

## SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	2017SSH019
DA Number	DA17/0467
LGA	Sutherland Shire
Proposed Development:	Refurbishment and restoration of Heathcote Hall, construction of 35 townhouses and 20 apartments, associated landscape works and 56 lot strata subdivision
Street Address:	Lot 1 DP 725184, Lot 2 DP 725184 (No. 1-21) Dillwynnia Grove, Heathcote
Applicant/Owner:	Ink Architects Pty Ltd
Date of DA lodgement	28 April 2017
Number of Submissions:	264 groups/individuals to the first notification period and 54 groups/individuals from second notification period.
Recommendation:	Deferred Commencement
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Schedule 4A of the Act (in accordance with correct version of the EP&A Act at the time of lodgement)
List of all relevant s4.15 (1)(a) matters	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy 55 – Remediation of Land</li> <li>• State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development</li> <li>• Heritage Act 1977</li> <li>• Rural Fires Act 1997</li> <li>• Sutherland Shire Local Environmental Plan 2015</li> <li>• Sutherland Shire Development Control Plan 2015 (DCP)</li> <li>• Sutherland Shire Development Control Plan 2015 (DDCP 2015)</li> <li>• NSW Planning &amp; Environment – Apartment Design Guide</li> </ul>
List all documents submitted with this report for the Panel's consideration	A Draft Conditions and General Terms of Approval (Rural Fire Service and Heritage Council) B Detailed Response to Submissions C Pre-Application Discussion Letter D Submissions Summary E Information Session notes F ARAP Letter G Original Heritage Council General Terms of Approval H Local Emergency Management Committee response I Clause 4.6 Variation Revised J RFS General Terms of Approval K Revised Heritage Council General Terms of Approval L Landscape, Height Annotated Plan M Privacy and Setbacks, Stair/Lift Annotated Plan N Parking Annotated Plan O Letter to SSPP re Council Resolution (referred to in Appendix B p8) P Plans
Report prepared by:	Lisa Pemberton, Assessment Officer Sutherland Shire Council
Report date	13 June 2018

**Summary of s4.15 matters**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

**Legislative clauses requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?  
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Yes / No /  
Not  
Applicable

**Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Yes**

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

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

**Not  
Applicable**

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**Conditions**

Have draft conditions been provided to the applicant for comment?

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

**No**

## REPORT SUMMARY

### REASON FOR THE REPORT

Pursuant to the requirements of State Environmental Planning Policy (State and Regional Development) 2009 (as at the time of lodgement), this application is referred to the Sydney South Planning Panel (SSPP) as the development has a capital investment of more than \$20,000,000 (as per the correct version of the Environmental Planning and Assessment Act 1979 at the time of lodgement). The application submitted to Council nominates the value of the project as \$29,500,474.00.

### PROPOSAL

The proposal is for the development of 35 townhouses; and 20 apartments across two residential flat buildings; two levels of basement parking, and landscaping. The proposal also includes the restoration of Heathcote Hall and the associated Heritage Gardens, related heritage interpretation and strata subdivision into 56 lots.

### THE SITE

The subject land is known as 1 – 21 Dillwynnia Grove, Heathcote. The site is listed on the State Heritage Register and under the Sutherland Shire LEP 2015 as a heritage item, known as “Heathcote Hall”. Existing structures on site include Heathcote Hall (the Hall) itself, remnant heritage artefacts, and various outbuildings. The site has three street frontages, Dillwynnia Grove to the south, Tecoma Street to the east and Boronia Grove to the north

### ASSESSMENT OFFICER’S RECOMMENDATION

#### THAT:

1. Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to *Height of Buildings* does not wholly satisfy the relevant provisions of Clause 4.6 and is therefore only supported in part regarding Building A. It is recommended that the provisions of Clause 4.6 be invoked and that the *Height of Buildings* development standard be varied to 9.1m m to the roof (excluding the lift overrun) for Building A only, in respect to this application. The height variation for Building B; and Townhouse 30 and 31; is not supported, and the maximum height is to be no greater than 8.5m in height (excluding the lift overrun for Building B).
2. Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application No. 17/0467 for the construction of 35 Townhouses, 20 apartments, 56 Lot Strata Subdivision and Restoration of Heathcote Hall and grounds, at Lot 1 DP 725184, Lot 2 DP 725184, (Nos. 1-21) Dillwynnia Grove, Heathcote is determined by the granting of a deferred commencement subject to the conditions contained in **Appendix A**.

## ASSESSMENT OFFICER'S COMMENTARY

### 1.0 DESCRIPTION OF PROPOSAL

The proposal consists of three elements as follows

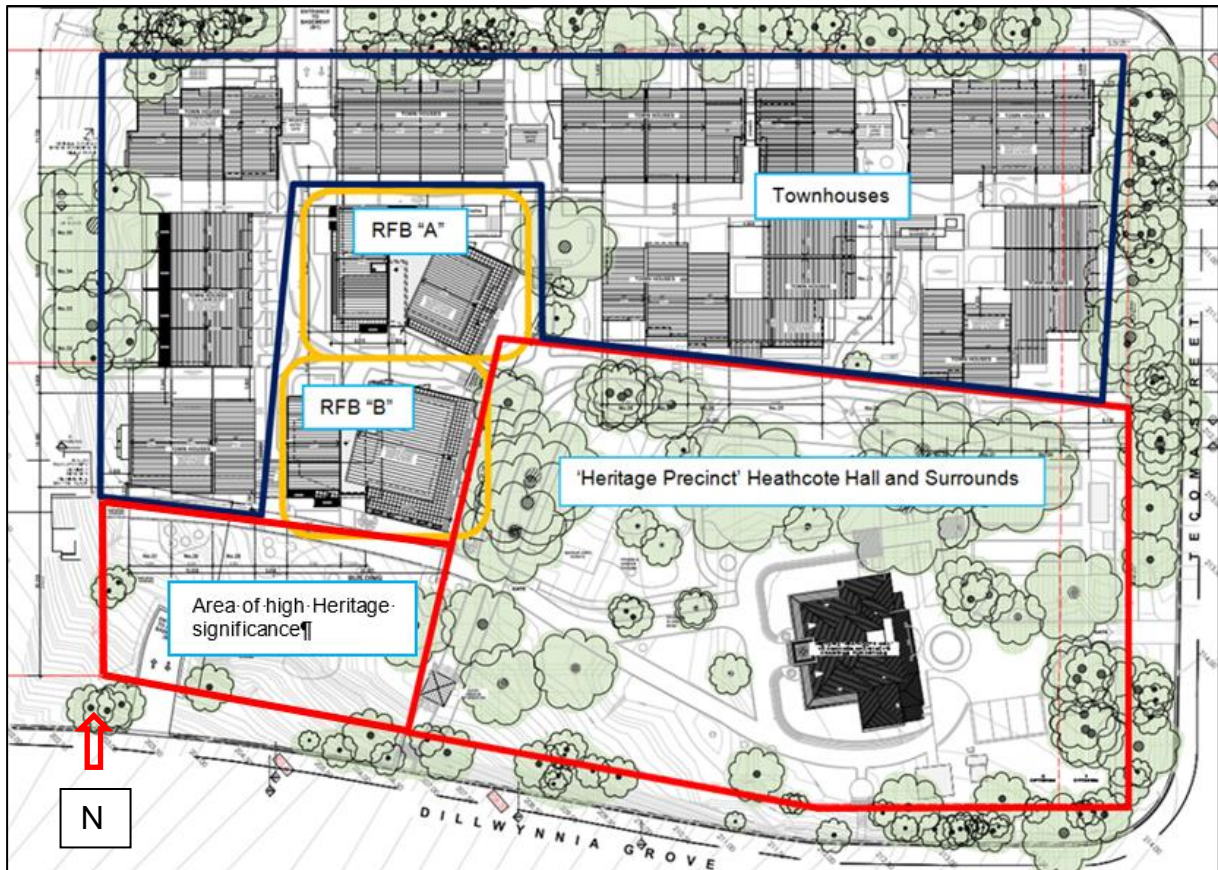
a) *Heritage Precinct:*

- Restoration of Heathcote Hall.
- Reinstate the Heritage landscape including gardens, pathways and vegetation.
- Heritage interpretation of the former tennis court.
- Provision of public pedestrian access from Tecoma Street, Boronia Grove and Dillwynnia Grove.
- Heritage interpretation of a former vehicular access from the western boundary towards Heathcote Hall (to the south of townhouses 29-31 and Building B).

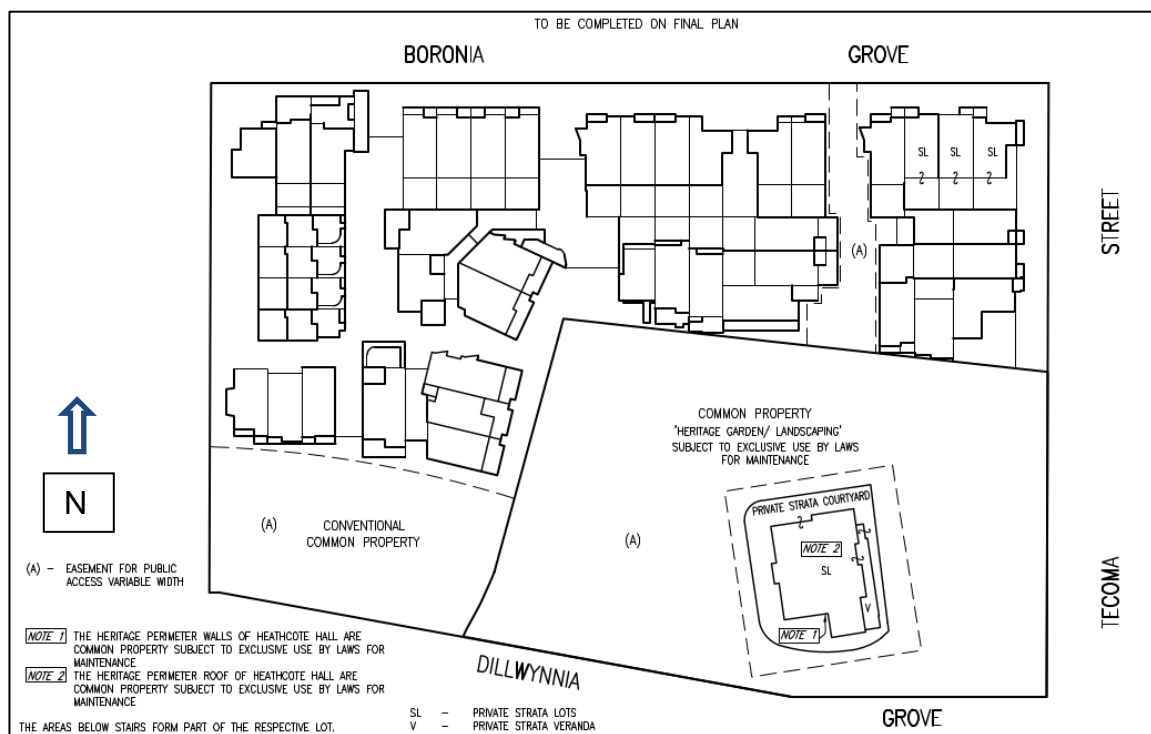
b) *Residential precinct:*

- Thirty-five x 3 bedroom townhouses each with private open space.
- Residential Flat Building A (Building A) – 3 storeys with 10 dwellings (9x2 bedroom and 1x3 bedroom).
- Residential Flat Building B (Building B) – 3 storeys with 10 dwellings (2x 1 bedroom, 7 x 2 bedroom, and 1 x 3 bedroom).
- Two separate levels of basement parking, one level accessed from Boronia Grove and the other from Dillwynnia Grove.
- Public and private pedestrian access through the site, including to Heritage Gardens and Heathcote Hall.

c) *56 Lot Strata Subdivision* - including one strata lot to contain the Heritage Precinct.



Site Plan



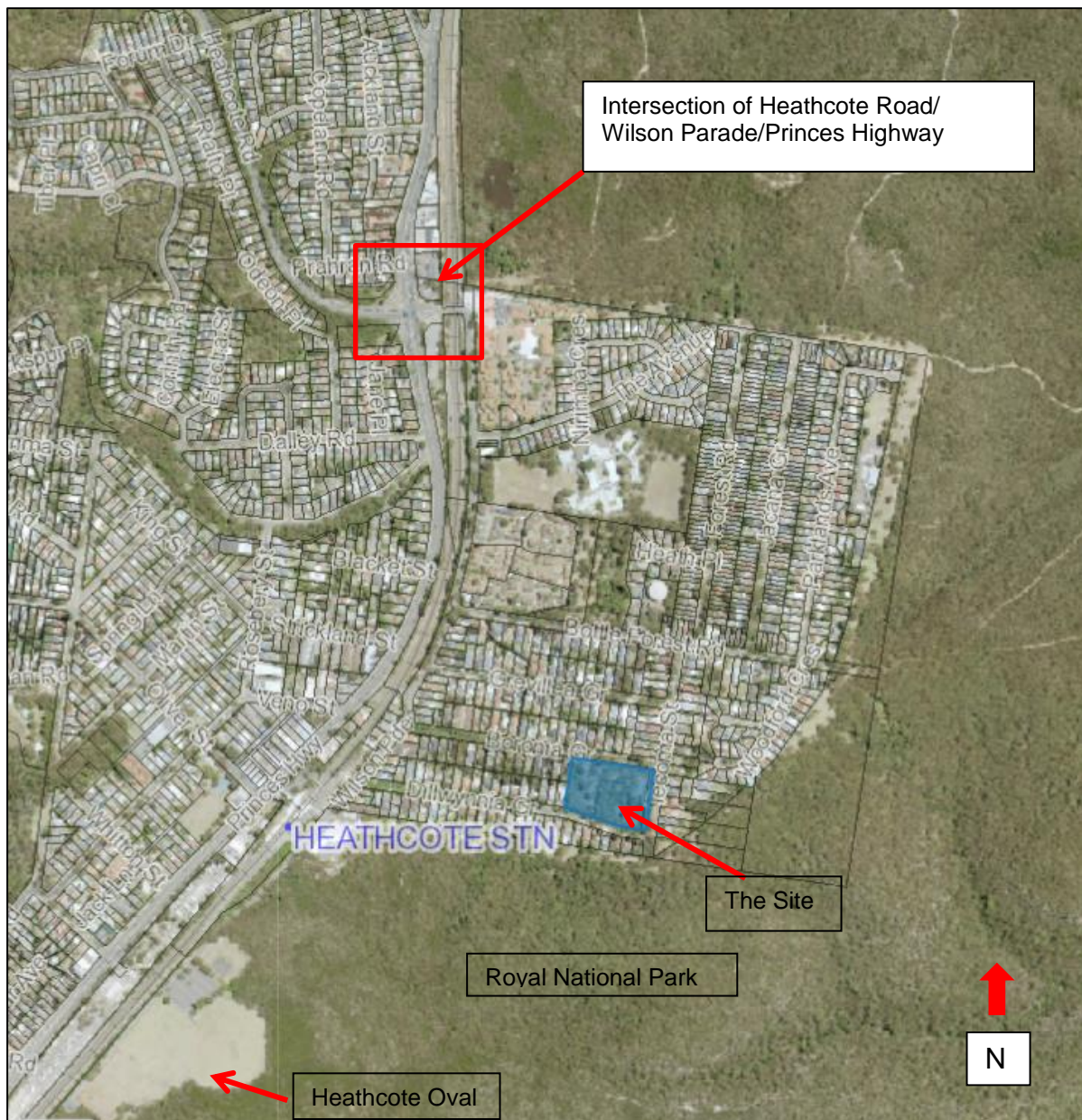
Plan identifying the strata lot containing the Hall and Gardens, and other common property



## 2.0 SITE DESCRIPTION AND LOCALITY

The subject land is known as 1 – 21 Dillwynnia Grove, Heathcote. The site is largely undeveloped except for a single dwelling known as “Heathcote Hall”, which is located towards the south eastern corner of the site and it is currently unoccupied. The subject site and part of the surrounding verge contain remnants of the Endangered Ecological Community of Sydney Turpentine Ironbark Forest (STIF), as well as other significant vegetation, which contribute to the streetscape and landscape setting of the site.

The site has three street frontages, Dillwynnia Grove to the south, Tecoma Street to the east and Boronia Grove to the north. The entire site is listed on the State Heritage Register (SHR No 00191).



Locality image



Site Location with bushfire layer overlaid

The site is irregular in shape and has frontages of 149.43m to Boronia Grove, 116.72m to Tecoma Street and 160m to Dillwynnia Grove and has a total area of approximately 17,500m<sup>2</sup>. The land falls from the south east to the north west by approximately 7m, as well as approximately 10m from the south east corner to the south west corner of the site. This includes a sharp 3m drop at the south western corner of the site, to Dillwynnia Grove.

The streetscape and urban environment in the immediate vicinity of the subject land is characterised by low density residential development including 1 – 3 storey single dwelling and dual occupancy developments. The site is in close proximity to the Royal National Park, and approximately 500m east of Heathcote Train Station. The south eastern corner of the site is classified as Bushfire Prone Land.

### 3.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD) was held on *10 November 2015* (PAD15/0146) regarding the restoration of Heathcote Hall and the development of multi dwellings and six storey residential flat buildings on the subject site. A formal letter of response was issued by Council dated *16 December 2015*. A full copy of the advice provided to the Applicant is contained within **Appendix C** of this report and the main points contained in this letter are as follows:
  - Satisfaction of Clause 5.10.10 of the Sutherland Shire LEP 2015 (SSLEP 2015).
  - The density and heights associated with the development were not supported.
  - Financial nexus for conservation and the development must be demonstrated.
  - Urban design.
  - Ecological Sensitivity – Endangered Ecological Community on site and management of the impact of the development upon this community including building and basement footprint.

