

## SUTHERLAND SHIRE COUNCIL ADDENDUM ASSESSMENT REPORT

<b>Panel Reference</b>	<b>2017SSH019</b>
<b>DA Number</b>	<b>DA17/0467</b>
<b>LGA</b>	<b>Sutherland Shire</b>
<b>Proposed Development:</b>	<b>Refurbishment and restoration of Heathcote Hall, construction of 35 townhouses and 20 apartments, associated landscape works and 56 lot strata subdivision</b>
<b>Street Address:</b>	<b>Lot 1 &amp; 2 DP 725184 (No. 1-21) Dillwynnia Grove, Heathcote</b>
<b>Applicant/Owner:</b>	<b>Ink Architects Pty Ltd</b>
<b>Date of DA lodgement</b>	<b>28 April 2017</b>
<b>Number of Submissions:</b>	<b>55 groups/individuals from formal post meeting notification period (November 2018), and 3 groups/individuals from May/June 2019 notification</b>
<b>Recommendation:</b>	<b>Refusal</b>
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	<b>Schedule 4A of the Act (in accordance with current version of the EP&amp;A Act at the time of lodgement)</b>
<b>List of all relevant s4.15 (1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy 55 – Remediation of Land</li> <li>• State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development</li> <li>• Heritage Act 1977</li> <li>• Rural Fires Act 1997</li> <li>• Sutherland Shire Local Environmental Plan 2015</li> <li>• Sutherland Shire Development Control Plan 2015</li> <li>• NSW Planning &amp; Environment – Apartment Design Guide</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<p><b>Appendix (1) - Original Appendices June 2018.</b></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><b>Appendix (2) – Original SSPP Report prepared June 2018</b></p> <p><b>Appendix (3) – Record of Deferral SSPP Meeting June 2018</b></p> <p><b>Appendix (4) – Current Submission Summary</b></p> <p><b>Appendix (5) – Full set of current plans</b></p> <p><b>Appendix (6) – Applicant's response to Deferred Matters</b></p> <p><b>Appendix (7) – Heritage Office Response Letter February 2019.</b></p> <p><b>Appendix (8) – General Terms of Approval Heritage Council June 2019 and Rural Fire Service General Terms</b></p> <p><b>Appendix (9) – Clause 4.6 Variation Report Building Height 2019</b></p>

<b>Report prepared by:</b>	<b>Lisa Pemberton, Assessment Officer Sutherland Shire Council</b>
<b>Report date</b>	<b>2 August 2019</b>

### 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? **Yes**  
*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* **Previously provided (Appendix 1)**

## **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. The applicant was required to address a number of Deferred Matters raised by the SSPP from this meeting. 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.

### **RESPONSE TO DEFERRED MATTERS**

An assessment of the proposal against the Deferred Matters has been undertaken, and it is concluded that not all matters have been satisfied by the applicant. Each matter has been discussed in detail below. The most significant issue arising from the assessment of the additional material is the height of the proposed residential flat buildings. Building A and Building B were required to be reduced in height consistent with the Deferred Matters. However, the applicant has failed to fully resolve the building heights in accordance with the Deferred Decision, and further, has not provided an accurate Clause 4.6 Variation regarding building height. As a result the proposal cannot be supported.

## ASSESSMENT OFFICER'S RECOMMENDATION

### 1.0 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 refusal of development consent for the reasons outlined below:

- a) Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 4.3 of the Sutherland Shire Local Environmental Plan 2015 with respect to the proposed height of Building A and Building B. In this regard, it has not been adequately demonstrated that breach of this height standard is acceptable, nor that the proposal satisfies the objectives of the development standard, particularly the current and desired future scale of the street and locality, visual intrusion and visual impact.
- b) Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed application has not satisfied the provisions of Clause 4.6 of the Sutherland Shire Local Environmental Plan 2015 with respect to the proposed height of Building A and Building B. In this regard the application has not measured building height accurately in accordance with the Sutherland Shire Local Environmental Plan 2015 and the Clause 4.6 variation is incorrect and invalid.
- c) Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 5(10)(10)(e) of the Sutherland Shire Local Environmental Plan 2015 with respect to the non-compliance with building height. In regard to building height, it has not been adequately demonstrated that the proposed development would not have significant adverse effect on the amenity of the surrounding area.
- d) Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the zone objectives for the *E4 Environmental Living* zone of the Sutherland Shire Local Environmental Plan 2015, with respect to building height, and resulting bulk and scale. In this regard, it has not been adequately demonstrated that the proposed height of the development would not have any significant adverse effect on the amenity of the surrounding area, nor that the proposal achieves the objectives of the development standard regarding character of the locality and low-impact residential development as a result of height of Building A and Building B.
- e) Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with *Schedule 1 Design Quality Principles* of the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*. In this regard, it has not been adequately demonstrated that the proposed development responds to the locality, nor does it demonstrate appropriate built form and scale as a result of the non-compliant height of Building A and Building B.
- f) Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 it is considered that in the circumstances of the application, approval of the development is not in the public interest with regards to building height.

- g) Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 6.17 of the Sutherland Shire Local Environmental Plan 2015 in that the proposal will have visual intrusion impacts, height and scale regarding Building A and Building B.
- h) Pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 6.16 and Clause 6.17 of the Sutherland Shire Local Environmental Plan 2015 as the application has failed to demonstrate that the development results in high quality design and development outcomes for the urban environment; the development does not contribute to the desired future locality; does not minimise the impacts of the development on adjoining land including visual intrusion, bulk, scale, height and siting; regarding Building A and Building B.
- i) The development application is deficient of information in order to enable a comprehensive assessment against provisions of s.4.15 Environmental Planning and Assessment Act 1979.

## ASSESSMENT OFFICER'S COMMENTARY

### 2.0 PRIOR ASSESSMENT BY THE SYDNEY SOUTH PLANNING PANEL

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

The Record of Deferral 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 previous planning assessment report prepared for the SSPP.

The prior assessment report 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 **2**).

