

SUTHERLAND SHIRE COUNCIL ADDENDUM ASSESSMENT REPORT
HEATHCOTE HALL , Response to Deferred Matters
03 September 2019

Matter A. Heritage Curtilage	Response
i) Amend plans to demonstrate the development is contained wholly within the areas identified as low to moderate significance, to the north and north-west of HH.	Previously satisfied
ii) Information to clarify how the private open space of townhouses that encroaches into the reduced landscaped setting / pleasure garden of Heathcote Hall.	Previously satisfied
Matter B. Building Height	
i) The height of building A must be no greater than 9.1 m as requested, with a maximum RL 221.235, below the maximum permissible of RL 221.534.	The amended height of building A is 8.954 m with a maximum RL 221.070 Please refer to DA-13 Issue I
ii) The height of building B must be no greater than 8.5 m, with a maximum RL 221.076, excluding lift overrun	The amended height of building B is 8.412 m with a maximum RL 220.195, excluding lift overrun. Please refer to DA-13 Issue I
iii) The height of Townhouses 30, 31 and 32 must be no greater than 8.5 m in height above existing ground level.	Previously satisfied
Matter C. Additional Commercial Basement Parking	
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.	Previously satisfied
ii) This parking is to be accessed via the driveway to Basement level B2 from Dillwynia Grove	Previously 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	Previously satisfied

Response to deferred matters

Nominated Architect: Gustavo Thiermann 8527



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<p>iv) A minimum of eight parking spaces must be provided in accordance with AS 2890.1 2014.</p>	<p>Previously satisfied</p>
<p>v) Provide a separate lift and stair core from this parking area, to be used for commercial basement parking. 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.</p>	<p>The amended drawings show a separate stair location as requested by the Heritage Office, outside the buffer zone and the Heritage Interpreted Carriageway. Consistent with the Heritage Office request, we propose Disabled parking at grade, directly adjacent to Heathcote Hall, to facilitate equal access to the Hall. Please refer to drawing DA-07 Issue 1 and drawing DA-07 CMP Issue 1</p>
<p>Matter D. Setbacks to Boronia Grove</p>	
<p>i) Dwellings 2-7 a) The first-floor voids must be reduced in depth to no greater than 1 m in order to achieve this, the screen must be set 1 m from the façade of these dwellings. The walls associated with the voids must also be reduced in depth to no greater than 1 m (except where required as common walls for fire separation), as must the roof areas. b) The northern deck off the master bedroom for these dwellings must be reduced in depth to no more than 300 mm, with the roof form to change over the balcony to align.</p>	<p>a) All First Floor voids for Dwellings 4,5,6 and 7 now reduced from 1.6 m to 1 m. b) Previously satisfied</p>
<p>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 1 m measured from the north façade.</p>	<p>Previously satisfied</p>

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iii) Dwellings 2 to 14 In addition to above, where there is an eave/ roof overhang, it shall measure no greater than 1 m in depth from the northern façade where overhang is proposed for these dwellings	All roof overhangs of dwellings 4,5,6,7 have been reduced to 1 m to comply. Please see drawing DA-08 Issue I
Matter E. Adaptable and Liveable Dwellings	
Submit amended plans indicating the following: A total 11 adaptable dwellings and 6 liveable dwellings must be provided in accordance with the following: i) Adaptable dwellings in accordance with AS 4299 at the following rate: a) Townhouses 7 b) Apartments 2 ii) In addition to Adaptable dwellings, Liveable dwellings must be provided designed to silver standard L H D G, at the following rates. a) Townhouses 4 b) Apartments 2	a) AS 4299-1995 3.7.3 recommends that carparking is provided in a convenient location close to the front door. As requested by Council and the Design Review Panel, no kerb crossings and direct street access should be provided for the development. All carparking for townhouses has been provided at B1 basement parking level. This complies with AS 4299-1995. b) Previously satisfied a) Previously satisfied b) Previously satisfied
Sutherland Shire LEP 2015	
Clause 4.3 Height of Building	Complies
Clause 4.4 Floor Space Ratio	Complies
Clause 6.14 Landscaped Area	Complies
Sutherland Shire DCP 2015	
Control 2.2 Building Setbacks Street Setback Boronia Grove Street Setback Dillwynnia Grove Street Setback Tecoma Street	Complies Complies Complies

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Side Setback Boronia Grove Rear Setback to western boundary	Previously satisfied Previously satisfied
4.2 Landscaping	Previously satisfied
6.2 Visual and Acoustic Privacy	Dwellings 32-35 are setback 8.9 m at ground floor level and 10.6 m at level 1 from adjoining dwellings to the west. Privacy screens have been incorporated to level 1 master bedroom to provide additional levels of privacy. (4.0 m setback requirement by code)
7.2 Parking	Previously satisfied
8.2 Adaptable Housing 8.3 Liveable Housing	Previously satisfied Previously satisfied
10.2 Waste Management	Previously satisfied
Chapter 36 Roads, Access, Traffic, Parking and Bicycles	Previously satisfied
Apartment Design Guide Building separation and Visual privacy Building A to Building B Building B to Townhouse 29 Building A to Townhouse to the north Setbacks to Boundary Building A and Building B Deep soil zones	 Previously satisfied Amended plans show compliance DA-07 and DA-08 Issue I Amended plans show compliance DA-07 and DA-08 Issue I Previously satisfied Previously satisfied
8.4 Council Engineer 1) Lift access to Basement 2 commercial parking 2) Carwash bays to comply with 3 x 7.6 m 3) Additional comments regarding garaging at Basement 1	 The amended drawings show a separate stair location as requested by the Heritage Office, far away from the Heritage Interpreted Carriageway. Consistent with the Heritage Office request, we propose Disabled parking at grade, directly adjacent to Heathcote Hall, to facilitate equal access to the Hall. Please refer to drawing DA-07 Issue I Amended plans show compliance. Please refer to drawing DA-05 Issue I

Response to deferred matters

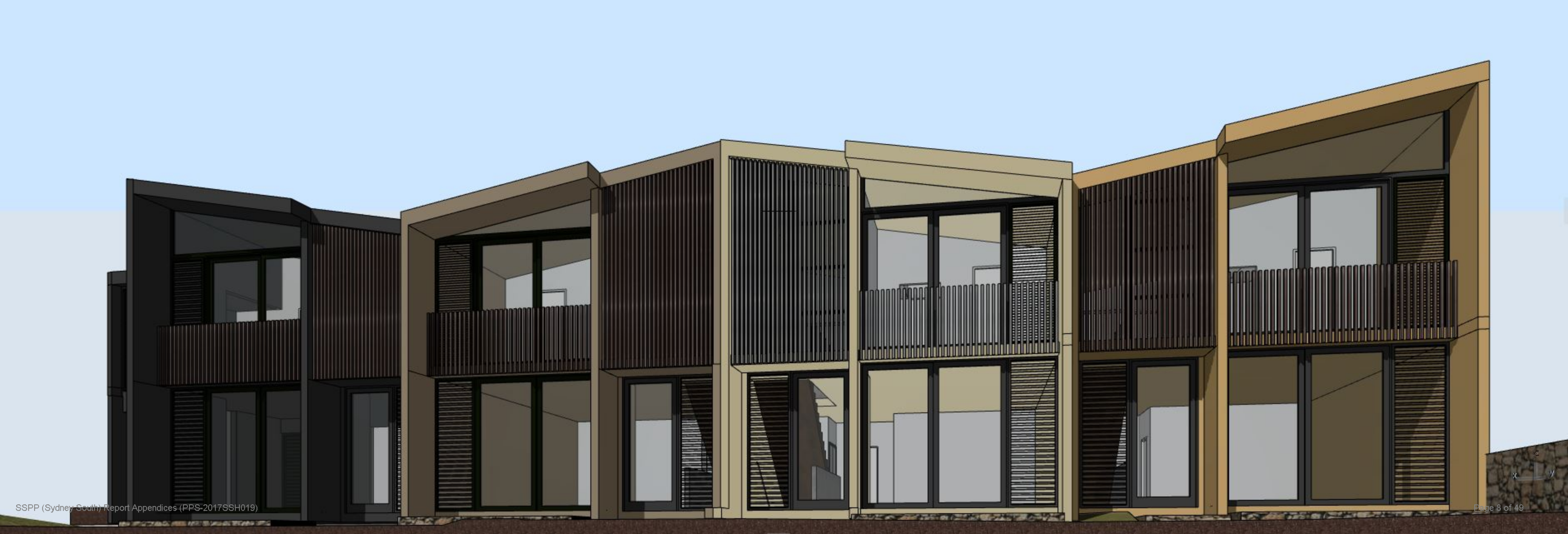
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<p>Garages 2 and 3 length</p> <p>Garages 4,5,6, 20 and 22</p> <p>The curve in the access driveway to the commercial basement parking is too narrow.</p> <p>Parking space 37 in B2 is too narrow</p> <p>The shared space in Basement B2 must be 2.4 m wide.</p>	<p>Garages 2 and 3 (tandem parking) have been amended to comply with AS2890.1</p> <p>Please refer to drawing DA-06 Issue I</p> <p>All Garages on Basement B1 have been amended to comply with AS 2890.1 Please refer to DA-06 Issue I.</p> <p>The curve and access to the commercial parking has been redesigned. Please refer to DA-06 Issue I.</p> <p>Parking 37 has been amended to comply</p> <p>The shared space has been amended to comply</p>
<p>8.5 Council Building Officer</p> <p>The proposed fire hydrant booster assembly will require a 2 m high and 3 m wide shield</p>	<p>The proposed fire hydrant booster assembly has been amended to comply</p>
<p>8.6 Council Landscape Architect</p> <p>Councils Landscape Architect has advised that the plans adequately respond to deferred matters along Boronia Grove and Tecoma Street, however there is some fill identified along Dillwynia Grove.</p>	<p>All cut and fill has been minimised in order to comply. Minor retention has been created to allow a recessed entry to Basement 2 carpark</p>
<p>8.7 Council Public Assets Engineer</p>	<p>Previously compliant</p>
<p>9.1 Heritage</p> <p>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</p>	<p>The Heritage Council has reviewed the amended plans and has provided revised General Terms of Approval.</p> <p>The Conservation Management Plan provided previously has been endorsed by the Heritage Council.</p>
<p>9.2 Height of Buildings and Clause 4.6 Variation to Building Height Control</p> <p>Buildings A and B have not been reduced in height to comply with a maximum height and RL as requested previously</p>	<p>Amended Clause 4.6 and amended drawings demonstrate compliance.</p> <p>Please refer to drawings DA-23 Issue I. and Amended Clause 4.6 Report</p>



