

SUTHERLAND SHIRE COUNCIL ADDENDUM 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 & 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:	<ul style="list-style-type: none"> • 264 individuals or groups until June 2018 Meeting • 55 groups/individuals from formal post meeting notification period (November 2018), and 3 groups/individuals from May/June 2019 notification • 4 groups/individuals since August 2019 meeting
Recommendation:	Deferred Commencement (Remedial Action Plan requirements)
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Schedule 4A of the Act (in accordance with current 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"> • State Environmental Planning Policy 55 – Remediation of Land • Draft State Environmental Planning Policy (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 • Sutherland Shire Development Control Plan 2015 • NSW Planning & Environment – Apartment Design Guide
List all documents submitted with this report for the Panel's consideration	<p>APPENDIX A1 - DECEMBER 2019: Draft Conditions</p> <p>Appendix (1) - Original Appendices June 2018.</p> <p>A Draft Conditions and General Terms of Approval (Rural Fire Service and Heritage Council)</p> <p>B Detailed Response to Submissions</p> <p>C Pre-Application Discussion Letter</p> <p>D Submissions Summary</p> <p>E Information Session notes</p> <p>F ARAP Letter</p> <p>G Original Heritage Council General Terms of Approval</p> <p>H Local Emergency Management Committee response</p> <p>I Clause 4.6 Variation Revised</p> <p>J RFS General Terms of Approval</p> <p>K Revised Heritage Council General Terms of Approval</p> <p>L Landscape, Height Annotated Plan</p> <p>M Privacy and Setbacks, Stair/Lift Annotated Plan</p> <p>N Parking Annotated Plan</p> <p>O Letter to SSPP re Council Resolution (referred to in Appendix B p8)</p> <p>P Plans</p> <p>Appendix (2) – Original SSPP Report prepared June 2018</p> <p>Appendix (3) – Record of Deferral SSPP Meeting June 2018</p> <p>Appendix (4) – August 2019 - Submission Summary</p> <p>Appendix (5) – August 2019 - Plans</p> <p>Appendix (6) – August 2019 - Applicant's response to Deferred Matters</p> <p>Appendix (7) – August 2019 - Heritage Office Response Letter February 2019.</p> <p>Appendix (8) – August 2019 - General Terms of Approval Heritage Council June 2019 and Rural Fire Service General Terms</p> <p>Appendix (9) – August 2019 - Clause 4.6 Variation Report Building Height 2019</p>

	Appendix (10) – December 2019 Applicants response to Deferred Decision including revised Clause 4.6 Request. Appendix (11) – December 2019 Record of Deferral SSPP Meeting August 2019 Appendix (12) – December 2019 Plans Appendix (13) – December 2019 Project Background Appendix (14) – December 2019 Correspondence from Heritage Council 2019 and RFS October 2019 Appendix (15) – December 2019 Current Planning Submission Summary (including submissions made at August 2019 determination meeting) Appendix (16) – December 2019 Addendum Report prepared for August 2019 Appendix (17) – December 2019 Adaptable Dwelling Amendment Plan Appendix (18) – December 2019 Photos of Heathcote Level Crossing Testing
Report prepared by:	Lisa Pemberton, Assessment Officer Sutherland Shire Council
Report date	30 October 2019

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**

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**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **No**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

REPORT SUMMARY

REASON FOR THE REPORT

This report has been prepared in response to the Deferred Decision made by the Sydney South Planning Panel (SSPP) on 28 June 2018 and 21 August 2019. The applicant was required to address a number of Deferred Matters raised by the SSPP. The applicant has submitted information to be considered in the determination of this application.

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 SSPP as the development has a capital investment of more than \$20,000,000 (as per the current 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.

THE SITE AND PROPOSAL

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 Local Environmental Plan 2015 as a heritage item, known as “Heathcote Hall”. The site has three street frontages, Dillwynnia Grove to the south, Tecoma Street to the east and Boronia Grove to the north.

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

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 Building Height satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that the Building Height development standard be varied to 9.0m for Residential Flat Building A, in respect to this application.
2. That 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 & Lot 2 DP 725184 (No. 1-21) Dillwynnia Grove, Heathcote is determined by the granting of a deferred commencement development consent subject to the conditions contained in **Appendix “A1”** of the report.

ASSESSMENT OFFICER'S COMMENTARY

1.0 PRIOR ASSESSMENT BY THE SYDNEY SOUTH PLANNING PANEL

The previous assessment by the SSPP is as follows:

- a) DA17/0467 was referred to the Sydney South Planning Panel for determination on 28 June 2018 (see **Appendix 1** and **Appendix 2**). The SSPP deferred their decision at this meeting and requested that the applicant address a number of matters prior to determination (Deferred Matters from June 2018 meeting are attached in **Appendix 3**).

The Record of Deferral from June 2018 meeting was issued for the following reasons:

1. *Clear direction from the Heritage Office regarding:*
 - *setbacks and curtilage to the areas of heritage significance surrounding Heathcote Hall*
 - *modification of the building heights to ensure the dominance of Heathcote Hall is retained, as per Council's draft conditions of consent*
2. *A number of other design matters outlined in Council's report.*

It is important to note that the matter regarding height was not a concern raised by the Heritage Office, rather it was an issue raised in the planning assessment report prepared for the SSPP meeting of June 2018.

The prior assessment report prepared for the June 2018 meeting and all supporting documents are still relevant and it is recommended they be relied upon to inform the assessment and determination of this proposal by the SSPP (**Appendix 1 and Appendix 2**), except where clearly stated in this supplementary report.

- b) The DA was again referred to the SSPP for determination on 21 August 2019. The SSPP deferred their decision at this meeting (**Appendix 11**) requesting that the applicant resolve all matters outstanding from the 28 June 2018 meeting.

The Record of Deferral from August 2019 meeting was issued for the following reasons:

"The panel agreed to defer the determination of the matter until further amendments are submitted by the applicant and an assessment is completed by council, as the material submitted was insufficient to satisfy the Panel that the issues identified in the Council report had been satisfactorily addressed.

When this information has been received and assessed by Council, the panel will hold another public determination meeting. It is required that the applicant will lodge the amendments within 2 weeks of this meeting to ensure that the matter can be dealt with efficiently and the next Public meeting scheduled within 3 months.

In addition, the Panel requests further detail on the emergency evacuation arrangements as noted in the general advice as provided by the RFS on 27 April 2018."

A copy of the August 2019 assessment report for the SSPP is included in **Appendix (16)**, however this has been *superseded by this assessment report*.

An assessment against all matters raised as a result of the June 2018 meeting is undertaken below. Further Council has provided additional comment regarding emergency evacuation.

2.0 Response to Deferred Matters

A response to the deferred matters from the June 2018 meeting is as follows:

Matter A. Heritage Curtilage

In accordance with the General Terms of Approval issued by the Heritage Council (dated 17 May 2018), and in consultation with the Heritage Council; the following must be demonstrated:

- i) *Amended plans overlaid with the development and setback zones identified in the CMP are required to clarify that the residential development is contained wholly within the areas identified as being of moderate significance to the north and north-west of Heathcote Hall, and the recommended setback areas have been kept free of development.*

Comment: The Heritage Council has issued revised General Terms of Approval dated 10 October 2019 (**Appendix 14**), indicating that the amended proposal has satisfied this matter.

- ii) *Information/amended plans 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.*

Comment: The applicant has submitted additional landscaping and planting information, and have undertaken an archaeological investigation to locate the former east- west carriageway. As advised by the Heritage Council (**Appendix 14**), this matter is satisfactory, however it will require additional detail and examination as part of any Section 60 application pursuant to the *Heritage Act 1977*; including detail on fencing, and plantings, including the buffer zone.