## 2.1 Response to Deferred Matters

A response to the deferred matters 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 27 June 2019, 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. As advised by the Heritage Council (**Appendix 8**), this matter is satisfactory, however 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 RL221.534 above existing ground level (ground level at the date of issue of the decision), excluding lift overrun.*

Comment: Not satisfied - whilst the building is no greater than RL221.534 (maximum RL221.235), an assessment of the information submitted indicates that Building A exceeds the 9.1m height requirement of the Deferred matter, and measures 9.54m at its highest point.

In response to the Deferred Matters the applicant advised: “*The height of Building A has been reduced to be no greater than 9.1 m as requested, with a maximum RL 221.235, below the maximum permissible of RL 221.534 (refer to Drawing DA-12 Section J-J)*”. (See **Appendix 6**, Response to Record of Deferral 2018 09 19, Page 2).

The 9.1m height referred to by the applicant is contrary to the height specified in the Clause 4.6 Variation submitted by the applicant (See **Appendix 9**) which indicates that the height of

building A is 9.54m. It is agreed that the height of Building A is a maximum of 9.54m, as the current plans indicate this. A comparison of the current plans and plans presented at the 28 June 2018 meeting, indicate that Building A has not changed in height in response to the Deferred Matters.

The proposed height of Building A cannot be supported, see detailed commentary in the assessment section of the report.

ii) *The height of Building B must be no greater than 8.5m, with a maximum RL of RL221.076 in height above existing ground level (ground level at the date of issue of the decision), excluding lift overrun.*

Comment: Not satisfied- whilst the building is no greater than RL221.076 (maximum RL 220.195), an assessment of the information submitted indicates that Building B is greater than 8.5m in height, and measures 9.305m in height at its highest point.

The applicant noted in their response to the Deferred Matters, that *“The top most level of Building B has two apartments. Apartment B 22 which is compliant with 8.5 m maximum height and maximum RL of 220.852, below the maximum permissible RL of 221.076. Apartment B 21 is slightly over the maximum 8.5 height control plane due to the sloping terrain but is compliant with the maximum permissible RL of 221.076 showing a maximum RL of 220.633 (please refer to drawing DA-10 Height Plane)”*. (See **Appendix 6**, Response to Record of Deferral 2018 09 19, Page 2).

Whilst there has been a change in the height of Building B from the previous set of plans presented to the SSPP, there is still a non-compliance with the height of this building, exceeding the 8.5m height limit.

The proposed height of Building B cannot be supported, see further assessment below.

In further response to the height of Building A and Building B, the applicant advises that as the Heritage Council does not have concern with the proposed height of Building A and Building B, that this matter has been responded to, regardless of being inconsistent with the Deferred Matter. (See **Appendix 6**, Page 77 – letter from HWL Ebsworth, and the response prepared by Ink Architects **Appendix 6**, Page 81).

It is important to note that the matter regarding height and the consistency with the character of the locality and transition to adjacent dwellings was not a concern raised by the Heritage Council, rather a matter raised in the previous planning assessment report prepared for the SSPP.

Regardless of the above the proposed height of Building A and Building B do not comply with the Deferred Matter, and remains outstanding.

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 RL217.759 and the maximum RL of Townhouse 31 must be RL217.731.*

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 under 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 Dillwynia 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.



**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: Not satisfied, the roof area associated with the void is 1.6m for dwellings 4, 5, 6 and 7.

*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: Unresolved - dwellings 4,5,6,7. Greater than 1m, in accordance with Matter D(i)(a) above.

The applicant has failed to comply with all setback requirements of the deferred matters issued by the SSPP.

**Matter E. Adaptable and Liveable Dwellings**

*Submit amended plans indicating the following:*

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

i) *Adaptable dwellings must be provided in accorded 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.

It should be noted that there is a concern regarding access from the basement to these dwellings. In order for a resident in an adaptable dwelling (#4- #10) to gain access to their dwelling, would require them to access the lift in basement 1 which is located up to approximately 95m from the garage. The resident would then need to walk the same distance (approximately) to gain access to their dwelling, by exiting the site, and gain access to their dwelling via the footpath. This is not acceptable, a more appropriate access solution is required.

b) *Apartments: Four (4) dwellings*

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

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

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

Comment: Satisfied - Four Liveable dwellings are proposed (townhouses 20, 23, 24 and 25)

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

Comment: Satisfied, two liveable 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.

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, however whilst the three carwash bays have been provided, one is not of sufficient dimension, impacting upon the layout of the basement level 2.

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

Comment: Not 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 some amount of fill along Dillwynia Grove.

*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.

### 3.0 DESCRIPTION OF AMENDED 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) 56 Lot Strata Subdivision - including one strata lot to contain the Heritage Precinct.**



Figure 1 Site Plan

#### 4.0 BACKGROUND

The development application was lodged on 28 April 2017. A detailed history of the development since the 28 June 2018 determination meeting is as follows (all history prior to this is indicated in the original assessment report, **Appendix 2**):

- *28 June 2018* - the application was referred to the SSPP for determination, the SSPP deferred their decision at this meeting (**Appendix 3**).
- *October 2018* - the applicant submitted additional information and amended plans (**Appendix 6**, a full set of plans is contained in **Appendix 5**).
- The amended plans were notified for a period of 30 days until *16 November 2018*. Submissions were received from 55 groups or individuals.
- The NSW Rural Fire Service provided a letter dated *16 November 2018* advising their General terms from *27 April 2018* still apply and remain unchanged.
- *21 February 2019* - the Heritage Council advised that the applicant had not resolved all Heritage related matters as per the deferred decision (**Appendix 7**).
- *11 March 2019* - the SSPP advised Council that the applicant should address and resolve Deferred Matters, as a result Council wrote to the applicant on *13 March 2019* requesting additional information.
- *17 April 2019* - the applicant provided a further response (**Appendix 6**). The applicant advised in this correspondence that as height was not an issue raised by the Heritage Council, that the height of Building A and B would remain as proposed.
- *1 May 2019* - Council wrote to the NSW RFS and the Heritage Council requesting a response to the latest information submitted by the applicant.
- *10 May 2019* - Council notified the additional information, and submissions were received from 3 individuals.
- *21 May 2019* - Council requested a revised Clause 4.6 Variation regarding the Building Height be submitted. The applicant submitted a Clause 4.6 variation on the same day (**Appendix 9**).
- *24 May 2019* - the applicant was asked to clarify the height of Building A and B as an assessment undertaken did not align with the information provided by the applicant. The applicant advised Council the building heights were correct according to their CI4.6 document.
- *27 May 2019* - the applicant was again asked to provide further information regarding the height variation and they provided an additional Height Plane view demonstrating the areas of non-compliance on the same day (**Appendix 6**, page 85).
- *31 May 2019* - the RFS responded with correspondence advising that the original General Terms of Approval of *27 April 2018* remains unaltered (**Appendix 8**).
- *28 June 2019* - the Heritage Council responded with revised General Terms of Approval (dated *27 June 2019*) (**Appendix 8**).