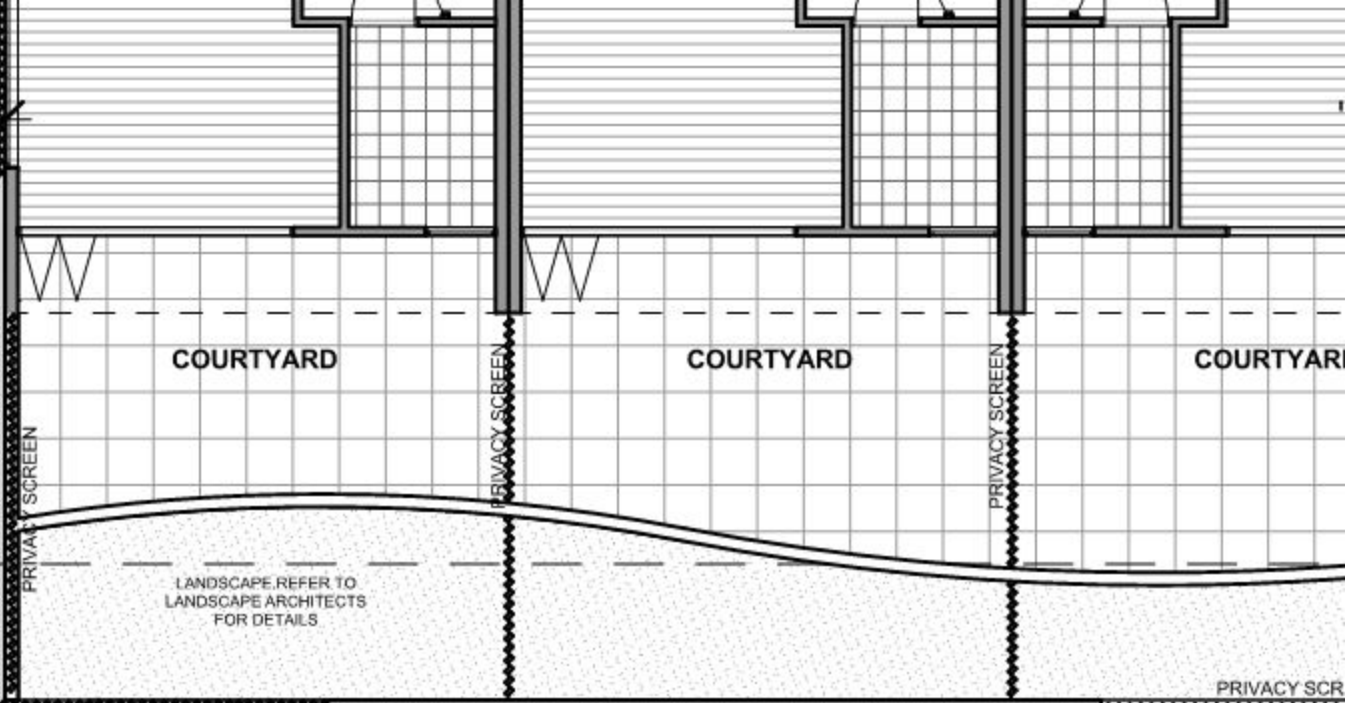




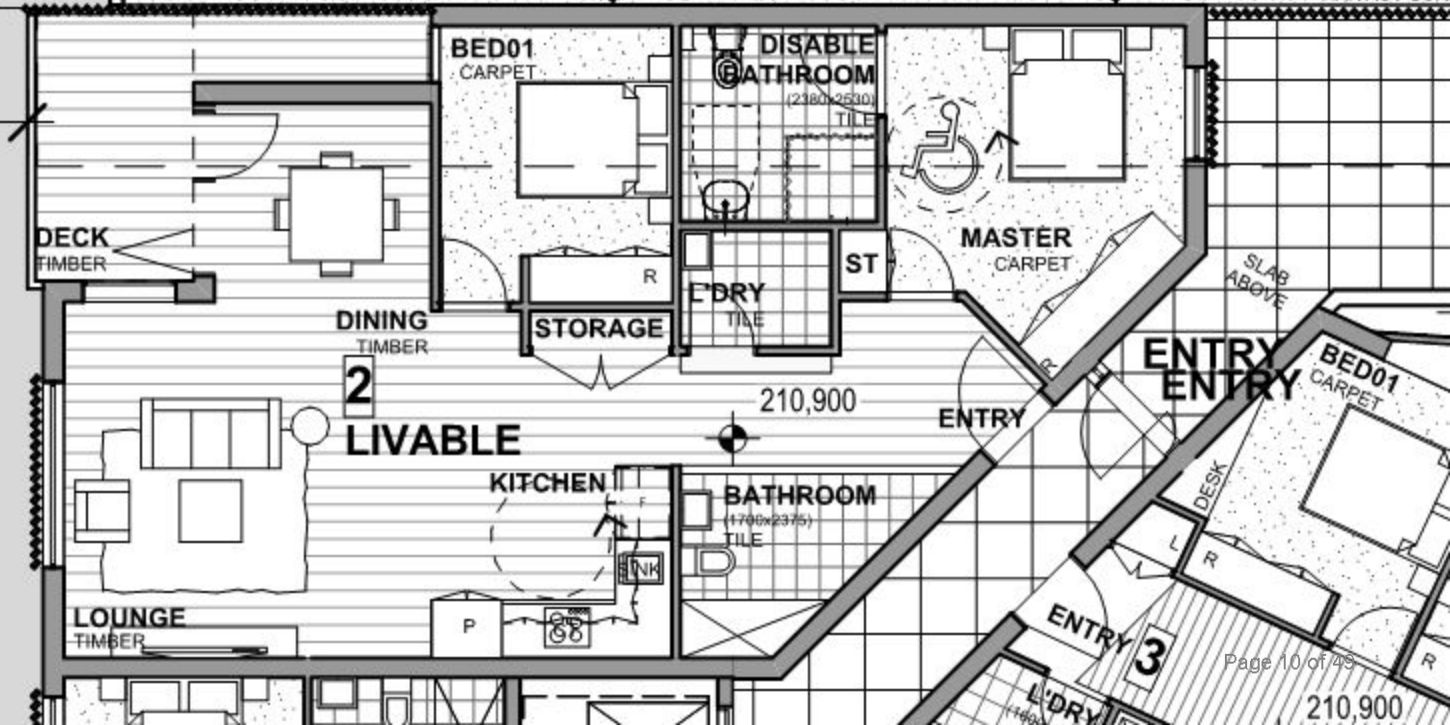
210,800
PATH

9,170

PRIVACY SCREEN



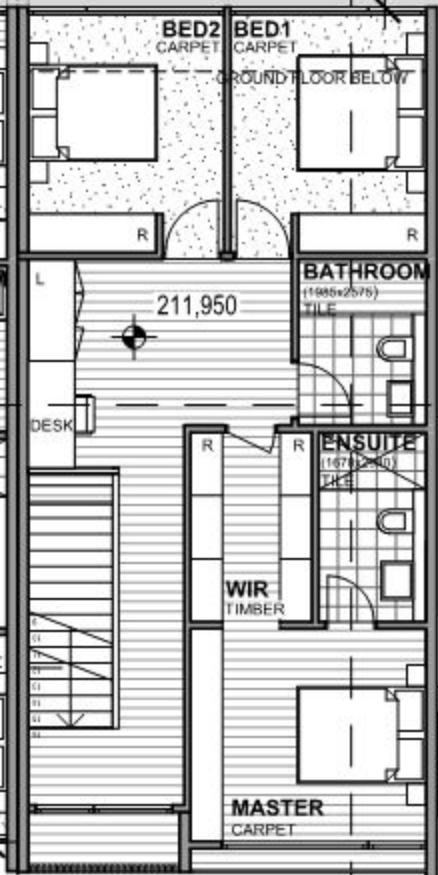
12,100



No.29

5,000

BASEMENT BELOW