Matter B. Building Height

Submit amended plans indicating:

- i) *The height of Building A must be no greater than 9.1m, with a maximum RL of RL 221.534 above existing ground level (ground level at the date of issue of the decision), excluding lift overrun.*

Comment: Satisfied – the maximum RL is RL 221.0 and the maximum height is 9.0m.

See further discussion below regarding the Clause 4.6 variation request for Building A.

- ii) *The height of Building B must be no greater than 8.5m, with a maximum RL of RL 221.076 in height above existing ground level (ground level at the date of issue of the decision), excluding lift overrun.*

Comment: Satisfied- the maximum building RL is no greater than RL 221.1, and the building is no greater than 8.5m in height.

- iii) *The height of Townhouses 30 and 31 must be no greater than 8.5m in height above existing ground level (ground level at the date of issue of the decision). The maximum RL of Townhouse 30 must be RL 217.759 and the maximum RL of Townhouse 31 must be RL 217.731.*

Comment: The plans demonstrate compliance with this matter.

Matter C. Additional Commercial Basement Parking

Submit amended plans indicating:

Separate commercial visitor parking must be provided at Basement Level B2, associated with the use of Heathcote Hall. This parking is to replace the proposed commercial parking in Basement Level B1 and lift (to the east of Dwelling 23) in accordance with the following:

- i) *Basement level B2 is to be increased in size to provide additional parking area under the footprint of Residential flat Building B and extend north towards Residential Flat Building A.*

Comment: Satisfied – additional basement level 2 commercial parking proposed.

- ii) *This parking area is to be accessed via the driveway to Basement Level B2 from Dillwynnia Grove.*

Comment: Satisfied.

- iii) *The vehicular entry to the commercial car parking is to be separate to the residential entry to Basement Level B2, with a secure gate to be provided to the residential entry.*

Comment: Satisfied – separate vehicular entry provided, and secure residential entry proposed.

- iv) *A minimum of eight (8) parking spaces must be provided in accordance with AS2890.1 2014.*

Comment: Satisfied - eight spaces provided in basement level 2 commercial parking

- v) *Provide a separate lift and stair core from this parking area, to be used for the commercial basement parking area. This lift shall be located so as not to have any connection and/ or conflicts with the private residential components of the development and shall be erected in the vicinity of the Heritage Interpreted Carriageway to the south of the residential flat buildings. This carriageway must provide pedestrian access to Heathcote Hall and gardens.*

Comment: Unresolved - Lift not provided, a condition of consent is recommended should consent be granted, that a lift be provided for this commercial carpark level, to ground level.

Matter D. Setbacks to Boronia Grove

Submit amended plans indicating the following:

- i) *Dwellings 2 - 7:*

a) *The first floor voids must be reduced in depth to no greater than 1m, in order to achieve this the screen must be set 1m from the façade of these dwellings. The walls associated with the voids must also be reduced in depth to no greater than 1m (except where required as common walls for fire separation), as must the roof areas.*

Comment: Satisfied.

b) *The northern deck off the master bedroom for these dwellings must be reduced in depth to no more than 300mm, with the roof form to change over the balcony to align with the amended depth of the deck.*

Comment: Satisfied.

ii) *Dwellings 11 and 12*

The extent of the eave/ roof overhang off the master bedroom, is to be reduced to be no greater than 1m, measured from the northern façade.

Comment: Satisfied.

iii) *Dwellings 2-14*

In addition to (D)(i)(a) and (D)(i)(b) above, where there is an eave/roof overhang, it shall measure no greater than 1m in depth from the northern facade where overhang is proposed for these dwellings.

Comment: Satisfied.

The applicant has complied with all setback requirements of the deferred matters issued by the SSPP.

Matter E. Adaptable and Livable Dwellings

Submit amended plans indicating the following:

A total of eleven (11) adaptable dwellings and six (6) livable dwellings must be provided in accordance with the following:

i) *Adaptable dwellings must be provided in accordance with AS 4299 (Adaptable Housing) at the following rates:*

a) *Townhouses: Seven (7) dwellings; and*

Comment: 7 dwellings are proposed by the applicant (townhouses 4 -10) as adaptable dwellings.

There is a concern regarding access from the basement to these dwellings. For a resident in an adaptable townhouse (4- 10) access is via the lift in basement 1 which is located up to approximately 95m from the garage. Resident's would then need to walk the same distance (approximately) to their dwelling, by exiting the site, and gain access to their dwelling via the public footpath. This is not acceptable, a more appropriate access solution is required.

A condition of consent is recommended that the adaptable townhouses be dwellings 7, 8, 11, 12, 13, 14 and 22, with additional lift access provided to these dwellings in various locations see **Appendix 17.**

b) *Apartments: Four (4) dwellings*

Comment: Satisfied, four adaptable apartments in Building B (dwellings 1, 3, 11 and 13)

- ii) *In addition to Adaptable dwellings as per (a) above, Livable dwellings must be provided designed to Silver Standard Livable Housing Design Guidelines, at the following rates:*

a) *Townhouses: Four (4) dwellings;*

Comment: Satisfied - Four Livable dwellings are proposed (townhouses 27, 23, 24 and 25).

Dwelling 27 is to be a livable dwelling as per recommended condition of consent, replacing townhouse 20 as a livable dwelling. Appropriate access to townhouse 20 could not be provided, therefore a condition of consent recommends that Townhouse 27 be made livable with a lift to be provided from the basement garage, see **Appendix 17**.

b) *Apartments: Two (2) dwellings.*

Comment: Satisfied, two livable dwellings in Building A (dwellings 2 and 12)

Matter F. Design Changes

Submit amended plans indicating the following:

- i) *An underground rainwater storage tank or tanks must be provided under the footprint of a building/s (i.e. not within a deep soil zone) to provide adequate water supply for the irrigation of the heritage garden and the communal landscaped areas. The rainwater tank/s shall have a minimum volume of 50,000L.*

Comment: Satisfied.

- ii) *Replace bitumen driveway on the eastern side of Heathcote Hall with gravel paving to match the reinstated heritage drive on the western side of the building.*

Comment: Satisfied, demonstrated on plan.

- iii) *Hydrant boosters and meters must be fully enclosed and incorporated within the building fabric associated with the townhouses and residential flat buildings.*

Comment: Not satisfied, hydrant boosters are shown on plan, however, a number of them are not incorporated into the building fabric, see Council Building Officer comments. If consent is granted a condition of consent is recommended to address this matter.

- iv) *The following changes to the basement must be made:*

a) *Ten (10) bicycle parking spaces must be provided in the basement.*

Comment: Satisfied - shown on plan.

b) *Three (3) dedicated car wash bays, with a minimum dimension of 3x 7.6m are to be provided in the basement.*

Comment: Satisfied.

c) *The provision of blind aisles, and parking spaces in both basements (B1 and B2) are to comply with AS2890.1.*

Comment: Satisfied.

d) *The driveway gradients must be in accordance with AS2890.1 with a 10m length at 5% to facilitate access by a Heavy Rigid waste collection vehicle.*

Comment: Satisfied.

e) *Waste collection areas should also be incorporated into the Basement Level (B2).*

Comment: Satisfied - waste collection area shown adjacent to stair 2.

f) *Where waste cannot be collected for Dwellings 29, 30 and 31 from Boronia Grove/ Basement level B1, kerbside waste collection may only occur for dwellings 29, 30 and 31 from Dillwynia Grove for these three dwellings only.*

Comment: Addressed via (g) below.

g) *A temporary waste holding area is to be provided adjacent to the collection area on Boronia Grove and Dillwynia Grove.*

Comment: Satisfied.

h) *Parking bays in Basement Level B2 must not be enclosed, caged or a door provided, except for the 3 double garages.*

Comment: Satisfied

i) *Curved access to Basement Level B2 must be widened to a minimum 6.3m wide to facilitate 2-way movement in accordance with table 2.2 of AS2890.*

Comment: Satisfied.

v) *The existing soil profile and ground levels must be retained around ALL existing trees to the north of townhouses 1 to 17 inclusive along Boronia Grove, and townhouses 18 to 21 on Tecoma Street, both on the Council verge and within the site.*

No reshaping, battering, excavating or filling of the original ground surface is permitted within this area.

