



SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

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| Panel Reference | PPSSSH-171 |
| DA Number | DA24/0369 |
| LGA | Sutherland Shire |
| Proposed Development | <p>Demolition of existing structures and removal of trees. Construction of a mixed-use development comprising retail, a 'cold shell' commercial tenancy suitable for a future pub, and residential flat buildings (labelled as buildings A, B & C) comprising a total of 168 apartments, of which 25 apartments are to be provided as affordable housing.</p> <p>The proposal includes staged construction with Building A being part of Construction Stage 1 and Building B and C being part of Construction Stage 2.</p> <p>It is noted that the applicant has lodged an appeal with the Land & Environment Court on 2 October 2024 against the 'deemed refusal', non-determination of the application.</p> |
| Street Address | 1323-1329 Princes Highway, Heathcote |
| Applicant Owner | Kathleen McDowell (Dickson Rothschild) Heathcote Tavern 1 Pty Ltd and Heathcote Tavern 2 Pty Ltd |
| Date of DA lodgement | 16 July 2024 |
| Number of Submissions | 18 |
| Recommendation | Refusal |
| Regional Development Criteria (Schedule 6 of the SEPP Planning Systems 2021) | Clause 2, Schedule 6 - Capital Investment Value exceeds \$30m. |
| List of all relevant s4.15(1)(a) matters | <ul style="list-style-type: none">• Environmental Planning and Assessment Act 1979.• Water Management Act 2000.• State Environmental Planning Policy (Planning Systems) 2021.• State Environmental Planning Policy (Resilience and Hazards) 2021.• State Environmental Planning Policy (Sustainable Buildings) 2022.• State Environmental Planning Policy (Biodiversity and Conservation) 2021.• State Environmental Planning Policy (Housing) 2021.• Apartment Design Guide.• State Environmental Planning Policy (Transport and Infrastructure) 2021.• Sutherland Shire Local Environmental Plan 2015.• Sutherland Shire Development Control Plan 2015.• Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.• Building Code of Australia. |

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| | <ul style="list-style-type: none"> • Australian Standards. • NSW Fire and Rescue Access fir Fire Brigade Vehicles and Firefighters. • NSW Contaminated Land Management Act (1997). • NSW Contaminated Land Management Regulation (2022). • Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019. • NSW EPA, <i>Guidelines for the implementing of the Protection of the Environment (Underground Petroleum Storage Systems) Regulation 2019</i> (2020). • NSW Government Development Near Rail Corridors and Busy Roads – Interim Guideline. • Sutherland Shire Environmental Specification 2020 Waste Collection for New Multi-Dwelling Housing and Residential Flat Buildings. • Sutherland Shire Environmental Specification 2009 Stormwater Management. |
| List all documents submitted with this report for the Panel's consideration | <ul style="list-style-type: none"> • Architectural, Landscape, Civil and Ancillary Plans • Statement of Environmental Effects • Access Report • Acoustic Assessment • Arborist Report • BASIX Certificate and NATHERS Certificate • BCA Assessment Report • Clause 4.6 Contravention Assessment (x2) • Construction and Traffic Management Report • Design Verification Statement • Detailed Site Investigation Report • Geotechnical Report • Operational Plan of Management • Survey Plan • Fire Services Assessment Report • Social Impact Assessment Report • Hydrogeological Assessment Report • Stormwater Design Report • Traffic and Parking Assessment Report • Waste Management Report |
| Report prepared by | Daniel Lukic, Senior Development Officer, Sutherland Shire Council |
| Report date | 24 February 2025. |

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? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

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 - building height
No - gross floor area**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Yes if approved.**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No – recommended for refusal**

REPORT SUMMARY

REASON FOR THE REPORT

Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 requires this application to be referred to the Sydney South Planning Panel (SSPP) as the development has a capital investment value of more than \$30 million. The application submitted nominates the value of the project as \$70,715,000.

The report recommends refusal of the application.

PROPOSAL

The application is for the demolition of existing structures, removal of trees, erection of a shop top housing development comprising retail, a 'cold shell' commercial tenancy suitable for a future pub, and residential flat buildings comprising a total of 168 apartments, of which 25 apartments are infill affordable housing. The development is proposed to be constructed in two stages.

THE SITE

The subject site is located 1323-1329 Princes Highway, Heathcote.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

- 1.0 That Development Application No. DA24/0369 for the demolition of existing structures and construction of shop-top housing constructed in stages at Lot 23 Section A DP 2499, Lot 24 Section A DP 2499, Lot 9 Section A DP 2499, Lot 10 Section A DP 2499, Lots 1 - 3 DP 455292, 1323-1329 Princes Highway, Heathcote is determined by the refusal of development consent for the reasons outlined below:
 - a) The application is unacceptable pursuant to s4.47 from the Environmental Planning and Assessment Act 1997, as insufficient information has been provided to WaterNSW to satisfy the provisions of the Water Management Act 2000 and general terms of approval have not been provided.

- b) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposal fails to satisfy the provisions of the State Environmental Planning Policy (Housing) 2021. The application does not provide the minimum gross floor area required to benefit from the gross floor and/or building height bonuses permitted by Sections 16 and 18. Additionally, as the application does not enjoy the benefit of the aforementioned bonuses, the written contravention request lodged pursuant to Clause 4.6 fails to demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.
- c) The application is considered unacceptable pursuant to the provisions of s4.151(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed development fails to comply with Clause 4.3(2) – Height of Buildings of Sutherland Shire Local Environmental Plan 2015. The written request fails to demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.
- d) The application is considered unacceptable pursuant to the provisions of s4.15 1(a)(i) of the Environmental Planning and Assessment Act, 1979, in that the proposed development fails to comply with Clause 4.4(2)– Floor Space Ratio of Sutherland Shire Local Environmental Plan 2015. No written request in accordance with Clause 4.6 in support of contravening Clause 4.4 of the SSLEP 2015 has been submitted for consideration.
- e) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental planning and Assessment Act 1979, as insufficient information has been submitted to satisfy the provisions of Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021. Specifically, the submission of a previous preliminary site investigation report that provides background information and information addressing on site conditions to enable a wholistic assessment of onsite contamination.
- f) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) and (iii) of the Environmental planning and Assessment Act 1979, as insufficient information has been submitted to satisfy the provisions of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 and Chapter 38 from the Sutherland Shire Development Control Plan 2015. Specifically, information relating to stormwater management and water measures to ensure the proposal will have minimal impacts upon the receiving waters of the Georges River Catchment and to determine if existing infrastructure has capacity to accommodate the additional stormwater generated by the development and/or establish if upgrades and/or onsite detention is required.

- g) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) and (iii) of the Environmental planning and Assessment Act 1979, as the application fails to satisfy the provisions of the State Environmental Planning Policy (Housing) 2021, Clauses 6.16 and 6.17 of the Sutherland Shire Local Environmental Plan 2015, Chapter 15 of the Sutherland Shire Development Control Plan 2015 and the Apartment Design Guide. Specifically, relating to urban design and form, compatibility with the existing and desired future character of the Heathcote Village, landform alteration, stormwater management, landscaping design outcomes, visual separation and boundary setbacks, vegetation protection, noise and ventilation requirements, solar access and crime prevention through environmental design.
- h) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental planning and Assessment Act 1979, as the application fails to satisfy the provisions of the State Environmental Planning Policy (Transport and Infrastructure) 2021, the NSW Department of Planning's Development Near Rail Corridors and Busy Roads - Interim Guideline, Australian Standard AS2890 and Chapter 36 from the Sutherland Shire Development Control Plan 2015, specifically:
- I) Insufficient information has been provided to satisfy section 2.120 regarding noise impacts to mitigate impacts from traffic noise,
 - II) The proposal will have unacceptable traffic impacts on the operation of the local road network, including the Princes Highway.
 - III) The application has failed to provide a traffic impact assessment report to investigate the impacts of the changes to the local road network, being the prohibition of right turn movements from both Veno and Strickland Streets onto the Princes Highway and the associated impacts of more traffic using other nearby intersections as a result.
 - IV) The proposal will create unacceptable pedestrian safety and will create conflicts with motor vehicles.
- i) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental planning and Assessment Act 1979, as the application as the proposal fails to satisfy the requirements of Australian Standard AS2890, Chapter 36 from the Sutherland Shire Development Control Plan 2015 and Council's Active Transport Strategy requirements. Specifically vehicular access, manoeuvrability, and circulation into and out of the site, and within the basement does not comply and the design of the access will create conflict between passenger motor and service vehicles.
- j) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental planning and Assessment Act 1979, as the proposal fails to adequately address the requirements of Australian Standard AS2890, Chapter 36 from the Sutherland Shire Development Control Plan 2015 and the Sutherland Shire Environmental Specification 2020 Waste Collection for New Multi-dwelling Housing and Residential Flat Buildings. Insufficient information has been provided to demonstrate waste collection can be undertaken in an efficient, effective manner, the need for swept paths, details to ensure the

minimum vertical clearance for the waste collection vehicle, and clarification on waste collection operations.

- k) The application is considered unacceptable pursuant to the provisions of s4.15(1)(c) of the Environmental Planning and Assessment Act 1979, as the proposed development is not suitable to the development site.
- l) The application is considered unacceptable pursuant to the provisions of s4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the development would set an undesirable precedent for similar inappropriate development and therefore not in the public interest.

ASSESSMENT OFFICER'S COMMENTARY

2.0 DESCRIPTION OF PROPOSAL

The development application (DA) seeks consent for a mixed use development that comprises:

- Demolition of existing buildings and structures on the site including the removal of trees.
- Erection of a shop top housing development comprising the following:
 - Two buildings, a residential flat building fronting Strickland Street (Building A) and a mixed use building with two wings (Buildings B and C) fronting the corner of Veno Street and the Princes Highway.
 - Building Heights ranging between 6 to 7 storeys.
 - Two commercial tenancies including a 'cold shell' commercial tenancy suitable for a future pub.
 - 168 apartments including 25 apartment categorised as affordable housing under *State Environmental Planning Policy (Housing) 2021*.
 - Three levels of basement parking, accommodating 249 cars (including 36 disabled spaces), 26 bicycle parking spaces and 11 motorcycle parking spaces, accessed from Veno Street and Strickland Street. The basements will also provide personal storage, resident and pub patron access, waste storage.
 - Landscaping, civil, site remediation and other ancillary works.

The development is proposed to be undertaken in two stages, being:

- Stage 1: The construction of Building A.
- Stage 2: The construction of Buildings Band C.

A site plan is provided below.