- Submission of relevant documents such as a Conservation Management Plan, and Ecological Assessment.
- Parking, privacy, visual impact, solar access, and application of SEPP 65 and the Apartment Design Guide with respect to the proposed residential flat buildings.
- Submission of a bushfire report for assessment by the Rural Fire Service.
- A Pre- DA ARAP meeting was held on *4 February 2016* for the restoration of Heathcote Hall, landscaping and 88 dwellings as townhouses and apartments. The proposed residential flat buildings were 12m in height.
- A second Pre- DA ARAP meeting was held on *10 November 2016* for the restoration of Heathcote Hall, 41 townhouses (varying between 2-3 storeys), basement parking, 24 apartments (11m in height or 3+ storeys) and landscaping.
- The current application was submitted on *28 April 2017*.
- Council requested additional information during May 2017 regarding:
  - PDF copy of the internal elevations of the proposed buildings.
  - Heritage Impact Statement not provided in an electronic format
  - Heritage Landscape Assessment - "A1 sheet "Heritage Landscape Assessment by the Expert *Michael Lehany*" not provided in an electronic format
  - Landscape Plans: error with revision numbers (Sheet L-03, Sheet L-05, L-09, L-12 and L-17).
  - an electronic copy of the flora and fauna report.
  - a copy of the Conservation Management Plan
  - a copy of the Arborist Report

The above was provided by 18 May 2017

- The application was placed on exhibition with the last date for public submissions being *8 June 2017*. This date was then extended due to a request from the public. The exhibition period was extended to *23 June 2017*. Submissions were received from 264 individuals or groups. (A submission summary with all names, addresses and matters raised is attached at **Appendix D**)
- An Information Session was held on *24 May 2017* and 73 people registered their attendance on the night of the meeting. A copy of the minutes is attached at **Appendix E**.
- A site visit was held on *22 May 2017*, all assessment and specialist Council staff attended the site.
- The application was reviewed by the Architectural Review Advisory Panel (ARAP) on *9 June 2017*. The applicant provided a written response to ARAP comments on *28 July 2017* (Copy of ARAP minutes at **Appendix F**).
- *22 August 2017* the NSW Heritage Office provided General Terms of Approval for the DA (Copy of document at **Appendix G**).
- *23 August 2017* Council briefed the Sydney South Planning Panel on the proposal.
- *27 June 2017* the Rural Fire Service requested additional information; this included a revised traffic report and a copy of the submissions.
- Council wrote to the applicant requesting additional information and amendments to the proposal on *29 August 2017*.



- Council officers held a workshop with the applicant and their consultants on *20 September 2017*. On *22 September 2017*, Council provided the applicant with a written record of this workshop including outcomes and additional information and amendments required.
- *20 September 2017* the applicant provided a supplementary report regarding the Traffic Assessment. Council advised the applicant on *13 October 2017* that the report did not adequately respond to Council's letter of *29 August 2017*, and that further information was required. On *6 November 2017* the applicant provided modelling and phasing reports regarding traffic. This was provided to the RFS.
- *8 November 2017* the applicant submitted a Phase 1 Contamination report, and then submitted an amended copy on *20 November 2017*. Council advised the applicant on *28 November 2017* that the amended report was not satisfactory and the applicant was required to submit additional information regarding contamination, which they had failed to do in response to Council's letter of *29 August 2017*. The applicant submitted a *Detailed Environmental Site Investigation* report on *8 January 2018*.
- *27 November 2017* Council met with the applicant again to discuss draft plans submitted in response to the workshop and Council's letter.
- *20 November 2017* the applicant submitted a Geotechnical Report.
- Amended plans and supporting documentation were notified on *13 December 2017*, with an extended notification period over the Christmas/New Year period ending on *22 January 2018*. This date was then extended until *2 February 2018* due to a request from the public. Submissions were received from 54 individuals or groups. (Submission summary attached at **Appendix D**)
- The amended application was referred to the Rural Fire Service and the Heritage Branch on *13 December 2017*.
- *14 December 2017* the applicant was requested to provide a copy of the latest Conservation Management plan as previously approved by the Heritage Office. A copy was provided on the same day.
- *11 January 2018* the applicant was requested to provide the DRAINS and MUSIC modelling prepared for the application so that Council could review the modelling in conjunction with amended stormwater plans. The applicant provided the information on *12 January 2018*.
- *22 January 2018*, Council requested amended stormwater plans from the applicant and met with them regarding this matter on *8 February 2018*. The applicant provided amended stormwater plans and DRAINS and MUSIC Modelling files on *16 February 2018* for assessment.
- *19 January 2018* the Rural Fire Service requested additional information from Council regarding traffic and evacuation of the local area.
- *23 January 2018* Council referred the application to the Local Emergency Management Committee. The proposal was tabled for the LEMC meeting on *8 February 2018*. A written response was received on *21 February 2018* (copy attached at **Appendix H**). Council wrote to the RFS on *23 February 2018* regarding the traffic and the LEMC.
- *8 February 2018* the applicant was requested to provide a complete copy of the Quantity Surveyors report. The copy was provided to Council on *12 February 2018*.

- *5 February 2018* the applicant was requested to provide an addendum to the Bushfire Report in light of the amendments to the proposal (*note as part of the original documentation the applicant submitted two bushfire reports, one for the new built form prepared by Ecological Australia and another report for the Heathcote Hall, prepared by Barry Eadie*). An addendum to the Barry Eadie report was submitted on *6 February 2018*, and a copy was sent to the Rural Fire Service on *9 February 2018*.
- *16 February 2018* the applicant was requested to provide an amended Clause 4.6 Variation regarding height, the applicant provided a copy on *23 January 2017*. On *16 February 2018* Council requested further information as the Clause 4.6 variation was not clear on building heights. An amended report was submitted on *5 March 2018* (copy attached at **Appendix I**).
- *1 March 2018* Council advised the applicant that they had not addressed concerns regarding flora and fauna as raised in their letter of *29 August 2017*, and discussed at the subsequent workshop. The report submitted was inadequate. The applicant provided a response to this matter on *9 March 2018*, including an amended flora and fauna report, amended landscape plans and amended arborist report.
- *12 March 2018*, the RFS sought clarification from Council as to whether an addendum to the bushfire report for new built form prepared by Ecological Australia would be updated and submitted for assessment. The applicant was contacted on *12 March 2018* to determine whether and amended Ecological Australia report would be submitted for assessment. The applicant advised on *13 March 2018* that the previous report prepared by Ecological would be superseded by an amended report prepared by Barry Eadie Consulting.
- *14 March 2018*, the Council requested an amended landscape plan for consistency with the stormwater plans submitted on *16 February 2018*. The applicant provided an amended plan on *20 March 2018*.
- *27 April 2018* the NSW Rural Fire Service provided their General Terms of Approval (copy attached at **Appendix J**)
- *18 May 2018* the applicant submitted strata plans.
- *21 May 2018* the Council received amended General Terms of Approval Heritage Council (dated 17 May 2018) (copy attached at **Appendix K**)
- The application was considered by Council's Submissions Review Panel on 29 May 2018.

#### **4.0 ADEQUACY OF APPLICANT'S SUBMISSION**

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to enable an assessment of this application, including a Clause 4.6 variation to the height standard.

#### **5.0 PUBLIC PARTICIPATION**

The application was advertised in accordance with the provisions of the Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

The application was first publicly exhibited until 23 June 2017. A total of 279 owners of neighbouring properties were notified of the application and the application was also advertised in the local press

(the Leader). Submissions were made by 264 individuals or groups as a result. This exhibition period was extended due to requests from the public for extended review period due to the detail and scale of the project.

The applicant lodged all revised plans and supporting information for notification in December 2017. In accordance with the requirements of SSDCP2015 these plans were publicly exhibited in the same way as the original application.

Amended plans and documents were notified to 268 adjoining or affected owners and submissions were made by 54 individuals or groups. This exhibition period was extended from 22 *January 2018* to 2 *February 2018*, again to account for the detail and scale of the project, as well as the holiday period.

A detailed response to issues raised has been undertaken and is included in **Appendix B**. The planning assessment issues raised have been addressed in this report and/or **Appendix B**. and are as follows:

- *Heritage*
- *Use of the Hall/ and Grounds*
- *Restoration and maintenance process*
- *LEP/DCP*
- *Consent Authority Should Be Council*
- *General Process*
- *SSPP Process*
- *Availability of documents from RFS*
- *Traffic and parking, site access*
- *Inadequate or poor information submitted*
- *Bushfire*
- *Fire (not bushfire)*
- *CPTED and SAFETY*
- *Construction*
- *Infrastructure*
- *Environmental Impact*
- *Waste Management*
- *Design*
- *Amenity*
- *Drainage*
- *Financial Viability*

All process related or additional comments regarding non-planning matters can be found within the submissions themselves. A full list of the locations of those who made submissions, the date/s of

their letter/s and the issue/s raised is contained within **Appendix D** of this report. A full copy of all submissions has also been provided separately to the SSPP for their information.

### **Information Session**

A public information session between Council Officers and interested residents was held during the exhibition period on 24 May 2017 and the session was attended by 73 parties.

### **Submission Review Panel (SRP)**

The submissions received and the issues raised, were reviewed by Council's SRP. The application is being determined Sydney South Planning Panel, all submissions and issues raised will be provided in full and summary for the SSPP to review and consider.

## **6.0 STATUTORY CONSIDERATIONS**

The subject site is located within *Zone E4 – Environmental Living*. The townhouses and residential flat buildings are a prohibited form of development in this zone, however the applicant has applied for this development under the Heritage Conservation incentives of Clause 5.10.10 of the SSLEP 2015. An assessment against Clause 5.10.10 has been undertaken below in the assessment section.

Notwithstanding the provisions of Clause 5.10.10, land in the E4 zone is subject to a Floor Space Ratio (FSR) of 0.55:1, a height limit of 8.5m and a landscape area requirement of 40%.

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

- State Environmental Planning Policy 55 – Remediation of Land
- State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development
- Heritage Act 1977
- Rural Fires Act 1997
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)
- Sutherland Shire Development Control Plan 2015 (DCP)
- NSW Planning & Environment – Apartment Design Guide

### **Section 94 and Section 94A**

- S94A 2016 Plan - Sutherland Shire

## **7.0 COMPLIANCE**

### **Sutherland Shire Local Environmental Plan 2015**

The subject site is located within Zone E4 – Environmental Living. While the townhouses and residential flat buildings are a prohibited form of development in this zone, they can be approved under Clause 5.10.10 if the development satisfies this clause.

Notwithstanding the provisions of Clause 5.10.10, land in the E4 zone is subject to an FSR of 0.55:1, a height limit of 8.5m and a landscape area requirement of 40%. A comparison of the development against the requirements of the SSLEP 2015 for land in the E4 zone has been undertaken in the table below.

<b>Sutherland Shire Local Environmental Plan 2015</b>			
<b>Clause</b>	<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
4.3	Height of Buildings – 8.5m	* Building A= max 9.545 (to the roof)  * Building B= 10.763m (to the roof)  *Townhouses < 8.5m except for Townhouses 30 and 31. #30= 8.771m #31=8.799m	<b>No</b> =+ 12.29%  <b>No</b> = + 26.62%  <b>No</b> = +3.1% <b>No</b> = +3.5%
4.4	Floor Space Ratio Max – 0.55:1  <b>Based on whole site area=9525m<sup>2</sup></b>  Based on developable area= 5897.37m <sup>2</sup>	Total GFA Residential and Heathcote Hall= 7517.7 + 438.57= <b>7956.27m<sup>2</sup></b>  FSR based on site area: <u>0.45:1</u>  FSR based on developable area: 0.74:1 (as stipulated by the Heritage Council)	Yes
6.14	Landscaped Area (deep soil) 40%  <b>(7000m<sup>2</sup> required)</b>	Approximately 7008.6m <sup>2</sup>	Yes

#### **Sutherland Shire Development Control Plan 2015 (DCP 2015)**

Chapter 4 of the DCP 2015 contains development controls for multi dwelling housing. In the case of this proposal, Chapter 4 of the DCP 2015 does not strictly apply as multi dwelling housing is not permissible within an E4 Zone. However, given the low density nature of the surrounding development and the E4 zoning, in order to undertake an assessment of the streetscape, bulk, scale and impacts of the townhouse component of this application, an assessment has been undertaken against the Zone R2 Low Density Residential development controls for multi-dwelling housing in accordance with Chapter 4 of the DCP 2015.

A compliance table is included below which also calculates car parking for the whole development, being the townhouses, residential flat buildings and commercial gross floor area of Heathcote Hall to



account for any future commercial use of the Hall. The assessment of car parking has been undertaken in accordance with Chapter 35 of the DCP 2015.

SUTHERLAND SHIRE DEVELOPMENT CONTROL PLAN – R2 Low Density Residential MULTI DWELLING		
CONTROLS/REQUIREMENTS	Proposal	COMPLIANCE
1.2 Streetscape & Building form		
<ul style="list-style-type: none"><li>20m minimum site width</li></ul>	Min 20m along all three frontages	Yes
<ul style="list-style-type: none"><li>Development must be designed and sited so that it addresses the street and must have a clearly identifiable entry.</li></ul>	Yes	Yes
<ul style="list-style-type: none"><li>Individual dwelling entries must be designed to ensure safe pedestrian access and easy way finding.</li></ul>	Secure entries provided where dwellings do not have direct street frontage/access	Yes
<ul style="list-style-type: none"><li>Buildings are to be a maximum of three storeys when viewed from the street.</li></ul>	Yes	Yes
<ul style="list-style-type: none"><li>The building form must be articulated to avoid large expanses of unbroken wall, and to visually reduce bulk.</li><li>Facades are to be composed with an appropriate scale, rhythm and proportion, which respond to the desired character of a locality.</li></ul>	Yes	Yes
<ul style="list-style-type: none"><li>Basement car parking must not result in the building having a three storey appearance when viewed from the street.</li><li>Where a basement car park extends above the natural ground level, it is to be designed to ensure that any podium or vehicular entry does not dominate the overall design of the building or the streetscape.</li><li>1m deep soil landscaped setback to neighbouring properties is to be provided along the driveways to basement car parks.</li></ul>	<div>Yes</div> <div>Yes</div> <div>Yes</div>	<div>Yes</div> <div>Yes</div> <div>Yes</div>

2.2 Building Setbacks		
<p>Street Setback</p> <ul style="list-style-type: none"> <li>7.5m or established street setback.</li> </ul>	<p><i>Dillwynnia Grove</i> Minimum 29.855m</p> <p><i>Boronia Grove</i> 4.7m to 7.39m</p>	<p>Yes</p> <p>No – see discussion below</p>
<ul style="list-style-type: none"> <li>3.0m secondary street Frontage (Tecoma St)</li> </ul>	<p>4.7m to 7.1m</p>	<p>Yes</p>
<p>Articulation Zone</p> <ul style="list-style-type: none"> <li>Building elements may encroach 1.5m of the 7.5m for 1/3 max façade area.</li> <li>Garages and garage doors are not to be located in the articulation zone.</li> </ul>	<p>Greater than one third</p> <p>Not proposed</p>	<p>No – see discussion below</p> <p>Yes</p>
<p>Side Setback</p> <p><i>(Front of the site taken from the Street address of Dillwynnia Grove for purposes of calculating 60/40))</i></p> <ul style="list-style-type: none"> <li>Ground Floor <ul style="list-style-type: none"> <li>0.9m front 60% of site</li> <li>4m rear 40% of site</li> </ul> </li> <li>Second storey <ul style="list-style-type: none"> <li>1.5m front 60%</li> </ul> </li> </ul>	<p><u>Setback to side (western) boundary</u></p> <p>4.5m to townhouse #31 (Dillwynnia Grove)</p> <p>7.9m to townhouses #32-35.</p> <p>4.04m to townhouse #1 (Boronia Grove)</p> <p>2.7m to townhouse #31 (Dillwynnia Grove)</p> <p>9.055m to townhouses #32 - 35</p> <p>4.04m to townhouse # 1 (Boronia Grove)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>Rear Setback (to western boundary) dwellings #32-#35</p> <ul style="list-style-type: none"> <li>4m</li> </ul>	<p>7.9m</p>	<p>Yes</p>

<p>Basement</p> <ul style="list-style-type: none"> <li>Any basement that extends beyond the foot print of the building must be setback a minimum of 3 metres from side boundaries unless it can be designed to mitigate overlooking between adjoining properties and make provision for landscaping at the side boundaries</li> </ul>	N/A	N/A
<b>3.2 Landform</b>		
<ul style="list-style-type: none"> <li>The natural contours of the land must not be unduly altered. Developments should avoid any unnecessary earthworks by designing and siting buildings within the natural slope of the land.</li> </ul>	The development has been designed to generally follow the natural contours.	Yes
<b>4.2 Landscaping</b>		
<ul style="list-style-type: none"> <li>Max. 50% hard surfaces within front setback, remaining area to be deep soil.</li> </ul>	41%	Yes
<ul style="list-style-type: none"> <li>Existing canopy trees in vicinity of side, rear, and front setbacks should be retained inc. adjoining land.</li> </ul>	Trees to be removed	See discussion below.
<ul style="list-style-type: none"> <li>Min. two indigenous canopy trees that will attain a min height of 5m to be planted within 3m of front boundary.</li> </ul>	Can comply	Tree planting to be conditioned to ensure adequate landscaping.
<ul style="list-style-type: none"> <li>Min. two indigenous canopy trees that will attain a min height of 5m must be planted within 2m of the rear boundary.</li> </ul>	Can comply	Tree planting to be conditioned to ensure adequate landscaping
<ul style="list-style-type: none"> <li>Landscaping in the vicinity of a driveway entrance should not obstruct visibility for the safe ingress and egress of vehicles and pedestrians.</li> </ul>	Yes	Yes
<b>5.2 Building Layout, Private Open Space &amp; Solar Access</b>		
<ul style="list-style-type: none"> <li>For at least 75% of residential units in a development, living rooms and private open spaces should receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter.</li> </ul>	100%	Yes