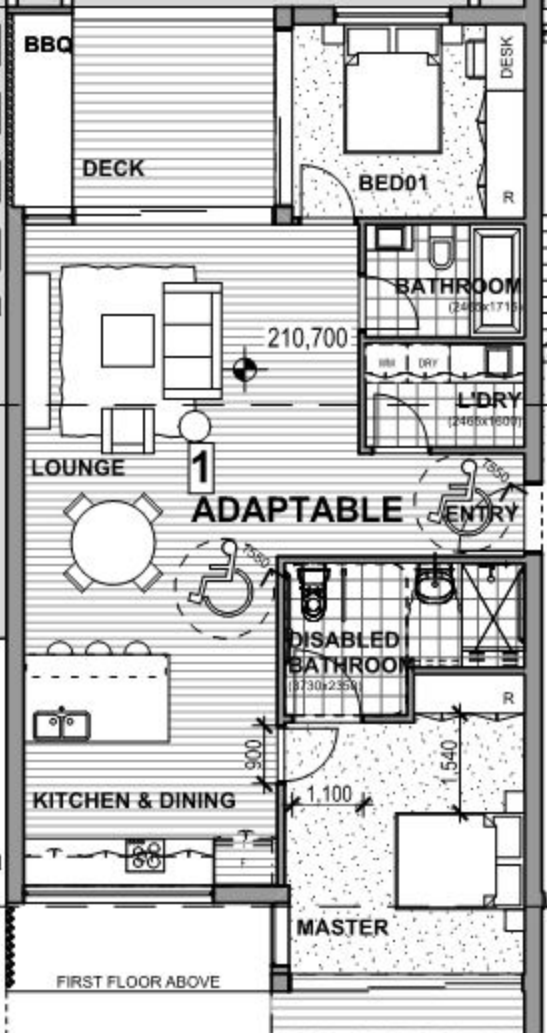
STAIR03

LETTER BOXES

PRIVATE
ENTRY
GATE

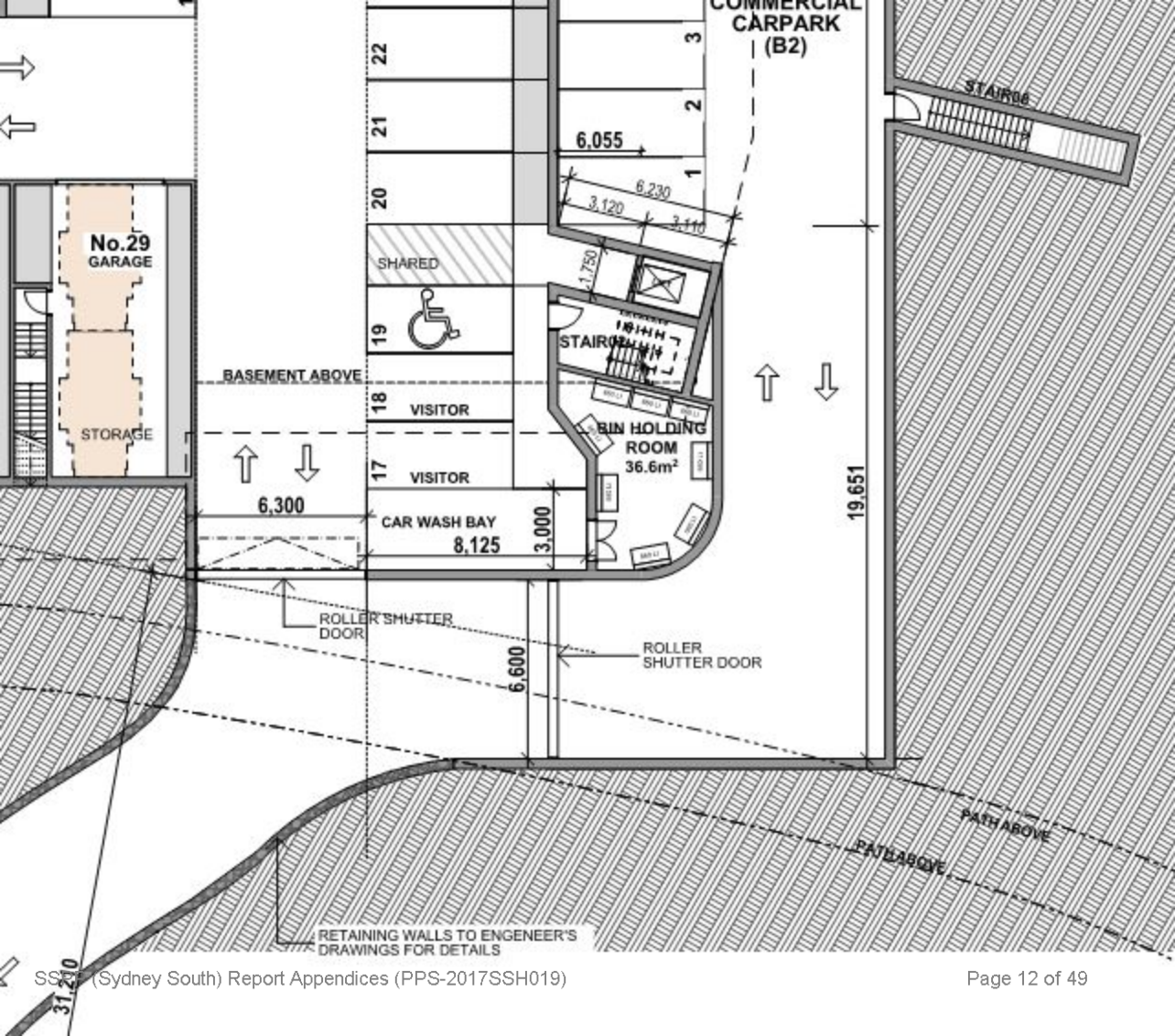
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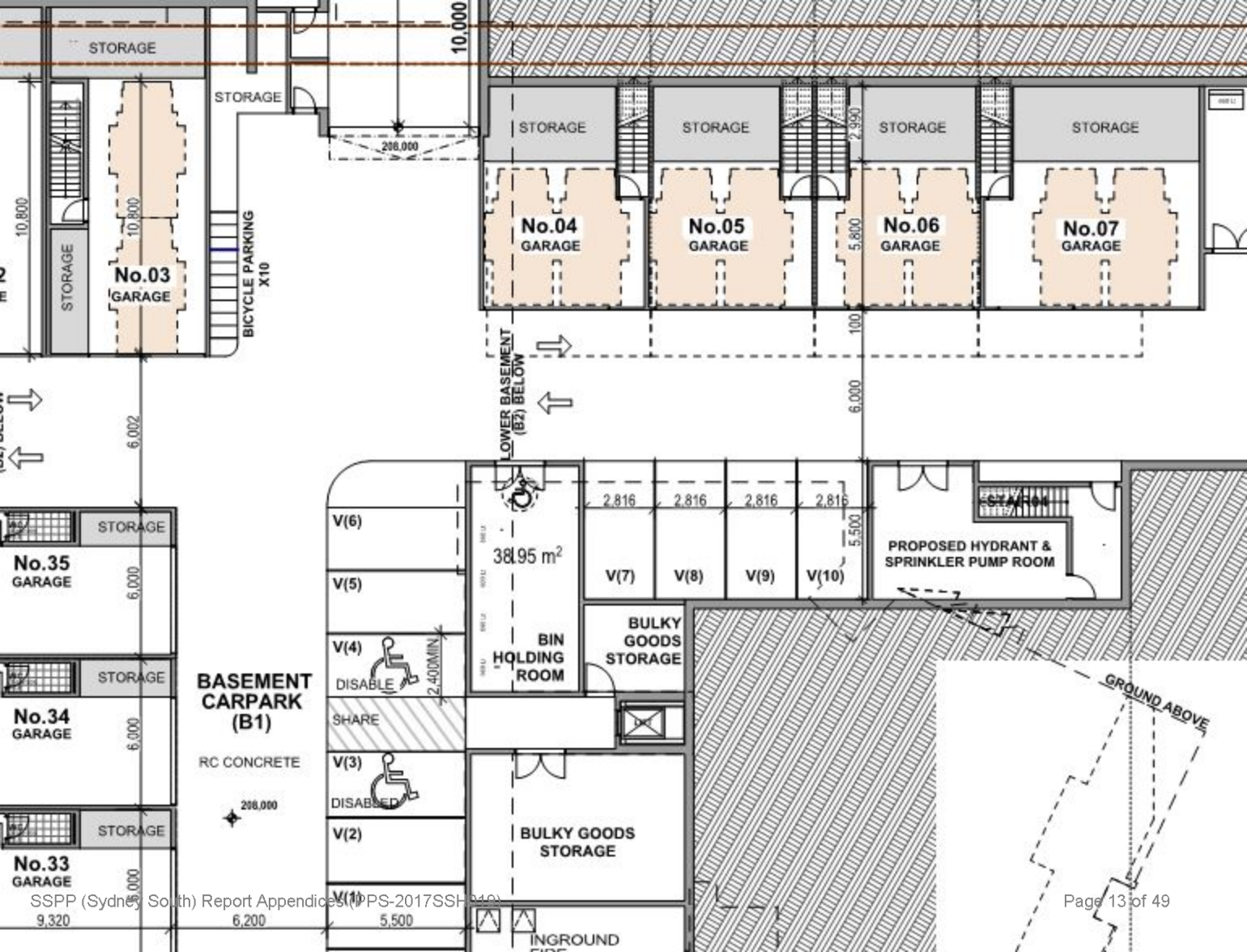
ROOF ABOVE