Where building edges or feature walls are required adjoining/adjacent to the trees on Council verge or within the site; they must be constructed so as to minimise impact upon the adjoining landscape, and present a vertical face to the street.

Comment: All sections taken through Boronia Grove and Tecoma Street appear to have mitigated cut and fill however section C-C (plan) still shows an amount of fill along Dillwynia Grove, with some fill also shown at the front of townhouses 2 and 3, on Boronia Grove. If consent is granted a draft condition of consent is recommended requiring levels to remain as existing in these locations.

- vi) *The wall on the northern side of the external stairs to Dwelling 2 must be deleted and replaced with a 1m balustrade constructed of a light weight material, either a clear glass or palisade type fence.*

Comment: Satisfied.

- vii) *The façades of all dwellings facing Heathcote Hall, Heritage Gardens, and the 'no development zone' (as per the endorsed Conservation Management Plan dated 18 July 2017) in the south western corner of the site must be constructed of finishes dark and recessive in colour.*

Comment: Materials and finishes provided on Plan DA21 Revision D.

4.0 DESCRIPTION OF PROPOSAL

The proposal consists of the following and as per Figure 1 below:

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 carriageway access from the western boundary towards Heathcote Hall (to the south of townhouses 29-31 and Building B).

b) Residential precinct:

- Thirty-five townhouses – 24 x 3 bedroom and 11 x 4 bedroom townhouses each with private open space.
- Residential Flat Building A (Building A) – 3 storeys with 10 dwellings (9x 2 bedroom and 1x 3 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, basement level 1 has vehicular access from Boronia Grove and the Basement level 2 from Dillwynnia Grove.
- Separate commercial parking for 8 vehicles at Basement level 2, with vehicular access from Dillwynnia Grove; and 4 at grade commercial parking spaces to the east of the Hall, with access from Tecoma Street.
- Public and private pedestrian access through the site, including to Heritage Gardens and Heathcote Hall.

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



Figure 1 Site Plan

5.0 BACKGROUND

The development application was lodged on 28 April 2017. A detailed history of the development since the 21 August 2019 determination meeting is as follows (all history prior to this is detailed in **Appendix 13**):

- 21 August 2019 - the application was referred to the SSPP for determination, the SSPP deferred their decision at this meeting (**Appendix 11**).
- 4 September 2019 – the applicant submitted additional information in response to the August 2019 SSPP deferred decision (**Appendix 10**).
- 10 October 2019 – The Heritage Council provided comments (**Appendix 14**)
- 17 October 2019 – The RFS provided comments (**Appendix 14**)

6.0 PUBLIC PARTICIPATION

Notification

The application was originally 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, with submissions received from 264 individuals or groups as a result. A summary of all original submissions can be found in **Appendix 1**.

The amended plans and supplementary material received after the determination meeting of 28 June 2018, were notified to 489 adjoining or affected owners, and submissions were made by 55 individuals or groups, the notification period ended 16 November 2018. Another letter was sent to 507 adjoining or affected owners in May 2019 that further amended plans had been received and submissions were made by 3 individuals/groups. A detailed summary of the submissions prior to the 21 August 2019 meeting is contained in **Appendix 4**.

A letter was sent to 503 adjoining or affected owners of the amended plans and supplementary material received after the determination meeting of 21 August 2019. Submissions were made by 4 individuals or groups. A summary and response to the relevant planning matters raised by the submissions since the 21 August 2019 meeting are attached at **Appendix 15**.

The planning assessment issues raised in the submissions made after the August determination meeting are as follows:

- *Alternative uses of the site*
- *Height/ Clause 4.6*
- *Heritage, use of the Hall/ and Grounds, restoration and maintenance process*
- *LEP/DCP*
- *General Process, and SSPP Process*
- *Traffic and parking, site access, pedestrian safety*
- *Bushfire*
- *Damage of public infrastructure due to construction; and damage to dwellings due to construction.*
- *Construction*
- *Infrastructure*
- *Environmental Impact*
- *Design and Amenity*

Submissions made to the SSPP during 28 June 2018 meeting

Five written submissions were provided to the SSPP at the meeting held on 28 June 2018. The matters raised in these submissions have been summarised in **Appendix 4**.

Submissions made to the SSPP during 21 August 2019 meeting

Five written submissions were provided to the SSPP at the meeting held 21 August 2019. The matters raised in these submissions have been summarised in **Appendix 15**.

A full copy of all submissions have been provided separately to the SSPP.

Submission Review Panel (SRP)

The submissions received and the issues raised, were reviewed under Council's SRP process. As the application is being determined SSPP, all submissions and issues raised will be provided in full and summary for the SSPP to review and consider.

7.0 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 as part of the previous assessment report prepared for the June 2018 meeting (**Appendix 2**). However further consideration against the provisions of Clause 5.10(10), has been undertaken on the current information submitted for assessment (see assessment below).

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

- State Environmental Planning Policy 55 – Remediation of Land
- Draft 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 (SSDCP 2015)
- NSW Planning & Environment – Apartment Design Guide

Section 94 and Section 94A

- S94A 2016 Plan - Sutherland Shire

All previous assessment against the EPI's, DCP, Codes or Policies are relevant to the assessment of this application. It is recommended that the previous assessment prepared for 28 June 2018 of the application be considered as part of this assessment (**Appendix 2**), except where specifically superseded in this report.

Where required additional assessment against the EPI's, DCP, Codes or Policies has been undertaken below relating to the additional information submitted in response to the Deferred Matters.

8.0 COMPLIANCE

8.1 Remediation of Land

8.1.1 State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

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. following remediation) for the proposed land use.

The results of the detailed site investigation indicate that asbestos containing materials were found, as identified through testing in specific locations across the site. The outcome of the contaminated land assessment has demonstrated that the site can be made suitable for the proposed residential development subject to remediation and validation involving the removal of asbestos impacted soils and appropriate off-site disposal.

8.1.2 Draft State Environmental Planning Policy (Remediation of Land)

The draft Remediation of Land SEPP seeks to repeal and replace SEPP 55 in relation to the management and approval pathways of contaminated land. The draft SEPP was exhibited between January and April 2018. New provisions will be added which will:

- require all remediation work carried out without the need for development consent to be reviewed and certified by a certified contaminated land consultant,
- categorise remediation work based on the scale, risk and complexity of the work, and
- require environmental management plans relating to post remediation, maintenance and management of on-site remediation measures to be provided to Council.

The site and proposal has been assessed against the provisions of both SEPP55 and *Draft State Environmental Planning Policy (Remediation of Land)*, it has been determined that the site contains asbestos contamination. Appropriate conditions, including a *deferred commencement condition* for the provision of a Remedial Action Plan, is recommended to ensure that the proposal will satisfactorily address the provisions of SEPP 55 and the *Draft State Environmental Planning Policy (Remediation of Land)*. The draft recommended conditions regarding remediation, will also require the involvement of a NSW EPA Accredited Site Auditor.

8.2 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 allowed in this zone 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%. An assessment of the development against the requirements of the SSLEP 2015 for land in the E4 zone has been undertaken in Table 1 below.