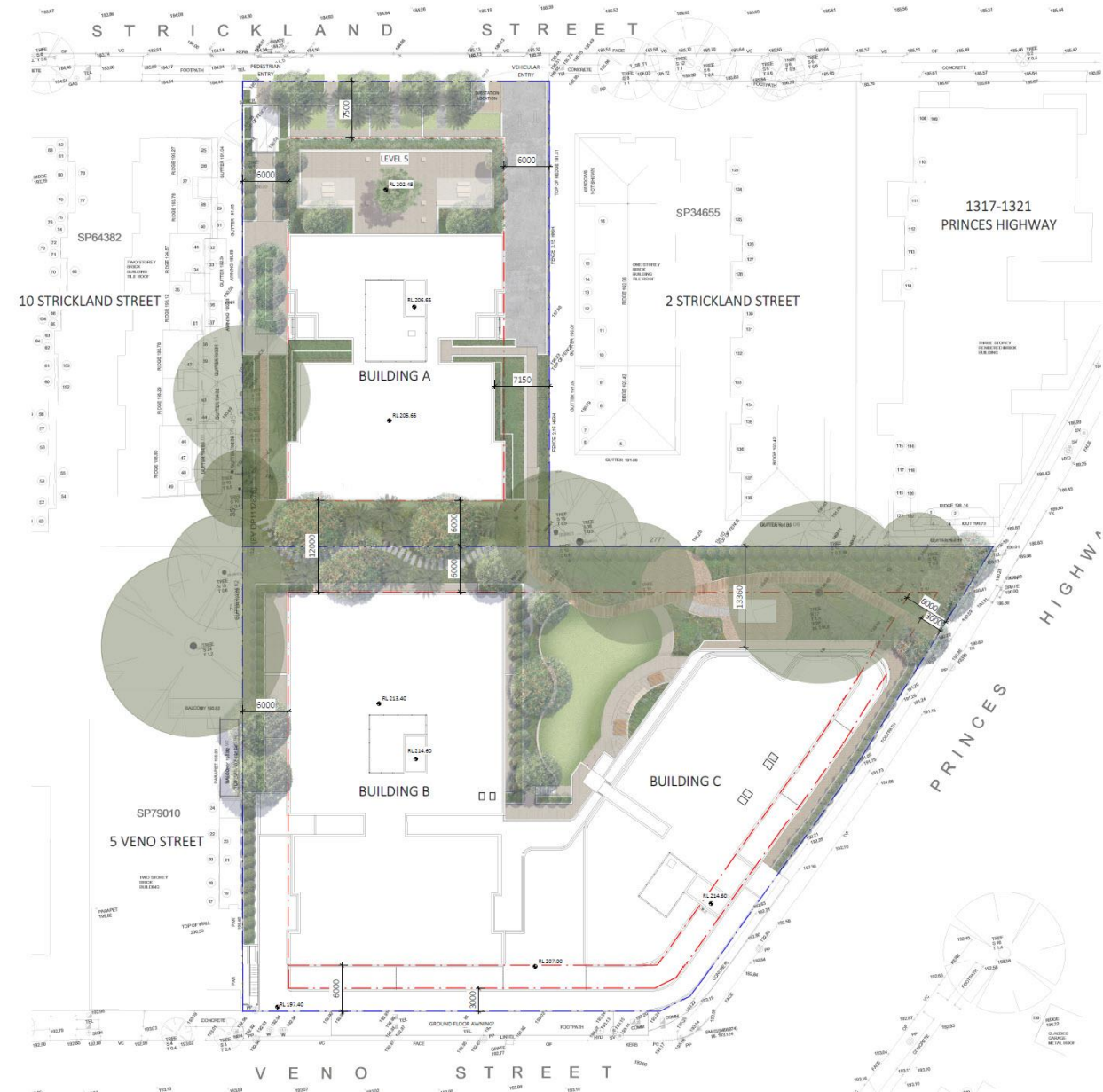


Image 1: Site Plan



Image 2: Artist Impression viewed from the Veno Street and Princes Highway intersection



Image 3: Artist Impression viewed from Strickland Street looking towards the southeast.

3.0 SITE DESCRIPTION AND LOCALITY

The site is located on the corner of Veno Street and the Princes Highway, Heathcote. It is bound by Veno Street to the south, to the east by the Princes Highway and is bound to the north by Strickland Street. The site comprises seven separate parcels of land and is located to the north of the Heathcote Village local commercial centre. It is an 'L' shape lit with the following characteristics:

- Area: 7245m² (by survey).
- South boundary to Veno Street: 54.72m (not including the splay to the street corner of 4.37m).
- East boundary to Princes Highway: 71.245m (not including the splay to the street corner of 4.37m).
- North boundary to Strickland Street: 40.23m (from survey).
- West boundary: 121.99m (from survey).
- Slope: falls from southeast to northwest, falling 8.29m from RL192.99 to RL184.70. The site has a crossfall, falling 3.85m from southwest to northeast from RL192.92 to RL189.07.

The site currently contains the Heathcote Hotel which is an elevated single storey pub with a drive through bottle shop, ancillary accommodation, car park, mature vegetation and a coffee trailer that is located in the southeast corner of the site. Vehicle access to the site is from both Veno and Strickland Streets.

Natural features on the site comprise mature trees which are concentrated adjacent to the site's common boundary with 2-4 Strickland Street, 1317-1321 Princes Highway and along the frontage to Veno Street. Smaller trees are located to the north of the existing hotel building. There is also a stand of mature trees on the adjoining land to the west on 5 Veno Street and 10-12 Strickland Street.

The site is located approximately 200m from the Heathcote Train Station (to the south along the Princes Highway) and located immediately to the north of the Heathcote Village commercial centre. The site is within a commercial and low to medium density residential area surrounded by commercial and business tenancies, low-rise residential flat buildings, townhouses and single dwellings. The Heathcote Public School is 40m to the southwest of the site and the Heathcote High School is approximately 380m to the northeast of the site.

To the west of the site is a two storey mixed use building facing Veno Street and a two storey multi dwelling development facing Strickland Street. To the east of the site is a single storey multi dwelling development with access direct to Strickland Street. Across Strickland Street (to the north) are single storey detached dwelling houses. There is also a three-storey residential flat building adjoining to the northeast on the corner of Strickland Street and Princes Highway. The Veno Street Reserve is to the south and across the road from the site.

A locality plan and an aerial photo are provided below.

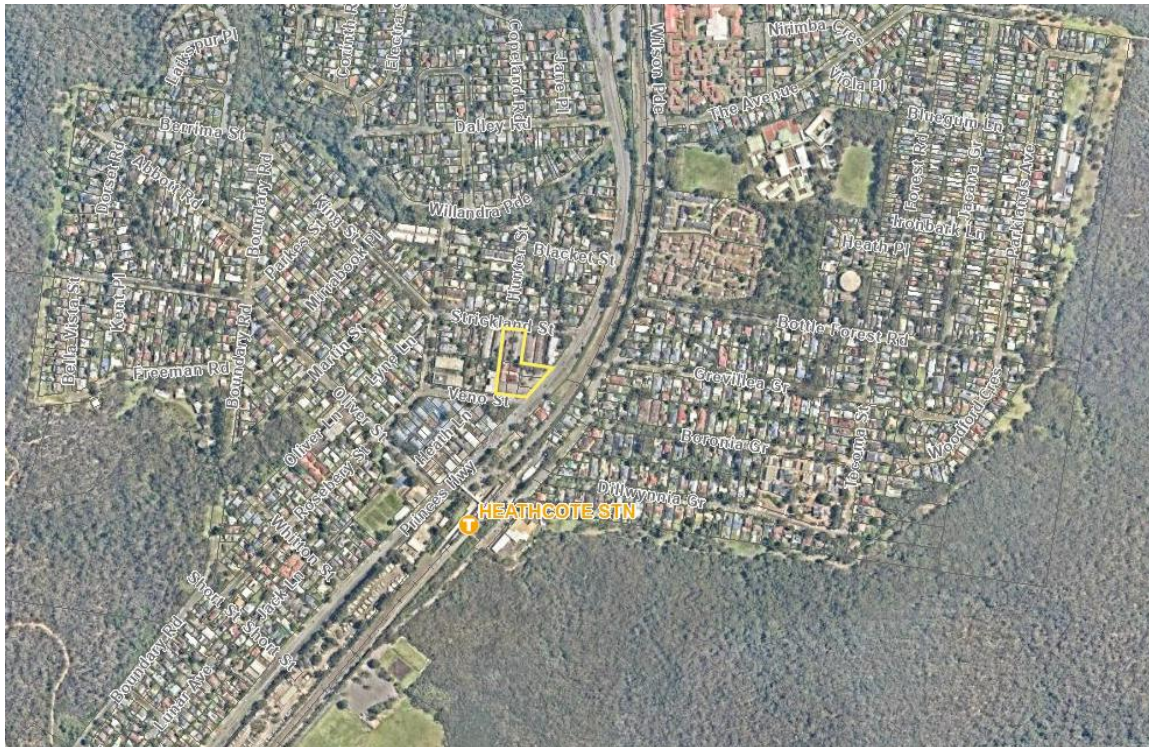


Image 4: Locality Plan



Image 5: Aerial Plan.

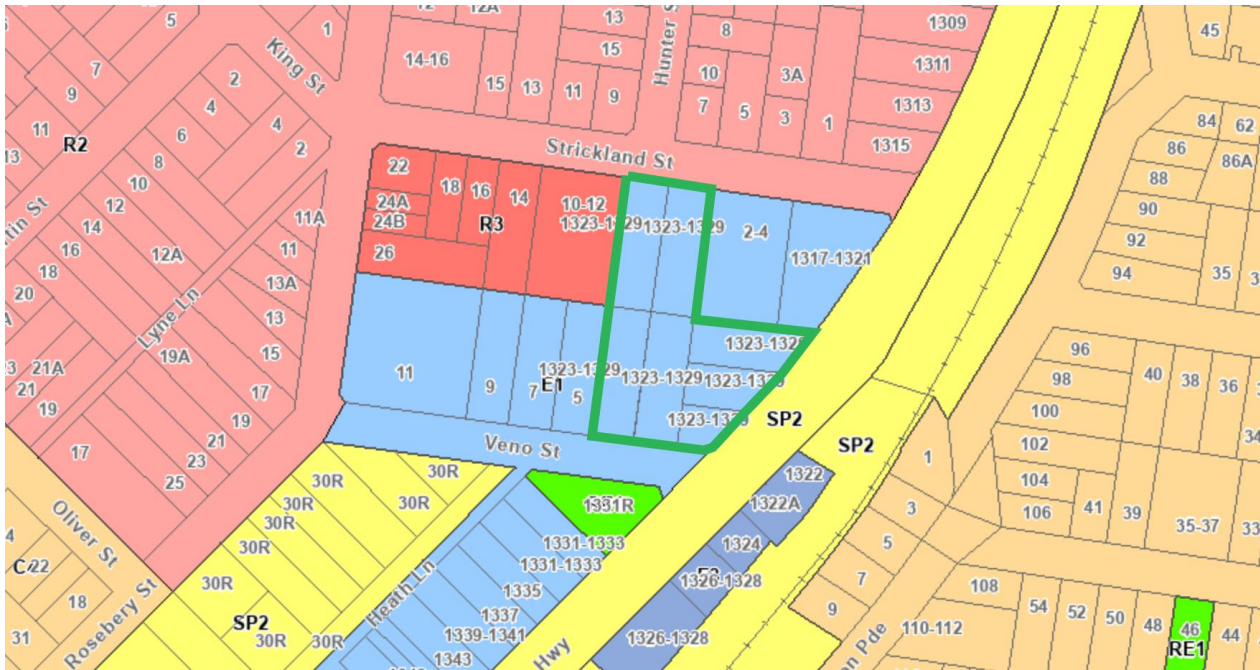


Image 6: Zoning Map (site highlighted in green)

4.0 BACKGROUND INFORMATION

A history of the site is as follows:

- A pre-application discussion (PAD) was held on 15 June 2022 regarding this development. As a result of this a formal letter of response was issued by Council dated 15 July 2022. A full copy of the advice provided to the Applicant is attached as **Appendix F** of this report. The main points contained in this letter are as follows:
 - Building height: Contravention of the 13m height development standard is unlikely to be supported. It is recommended that a planning proposal application is made seeking support to amend the building height for the site.
 - Setbacks: Non-compliance with the SSDCP 2015 street frontage landscaped setback control of 6m and non-compliances with the Apartment Design Guide building separation/setback requirements (particularly at zone interfaces) is not supported.
 - Engineering matters: vehicular access-way and car park layout, traffic, stormwater and public domain.
 - Landscaping and environmental matters: Potential impact on Sydney Turpentine Ironbark Forest (STIF) Endangered Ecological Community (EEC).
 - Building Code of Australia.
 - Fire protection.
 - Waste management.
 - Other matters: Noise (Princes Highway and Railway line), hours of trading (Intermediate Activity' area in accordance with Council's Late Night Trading Policy), Social impact, Safety and Operation, referral to the Design Review Forum, design of rooftop common open space.
 - Utilities and infrastructure.