<ul style="list-style-type: none"> <li>• POS provided to each dwelling at or near ground level with: <ul style="list-style-type: none"> <li>– 36m<sup>2</sup> (min)</li> <li>– 6m min dimension</li> <li>– 9m<sup>2</sup> must be paved</li> </ul> </li> </ul>	Yes	Yes
<ul style="list-style-type: none"> <li>• Primary living area to provide direct access to POS.</li> </ul>	Yes	Yes
<p>Multi dwelling development:</p> <ul style="list-style-type: none"> <li>• Orientate the area of private open space to take advantage of the northern solar access,</li> <li>• Ensure 10m<sup>2</sup> of private open space has 3 (4) hours of solar access between 9:00am and 3:00pm at the winter solstice (21 June).</li> </ul>	<p>Some dwellings located to the south of the dwellings.</p> <p>Minimum 2 hours</p>	Acceptable
<ul style="list-style-type: none"> <li>• Neighbouring dwellings: ensure 3hrs of solar access between 9am and 3pm (21 June) maintained to living areas and 10m<sup>2</sup> of POS.</li> </ul>	Yes	Yes
<p>Storage</p> <ul style="list-style-type: none"> <li>• Each dwelling is to provide a secure storage space, 50% of which is inside the dwelling as follows: <ul style="list-style-type: none"> <li>– One bedroom unit - 6m<sup>3</sup></li> <li>– Two bedroom unit – 8m<sup>3</sup></li> <li>– Three bedroom unit – 10m<sup>3</sup></li> </ul> </li> </ul>	Specific storage allocations not provided. However extensive storage is shown the basement	Condition required ensuring that minimum volumes are met
<ul style="list-style-type: none"> <li>• Suitable clothes drying facilities shall be provided. They shall not be visible from a public place and shall have access to sunlight.</li> </ul>	-	To be conditioned.
<b>6.2 Visual &amp; Acoustic Privacy</b>		
<ul style="list-style-type: none"> <li>• Locate, orientate and design new development to maximise the provision of visual privacy.</li> </ul>	Interface of proposed dwellings along the western boundary with existing dwellings. Balconies proposed at first floor level for dwellings 32-35. These have been fully screened.	Balconies to be decreased in depth to address acoustic privacy via a condition. This is discussed below in the

		assessment section
<ul style="list-style-type: none"> <li>All noise generating equipment must be designed to protect acoustic privacy of residents and neighbors, acoustically screened and not to exceed LAeq (15 min) of 5dB(A) above background.</li> </ul>	Can comply	Condition to be imposed
<ul style="list-style-type: none"> <li>Development adjacent to a rail corridor or a busy road should be sited and designed to include noise and vibration attenuation measures.</li> </ul>	N/A	N/A
<b>7.2 Parking</b>		
<ul style="list-style-type: none"> <li>Parking spaces shall be located behind the building line.</li> </ul>	<p>Two levels of Basement parking</p> <p>4 spaces at grade adjacent to Heathcote Hall</p>	<p>Yes</p> <p>Yes</p>
<ul style="list-style-type: none"> <li>For developments in excess of 30 dwellings, car wash bays are required at a rate of one (1) per 20 dwellings.</li> </ul> <p><b>3 spaces needed</b></p>	2 provided in conjunction with visitor parking	Condition recommended to provide 3 dedicated carwash bays in total
<ul style="list-style-type: none"> <li>Location of driveways is to be determined with regard to dwelling design and orientation, street gully pits and street trees, and is to maximise the availability of on-street parking.</li> </ul>	Yes	Yes
<ul style="list-style-type: none"> <li>The design of the all vehicle access ways shall enable all vehicles to enter and leave the site in a forward direction.</li> </ul>	Yes	Yes
<ul style="list-style-type: none"> <li>The minimum vehicular crossing and driveway for a combined vehicular crossing (entry/exit) is 5.5m.</li> </ul>	6.m wide entry both from Dillwynnia and Boronia Grove.	Yes
<ul style="list-style-type: none"> <li>Bicycle parking shall be located and designed in accordance with the controls contained in chapter 35.</li> </ul>	Bicycle Parking locations not identified on plan	To be conditioned.



<ul style="list-style-type: none"> <li>Chapter 35 Cl.5.2.1 - 1 bicycle parking space per 10 car parking spaces for the first 200 car spaces, then 1 space per 20 parking spaces thereafter. In addition, 1 unisex shower is required per 10 employees.</li> </ul> <p><b>10 spaces needed</b></p>		
<b>8.2 Adaptable Housing and 8.3 Livable Housing</b>		
<ul style="list-style-type: none"> <li>All new multi dwelling housing must provide dwellings designed in accordance with the Australian Adaptable Housing Standard (AS4299) to Class C Certification at the following rates: <ul style="list-style-type: none"> <li>Developments of 6 or more dwellings <ul style="list-style-type: none"> <li>– 20% adaptable</li> </ul> </li> </ul> <p><b>11 dwellings needed (7 x townhouses and 4x Units)</b></p> <li>In addition to complying with the adaptable housing rates in clause 1 above, all new multi dwelling housing developments must provide 'livable dwellings (i.e., dwellings designed to Silver Standard Livable Housing Design Guidelines) at the following rates: <ul style="list-style-type: none"> <li>Developments of 6 or more dwellings <ul style="list-style-type: none"> <li>–10% of dwellings.</li> </ul> </li> </ul> <p><b>6 dwellings needed (4 x townhouses and 2 x units)</b></p> </li> </li></ul>	<p>Building A =2</p> <p>Building B = 4</p> <p>TOTAL= 6 (as livable and adaptable)</p> <p>Townhouses= Nil</p>	<p>No – Condition to be imposed to comply</p>
<b>9.2 Safety and Security</b>		
<ul style="list-style-type: none"> <li>A design for multi dwelling housings must demonstrate compliance with Crime Prevention Through Environmental Design guidelines.</li> </ul>	<p>Referred to the NSW Police for assessment. NSW Police have provided CPTED comments to be included in any consent.</p>	<p>To be conditioned.</p>

10.2 Waste Management		
<ul style="list-style-type: none"> <li>A waste storage area is to be provided for all developments to store bins for general waste and recyclables. The area must have sufficient space for the storage of garbage, recycling and green waste generated by the development</li> <li>The design, location and size of bin storage areas/rooms are to be in accordance with the requirements set out in the Better Practice Guide for Waste Management in Multi- Unit Dwellings. The storage area must: <ul style="list-style-type: none"> <li>be integrated into the overall building design and constructed of materials compatible with the new development;</li> <li>be located in an area so as not to compromise the amenity of the occupants of the development and of adjacent properties in terms of noise, odour and aesthetic impact, such as on a rear land frontage, near windowless walls, away from pedestrian areas and in the least visually obtrusive position; and</li> <li>be screened from view from the street with built form and landscaping so as to not detract from the streetscape.</li> </ul> </li> </ul>	<p>An assessment has been undertaken by Councils Engineer and Waste Manager – overall the waste collection is acceptable. Some minor amendments are required to ensure that there are adequate temporary storage bays for collection.</p> <p>The Collection Vehicle can be accommodated within the driveway to the Basement level 1 to be accessed via Boronia Grove.</p>	<p>Can be conditioned to provide appropriate waste collection bay within the basement.</p> <p>Waste collection from Dillwynnia Grove, will be collected from the street for townhouses 29-31 only, if collection from Boronia Grove is not possible - see draft condition.</p>
Chapter 36 – Roads, Access, Traffic, Parking and Bicycles		
<p>For multi- dwelling in an R2 Zone and Residential Flat buildings in an R4 Zone)</p> <p>Car parking is to be provided at the following (minimum) rates:</p> <ul style="list-style-type: none"> <li>–1 bedroom- 1 space (2x1 = <b>2 spaces</b>)</li> <li>–2 bedrooms – 1.5 (16x1.5= <b>24 spaces</b>)</li> <li>–3+ bedrooms – 2 (37 x 2= <b>74 spaces</b>)</li> <li>–One (1) visitor car park is to be provided for every 4 dwellings (55/4 =</li> </ul>	<p>Basement:</p> <p>106 Residential spaces +</p> <p>22 Visitor (both residential and commercial)</p> <p><i>Total 128</i></p>	<p>Yes</p> <p>A total of 132 car parking spaces are proposed (128 in basement) (see discussion on commercial</p>

<b>14 visitor spaces)</b> <b>TOTAL REQUIRED= 114</b> for the residential component		parking in table and assessment section below)
Commercial/retail in a business zone. 1 space per 30m2 GFA GFA of the Hall 354.8m <sup>2</sup> (= 12 spaces)	<ul style="list-style-type: none"> <li>- 4 at grade spaces provided adjacent to Heathcote Hall and spaces in the basement</li> <li>- Visitor spaces for commercial visitor and residential parking spaces not differentiated on plan.</li> </ul> <p>Total parking proposed across the site = 132 spaces including the 4 at grade parking (see parking above)</p>	Can be conditioned to comply with the requirement for <b>12</b> commercial visitor spaces – See discussion in assessment below.

#### State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development

The Principles of SEPP 65 apply to the residential flat building component of this development. An assessment against SEPP 65 has been undertaken and is discussed below.

DESIGN QUALITY PRINCIPLES	ASSESSMENT
Principle 1: Context & Neighbourhood Character	<p>The design has responded to the context of the Heathcote Hall, by providing a development that compliments the Heritage item rather than completing with it from an Architectural aspect. The proposed roof forms and materials are simplistic, and provide as a backdrop to the Heathcote Hall itself and gardens.</p> <p>As discussed above the residential flat buildings and townhouse 30 and 31 exceed the height limit, which is not an acceptable response to the context and neighbourhood character, therefore deferred commencement conditions will address this matter as discussed above and below; in order to improve the relationship with the adjacent lower scale residential development.</p>
Principle 2: Built Form & Scale	<p>Overall the development will provide contemporary dwellings, reinforcing the Heritage significance of the site. In regards to the clusters of townhouses along Boronia Grove and Tecoma Street., the proposed development achieves an appropriate form in terms of proportions and building composition in relation to the Heathcote Hall and surrounding low scale residential development.</p>

	<p>However there are a number of matters that require resolution, and with this is recommended that a deferred commencement be granted in order to resolve issues regarding setbacks to Boronia Grove, building height, and building location in relation to the requirements of the Heritage Council.</p> <p>Deferred commencement conditions recommend a number of design amendments in order to improve the transition to the heritage significant areas and existing residential development.</p> <p>If these changes are imposed then it is considered that the development can satisfy the built form and scale provisions of SEPP 65.</p>
Principle 3: Density	The unit areas and proportions are in keeping with the rules of thumb in the Apartment Design Guide, and provide a level of openness and amenity.
Principle 4: Sustainability	The development incorporates BASIX requirements and sustainability measures into its overall design so as to enhance water and energy efficiency and to provide suitable amenity to the building's future occupants. Rainwater tanks will also be conditioned to be provided to further enhance this.
Principle 5: Landscape	Trees on the neighbouring properties will be protected through the provision of adequate tree protection zones. Deep soil areas within the communal open space and along the boundaries of the site will contribute to preserving the existing landscaped character. Further planting and appropriate species selection will reinforce the existing and desired future character of the locality. In addition the applicant proposes to replant species associated with the Endangered Ecological Community of the Sydney Turpentine-Ironbark Forest and embellish the Heritage Gardens as per the requirements of the Heritage Council.
Principle 6: Amenity	The proposal adequately satisfies the provisions of the Apartment Design Guide in terms of residential amenity, including appropriate building and floor plan layout. The development proposes expansive areas of active and passive communal open space, which is secure from the Heritage areas of the site. In addition to this the Heritage gardens are proposed to be common property for residents and the public to use as open space areas.

Principle 7: Safety	The proposed development incorporates suitable Crime Prevention Through Environmental Design (CPTED) Principles in the design. Further conditions are recommended as per the requirement of the NSW Police.
Principle 8: Housing Diversity & Social Interaction	The proposal provides a mix of apartment types. Adaptable and Livable dwellings have not been adequately provided for; however this can be addressed via a recommended condition.
Principle 9: Aesthetics	An appropriate composition of building elements, proportions, textures, materials and colours within the development has been achieved. There are a number of matters relating to building height and resultant bulk that are not acceptable as discussed in this report.

The application has been assessed against the provisions of the Apartment Design Guide, this guide supports State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.

Apartment Design Guide			
Objective	Design Criteria	Proposal	Complies
2F - 3F-1(1)	<u>Internal Separation</u>		
Building	<u>Up to 4 storeys(approx 12m)</u>		
Separation & Visual Privacy	<i>3m non-habitable to solid walls</i>	6.8m min between Building A and B (solid walls)	Yes
	<i>6m habitable to solid wall</i>	5.17m min between Building A and B (solid wall to habitable)	No
		10 between Building A to western townhouses (solid wall to habitable)	Yes
		NIL between Building A and townhouses to the north (solid wall to habitable)	No
		5m min between Building B and townhouses to the west (habitable to solid wall)	No
	<i>12m between habitable rooms/balconies</i>	8.8m minimum at northern end but 14.5m at southern end between Building A to western townhouses (habitable to	No







4E-1(1)(2)  Private Open Spaces / Balconies	1br = 8m <sup>2</sup> / depth 2m  2br = 10m <sup>2</sup> / depth 2m  3bdr=12m <sup>2</sup> / depth 2.4m  Ground Level apartments = 15m <sup>2</sup> / depth 3m	All apartments meet the minimum area and depth requirements	Yes
4F-1(1)(2)  Common Circulation and Spaces	Maximum apartments of single circulation core = 8	Building A= 4  Building B= 4	Yes
4G-1(1)  Storage	1br apartment = 6m <sup>3</sup>  2br apartment = 8m <sup>3</sup>  Storage 3br apartment = 10m <sup>3</sup>  At least 50% of storage to be located within the apartments	Specific storage allocations not provided. However extensive storage is shown the basement.	Condition required ensuring that minimum volumes are met

An assessment of the development against the Principles of SEPP 65 is included below.

## 8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

### 8.1 Heritage Office

The application is integrated development pursuant to Section 4.46 of the *Environmental; Planning and Assessment Act 1979*. The Heritage Council have provided their revised General Terms of Approval to Council on 21 May 2018. A copy of the General Terms of Approval is attached at **Appendix K**. The General Terms of Approval have been discussed below in the assessment section.

### 8.2 NSW Rural Fire Service

The development is integrated development subject to Section 4.46 of the *Environmental; Planning and Assessment Act 1979*. The NSW Rural Fire Service Issued their General Terms of Approval under the *Rural Fires Act 1997*. A copy of the General Terms of Approval is attached at **Appendix J**. The NSW RFS support the development subject to conditions.

The NSW RFS has also included a note for the consent authority stating:

***“General advice – consent authority to note***

*The Council, together with the Local Emergency management Committee (LEMC) and relevant government authorities, should ensure that the vehicular crossing of the railway line at Heathcote Station is kept trafficable at all times in case of an emergency”*

A copy of these General Terms of Approval were provided to the Chairperson of the LEMC on 3 May 2018.

**8.3 NSW Trains**

The development application was referred to Sydney Trains. Sydney Trains provided draft conditions of consent regarding maintaining clear access to Railcorp’s access gate on Wilson Parade during construction; detail on Construction Management and *Safe Working Method Statements* regarding adhering to the load restriction set in place for Wilson Parade, and Heathcote Bridge of 44 Tonne.

Sydney Trains reviewed the amended plans and advised that their original advice was still applicable and that if consent was granted that condition be imposed regarding the access gate and load restrictions/ structural requirements. A draft condition is recommended should a deferred commencement be granted.

**8.4 Sydney Water**

Sydney Water have reviewed the proposal and raise no objections. Sydney Water has provided draft conditions if consent is recommended. The draft conditions require the referral of the application to Sydney Water prior to issue of construction certificate so they can undertake a detailed assessment of the proposal with regards to water and sewer mains, stormwater drains and/or easements; further a Section 73 Certificate will be required under the *Sydney Water Act 1994* to be obtained. A draft condition is recommended reflecting this.

**8.5 Office of Environment and Heritage (OEH) (National Parks and Wildlife Service division)**

The proposal was referred to the NPWS as they are an adjacent landowner (Royal National Park). The NPWS advises that as part of its assessment that Council *“consider the Guidelines for developments adjoining land managed by the Office of Environment and Heritage (OEH guidelines)”*. These guidelines *provide “guidance to avoiding impacts to the natural and cultural values of OEH land by consideration of a range of matters including: noise impacts and amenity; boundary encroachments; management implications, pests, weeds, edge effects; erosion and sediment control, and stormwater runoff.*

The OEH did provide comments regarding storm water management, and advised that while the development is not directly adjacent to the park that there *“are potential impacts on Royal National Park from additional stormwater occurrence”*. The OEH referred to Section 2.2 of the above OEH guidelines relating to storm water runoff, advising that the *“developer must consider not to direct*

*stormwater to park where possible. The above guidelines recommend the development proponent ensure all storm water storage areas and associated infrastructure are appropriately sized and maintained to ensure that there is no unauthorised overflow onto OEH land. The proponent should consider stormwater retention on site and utilising existing council drainage structures rather than diverting flows into Royal National Park.”*

Council has undertaken an assessment of the proposal against these guidelines and the comments provided by the OEH which is included in the assessment section below. Council considers that the development satisfies these guidelines.

## **8.6 NSW Police**

The NSW Police have undertaken a *Safer by Design Risk Evaluation* of the proposal. The NSW have provided draft conditions of consent relating to Crime Prevention Through Environmental Design (CPTED), which should be applied to this development via a condition of consent if consent is granted. These conditions have been included.

## **8.7 Roads and Maritime Services**

The Roads and Maritime has reviewed the submitted application and raises no objection to the revised development subject that a condition being included in any consent issued advising the applicant that the *“subject property is within a broad area currently under investigation in relation to the proposed F6 project”*. This condition has been recommended.

## **8.8 Local Emergency Management Committee**

Council referred the application to the Local Emergency Management Committee (LEMC) for consideration of evacuation and internal access to the site. The LEMC met on 8 February 2018, and they reviewed the application. The LEMC advised that *“there is nothing specific to this development application which creates unique evacuation management issues compared to other developments currently being undertaken in the Sutherland Shire”*. (A full copy of the response from the LEMC is attached at **Appendix H**).