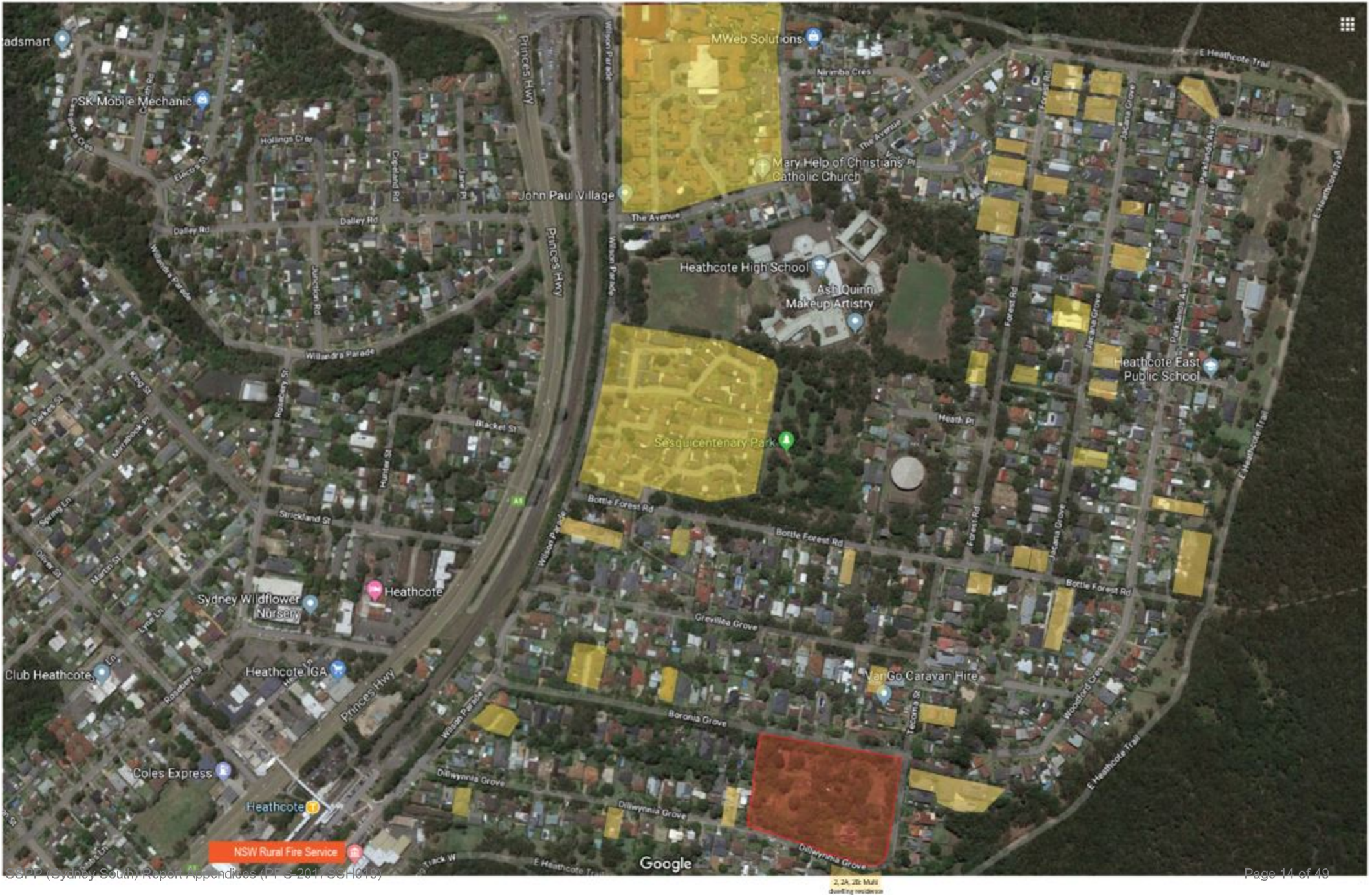
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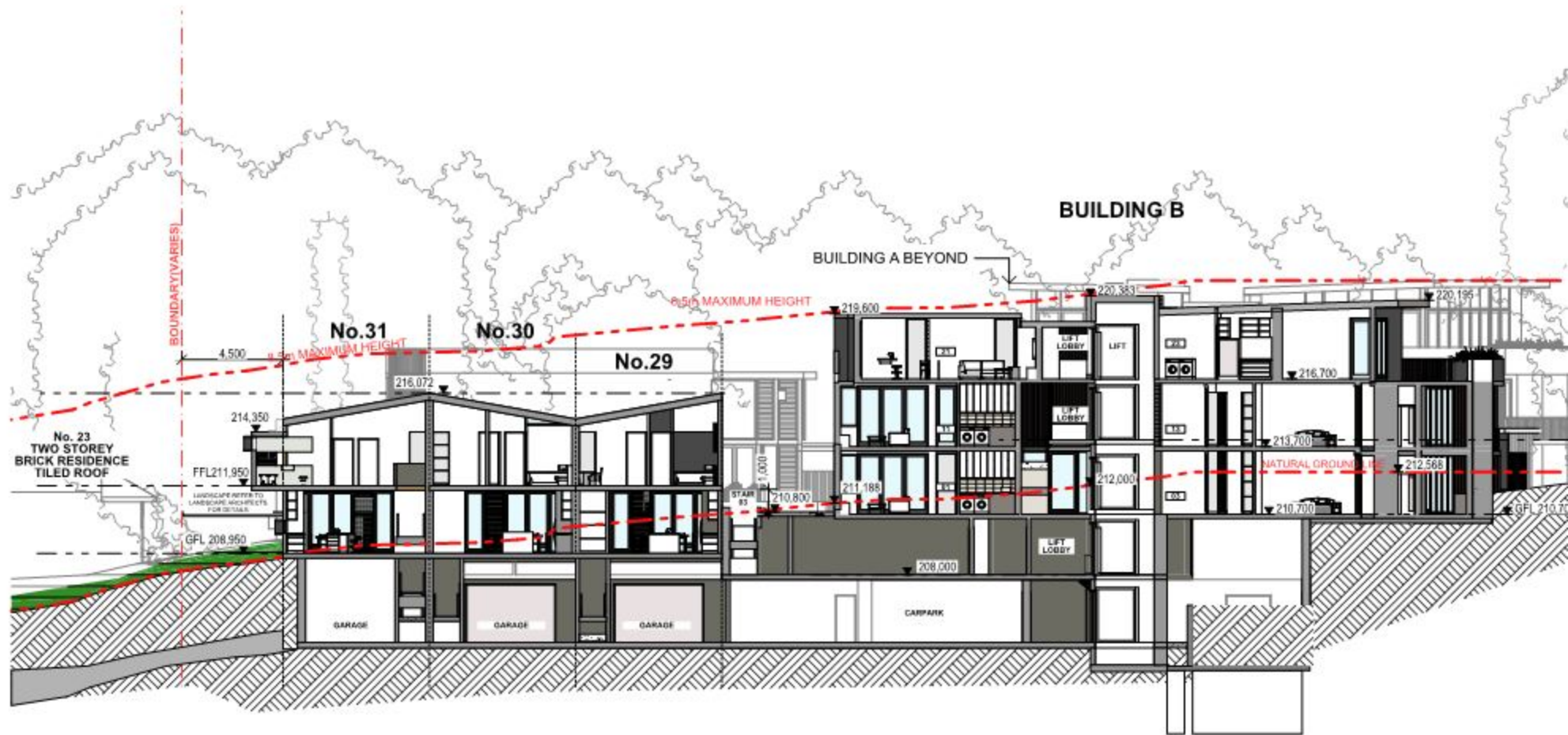
ENTR

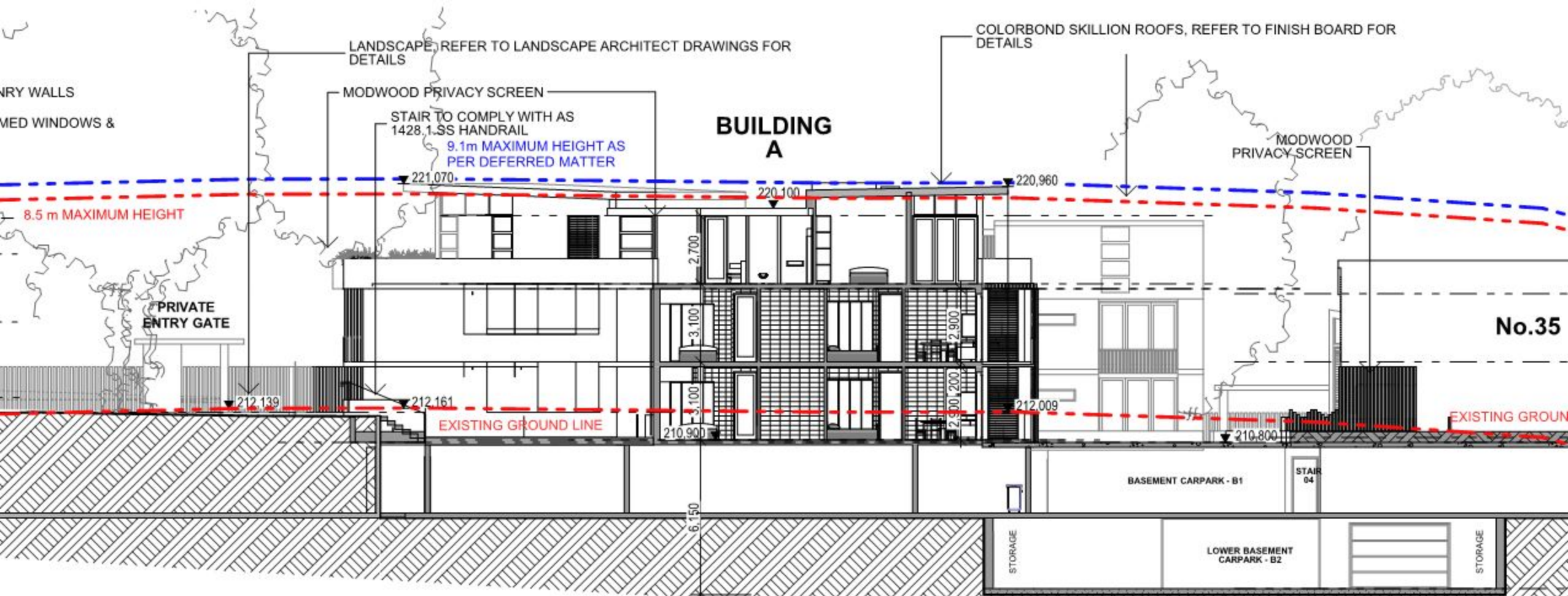




Multi Dwelling Residential - Heathcote East







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A Statement on The Importance of Restoring Historic Heathcote Hall: From the Heritage Consultant's Perspective

Tropman and Tropman have been involved with the restoration of Heathcote Hall for over three years. As heritage architects we work daily on projects which are interesting and fulfilling as we see them “rise again”, so to speak.

Tasman Storey has worked on a number of wrecked buildings, and with the support of Councils and the buildings' owners, has restored them for adaptive reuse. Besides the many houses in Millers Point which have been dragged back from ruinous neglect and termite invasion, Tropman and Tropman have had the pleasure of working on Melrose House in Seven Hills and Woodstock House in Plumpton, both for Blacktown Council.

Tropman and Tropman are an award-winning practice and have won over 65 design and heritage awards for our Walsh Bay Precinct in Sydney Harbour, but it is these two houses which define what we do best. We incidentally have been commended for both of these historic house restorations in the past four years. In addition, No. 57 Lower Fort Street was awarded a commendation for its 1850s restoration, and this project is one that is very much admired by all who have had the pleasure of viewing the completed product.

With regards to Heathcote Hall, it is a building on the cusp of further exponential decline.

There are many wonderful aspects of Heathcote Hall which exhibit an intactness not often found in a building of this age.

The staircase with its dado, the iconic mosaic floor with tessellated tiles, and the refined room layout are all untouched or unaltered.

I quote from the HIS below:

“Originally owned and built by Abel Harber and his family, to a design by the leading Sydney architectural firm of Rowe and Green for a sum of £7,000.00. It is described on the State Heritage Register as being "an imposing two storey building designed in the Victorian Italianate style and is one of the oldest and greatest building in the Sutherland Shire".

In the 1892 the property was taken over by the mortgagees and offered as prize in a Queensland lottery. The winner of the lottery, Samuel Gillette sold the property to Mrs Jessie Fotheringham Brown in 1901.