Sutherland Shire Local Environmental Plan 2015			
Clause	Standard	Proposed	Complies
4.3	Height of Buildings – 8.5m	<ul style="list-style-type: none">• Building A= 9.0m• Building B= 8.5m (to the roof) Max RL 220.1• Townhouses < 8.5m	No +5.8% - however satisfies Deferral Matter B(i) Yes Yes (See discussion below regarding response to Deferred Matters)
4.4 Site AREA: 17502.3m ²	Floor Space Ratio Max – 0.55:1	Total GFA Residential and Heathcote Hall= 7239.1 + 438.57= 7677.67m²	Yes

“Developable Area” (as per CMP) = 10722.48m ²	Based on whole site area=9525m² Based on developable area= 5897.37m ²	FSR based on site area: <u>0.44:1</u> FSR based on developable area: 0.72:1	
6.14	Landscaped Area (deep soil) 40% (7000m² required)	7008.6m ² or 40%	Yes

Table 1 Sutherland Shire Local Environmental Plan 2015 Assessment

8.3 Sutherland Shire Development Control Plan 2015 (SSDCP 2015)

Chapter 4 of the SSDCP 2015 contains development controls for multi dwelling housing. In the case of this proposal, Chapter 4 of the SSDCP 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 SSDCP 2015.

An assessment against the relevant standards (including where changes have been noted from the previous scheme) associated with the additional material has been included below. All previous compliance tables from the June 2018 meeting regarding the SSDCP 2015 can be viewed **Appendix 2**, and remain relevant, **where not superseded by Table 2 below**.

Sutherland Shire Development Control Plan – R2 Low Density Residential multi dwelling		
CONTROLS/REQUIREMENTS	Proposal	Compliance
2.2 Building Setbacks		
Street Setback 7.5m or established street setback.	- Dillwynnia Grove Minimum 31.6m - Boronia Grove 2.4m to 7.5m	Yes No – see discussion below
3m secondary street frontage (Tecoma St)	3m	Yes
Side Setback (Front of the site taken from the Street address of Dillwynnia Grove for purposes of calculating 60/40)) • Ground Floor – 0.9m front 60% of site – 4m rear 40% of site	<u>Setback to side (western) boundary</u> • 4.5m to townhouse #31 (Dillwynnia Grove) • 7.9m to townhouses #32-35. • 4.0m to townhouse #1 (Boronia Grove)	Yes Yes Yes
Second storey	• 2.7m to townhouse #31 (Dillwynnia	Yes

– 1.5m front 60%	Grove) • 9.05m to townhouses #32 -35 • 4.0m to townhouse #1 (Boronia Grove)	Yes Yes
Rear Setback (to western boundary) dwellings #32-#35 - 4m	7.9m	Yes
4.2 Landscaping		
Max. 50% hard surfaces within front setback, remaining area to be deep soil - 50% of 1172m ² =586m ²	Min 598.1m ² deep soil or 573.9m ² hard surface or 48% max	Yes
6.2 Visual & Acoustic Privacy		
Locate, orientate and design new development to maximise the provision of visual privacy.	Interface of proposed dwellings along the western boundary with existing dwellings. Balconies proposed at first floor level for dwellings 32-35, proposed full height screening of west facing balconies	Yes
7.2 Parking		
Car wash bays are required at a rate of one (1) per 20 dwellings - 3 spaces needed	3 proposed	Complies
The minimum vehicular crossing and driveway for a combined vehicular crossing (entry/exit) is 5.5m.	6.0 m wide entry from Dillwynnia and Boronia Grove.	Yes
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. - 10 spaces required	10 provided	Yes.
8.2 Adaptable Housing and 8.3 Livable Housing		
Multi dwelling housing - dwellings in accordance with the Australian Adaptable Housing Standard (AS4299) to Class C Certification at the following rates: – Developments of 6 or more dwellings – 20% adaptable 11 dwellings needed (7 x townhouses and 4x Units) In addition to complying with the adaptable housing rates, all new multi dwelling housing developments must provide 'livable dwellings (i.e., dwellings	• Building B= 4 adaptable units • 7 x Adaptable townhouses 11 Total	Yes

<p>designed to Silver Standard Livable Housing Design Guidelines) at the following rates:</p> <ul style="list-style-type: none"> – Developments of 6 or more dwellings –10% of dwellings. <p>6 dwellings needed (4 x townhouses and 2 x units)</p>	<ul style="list-style-type: none"> • 4 x livable townhouses • Building A – 2 livable units <p>6 Total</p>	<p>Yes</p> <p>Note: See further discussion in the report regarding adaptable townhouses.</p>
10.2 Waste Management		
<p>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</p>	<p>An assessment has been undertaken by Councils Engineer and Waste Manager – overall the waste collection is acceptable.</p> <p>The collection vehicle can be accommodated within the driveway to the Basement level 1 to be accessed via Boronia Grove.</p>	<p>Yes</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"> – 1 bedroom- 1 space (2x1 = 2 spaces) – 2 bedrooms – 1.5 (16x1.5= 24 spaces) – 3+ bedrooms – 2 (37 x 2= 74 spaces) – One (1) visitor car park is to be provided for every 4 dwellings (55/4 = 14 visitor spaces) <p>TOTAL REQUIRED= 114 for the residential component</p>	<p>Basement:</p> <p>105 Residential spaces + 16 Residential Visitor</p> <p>Total = 121</p>	<p>Yes</p>
<p>Commercial/retail in a business zone.</p> <p>1 space per 30m² GFA</p> <p>GFA of the Hall 354.8m²</p> <p>TOTAL REQUIRED =12 spaces</p>	<ul style="list-style-type: none"> - 4 at grade spaces provided adjacent to Heathcote Hall and spaces in the basement - 8 spaces provided in separate basement below Building A and B <p>12 total</p>	<p>Yes</p>

Table 2 Assessment against Sutherland Shire Development Control Plan 2015

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

SEPP 65 applies to the residential flat building component of this development. An assessment against State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and the associated Apartment Design Guide has been undertaken in Table 3 below.

Apartment Design Guide			
Objective	Design Criteria	Proposal	Complies
2F - 3F-1(1) Building Separation & Visual Privacy	<u>Internal Separation</u> Up to 4 storeys(approx 12m) <i>6m habitable to solid wall</i>	- 6.8m min between Building A and B (solid wall to habitable) - 5m min between Building B and townhouses to the west (habitable to solid wall)	Yes No
	<i>12m between habitable rooms/balconies</i>	- 12.2m between Building A to western townhouses #33-35 (habitable to habitable) - 5m between Buildings A and townhouses to the north (habitable to habitable)	Yes No
	<u>Setbacks to Boundary</u> Up to 4 storeys(approx 12m) <i>6m habitable rooms/balconies</i> <i>3m non-habitable rooms</i>	<u>Building A:</u> 35.8m to western boundary <u>Building B:</u> 29m to western boundary	Yes Yes
3E-1(1) Deep Soil Zones	Sites > 1500m ² = Minimum dimension 6m 7% of site area (1225m² required)	Deep soil approx. 7000m ²	Yes

Table 3 Assessment against the Apartment Design Guide

An assessment of the development against the Principles of SEPP 65 is included in Table 4 below.