The LEMC considered other developments in the area including the John Paul Village and Heathcote High School and advised that *“Evacuation management would be managed dependent on the emergency/incident situation being presented and other associated factors such as time of day, day of week and timings available to coordinate an evacuation. This would all be taken into account in terms of any proposed evacuation of the east Heathcote area, which would be coordinated via the Local Emergency Operations Controller (LEOCON) and the respective combat agency commanders”*.

The LEMC provided advice regarding the emergency services access crossing at the northern end of Heathcote station as an alternate evacuation route for the property at Dillwynnia Grove. The operation of this access *“would require liaison between a qualified Sydney Trains representative and emergency services before, during and after the utilisation of this emergency access route”*.



The LEMC advised that considerations regarding the use of the crossing highlighted by Sydney Trains are as follows:

- *Vehicles with insufficient ground clearance risk becoming stuck whilst traversing the crossing.*
- *Vehicles which are too high may risk contact with or arcing from the overhead wiring.*
- *The use of the crossing to walk people out of Dillwynnia Grove Heathcote would also require a similar high level of liaison between Sydney Trains and emergency services.*
- *An open walkway is in place at the city end of Heathcote station with ramps from platform to platform.*

The NSW Ambulance Service who attended the LEMC meeting, advised that relating to the development that any lift design be able to accommodate their stretchers this has been included as a draft condition.

In conclusion, the LEMC advised that “*any emergency incident in East Heathcote would be managed in accordance with the procedures outlined in the Sutherland Shire Emergency Management Plan (EM PLAN) and the respective Consequence Management Guide (CMG).*”

## **8.9 Architectural Review Advisory Panel**

Council engages an independent panel for review of medium to large projects. The ARAP considered this application on 9 June 2017, where they raised a number of significant concerns associated with the development scheme including:

- Tree loss, tree protection measures;
- Setback of the townhouses from the street.
- Inconsistencies between various plans making assessment of the proposal difficult.
- The design of both residential flat buildings including layout, solar access, and bulk.
- Height of the three storey residential flat building should be reduced or an attic introduced to reduce the height and appearance.
- Site layout / planning.
- Access to/from the basement, including the number of lifts and pedestrian circulation to the townhouses; accessibility to the dwellings and the Hall, the number of ramps and handrails.
- Encroachment of parts of the development into the “Heritage Curtilage”.
- Solar access to various dwellings.
- Landscaping within the site along Boronia Grove to mitigate visual impacts of the proposed dwellings.
- Paving in relation to basements, deep soil landscaping, and additional planting over the basement.

A full copy of the ARAP report is attached at **Appendix F**.

### 8.10 Council Engineer

Council's development engineer has undertaken an assessment of the application and advised that subject to suitable conditions of development consent no objection is raised to the proposal. The Engineer has assessed the latest set of plans and all relevant supporting information and has provided draft conditions.

A summary of comments from the Engineer is as follows:

- The applicant has submitted an unacceptable construction and site management plan drawing. There is sufficient area on site to accommodate the storage of building materials, equipment and machinery. A draft condition is included regarding the preparation of a construction (site) management plans) to be submitted to Council prior to the release of any Construction Certificate. This will be required to address matters including, but not restricted to, servicing; truck movements; parking; and dust and noise measures.
- Because of the lack of practical on street parking due to the narrow pavement and heritage trees, additional parking should be accepted within the basement.
- The conflict between the visitor spaces for Heathcote Hall and the security of the basement must be addressed. Ideally a separate basement parking area for the Heathcote Hall should be provided that does not conflict with the general residential / visitor spaces.
- The applicant submitted a waste report, but did not provided an amended version to accompany the amended scheme. However an assessment of waste generation and collection has been undertaken by Council Engineers and Waste Officers in the absence of an amended report. Even though there is an extremely large frontage for this site, it is the high density nature of this development that the acceptance of on-street waste collection for the entire development would result in unacceptable impacts on the streetscape, amenity and on-street parking:
  - i) It is considered impractical for the residents to only have waste collection in the upper basement. Waste collection areas should also be incorporated into the lower basement. A condition has been recommended regarding this.
  - ii) A temporary waste holding area is to be provided adjacent to the collection area on both driveways. On street waste collection is considered acceptable for three dwellings only facing Dillwynnia Grove (dwellings 29, 30 and 31), if collection for these dwellings is not possible from Boronia Grove. A condition has been recommended regarding this.
  - iii) Councils Waste Manager has accepted that the garbage vehicle is able to reverse into the site and exit in a forward direction. The Engineer has also advised that the preliminary geotechnical report submitted is satisfactory. Bore hole logs were provided which has provided preliminary geological information. A condition has been recommended regarding geotechnical matters if consent is granted.

### 8.11 Council Environmental Assessment Officer (Environmental Science)

The *Detailed Environmental Site Investigation Report* (prepared by LG Consult, dated 4 January 2018) is a detailed investigation that builds on the previous submitted preliminary report: "*Heathcote Hall Services, Phase 1 Contamination Assessment*" by GHD, October 2017 – which did not include any soil sampling.

The investigation by LG Consult involved an appropriate number of soil samples based on the area of the site. The sampling rationale was also generally in accordance with the NSW EPA Sampling Design Guidelines. There were some small exceedances in 2 samples for lead and chromium however the consultant has advised that the site works, sealing of site and landscaping works, will remove the risk to human health.

In order to be prudent, draft conditions will be imposed to manage hazardous materials (i.e. heavy metals, asbestos etc) during any demolition/ building/ repairs works. This requirement will be required to be included in a Construction Environmental Management Plan or Site Management Plan to ensure appropriate work, health and safety procedures are implemented.

The soil results also indicate bonded asbestos fragments at the north-western corner of the site and at north-eastern corner of Heathcote Hall. This matter can be addressed by conditions including the precautionary unexpected finds condition and management of site soil/ fill material.

Application of this condition is standard practice to ensure that any unexpected finds are appropriately managed.

Therefore, with respect to contaminated land matters, the minor exceedances will be managed by recommended conditions and as such the site will be suitable for the proposed residential use.

#### **8.12 Council Manager Environmental Science**

A compensation package is identified by the applicant in the amended Flora and Fauna report, to the satisfaction of Councils Manager, Environmental Science. This is discussed in further detail below in the assessment section.

#### **8.13 Council Building Officer**

The Building Officer has provided comments regarding fire safety upgrades to Heathcote Hall regarding the necessary fire safety upgrade. This is consistent with the GTAs issued by the Heritage Council who require additional information regarding fire protection of the Hall to be submitted with the Section 60 application.

A draft condition has been included regarding compliance with the Building Code of Australia.

#### **8.14 Council Heritage Officer**

Councils Heritage Officer has provided comments regarding the DA and has no objections to the proposal from a Heritage aspect. A summary of the Heritage Officer comments are as follows:

- Heathcote Hall (building and grounds) is a heritage item of State and Local significance. Both the Statement of Heritage Impact (SHI) and the Conservation Management Plan (CMP) thoroughly demonstrate the importance and significance of the item at State level.
- The Local listing in the Schedule 5 of the Sutherland Shire Local Environmental Plan 2015 establishes the importance of the building locally. However, the Heritage Act 1977 is a higher

level of protection. Therefore the development application is Integrated Development that requires the approval of the Heritage Council (OEH) for the proposed works.

- In principle, the proposed conservation works are acceptable on heritage terms and have a positive impact onto the dilapidated Heathcote Hall. Heathcote Hall is a rare Victorian Italianate building designed in 1887 by the leading Sydney architectural firm Rowe and Green, and restoration of the building (which is mainly intact), the Italianate garden and carriageway entrance is highly desirable.
- The proposed units and villas close to the areas of high significance have their own private open spaces to act as a soft transition between the development and the setting of the Hall (Italianate garden and carriageway entrance), to ameliorate the impacts between the new and the old. In heritage terms this is a good development outcome.

Councils Heritage Officer notes the GTAs issued by the Heritage Council.

### **8.15 Council Architect**

Councils Architect has recommended a number of amendments to the development in order to improve the relationship to the street, and surrounding development, as well as to minimise the visual impact of the development. The Architect also raises concerns regarding the location of the visitor parking. A summary of comments are as follows:

- Setbacks along both Boronia Grove and Tecoma Street generally vary from between 5m and 6m. Though there may be some scope to vary street setbacks the impact on the street must be carefully considered given the low density landscaped character of this neighbourhood.
- The height of Building B is excessive given the sensitive low scale character of the area and the proximity of this building to the Heritage interface and Hall.
- Concerns regarding the interface of western facing townhouses #32- #35, with regards to privacy impacts arising from the first floor west facing balconies.
- Provision of a dedicated commercial visitor car park, separate to the residential basement parking levels.

These matters are discussed in detail below.

### **8.16 Council Landscape Architect**

Council's Landscape Architect has undertaken a detailed assessment of the arborist report, landscape plans and architectural plans, and other relevant supporting information. The Landscape Architect has recommended a number of conditions, including to ensure that adequate replacement tree plantings occur, and that the replacement species are suitable for the location including the Endangered Ecological Community of the Sydney Turpentine Ironbark Forest, and the Greenweb (both discussed further below).

It is noted that plans indicate that there is to be an amount of fill battering up to the retaining wall associated with townhouses 2 and 3 facing Boronia Grove, as indicated below.



- 5% heavy vehicles for Princes Highway and Heathcote Road.
- RMS IDM data though using user defined phase time.
- The proposed intersection layout (additional right turn lane from Heathcote Road to Princes Highway) based on the future road works (see further discussion below in assessment section)

The Traffic Engineer has concluded that with the proposed RMS intersection upgrades there will be some improvements to the performance of the Princes Hwy / Heathcote Rd / Wilson Parade intersection.

The development will have minor and acceptable impacts on the performance of the Princes Hwy / Heathcote Rd / Wilson Parade intersection and surrounding road network from the proposed development traffic.

The Traffic Engineer also supports the recommendations of the Public Assets Engineer regarding the road and footpaths.

#### **8.19 Council Strategic Planner**

Councils Strategic Planner provided comments regarding bushfire planning on the Sutherland Shire and incorporation of bushfire matters into the SSLEP 2015. The Strategic Planner advises of the following:

- There have been numerous inquiries following major bush fire events, including the 2005 COAG Inquiry on Bushfire Mitigation and Management, and the Coronial Inquiries into the 2009 Victorian Bushfires and 1994 NSW Bushfires.
- SSLEP2015 took the same approach to bushfire-affected zones as employed in SSLEP2006.
- The mapping of the E4 zone reflects both the Bush Fire Prone Land Map, most recently reviewed and certified by the RFS on 19th November 2014, and the RFS Neighbourhood Safer Places Mapping. This mapping is part of a state-wide initiative arising from recommendations made by the 2009 Victorian Bushfires Royal Commission, requiring identification of places for (relatively) safe shelter in the event of late evacuations during a bush fire.
- The mapping identifies areas at risk during severe bush fires, and those areas sufficiently removed from the bushfire hazard enable location of Neighbourhood Safer Places.
- There is a correlation with the E4 zone locations and the risk areas identified by the mapping. In Heathcote, the nearest Neighbourhood Safer Places are: Heathcote High School Bus Bay, Wilson Parade and Grevillea Grove, Heathcote; and Heathcote Hotel, Veno Street, Heathcote.

In this regard the application has been referred to the RFS and is discussed further in this report.

## 9.0 ASSESSMENT

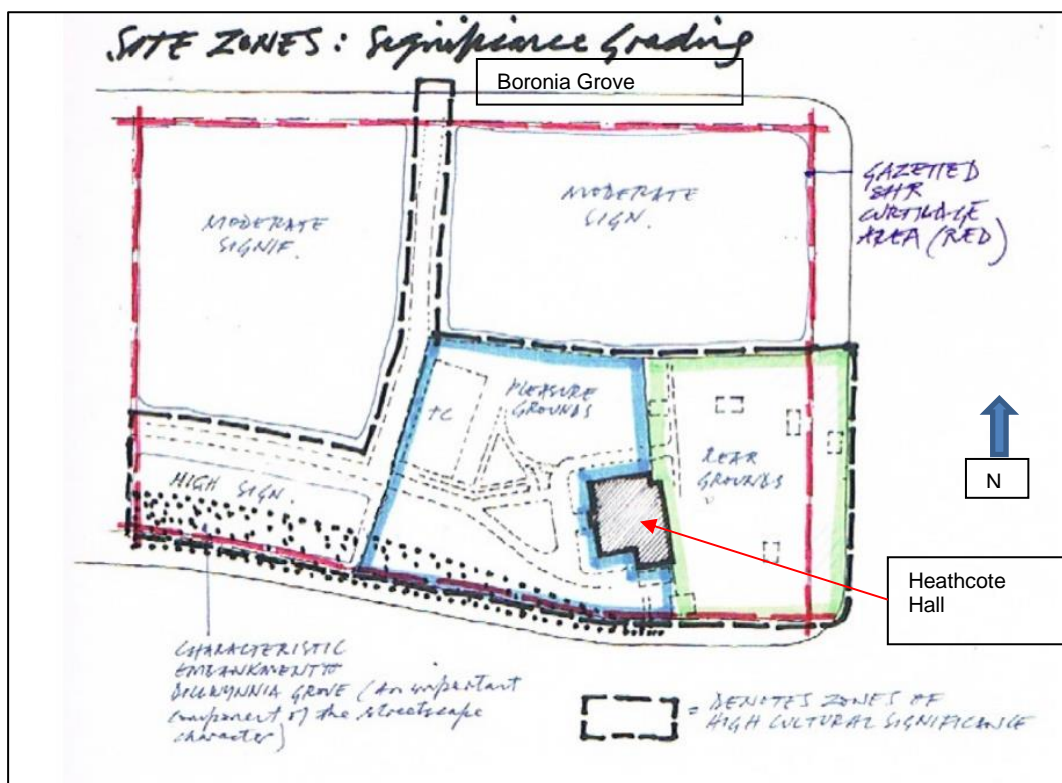
Following a detailed assessment of the application having regard to the Heads of Consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and the provisions of relevant environmental planning instruments, development control plans, codes and policies, the following matters are considered important to this application.

### 9.1 Heritage

The subject site has been identified as an item of environmental heritage pursuant to SSLEP 2015. The site is also an item of State Heritage Significance pursuant to the Heritage Act 1977, and was referred to the Heritage Office for their General Terms.

The applicant prepared a Conservation Management Plan (CMP) which has since been endorsed by the Heritage Council.

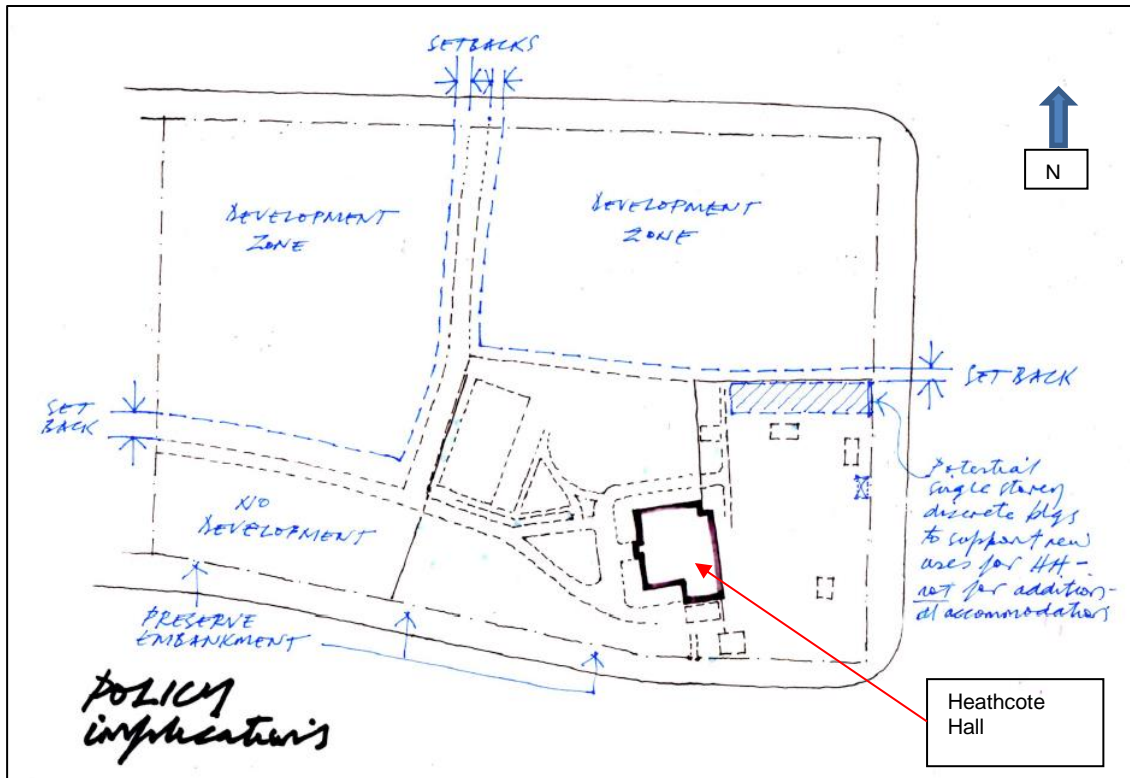
The CMP provides a historic analysis of the site, including its use, setting, built form, access, landscaping and previous land holdings. The analysis has then been used as a basis to determine the areas of high and moderate significance of the site, as can be seen in the image below.



Site zones - grading's of significance (image taken from the Conservation Management Plan)

The CMP analysis of areas of significance has then informed areas most suitable for development (from a heritage aspect), as can be seen in the image below.





Development zones based on the gradings of significance (image taken from the Conservation Management Plan)

As can be seen in the figure above there is a Heritage Curtilage (plus a setback to this curtilage), as well as areas for development. Areas for “no development” incorporate parts of the site of high significance, including views to the site when looking east from Dillwynnia Grove, the pleasure grounds and Hall itself, as well as the former carriageway, and former access from Boronia Grove.