## 5.0 PUBLIC PARTICIPATION

### ***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**.

### ***Notification***

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

A detailed summary of the notification period prior to the 28 June 2018 meeting is contained within original assessment report (**Appendix 2**). However 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.

A summary and response to the relevant planning matters raised by the submissions since the 28 June 2018 meeting are attached at **Appendix 4**. The planning assessment issues raised in the submissions made after the June determination meeting are as follows:

- *Not all Deferred Matters addressed*
- *Heritage, use of the Hall/ and Grounds, restoration and maintenance process*
- *LEP/DCP*
- *General Process, and SSPP Process*
- *Traffic and parking, site access*
- *Bushfire, and fire (other than bushfire)*
- *Construction*
- *Infrastructure*
- *Environmental Impact*
- *Waste Management*
- *Design and Amenity*

A full copy of all submissions has also 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.

## 6.0 STATUTORY CONSIDERATIONS

The subject site is located within *Zone E4 – Environmental Living*. The townhouses and residential flat buildings are a prohibited form of development in this zone, however the applicant has applied for this development under the Heritage Conservation incentives of Clause 5.10(10) of the SSLEP 2015.

An assessment against Clause 5.10(10) has been undertaken as part of the previous assessment report (**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
- 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 of the application be considered as part of this assessment (**Appendix 2**).

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.

## 7.0 COMPLIANCE

### Sutherland Shire Local Environmental Plan 2015

The subject site is located within *Zone E4 – Environmental Living*. While the townhouses and residential flat buildings are a prohibited form of development in this zone, they can be 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"> <li>Building A= 9.545m Max RL 221.235</li> <li>Building B= 9.3m (to the roof) Max RL 219.705</li> <li>Townhouses &lt; 8.5m</li> </ul>	<p><b>No</b> +12.2% - does not fully satisfy Deferral matter B(i)</p> <p><b>No</b> +9.47% - does not fully satisfy Deferral matter B(i)</p> <p>Yes (See discussion below regarding response to Deferred Matters)</p>
4.4 Site AREA: 17502.3m <sup>2</sup>  “Developable Area” (as per CMP) = 10722.48m <sup>2</sup>	Floor Space Ratio Max – 0.55:1  <b>Based on whole site area=9525m<sup>2</sup></b>  Based on developable area= 5897.37m <sup>2</sup>	Total GFA Residential and Heathcote Hall= 7239.1 + 438.57= <b>7677.67m<sup>2</sup></b> FSR based on site area: <u>0.44:1</u>  FSR based on developable area: 0.72:1	Yes
6.14	Landscaped Area (deep soil) 40% <b>(7000m<sup>2</sup> required)</b>	7008.6m <sup>2</sup> or 40%	Yes

Table 1 Sutherland Shire Local Environmental Plan 2015 Assessment

### Sutherland Shire Development Control Plan 2015 (SSDCP 2015)

Chapter 4 of the DCP 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 regarding the SSDCP 2015 can be viewed at **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
<b>2.2 Building Setbacks</b>		
Street Setback 7.5m or established street setback.  3m secondary street frontage (Tecoma St)	- Dillwynnia Grove Minimum 31.6m - Boronia Grove 4.7m to 7.39m 4.6m to 7.1m 3m	Yes  No – see discussion below 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  Second storey – 1.5m front 60%	<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) • 2.7m to townhouse #31 (Dillwynnia Grove) • 9.05m to townhouses #32 -35 • 4.0m to townhouse #1 (Boronia Grove)	Yes  Yes Yes  Yes Yes Yes
Rear Setback (to western boundary) dwellings #32-#35 - 4m	7.9m	Yes
<b>4.2 Landscaping</b>		
Max. 50% hard surfaces within front setback, remaining area to be deep soil - 50% of 1172m <sup>2</sup> =586m <sup>2</sup>	Min 598.1m <sup>2</sup> deep soil or 573.9m <sup>2</sup> hard surface or 48% max	Yes
<b>6.2 Visual &amp; Acoustic Privacy</b>		
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, raise concerns regarding acoustic privacy	No
<b>7.2 Parking</b>		
Car wash bays are required at a rate of one (1) per 20 dwellings - <b>3 spaces needed</b>	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 36 – Roads, Access, Traffic, Parking and Bicycles		
For multi- dwelling in an R2 Zone and Residential Flat buildings in an R4 Zone) Car parking is to be provided at the following (minimum) rates: <ul style="list-style-type: none"> <li>– 1 bedroom- 1 space (2x1 = <b>2 spaces</b>)</li> <li>– 2 bedrooms – 1.5 (16x1.5= <b>24 spaces</b>)</li> <li>– 3+ bedrooms – 2 (37 x 2= <b>74 spaces</b>)</li> <li>– One (1) visitor car park is to be provided for every 4 dwellings (55/4 = <b>14 visitor spaces</b>)</li> </ul> <b>TOTAL REQUIRED</b> = 114 for the residential component	Basement: 106 Residential spaces + 16 Residential Visitor  <b>Total = 122</b>	Yes
Commercial/retail in a business zone. 1 space per 30m <sup>2</sup> GFA GFA of the Hall 354.8m <sup>2</sup> <b>TOTAL REQUIRED =12 spaces</b>	- 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  <b>12 total</b>	Yes

Table 2 Assessment against Sutherland Shire Development Control Plan 2015

### 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> <u>Up to 4 storeys(approx 12m)</u> <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

