



DETERMINATION AND STATEMENT OF REASONS
SYDNEY SOUTH PLANNING PANEL

DATE OF DETERMINATION	Friday, 13 December 2019
PANEL MEMBERS	Helen Lochhead (Chair), Bruce McDonald, Nicole Gurran, Steve Simpson, Jack Boyd
APOLOGIES	None
DECLARATIONS OF INTEREST	Michael Forshaw voted on a resolution at a Sutherland Shire Council meeting on 19 June 2017, relating to Heathcote Hall, resolving that Council submit a statement to the SSPP bringing to its attention the genuine concerns of the local community, and requesting the Panel listen to those concerns and give them very close consideration in making its decision. Michael Forshaw did not participate in the panel for this matter.

Public meeting held at Sutherland Shire Council, 4-20 Eton Street, Sutherland on 13 December 2019, opened at 12.35pm and closed at 4pm.

MATTER DETERMINED

2017SSH019 – Sutherland – DA17/0467 at 1-21 Dillwynnia Grove, Heathcote – Refurbishment and restoration of Heathcote Hall, construction of 35 townhouses and 20 apartments, associated landscape works and 56 lot strata subdivision. (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Sutherland Shire Local Environmental Plan 2015 (LEP), to vary provisions of CL 4.3(1) the Panel is satisfied the request has demonstrated that:

- a) compliance with cl. 4.3(1) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3(1) of the LEP and the Conservation Incentives of Cl. 5.10.10 of the LEP and the objectives for development in the E4 Environmental Living zone; and
- c) the concurrence of the Secretary has been assumed.

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 3:2 in favour, against the decision were Steve Simpson and Jack Boyd.

REASONS FOR THE DECISION

The Panel concludes that the proposal satisfies the provisions of Clause 5.10.10 of the Sutherland Shire Local Environment Plan 2015 and accordingly the Panel may consent to the development within the applicable E4 Environmental Living zone.

Having considered the assessment made of extensive amendments required to the proposed development following earlier consideration of this application the panel considers these amendments have appropriately addressed the issues raised in those earlier considerations.

The Panel further considers:

- The proposed development of the site with the extent and form of housing proposed will facilitate the conservation, restoration, future use and maintenance of Heathcote Hall. The development will also add to the supply and choice of housing within the Sutherland Shire and the Sydney South District.
- The proposed development adequately satisfies the relevant State legislation including the Heritage Act 1977 and the Rural Fires Act 1997. In that regard the Panel notes the Heritage Council of NSW and the NSW Rural Fire Service have issued general terms of approval which are imposed as conditions of consent.
- Subject to the conditions imposed, the proposed development adequately satisfies the relevant State Environmental Planning Policies including SEPP65 – Design Quality of Residential Apartment Development and its associated Apartment Design Guide and SEPP (Infrastructure) 2007 and SEPP 55- Remediation of Land.

In regard to SEPP 55 an amended condition requiring submission of a site remediation plan has been imposed.

In regard to SEPP 65 the Panel recognises that while the subject site is located in a context of predominantly detached housing the building effectively responds to that context and has been assessed on merit as being acceptable and to not significantly impact on the surrounding area.

- The proposal adequately satisfies the applicable objectives and provisions of Sutherland Shire LEP 2015 and Sutherland Shire DCP 2012. In this regard the Panel notes that while subject site is zoned E4 Environmental Living. The conditions imposed will ensure the provisions of Cl. 5.10(10) of Sutherland Shire LEP 2015 are satisfied.
- The proposed development subject to the conditions imposed will have no unacceptable adverse impacts on the natural or built environments including the amenity of housing located nearby, unacceptable loss of views or the operation of the local road system.

In consideration of the conclusions above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest

Steve Simpson and Jack Boyd disagreed with the majority decision for the following reasons:

After consideration and discussion within the Panel, they are of the opinion that the proposal is not in the public interest; does not conform with the character and desired future locality of the East Heathcote area; and does not demonstrate that the proposal would not have significant adverse effect on the amenity of the surrounding area. Accordingly, the proposal should not be approved.

They consider that approval of the proposal would establish an undesirable precedent that would fundamentally change the character of the surrounding area, which is zoned *E4 Environmental Living*.

They note that key objectives of the E4 zoning are:

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

In their opinion, the proposal does not minimise or mitigate (and in fact may increase) the well documented risks put forward when developing the zoning for this area.