In 1927, the fifty acre property was subdivided into 168 suburban lots with Heathcote Hall remaining on a 4 acre block. The blocks sold very slowly, and in 1945, the Heathcote Hall Estate Limited sold the Hall on its reduced 4 acre block to Mrs Mimina Farrelly, wife of Mr Joseph Farrelly.

The Farrell family continued to live in the property until July 2015 when it was sold to Fuzortinn Pty Ltd. ”

Close scrutiny reveals a sad history for this Italianate folly, with its incongruous setting in the Australian bush. Heathcote Hall is the story of failure upon failure.

I had the privilege of a conversation with Roman Farrelly as I prepared the HIS, while working with the eminent Heritage Architect, Anne Warr on the CMP.

Mr Farrelly recalled the great nights of entertainment and dancing held by his immigrant mother coupled with the hopelessness of the 1950s as they shared the house with migrant workers from war-torn Europe on their way to and from the Snowy River Scheme. The garden was a potato patch in which everyone dug, and while the decline of Heathcote Hall stalled, it never has been stemmed.

The opportunity to restore Heathcote Hall is now on the table. The Heritage Branch has actively encouraged commercially viable ventures across the state to ensure the ongoing restoration and maintenance such the sites and here the historic garden is part of that restoration.

Our major work at Walsh Bay, a public private partnership, saw an acclaimed world-class cultural residential and commercial precinct rise from the ruins of the historic dock.

This can be true for Heathcote Hall.

Tasman Storey FRAIA ARBNSW 3144

Architect and Heritage Specialist

Design Principal TROPMAN & TROPMAN

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A Statement on The Magnitude of The Public Benefits of Restoring Historic Heathcote Hall: From the Heritage Consultant's Perspective

The entirety of the site within the heritage curtilage, which previously had been closed-off private property, shall become public space. The garden landscaping, with its historic Victorian Plantings setting, shall be juxtaposed with endemic native species.

The grounds of Heathcote Hall will be open-access, and the gardens are proposed to be parklike. This is an amenity that will be shared equally by residents of the estate and the local population.

The Hall itself will be restored to its original splendour. Though the Hall sought to be grand, its history tells us that since its construction, it has never reached its intended peak: all that will change with this proposal.

Access to the building itself will be mandated by the approvals. It is normal for a State Relic to open for public viewing even when held by private ownership.

If the Hall is restored to be utilised as a residence, as per the Sutherland Council Design Panel's recommendation, it will revert to its previous closed-off state. If it becomes a commercial or public venue, the Hall shall provide significant public utility, and amenity benefits to the East Heathcote community.

Our work with the Heritage Office indicates that a very gentle approach must be used in the restoration. It may be necessary to have some interventions such as a small lift for disabled access, with some rooms possibly being converted to bathrooms as only one small bathroom exists.

The project is only viable with the backing of the contemporary development surrounding it, and this is the greatest opportunity for the renewal of Heathcote Hall and its enjoyment by the public both in Heathcote and beyond.

Tasman Storey FRAIA ARBNSW 3144

Architect and Heritage Specialist

Design Principal

TROPMAN & TROPMAN

BUSHFIRE STATEMENT 1-21 DILLWYNNIA GROVE HEATHCOTE NSW

04 September 2019
Project No: 2649

John Innes

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Dear John,

This statement relates to the proposed development at 1-21 Dillwynnia Grove, Heathcote, specifically its fire safety and Fire Evacuation Procedures. The guidelines of the NSW Rural Fire Service (RFS) for the development of Emergency Evacuation Procedures are based upon the philosophy of Leave Early or Stay and Defend.

These are relevant and applicable to the above development as currently proposed in DA17/0467. These procedures set out the scenarios for residents of the development, should they decide to Leave Early or Stay and Defend. If residents of the development decide to Leave Early, it is my professional view that this development will have little or no impact upon existing residents leaving early, as at that time of departure, there is no risk of loss of life.

For those who decide to Stay and Defend, the proposed development has been designed in accordance with the Bushfire Construction Requirements (AS3959-2009 *Construction of buildings in bush fire-prone areas*; the NSW RFS *Planning for Bush Fire Protection 2006* guideline; and the Building Code of Australia's 2002 Amendments), i.e. for ember protection. The occupants of the proposed development will be in a safe environment by virtue of the proposed development's building design and siting of the built form. As the current bushfire regulations came into effect in 2002, under this scenario, existing dwellings, in particular those fronting the Royal National Park, would not have been built to comply with any bushfire construction requirements in the 2002 regulations, therefore existing dwellings are arguably not as safe as the proposed development.

In relation to the existing Hall, which will be required to be upgraded to achieve ember protection, the hall will also have full protection from fire and embers in full compliance with AS3959-2009; the NSW RFS *Planning for Bush Fire Protection 2006* guideline; and the Building Code of Australia's 2002 Amendments.

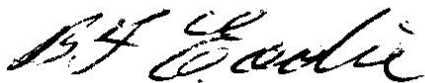
Therefore, in summary, in the case of Leave Early, the occupants of the proposed development are expected to have little or no impact upon local residents evacuating the area. For those residents

who choose to Stay and Defend, the occupants of the proposed development will pose no difference to any other dwelling occupants or their ability to remain safe in place. As for the occupants of the newly-proposed development, it can be easily argued that they will be in a highly-protected bushfire zone, even when compared with existing local residents.

Excluding the complex effects of smoke, it may be possible that the new areas of the proposed development, could be considered as safe areas for all residents and occupants, including emergency services personnel, seeking refuge whilst the fire front passes. This would be, in my view, an improvement on existing fire safety refuge protection areas currently available in the area.

This is the purpose of the Emergency Evacuation Plan.

Yours sincerely

A handwritten signature in black ink, appearing to read "B. Eadie", written in a cursive, flowing style.

Barry Eadie



1-21 DILLWYNNIA GROVE HEATHCOTE

REFURBISHMENT AND RESTORATION OF HEATHCOTE HALL, CONSTRUCTION OF 35 TOWNHOUSES AND 20 APARTMENTS, ASSOCIATED LANDSCAPE WORKS AND STRATA SUBDIVISION



**CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD- HEIGHT
OF BUILDING FOR
PROPOSED BUILDING A**

SSPP (Sydney South) Report Appendices (PPS-2017SSH019)

SEPTEMBER 2019



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CLAUSE 4.6 STATEMENT



Wednesday, 4th September 2019

Author:

EG Property Group Pty Ltd

Prepared for:

Sutherland Shire Council

Project: 1-21 Dillwynnia Grove, Heathcote NSW, 2233

Refurbishment and restoration of Heathcote Hall, construction of 35 townhouses and 20 apartments, associated landscaping works with 56-lot strata subdivision.

Report Stage	Date	Author	Reviewed
Final	04/09/2019	DB	SG
Final v2	28/10/2019	DB	GT

1. - Introduction

This Clause 4.6 Exception to a Development Standard, has been prepared in support of an Amended Development Application submitted to Sutherland Shire Council on 3rd September 2019, for the proposed restoration of Heathcote Hall and the construction of 35 townhouses and 20 apartments (across two residential flat buildings); landscape works, all located with a newly-formed a 56-lot strata subdivision at 1-21 Dillwynnia Grove Heathcote (Lot 1 DP725184 and Lot 2 DP725184). The Site has a total area of 17,502.3 m².

The proposed apartments are provided within two residential flat buildings: Building A and Building B. This request seeks to vary the Maximum Height of Building development standard, prescribed for the Site contained within Clause 4.3 of *Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)*. **This relates to Building A only.** The prescribed Height of Building control for the Site is 8.5 m.

All other residential development components including Building B and the proposed townhouses, are fully compliant with the 8.5-m Height Limit. There is no change proposed to the height of Heathcote Hall. It is proposed to fully restore Heathcote Hall and its landscape setting, as part of this Development Application. Built in 1887, Heathcote Hall is one of the oldest and grandest buildings in the Sutherland Shire, but is in a poor state, requiring immediate attention.

It is noted that the extent of numerical non-compliance of the Height of Building control, is strictly limited to a portion of the skillion butterfly roof structure of Building A only. The proposed height of the roof structure in Building A varies from 8.01 m at the flat-roof portion (fully compliant in this portion) to 9.0 m (RL 220.800 m) on the western side of Building A and 8.909 m (RL 221.070 m) on the eastern side of Building A. The flat roof component of the roof structure, is below the 8.5-m Height of Building control at 8.01 m (measured from the gutter). Despite the 8.5 m statutory height control. Council have already, in writing, indicated support for a variation to the height of up to 9.1 m for Building A.

The Standard Instrument Local Environmental Plan contains its own variation clause (Clause 4.6). This clause is designed specifically to allow an appropriate degree of flexibility to particular development and to achieve improved outcomes for and from development, by allowing development standards to be varied. Given that the *Sutherland Shire Local Environment Plan 2015 (SSLEP 2015)* was prepared under the Standard Instrument, an objection to vary this Development Standard is hereby made under Clause 4.6 of *SSLEP 2015*.

This Statement has been prepared in accordance with “Varying Development Standards- A Guide” prepared by the then Department of Planning and Infrastructure (now Department of Planning, Industry and Environment), dated August 2011. This Statement has incorporated as relevant, Land and Environment Court judgements which have established a series of questions, to be addressed in variations lodged under Clause 4.6 of the *SSLEP 2015*. The following judgements are relevant:

1. Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;
2. Wehbe v Pittwater Council [2007] NSWLEC 827;
3. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (“Four2Five No.1”);
4. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (“Four2Five No.2”);
5. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 (“Four2FiveNo.3”);
6. Micaul Holdings Pty Limited v Randwick Council [2015] NSWLEC 1386;
7. Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;

8. Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
9. Brigham v Canterbury-Bankstown Council [2018] NSWLEC 1406.

This Statement should be read in conjunction with the submitted and addendum Statement of Environmental Effects reports, prepared by HSquare dated April 2017 and December 2017.

2. - Development Standard to be Varied

2.1 - Clause 4.3 of Sutherland Shire Local Environmental Plan 2015

The Environmental Planning Instrument to which this objection relates is *SSLEP 2015*.