- On 6 October 2023, a second and informal PAD meeting was held with Senior Council Officers. The main issues and areas of concerns were as follows:
 - Advice provided in relation to PAD22/0016 remains relevant (building height, setbacks and landscaping as shown above).
 - Non-residential uses fronting the Princes Highway are supported given the lack of amenity that would be afforded to residential uses fronting the Highway.
 - Height non-compliance.
 - Location and design of communal open space.
 - Deep soil at the centre of the site is supported. A landscape setback should be incorporated into street frontages.
 - Baseline analysis is to be undertaken to inform any future design. This includes matters raised in previous pre-DA advice, including, an assessment of tree / significant vegetation on the site, noise levels, any potential contamination issues, servicing requirements, waste management and traffic and parking impacts.

5.0 APPLICATION HISTORY

A history of the development proposal is as follows:

- The current application was submitted on 17 July 2024.
- On 22 July 2024, a request for information (RFI) was sent to the applicant, requesting the lodgement of a preliminary hydraulic assessment to confirm compliance with AS2419.1 (2021), the *Fire safety guideline – Access for fire brigade vehicles and firefighters*.
- The application was placed on exhibition, with the last date for public submissions being 29 August 2024. A total of 23 objections were received, of which 18 unique objections
- On 2 August 2024, the applicant uploaded a fire services assessment report in response to the RFI. A further and revised report was uploaded to on 22 August 2024.
- On 22 August 2024, the Design Review Panel (DRP) reviewed the application.
- On 2 October 2024, the applicant lodged a 'deemed refusal' appeal with the NSW Land and Environment Court.
- On 3 October 2024, a second RFI was sent by Council raising the following issues and areas of concern:
 - Height non-compliance.
 - GFA and FSR non-compliance, insufficient information to undertake an assessment of compliance.
 - ADG and SSDCP2015 non-compliance.
 - Failure to step the building form with the land.
 - Landscape setback along the highway.
 - Impacts of the future pub (including amenity of residents and carparking requirements).
 - Amenity for future residents.
 - Contamination of the site.
 - Stormwater and landscaping conflicts.
 - Waste collection.
 - Landscaping and vegetation impacts.

- External agency issues: lack of information to advise if the basement will be tanked or dewatering, prohibiting right hand turns from Strickland and Veno Streets onto the Princes Highway, number of parking spaces for the tavern and dedicated drop off zones for car sharing operators.
- A copy of Council's RFI is attached as **Appendix G** to this report.
- On 5 November 2024, a hydrogeological report was lodged in response to issues raised by WaterNSW. A social impact assessment report was also lodged.
- On 12 December 2024, WaterNSW advised that they are refusing to issue General Terms of Approval. (GTAs). A copy of the correspondence is provided as **Appendix H** to this report.

6.0 ADEQUACY OF APPLICANT'S SUBMISSION

Following assessment, it has been established that the applicant has not provided adequate information to enable a thorough assessment of this application. The following information is required in order to fully assess the following components of the application.

- Information to satisfy the requirements of the Water Management Act 2000, State Environmental Planning Policy (Biodiversity and Conservation) 2021, Clause 6.4 Stormwater Management from Sutherland Shire Local Environmental Plan 2015 and Chapter 38 from the Sutherland Shire Development Control Plan 2015.
- Information to enable an assessment of compliance regarding the gross floor area. Refer to section 11.1.
- Information to address the contamination requirements from Chapter 4 from State Environmental Planning Policy (Resilience and Hazards) 2021.
- Information to address the State Environmental Planning Policy (Biodiversity and Conservation) 2021 and Chapter 38 from the Sutherland Shire Development Control Plan 2015 regarding onsite and offsite vegetation impacts.
- Information to address State Environmental Planning Policy (Transport and Infrastructure) 2021, the NSW Department of Planning's Development Near Rail Corridors and Busy Roads - Interim Guideline, Australian Standard AS2890, Chapter 36 from the Sutherland Shire Development Control Plan 2015 relating to traffic impacts, road noise impacts, ventilation, operation and use of the basement parking areas and access thereto, pedestrian safety.
- Information to satisfy the design and operational requirements from Australian Standard AS2890, Chapter 36 from the Sutherland Shire Development Control Plan 2015 and the Sutherland Shire Environmental Specification 2020 Waste Collection for New Multi-dwelling Housing and Residential Flat Buildings.

7.0 PUBLIC PARTICIPATION

The application was notified in accordance with the provisions of Appendix A of the Sutherland Shire Community Engagement Strategy 2023. Council notified 44 adjoining or affected owners of the proposal and a total of 23 objections were received, of which 18 were unique objections.

The key issues identified in the submission/s are as follows:

Issue 1: Traffic impacts and insufficient parking availability, including insufficient EV charging facilities.

Comment: TfNSW and Council's Traffic Section have raised issues with the proposal – this is addressed in more detail in Section 11 in this report. A traffic and parking report was lodged with the application which details parking supply is sufficient for the development.

There is no requirement to provide electric vehicle charging stations in accordance with SSDCP2015. Nonetheless, a review of the plans shows that there is capacity within the basement to provide a number of either dedicated spaces or for each space to have the infrastructure to enable electric charging.

Issue 2: Excessive building height and overdevelopment of the site, out of context with the existing character of the area.

Comment: The assessment shows that the proposal is not satisfactory having regard to the existing and future desired character of the locality. The scheme is significantly beyond the height and density permitted by SSLEP2015. Refer to Section 11 in this report.

Issue 3: Impacts to adjoining properties including ongoing acoustic impacts.

Comment: It is uncertain at this time if the future pub will have an unacceptable impact to adjoining and nearby uses. This will be a matter for a future application to demonstrate minimal impacts.

Issue 4: Construction Timeframes and damage from Excavation

Comment: If consent were recommended, standard hours of construction would be conditioned to ensure minimal impacts. Impacts of construction and compliance with regulations can be managed through appropriate conditions and management requirements.

Issue 5: Overshadowing

It is agreed that the shadow plans lodged with the application fail to show the impacts of surrounding developments and the impacts of solar access loss to both private open space and living areas of the proposed apartments. Further, the application fails to provide shadow elevation plans to demonstrate the proposal's impact to adjoining development's living and private open space areas.

Issue 6: Waste management impact to street.

Comment: Onsite waste collection is proposed, therefore there will be minimal impacts to the operation of the local road network.

Issue 7: Natural vegetation is not enhanced or maintained.

Comment: Insufficient information has been provided to enable a comprehensive assessment of impacts to both onsite and offsite vegetation. Refer to Section 11 in this report.

Issue 8: Lack of open space and landscaping.

Comment: An assessment of compliance cannot be established due to a lack of information, particularly the apportionment of communal open space.

Issue 9: Drainage concerns.

Comment: Additional information and plans are required to fully inform the assessment.

Issue 10: Economic enhancement of area from development is not tangible and services in the area cannot support this scale of development.

Comment: The site is zoned as E1 – Local Centre and commercial uses are permissible with consent.

Issue 11: Lack of operator for affordable units.

Comment: The applicant has not identified the operator for the affordable housing apartments as part of the application. This could be resolved by a condition of consent.

Issue 12: Opening times for future pub.

Comment: While the application identifies that the 'cold shell' will accommodate a future pub, the occupation and use of the pub does not form part of this application. If consent were recommended, a condition would require a separate development application be lodged and operating hours would form part of that assessment.

The submissions received have been considered against relevant planning controls as part of this assessment.

8.0 STATUTORY CONSIDERATIONS

The subject land is located within the E1 Local Centre Zone pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015 (SSLEP2015). The proposed development, being shop top housing, is a permissible land use within the zone with development consent.

The objectives of the E1 zone are as follows:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

- *To create an attractive, vibrant and safe public domain that has both a high standard of urban design and public amenity that is designed to cater for the needs of all ages and abilities.*
- *To provide a mix of compatible land uses and building forms that act as a transition to the surrounding residential neighbourhood.*

Comment: It is considered that the proposal fails to address the following objectives

- *To create an attractive, vibrant and safe public domain that has both a high standard of urban design and public amenity that is designed to cater for the needs of all ages and abilities.*
- *To provide a mix of compatible land uses and building forms that act as a transition to the surrounding residential neighbourhood.*

The issues associated with the development and detailed in this report demonstrate that the proposal fails to satisfy these objectives.

The following Environmental Planning Instruments, Development Control Plan, Codes or Policies are relevant to this application:

- Environmental Planning and Assessment Act 1979.
- Water Management Act 2000.
- State Environmental Planning Policy (Planning Systems) 2021 (PSSEPP).
- State Environmental Planning Policy (Resilience and Hazards) 2021 (RHSEPP).
- State Environmental Planning Policy (Sustainable Buildings) 2022 (SBSEPP).
- State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BSSEPP).
- State Environmental Planning Policy (Housing) 2021 (HSEPP).
- Apartment Design Guide (ADG).
- State Environmental Planning Policy (Transport and Infrastructure) 2021 (TISEPP).
- Sutherland Shire Local Environmental Plan 2015 (SSLEP2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP2015).
- Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.

9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

9.1 WaterNSW

The application was referred to WaterNSW as the application highlighted that the proposal would intercept the watertable, triggering a concurrence assessment in accordance with Section 90(2) of the Water Management Act 2000. WaterNSW advised they will not issue GTAs as insufficient information has been supplied and additional information is required to clarify if the basement will be tanked (fully watertight) or drained (requiring permanent ongoing dewatering).

Pursuant to Section 4.47(4) from the Act, the consent authority has no power to approve the application.

9.2 Ausgrid

The application was referred to Ausgrid in accordance with Section 2.48 from the TISEPP. Ausgrid advised that no objections were raised, and the developer must have regard to working near overhead powerlines, consider impacts upon infrastructure during works, driveway crossovers to maintain minimum clearances from power poles, discuss the connection to infrastructure.

9.3 Transport for New South Wales (Roads and Maritime)

The application was referred to Transport for New South Wales (TfNSW) in accordance with Sections 2.119, 2.120 and 2.122 from the TISEPP and the following comments were made:

- Right turning movements from Veno and Strickland Streets are required to cross a number of lanes. This in addition to the volume of traffic using the highway has highlighted traffic safety concerns. Based on a safer systems approach, right turning movements out of Strickland and Veno Streets should be prohibited.
- Motorists wanting to head southbound on the Highway can instead utilise the existing signalised intersection of the Highway and Oliver Street. These intersection changes would be subject to Council endorsement as the relevant road authority for Veno Street and Strickland Street. Any approval would need to be conditioned accordingly including the need for the applicant to prepare a Traffic Management Plan that assesses the traffic impacts of the vehicles displaced by the proposed prohibited right turn movements. As part of the TMP, the applicant will be required to undertake and document community consultation with any residents/businesses affected by the above proposed right turn prohibition.
- TfNSW is of the view that consideration be given to conditioning the application to provide a pedestrian refuge on Veno Street at the Princes Highway intersection to enable pedestrians to safely cross this local road via a two staged pedestrian crossing. The pedestrian refuge would need to be designed and constructed in accordance with AUSTROADS and undertaken via a Works Authorisation Deed with the *Agency*.

9.4 Transport for New South Wales – Sydney Trains

The application was referred to Sydney Trains in accordance with Section 2.98 from the TISEPP and the following comments were made:

- No issues are raised, and conditions are recommended to ensure that the development is undertaken in a safe manner having regard to the operation and use of the railway network.

9.5 NSW Police

In accordance with the Crime Risk Assessment – Police and SSC Protocol, the application was referred to the NSW Police Force (NSWPF):

NSWPF raised the following issues:

- Concerns are raised regarding the number of parking spaces allocated to the future tavern use. The current hotel has 121 parking spaces, and this application proposes 89 spaces. Given the likelihood of residents and guest using the commercial parking spaces long term, there appears to be insufficient parking for the potential 200 patrons that the venue may hold.

- The future tavern will have doors opening on the Princes Highway. This causes significant concern as there does not appear to be any traffic mitigation shown in the plans with potentially intoxicated patrons or patrons who have consumed alcohol and reduced balance and co-ordination navigating a footpath only steps away from a 60km/h 6 lane highway. The current venue sits significantly back from the roadway and footpath.
- Without a designated pick up and drop off location for Uber/Taxi pick up and drop off. Given that there will be a likely usage of taxi/uber usage, there may need to be consideration for management of a dedicated zone on Veno street to avoid traffic build up/hazards on the highway.