Steve Simpson and Jack Boyd are of strong opinion that the proposal is out of character for the East Heathcote area. If approved, the proposal would introduce new density forms that are not consistent with its immediate surrounds and would result in unacceptable visual impacts due to its scale, visual dominance and stark contrast to the present character of East Heathcote.

They consider that the renovation of Heathcote Hall to be the only unique public benefit offered by the proposal. We do not consider this identified public benefit to be sufficient to offset the adverse impacts on amenity that would be caused by the proposal.

On balance, Steve Simpson and Jack Boyd are of the opinion that approval of the proposal is not in the public interest because the intensity of the development has significant impacts on the character and amenity of East Heathcote, which outweigh the community benefit that stems from the restoration of Heathcote Hall.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with amendments to conditions. The conditions are as follows:

2 Remedial Action Plan

A. Prior to Issue of any Construction Certificate

A Remedial Action Plan must be prepared by an appropriately qualified and experienced environmental consultant in accordance with relevant NSW EPA Guidelines including, but not limited to “Guidelines for Consultants Reporting on Contaminated Sites 2011.”

The environmental consultant must be certified by one of the following certification schemes:

- EIANZ ‘Certified Environmental Practitioner - Site Contamination’ scheme (CEnvP SC).
- Soil Science Australia ‘Certified Professional Soil Scientist - Contaminated Site Assessment & Management’ scheme (SSA CPSS CSAM).

The Remedial Action Plan must set remediation goals to ensure the site will be made suitable for the proposed development and will not pose any unacceptable risk to human health or the environment. The Remedial Action Plan must also include an environmental site management plan, a work health & safety plan and an unexpected

finds protocol. The Remedial Action Plan must also consider and be consistent with the Conservation Management Plan and any other approval granted by the NSW Heritage Council.

The Remedial Action Plan must be reviewed by a NSW EPA accredited site auditor. As part of the site audit review, the applicant must act in accordance with and comply with any requirements stipulated by the NSW EPA accredited site auditor, which may include further site investigation and the preparation of a long-term environmental management plan. The applicant must also modify the Remedial Action Plan as and if required by the NSW EPA accredited site auditor.

The accredited site auditor must provide verification of the suitability of the Remedial Action Plan and any associated environmental management plans, in the form of an interim site audit advice letter or a section B site audit statement and these must be submitted and approved to the satisfaction of Sutherland Shire Council, Manager Environmental Science, prior to the issue of any Construction Certificate.

5 Restoration of Heathcote Hall

The restoration and any conservation works of Heathcote Hall and the heritage landscape area, shall be completed prior to the issue of any occupation certificate for any element of the residential development, to the satisfaction and approval of the NSW Heritage Council of NSW.

26 Construction Environmental Management Plan (ENG9002)

A. Design

A Construction Environmental Management Plan (CEMP) must be prepared by an appropriately qualified, experienced and certified environmental consultant to manage and control all aspects of environmental site management throughout the development

The environmental consultant must be certified by one of the following certification schemes:

- EIANZ ‘Certified Environmental Practitioner’ scheme (CEnvP).
- Soil Science Australia ‘Certified Professional Soil Scientist’ scheme (SSA CPSS).

The CEMP must be submitted to Sutherland Shire Council, Director, Shire Planning, for approval prior to the issue of any Construction Certificate. If demolition is to commence prior to the issue of any Construction Certificate, the applicant must submit to Sutherland Shire Council, Director, Shire Planning, a separate Demolition Site Management Plan. These plans must satisfy the Objectives and Controls of Sutherland Shire Development Control Plan 2015 relating to environmental site management, and the following:

- (i) The CEMP must be prepared in accordance with the “Guidelines for the Preparation for Environmental

Management Plans”, by NSW Department of Infrastructure, Planning & Natural Resources (2004).