The development standard to be varied is the Height of Buildings contained in Clause 4.3 of *SSLEP 2015*. The Clause reads as follows:

4.3 Height of Buildings

(1) *The objectives of this clause 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.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

(2A) *Despite subclause (2), the maximum height for a dwelling house on land in Zone R4 High Density Residential is 9 metres.*

(2B) *Despite subclauses (2) and (2A), the maximum height for a dual occupancy on an internal lot in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone E3 Environmental Management and Zone E4 Environmental Living is 5.4 metres.*

(2C) *Despite subclauses (2) and (2A), the maximum height for a rear dwelling that is part of a dual occupancy on land in Zone R2 Low Density Residential, Zone E3 Environmental Management and Zone E4 Environmental Living is 5.4 metres if the lot has only one road frontage.*

(2D) Despite subclauses (2) and (2A), the maximum height for multi dwelling housing on an internal lot in Zone R2 Low Density Residential and Zone R3 Medium Density Residential is 5.4 metres.

(2E) Despite subclause (2), the height of the following buildings may exceed the maximum height shown for the land on the Height of Buildings Map by an additional amount specified below, but only in the circumstances so specified:

(a) a building on land identified as “Area 1” on the Height of Buildings Map (including the council-owned land at 39R President Avenue, 340R and 348R Kingsway, Caringbah) may exceed that height by 5 metres if the development provides a pedestrian plaza, pedestrian access through the land from Park Lane to Kingsway, Caringbah and vehicular access to 344–346 Kingsway, Caringbah (being Lot 1, DP 219784) and 340 Kingsway, Caringbah (being SP 13533),

(b) a building on land identified as “Area 2” on the Height of Buildings Map may exceed that height by 15 metres if there is to be a lot amalgamation and the development provides pedestrian access through the land from Port Hacking Road to President Avenue, Caringbah,

(c) a building on land identified as “Area 3” on the Height of Buildings Map may exceed that height by 5 metres if the land consists of at least 4 amalgamated lots, including 307 Kingsway, Caringbah (Lot 1, DP 13346), and the development provides pedestrian access through the site from Kingsway to Hay Lane, Caringbah,

(d) a building on land identified as “Area 4” on the Height of Buildings Map may exceed that height by 15 metres if the land has an area of at least 1,800 square metres and the development provides an enlargement of the Park Place pedestrian plaza in Caringbah,

(e) a building on land identified as “Area 5” on the Height of Buildings Map may exceed that height by 14 metres if the development will incorporate vehicular access to all lots identified as “Area 5A” on the Height of Buildings Map,

(f) a building at 40–44 Kingsway, Cronulla (being Lot 506, DP 1109821), being land identified as “Area 10” on the Height of Buildings Map may exceed that height by 10 metres if the development is wholly for the purposes of tourist and visitor accommodation.

The Height of Building shown for the land under Clause 4.3(2) of the SSLEP 2015 is 8.5 metres.

2.2 - Development Standards

The term “Development Standards” has the following definition under Section 4(1) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act, 1979):

“Development standards means the provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) *the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work,*
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*
- (l) *the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) *the provision of services, facilities and amenities demanded by development,*
- (n) *the emission of pollution and means for its prevention or control or mitigation, and such other matters as may be prescribed”.*

This Clause 4.6 Objection relates to a departure from the below numerical standard:

- “(c) *the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work”*

It is considered therefore that Clause 4.3 of *SSLEP 2015* is a Development Standard and not a ‘prohibition’ in respect to development. It is appropriate therefore to submit a variation, pursuant to Clause 4.6 of the *SSLEP 2015*, to enable the granting of consent to this Development Application.

2.3 - Clause 4.6 Framework

The objective of Clause 4.6 is to allow flexibility in the application of numeric development standards. The relevant objectives of Clause 4.6(1) of *SSLEP 2015* are:

- (1) *The objectives of this clause are as follows:*

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the Consent Authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

It is at the discretion of the Consent Authority, in this case Sutherland Shire Council, to be satisfied with this written request, made pursuant to Clause 4.6(ii) and to form a view with respect to the Public Interest, consistent with the objectives of the Height of Building control and the objectives of the E4- Environmental Living Zone, as contained in the *SSLEP 2015*. The Consent Authority typically has assumed concurrence of the Secretary.

It is intended that this written request will satisfy Sutherland Shire Council in formulating its views pursuant to Clause 4.6(4)(a)(i) and (ii).

3. - Extent of Variation

This request seeks to vary the maximum Height of Building development standard prescribed for the Site pursuant to Clause 4.3 of *Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)*, **as relevant to Building A only**. Building A is proposed to be 3 storeys in height, including a recessed top floor and comprises only 10 apartments.

The prescribed Height of Building control for the Site is 8.5 m.

The definition for Height of Building as contained in the *SSLEP 2015*, is as follows:

“building height (or height of building) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

The extent of numerical non-compliance with the Height of Building control, is limited to a small portion of the skillion butterfly roof. The height of the roof structure, varies from 8.01 m at the flat roof portion (fully compliant) to 9.0 m (RL 221.800 m) on the western side of Building A and 8.909 m (RL 221.070 m) on the eastern side of Building A. Refer to Figure 1 and Figure 2 (shown below).

The flat roof component of the building is underneath the 8.5-m Height of Building control, at 8.01 m (measured from the gutter).

As such, the proposed variation to the Height of Building control, relates to part of the roof only and is considered to be minor in the context of the overall built form proposed for the site. The extent of non-compliance relates only to 1.3% of the Site Area, as shown in Figure 3.

Plan	Section	Building	Element	Existing Ground GL	Max Element* RL	Height (m)	LEP Height (m)	Variance (m)	Variance (%)
DA23	J-J	A	Roof R1	212.161	221.070	8.909	8.500	0.409	4.81%
DA23	J-J	A	Roof R2	211.800	220.800	9.000	8.500	0.500	5.88%

Figure 1- Extent of Variation of the Proposed Roof Structure. Maximum Height of 9.0 m, for the highest roof element.

Figure 2 below shows a section view of Building A (Section J-J).

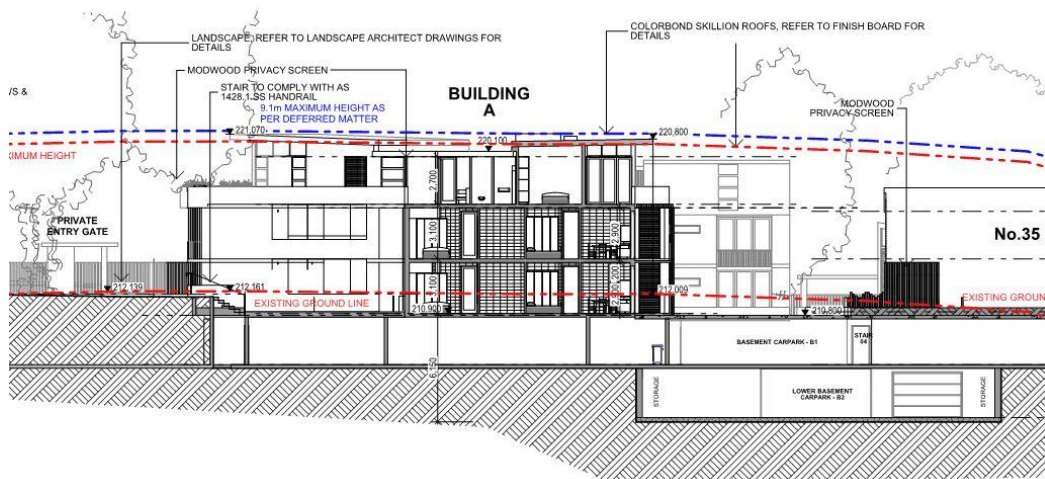


Figure 2- Section J-J above showing that variation to the Height of Building control only occurs at the skillion roof component of the butterfly roof structure. The flat roof component at the gutter, fully complies with the Height of Building control and is at 8.01 m.

Figure 3 below shows the extent of non-compliant area, as a percentage of total site area.

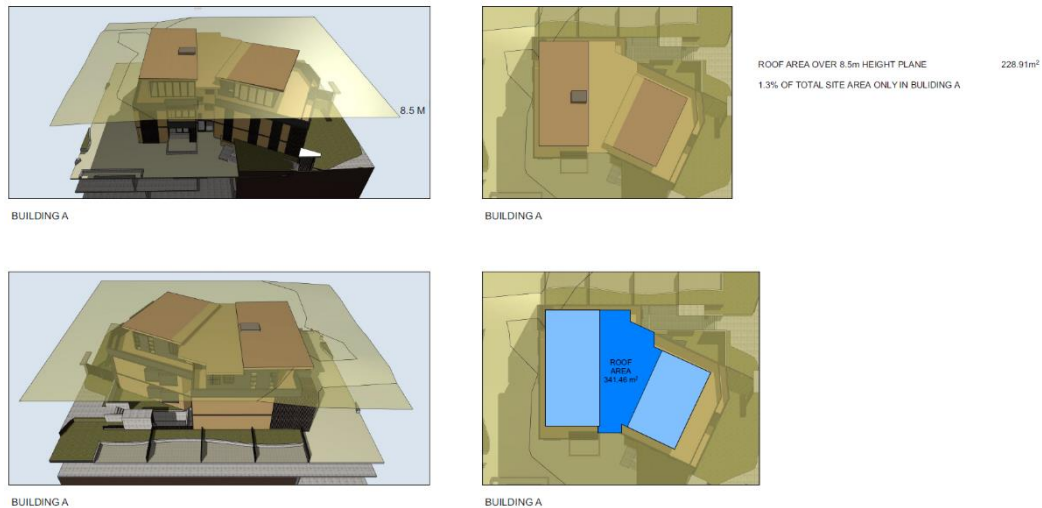


Figure 3- Shows that that the extent of non-compliance is the equivalent to 1.3% of the Site Area.