Comment: The comments are noted. As the application does not show the fitout of the future tavern, it is not understood what areas will be available to patrons/customers and what areas will be provided for back of house operations and the like.

Regarding the provision of a dedicated drop off/pick zone for the tavern, the concerns of the NSWPF and Council's Engineering Sections are valid and to date, have not been addressed by the applicant.

9.6 Design Review Panel (DRP)

The application was considered by the DRP who provided the following comments:

The DRP advised that the quality of the design of the development was inadequate when evaluated in accordance with the following design principles for residential apartment development set out in Schedule 9:

- 1 Context and neighborhood character.
- 2 Built form and scale.
- 3 Density.
- 4 Sustainability.
- 5 Landscape.
- 6 Amenity.
- 7 Safety.
- 9 Aesthetics.

A fully copy of the DRP comments are included in **Appendix E**.

9.7 Traffic and Public Domain Services

The application was referred to Council's Traffic Section due to matters raised by TfNSW (RMS), the site's proximity to a classified road and the potential impacts on the operation of the local road network. The following comments were made:

- The proposal is not supported due to impacts to the operation and use of the highway.
- The SIDRA modelling indicates that the efficiency of right turn movements to the highway from both Veno and Strickland Streets will be unsatisfactorily impacted as a result of the traffic generated by the development.

- TfNSW indicates that right turn movements from both Veno and Strickland Streets should be prohibited for safety reasons. Motorists will then need to utilise other intersections to gain access.
- Insufficient information has been provided to enable an assessment of the impacts of the required intersection works to the highway and Veno and Strickland Streets with any certainty regarding their suitability.
- TfNSW has requested the applicant must prepare a Traffic Management Plan that assessed the traffic impacts on the vehicles that will be displaced as a result of the proposed prohibited right turn movements.
- The current layout of the intersection allows for vehicles to turn left into Veno Street from the highway at speed. This creates an unsafe environment for both pedestrians and motor vehicles.
- Concerns are raised regarding the pedestrian access points to Buildings B and C. They have limited setbacks and are in close proximity to the highway and its intersection with Veno Street.
- There will be a desire to cross the highway near the Veno Street and highway intersection as a result of the proposed design and building access locations. To ensure pedestrian safety and to reduce motor vehicle conflict, a pedestrian refuge and associated fencing need to be designed and constructed via a works authorisation deed with TfNSW. The works will need to have regard to the prohibitions of the right turn movements, and this may need to extend the barrier fencing along the highway median to prevent unsafe pedestrian movements.

9.8 Engineering (Assessment Team)

The application was referred to Council's Assessment Team Engineer and concerns were raised regarding safety of vehicle movements within, to and from the site and stormwater management. The assessment established that additional information, revised plans and clarification is required to ensure compliance with Australian Standard AS2890, Chapter 36 from the SSDCP2015 and Council's Active Transport Strategy requirements, specifically:

Traffic, Parking, Vehicular Manoeuvrability

- The traffic report indicates that swept path of the passing B85 and B95 vehicle have unacceptable overlaps at the driveway security gate for building A. The entrance must be widened.
- The first ramp to the basement off Veno Street to be widened to 6.2m.
- There will be a high area of congestion at the first two 90° turns on basement 1 (approximately opposite parking bays C58 & 69). Swept path diagrams are required for passing B85 and B99 vehicles turning through the abovementioned two turns.
- It is unclear as to how commercial parking spaces C88, C86 and C84 will be independently accessed. The commercial parking bays C85, C87, C89, C84, C86 and C88 could all be dedicated staff parking bays to minimise impacts.
- Building B basement 1, the blind aisle for parking bays 31 and 30 are undersized.
- It appears there is conflict between an existing power pole and the swept path for the heavy rigid vehicle (HRV), as shown in the traffic report.
- The swept path of the HRV, provided in the traffic report, show that when a delivery truck entering, leaving, or manoeuvring on site, there will be conflict with motorists attempting to enter/leave the basement carpark for Building B and C. The conflict between motorists and truck drivers is not

acceptable, there is a lack of passing opportunities, how to prevent access to the property if motorist is leaving the top end of the first ramp, creation of appropriate sight lines, designated queueing areas, and traffic lights and sensor. The traffic report has not provided sufficient commentary on these matters.

Drainage and Stormwater

- Sub catchments within the site that are being drained to existing single or separate drainage system within the site.
- Details of the existing pipe drainage network and overland flow paths within the site and details of the stormwater disposal system/s (piped or overland) from the site.
- Full catchment analysis of Street Pit 7027 (Strickland Street pit), to determine if the 300mm diameter pipe requires an upgrade or if onsite detention is required.

9.9 Landscape Officer

The application was referred to Council's Landscape Officer who had a number concerns with the proposal. These included the following:

- Tree numbering on plans is not in accordance with arborist report submitted with this application. The arborist report has accurately calculated and displayed TPZ in the report. TPZ must be shown on all plans for trees to be retained to ensure no encroachment over 10% is proposed.
- Landscape plans do not show all trees proposed to be removed to support the development.
- A pruning assessment report will be required for Trees 13, 20 and 26 to assess tree branches interference with the proposed built form. This should include images of specific branches which will be required to be removed.
- The application must note that pruning over 10% of the canopy will not be supported. These trees are significant within the landscape and must be retained and protected.
- Tree 13 will incur a major encroachment to allow for (S2) Lower Ground Commercial Carparking beneath buildings B and C. This encroachment is not accepted, therefore the basement will need to be reconsidered to ensure the safe retention of Tree 13.
- Trees along the western boundary are of high significance and must be retained and protected. The current (S1) Basement 1 and (S2) Basement 2 plan does not show TPZ for existing trees, therefore a thorough assessment is difficult to undertake.
- The basement car parking below Building A will likely cause a major encroachment to Tree 20. Trees to the Western boundary must be retained and protected, therefore an encroachment of over 10% will not be accepted.
- TPZ must be correctly shown on all plans submitted to allow a thorough assessment of potential encroachments.
- As there will be extensive excavation of existing bitumen as well as construction within the TPZ and SRZ of trees to be retained, the application must outline which tree sensitive methods will be adopted before and during works.
- The existing tree along the southern boundary (Tree 18 as per arborist report) is proposed to be removed and is not shown on plans. This tree is of high significance and efforts must be made to

retain and protect the tree as it contributes to street character and aesthetics of the Heathcote Village. If the building maintains a 5m setback in this area, the tree can be safely retained and protected.

- Existing ground levels must be maintained where possible within TPZ of trees for retention. Necessary level changes must not comprise of more than 10% of the TPZ.
- Trees proposed under this application are within 3m of the built form. The application must redesign the landscape areas to ensure no canopy trees are proposed within 3m of the proposed built form.
- The sections and landscape plans provided do not align with the plant schedule. The plans and sections indicate larger species such as Turpentine will be planted within the site, however, the plant schedule indicates smaller species which are not endemic to the site.
- The planting of Turpentine between Buildings A and B is an inappropriate location for the size of the species. These trees should be replaced with a smaller species endemic to the area such as *Eucalyptus globoidea* (White Stringybark) or *Glochidion ferdinandi* (Cheese Tree). A Turpentine specimen must be planted in a more open location within the communal open space to ensure appropriate root and canopy growth can occur.
- Plans must include all of the following alternate and native species.
- Additional landscaped area should be provided to the eastern boundary of the ground level to allow for additional planting which will soften the interface between the streetscape and the proposed built form.
- The 6m wide proposed outdoor space must be converted into mass planting. This area will be suitable to contain additional canopy tree planting and create a landscape setting to soften the large building proposed. This may result in changes to the architectural plans.
- The trees proposed over the stormwater tank must be relocated.

○

9.10 Environmental Science - Air Quality

The application was referred to Council's Senior Scientist who raised the following issues:

- The site has frontage to the highway and has an Annual Average Daily Traffic (AADT) over 46,000.
- A number of apartments and the commercial land use are oriented towards the highway and highly likely going to be exposed to heightened levels of air contaminants from vehicle emissions and generated dusts.
- The application makes no reference to TfNSW Guidelines and/or how the proposal addresses exposure to air pollutions and potential risks of harm to health will be addressed and/or considered.
- The use of mechanical ventilation can address the above, although this can be compromised if balcony doors and/or windows are open.
- Additional information must be provided demonstrating how the proposed ventilation system satisfy AS1668.2 AS3666.3 and SAA HB32 regarding control of microbial growth and further information to support indoor air quality and filtration requirements.
- Insufficient information has been provided demonstrating how the commercial areas will be ventilated.
- Following a strata subdivision, issues are raised regarding management and responsibilities of the exhaust systems, including access to cleaning, noise and vibration impacts. Additional space within the buildings may be needed to accommodate the separate systems.
- The proposal does not satisfy the Austroads guidelines *AP-R711-24 Prioritising Active Transport* and *AP- R528-16 Bicycle Parking Facilities: Updating the Austroads Guide to Traffic Management*

SSDCP2015 objectives and requirements for bicycle parking provision, particularly adequate and/or secured storage areas.

- Insufficient information has been provided regarding end of trip facilities and the location for safe storage of bicycles for staff. While details are provided in the traffic assessment report, but it states this will be addressed in the later DA for the occupation and use of the tavern.

9.11 Environmental Science - Contamination

The application was referred to Council's Contamination Officer due to historic land use activities and the application lodging a preliminary site investigation report. The officer requested the copy of the previous preliminary site investigation report that was prepared but not lodged with the current application. The report is needed to assist in the assessment of compliance against the RSSEPP.

It was drawn to the applicant's attention that the decommissioning of underground tanks also requires detailed remediation advice. These are jurisdictional details that must be addressed to illustrate the site is suitable for the proposed development.

9.12 Waste Management

The application was referred to Council's Waste Officer who raised concerns to the proposal and further investigation is required to ensure waste collection can be undertaken in an efficient, effective manner, the need for swept paths, details to ensure the minimum vertical clearance for the waste collection vehicle, and clarification on waste collection operations.

9.13 Building Surveyor

The application was referred to Council's Building Surveyor who advised the following:

- The development will be serviced by two combined fire hydrant and sprinkler booster assemblies.
- The report details that buildings will be sprinkler protected and no radiant heat shields are required to protect the hydrant boosters.
- The pressure and flow inquiry has confirmed there is adequate flow and tanks are not required. Therefore, no suction connection outlets will be required to be installed as part of the hydrant booster system.
- The application proposes a mix of deem to satisfy and performance solutions to satisfy the BCA.

9.14 Environmental Health Section

The application was referred to Council's Health Officer who did not raise issues with the proposal, except that car washing facilities were lacking and a condition could be imposed to address this issue.

9.15 Bushfire Officer

The application was referred to Council's Bushfire Officer who did not raise any issues with the proposal having regard to Planning for Bushfire Protection 2019.

9.16 Heritage

The application was referred to Council's Heritage Officer as there are two items of local heritage significance located 105m to the east and 64m to the southeast of the site, being.

- Item 1708 House, 1 Wilson Parade, Heathcote.
- Item 1706 Former Railway Cottage, 1328 Princes Highway, Heathcote.

Following assessment, no issues and/or concerns were raised regarding the proposed development and impacts on the setting and significance of the heritage items.

10.0 COMPLIANCE

10.1. Water Management Act 2000

In accordance with section 4.46 from the Environmental Planning and Assessment Act 1979, the application was referred to WaterNSW as required pursuant to Section 90(2) of the Water Management Act 2000.