- (ii) The CEMP must be consistent with the management measures and controls stipulated by other plans relevant to the site including, but not limited to, the Remedial Action Plan. The CEMP must also consider and be consistent with the Conservation Management Plan and any other approvals granted by the NSW Heritage Council.
- (iii) The CEMP must address, but not be limited to, the following:
 - a) Description of works.
 - b) Details of all contractors involved with the project.
 - c) Protection of existing trees and vegetation i.e. tree protection zones etc.
 - d) Identification of all vegetation that is to be retained and the measures proposed to protect vegetation (including fencing, mulching, watering, erection of signs excluding access to the protection zone, etc), and identification of revegetation area.
 - e) All trees and their protection zones on and around the site that are identified for retention are to be protected according to Australian Standard AS 4970 – 2009 ‘Protection of Trees on Development Sites’ using the methods outlined in that Standard.
 - f) Environmental awareness and training of contractors.
 - g) Compliance with legislation and regulations.
 - h) Measures to prevent noise, water, air and land pollution, including detail on the control of airborne dust for all aspects of the proposed works.
 - i) Actions and method to be employed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery, and the like.
 - j) Safety and security of the entire work site, road and footpath area; including details of any proposed fencing, signage, hoarding and lighting, as required.
 - k) All construction traffic is to be restricted to using Wilson Parade, Boronia Grove, Dillwynnia Grove and Tecoma Street only.
 - l) Details regarding parking provision for all construction vehicles within the site.
 - m) Method and details of loading and unloading excavation machines, construction materials etc.
 - n) Details of how and where construction material and any waste materials will be appropriately managed, stored and disposed of.
 - o) Details of any fuel storage and management.
 - p) Detailed erosion and sediment control measures including methods to prevent material impacting adjoining roadways, neighbouring land and the Royal National Park.
 - q) Unexpected Finds Protocol i.e. to address unexpected finds of soil or groundwater contamination.
 - r) Work, Health & Safety requirements.
 - s) Contingency and emergency response plans.
 - t) Inclusion of detailed site plans.
 - u) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be certified by a Certifier accredited in civil

engineering.

Note: The footpath and road reserve must not be used for construction purposes (including storage of skips or building materials, standing cranes or concrete pumps, erecting hoardings, or as a construction zone) unless prior approval has been granted by Council under the *Roads Act 1993*.

B. Prior to Commencement and issue of Construction Certificate

The CEMP must be approved by Sutherland Shire Council, Director, Shire Planning; prior to the issue of any Construction Certificate.

C. During Works

The site management measures set out in the above plan must remain in place and be maintained throughout the period of works until the site is stabilised and landscaped.

D. Before Occupation

Before the issue of any Occupation Certificate, all foundations / materials associated with construction works (that do not form part of the approved works) must be removed. This includes but is not limited to foundations for tower cranes, vehicle access ways, stockpiles, building waste etc.

34 Supervising Environmental Consultant (ENV9001)

A. Before Commencement

The applicant must engage an appropriately qualified and experienced environmental consultant to supervise all aspects of site remediation, site validation and environmental site management matters.

The environmental consultant must be certified by one of the following certification schemes:

- EIANZ ‘Certified Environmental Practitioner - Site Contamination’ scheme (CEnvP SC).
- Soil Science Australia ‘Certified Professional Soil Scientist - Contaminated Site Assessment & Management’ scheme (SSA CPSS CSAM).

B. Before Works and issue of any Construction Certificate

The applicant must provide clear evidence of the appointment of the supervising environmental consultant to the satisfaction and approval of Sutherland Shire Council, Manager Environmental Science, prior to the commencement of any works or the issue of any Construction Certificate, whichever occurs first.

C. During Works

The certified environmental consultant must supervise all aspects of site remediation and validation and onsite environmental management to ensure compliance with the approved plans.

35 Site Remediation (Env 9002)

A. During Works

The site must be remediated in accordance with the Remedial Action Plan under the supervision of the supervising environmental consultant.

Any required variations to the Remedial Action Plan, must be notified to Sutherland Shire Council, Manager, Environmental Science; and approved by the NSW EPA accredited site auditor, prior to implementation.

36 Site Validation

A. Prior to Occupation and Issue of Occupation Certificate

On completion of site remediation, a Validation Report must be prepared by an appropriately qualified and experienced environmental consultant in accordance with, but not limited to, the NSW EPA 'Guidelines for Consultants Reporting on Contaminated Sites' 2011.

The environmental consultant must be certified by one of the following certification schemes:

- EIANZ 'Certified Environmental Practitioner - Site Contamination' scheme (CEnvP SC).
- Soil Science Australia 'Certified Professional Soil Scientist - Contaminated Site Assessment & Management' scheme (SSA CPSS CSAM).

The Validation Report must verify that the site has been remediated in accordance with the Remedial Action Plan. The validation report must also verify that the site is suitable for the proposed development.