4. - Justification for Variation to Development Standard

4.1 - Clause 4.6(3)(a): Compliance with the Development Standard is unreasonable and unnecessary in the circumstances of the case

The NSW Land and Environment Court has established a series of questions, that need to be addressed when submitting variations to Development Standards. These include the judgements of Justice Lloyd in *Winten Property Group v North Sydney Council* [2001] NSW LEC 46, which was later rephrased by Chief Justice Preston in *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*). In *Wehbe*, CJ Preston expressed the view that there are five different ways (“5 Part Test”) in which an objection to a Development Standard might be shown as **unreasonable or unnecessary** to be deemed well founded.

Additional principles were established in the decision by Commissioner Pearson in *Four2Five Pty Limited v Ashfield Council* 2015 NSW LEC 248 (*Four2Five Pty Limited No.3*), which was upheld by Justice Pain on appeal, as well as in a decision of the Chief Judge of the NSW Land and Environment Court, in an appeal against a decision of Commissioner Morris in *Micaul Holdings Pty Limited v Randwick Council* [NSW LEC 7] (*Micaul*).

In the *Four2Five Pty Ltd* case, Commissioner Pearson found that due to the consistency in language used in both *State Environmental Planning Policy (SEPP 1) - Development Standards* and Clause 4.6, that when determining whether compliance with a development standard is “unreasonable or unnecessary” under Clause 4.6, that the consideration provided in the *Wehbe* case (which applied to *SEPP 1 - Development Standards*) may be of assistance. Note that an additional principle that resulted from the *Four2Five Pty Ltd*

case, was whether there are sufficient environmental planning grounds to the circumstances of the proposed development to the site. Also that it is necessary to demonstrate, that there is something more than achieving the objective of the Standard.

The 5-Part Test established in the Webhe case is set out as follows:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (1st Way);*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (2nd Way);*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (3rd Way);*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (4th Way);*
5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of that particular land. That is, that particular parcel of land should not have been included in the zone (5th Way).*

More recently in the Micaul Holdings case (which was a decision of the Chief Judge of the Land and Environment Court Preston CJ) in an appeal against a decision of Commissioner Morris, established that a Clause 4.6 imposed four (4) tests:

1. *That compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case;*
2. *There are sufficient environmental planning grounds to justify contravening the development standard;*
3. *That the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3) and;*
4. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development with the zone in which the development is proposed to be carried out. In addition, satisfaction of those matters that must be granted by the Secretary in determining whether concurrence should be granted is required.*

While the Micaul judgment did not directly overturn the Four2Five Pty Limited case, an important issue emerged. Chief Judge Preston noted that one of the Consent Authority's obligations, is to be satisfied that *"the applicant's written request has adequately addressed...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard."* Preston CJ held that this means:

*“The Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, **but only indirectly by being satisfied that the applicant’s written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary**”.*

(emphasis added)

The effect of the Miccaul judgement, lessens the force of the Court’s earlier judgement in Four2Five and demonstrates discretion at work.

Consistent with the decision in Four2Five, in *Moskovich v Waverley Council* [2016] NSWLEC 1015, the Commissioner agreed that the Public Interest Test (in Clause 4.6(4)(a)(ii)), is different to the “unreasonable or unnecessary in the circumstances of the case” test (in Clause 4.6(3)(a)). The Court held that *“the latter, being more onerous, would require additional considerations such as the matters outlined by Preston CJ in Wehbe at [70-76]”*.

In light of the tests established by the relevant case law quoted above, the following section of the report (Section 4.1.1) addresses the matters in Clause 4.6(3)(a) of *SSLEP 2015* and in particular how the objectives of the development standard are achieved, notwithstanding the non-compliance with the numerical control, consistent with the first test as outlined in the *Wehbe* case. In this instance, the First Way is the relevant test for this Development Application.

4.1.1. - The objectives of the Development Standard are achieved notwithstanding non-compliance with the standard (Wehbe case - 1st Way)

The following provides a response to the assumed objectives of “Clause 4.3 Height of Building” control within *SSLEP 2015*.

The objective of this clause 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.

Also, under Clause 4.3 of the *SSLEP 2015*, the objectives are quoted to be:

“(1) The objectives of this clause 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.”

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.

Local character is maintained as demonstrated the development’s Floor Space Ratio of 0.44:1, which is some 20 % lower than the E4- Environmental Living Zone FSR control of 0.55:1. This demonstrates great consistency with the Height of Building controls under the E4- Environmental Living zone.

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.

(b) to allow reasonable daylight access to all buildings and the public domain,

All shadowing has been minimised by the Height of Building controls as well as maintaining significant setbacks to public domain, and curtilage to Heathcote Hall. The Proposed Development fully complies with all Council controls on solar access, and is fully compliant with both *SEPP65*, and the DPIE’s *Apartment Design Guide* requirements.

(c) to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,

The proposed development has incorporated privacy screens into its design, thereby increasing the privacy of surrounding dwellings and minimising the possibility of visual intrusion.

The proposed development complies with the mandated heritage curtilage and setbacks, thereby minimising the impacts on extant views to Heathcote Hall.

The proposed development improves upon the views to Heathcote Hall, through the removal of all overgrown vegetation, and the improvement of the site's landscaping, through better design and plantings.

(d) to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,

The significantly-tall trees located around the boundary of the site will remain untouched, thereby providing a visual barrier which is designed to minimise all possible adverse visual impacts of the proposed development, when viewed from adjoining properties and the street.

(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,

Not applicable to the proposed development.

(f) to achieve transitions in building scale from higher intensity employment and retail centres to surrounding residential areas.

Not applicable to the proposed development.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

A variation of up to 9.1 m, has already been supported by Council. This entire variation relates to only 1.3 % of the total site area, noting that a maximum height of 9.0 m is present for a small part of the roof structure, located in the middle of the site.

This submitted Clause 4.6 Statement justifies the proposed variation.

(2A) Despite subclause (2), the maximum height for a dwelling house on land in Zone R4 High Density Residential is 9 metres.

Not applicable to the proposed development.

(2B) Despite subclauses (2) and (2A), the maximum height for a dual occupancy on an internal lot in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone E3 Environmental Management and Zone E4 Environmental Living is 5.4 metres.

Not applicable to the proposed development.

(2C) Despite subclauses (2) and (2A), the maximum height for a rear dwelling that is part of a dual occupancy on land in Zone R2 Low Density Residential, Zone E3 Environmental Management and Zone E4 Environmental Living is 5.4 metres if the lot has only one road frontage.

Not applicable to the proposed development.

It would be unreasonable and unnecessary to require strict compliance with the development standard as the proposed development is permissible through the application of Clause 5.10 (10)- of *SSLEP 2015* and meets the objectives of the E4 - Environmental Living Zone, which are further detailed in Section 4.3.2 on p. 20 of this submission.

4.2 - Clause 4.6(3)(b): Environmental Planning Grounds to justify contravening the Development Standard

There are several environmental planning grounds to justify a flexible approach to the application of the Height of Building development standard, contained in Clause 4.3 of *SSLEP 2015*, as per below.

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 following points are important to note:

- The proposal is consistent with the objectives of the Height of Building development standard as provided in Clause 4.3 of the *SSLEP 2015* – refer to Section 4.1.1.

- The proposed development results in an overall floor space ratio (FSR) of 0.44:1, which is fully compliant with the maximum FSR of 0.55:1 that is applied to the site in the *SSLEP 2015*. Therefore, the height variation does not seek to increase either density or Gross Floor Area.
- The proposed Height of Building is below 9.1 m, which was supported by Council staff as a guide for appropriate built form for proposed Building A, given its distance on site from Heathcote Hall.
- 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 development fully complies with solar access requirements. A minimum of 3 hours solar access to neighbouring properties is achieved.
- The proposed development does not affect any views of Heathcote Hall, and the dominance of Heathcote Hall is maintained.
- The proposed development is in accordance with the endorsed Conservation Management Plan (CMP 2018) and the rigorous Heritage Impact Assessment that has been conducted for the Site by the NSW Heritage Council. The Heritage Council have issued their General Terms of Approval (GTAs) for this site on 17/05/2018.
- Where a built-form is determined to be an appropriate outcome for the site, height is a secondary consideration as the proposed development fully complies with other key controls such as floor space ratio, landscape and open space.
- The proposed development is fully consistent with the objectives of Clause 4.3 - Height of Building control in the *SSLEP 2015*, despite the strict numerical non-compliance.
- The proposed development does not result in any significant adverse impacts upon the locality or adjacent residential properties by way of overshadowing, view loss, privacy, bulk and scale.
- The proposed development achieves a high-quality design, which is sympathetic to the local and State heritage significance of Heathcote Hall.
- 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.
- The proposed landscaping for the site will significantly enhance the Site and the heritage setting of Heathcote Hall. Requirements for landscaping, including deep soil planting have all been fully complied with.

- The proposed development does not result in any visual impacts on the surrounding streetscapes, given the existing level difference and substantial planting along property boundaries.
- The proposed development satisfies the requirements of Clause 5.10(1) of *SSLEP 2015*.

There would be no purpose served, if a variation cannot be accommodated under these circumstances. The site is clearly capable of supporting the intended development and is fully compliant with all other relevant development standards and controls, contained within the *SSDCP 2015*; *SSLEP 2015*; and all relevant State policies.

4.3 - Clause 4.6(4)(a)(ii): In the Public Interest because it is consistent with the Objectives of the Zone and Development Standard

4.3.1 - Compliance with the Objectives of the Development Standard

In line with the decision in *Micaul Holdings v Randwick Council*, the proposed development is consistent with all of the objectives of the Height of Building Development Standard, for the reasons set out in Section 4.1.1 of on p. 15 of this report.

4.3.2 - Consistency with the Objectives of the Zone

The Site is zoned E4 - Environmental Living, pursuant to *SSLEP 2015*. The proposed development is permissible by the operation of Clause 5.10(10) of the *SSLEP 2015*.

The proposed development will satisfy the zone objectives for the following reasons:

To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

The proposed development minimises impact by reducing density with a proposed floor space ratio of 0.44:1, which is a 20 % reduction of the E4 - Environmental Living zone maximum floor space ratio of 0.55:1. Possible external impacts have been furthermore minimised, by the *SSLEP 2015* height limit of 8.5 m across 98.7 % of the site. Only 1.3 % of the site is subject to the 9.1 m maximum Height of Building as supported by Sutherland Council in their Assessment Report to the Panel dated 28th June 2018. Using the density and

scale metrics of Floor Space Ratio and Height of Building respectively, the proposed development does minimise impact on the surrounding area.