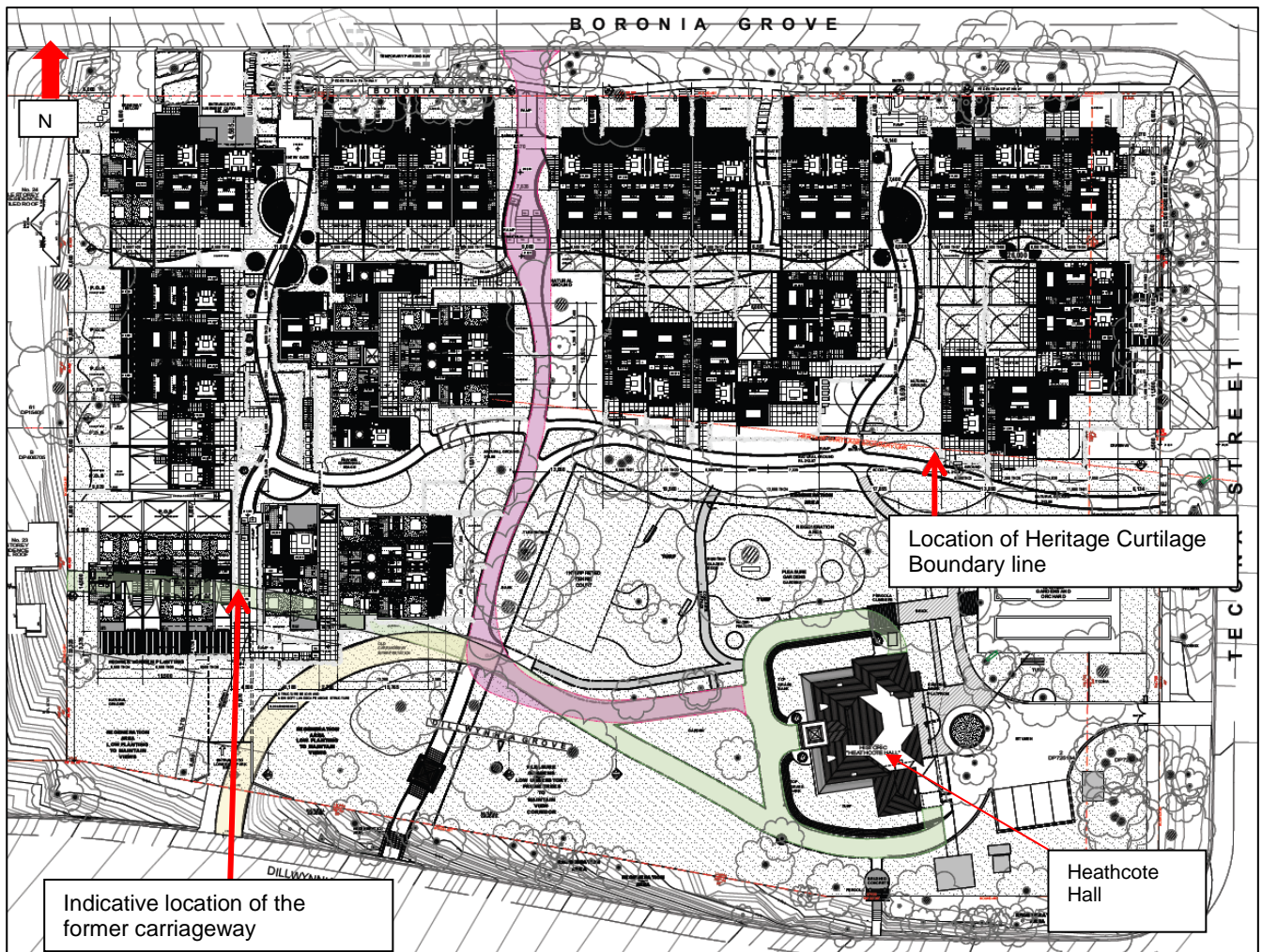
Of importance is the heritage significance of the former carriageway as can be seen in the image below. Historically this carriageway was a key entry point to the site from the west.



*Aerial photograph of the site identifying the location of the former carriageway –circa. 1943 (image taken from the Conservation Management Plan) circa 1943.*

The Heritage Council provided General Terms of Approval (GTAs) relating to the original development, on 22 August 2017 (copy included at **Appendix G**).The general terms included specific heritage treatment such as painting; processes relating to archaeological matters; tradespersons; and heritage interpretation.

However, there were design modification imposed in these original GTAs, whereby the Heritage Council required amendments to various aspects of the development as they encroached into the setback and curtilage areas as identities in the CMP. Encroachments can be seen below on the original plan submitted with the application. Further the setbacks and curtilage were not clearly identified on the plans.



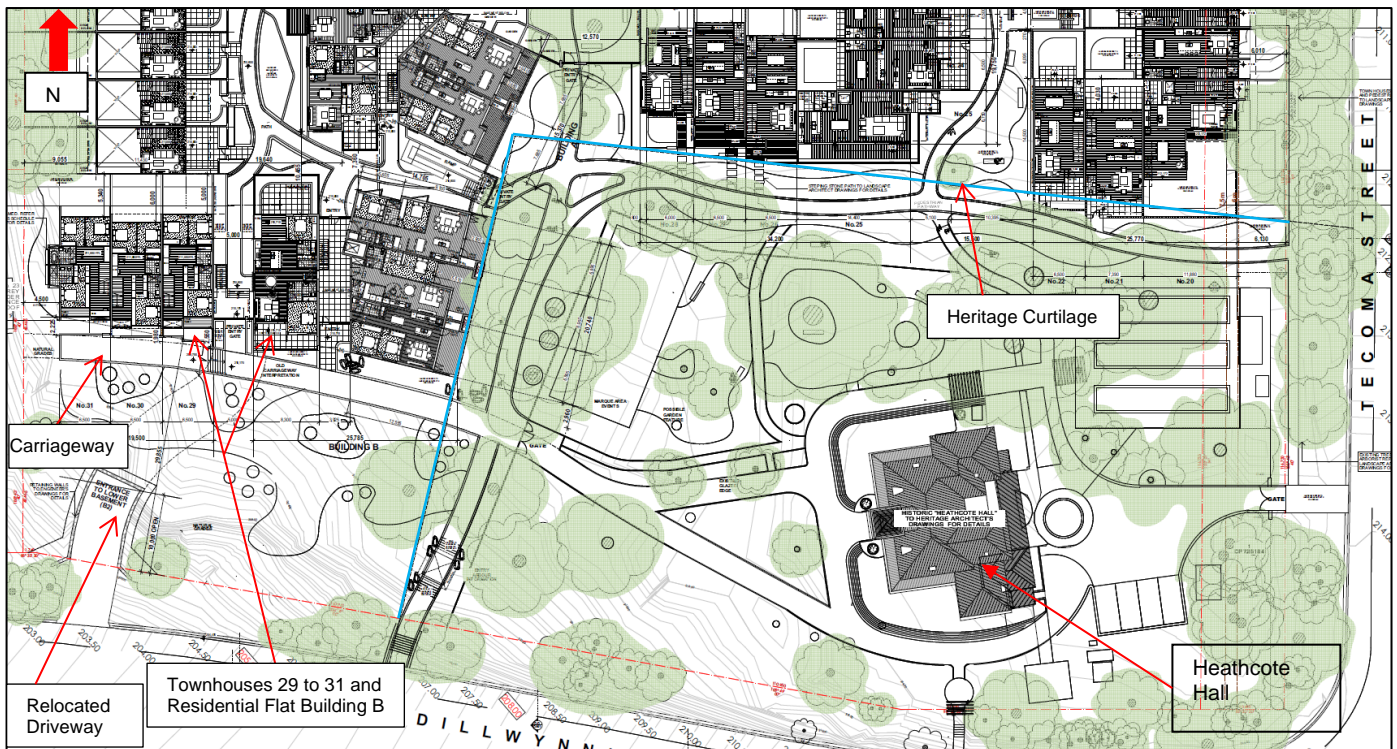
*Site layout as originally proposed with the Development Application*

The original GTAs would require design modification. However, these would not be required until Section 60 stage (post any consent) rather than at development assessment stage. As a result of these general terms there was no certainty for Council regarding the future location of the dwellings and other built form.

Council advised the Heritage Council that any changes required by the GTAs would need to be resolved prior to determination. The Heritage Council attended the workshop held at Council, and provided some advice and clarification to both Council and the applicant regarding the general terms. Of particular importance was that the applicant would be required to accurately overlay the setbacks and curtilage as identified in the images from the CMP above, as well as locate dwellings further north to align with the curtilage and setbacks. The Heritage Council advised they were satisfied with retaining a driveway entry to the basement from Dillwynia Grove, subject to a suitable redesign and the driveway being relocated as far west as possible, to minimise visual impact of this entry. The applicant was advised by the Heritage Council that the carriageway should be kept free of all above ground structures.



In response the applicant relocated a number of dwellings further north to address the GTAs. In particular Residential Flat Building B and Townhouses 20-31 were repositioned further north, as can be seen on the plan below.



*Amended site layout as proposed in amended plans identifying the carriageway and Heritage Curtilage*

All amended plans and supporting documentation were sent to the Heritage Council for assessment. On 21 May 2018 Council received the updated General Terms of Approval (copy attached at **Appendix K**). The revised General Terms of Approval include a number of conditions requesting additional information to be submitted with the Section 60 application, *“in order to clarify issues and enable a thorough impact assessment”*.

The additional information requested by the Heritage Council includes *“Amended plans overlaid with the development and setback zones identified in the CMP” and “Information to clarify how the private open space of townhouses that encroaches into the reduced landscaped setting/ pleasure garden of Heathcote Hall, as well as the original east-west drive, will be detailed to mitigate any potential adverse heritage impacts”*

These General Terms suggest that it is unclear whether the development is appropriately located, and again provides no certainty as to the future location of the development and other built form.

Therefore it is a recommendation that the development application be granted a deferred commencement in order to provide certainty that the development satisfies the Heritage Council, and the CMP. A deferred commencement condition has been prepared, and amended plans must be

submitted for approval by the Sydney South Planning Panel and the Heritage Council, as per the General Terms.

## **9.2 Clause 5.10.10 of the Sutherland Shire Local Environmental Plan 2015**

The proposal has been applied for under the heritage provisions of Clause 5.10.10 of the Sutherland Shire LEP 2015.

Clause 5.10.10 of the SSLEP 2015 reads as follows:

*(10) Conservation incentives*

*The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:*

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Otherwise prohibited development may therefore be granted consent provided that the proposal satisfies this clause.

An assessment of the development in regards to Clause 5.10.10 has been undertaken below:

- a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent.*

The restoration of Heathcote Hall and grounds is facilitated by the sales of the proposed residential development. Furthermore the site is proposed to be strata subdivided and an appropriate proportion of strata fees will be required to go towards the ongoing maintenance of the Heathcote Hall and grounds. Both the restoration and maintenance will be a requirement under a heritage agreement with the Minister for Heritage, which must be registered on the title of the property, and must remain on title in perpetuity. This requirement is a “Deferred Commencement Condition” in accordance with the General Terms issued by the Heritage Council.

The applicant has submitted a Quantity Surveyors Construction Cost Report for assessment. This report not only provides the total cost of works (including restoration and construction costs), but also examines the sinking fund requirements for the ongoing maintenance of the Hall and Grounds, by projecting *“the likely contributions required from the proposed new residential dwellings to ensure satisfactory maintenance and upkeep...”*. This report also provides information regarding the feasibility of the project.

A detailed assessment of the feasibility report, the overall feasibility of the development and the on-going strata costs has been undertaken. It is considered that the level of development is adequate to fund the restoration and on-going maintenance of the Heritage Item.

- b) *the proposed development is in accordance with a heritage management document that has been approved by the consent authority.*

The proposed development is generally in accordance with the Conservation Management Plan, which has been endorsed by the Heritage Council. However as discussed above in Section 9.1 there is some uncertainty as to whether the development is within the correct footprint as specified by the CMP, hence the recommendation for deferred commencement.

- c) *the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out.*

Any consent issued would require all necessary conservation work to be carried out in accordance with any Section 60 application and as per the General Terms of Approval.

- d) *the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance.*

Whilst the proposed development includes the restoration of the Hall and grounds, it is unclear as to whether the development would not have an adverse impact upon the heritage item including its setting. As per the General Terms 4(a) and 4(b) as discussed in Section 9.1 above, there is no certainty that the development is sited correctly in accordance with the CMP. There is concern that there are encroachments into these setbacks. The Heritage Council in their reasoning for these general terms is to ensure that their proposal is consistent with the policies of the CMP, and to ensure that *‘this encroachment will not result in further adverse visual (or physical) impact upon the setting of Heathcote Hall and ensure significance is conserved...’*.

- e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

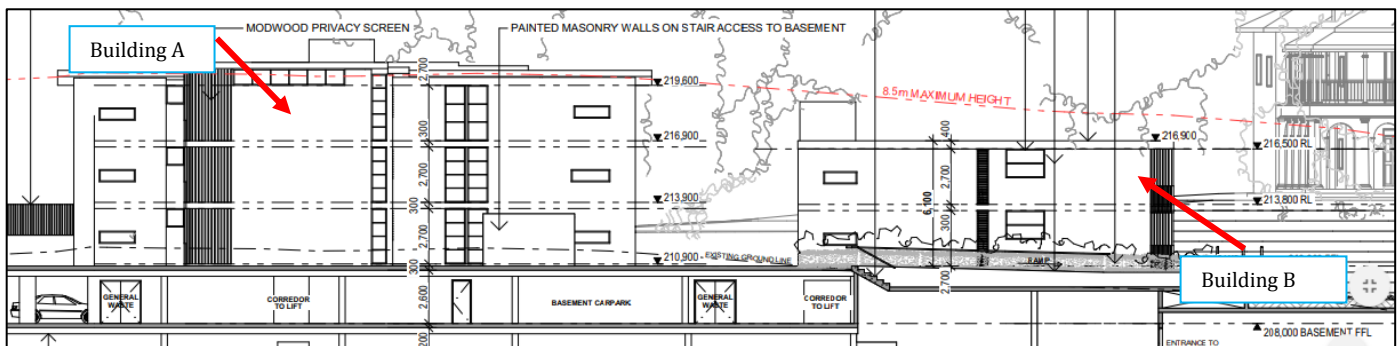
By its higher density nature compared to surrounding development the proposal will have some impacts upon amenity. This is discussed in further detail below, and includes discussion on waste collection, landscaping and vegetation, construction management, bushfire, privacy, bulk and scale, contamination and engineering matters.

It is considered that with the proposed draft conditions including deferred commencement detail and design change conditions, including the reduction in height of a number of buildings, and the increase setback to Boronia Grove - that the impacts can be managed.

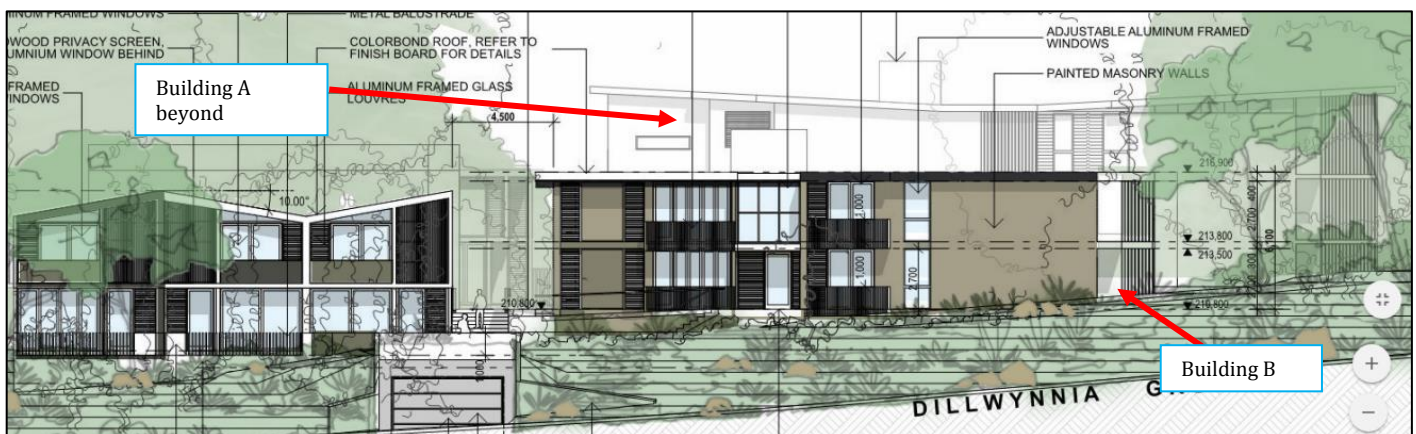
### 9.3 Height of Buildings

The proposed development fails to satisfy with the development standard for height. Clause 4.3 of SSLEP 2015 stipulates a maximum height of 8.5m for this site. While these controls do not strictly apply to this site due to Clause 5.10.10 an assessment of the height in relation to the objectives of this control has been undertaken.

As seen in the figures below the height of Building A as per the original plans and original Clause 4.6 variation request measured 8.8m to the roof at its highest point and 9.8m to the lift overrun. Buildings A and B can be seen below as originally proposed, with Building B below the 8.5m height limit and presented in a form not unlike the town houses in bulk and scale.