DESIGN QUALITY PRINCIPLES	ASSESSMENT
Principle 1: Context & Neighbourhood Character	<p>The modern architectural form and design has responded to the heritage context of Heathcote Hall, by proposing a development that does not compete with the heritage architecture and form.</p> <p>Building A and Building B have been reduced in height to address the Deferred Matters issued by the SSPP on 28 June 2018. The reduction in height addresses the context, by reducing the bulk of the residential flat buildings at their closest interface with the existing development.</p>
Principle 2: Built Form & Scale	<p>The clusters of townhouses along Boronia Grove and Tecoma Street, achieve an appropriate form in terms of proportions and building composition in relation to Heathcote Hall.</p> <p>The Heritage Council, as per the amended General Terms of Approval, is satisfied with the amended scheme, as it addresses the setbacks from the heritage item and curtilage areas, to improve the transition between the</p>

	<p>heritage significant areas and residential development</p> <p>In response to the deferred matters, a number of dwellings have had an increase in setback from the Boronia Grove frontage, improving the transition to existing dwellings along Boronia Grove and Tecoma Street.</p> <p>The decrease in height of residential flat buildings A and B has resulted in a reduction in scale of these buildings, providing a transition to the Hall and to adjacent development. The roof form of Building B has been reduced in size providing an improved response to roof proportion.</p>
Principle 3: Density	The unit areas and proportions of the apartments continue to be in keeping with the rules of thumb in the Apartment Design Guide.
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. Rainwater tanks are proposed as part of this development.
Principle 5: Landscape	<p>There are minimal changes to the landscape as a result of the amendments. There is additional detail provided regarding the Heritage Landscaping and the relationship of this landscape setting to the dwellings proposed closest to the Hall.</p> <p>Trees on the neighbouring properties are proposed to be protected through the provision of tree protection zones. Deep soil areas within the communal open space and along the boundaries of the site contribute to preserving the existing landscaped character.</p> <p>Further planting and appropriate species selection reinforce the existing and desired future character of the locality. Replacement species would be associated with the Endangered Ecological Community of the Sydney Turpentine-Ironbark Forest. Embellishment of the Heritage Gardens would be as per the requirements of the Heritage Council.</p>
Principle 6: Amenity	<p>This principle refers to good amenity as combining “<i>appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</i>”</p> <p>The amended proposal is generally consistent with the above amenity provisions regarding the controls contained within the Apartment Design Guide. The development proposes areas of active and passive communal open space, which is secure from the Heritage areas of the site.</p>
Principle 7: Safety	The proposed development incorporates suitable Crime Prevention Through Environmental Design (CPTED) Principles in the design. If consent is granted draft conditions of consent include recommendations from NSW Police.
Principle 8: Housing	The proposal provides a mix of apartment types and townhouse types.

Diversity & Social Interaction	Numerically the Adaptable and Livable dwellings have been provided for in accordance with the SSDCP 2015, however a number of these dwellings are poorly located, as discussed above.
Principle 9: Aesthetics	An appropriate composition of textures, materials and colours within the development has been achieved. The changes to the finishes of the residential flat building A and B are considered acceptable in this instance in accordance with the deferred matters.

Table 4 Assessment of the development against the Principles of SEPP 65

9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

All previous comments submitted by public authorities are contained within the previous planning reports (**Appendices 2 and 16**) and are still applicable to the assessment of this application, except where **superseded** by the comments below.

Where required the amended scheme was referred to a number of authorities. The amended plans and supplementary information was referred to the following internal and external specialists for assessment and the following comments were received:

9.1 Heritage Council

The application is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*. The Heritage Council has provided amended General Terms of Approval (dated 10 October 2019), subject to conditions; in response to the current information submitted by the applicant, and considering the Deferred Matters issued by the SSPP from the June 2018 meeting. A copy of the General Terms of Approval is attached at **Appendix 14**.

9.2 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* on 27 April 2018. A copy of the most recent comments from the RFS is attached at **Appendix 14**.

The NSW RFS has reviewed the latest set of plans and information and advise that their General Terms of Approval issued on 27 April 2018 are still applicable in this instance (**Appendix 1**).

The RFS advises that the additional information submitted by the applicant has also been reviewed against the *Draft Planning for Bushfire Protection 2019*, in addition to the current *Planning for Bushfire Protection 2006*, and that regarding this development “a perimeter road is not a requirement under the provisions of *Planning for Bushfire Protection 2006* nor the draft 2019 edition. The site does not adjoin bushland and is bounded on three sides by public roads.”

9.3 Council Heritage Officer

Councils Heritage Officer has provided comments regarding the amended plans. A summary of the Heritage Officer comments are as follows:

- The encroachments into the significant Heritage areas appear to be resolved, and is subject to further satisfaction by the Heritage Council.
- The building height of Building A and B have been reduced to provide a more appropriate response to CI5(10)(10)(e) of the SSLEP 2015.
- The development is subject to further approval, post-determination, subject to a Section 60 application under the *Heritage Act 1977*.

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

9.4 Council Engineer

The Engineer has assessed the latest set of plans and all relevant supporting information, the following is advised:

- 1) Lift access to the commercial basement level 2 has not been provided, a condition of consent is recommended to construct a lift for this basement level.
- 2) Three carwash bays have been provided.

The required amendments can be imposed in the conditions and will require minor modification to the proposed basements.

9.5 Council Building Officer

The Building Officer has provided comments regarding the amended plans, as follows:

- The location of hydrant boosters and meters has been shown on the plan, however, it has not been adequately demonstrated that their design and location satisfies the Deferred Matter.
- The location of the fire hydrant booster assembly adjacent to the driveway on Boronia Grove, will have a detrimental impact upon the streetscape and amenity when viewed from Boronia Grove, and has not adequately satisfied the Deferred Matter.
- The fire hydrant booster assembly on the latest revision of plans does not comply with the E1.3 of the BCA or AS2419.1.
- The fire hydrant booster assembly should be located at the property boundary, adjacent to the driveway on Boronia Grove and be positioned parallel to the street.
- The northern balcony of townhouse 3 is required to be reduced in depth, in order to be no closer than 3.5m from the booster assembly.
- The booster assembly will require an adjacent fire rated free standing wall with an FRL not less than 90/90/90 and extend not less than 1m each side of the outermost hydrant booster riser (a minimum of 3m wide) and extend to a height not less than 2m above the finished ground level.

If consent is granted a condition of consent is recommended to address this matter, with further design detail to be submitted to Council for assessment prior to the issue of a Construction Certificate.

9.6 Council Landscape Architect

The plans adequately respond to the deferred matters regarding landscaping along Boronia Grove and Tecoma St, however there is still some fill identified along Dillwynnia Grove. A condition of consent is recommended requiring levels to remain as existing in these locations, should consent be granted.

9.7 Council Public Assets Engineer

Councils Public Assets Engineer has reviewed the amended application and has provided a number of comments, conditions are recommended regarding the comments below:

- “road widening” would be in the form of 3m x 3m splay dedications on the south eastern and north eastern corners of the site.
- no on street parking restrictions are intended across the northern and eastern frontages.
- adjustment of the roll kerb on all three frontages to provide a wider carriageway would be required to facilitate the on street parking and traffic movements generated by the development.
- footpath pavement would be provided across all three frontages, any new footpath pavements would require associated pram ramps and would be required to be constructed by the applicant/developer.

10.0 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 plan, codes and policies, the following matters are considered important to this application. The original assessment as per the report prepared for the SSPP determination meeting of 28 June 2018 is still applicable (with the exception of the response to the SSPPs request subject of this report), and can be relied upon in this instance to aid in the assessment of this proposal (**Appendix 2**).

10.1 Heritage

The site has been identified as a local 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 Council for their comment.

10.1.1 Background

The applicant has previously prepared a Conservation Management Plan (CMP) which has 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 and site access. The analysis has then been used as a basis to determine the areas of high and moderate significance of the site. The CMP analysis of areas of significance, informs areas most suitable for development (from a heritage aspect), as can be seen in Figure 2 below.