The proposed development has taken this objective into consideration by providing lower-impact residential development that comprises townhouses. These have been setback from the frontage of Boronia Grove and Dillwynnia Grove, at a scale that is in keeping with the surrounding dwellings within this precinct. The proposed apartments are contained within two residential buildings, limited to three storeys in height, with a recessed top floor and are situated within the middle of the site. The proposed dwellings will be screened by the existing mature-tree canopies, planned landscape works and restoration of the State heritage item: Heathcote Hall.

The existing dwellings opposite the subject site, that front Tecoma Street and Dillwynnia Grove, have their backyards abutting the boundary of the Royal National Park. These properties already have a buffer, being at a distance of between 40 to 120 metres from Heathcote Hall in the form of road, single and two-storey dwellings, swimming pools, landscaped areas, cleared bushland. It is in fact these properties that impact directly on the special ecological, scientific or aesthetic values within this precinct.

To ensure that residential development does not have an adverse effect on those values.

The proposed development minimises impact on the special ecological, scientific or aesthetic values, by proposing townhouses that are set back from the frontage of Boronia Grove, Tecoma Street and Dillwynnia Grove. The proposed residential Apartment buildings have also been designed to present with a low visual and privacy impact, when viewed from the site perimeter roads. The proposed dwellings will be screened by the existing mature tree canopies (trees of up to 30 m in height, and 10 m in diameter), planned landscape works and the restoration of the existing heritage item of Heathcote Hall.

The NSW Office of Heritage and Environment has endorsed the Conservation Management Plan (CMP) on 18/07/2017. Full Arboricultural, Flora and Fauna reports have been earmarked by the OEH to be incorporated as part of the Conditions of Consent. The CMP has clearly defined the development areas and proposed buffer zones, to separate the built form from the Heritage Gardens of Heathcote Hall, creating a natural separation, that will ensure that the Hall retains its dominance in its new setting.

Selected materials and architectural expression, have been deliberately selected to be respectful of the architectural character of Heathcote Hall. The materiality and selected colour palette will make the proposed buildings appear recessive in nature and colour allowing the restored Hall to regain its dominance and original visual dominance.

To allow for development that preserves and enhances the natural landscape setting of the locality.

The natural landscape setting is attributed in part to the proximity to the Royal National Park, however this interface is fragmented in parts by the abutting existing housing stock, newer dwellings, non-indigenous domestic gardens and landscaping along Tecoma Street and Dillwynnia Grove which acts as a buffer to the subject site.

The subject site is not currently an example of a pristine natural landscape, it was historically a larger land parcel which has been subdivided by the previous owners and descendants, which resulted in the natural attributes being cleared to sell lots for dwellings and thereby fund the upkeep of the original owners and descendants of Heathcote Hall.

The proposed development will satisfy this object by facilitating an opportunity to restore, preserve and enhance the natural landscape setting within the locality by incorporating the Heritage Office's endorsed CMP, the recommendations of the Arboricultural report, Flora and Fauna report and the landscape works and these recommendations and works can be incorporated as part of the Conditions of Consent.

The site that has been for a very long time in private ownership, will once completed allow local residents to permeate and gain access to the restored Hall and over 3,000 m² of publicly accessible land.

To protect and restore trees, bushland and scenic values particularly along ridgelines and in other areas of high visual significance.

The proposed development will satisfy this objective by creating a financial opportunity to restore and protect a State Heritage Item – Heathcote Hall with its surrounding gardens and a number of mature trees. Council representatives and the Heritage Office have requested that CMP proposed sightlines to Heathcote Hall be re-established by clearing undergrowth and obnoxious specimens, opening vistas from Dillwynnia Grove.

To ensure the character of the locality is not diminished by the cumulative impacts of development.

Historically the subject site was a larger land holding which has been subdivided by the previous owners and descendants, which resulted in cleared lots being sold for dwellings which now abut or are adjacent to the subject site. The proposed development has addressed the cumulative impacts which included considerations of water, sewer, power, telecommunications, transport, bushfire response, traffic, landscaping, tree plantings, waste management and these have been documented within the Statement of Environmental Effects (SEE) and supporting specialist technical reports.

The considerations and recommendations within the SEE and the relevant specialist technical reports indicate that the proposal will not diminish the character of the locality due to cumulative impacts as infrastructure provisioning and servicing by relevant authorities are continually planned, reviewed and monitored and can be mitigated as part of the Conditions of Consent.

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.

The DA, as proposed, has been designed in accordance with Australian Standard AS3959-2009 Construction of buildings in bush fire-prone areas and the NSW Rural Fire Service (RFS) Planning for Bush Fire Protection 2006 guideline. The DA has been endorsed by the NSW RFS, who issued General Terms of Approval (GTA) on 27th April 2018 (reference ID:107313/104574/5).

According to expert advice provided by Barry Eadie Consulting, the ability to either evacuate or remain in the case of fire is improved under the proposed DA. As the proposed development has been designed in accordance with the aforementioned Bushfire Construction Requirements, it will in fact be safer in the event of fire than the surrounding existing dwellings, most - if not all - of which were constructed prior to the development of AS3959-2009 and Planning for Bush Fire Protection 2006 compliance standards. The resultant effect is that the proposed development in its current form, reduces all risk associated with fire at the site. The application therefore poses little or no risk to residents, property, and the environment.

The proposed development responds to satisfying this objective by minimising the risk to life, property and the environment as the proposed scale, number of dwellings, type of dwellings are reflective to the potential threats and hazards within this precinct. Appropriate building materials have been taken into consideration to address these risks and hazards which has influenced the architectural language and fire safety engineering. Bushfire emergency, evacuation and management considerations, CPTED report and other relevant consultant reports have identified threats and proposed mitigation measures and submitted to Council for consideration.

The maximum permissible density for the site is 0.55:1 FSR. The proposed design achieves a FSR of 0.44 :1.

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.

Land Subdivision is not proposed.

The site is zoned E4 Environmental Living pursuant to the *SSLEP 2015*. However, Clause 5.10(10) of Council's LEP is relevant as it enacts the permissibility of the residential development component including Strata Subdivision which will fund the restoration of the State Significant Heritage Item – Heathcote Hall, ongoing maintenance and natural features.

The development footprint for the new dwellings at the subject site, has been defined by the CMP which has been endorsed by the Heritage Office and in conjunction with Council's LEP Clause 5.10(10) will not conflict with this objective as the proposed strata subdivision will fund the restoration of the heritage item and natural features.

To share views between new and existing development and also from public space.

The proposed development creates groups of dwellings of similar scale and height of adjoining properties, satisfying the objectives of the zoning. Pedestrian access corridors will allow public access to the Hall and its Heritage Gardens that once was of private use. Filtered views will visually connect the existing developments with the proposed gardens and the restored Heathcote Hall.

This development is creating a contemporary architectural language, inspired in environmental and sustainable principles. One hundred percent of the dwellings will enjoy a northerly or easterly aspect. All dwellings will enjoy natural cross ventilation, minimising the use of air conditioning devices and mechanical ventilation. This will establish a high level of amenity with a low index of energy use, creating new levels of sustainability outcomes as a guide for the future developments in the Heathcote area.

5. - Other Matters for Consideration

Pursuant to Clause 4.6 (5) of *SSLEP 2015*, in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (a) whether non-compliance with the development standard raises any matter of significance for State or regional planning;*
- (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument; and*
- (c) Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

5.1. - Clause 4.6 (5)(a): Whether contravention of the Development Standard raises any matter of significance for State or Regional Environmental Planning

The numeric non-compliance with Clause 4.3 of *SSLEP 2015* does not raise any matter of significance for State and Regional Planning, nor does it conflict with any State Planning Policies or Ministerial Directions.

5.2. - Clause 4.6 (5)(b): The Public Benefit of maintaining the Development Standard

The public benefit is best served by the proposed development complying with the objectives of the Height of Building control rather than strictly complying with the numeric standard of the control.

The public benefits of the proposed departure from the Height of Building control can be summarised as follows:

- The co-ordination of the orderly and economic use and development of land would be discouraged as it would hinder the restoration of a State Heritage Listed item whilst ensuring the character of the locality is not diminished;
- Once completed allow local residents to permeate and gain access to the restored Hall and over 3,000 m² of publicly accessible land.
- The proposed development results in public benefit through positive urban design outcomes, the provision of additional housing stock with a high standard of residential amenity.

5.3. - Clause 4.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence

There are no other matters that require consideration by the Secretary.

The Five Part Test of the Land and Environment Court Matters for Consideration states that the Consent Authority must be of the opinion that granting consent to the development application would be consistent with the Policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the *EP&A Act, 1979*.

(a) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, and


(b) the promotion and co-ordination of the orderly and economic use and development of land.

This is clearly the case for 1-21 Dillwynnia Grove Heathcote.

6. Conclusion

This Clause 4.6 Exception to a Development Standard has demonstrated that it would be unreasonable for strict compliance with the Height of Building control contained in Clause 4.3 of *SSLEP 2015* to be enforced in this particular case as there are sufficient planning grounds to justify contravening the standard. The proposed development satisfies the stated and underlying objectives of the Height of Building Development Standard and the zoning objectives for the Site such that:

- The proposal meets the objectives of Clause 4.3- Height of Building contained with *SSLEP 2015*.
- The maximum Floor Space Ratio of the Site is not exceeded by the Proposed Development, and provides a 20% reduction to the maximum floor space ratio allowed for the Site under the *SSLEP 2015*.
- Provides a low-impact residential development, whilst ensuring that the proposed development does not have an adverse impact on any of the special ecological, heritage or aesthetic values of the Site.
- The proposed development will facilitate the restoration and conservation of the State Significant Heathcote Hall, and will allow both views and landscaping to be improved.
- The variation to the development standard, is supportable by environmental planning grounds, including the limited environmental impact, resulting from the breach to the standard, which is limited to the skillion roof aspect of the proposed butterfly roof structure.
- The proposed development does not result in any adverse impacts on surrounding development.



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