Western elevation of Residential Flat Buildings A and B (as originally proposed)



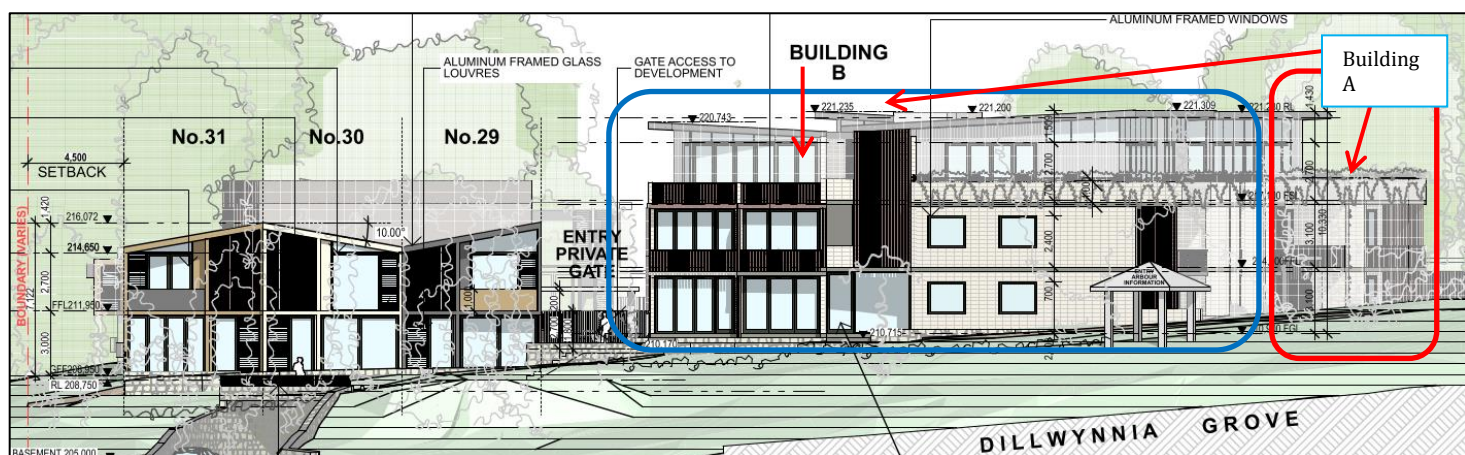
Residential Flat Building A and B when viewed from Dillwynnia Grove (as originally proposed) with Residential Flat Building B in the foreground.

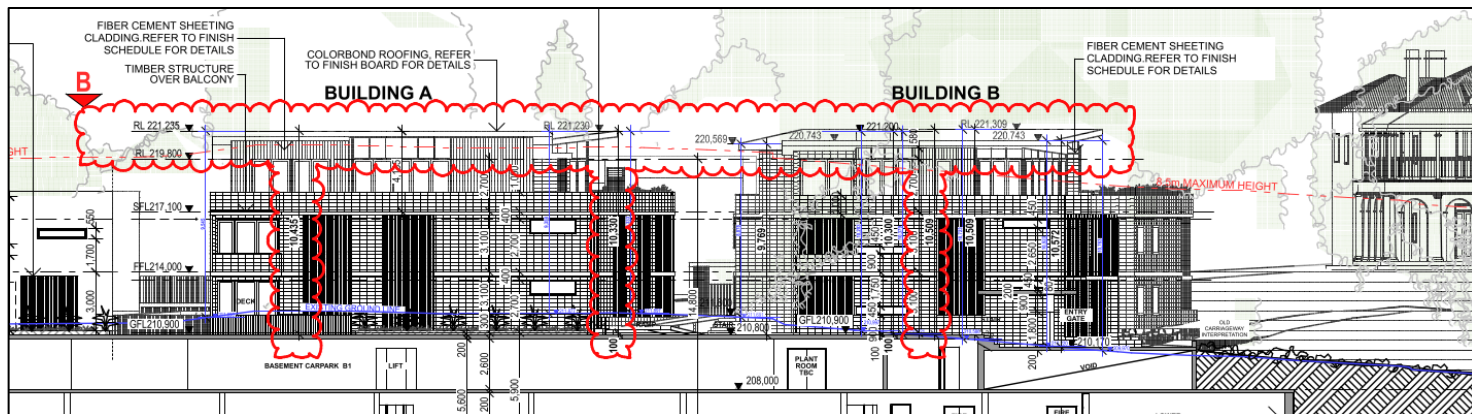


Several concerns were expressed in Council's letter to the applicant, the first GTAs issued by the Heritage Council and follow up workshop and meeting. These matters included the non-compliant height of Building A; encroachment of the heritage curtilage contained within the Conservation Management Plan (CMP); and the reduced setbacks along Boronia Grove.

The applicant's response was to remove buildings from the Heritage carriageway and increase setbacks to Boronia Grove, one of the west facing townhouses was deleted and both RFBs re-designed and repositioned. In order to minimise the resulting loss of dwellings the applicant proposed an additional level to Building B increasing it from 2 storey to 3 storeys.

The applicant presented this additional level to Building B, at the workshop and subsequent meeting. Council advised on both occasions that if a third storey to Building B was to be considered, it would need to be well designed, recessive in nature at the third level, and responsive to the context and setting. Council advised that it would assess the built form and response to the context once final plans had been submitted. The amended plans show the apparent flat roof of Building B amended to replicate the butterfly roof form of Building A. Amended elevations have been included below. The revised scheme presents an increased roof height of Building A to 9.545m and Building B to 10.763m. Townhouses 30 and 31 adjacent to Building B are also above the 8.5m height control in the modified plans.





*Western Elevation of Residential Flat Building A and B (as amended)*

The objectives of the height of buildings development standard set out in clause 4.3 (1) of SSLEP 2015 are as follows:

- (a) *to ensure that the scale of buildings:*
  - (i) *is compatible with adjoining development, and*
  - (ii) *is consistent with the desired scale and character of the street and locality in which the buildings are located or the desired future scale and character, and*
  - (iii) *complements any natural landscape setting of the buildings,*
- (b) *to allow reasonable daylight access to all buildings and the public domain,*
- (c) *to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,*
- (d) *to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,*
- (e) *to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings in those zones,*
- (f) *to achieve transitions in building scale from higher intensity employment and retail centres to surrounding residential areas.*

Building A is located in the centre of the site and therefore lends itself to having a minor breach in building height limit as the view to this from the public domain is limited. However Council does not support the new height of Building A, as the increase in height of the building is not justified. A minor increase into the height, to allow for a 3.1m floor to floor height is supported for this building, to a maximum height of 9.1m (excluding the lift overrun) and a deferred commencement condition is recommended requiring the height to be reduced to this level.

The additional height of Building B however, is not supported. This building is located at the sensitive interface with the lower density residential development to the south as well as the Hall itself. The additional level and exaggerated roof form presents an unacceptable bulk and scale and will have visual impacts upon the locality.

The reduction in height of Building will provide a transition to the residential development to the south and west, and the significant heritage areas to the south and east. There is no justification for townhouse 30 and 31 to be above the height limit and a condition is recommended that these be a maximum of 8.5m in height.

The proposed height breaches are contrary to the objectives set out in Clause 4.3 of the SSLEP2015 above. The development does not provide a transition in building scale or minimise impacts upon visual intrusion, this include to the areas of high heritage significance within the site. In particular the height of Building B and townhouses 30 and 31, where these dwellings have not provided an adequate response to the bulk and scale of the site, and the impacts these buildings will have upon the streetscape, adjoining properties and the heritage of the site itself.

The proposed development is located within Zone E4 Environmental Living. The objectives of this zone are as follows:

#### Zone E4 Environmental Living

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To allow for development that preserves and enhances the natural landscape setting of the locality.*
- *To protect and restore trees, bushland and scenic values particularly along ridgelines and in other areas of high visual significance.*
- *To ensure the character of the locality is not diminished by the cumulative impacts of development.*
- *To minimise the risk to life, property and the environment by restricting the type or level and intensity of development on land that is subject to natural or man-made hazards.*
- *To allow the subdivision of land only if the size of the resulting lots makes them capable of development that retains or restores natural features while allowing a sufficient area for development.*
- *To share views between new and existing development and also from public space.*

With regards to the height breaches the development has not adequately responded to the objective of the E4 zone, in particular the cumulative impacts of the development upon this site and the locality. The number and extent of height breaches across the site are not supportable, and a deferred commencement condition is recommended to reduce the extent of breaches in particular at the sensitive interfaces of Heathcote Hall, the heritage gardens and the lower density residential development.

The applicant has lodged a written request in accordance with the requirements of clause 4.6 of SSLEP 2015. A full copy of this request is on the file and the most relevant section is reproduced below:

*“The three storey buildings are set back from the street frontages, screened by the 2 storey dwellings and existing mature trees, recessed to avoid any negative impact on overshadowing or loss of privacy for existing properties. The lift overrun will not create additional shadows as the shadows created by the minor additional height are falling within the shadows cast by the proposed buildings.”*

*“No more density is proposed for site than envisioned under the LEP, noting that compliance with the maximum FSR is achieved. The proposed development purely seeks to achieve a better planning and architectural, amenity and urban design outcome supported by the Conservation Management Plan and Heritage Impact Statement.*

*“The proposal results in a built form outcome that is satisfactory to the Conservation Management Plan, is compatible with the desired future built form for the site and the surrounding area. As such, the proposal is capable of being in harmony with future buildings within the area and the desired future character of the street network following any potential transformation of the neighbourhood.”*

*“Strict compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following additional reasons:*

- *No Additional Density*
  - *The minor additional height above the height standard to select portions of Building A and B within site will not result in any additional GFA/density. Therefore, the height variations are not attributed to any additional density on the site but rather a direct response to the specific site attributes (i.e. CMP, Heritage Impact Assessment, street orientation, block form and drainage) and to achieve a better planning outcome.*
- *Better Residential Amenity*
  - *Based on the above, we contend that the proposed variations in height and the nature of a sloping site topography, results in a better outcome for residential amenity in terms of solar access and views/outlook. For the reasons as set out above, compliance with the standard can be demonstrated to be unreasonable and unnecessary in the circumstances of this case.”*

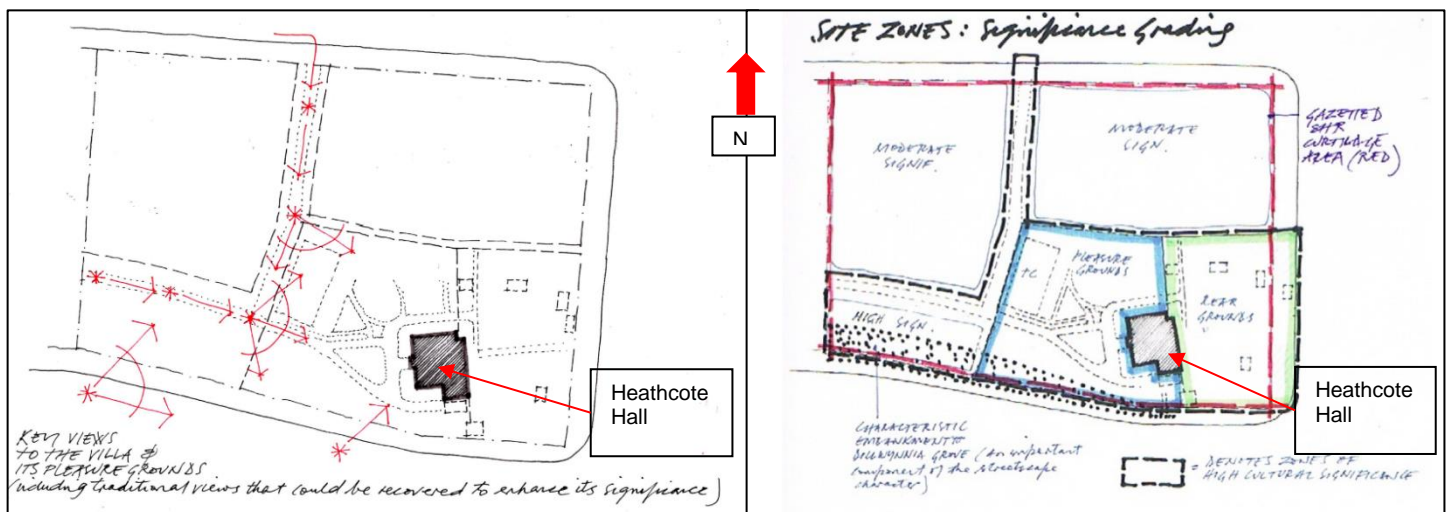
*“This Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.6 of the LEP, that:*

- *Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;*

- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case;
- The development meets the objectives of the development standard and where relevant, the objectives of the E4 zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard; and
- The contravention does not raise any matter of State or Regional significance. The variation is therefore considered appropriate in the circumstances of the case."

Based on an assessment of the proposal and Clause 4.6 variation, the applicant's written submission fails to adequately demonstrate that compliance with the height development standard is unreasonable or unnecessary in the circumstances. It also demonstrates insufficient environmental planning grounds to justify varying this development standard to the extent it does across two residential flat buildings and two townhouses.

The Clause 4.6 document advises that the development will be adequately screened by trees, however there is an area of high heritage significance to the south of townhouses 29-31 and Building B. This is identified in the CMP below.



Key views and areas of high significance (taken from the Conservation Management Plan)

This area of high significance will be required to be maintained in a certain manner to ensure the on-going views to Heathcote Hall, as per the General Terms of Approval issued by the Heritage Council.

The proposed variation does not raise any matters of State or Regional Environmental Planning significance.

Considering the location of Building A, the additional height has little impact on the streetscape, visual impact from surrounding properties and amenity. However the height proposed by the applicant in the case of this amended building design is not justified. It is considered that given the locality that the maximum height of the roof of Building A be reduced to 9.1m.

There is a public benefit to maintain the height development standard of Residential Flat Building B and Townhouses 30 and 31 in the circumstances of this case. Building B and Townhouses 30 and 31 will be required to be reduced to have a height no greater than 8.5m. This reduction in height is to provide for a transition in bulk and scale down to the adjacent high significance heritage area (as per the CMP), to the Heathcote Hall and to the adjacent low density dwellings to the south, across Dillwynia Grove. (See annotated plan in **Appendix L**).

In conclusion:

- the variation to the height development standard does not satisfy relevant parts of clause 4.6 regarding Building A and therefore only a minor variation can be supported for Building A. If a deferred commencement is granted, a condition is recommended requiring this building to be reduced to 9.1m in height above existing ground level (excluding the lift overrun).
- the variation to the height development standard for Building B fails to satisfy all relevant parts of clause 4.6 and therefore the variation cannot be supported. If a deferred commencement is granted, a condition is recommended requiring this building to be reduced in height to comply with the 8.5m height limit (excluding the lift overrun).
- the variation to the height development standard does not satisfy relevant parts of clause 4.6 regarding Townhouses 30 and 31. If a deferred commencement is granted, a condition is recommended requiring these dwellings to be reduced in height to comply with the 8.5m height limit.

#### **9.4 Rural Fires Act 1997**

Council records indicate that the site is bushfire prone land. The applicant has included a Bushfire Assessment Report with their development application.

The proposal is integrated under the Rural Fires Act 1997, and was referred to the Rural Fire Service for their General Terms. The RFS has undertaken an assessment of the proposal in relation to bushfire, and has reviewed Councils' Traffic Engineers comments and taken into consideration the LEMC meeting minutes and has issued General Terms of Approval (**Appendix J**).

The RFS is satisfied with the development subject to their General terms of approval, including the provision of a Bushfire Emergency Evacuation management and Evacuation Plan, and the provision of water, electricity and gas.

The new buildings will be required to be constructed to suit fire rating to minimise the risk to life and property rated at BAL 12.5, with any landscaping to be comply with the principles of *Appendix 5 of Planning for Bush Fire Protection 2006*. Further the Hall itself is required to be upgraded to improve ember protection, and any new works to the Hall shall also comply with BAL 12.5.



## 9.5 Urban Design, Massing

Clauses 6.16 and 6.17 of SSLEP 2015 contain certain matters of consideration relating to urban design. The proposed development promotes a high standard of urban design and also provides a variety of housing types, including townhouses and 1, 2 and 3 bedroom apartments, in a heritage setting. The application however has failed to satisfy matters in relation to height and setbacks to Boronia Grove. If deferred commencement is granted, these matters can be addressed via a deferred commencement condition.

Along Boronia Grove the dwellings have been designed in varying groups of two to four to break visual extent of the development along this frontage. The dwellings however are not located in accordance with front setback requirements of the DCP 2015 (this is discussed further below), where the proposed setbacks vary from 4.7m to 7.39m.

Whilst some variation towards the corner of Tecoma Street is considered acceptable in this instance, moving further west towards the adjacent dwelling on Boronia Grove, the dwellings should be setback further to minimise the visual impact, as well as the setting of the locality. A draft condition is recommended to alter the setbacks from the street along Boronia Grove for dwellings 2 – 14. (See annotated plan in **Appendix M**)

The separation between the clusters of dwellings along Boronia Grove has also provided the visual separation to activate views to the Hall.

The dwellings have been sited so as to minimise tree loss, where there are trees proposed to be removed there are offsets required, as a draft condition is recommended. The removal of approximately 8 trees from the Council land is proposed. There is an Endangered Ecological Community within the site and surrounding Council owned land, known as the Sydney Turpentine Iron Bark Forest. Council's Manager of Environmental Science has reviewed the latest version of the Flora and Fauna report submitted, and considers the management and impacts acceptable in this instance, subject to the imposition of conditions. The draft condition recommends that approximately 400 replacement trees will be required (see further discussion below).

The NSW Rural Fire Service has undertaken an assessment of the development and has issued General Terms of Approval subject to conditions. Further the LEMC has viewed the development in terms of evacuation, and considers that the development can be accommodated within this evacuation process (See **Appendix H**).

The land is proposed to be strata subdivided, as supported by the Heritage Council. The lot cannot be diminished any further in area via Torrens Title subdivision, as the entire lot is a State Heritage item. Further, the strata levies are required to contribute towards the ongoing maintenance of the Hall and grounds. The proposed subdivision enables the retention and restoration of natural features.



Overall, the development preserves the natural landscape setting of the area, as well as providing a variety of housing options, provided that conditions are imposed in to order to ensure adequate setbacks, replacement plantings and height to not only complement the existing setting, but enhance it. In accordance with the Heritage Council General Terms of Approval further conditions imposed by the Heritage Council, including enhancing the visual setting to the Hall when viewed from Dillwynnia Grove are to be imposed if consent is granted.

Use of the Heathcote Hall and grounds is not proposed under this development application, any future use would require the lodgement of a development application, which would be required to satisfy permissibility and provisions of the zone.