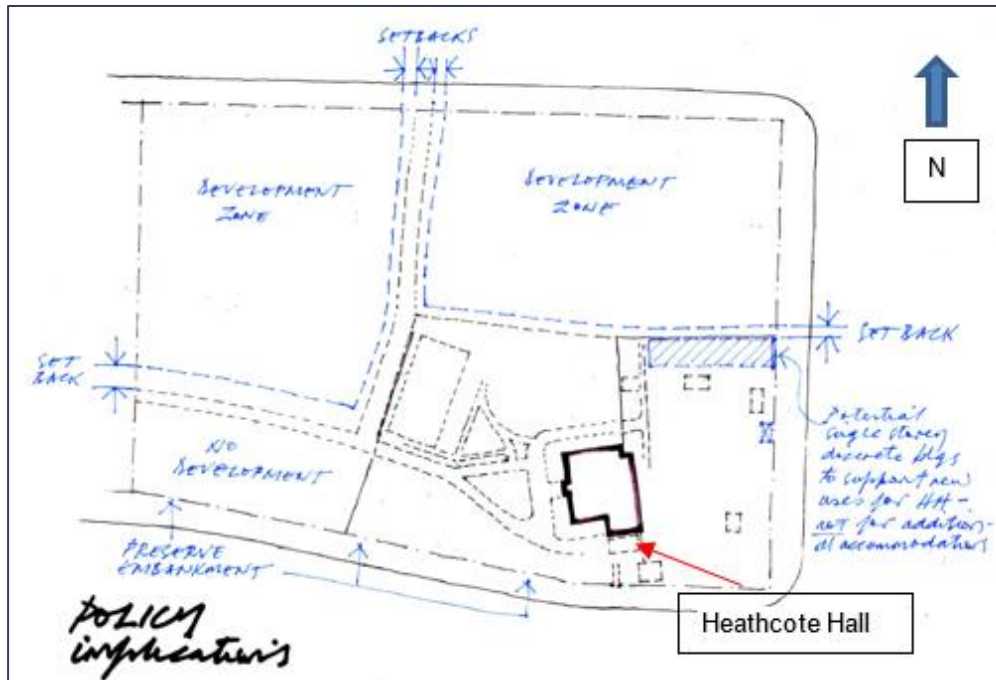


Figure 2 Development zones based on the gradings of significance (image taken from the CMP)

As can be seen in Figure 2 there is a Heritage Curtilage, a setback to this curtilage, and areas for identified for development. Areas of “no development” incorporate parts of the site noted as high significance, including views to the site when looking east from Dillwynnia Grove; the pleasure grounds; the Hall; the former east-west carriageway, and former access from Boronia Grove.

The Heritage Council provided General Terms of Approval (GTAs) relating to the original development, on 22 August 2017 (copy included at **Appendix 1**). The GTAs identified concerns with the location of the development, and concluded that there was insufficient information to determine if the development was contained wholly within the buffers identified in the endorsed CMP, including the location of buildings in relation of the former east-west carriageway. The applicant was requested to address this matter through amended plans, and the Heritage Council issued amended General Terms of Approval dated 17 May 2018 (**Appendix 1**), noting that a number of matters raised in the original GTAs were still outstanding and required addressing through further amendments, including resolution of the location of the former east-west carriageway, and the heritage setback/buffers. These outstanding matters formed the basis for a number of the Deferred Matters raised by the SSPP from the 28 June 2018 meeting.

10.1.2 Current Assessment

The Heritage Council has reviewed the amended plans and submitted in response to the deferred matters from 28 June 2018 and has provided revised General Terms of Approval (**Appendix 14**).

- *Former Carriageway*

The former carriageway is seen in Figure 3 below; and historically this carriageway was a key entry point to the site from the west.



Figure 3 Aerial photograph of the site identifying the location of the former carriageway –circa. 1943 (image taken from the CMP).

As the location and existence of the carriageway was under dispute, the applicant undertook an archaeological investigation regarding the carriageway across five trenches, as in Figure 4 below.



Figure 4 Survey plan of five trenches (taken from Heathcote Hall Driveway Testing Results, prepared by Casey and Lowe, September 2018)

The archaeological investigation identified evidence of gravel metalling and stones, confirming the alignment of the former carriageway/east-west drive, refer to Figure 5 below. In response to the findings, the development has been amended to be located out of the former carriageway to the satisfaction of the Heritage Council.



Figure 5: Trench 5 (looking north), identifying stone edging of the southern edge of metalling (taken from Heathcote Hall Driveway Testing Results, prepared by Casey and Lowe, September 2018)

It is noted that the Heritage Council has advised in the revised GTAs issued 10 October 2019, that the “The stairs proposed in the ‘Old Carriageway Interpretation’ are to be removed and the path graded to accommodate the change in levels.” A draft condition of consent is recommended regarding the removal of these stairs if consent is granted.

- Buffer Zones

In response to the deferred matter regarding the development and setback zones, the applicant has also provided a plan identifying the conservation zones, former carriageway, buffers and areas where development is permitted in accordance with the CMP, see Figure 6 below.

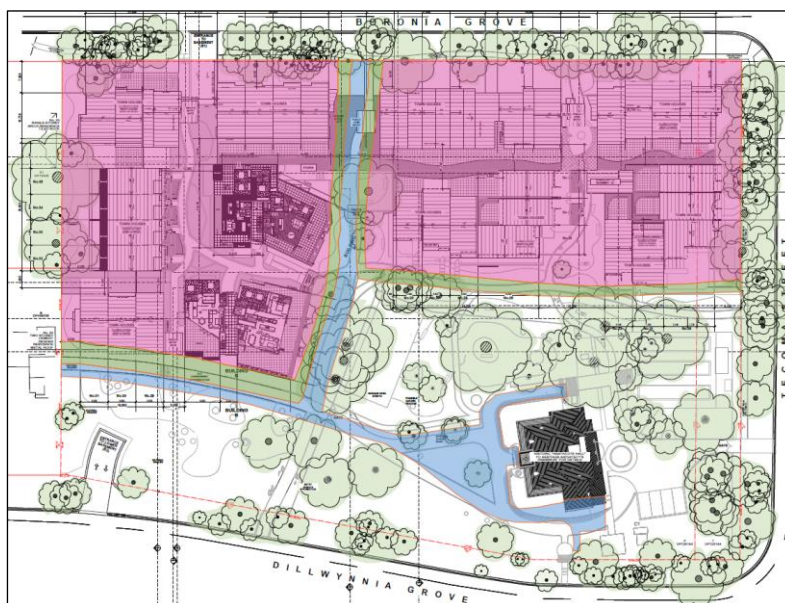


Figure 6 CMP development zones overlaid on proposed site layout

The Heritage Council has advised that the location of the built form is acceptable in this instance, subject to conditions contained within the revised GTAs, dated 10 October 2019 (**Appendix 14**).

10.2 Emergency response and access

In response to the previous determination meeting held on 21 August 2019, the SSPP requested the following be addressed:

“...further detail on the emergency evacuation arrangements as noted in the general advice as provided by the RFS on 27 April 2018.”

The RFS advised the following in their General Terms of Approval issued on 27 April 2018:

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.

Figure 7 Advice from RFS General Terms of Approval 27 April 2018.

a) Level crossing

In their letter dated 17 October 2019 (**Appendix 14**), the RFS clarified that the “General Advice” issued on 27 April 2018 was a note that the “*emergency railway crossing should not be let fall into disrepair. In this regard it is noted that a recent “test” of the railway level crossing was undertaken by NSW RFS Operational Staff and others using fire fighting vehicles, and was found to be adequate.*”

On 18 August 2019, NSW Fire and Rescue and the NSW RFS undertook Fire Appliance testing over the East Heathcote Emergency Access – Railway Level Crossing (Figure 8 below), under the supervision of Sydney Trains.