	12m between habitable rooms/balconies	- 12m between Building A to western townhouses #33-35 (habitable to habitable) - 6m between Buildings A and town houses to the north (habitable to habitable)	Yes  No
	<u>Setbacks to Boundary</u> Up to 4 storeys(approx 12m) 6m habitable rooms/balconies 3m non-habitable rooms	<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 <sup>2</sup> = Minimum dimension 6m 7% of site area ( <b>1225m<sup>2</sup> required</b> )	Deep soil approx. 7000m <sup>2</sup>	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>However as discussed further in this report and in the previous assessment report, the residential flat Buildings A and B exceed the height limit contained within the SSLEP 2015, further they exceed the height specified in the Deferred Matters specified by the SSPP.</p> <p>Building A has not been reduced to a maximum height 9.1m, and Building B has not been reduced to a maximum height of 8.5m, therefore not complying with the maximum height specified by the SSPP.</p> <p>The variation to height is discussed in detail below. However, as the height has not been resolved through the latest amendments the issue regarding the relationship of these buildings with adjacent lower scale residential development has not been resolved.</p> <p>Therefore the application cannot be supported, as the proposed residential flat buildings have failed to contribute their local residential context and character. With respect to height, the urban design and character test the issue remains unresolved. See further discussion below regarding height.</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 the 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 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. In some instances however, the dwellings have not met the setback requirements of the deferred matters.</p> <p>The height of Building A and B have not been decreased to address the Deferred Matter (see further discussion below), and as a result the neither of the proposed residential flat buildings satisfy this principle. The revised application has not successfully resolved the bulk, scale and height issues associated with the proposed residential flat buildings in relation to the existing or future character of the locality. Nor does the proposed height appropriately define or respond to the public domain. It fails to appropriately add to the character and streetscape.</p> <p>As a result the application cannot be supported, as the proposed residential flat buildings and a number of townhouses on Boronia Grove, have failed to provide an appropriate design response to the local residential character, with particular reference to height, scale and bulk</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>

	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.
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.
Principle 8: Housing Diversity & Social Interaction	The proposal provides a mix of apartment types and townhouse types. Numerically the Adaptable and Livable dwellings have been provided for in accordance with the SSDCP 2015, however a number of dwellings are poorly located.
Principle 9: Aesthetics	<p>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.</p> <p>However the amended scheme has failed to satisfy the building elements, proportions component of this principle. The bulk and scale of Building A and B have not adequately addressed building elements and propositions, and the bulk and scale of the roof form and all dwellings above the 8.5m height limit are inconsistent with the existing and future local context, and this is discussed below.</p>

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

## 8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

All previous comments submitted by public authorities are contained within the original assessment report (**Appendix 2**), 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:

## 8.1 Heritage Council

The application is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*. On 21 February 2019 (**Appendix 7**), the Heritage Council advised that the applicant had not adequately addressed the Deferred Matters.

The Heritage Council determined that the amended proposal did not comply with the Conservation Management Plan (CMP), and requested:

*“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.”*

The Heritage Council also requested additional information to ensure that the landscaping addresses the CMP.

The Heritage Council also provided comments regarding building height, and advised:

*“It is noted that the Sydney South Planning Panel also seeks heritage comment in relation to building heights to ensure the dominance of Heathcote Hall. The Heritage Council’s GTAs have not raised issue with the height of the proposal in the past.”*

It is important that the SSPP note that the issue regarding height was not a matter of concern raised by the Heritage Council. Rather height was raised in the assessment of the proposal against CI5.10(10) of the SSLEP 2015 (see original assessment report prepared for the SSPP for 28 June 2018 meeting, (**Appendix 2**). The issue regarding height is discussed in extensive detail below.

The Heritage Council have provided their revised General Terms of Approval to Council on 28 June 2019. A copy of the General Terms of Approval is attached at **Appendix 8**.

## 8.2 NSW Rural Fire Service

The development is integrated development subject to Section 4.46 of the *Environmental Planning and Assessment Act 1979*. The NSW Rural Fire Service issued their General Terms of Approval under the *Rural Fires Act 1997* on 27 April 2018. A copy of the General Terms of Approval (GTAs) is attached at **Appendix 1(J)**, the GTAs have been issued subject to conditions.

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 8**).

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



### 8.3 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 requires further detailed planning assessment by Councils assessment team to determine if the application satisfies CI5(10)(10)(e) of the SSLEP 2015, regarding “...significant adverse effect on the amenity of the surrounding area.”

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

### 8.4 Council Engineer

The Engineer has assessed the latest set of plans and all relevant supporting information, the Engineer advised that the basement levels of parking had not been designed in accordance with the relevant Australian Standards and therefore manoeuvring had not been resolved. The applicant was requested to address this and they submitted further plans for assessment.

The Engineer has since undertaken an assessment of all current information and advises that there remain a number of outstanding design issues:

- 1) Lift access to the commercial basement level 2 has not been provided.
- 2) Whilst three carwash bays have been provided, one is not of sufficient dimension, impacting upon the layout of basement level 2, including impacts upon manoeuvring.
- 3) Additional comments regarding garaging at basement level 1 have not been resolved across a number of garages:
  - Garages 2 and 3 are not a sufficient length at basement level 1.
  - Garages 4, 5, 6 and 22 are not wide enough to be double garages at basement level 1
  - Garage 20 does not provide for adequate manoeuvring for two vehicles at basement level 1
  - The curve in the access driveway to the commercial basement parking is too narrow to facilitate 2-way movement.
  - Parking space 37 in basement 2 is too narrow as it abuts a wall.
  - The columns in Basement 2 adjacent to the central aisle must be moved 750mm into the parking spaces to facilitate manoeuvring.
  - The shared space in basement 2 must be 2.4m wide and incorporate a bollard.

### 8.5 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 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 proposed fire hydrant

booster assembly will require a radiant heat shield that is 2m high and a minimum of 3m wide, as the booster is within 10m of the building.

The fire hydrant booster assembly as indicated adjacent to the driveway of Boronia Grove requires relocation to address the Deferred Matter.

- The location and design of the fire services pump room, does not comply with 6.4.2 of AS2419.1-2005 (or clause 6.11.2 of AS2419-2017).