Additional information was provided by the applicant in response to issues raised. In December 2024, WaterNSW advised that they are refusing to issue GTAs for the following reasons:

- 1 *The proposed drained basement design as it has been presented cannot be supported as insufficient hydrogeological information of the required standard has been supplied.*

Note: The Minimum Requirements for Building Site Groundwater Investigations and Reporting and the NSW Aquifer Interference Policy have not been addressed in the supplied documentation, therefore the effects of the proposed drained basement design during both construction and the long-term have not been adequately determined and demonstrated to be of minimal impact.

- 2 *In accordance with the WaterNSW position for proposed drained basement designs that have not been adequately supported with comprehensive documentation, it is not considered appropriate to provide General Terms of Approval at this time.*

Pursuant to Section 4.47(4) from the Act, the consent authority has no power to approve the application, therefore the application must be refused.

A copy of the correspondence from WaterNSW is provided as **Appendix H** to this report.

10.2. State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 (PSSEPP) identifies State and Regionally Significant development in NSW. Schedule 6, PSSEPP identifies this application as regionally significant development as it has a capital investment of more than \$30 million. As such, the application is referred to the SSPP for determination.

10.3. State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 (RSSEPP) requires Council to consider whether the land subject to the development proposal is contaminated; and if the site is

contaminated, Council must be satisfied that the site is suitable or can be made suitable (i.e. following remediation) for the proposed land use. A site inspection identified that the site is currently occupied by a commercial premises, being a pub with hotel accommodation and a standalone mobile coffee vendor.

A review of Council's GIS and historical aerial photos has shown that the pub has been onsite since (approximately) 1970. A search of Council's records, including historical files, has revealed that the site has had previous uses including residential accommodation. Previous aerial photographs show some of the properties contained dwelling houses. A search of Council's contaminated land register specifies that the site is not potentially contaminated, however, there are two sites within 100m that are mapped as being potentially contaminated, being:

- 7-9 Veno Street – Plant nursery.
- The Sutherland to Waterfall rail corridor, east of site.

Council's Contamination Officer has advised that the Detailed Site Investigation (DSI) submitted with the application has made the following findings:

- Evidence of an underground storage tank observed in the western portion of the site.
- Some deterioration of the building was observed including flaking paint.
- Fill material was observed to a depth of 0.6 metres below ground level.
- Friable asbestos was observed in the soil in one hotspot.
- Some heavy metals and hydrocarbons were detected in groundwater above the adopted criteria, however this is considered to pose a low risk to future site users.

Based on the current level of information, the provisions of the SEPP have not been adequately addressed.

10.4. State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy (Sustainable Buildings) 2022 (the SBSEPP) encourages the design and construction of more sustainable buildings across NSW and commenced operation on 1 October 2023. The overarching purpose of the SBSEPP is to assist NSW's target of achieving net zero greenhouse gas emissions by 2050. The SBSEPP repeals the BASIX SEPP, and applies to all residential development (excluding alterations and additions less than \$50,000, and pools less than 40,000L) and all non-residential developments (except those excluded in chapter 3.1 of the Policy).

The SBSEPP applies only to development applications (DAs) that are submitted on the NSW Planning Portal on or after 1 October 2023. Savings and transitional provisions apply under chapter 4.2 of the policy, including the exclusion of development applications that are submitted on the NSW Planning Portal prior to 1 October 2023.

a) Residential Development (Chapter 2.1)

BASIX is now under the SBSEPP and continues to apply to all new housing and housing renovations costing \$50,000 or more. A BASIX certificate accompanies the development application addressing the sustainability requirements for the proposed building. The proposal achieves the minimum performance levels and targets associated with water, energy, thermal efficiency, and embodied emissions. However

given design issues associated with the development any initiatives would need to be revised with a redesign should development of the property be pursued.

10.5. State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 11 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BCSEPP) sets out the plan objectives and planning principles for the Georges River Catchment. Part 11.4 includes a number of aims and objectives for the environment and water quality within the catchment. It is noted that as from 21 November 2022, new Chapter 6 of the SEPP consolidates Chapters 7-11 related to water catchments (including Georges River catchment).

The Georges River Catchment is defined as a “regulated catchment.” Division 4 contains controls for development for specific purposes, including at Clause 6.21 (Stormwater Management). Savings provision under Clause 6.65 of the SEPP confirm that the former provisions referred above continue to apply to an application for development consent lodged, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Water Catchments) 2022*, i.e. the subject application).

Insufficient information was lodged to enable an assessment of stormwater management and water quality measures to ensure the proposal will have minimal impacts upon the receiving waters of the Georges River Catchment. Council’s Engineering Section have advised that a full catchment analysis of the existing stormwater system is required to determine if the existing infrastructure has capacity to accommodate the additional stormwater generated by the development and/or establish if upgrades and/or onsite detention is required.

In the absence of this information, it cannot be established if the proposal will have a neutral and/or beneficial effect on water quality and/or minimal impacts upon the receiving waters of the catchment and therefore is not supported.

10.6. State Environmental Planning Policy Housing 2021 – Chapter 4

On 14 December 2023, the NSW Government consolidated the provisions of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development into the Housing SEPP (HSEPP) and the Environmental Planning and Assessment Regulation 2021 (the Regulation). The process of consolidation does not affect the operations of the provisions or the Apartment Design Guide (ADG).

The application was presented to the Design Review Panel (DRP) who raised a number of issues with the proposal and have advised that the proposal is not supported. The Design Review Panel comments are included in **Appendix E** to this report.

An assessment of the proposal having regard to the design quality principles of HSEPP is set out in **Appendix A** to this report.

In summary, the application does not satisfy the provisions of the HSEPP. The primary issue with the application is the failure to provide the minimum 10% of the total GFA for affordable housing and as such,

the proposal does not benefit from the floor area and the height bonuses prescribed by the SEPP. A detailed assessment of this non-compliance is undertaken in Section 11 in this report.

10.7. Apartment Design Guide (ADG)

The applicable design guidelines for the proposed development are contained within the ADG, which is based on the nine design quality principles set out in SEPP 65. The ADG illustrates good practice, and these guidelines are largely replicated in the SSDCP2015. A table with a compliance checklist of the proposal against the ADG design criteria is contained **Appendix A** to this report.

The assessment has established that the proposal is unsatisfactory as the application is inconsistent with the ADG and is therefore not supported. A detailed assessment of compliance will be provided in Section 11 and **Appendix A** in this report.

10.8. State Environmental Planning Policy (Transport and Infrastructure) 2021 (TISEPP)

a) Development likely to affect an electricity transmission or distribution network (sections 2.47 and 2.48)

Division 5, Subdivision 2 of the TISEPP relates to development that has the potential to impact on electricity supply. This application involves:

- The penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower.
- Development carried out within 5m of an exposed overhead electricity power line.
- Development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.

Ausgrid advised that no objections are raised, and the developer must have regard to working near overhead powerlines, consider impacts upon infrastructure during works, driveway crossovers to maintain minimum clearances from power poles, discuss the connection to infrastructure. Conditions could be imposed if consent were recommended.

b) Development adjacent to rail corridors / Excavation in, above, below or adjacent to rail corridors (sections 2.97 and 2.98)

Division 15, Subdivision 2 of the TISEPP relates to development that has the potential to impact on rail infrastructure. This application

- Involves the penetration of ground to a depth of at least 2m below ground level (existing) on land: within 25m (measured horizontally) of the ground directly below a rail corridor.

The application was referred to Sydney Trains who advised they had no objection and/or issues subject to conditions being imposed, specifically:

- requiring the preparation of an acoustic assessment.
- preparation of an electrolysis risk report.
- details on craneage operations and provision of relevant information.
- documents and ongoing liaison with Sydney Trains.

c) Development with frontage to a classified road (section 2.119)

Division 17, Subdivision 2 of the TISEPP relates to land in or adjacent to road corridors or road reserves. The site has a frontage to the Princes Highway which is identified as a classified road on Council's road hierarchy maps. Before granting consent for development on land which has a frontage to a classified road the consent authority must be satisfied that certain factors have been considered. These factors include safety; efficiency of the road network; design, emission of smoke or dust from the development; nature, volume and frequency of vehicles; and the impact of traffic noise and emissions.

The application was referred to TfNSW who did not raise objection to the proposal based on the following:

- All works to be wholly located within the property boundaries.
- Any awnings must be inset 0.6m from the boundaries.
- Drawings and details must be lodged with TfNSW regarding site excavation and support structures.
- A Road Occupancy License should be obtained.
- Utility adjustment will require detailed civil design and for the plans to be reviewed.

d) Impact of road noise or vibration on non-road development (section 2.120) -

Division 17, Subdivision 2 of the TISEPP also relates to development that may be impacted by road noise or vibration. This application is for residential accommodation and the site is adjacent to the Princes Highway and is also identified on Council's Road and Rail Noise Buffer Map. The land has frontage to the Princes Highway and the AADT volume exceeds 46,000 vehicles. The impact of road noise and vibration on the residential accommodation have been considered under Section 2.120.

The application was TfNSW who advised the proposal should be designed to ensure noise from the highway is mitigated and that Council to consider banning the right turn movement from Veno Street onto the highway due to the potential increase in right turning movements at this uncontrolled intersection.

A noise impact assessment report was lodged with the application demonstrating that those apartments having living and private open space areas oriented towards the highway are able to meet the minimum noise intrusion levels prescribed by the TISEPP and the NSW Department of Planning's Development near Rail Corridors and Busy Roads - Interim Guideline. Concerns have been raised regarding the design of the apartments for the following reasons as the apartments that are oriented towards the highway will rely on mechanical rather than natural ventilation to satisfy the ADG.

It cannot be established that the mechanical ventilation systems are adequate, and the application fails to provide sufficient information to demonstrate if sufficient air flow can be achieved. This will force future

residents to leave windows and/or doors open which will create unsatisfactory internal amenity and comfort levels and therefore is considered not satisfactorily address this section.

e) Traffic Generating Development (section 2.122)

In accordance with Column 3, Schedule 3 from the TISEPP, the proposal is a traffic generating development as more than 75 dwellings are proposed, and the site has frontage to a road that is within 90m of a classified road.

The application was referred to TfNSW who did not raise objection to the proposal based on the following:

- All works to be wholly located within the property boundaries.
- Any awnings must be inset 0.6m from the boundaries.
- Drawings and details must be lodged with TfNSW regarding site excavation and support structures.
- A Road Occupancy License should be obtained.
- Utility adjustment will require detailed civil design and for the plans to be reviewed.

Council's Traffic Section have advised that the proposal cannot be supported for the following reasons:

- The proposal will have impacts on the operation of the highway.
- The traffic modelling indicates efficiency of right turn movements from Veno and Strickland Streets will be impacted.
- Prohibiting right turn movements from Veno and Strickland Streets will impact the level of service of other intersections.
- The current road intersection design allows for vehicles to turn into Veno Street at speed.
- Issues have been raised regarding pedestrian safety.
- Insufficient information has been provided to enable an assessment of impacts.

Based on the above issues and concerns, it is recommended that the application is refused as it cannot be established based on the current level of information if the proposal will have a minimum impact upon the operation of the highway.

10.9. Biodiversity Conservation Act 2016

The Biodiversity Conservation Act 2016 and the Biodiversity Conservation Regulation 2017 outlines the framework for assessment and approval of biodiversity impacts for development that requires consent under the Environmental Planning and Assessment Act 1979. The assessment of the development has revealed that the Biodiversity Offset Scheme (BOS) threshold is not triggered, and biodiversity matters have been appropriately assessed via Council's LEP and DCP objectives and controls.

10.10. Sutherland Shire Local Environmental Plan 2015 (SSLEP2015)

The proposal has been assessed for compliance against SSLEP2015. A compliance table with a summary of the applicable development standards is contained below:

| Clause | Required | Proposal | Compliance |
|------------------------|------------------------------------|---|---|
| 4.3 Height of Building | Maximum 13m | SEPP prevails, permits a maximum 14.3m | 83% contravention to SSLEP2015. Refer to HSEPP for assessment and Section 11. The Clause 4.6 contravention is not supported. |
| 4.4 Floor Space Ratio | Maximum 2:1 14490m ² | SEPP prevails, permits a maximum 2.6:1, or 18,837m ² | A complete assessment of compliance cannot be established due to a lack of information. A Clause 4.6 contravention request has not been lodged. Refer to HSEPP for assessment and Section 11. |

10.11.Sutherland Shire Development Control Plan 2015 (SSDCP2015)

The proposal has been assessed for compliance with SSDCP2015 where it was found the proposal is inconsistent with controls relating to building form, landscaping, setback, solar access, landform, balcony size and car parking. A compliance table with a summary of the applicable development controls is contained in **Appendix B**.