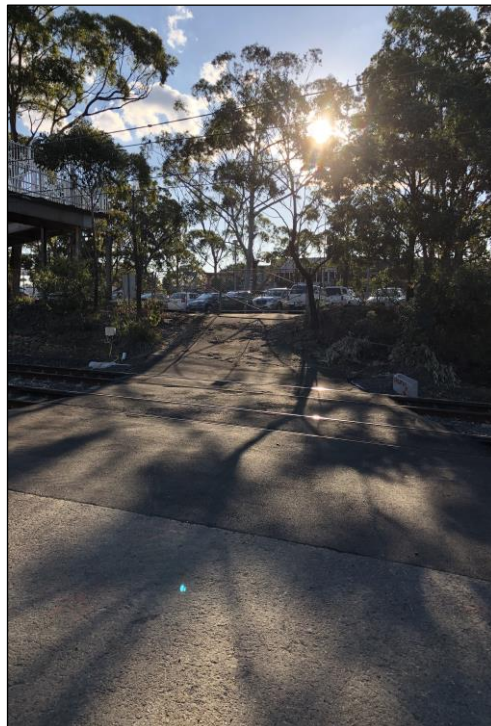


Figure 8 Heathcote Emergency Crossing - looking west.

The height from ground level of the ‘Live Conductor’ is 4.8m (top of Rail Head), the following vehicles were tested, including vehicle heights and clearance, as per Table 5 below.

East Heathcote Emergency Access - Railway Level Crossing				
Fire Appliance Clearance Test 18 August 2019				
Combat Agency	Station	Appliance Type	Appliance Height (metres)	Clearance Height (Conductor Height 4.8m minus Appliance Height)
Fire Rescue New South Wales (F+RNSW)	Engadine (33)	Rescue Pumper - Scania	3.2	1.6m
Fire Rescue New South Wales (F+RNSW)	Kogarah (21)	Ladder Platform - Scania	3.4	1.4m
New South Wales Rural Fire Service (NSWRFS)	Heathcote / Headquarters	Category 1, 4WD Village 2 - Isuzu	3.6	1.2m
New South Wales Rural Fire Service (NSWRFS)	Heathcote / Headquarters	6WD Bulk Water Tanker - MAN	3.6	1.2m
New South Wales Rural Fire Service (NSWRFS)	District - Group Officer	4WD 7 Seat Wagon - Isuzu Dmax	2	2.8m

Table 5 Fire Appliance Testing 18 August 2019

A number of images below indicate vehicle movements over the level crossing (Figure 9 and Figure 10), the remaining images are within **Appendix 18**.



Figure 9 NSW Fire and Rescue Pumper



Figure 10 NSW Fire and Rescue Ladder Platform Truck

b) Evacuation

Council referred the amended scheme to the LEMC for further advice regarding evacuation. The advice is summarised as follows:

- Emergency related incidents are managed in accordance with the Sutherland Shire Emergency Management Plan (EMPLAN), Sub-Plan (plans for specific hazards), and Supporting Plans (planning for a coordinated response). These Plans provide the basis upon which the relocation and/or evacuation of residents and other persons within the East Heathcote area can be coordinated, as deemed necessary during time of emergency.
- Evacuation management is related to the type of emergency / incident presented, and in addition to associated factors including, time of day, day of week. These and other factors are reviewed when coordinating evacuations, in accordance with the EMPlan.
- Various evacuation options are available to the 'Local Emergency Operations Controller' (LEOCON), and Combat Agency Commanders. These options are recommended by the Office of Emergency Management (OEM) including, partial evacuation, full evacuation, shelter in place.
- Relocation and/or evacuation of residents and other persons from within East Heathcote, would be coordinated via the Local Emergency Operations Controller (LEOCON), in consultation with the Incident Combat Agency Commander;
- A secondary access/egress capability is available to relocate and/or evacuate residents and other persons from within East Heathcote via the 'East Heathcote Emergency Access – Railway Level Crossing' (the level crossing).

- The utilisation of the level crossing is coordinated by Sydney Trains, and is managed in consultation with the LEOCON and Combat Agency Commander, and is performed in compliance with *Sydney Trains Incident Management Framework, Network Rules, Network Procedures and Network Local Appendices*.
- Sydney Trains participates with the Local Emergency Management Committee, Combat Agencies and Emergency Services to ensure the Emergency Crossing is maintained, and available for use 24/7.
- During times of emergency, NSW Police, and Roads and Maritime Services (RMS) also have the ability to manage traffic flow in and out of East Heathcote, independent to the existing traffic signal phasing on the Princes Highway.

10.3 Height of Buildings and Clause 4.6 Variation to Building Height Control

a) Building A

The applicant seeks a variation to the building height standard of 8.5m in accordance with the SSLEP 2015 for Building A. The height of Building A is required to be less than 9.1m in height as per the deferred matters issued by the SSPP from the 28 June 2018 meeting. Based on an assessment of the plans submitted, the maximum height of Building A is 9.0m, satisfying the deferred matter issued by the SSPP.

The applicant has lodged a revised written request in accordance with the requirements of Clause 4.6 of SSLEP 2015. A full copy of this request is attached to **Appendix 10**.

The applicant has argued that compliance with the *“objectives of the Development Standard are achieved notwithstanding non-compliance with the standard...”*. The applicant has provided the following to demonstrate that compliance with the Building Height Development Control is both unreasonable and unnecessary:

“The proposed development provides for low rise townhouses, all setbacks from the frontage of Boronia Grove and Dillwynnia Grove, are at a scale considered in keeping with the surrounding dwellings in this precinct. The proposed apartments contained only within Building A and Building B are limited to three stories in height, including a recessed top floor, and are situated in the middle of the site. In this regard the impacts on adjoining development is considered minimal.”

“Importantly, some 98.7 % of the total site area is compliant with the Height control of 8.5 m, and is consistent with all adjoining sites. Only 1.3 % of total site area is subject to a Clause 4.6 Variation. The varied maximum height of 9.1 m has already supported by Council.”

“The proposed development deliberately distributes height and architectural form, so as to accentuate the dominance of the high point of the Site, upon which State Heritage Item Heathcote Hall is located.”

The applicant has also provided justification to vary the Building Height on the following planning grounds:

“It is noted that the extent of numerical non-compliance of Building A with the Height of Building control, is strictly limited to the skillion butterfly roof only (achieving a Height of 9.0 m at its highest point), noting that the flat roof component of the roof structure, is below the 8.5-m Height of Building control. As such, the proposed variation to the Height of Building control, which relates to only a small part of the roof, is considered to be minor in the context of the overall built form proposed for the site.”

“The proposal is consistent with the objectives of the Height of Building development standard as provided in Clause 4.3 of the SSLEP 2015...”

“Building A which is limited to three storeys in height, has a recessed top floor and is situated in the middle of the site, such that such a minor exceedance to the height limit would have limited impact to the surrounding built form.”

“The proposed roof structure does not cause any shadowing impacts and does not result in the loss of any views from surrounding properties. This is confirmed by a Visual Impact Assessment Report. Building A is also screened by the 2-storey townhouses, large mature existing trees and the proposed landscaping.”

An assessment has been undertaken in response to Clause 4.6(4) of the SSLEP 2015.

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.*

In the previous assessment report prepared for 28 June 2018 SSPP meeting, it was identified that as Building A (which measured 9.54m) *“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 applicant has adequately responded to the height as required in the deferred matters issued by the SSPP from the June 2018 meeting, and Building A has been reduced to be no greater than 9.0m in height. The applicant has demonstrated that the height of the proposed residential flat Building A satisfies Clause 4.3(1) of the SSLEP 2015. Building A now provides a transition in building scale down towards the lower density residential development proposed within the site and the neighbouring properties to the west of the site. The building does not impact upon overshadowing, and the visual

intrusion has been minimised through the latest amendments. Further, the decrease in height provides a transition to the significant heritage areas to the south and east, and the area of non-compliance regarding Building Height will not be readily seen from Heathcote Hall or the public domain.

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.*

Through the amendments made to the height of Building A, in response to the issues raised in the June 2018 assessment report, and the deferred matters issued by the SSPP from the June meeting (**Appendix 3**), it is considered the development has responded to the zone objectives.