## **8.6 Council Landscape Architect**

Councils Landscape Architect has undertaken a detailed assessment of the amended plans and supporting details lodged by the applicant. The Landscape Officer has advised that the plans adequately respond to the deferred matters regarding landscaping along Boronia Grove and Tecoma St, however there is still some fill identified along Dillwynia Grove.

## **8.7 Council Public Assets Engineer**

Councils Public Assets Engineer has reviewed the amended application and has provided a number of comments. A summary of comments are as follows:

- “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.

## **9.0 ASSESSMENT**

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and the provisions of relevant environmental planning instruments, development control 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**).

### **9.1 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. The Heritage Council has reviewed the amended plans and has provided revised General Terms of Approval (**Appendix 8**).

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. 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.

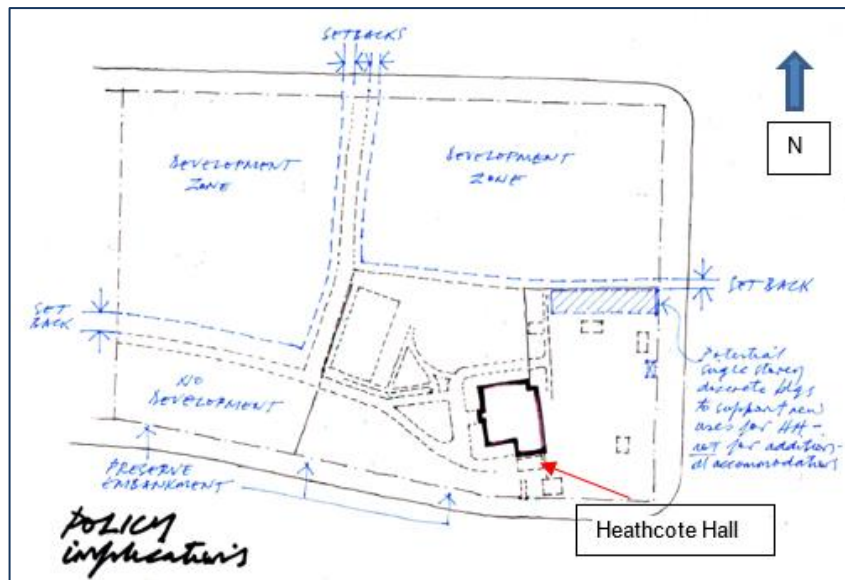
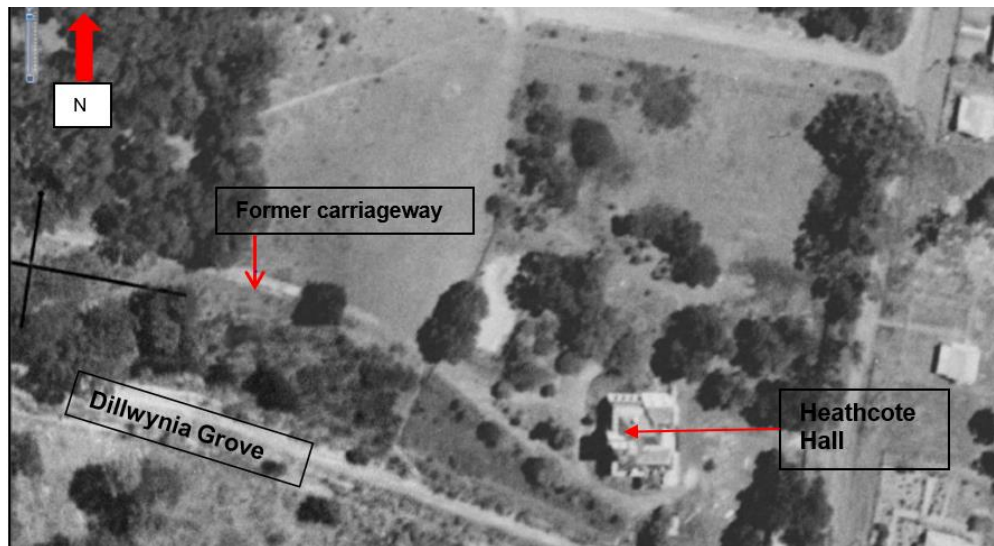


Figure 2 Development zones based on the gradings of significance (image taken from the CMP)

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 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(K)**). 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, of particular concern was the location of buildings in relation of the 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)*

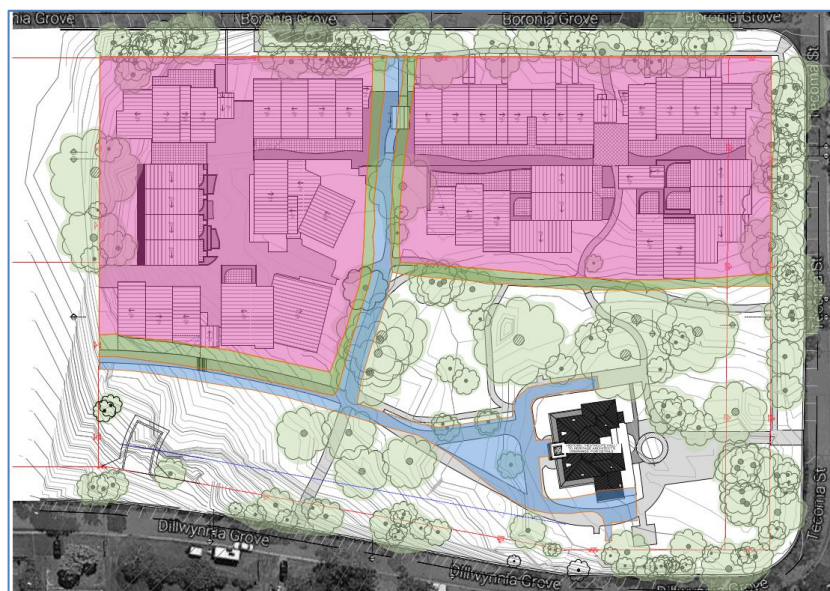
The archaeological investigation identified evidence of gravel metalling and stones, confirming the alignment of the former carriageway/east-west drive, refer to Figure 5 below. In response the development has been amended to be located out of the former carriageway to the satisfaction of the Heritage 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 27 June 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.”