11.0 ASSESSMENT

A detailed assessment of the application has been carried out having regard to the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979. The following matters are considered important to this application.

11.1. Floor Space Ratio and application of the HSEPP

Clause 4.4 of SSLEP 2015 stipulates a maximum floor space ratio (FSR) of 2:1 for this site. Section 16 from the HSEPP permits additional floor space up to 30% based on the minimum affordable housing component in relation to the proposal's total gross floor area (GFA). A 30% GFA bonus allows for a maximum FSR of 2.6:1.

The applicant details that the application proposes an FSR of 2.216:1 or a GFA of 16,056m². A review of the GFA Diagrams shows 1,605m² of the total GFA will be allocated to affordable housing apartments.

The assessment has established that the applicant has incorrectly calculated the GFA as they have failed to include the following:

- The non-basement waste rooms.
- Thicknesses of walls surrounding lift shafts and services rooms – all buildings.
- The storage room associated with the communal open space on the top level of Building A.
- The access lobby area for Buildings B and C.
- The private open space/balcony areas where 50% or more of the opening is screened.

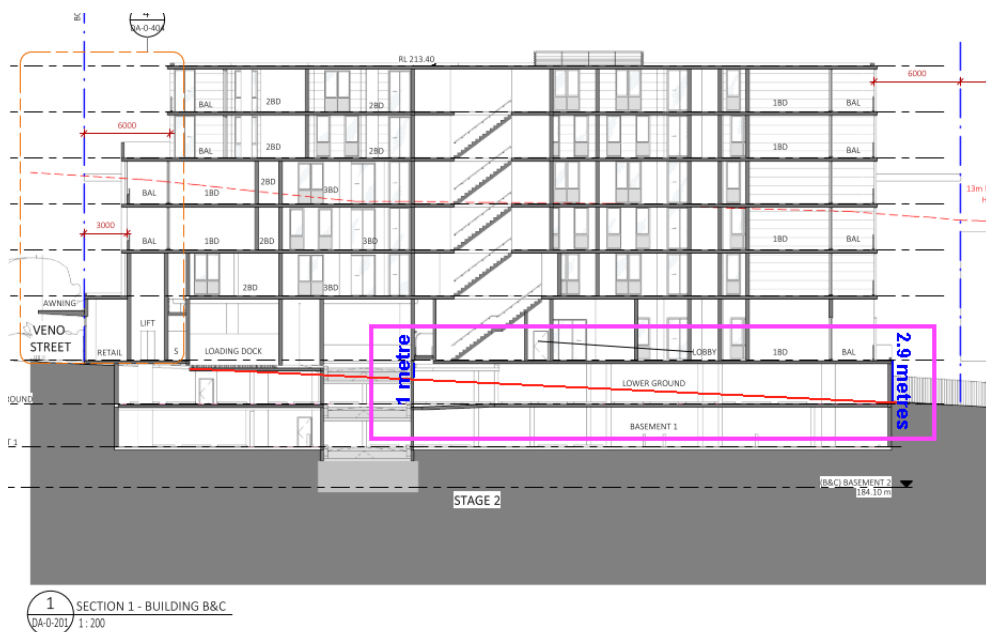
When these areas are included, the proposal has a GFA of 16,829.4m² or an FSR of 2.23:1. Based on this GFA, a minimum 1,683m² of the total GFA must be allocated for the affordable housing apartments. The application has a current affordable housing GFA shortfall of 78m². As the application fails to provide the minimum 10% of the GFA for affordable housing, the proposal does not gain any benefit from the HSEPP and as such, the provisions of SSLEP2015 apply. Based on a GFA of 16,829.4m², the proposal exceeds the maximum permitted GFA prescribed by Clause 4.4 from SSLEP2015 by 2,339.4m², equating to a contravention of 116.14%.

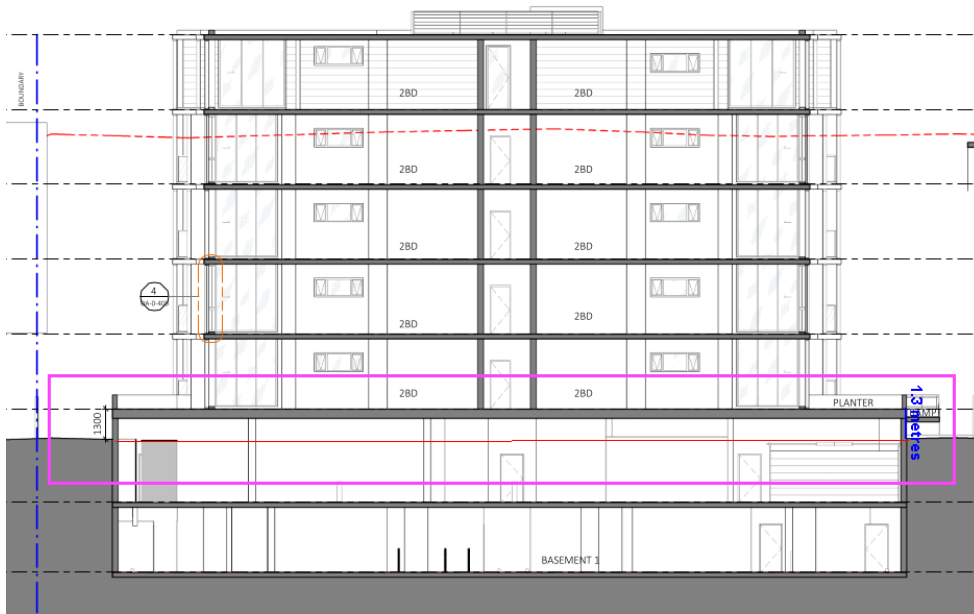
In addition to the above, a review of the plans shows that there are substantial basement areas that protrude more than 1m above the existing ground level. In accordance with the basement definition from the Standard Instrument Order, that part of the basement that is more than 1m above the ground comprises a storey and is therefore included in the calculation of GFA and FSR.

Drawings DA0401D (Section 1 Building B and C), DA0402D (Section 1 Building A), DA0403N (Section 2 Building C) shows the basements protrude above the ground by 2.9m, 1.3m and a maximum 2.1m respectively. There is no drawing/section plan through the length of Building C. Drawing DA-0-243B Ground Level Plan for Building C shows the northern outdoor area and a significant portion of the eastern outdoor area will be constructed well above 1m above the existing ground level. Therefore, the subfloor area below constitutes GFA.

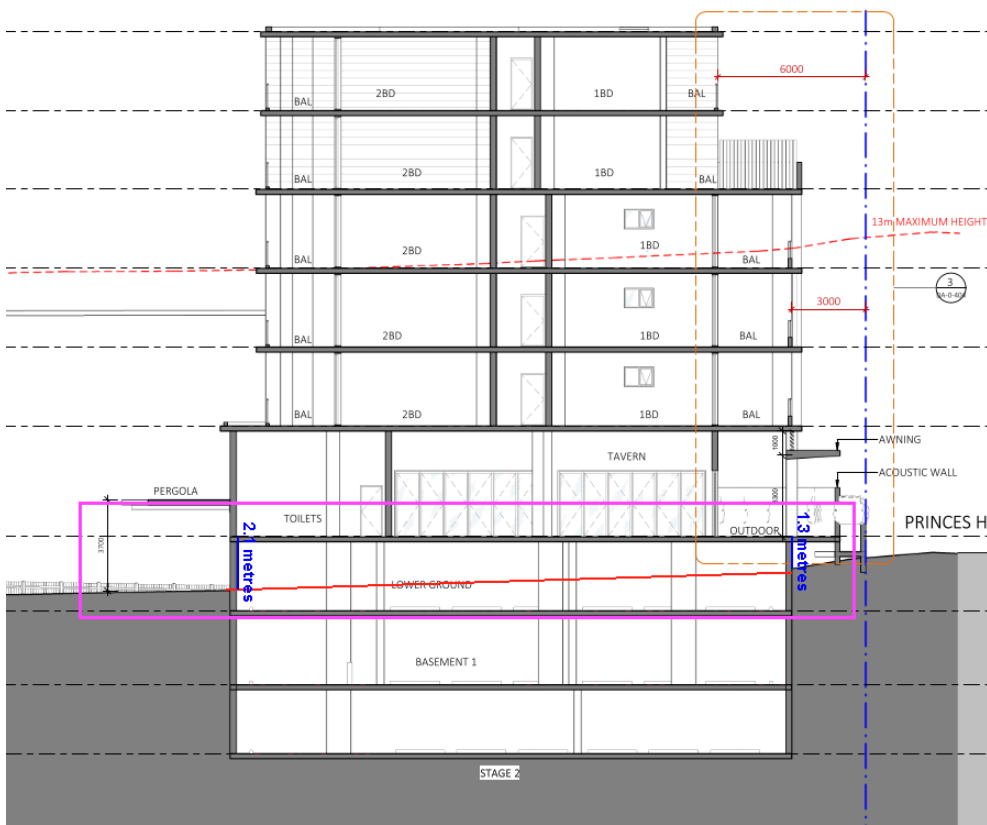
Based on the above, the total GFA is considerably more than the 16,829.4m² as detailed above.

The following plan extracts show those parts of the basement levels that comprise GFA:





3 SECTION 1 - BUILDING A
DA-0-201/ 1:100



4 SECTION 2 - BUILDING C
DA-0-201/ 1:100

Images 7, 8 and 9: Section Plan extracts showing the extent of the basement levels that are more than 1m above the existing ground level which have not been included in the applicant's FSR/GFA assessment of compliance



Images 10 and 11: Plan extracts showing the extent of the northern and eastern outdoor areas that are more than 1m above the existing ground level which have not been included in the applicant's GFA calculation.

An assessment of compliance cannot be established as the application lacks the necessary details and information for a calculation to be undertaken, particularly additional section plans that show the true extent of the basement and floor areas above the ground level. Having regard to the aforementioned drawings, the proposal significantly exceeds the maximum permitted GFA and cannot be supported.

As discussed, the proposal fails to provide the minimum required 10% of affordable housing floor space, therefore the proposal does not enjoy the bonus provisions afforded by the HSEPP.

In the absence of a well-founded Clause 4.6 written request, the application must be refused as the SSPP has no power to approve the application.

11.2. Height of Buildings

In accordance with Clause 4.3 from SSLEP2015, the maximum building height for the site is 13m. Section 18(2) from the HSEPP prescribes that the maximum building height for the site can be an additional 30% based on a minimum affordable housing component. Section 18(3) requires the minimum affordable housing must be at least 10% and calculated as follows:

Affordable housing component = additional building height (as a percentage) / 2.

Based on the above, the maximum building height prescribed by Section 18 would be 14.4m.

Note: As detailed in Section 11.1 above, the proposal does not benefit from the HSEPP due to a failure to provide the minimum 10% of the floor area as affordable housing, therefore the maximum permitted building height for the site is 13m in accordance with Clause 4.3 from SSLEP2015.

The application proposes to exceed the maximum building height prescribed by the HSEPP by 10.8m (refer to Figure 4 from the Clause 4.6 request). This equates to a maximum building height of 23.8m or contravention of 65.3% to the maximum building height permitted by the HSEPP. The proposed building height equates to an 83% contravention to the maximum building height permitted by Clause 4.3 from SSLEP2015.