It has been assessed that the non-compliance of 0.5m of height for part of Building A has a negligible effect upon the environment; heritage and aesthetic values of the site, and landscape setting. The bulk and scale issues have been addressed, providing a transition to surrounding development.

To further enhance the development, draft conditions regarding landscaping; tree protection; heritage restoration and maintenance; and stormwater management are recommended.

The applicant has addressed the deferred matters regarding building height for both Building A and B.

Based on an assessment of the amended proposal and Clause 4.6 variation, the applicant's written submission adequately demonstrates that compliance with the height development standard for Building A is unreasonable or unnecessary in the circumstances. It also demonstrates sufficient environmental planning grounds to justify varying this development standard to the extent it does across Building A.

In this instance, the proposed variation to the Building Height control is in the public interest as the variation satisfies the objectives for both height and the E4 zone. Regardless of the minor height breach of 0.5m for Building A, the proposal facilitates the restoration and long term maintenance of Heathcote Hall and provides a substantial, publicly accessible heritage grounds.

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

In conclusion, the variation to the height development standard for Building A satisfies all relevant parts of Clause 4.6 and therefore the variation can be supported should the SSPP support the application for approval.

b) Building B

In the original assessment prepared for 28 June 2018 meeting, Building B was required to be reduced to 8.5m in height due to the sensitive location of this building at the interface of the existing residential development along Dillwynnia Grove and with Heathcote Hall.

Building B has been amended to be 8.5m or less in height in accordance with the Deferred Matters issued by the SSPP as from the June 2018 meeting. The height of Building B is compliant with the SSLEP Building Height control of 8.5m, and is considered to respond to the surrounding context, providing a transition to existing development.

10.4 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:

(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.*

Consent may be granted for development that “*would not otherwise not be allowed by this Plan*” provided that the proposal satisfies Clause 5.10(10). An assessment against Clause 5.10(10) is undertaken below:

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

Both the restoration and maintenance of the Hall and the heritage grounds, will be a requirement under a heritage agreement with the Minister for Heritage. The General Terms of Approval issued by the Heritage Council (**Appendix 14**), requires this ongoing maintenance to be registered on the title of the property. This condition also includes a requirement for the “*development and implementation of a comprehensive maintenance plan which identifies urgent, short term, medium and long term maintenance works in perpetuity*”.

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.

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.

- 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, and is subject to further conditions issued in the General Terms of Approval issued by the Heritage Council (**Appendix 14**).

- 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 issues by the Heritage Council on 10 October 2019 (**Appendix 14**)

- 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.*

It is considered that the applicant has resolved the outstanding matters regarding height of the residential flat buildings and other matters such as the former east-west carriageway, development within the areas identified to the satisfaction of the Heritage Council and minimising the impact upon the Heritage curtilage.

The applicant has been able to demonstrate to the Heritage Council (in response to deferred Matters) that the development is located on areas of the site that are of low heritage significance. The Heritage Council has issued revised GTAs (**Appendix 14**) indicating support for the revised proposal, subject to conditions and future assessment pursuant to Section 60 of the Heritage Act 1977, and that the proposal is generally consistent with the endorsed CMP.

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

The revised application has been assessed and it is considered that the impacts will not be adverse and significant in nature. The amended proposal, in response to the Deferred matters raised from the June 2018 meeting, minimises the impacts upon amenity.

An assessment of amenity is discussed in detail in the previous report prepared for the June 2018 (**Appendix 2**), and also discussed in this report where relevant; and includes discussion on waste collection, landscaping and vegetation, parking, construction management, bushfire, privacy, bulk and scale, contamination, engineering matters and streetscape.

There are also draft conditions recommended to further enhance amenity (**Appendix A1**); including construction management, stormwater and landscaping.

As a result of the above assessment regarding height, and the amendments applied consistent with the June 2018 report, it has now been adequately demonstrated that the development can satisfy Clause 5.10(10)(e) of the SSLEP 2015.

10.5 Urban Design

Clauses 6.16 and 6.17 of SSLEP 2015 contain certain matters of consideration relating to urban design. An assessment of the amended development against the Clause 6.16 and 6.17 has been undertaken.

The setbacks were required to be increased for a number of townhouse facing Boronia Grove, the report prepared for the SSPP June 2018 meeting reads *“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 minimise the visual impact, as well as the setting of the locality in order to improve the transition to the existing residential development, when viewed from Boronia Grove”*

The townhouses indicate a high standard of urban design, providing a variety of housing types. The separation between the clusters of dwellings along Boronia Grove has provided visual separation to activate views to the Hall, as well as provide appropriate low density scale. The applicant has responded to the front setback requirements identified in the deferred matters issued from the 28 June 2018 meeting. The proposed development appropriately responds to the established street pattern and spatial proportion of the streetscape.

There is an area of reduced setback of approximately 2.7m from the Boronia Grove boundary, associated with the front elevated entry areas of townhouses 2 and 3. If consent is granted, a condition of consent is recommended to increase the setback of these elevated areas to a minimum of 4m from the boundary to address the visual impact and the requirements associated with the fire hydrants booster.

The proposed development has been designed to minimise impacts upon visual intrusion and privacy through the use of privacy screening, window placement, articulation and setbacks to the western boundary. The development also complies with the solar access requirements of the SSDCP 2015. While the development will cast a shadow over a minor portion of the adjacent properties to the west at 9am in mid- winter (21 June), by 12 noon in mid-winter shadows will be wholly contained within the site.

The dwellings have been sited so as to minimise tree loss, where there are trees proposed to be removed there are offsets required, through recommended conditions of consent. The landscaping and tree retention will enable the development to integrate into the character of the locality.

Through the reduction in height of Building A and B below 9.1m and 8.5m, respectively, as required by the SSPP from the June 2018, it has been adequately demonstrated that the design and bulk of these buildings can satisfy the provisions of Clause 6.17 of the SSLEP 2015.

Clauses 6.16 and 6.17 of SSLEP 2015 contain certain matters of consideration relating to urban design. The relevant matters have been considered as a part of the assessment of the application and the proposal is considered to be acceptable. The proposed development, subject to conditions, will not have significant detrimental impacts on adjoining properties in terms of privacy, visual intrusion and overshadowing.

10.6 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 the original application was referred to the Rural Fire Service for their General Terms, which were issued on 27 April 2018 (**Appendix 2 (j)**).

The amended application was referred to the RFS for their comment, and they have advised that their previous General Terms of Approval remains unaltered (**Appendix 14**).

The RFS advises that the amended plans have also been reviewed against the *Draft Planning for Fire Protection 2019*, and that the application is acceptable in this instance against this draft policy.

10.7 Parking

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

A total of Twelve (12) commercial spaces are required based on Council's calculation of gross floor area of the Hall itself. The applicant responded to the deferred matters and has provided 8 basement parking spaces, and 4 at grade spaces to the east of the Hall.

The applicant has however failed to provide lift access from the commercial basement in response to the Deferred Matters. A condition requiring the construction of a lift is recommended if the SSPP grants consent to this application.

11.0 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.

12.0 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.

13.0 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 SSLEP 2015, as the proposal includes restoration to the Heritage Item and identified heritage grounds.

The relevant planning matters raised in submissions made have been discussed in **Appendices 1, 4 and 15**.

The majority of the Deferred Matters have been satisfied. Where they have not been satisfied draft conditions of consent are recommended, as identified in the report above, requiring amendment to the proposal. Should the SSPP determine to support this application by way of development approval, a draft conditions of consent are included in **Appendix A1**.

Following assessment, Development Application No. DA17/0467 may be supported for the reasons outlined in this report. The application has been assessed having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The amendments made to the application in response to the Deferred Matters issued by the SSPP, as a result of the 28 June 2018 have been satisfactorily resolved subject to conditions of consent should the SSPP approve this application.

RESPONSIBLE OFFICER

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