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*



## 9.2 Height of Buildings and Clause 4.6 Variation to Building Height Control

The applicant seeks a variation to the building height standard of 8.5m in accordance with the SSLEP 2015, for both Building A and Building B. The Clause 4.6 Variation submitted indicates that the height of Building A and B are as identified in Figure 7 below.

The maximum variations for each building height point as measured to the roof and lift overrun as obtained from the Sections prepared by Ink Architects are:

Element	Height (m)	Variance to 8.5m Control (m)	Variance (%)
DA 11 Section B-B	9.545 m	1.045 m	12.29 %
DA 23 Section H-H	8.797 m	0.297 m	3.49 %

Please refer to Section Plans DA11 and DA 23 included with this development application which include annotations of the relevant LEP height lines to visually demonstrate the extent of height non-compliance of Building A and Building B.

Figure 7 Building Height as per the Clause 4.6 Variation submitted by the applicant

The relevant portion of the definition of 'building height' contained in SSLEP 2015 reads:

*'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,*

*.....*

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

Based on this definition, it is agreed with the Clause 4.6 Variation, that the maximum height of Building A is 9.54m measured from the existing ground level at its highest point.

However, it is not agreed that the maximum height of Building B is 8.79m as presented by the applicant in Figure 7 above. Based on an assessment of all information submitted, the applicant has measured the height of Building B through the centre line of the building as shown in Figure 8 below, identified by the "X", at which the height of Building B is 8.79m.



Figure 8 Line showing Section H-H through Building B

This is contrary to the SSLEP 2015 definition of *building height*, as the site continues to slope down towards the south west and therefore the height as measured by the applicant is inaccurate. When measured in accordance with the definition in the SSLEP 2015, the maximum height should be measured at point “X” as shown in Figure 9 below, resulting in a maximum height of 9.3m.



Figure 9 Height of Building B, to be measured at point “X”.

The applicant was requested to clarify the height consistent with the SSLEP 2015, however they maintain that the maximum building height for Building B is 8.79m, and that the height should be measured at the point that Section H-H meets Building B, as per Figure 8 above.

Based on an assessment the applicant has failed to measure building height in accordance with the SSLEP 2015, and the Clause 4.6 submitted for assessment is incorrect and invalid and cannot be relied upon to justify the variation of the building height development standard.

Whilst the Clause 4.6 variation has been assessed as inaccurate and invalid an assessment against Clause 4.6 of the SSLEPP 2015 has been undertaken.

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 9** and the most relevant section is reproduced below:

*“The objectives of the zone are addressed below.*

*The proposed minor variation to height standard will not conflict with these objectives. The proposed minor height variation does not result in any impact to the planned density for the site. The envisaged development will complement the desirable attributes and character of the area by providing a better amenity outcome than a height complying scheme or non-restored heritage item.*

*The proposal in accordance with the CMP, Heritage Impact Statement, Heritage Landscape Plans and Arboricultural Report ensures restoration and protection of existing mature trees and gardens which promotes better site lines, streetscape and views*

*The proposed variation to the height standard will not conflict with these objectives as the proposed strata subdivision will fund the restoration of the heritage item and natural features, promote view sharing between new and existing development, incorporate communal spaces which will enhance and define the streetscape in a positive manner.”*

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

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

*The variation is therefore considered appropriate in the circumstances of the case.”*

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.*



Through the submission of amended plans in response to the Deferred Matters, the applicant has failed to demonstrate that the proposed residential flat buildings satisfy Clause 4.3(1) of the SSLEP 2015. The applicant has failed to establish that the scale of these buildings, measuring a height of 9.54m for Building A and height of 9.3m for Building B, are compatible with adjoining development. The bulk and scale of the proposed residential flat buildings, as a result of their excessive height, are not consistent with the existing and desired future scale of residential development in this setting and locality.

In the previous assessment report, 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 failed to address this matter, and the height of Building A has not been reduced to 9.1m in order to satisfy the Deferred Matter. As this building has not been amended at all, and Building A presents an unacceptable bulk and scale and will have visual impacts upon the locality.

In the previous assessment report, it was identified that *“The reduction in height of Building B will provide a transition to the residential development to the south and west...”*. The applicant has failed to address this matter, as they have not proposed a building compliant with the 8.5m height as required by the Deferred Matter and the SSLEP 2015.

The applicant has provided a diagram indicating the extent of non-compliance regarding Building B (Figure 10 below).

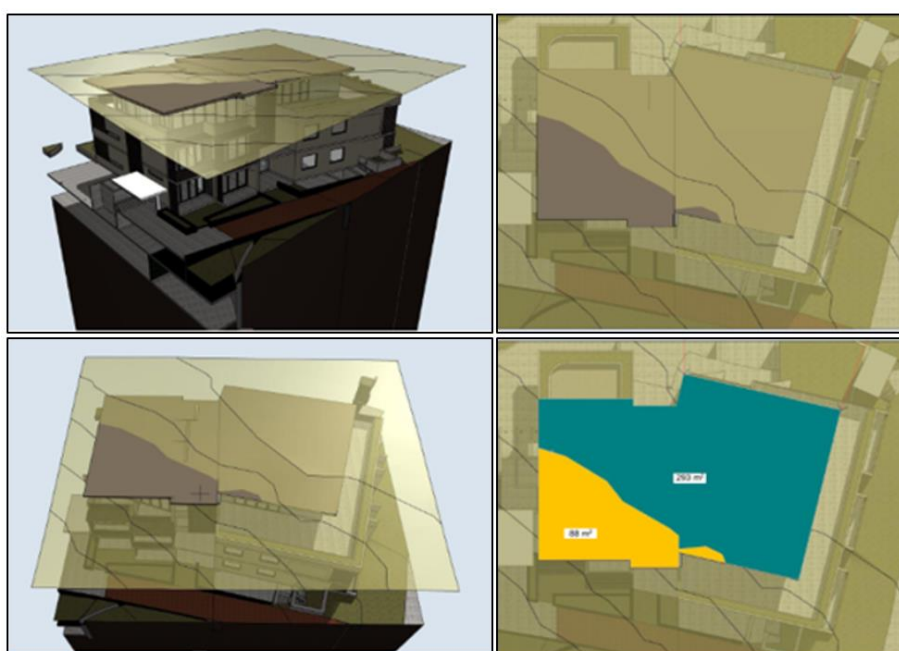


Figure 10 Height Plane of Building B showing extent of non-compliance (as per Plan DA10HP Issue C)

According to the applicant, Figure 10 demonstrates of the 381m<sup>2</sup> roof area, 88m<sup>2</sup> or 23% of this area is over the 8.5m building height plane.