Clause 4.6 – Exceptions to development standards

The objectives of Clause 4.6 under SSLEP 2015 are to provide an appropriate degree of flexibility in applying development standards to development and to achieve better outcomes by allowing flexibility in particular circumstances.

It is noted that amendments were made to Clause 4.6 and the Regulations which modified the requirements for applicants seeking to contravene a development standard. These changes came into effect on 1 November 2023. The consent authority no longer needs to be satisfied that the development is in the public interest because it is consistent with the objectives of the standard and the zone, and the Planning Secretary's concurrence is no longer required. Savings provisions under Schedule 6 of the Regulations provide that the new sections apply only to development applications made on or after 1 November 2023. This development application was lodged on 15 January 2024 and therefore the new sections apply.

The below diagrams show those parts of the proposal that are above the maximum building height plane.



Figure 4: 3D Height Exceedance Diagram - DA-0-900 (Source: Dickson Rothschild)

Image 12: Extract from the Clause 4.6 showing the building elements that contravene the maximum building height (shown in red) – viewed from a bird's eye perspective from the Veno Street and Princes Highway intersection.



Figure 5: 3D Height Exceedance Diagram - DA-0-901 (Source: Dickson Rothschild)

Image 13: Extract from the Clause 4.6 showing the building elements that contravene the maximum building height (shown in red) – viewed from a bird's eye perspective north of the Princes Highway and Strickland Street intersection.

Clause 4.6 allows a contravention to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

- *Clause (3)(a) – compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *Clause (3)(b) – there are sufficient environmental planning grounds to justify the contravention of the development standard .*

Of relevance to Clause 4.6(3)(a), in *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

"An objection under SEPP1 may be well founded and consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

Preston CJ in the judgement then expressed the view that there are five different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6):

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The assessment of Clause 4.6 below has been undertaken in accordance with the principles established by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) NSWLEC 118 where it was observed that:

- *In order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*
- *There is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.*

The applicant has lodged two Clause 4.6 contravention requests, one against the provision of the HSEPP and the second against the provisions of SSLEP2015. A full copy of these requests has been included in **Appendices D and E** of this report.

Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Applicant's comments:

In summary, the applicant's comments are as follows:

- This application relies on 'Test 1' in Wehbe.
- The proposed development achieves the objectives of the development standard contained in section 15A of the HSEPP,
- The proposal includes more than 10% of affordable housing. The affordable rental units will meet the needs of very low to moderate income households and will be made available through a community housing provider.
- If the variation were not possible, affordable housing could not be delivered due to constraints of the site achieving the additional FSR required.
- The additional building height under section 16(3) of the HSEPP are achieved notwithstanding the non-compliance, therefore compliance with the development standard in this instance is not unreasonable or unnecessary.
- The variation achieves a better design outcome for the site and has minimal environmental impacts.
- The design is consistent with the E1 objectives and is compatible with the adjoining development, reflecting the desired local streetscape character.
- The proposal provides adequate setbacks to boundaries and incorporates stepped form with upper levels progressively setback further from the street. This approach achieves appropriate transition of the 6 storey built form to the lower scale buildings on neighbouring sites.
- Significant landscaping is proposed that will improve natural amenity for the development and the local area. Ample deep soil and retention of significant trees and the opportunity to increase canopy cover across the site while supporting quality communal open space.
- Building A has a strong residential character that reflects the streetscape of Strickland Street and setback 6m to minimise impacts on the lower scale developments either side. Landscaping is used to screen the development from adjoining properties to improve streetscape character and natural amenity. The upper level is setback 20m from the street to minimise visual dominance.
- Building B provides appropriate transition to the more diverse medium-higher density mixed use developments to the west and south. It supports a natural transition incorporating an active frontage. Levels 1-4 are setback 3m and Level 5 is setback 6m to support the amenity and minimise perceived bulk and scale.
- Building C Provides continuity in design from Building B. Similarly, Levels 1-4 are setback 3m from the building and Level 5 is setback 6m, again to support residential amenity and to minimise perceived building bulk and scale.
- Height and massing are optimised in the middle of the site and closer to Veno Street where the bulk and scale has the least impact and where the buildings provide the strongest interface with the town core and train station.

- The development is consistent with the desired future scale and character of the Heathcote Town Centre. The underutilised site holds the greatest potential for urban renewal with opportunity for well-placed housing and employment, improved natural amenity with minimal impact.
- The development has minimal impacts to privacy by limiting balconies and windows towards private open space and balconies of adjoining sites.
- Visual intrusion is minimised by providing adequate setbacks and stepping the building form and strategically placing the height and massing in the middle of the site.
- The proposal responds sympathetically to surrounding residential areas by providing sufficient setback and stepping the form to allow for satisfactory transition in height and scale.
- A high level of ADG compliance is achieved.

Council Officer comments:

Based on the merits of the application, both contravention requests do not adequately address the provisions of Clause 4.6(3)(a). As detailed in Section 11.1 in this report, the application fails to provide the minimum 10% of the total GFA of the development as affordable housing, therefore the application does not benefit from the HSEPP floor space and/or building height bonuses.

It is acknowledged that the site is appropriately zoned for higher density development which is complemented by the site's large area and proximity to public transport services, however, the proposed development is substantially higher than what is envisaged for the Heathcote Village by SSLEP2015.

It is not agreed that the proposed development achieves a better design outcome and/or will result in minimal environmental impacts, achieves the objectives of the development standard and/or the zone. The proposal significantly exceeds the maximum permitted building height prescribed by SSLEP2015. The application has failed to achieve compliance with a significant number of planning controls relating to this type of development and density (ADG, SSLEP2015, SSDCP2015), resulting in a proposal that is not compatible with the adjoining developments, transition to the lower density zones that adjoin the site, does not reflect the character of the Heathcote Village and will result in overlooking, privacy, overshadowing and loss of solar access to adjoining sites.

The application in its current form does not satisfy Section 20(3) of the Housing SEPP as the proposal is incompatible with the desirable elements of the existing character and is not in keeping with the future desired character of the Heathcote Village as envisaged by SSLEP2015, the Our Greater Sydney 2056 South District Plan and in the Local Strategic Planning Statement. The Heathcote Village has not been identified as a locality for high density residential accommodation.

It is recognised that there is a need for the provision of affordable housing within the metropolitan area, however, the supply must not be at the expense of the existing and the future desired character and the urban design permitted and envisaged by SSLEP2015 and SSDCP2015.

It is considered that the current approach to contravene the building height limit is circumventive of appropriate planning pathway and mechanisms to consider greater height and density for the site. In the

circumstances of this application, a Clause 4.6 contravention request is not considered to be the appropriate mechanism and/or planning pathway to depart from the development standard. As the applicant has been advised at the pre-application and subsequent meetings, a planning proposal is recommended to investigate whether the site has capacity for an uplift in building height to the scale that is proposed in this DA.

Based on the merits of the application, the Clause 4.6 contravention requests are not considered to be well-founded and therefore the application is not supported.

Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard

Applicant's comments:

In summary, the applicant's comments are as follows:

There are sufficient grounds to justify the contravention as follows:

- The irregular shaped site and proximity of existing buildings on adjoining sites constrain the development potential.
- Due to the permissible 2:1 FSR (2.6:1 under HSEPP), a compliant design would result in a development that sprawls over a larger area of the site. A lower, squatter building could be achieved but it would lead in a poorer design and planning outcome.
- Height non-compliance allows the built form to respond to the particular site context and onsite constraints, allows a better design to the irregular shape and topography by limiting the footprint to achieve high quality communal open space and retention of trees, provides better design outcomes, minimises impacts to adjoining properties, is consistent with the desired future character and streetscape of Heathcote, supports a transition to lower scale buildings, setting back of upper levels limits perceived bulk and scale.
- The proposal incorporates substantial landscaping internally and along the perimeter to mitigate perceived impacts and provides better amenity for the site and the locality by retaining significant trees and expanded canopy cover.
- The height responds to the unique setting of the site within the town centre, adjacent to the existing amenity such as local parks and the train station. Being close to the train station, it is well placed for the proposed density and scale. The assessment has concluded the development will not have an adverse impact on the road network.

Assessing Officer comments:

It is not agreed that the contravention to the maximum building height results in a better planning outcome due to the anomalous shape and the development constraints of the site. As highlighted above, the application fails to comply with a significant number of planning controls and widespread design changes are required to achieve compliance.

The increased building height to 'better' distribute the GFA is not supported and there are other opportunities to reconfigure and/or 'squat' and importantly, step the building form to follow the topographic fall of the site to result in a more suitable design, which may reduce the bulk, scale, density and massing impacts of the current proposal.

The failure to comply with the setback and separation distance requirements from Section 3F Visual Privacy is a central building design flaw (i.e. top levels setback do not increase from the boundaries and the failure to have an increased setback to the lower density zone for the adjoining site to the west) .

In the circumstances of this application, the Clause 4.6 contravention requests are not considered to be well-founded, and therefore the application is not supported.

Clause 4.6(4) The consent authority must keep a record of its assessment carried out under subclause (3).

Assessing Officer comments:

Noted.

Conclusion- Clause 4.6 Assessment

Based on the above, Council officers are not satisfied that the provisions of Clause 4.6 have been achieved and the contravention to building height is not recommended to be supported.

11.3. Urban Design

The HSEPP, the ADG, the SSLEP 2015 and SSDCP2015 contain certain matters of consideration relating to urban design. The application has failed to satisfy these matters for consideration, in particular :

a) SEPP Housing 2021

The assessment of the application has established the proposal fails to satisfy the following:

- Section 3(c) due to a poor level of amenity resulting from the proposal failing to satisfy the ADG.
- Section 20 as the proposal is inconsistent with the character of the area or within the desired future character of the precinct.
- Fails to satisfactorily address the design principles for residential apartment development contained in Schedule 9, as the proposal has unacceptable building bulk, scale, massing and density design issues.

b) The Apartment Design Guide(ADG)

The assessment has established the proposal has failed to satisfy the following:

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| Section 3A Site Analysis | <p>A lack of information has been lodged to enable an assessment of compliance, particularly shadows generated by adjoining development, shadows in elevation to enable an assessment of solar access impacts, extent of tree protection zones for onsite and offsite vegetation.</p> <p>Furthermore, the proposal bears little resemblance to its surroundings. The proposed scale and density is significantly larger than the development anticipated by the SSLEP 2015 and strategy for Heathcote Village. The proposal has a poor interface with the residential zone to the west and north.</p> |
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| Sections 3B Orientation and 4A Solar and Daylight Access | A lack of information regarding shadow impacts, poor apartment orientation, lack of consideration to alternate sun shading measures, overlooking and privacy, poor solar access consideration and layout. |
| Section 3C Public Domain Interface | The proposal has a poor public domain interface due to lack of the required SSDCP2015 6m landscape setback, raised planter along the highway frontage forms a high barrier wall rather than stepping with the site, buildings fail to step with the site fall, height of beer gardens above existing ground level, building access location concerns close to highway and intersection, basement access to electrical kiosk impacts on the streetscape. |
| Section 3D Communal and Public Open Space | A lack of detail regarding CPTED design issues, ventilation discharge points for the future commercial uses and the apportionment of communal open space to the future tavern and what will be allocated to future residents. In addition, the rooftop communal open space should be less hardscape with more trees and shading provided. Deep soil zones (with a minimum dimension of 6m) must be located within the front setback and also located to retain existing significant trees and to allow for the development of health root systems for existing significant and proposed trees. |
| Section 3E Deep Soil Zones and 4O Landscape Design | A lack of detail regarding onsite and offsite vegetation impacts, elevation and section plans need tree profiles to understand canopy reduction is needed during construction and long term. The landscape design is not supported, stormwater and vegetation design conflicts, lack of finished ground levels, lack of ToW and RLs to all raised planters and civil plans show a swale along part of the northern boundary but no details on its design. |
| Section 3F Visual Privacy | <p>The proposal has no regard to adjoining property having a different zone that permits a lower residential density, building fails to comply with setbacks, private open space areas are not offset, heavy reliance on screening, front setbacks do not comply with SSDCP2015. Specific building separation and visual privacy issues include:</p> <ul style="list-style-type: none"> • The setback at the north-eastern corner of the site, to the interface with Zone R3 land on Strickland Street, requires an additional setback to 9m, to suit the design guidance in ADG Part 3F. • Above Level 4, setbacks from side boundaries should increase to 9m, to suit the design criteria in ADG Part 3F. • The upper levels at the separation between Buildings A and B above Level 4 should provide 18m separation between habitable rooms and balconies, to suit the design criteria in ADG Part 3F. • At the junction of Buildings B and C, the proposal fails to comply with the minimum separation distances between balconies and bedroom windows and these should be re-configured to improve privacy. For example, balconies at B108 and C109; bedroom windows B108 and B109 and C108. |