If a long-term environmental management plan is required through the site audit review process, such a plan must be prepared by an appropriately qualified and experienced environmental consultant. This plan must also be reviewed by the NSW EPA accredited site auditor.

The Validation Report must be reviewed by a NSW EPA accredited site auditor and a Site Audit Statement issued to certify that the land is suitable for the proposed development. The Site Audit Statement must be submitted to the satisfaction, and approval of Sutherland Shire Council, Manager, Environmental Science prior to occupation and issue of any occupation certificate.

38 Potential Contaminated Land - Unexpected Finds

A. During Works

If unexpected soil and/or groundwater contamination is encountered during any works; all work must cease and the situation must be promptly evaluated by the supervising environmental consultant. The contaminated soil and/or groundwater must then be managed under the supervision of the environmental consultant, in accordance with the Unexpected Finds Protocol within the Remedial Action Plan, as endorsed by the NSW EPA accredited site auditor.

B. Prior to recommencement of works

If unexpected contaminated soil or groundwater is treated and/or managed onsite; the supervising environmental consultant must verify that the situation was appropriately managed in accordance with relevant NSW EPA guidelines.

The verification documentation must be provided to the satisfaction and approval of the Principal Certifier **and** Sutherland Shire Council, Manager Environmental Science, prior to the recommencement of any works.

39 Management of Site Soil / Fill Material

A. During Works

i) Disposal of site soils

Any soils to be excavated and disposed of from the site must be analysed and classified by an appropriately qualified and experienced environmental consultant, in accordance with the Remedial Action Plan, and relevant NSW EPA guidelines including the “Waste Classification Guidelines” 2014, prior to off-site disposal.

The environmental consultant must be certified by one of the following certification schemes:

- EIANZ ‘Certified Environmental Practitioner - Site Contamination’ scheme (CEnvP SC).
- Soil Science Australia ‘Certified Professional Soil Scientist - Contaminated Site Assessment & Management’ scheme (SSA CPSS CSAM).

Excavated material is to be transported to an appropriately licensed waste facility by an EPA licensed waste contractor in accordance with relevant NSW EPA guidelines.

With respect to fill material classified as special waste (asbestos); the waste facility must be licensed to accept asbestos waste.

ii) Reused soils

Any existing soils excavated to be reused on the site must be assessed by an appropriately qualified and experienced environmental consultant in accordance with the National Environment Protection (Assessment of

Site Contamination) Measure 1999 (amended 2013) and any relevant guidelines approved under the *Contaminated Land Management Act 1997*; to verify that the material is suitable for the intended land use, prior to reuse.

Any soils not suitable for the intended land use must be removed from site and disposed of in accordance with i) above.

iii) Importation of fill material

Any fill material that is imported onto the site must comprise Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM) or other suitable material in accordance with the relevant Resource Recovery Exemption issued under the Protection of the Environment Operations (Waste) Regulation 2014.

54 Demolition and other Building Work including Heritage Restoration - (HLT5015)

To ensure that demolition of structures and other building work, including Heritage Restoration, is carried out in an environmentally acceptable and safe manner:

A. Before Commencement

If works involve the removal of more than 10 square metres of asbestos material, a bonded asbestos licence is required, any removal of asbestos must also be consistent with the requirements of the Remedial Action Plan. A friable asbestos licence is required to remove, repair or disturb any amount of friable asbestos. For further information contact SafeWork NSW.

B. During Works

- i) The demolition or works to any building/s or structures must be carried out strictly in accordance with Australian Standard 2601 - The Demolition of Structures.
- ii) The applicant must ensure that the demolition contractor has a current public risk insurance coverage for a minimum of \$5 million. A copy of the Policy must be submitted to the Council prior to demolition.

To ensure that the removal and transportation of any asbestos material, regardless of the quantity, is carried out in an environmentally acceptable and safe manner, all work must comply with the following:

- a) Work Health and Safety Act 2011;
- b) Work Health and Safety Regulation 2011;
- c) Safe Work Australia Code of Practice - How to Manage and Control Asbestos in the Workplace;
- d) Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC:2002(2005)];
- e) SafeWork NSW 'Working with Asbestos - Guide 2008';
- f) Protection of the Environment Operations Act 1997; and
- g) Protection of the Environment Operations (Waste) Regulation 2005.

Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW EPA to accept asbestos waste. Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m² or more of asbestos sheeting must be registered with the EPA on-line reporting tool WasteLocate. More information can be found at <<https://wastelocate.epa.nsw.gov.au>>.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- Amenity of the neighbours and community
- Response to local character
- Heritage management including use and ongoing maintenance
- Fire risk
- Construction impacts
- Traffic management
- Direct impacts on the adjoining properties including overshadowing, remediation and stormwater run-off

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting. The panel notes that in addressing these issues additional studies had been undertaken with regards to:

- the suitability of the alternate level crossing for evacuation and access by the RFS and Local Area Command including the testing of the crossing by emergency vehicles to demonstrate its viability
- the site contamination and condition amended accordingly, and a further condition was added to ensure restoration of Heathcote Hall before any occupation of the residential development be issued.

PANEL MEMBERS	
 Helen Lochhead (Chair)	 Bruce McDonald
 Nicole Gurran	 Steve Simpson
 Jack Boyd	

SCHEDULE 1

1	PANEL REF – LGA – DA NO.	2017SSH019 – Sutherland – DA17/0467
2	PROPOSED DEVELOPMENT	Refurbishment and restoration of Heathcote Hall, construction of 35 townhouses and 20 apartments, associated landscape works and 56 lot strata subdivision.
3	STREET ADDRESS	1-21 Dillwynnia Grove Heathcote
4	APPLICANT/OWNER	Applicant: Gustavo Thiermann, INK Architects Pty Ltd Owner: Fuzortinn Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy 55 – Remediation of Land ○ Draft State Environmental Planning Policy (Remediation of Land) ○ State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development ○ Heritage Act 1977 ○ Rural Fires Act 1997 ○ Sutherland Shire Local Environmental Plan 2015 ○ NSW Planning and Environment – Apartment Design Guide • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Sutherland Shire Development Control Plan 2015 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 28 November 2019 • Clause 4.6 variation request - height <ul style="list-style-type: none"> • Written submissions during public exhibition: 264 individuals or groups until June 2018; 55 groups/individuals from formal post meeting notification period (November 2018), and 3 groups/individuals from May/June 2019 notification 5 groups/individuals since August 2019 meeting. • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support – Nil ○ In objection – Brian O'Dowd- on behalf of <i>Save Heathcote East Community Group</i>, Dominique Passmore, Phil Targett – on behalf of <i>Save Heathcote East Group</i>, Ross Handley, Sandra Kilbourn, Russell Maddern, Wally Koppe, Barbara Koppe – on behalf of <i>Save Heathcote Action Group</i>, Ian Campbell, Tony Slattery – on behalf of <i>'Residents of Dillwynnia Grove Group'</i>, Ross Meldrum ○ Council assessment officer – Lisa Pemberton ○ On behalf of the applicant – Shane Geha, Paul Lalich, Gustavo Thiermann, John Innes, Tasman Storey, Barry Eadie

		<ul style="list-style-type: none"> • 15 written submissions handed to the panel at the 13 December 2019 meeting.
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 23 August 2017 • Site Inspection – 20 June 2018 • Public meeting (decision deferred) 28 June 2018. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Helen Lochhead (Chair), Bruce McDonald, Nicole Gurran, Steve Simpson, Michael Forshaw ○ <u>Council assessment staff</u>: Lisa Pemberton, Annette Birchall, Muhammad Mahmud, Mark Adamson, Claudia Miro, Leanne Mariani, Thomas Stanton and Barbara Buchanan • Public meeting (decision deferred) 21 August 2019. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Helen Lochhead (Chair), Bruce McDonald, Nicole Gurran, Steve Simpson, Jack Boyd ○ <u>Council assessment staff</u>: Lisa Pemberton, Annette Birchall, Carine Elias, Beth Morris, Tom Stanton • Site Inspection: 13 December 2019. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Helen Lochhead (Chair), Bruce McDonald, Nicole Gurran, Steve Simpson, Jack Boyd ○ <u>Council assessment staff</u>: Lisa Pemberton, Annette Birchall, Mark Adamson ○ <u>Other</u>: Scott Deller (NSW Rural Fire Service), Nathan Hesson (Transport – Sydney Trains) • Final briefing to discuss council's recommendation, 13 December 2019. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Helen Lochhead (Chair), Bruce McDonald, Nicole Gurran, Steve Simpson, Jack Boyd ○ <u>Council assessment staff</u>: Lisa Pemberton, Annette Birchall, Mark Adamson, Leanne Mariani
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report