A comparison of the current plans and the plans presented to the SSPP on 28 June 2018, indicate that the second floor plan/layout of Building B has not changed, however the roof has been extended towards the south and east, increasing the apparent bulk of Building B, as seen in Figure 11 and Figure 12 below.

Whilst a partial reduction in height of Building B has occurred the figures below demonstrate that, the roof has been extended and will be more visible from the public domain. The non-compliant height and extended roof height cannot be supported.



Figure 11 Second Floor Plan (left) and Roof Plan of Building B (right) (as presented at 28 June 2018 SSPP meeting)

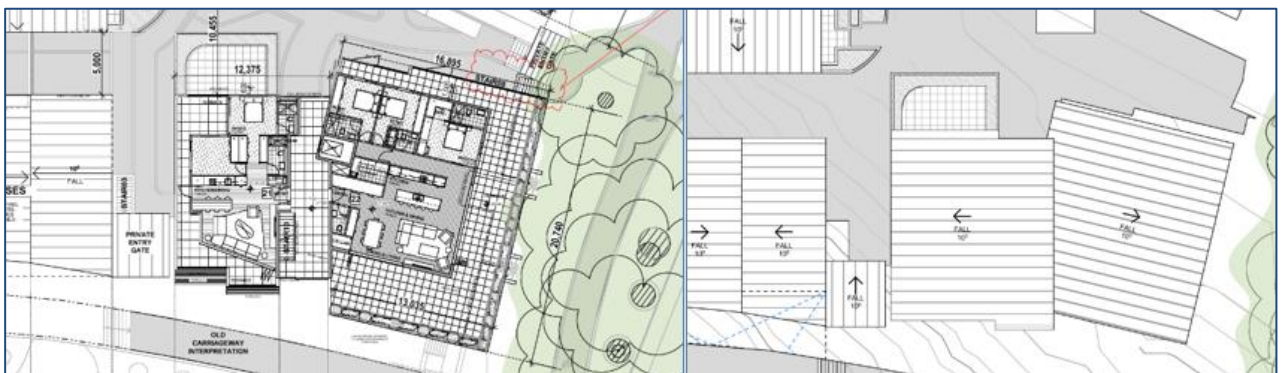


Figure 12 Second Floor Plan (left) and Roof Plan of Building B (right), as currently proposed.

The changes made to Building B has failed to resolve the height issues identified in the original assessment report (**Appendix 2**), which is located at a sensitive interface with the adjacent low scale residential development. As a result this building presents an unacceptable bulk and scale and will have visual impacts upon the locality.

The height of each of the proposed residential flat buildings has not adequately addressed nor resolved the visual intrusion upon the locality and adjoining properties as demonstrated in Figure 13 and Figure 14 below, as per Clause 4.3 (1)(c) and (d) of the SSLEP 2015. The residential flat buildings will be

visible in particular from the west and south. The applicant has failed to minimise the visual intrusion in response to the Deferred Matters.

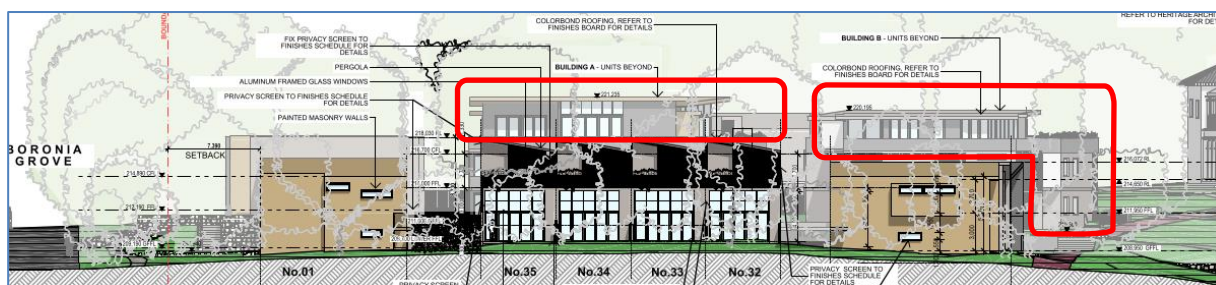


Figure 13 Western view of the site, with the residential flat buildings identified in red.

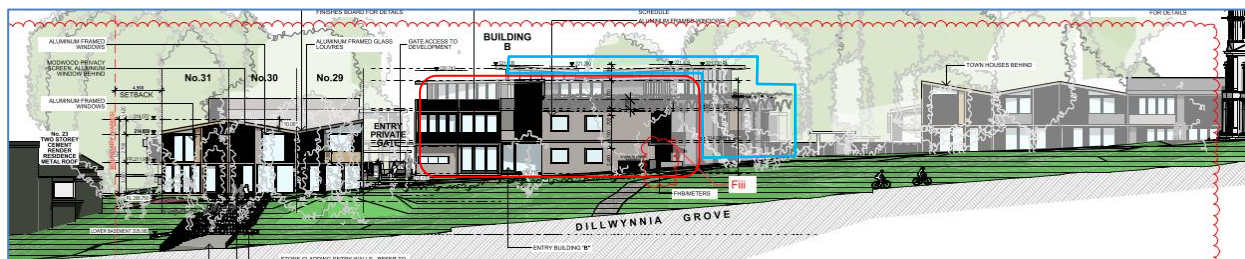


Figure 14 Southern view of Building B (identified in red) and Building A identified in blue

As a consequence of the proposed height of both Building A and B, the development does not address nor satisfy Clause 4.3(1)(a) of the SSLEP 2015.