#### *9.5.1 Built form*

It is considered that whilst the development is acceptable in this case relating to Floor Space Ratio over the site as a whole, the need to concentrate floor space away from the heritage area has resulted in a proposal for medium density development. Reasonable consideration has been given to the distribution of the built form in that the townhouses have been clustered in groups of 2- 4, with spacing between to present a built form similar to a large house, with adjacent setbacks and view lines to the hall and gardens to be maintained.

#### *9.5.2 Setbacks of Townhouses to Boronia Grove*

Concern was expressed with regards to the setbacks to Boronia Grove and Tecoma Street. The street setbacks do not comply with the requirements of the DCP 2015, and are inconsistent with the overall streetscape and character of the surrounding dwellings, particularly to the western end of the site. The non-compliant setbacks to the street contribute to the bulk of the development and the visual impact of the development.

Moving east towards the corner of Tecoma Street and Boronia Grove, a variation to front setbacks is acceptable in this instance, where by Tecoma Street forms a secondary street frontage.

Of particular importance are the setbacks from the street closer to the interface of the existing low density development to the west along Boronia Grove. At this interface the townhouses should be setback further to be consistent with the setback requirements and objectives of the DCP 2015. A draft condition is recommended should deferred commencement be granted to alter the setbacks from the street along Boronia Grove for dwellings 2 – 14. See annotated plan in **Appendix M**.

These amendments will bring the built form into greater consistency with the surrounding lower density development.

### **9.6 Privacy**

Concern was raised with regards to privacy impacts for Townhouses 32-35.

The Draft Sutherland Shire Development Control Plan 2015 (DSSDCP 2015) was effective as a Council Policy to assess development application lodged under SSLEP 2015 until a Development

Control Plan is finalised, adopted and put into force. The Sutherland Shire Development Control Plan 2015 (DCP 2015) came into force on 2 August 2017. While most development controls remain substantially the same as DSSDCP 2015, a control limiting 2 storey development to within the front 60% of the site was introduced in the R2 Low Density Residential zone, which has an impact to this application. As discussed above Council has assessed the proposed townhouses against the controls for multi -dwelling housing in an R2 Zone as per the DCP 2015, whilst the provisions don't strictly apply, Council has undertaken an assessment against this objectives of this control from the DCP 2015.

Council requested that townhouses 32-35 be redesigned to be more recessive in keeping with 60% height control single storey height objectives of the DCP as a guide. This has not occurred, however, these dwellings have been reduced in their height above existing ground level and have been redesigned to generally face east and remove the floor to ceiling windows on the top floor. Further the top floor of the dwellings have been treated with the provision of privacy screens and planter boxes to minimise the visual impact, therefore satisfying a number of objectives of the DCP 2015

In order to minimise impacts upon privacy however, a draft condition is recommended to reduce the depth of the balconies from 1.6m to 1.2m in order to minimise privacy impacts upon the dwellings to the west. See annotated plan in **Appendix M**.

#### **9.7 Landscape setting**

The landscape setting will be maintained, and enhanced. The majority of trees within the Council verge will remain. As a result of amendments, the driveway access on Boronia Grove was relocated further east and changes made to the basement, to retain a cluster of trees on the Council verge.

Approximately 46 trees within the site and 8 street trees are proposed to be removed, (excluding trees in poor health). These trees are required to be replaced by approximately 400 trees, which is a significant offset. Planting of all 400 trees on the subject site may not be achievable as there are Heritage and Bushfire constraints which will include the planting of replacement trees. A number of draft conditions of make recommendation to tree planting and offsets, including any required plantings offsite subject to the satisfaction of Council

Council has identified an area of fill in the front setback of dwellings 2 and 3 along Boronia Grove, this fill is not supported. This area will be required to be retained at the existing ground level, and to be vegetated with suitable species, if deferred commencement is granted a condition is recommended to reflect this. It is important to maintain levels here given the proximity of these dwellings to a significant stand of vegetation on the Council verge.

The Heritage landscape setting is also an important feature of the site, the gardens and the view corridor from Dillwynia Grove. These are required to be restored and maintained as part of the Heritage works and the agreement with the Minister (as per the GTAs issued by the Heritage Council).

The subject site is identified within Council's Greenweb strategy. The Greenweb is a strategy to conserve and enhance Sutherland Shire's bushland and biodiversity by identifying and appropriately managing key areas of bushland habitat and establishing and maintaining interconnecting linkages and corridors. The subject site is identified as a Greenweb core area.



Having regard for the nature of the proposed development conditions have been included in relation to additional Greenweb plantings.

A draft condition is recommended requiring the payment of a Landscaping Bond in order to protect vegetation on Council land.

## 9.8 Threatened Species

Threatened species are particular plants and animals that are at risk of extinction and include threatened populations and endangered ecological communities. Threatened species, populations and ecological communities are protected by various pieces of legislation.

The subject site contains the Endangered Ecological Community known as the Sydney Turpentine-Ironbark Forest (STIF).

At the time of lodgement this EEC was protected by the NSW Threatened Species Conservation Act 1995 (which has since been superseded by the Biodiversity Conservation Act 2016), and the commonwealth Environmental Protection and Conservation of Biodiversity Act 1999. Sydney Turpentine-Ironbark Forest is listed as an endangered ecological community on Part 3 of Schedule 1 of the Act. The listing of endangered ecological communities is provided for by Part 2 of the Act.

The structure of the STIF community was originally forest, but may now exist as woodland or as remnant trees. The species composition of the site can be influenced by the size of the site and by its recent disturbance history. The number of species and the above-ground composition of species

will change with time since fire, and may also change in response to changes in fire frequency. Main characteristic tree species in the STIF are *Syncarpia glomulifera*, *Eucalyptus globoidea*, *Eucalyptus resinifera*, *Eucalyptus paniculata*, *Angophora costata* and *Angophora floribunda*.

Council has mapped the known threatened species, populations and ecological communities. Following a review of this information and an inspection of the site it is concluded that the proposed development will not result in any significant impact on threatened species, populations and ecological communities.

A compensation package is identified by the applicant in the amended Flora and Fauna report, to the satisfaction of Councils Manager, Environmental Science. The compensation package quantifies compensatory planting for both trees and bushland vegetation. Compensatory offsets for vegetation do not quite comply with the ratios recommended by Council, but it is acknowledged that the vegetation on the site is degraded, and that compensatory planting as proposed represents a potential improvement over the current conservation value of the site, and is considered acceptable in this circumstance, subject to conditions.

Compensatory tree planting has been quantified, and considerable effort has been made to accommodate as many trees as possible on the site, having regards to the constraints of heritage and bushfire. This does still leave a shortfall in the number of trees required. The consultants indicate that the requirement for offset tree planting is an informal policy of Council. While this is the case for vegetation off sets, it is not the case for tree off sets. Accordingly draft conditions are recommended to ensure that the shortfall of trees planted on site is offset.

A draft condition of is recommended requiring the payment of a Landscaping Bond in order to protect vegetation on Council land during construction.

## **9.9 Parking**

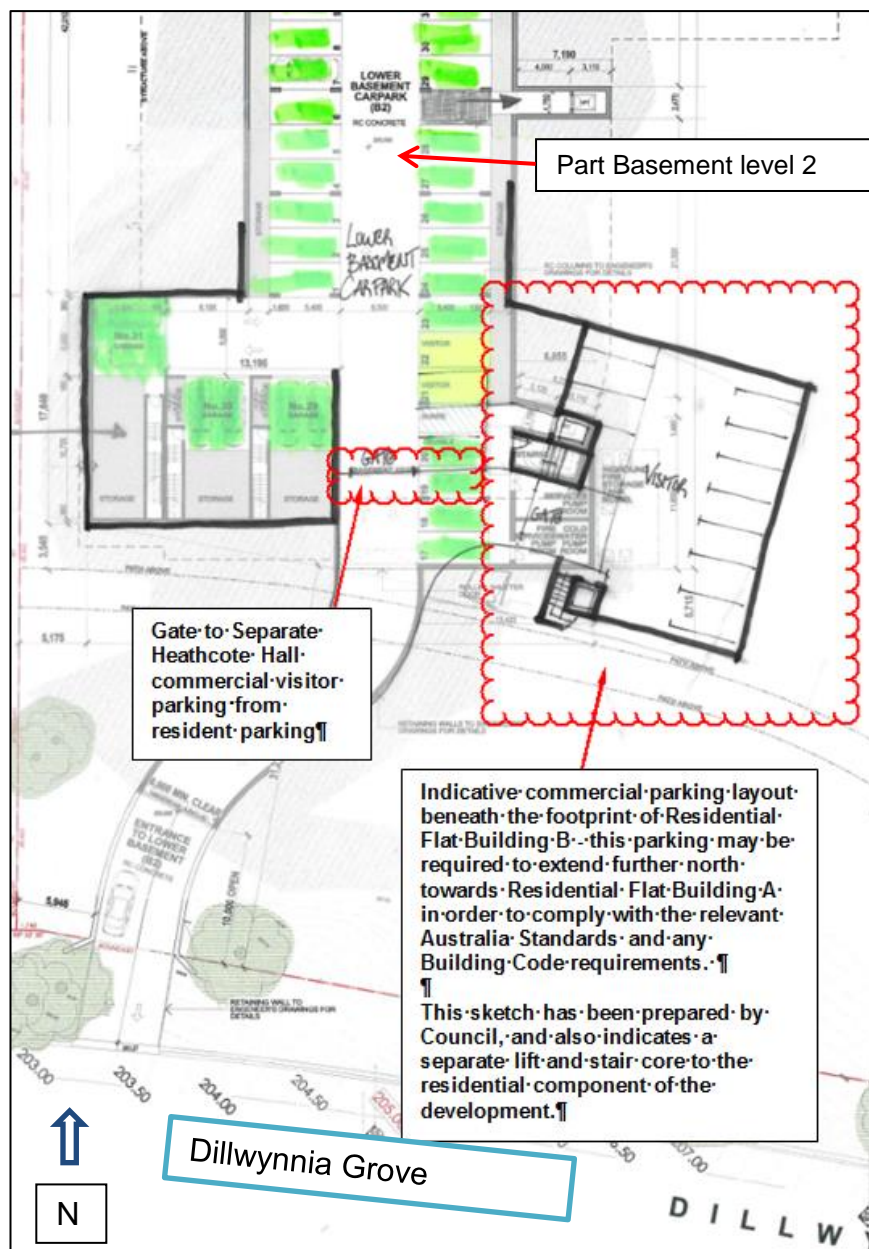
Adequate residential parking and residential visitor parking is proposed in accordance with the provision of parking in accordance with the DCP 2015 requirements.

Whilst the parking rates for commercial development do not apply to an E4 zone, it is considered that given the scale of the development, and to account for any future commercial use of Heathcote Hall, that a separate parking allocation for future commercial tenancies is required to reduce the number of vehicles parking on the surrounding local streets. A total of Twelve (12) commercial spaces are required based on Council's calculation of gross floor area of the Hall itself.

While adequate commercial parking is proposed in the basement, it is located at the eastern end of the upper basement (Basement Level 1) requiring any public/ commercial visitors to the Hall to access the site via Boronia Grove, and drive through the residential parking to the allocated commercial parking spaces. Whilst this offers visitors to the Hall a separate lift access to the north of the Hall, it causes conflicts between the residential and commercial components of this development, in particular issues relating to security.

Council's Architect has proposed an alternate solution which would enable the entry of the visitor parking for the Hall and other public areas of the site, to enter via the lower basement from Dillwynia Grove, and be located below Residential Flat Building B - see the sketch plan below in.

This would provide additional parking spaces, and separate secure lift access to the ground level. When coupled with at grade parking spaces (4 in total adjacent to the Hall), would satisfy the commercial parking requirement as per Councils DCP 2015.



*Draft Sketch plan of potential separate basement level parking for commercial visitors to Heathcote Hall*

This separate basement parking area would not only provide secure parking for future residents by providing gated security to residential parking only, but would provide a clearly identifiable

commercial parking entry for visitors, and activate the use of the former “carriageway” and other heritage pathways leading east towards the Hall.

After meeting with the applicant for the workshop on 20 September 2017 and after reviewing draft plans submitted as a result of the workshop, Council met with the applicant on 27 November 2017. Council advised the applicant that commercial parking should be provided below residential flat building B to provide secure parking for future residents. This has not been provided.

If the application is supported, Council requires that a separate secure basement level for commercial visitors only is provided below the Building B.

Should deferred commencement be granted to this proposal, a draft deferred commencement condition recommends that a separate commercial level of basement parking be required to be provided as per the plan above, to provide an additional eight (8) parking spaces as well as separate lift access to the ground level Heritage Interpreted Carriageway adjacent Building B. See annotated plan in **Appendix N**.

#### **9.10 Traffic and Pedestrian Safety**

Council has undertaken an assessment of the performance of the Princes Highway in particular the intersection of Wilson Parade, Princes Highway and Heathcote Road. There are road works proposed by the RMS to the western side of the Princes Highway at the intersection of Heathcote Road.

The roads works include the addition of a short lane eastbound on Heathcote Road for traffic going straight ahead or turning right; retention of the existing left turn slip lane from Heathcote Road onto Princes Highway and the existing left turn slip lane from Princes Highway onto Heathcote Road.

The benefits of these roads works are anticipated to increase the capacity for right turning vehicles onto the Princes Highway from Heathcote Road, allowing for improved traffic flow at this intersection, including reduced delays for road users turning left onto the Princes Highway from Heathcote Road.

Road works can be seen in the image below.



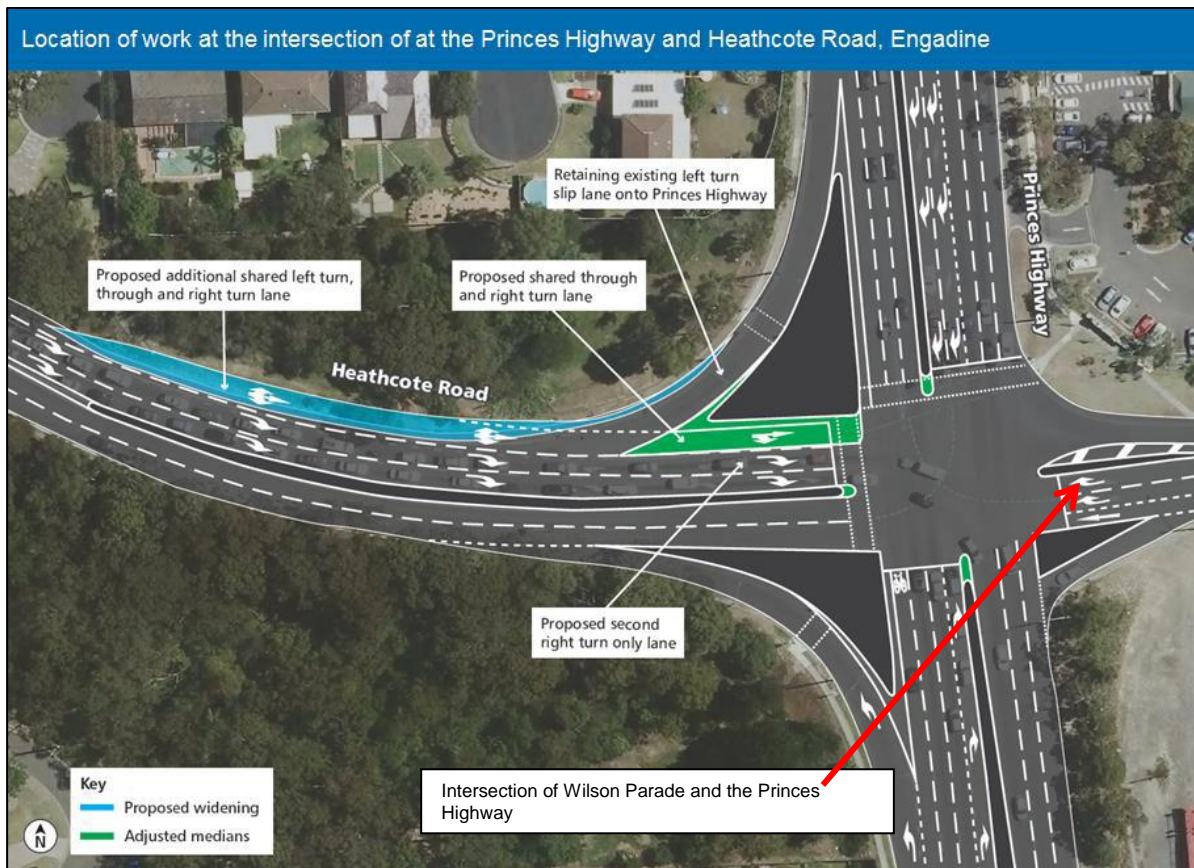


Image of the intersection upgrade as proposed by the Roads and Maritime Services (source: <http://www.rms.nsw.gov.au/documents/projects/sydney-south/princes-hwy-heathcote-road-engadine/princes-hwy-heathcote-road-engadine-project-update-2017-05.pdf>)

The proposed development is expected to generate 54 additional vehicle trips during both the AM and PM weekday commuter peak periods.

Council's Traffic Engineer has undertaken assessment and modelling of the proposal and has advised of a number of scenarios, with reference to the *Level of Service Criteria* as per the RMS Guide to Traffic Generating Development:

Level of Service	Average Delay per Vehicle (secs/veh)	Traffic Signals, Roundabout	Give Way and Stop Signs
A	less than 14	Good operation	Good operation
B	15 to 28	Good with acceptable delays and spare capacity	Acceptable delays and spare capacity
C	29 to 42	Satisfactory	Satisfactory but accident study required
D	43 to 56	Operating near capacity	Near capacity and accident study required
E	57 to 70	At capacity; at signals incidents will cause excessive delays. Roundabouts require other control mode	At capacity and requires other control mode
F	More than 70	Unsatisfactory and requires additional capacity.	Unsatisfactory and requires other control mode or major treatment.

The scenarios are based on the RMS works to the intersection of the Highway as discussed above.