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

#### Zone E4 Environmental Living

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

With regards to the height breaches, the development has not adequately responded to the objectives of the E4 Environmental Living zone, that do not anticipate development of this scale,

notwithstanding the Heritage Provisions of Cl5.10(10) of the SSLEP 2015. In particular, the cumulative impacts of the development upon this site and the locality, with regards to building height. As discussed above, and in the previous report, the residential flat buildings present an unacceptable bulk and scale and will have visual impacts upon the locality.

The bulk and scale issues raised in the previous report have not been adequately resolved through the submission of amended plans in response to the Deferred Matters.

The previous report recommended a reduction in height of both residential flat buildings to improve the visual relationship with the surrounding development and to more closely align with the maximum permissible building height of 8.5m as per the SSLEP 2015. The impacts of the excess height upon the character of the area (current and desired) has not been achieved through the amended plans submitted.

In conclusion, the requested variation to the building height development standard is incorrect and invalid; the information provided by the applicant cannot be relied upon and therefore fails to satisfy the provisions of Clause 4.6 of the SSLEP 2015. In addition the applicant has failed to adequately justify and adequately demonstrate through plans and supporting documents, that the proposal satisfies the requirements of Clause 4.6 of the SSLEP 2015.

The applicant has failed to demonstrate that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case; and that there are sufficient planning grounds to justify a departure from the 8.5m height limit control for both Building A and B.

The applicant has also failed to address the Deferred Matters regarding building height.

As a result of the failure to amend the height of Buildings A and B, the proposed height of Building A and Building B is not in the public interest as the proposal fails to comply with the objectives for height contained within Clause 4.3 of the SSLEP 2015 and a number of objectives of the E4 Environmental Living Zone.

The proposed height breaches are contrary to the objectives set out in Clause 4.3 of the SSLEP2015 above. The development does not provide a transition in building scale or minimise impacts upon visual intrusion. Building A and B have not been appropriately designed to provide an adequate response to the bulk and scale of the locality, nor have they been designed to reduce the impacts upon the streetscape and adjoining properties.

The proposed variation raises matters of State environmental planning significance, as the amended plans have not been able to resolve a number of design quality principles of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development, as identified above in Table 4.

As a result, the application cannot be approved.



### 9.3 Clause 5.10(10) of the Sutherland Shire Local Environmental Plan 2015

The proposal has been applied for under the heritage provisions of Clause 5.10(10) of the Sutherland Shire LEP 2015. Clause 5.10(10) of the SSLEP 2015 reads as follows:

#### **(10) Conservation incentives**

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

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

As a result of the above assessment regarding height, it has not been adequately demonstrated that the development can satisfy Clause 5.10(10)(e) of the SSLEP 2015. The above assessment of height demonstrates that the proposed development would have “significant adverse impact upon 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). The previous assessment against Clause 5.10(10) (a) to (c) is still relevant in this instance and can be found in **Appendix 2**. However, a revised assessment against Clause 5.10(10) (d) and (e) against the revised information has been undertaken:

- 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.*

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 8**) 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 applicant has not been able to demonstrate that the height of either residential flat buildings has been amended in accordance with the Deferred Matter. This has resulted in a failure to satisfy this subclause. The applicant has not provided an appropriate design and height response to the deferred matters and concerns regarding height raised in the previous report. Therefore this matter has not been adequately resolved to address amenity impact upon the surrounding area.

As a result of the non-compliant building height of 8.5m in accordance with the SSLEP 2015, the development does not satisfy nor demonstrate that the development would not have any significant and adverse effect on the amenity of the surrounding area, and therefore the application cannot be supported.

#### **9.4 Urban Design, Massing**

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.

Whilst the townhouses indicate a high standard of urban design and provides a variety of housing types, the application has failed to satisfy matters in relation to a number of setbacks to Boronia Grove in response to the Deferred Matters. Originally 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”*

There are still a number of dwellings (4-7) that have not been amended in accordance with the Deferred Matter regarding setbacks as discussed above in Section 1.1, therefore not responding appropriately to the streetscape nor minimising visual intrusion.

With regards to non-compliant building height of Building A and B, the information contained within the revised application, it has not been adequately demonstrated that the design and bulk of these buildings can satisfy the provisions of Clause 6.17 of the SSLEP 2015. The revised application has failed to demonstrate that the proposed residential flat buildings will not impact upon visual intrusion, the quality of the streetscape. The amended application has failed to propose a development of an appropriate size, bulk, height, scale and siting as discussed above.

The amended development has not adequately addressed the urban design outcomes required by Clause 6.16 and 6.17. The application has failed to satisfy these matters for consideration in particular it fails to strengthen or integrate into the existing or desired character of the streetscape or locality.

### **9.5 Rural Fires Act 1997**

Council records indicate that the site is bushfire prone land. The applicant has included a Bushfire Assessment Report with their development application. The proposal is integrated under the Rural Fires Act 1997, and was referred to the Rural Fire Service for their General Terms, which were issued on 27 April 2018 (**Appendix 1 (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 8**).

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.

### **9.6 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.

## **10.0 DEVELOPER CONTRIBUTIONS**

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

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

## **11.0 DECLARATION OF AFFILIATION**

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

## 12.0 CONCLUSION

The proposed development is for restoration of a State Heritage Item, including surrounding gardens, two levels of basement parking, two residential flat buildings containing 10 dwellings each; and 35 multi dwellings at 1-21 Dillwynnia 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 since the 28 June 2018 meeting (including submissions made during this meeting) have been discussed in **Appendix 4**.

The majority of the Deferred Matters have been satisfied, however the amended proposal includes a variation to height and setbacks of townhouses to Boronia Grove. The Deferred Matter regarding height has not been satisfied, and further the height of Building A and B is contrary to the building height control of the SSLEP 2015. These variations have been discussed and cannot be supported for reasons discussed above.

The application has been assessed having regard to the Heads of Consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and the provisions of Sutherland Shire Local Environmental Plan 2015 and all relevant Council DCPs, Codes and Policies. The application will result in impacts on amenity and character of the locality. Following assessment, Development Application No. 17/0467 cannot be supported for the reasons outlined in this report.

## RESPONSIBLE OFFICER

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