### **Pre-development Scenarios**

*a) Pre development and Pre-Intersection upgrade:*

- With the existing intersection layout and current traffic volume, Council's traffic modelling results indicates that the Princes Hwy / Heathcote Rd / Wilson Parade intersection is currently operating during AM peak hour with a Level of Service D (LoS D) with 47 seconds average intersection delay and during PM peak unsatisfactorily with LoS F with average delay of 182 seconds and significant delay of more than 9 minutes and queue of >1300m for Heathcote Road approach to the Princes Highway. The Wilson Parade approach to the Princes Highway experiences delay of 100 seconds and queue of 60m during peak hours.

*b) Pre development and Post Intersection upgrade:*

- With current traffic volume (excluding the development traffic) and with future RMS pinch point intersection upgrade at Heathcote Road intersection with the Princes Highway, modelling results shows there will be improvement in intersection level of service, delay and queue length particularly for Heathcote Road approach to the Princes Highway.
- With upgrades, the intersection will operate at LoS D with average delay of 45 seconds during AM peak hour.
- During the PM peak hour, there will be a LoS F with average delay of 71 seconds during PM peak hour.
- In particular the delay on Heathcote Road approaching the Princes Highway will reduce from 9 minutes to 1 minute and queue from 1300m to 250m.
- The Wilson Pde approach to the Princes Highway will experience delay of 85 seconds and queue of 55m during PM peak hour.

### **Post Development Scenario**

It is estimated that the proposed development will generate additional 54 vehicle trips during AM and PM peak hours.

*a) Post development and post intersection upgrade:*

- With the development traffic volume and RMS proposed intersection upgrade, the intersection will operate during AM peak hour with LoS D with average delay of 46 seconds and LoS F with average delay of 71 seconds during PM peak hour.
- The Wilson Pde approach to the Princes Highway will experience delays of 100 seconds and queues of 60m during peak hours.



- Council traffic modelling results indicates that with the proposed RMS upgrade, the Princes Hwy / Heathcote Rd / Wilson Pde intersection performance will improve compared to current traffic conditions.

Further a draft condition is recommended that will require the construction of footpaths along the frontage of the site, and extending the footpath from Boronia Grove to Wilson Parade, this will improve pedestrian access to Heathcote Station.

### 9.11 View loss

The issue of view loss to the Royal National Park has been raised by a submitter in Lunar Avenue, Heathcote, the location is shown in red on an aerial below, this image also identifies the subject site and the Royal National Park.



The submitter in states *“The SEE does not adequately assess the potential impact of the development on the adjacent residences or any shared viewpoints.”*

*The development would have significant impact to residence amenity as there will be two and three story buildings as their vista compared to the current bush views such as from Boronia Grove.”*

The proposed development approximately 1137m (measured in a straight line) to the north west of Lunar Avenue, across the Royal National Park. The submitter advises of concerns regarding view loss from Boronia Grove looking south to the Royal National Park.

The bush views to the National Park from Boronia Grove over the subject site is obstructed, the “bush views”, are mostly the vegetation that exists on the subject site.

A clear view standing at the intersection of Tecoma St and Boronia Grove towards the Royal National Park is available, as demonstrated below:



There is no impact upon view loss from Boronia Grove as a result of the development to the Royal National Park given the topography of the site, and the existing vegetation (which is mostly to be retained) on the subject site.

### 9.12 Contaminated Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) requires Council to consider whether the land subject to the development proposal is contaminated; and if the site is contaminated, Council must be satisfied that the site is suitable or can be made suitable (i.e. remediated) for the proposed land use.

The results of the detailed site investigation outlines that the site is not affected by significant or widespread contamination. The outcome of the contaminated land assessment has demonstrated that the site can be made suitable for the proposed residential development subject to the removal of asbestos impacted soils and appropriate off-site disposal.

Therefore, to ensure that the site is made suitable for the intended residential development, specific draft conditions are recommended to address:

- the removal of asbestos impacted material via a site-specific Construction Environmental Management Plan.
- management of unexpected finds during works, via an Unexpected Finds Protocol as a component of the Construction Environmental Management Plan.
- management of site soil/ fill material including appropriate offsite disposal

### 9.13 Terrestrial biodiversity

The subject land is identified as “Biodiversity” on the Terrestrial Biodiversity Map and the provisions of clause 6.5 are applicable.

Clause 6.5 requires Council’s assessment to consider certain matters. Council must consider the impact of the development on flora; fauna; vegetation; biodiversity and habitat and any appropriate mitigation measures. The relevant matters have been considered as part of the assessment and discussed in this report, and the proposal is acceptable in this regard. Draft conditions are recommended to ensure that these areas are appropriately managed.

### 9.14 Guidelines for developments adjoining land managed by the Office of Environment and Heritage

The *Guidelines for developments adjoining land managed by the Office of Environment and Heritage* prepared by the Office of Environment and Heritage contains matters to be considered when assessing proposals adjoining OEHL land. Whilst the development site does not directly adjoin the Royal National Park (RNP), it is in the vicinity of the park, and therefore this Guideline must be considered in the assessment of this application.

Matters for consideration are as follows:

Matter	Aim of the Guideline	Comment
Erosion and sediment erosion control	To prevent erosion and the movement of sediment onto OEHL land, and ensure no detrimental change to hydrological regimes.	Councils Engineers have reviewed the application and considered that the stormwater treatment on site will have minimal impacts upon the RNP.
Stormwater runoff	Nutrient levels are minimised, and stormwater flow regimes and patterns mimic natural levels before it reaches OEHL land	Councils Engineers have reviewed the application, including the modelling data associated with the stormwater drainage of the site. The development is acceptable in this instance. Appropriate treatment measures have been incorporated to reduce nutrient levels as required.
Wastewater	There are no adverse impacts on OEHL land due to wastewater from adjacent development	Wastewater will be disposed of through the existing Sydney Water System. Sydney Water has provided comment on this application and considers it acceptable. If consent is granted the applicant will be required to submit the application to Sydney

		Water for relevant post – consent assessment. A draft condition will reflect this.
Management implications relating to pests , weeds and edge effects	<p>Adjoining development does not:</p> <ul style="list-style-type: none"> <li>- lead to increased impacts from invasive species (weeds and pests), domestic pets and stock</li> <li>- facilitate unmanaged visitation, including informal tracks, resulting in negative impacts on cultural or natural heritage values</li> <li>- lead to impacts associated with changes to the nature of the vegetation surrounding the reserve</li> <li>- impede OEH access for management purposes, including inappropriate fencing.</li> </ul>	<p>The development is within walking distance of a number of walking tracks into the RNP. The development does not propose any fencing along the interface of the RNP and the subject site.</p> <p>Landscaping planting will be consistent with species existing on site including the EEC of the Sydney Turpentine Ironbark Forest. Planting is also required to be consistent with the Green web (discussed above)</p>
Fire and location of asset protection zones	All asset protection measures are within the development area, and there is no expectation for OEH to change its fire management regime for the land it manages.	The NSW Rural Fire Service have assessed this application and provided General Terms of Approval. The development will not require APZs to be contained within the RNP.
Boundary encroachments and access through OEH land	No pre-construction, construction or post-construction activity occurs on land managed by OEH. Any access that does occur must be legally authorised and comply with park management objectives.	Nil Proposed
Visual, odour, noise, vibration, air quality and amenity impacts	There is no reduction of amenity on OEH land due to adjacent development	If consent is recommended draft conditions are recommended regarding construction management, and hours of construction. Should use of the Hall be imposed in the future, these guidelines will need to be considered regarding hours of operation and any odour control as a result of any future use of the Hall.
Threats to ecological connectivity and ground –	Native vegetation and other flora and fauna habitats that provide a linkage,	There are no known groundwater dependent ecosystems in the

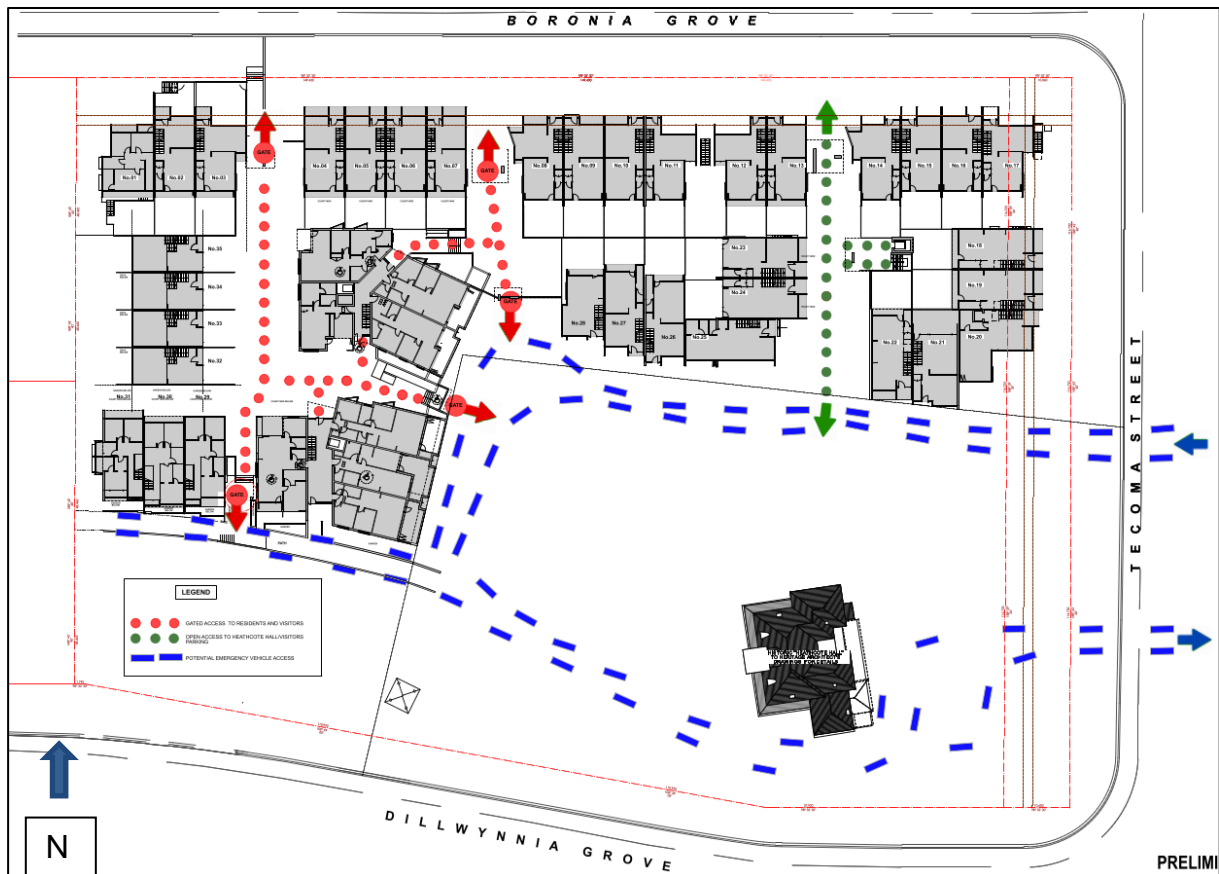
water dependent ecosystems	<p>buffer, home range or refuge role on land that is adjacent to reserves are maintained and enhanced, where possible.</p> <p>Groundwater-dependent ecosystems in OEH land are protected.</p>	<p>vicinity of the site.</p> <p>Tree canopy will be retained on site and enhanced providing linkages and buffers. Vegetation in the RNP is not proposed to be removed as part of this application.</p>
Cultural Heritage	<p>Aboriginal heritage values on OEH land, and areas and sites of heritage value that are World Heritage listed, on the National Heritage Register, or the State Heritage Register are protected.</p>	<p>There are no known items of Aboriginal Heritage on Site. However a draft condition is recommended regarding any unexpected finds regarding Aboriginal Heritage.</p> <p>The Heathcote Hall and site are listed on the State Heritage Register, this has been discussed in detail throughout this report.</p>

Based on the above the development is considered acceptable, and can be appropriately managed through conditions.

#### **9.15 Access to the Site**

The applicant has provided a way finding plan (see figure below) this identifies the pedestrian permeability of the site. The plan also identifies emergency vehicular access routes. A draft condition is recommended within the GTAs issued by the RFS - regarding vehicular access requirements (**Appendix J**).





*Way finding Plan*

There is also vehicular access provided to two basement levels of parking, with an entry from Boronia Grove and Dillwynnia Grove. There is vehicular access from Tecoma Street to at grade parking adjacent to the Hall.

A draft condition is recommended to ensure the public has access over relevant parts of the site.

### 9.16 Earthworks and Geotechnical

The proposal includes earthworks and Clause 6.2 of SSLEP 2015 requires certain matters to be considered in deciding whether to grant consent. These matters include impacts on drainage; future development; quality and source of fill; effect on adjoining properties; destination of excavated material; likely disturbance of relics; impacts on waterways; catchments and sensitive areas and measures to mitigate impacts. The relevant matters have been considered and the application is acceptable.

### 9.17 Housing Diversity

In accordance with the DCP 2015, the proposal is required to provide 10% of the townhouses and 10% of the apartments to be allocated as Liveable dwellings, and in addition to this 20% of the town houses and 20% of the apartments to be allocated as adaptable dwellings. The following is proposed:

Dwelling Type and number	DCP 2015 Dwelling Requirement	Proposed
Townhouses x 35	10% Liveable (4 dwellings)	Nil
	20% Adaptable (7)	Nil
Apartments x 20	10% Liveable (2)	Building A: Units 2 and 12= 2
	20% Adaptable (4)	Building B: Units 1,3,11,13 =4  Total of 6 units identified as both liveable and adaptable

Council requested in its letter dated 29 August, 2017 that the proposal comply with the required Adaptable and Liveable dwelling provision rates as per the DCP 2015, as previously nil dwellings were identified.

The applicant responded by providing six (6) dwellings over the entire development to be adaptable/liveable dwellings. This is inconsistent with the DCP 2015 which requires Adaptable dwellings to be provided in addition to Liveable dwellings.

A draft condition is recommended to ensure compliance with these controls, which may result in reconfiguration of dwellings or a change in dwelling yield in order to accommodate these dwelling types within the development.

#### **9.18 Stormwater Management**

Clause 6.4 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. These matters have been addressed to Council's satisfaction. Large detention tanks have been proposed to slow flows of stormwater into the Council drainage systems following development.

#### **9.19 Archaeological Sensitivity**

Council records indicate that the subject site is rated medium in terms of Archaeological Sensitivity. A site inspection did not reveal any evidence of shell material or significant sandstone features within the development zone. The proposal does not warrant an Aboriginal Archaeological Study being undertaken.

A draft condition is recommended to account for unexpected Heritage finds during construction.

### **10.0 DEVELOPER CONTRIBUTIONS**

The proposed development has a value of greater than \$100,000. In order to provide high quality and diverse public facilities, the proposed development will attract Section 7.12 Contributions in accordance with Council's adopted Section 94 Development Contribution Plan 2016.

This contribution is based upon the proposed cost of the development and has been calculated at 1% of \$29,500,474.00 (the estimated cost of development identified on the development application form). Therefore, Section 7.12 Levy contributions for the proposed development would be \$295,004.74.

## **11.0 DECLARATION OF AFFILIATION**

Section 10.4 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts in excess of \$1000. In addition Council's development application form requires a general declaration of affiliation. In relation to this development application no declaration has been made.

## **12.0 CONCLUSION**

The proposed development is for restoration of a State Heritage Item, including surrounding gardens, two levels of basement parking, two residential flat buildings containing 10 dwellings each; and 35 multi dwellings at 1-21 Dillwynia Grove, Heathcote.

The subject land is located within Zone E4 Environmental Living pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being residential flat buildings and multi dwellings, is only permissible with consent in this Zone due to Clause 5.10.10 of the LEP (Conservation Incentives), as the proposal includes restoration to the Heritage Item and identified heritage grounds.

The application was placed on public exhibition on two (2) separate occasions. In response to public exhibition, submissions were received from 264 individuals or groups for the first exhibition period, and 54 individuals or groups for the second notification period. The matters raised in these submissions have been discussed in this report and include evacuation, bushfire, Heritage, density, height, zoning, traffic, privacy and construction management.

The proposal includes a variation to height and setbacks of townhouses to Boronia Grove. These variations have been discussed and are considered unacceptable; design change conditions have been included within a deferred commencement condition.

The application has been assessed having regard to the Heads of Consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* and the provisions of Sutherland Shire Local Environmental Plan 2015 and all relevant Council DCPs, Codes and Policies.

Based on Council's interpretation of the General Terms of Approval issued by the Heritage Council, it is considered that the development is not consistent with the approved Conservation Management Plan (endorsed by the Heritage Council), and that the Heritage Council raises concerns with the location of the development by requesting further information as per General Term 4(a) and 4(b).



The General Terms of Approval issued by the Heritage Council (dated 17 May 2018), have provided insufficient comfort as to the final form and location of development. In with regards to the location of townhouses (dwellings 29, 30 and 31) and Building B along the 'carriageway'; townhouses (dwellings 20-22 and 25-28) and Building A to the north and northwest of the Hall adjacent to the required buffer to the heritage curtilage.

These two General Terms then raise the issue as to whether the proposal satisfies Clause 5(10)(10) of the LEP 2015, in particular subclause (b) and (d), which requires the Consent Authority to be satisfied that the proposed development is in accordance with a heritage management document and that the proposed development would not adversely affect the heritage significance of the heritage item, including its setting.

Therefore a deferred commencement is recommended in order that the applicant demonstrate compliance with General Terms of Approval issued by the Heritage Council, and so that the Consent Authority be satisfied that the development satisfies Clause 5.10.10, and the Heritage Council General Terms of Approval, whilst still ensuring that there is an appropriate built form response to these matters.

A draft deferred commencement condition has been prepared, requiring the applicant to prepare amended plans as per the General Terms of Approval. These plans are to be submitted to Sydney South Planning Panel and the Heritage Council for approval prior to the activation of the deferred commencement. There are also a number of key design changes required, as discussed above that also form part of this recommended deferred commencement condition. It is noted that the SSPP may delegate their authority to Council to assess any plans submitted in response to the deferred commencement.

## **RESPONSIBLE OFFICER**

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