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| 3G Pedestrian access and entries | The provision of a pedestrian connection from Strickland Street to Veno Street is desirable to assist with pedestrian connection to the commercial village area. The pedestrian entry to Building B from Veno Street should be reconfigured to be more welcoming and direct, rather than a circuitous path from a small lobby on the street via a lift to Level 1, then a long walk along a corridor to the next lift to the required floor. |
| Section 3H Vehicular Access | A lack of details regarding vertical clearance and whether waste collection vehicles can operate without impediment. Access to Building A waste collection is considered poor in design and outcome, conflict between pub patron and residential parking areas for Buildings B and C, CPTED issues, conflict between the waste/loading/unloading zone in Building B and basement parking access. |
| Section 3J Bicycle and Car Parking | A lack of detail regarding electrical vehicle charging and no car wash bays proposed. Any bicycle parking facilities must be designed to be installed in accordance with Australian Standard AS2890.3 – Bicycle Parking Facilities (as amended). |
| Section 4B Natural Ventilation | The impacts from highway and private open space and living areas oriented towards the major road, mechanical ventilation is not supported and lack of detail on plan which apartments will be mechanically ventilated. |
| Section 4D Apartment Size and Layout | A large number of apartments have depths that are noncompliant which impact access to natural light and quality of natural ventilation, apartment layout is not considered optimal (i.e. bedrooms adjacent to lift cores), snorkel bedrooms are not considered ideal to allow light and ventilation to inbound bedrooms. |
| Section 4E Private Open Space and Balconies | Internal access to private open space areas in a number of apartments are considered poor, anomalous shaped private open space should be avoided, secondary private open space areas to be considered and single aspect apartments must be explored. Alternate designs should be explored re noise attenuation, heavy reliance on screens to be avoided, lack of details regarding clothes drying (clotheslines or dryers). |
| 4F Common circulation and spaces | The long double-loaded corridors and lack of natural cross ventilation is unacceptable and will result in poor amenity for the occupants of the units. |
| Section 4G Storage | Oversized personal storage rooms within apartments are questionable and have capacity to be used as bedrooms, access to some personal storage cages within basement is compromised and will be impacted by parking spaces. |
| Section 4H Acoustic Privacy and 4J Noise and Pollution | Apartments fronting the highway will be burdened by peak traffic and train periods, impacts from future pub use and some apartments have bedrooms sharing a common wall with a living area. There is lack of detail and alternate designs are required addressing impacts from Building B waste/loading zone and adjoining and nearby sensitive receptors. |

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| | | | The ADG and TISEPP simultaneously requires that sound pressure levels are met. If all habitable room windows face towards the highway, this will require some form of acoustic plenum to permit air whilst preventing noise. |
| 4M Facades | | | Building facades are not considered appropriate to alleviate the bulk, scale and density impacts of the proposal. |
| 4N Roof design | | | More skylights could be provided to improve solar access to underperforming units. The design proposes a dark roof in "monument" which is not recommended due to the heat gain effect of the dark colours absorption factor. A light roof colour should be provided. |
| <u>4O Landscaping</u> | | | Landscaping along the street frontage to Veno Street and the Princes Highway is not in accordance with the SSDCP 2015. Trees must be planted to prevent removal later in accordance with exempt development provisions. Elevations must show canopy trees to be retained to establish if canopies are required to be modified as part of the building and establish the % of alteration. |
| 4P Planting on structures | | | Size of planter on the roof of Building A is not adequate (must be increased in size to 3m x 3m and 1.2m high). Insufficient information provided in relation to the pedestrian accesses between Buildings A and B and along the western boundary (finished ground levels and detail if steps are needed). |
| <u>4S Mixed use</u> | | | Potential impacts from the noise generation from the pub/tavern use have not been addressed. The proposed active frontage is acceptable but better separation (using setbacks and landscaping) should be provided. The design, layout and configuration of the basement requires review. There is no barrier or controls preventing tavern patrons from using residential parking spaces or gaining access to residential storage cages and the like. There are no controls preventing residents using commercial parking spaces. This conflict needs further consideration to address CPTED principles and to ensure that there are no parking shortfalls between the two land uses. |
| <u>4U Energy efficiency</u> | | | It has not been demonstrated that the proposed Silence Air boxes will provide adequate natural ventilation to units with private open space areas oriented towards the Highway. A full suite of well-considered sustainability measures should be designed and integrated into the proposal. As a minimum the proposal should provide rainwater tanks for irrigation and toilet flushing, electric systems rather than gas for domestic hot water, electric cooking, solar PV cells and electric vehicle charging. Clothesline on balconies or in communal areas should be provided to allow residents the opportunity to freely dry clothes without relying on a clothes dryer. |
| Section 4V Water Management and Conservation | | | The proposal lacks rainwater tanks and ability to use collected rainwater to water communal open space and landscaped areas or for communal sanitary facilities. |
| Section 4W Waste Management | | | Significant issues raised regarding waste collection, stacked bins not supported within waste rooms, plans do not demonstrate vehicles can enter and leave in a forward direction, lack of details on waste collection vehicle |

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| | size, lack of details regarding vertical clearance within the waste collection areas and conflict between plans regarding waste collection design. |
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c) Sutherland Shire Local Environmental Plan 2015

The assessment has established the application does not satisfy the following from SSLEP2015, primarily due to the unacceptable building height, floor area and from the lack of compliance with the ADG:

Objectives of the Zone

- Objectives (5) and (6) of the E1 Local Centre Zone as the application fails to achieve a high standard of urban design and the proposal is not compatible with the existing and/or future desired character of the Heathcote Village and/or will act as a transitional building form to the surrounding residential neighbourhood.

Urban Design (Residential Buildings)

Clauses 6.16 and 6.17 of SSLEP 2015 contain certain matters of consideration relating to urban design. The proposed development fails to satisfy these matters for consideration, in particular, the following :

Clause 6.16 Urban design - general

- (a) The proposal will not attain a high quality design and development outcomes for the urban environment of SSC.
- (b) The proposal has not been designed to:
 - Strengthen, enhance or integrate into the existing character of distinctive locations, neighbourhoods and streetscapes.
 - Contribute to the desired future character of the Heathcote village and locality.
 - The proposal has not adequately demonstrated that the natural environment will be retained or enhanced (in particularly existing significant trees and proposed trees).
 - The proposal has not adequately responded to the natural landform of the site.
 - The proposal has not adequately enhanced gateways, views and vistas.
 - The proposal has not minimised crime risk.

Clause 6.17 Urban design – residential accommodation

Clause 6.17 of SSLEP 2015 contain certain matters of consideration relating to urban design. The proposed development fails to satisfy these matters for consideration, in particular, the following:

- The proposal has not minimised adverse impacts on adjoining land, in terms of overshadowing, overlooking, views, privacy and visual intrusion from building bulk.
- The proposal has not improved the quality of the streetscape along Veno Street, Strickland Street and the Princes Highway.
- The proposal has not provided private open space of a sufficient area and dimensions for all units.
- The proposal has not minimised adverse impacts on adjoining land, in terms of size, bulk, height, scale and siting.
- The proposal does not adequately integrate with a well-designed landscaped setting.

d) Sutherland Shire Development Control Plan 2015

The assessment of the proposal has established that the application does not satisfy the planning controls contained in the development control plan for the following reasons:

- The proposed building height and density are significantly greater than what is anticipated for the character of the Heathcote Village and locality.
- The proposal is contrary to Sections 1, 2, 3, 5, 6 and 7 , Chapter 15, as it is not comparable to other developments or to a scale and density envisaged by this plan, the proposal does not retain the Heathcote Village atmosphere. The proposal does not provide the required 6m landscaping setbacks to the highway and /or Veno Street and fails to step with the topographic fall. The design of the buildings relies on excessive screening of side elevations to minimise impacts but results in a poor building aesthetic, will have unacceptable visual intrusion as the upper levels fail to be setback in accordance with the ADG and the building fails to provide an acceptable level of transition to the lower density zone.
- The proposal is contrary to Section 4, Chapter 15 as there is a lack of meaningful landscaping along the highway and Veno Street frontages, the proposal will have an unacceptable impact on onsite and offsite vegetation. Insufficient information has been provided to determine the capacity of the development to ensure the long term health and survival of proposed landscaping.
- The proposal is contrary to Section 9, Chapter 15 as apartment layouts are considered poor due to the reliance on mechanical ventilation. The site borrows the amenity from adjoining sites and fails to be designed to respond to the site's constraints.
- The proposal is contrary to Section 11, Chapter 15 as apartments rely on excessive balcony screening to mitigate heat loading in lieu of other mitigation measures. Bedrooms adjoin living areas and lift cores and will have unacceptable noise intrusion impacts apartments oriented towards the highway will have unacceptable noise and ventilation impacts.
- The proposal fails to address CPTED requirements from Section 12, Chapter 15 as residents will need to traverse the open space area allocated to the future pub to gain access to the communal open space area. In addition, there are no barrier or controls between the resident and the commercial parking areas.
- The proposal is contrary to Section 13, Chapter 15 and Chapter 36 as there are parking, access and manoeuvring issues within areas of the basement and the access thereto, including waste collection operations, that have not been resolved.
- Insufficient information has been provided to demonstrate waste collection satisfies the controls in Section 15, Chapter 15.
- Insufficient information has been provided to demonstrate drainage satisfies Chapter 38.

The height and density of the proposed development is contrary to the aims and objectives for the Heathcote Village. The application is unacceptable, as the proposal fails to be designed to ensure the development achieves acceptable transition building forms, minimises impacts to the amenity of adjacent properties, the streetscape and will fail to integrate into the existing character of the locality. As such, the proposed development is therefore not supported.

11.4. Future Pub Use

While the pub does not form part of this DA, there is an expectation that plant, equipment, services and safety barriers will be installed on the roof top of Building C. Insufficient information has been provided to demonstrate that the future pub use will not be incompatible with existing development and the proposed development, nearby land use activities and/or other sensitive receptors.

11.5. Traffic, access, parking and manoeuvrability

A number of issues were raised regarding the operation of the local road network and the design and operation of the parking area.

TfNSW have detailed that right turning movements from Veno and Strickland Streets onto the highway should be prohibited due to increased traffic safety concerns. This will inevitably impact the operation of other local intersections having to cater with the increased volume of traffic not only generated by the development, but generally from the Heathcote Village as there will be a reduction of right turn access locations. Pedestrian safety was also raised as an issue of concern and additional refuges would be sought to cater for the development.

Council's Traffic Section have advised that the proposal cannot be supported due to a lack of information and the unsatisfactory impacts upon traffic and pedestrian safety, particularly from prohibiting right turns from Veno and Strickland Streets. Issues were also raised regarding the current design of the Veno Street intersection with the highway. The long radiused corner allows for vehicles to turn left into Veno Street at speed creating an unsafe environment for both pedestrians and motor vehicles.



Image 14: Mapping extract showing the site and the Veno Street intersection with the highway, specifically showing the long radiused/sweeping corner highlighted in yellow.

Council's Engineers have advised that the application has a number of design and operation issues with the proposed basement and access thereto. A detailed list of issues was raised (refer to Section 8) seeking additional information, plans and clarification to demonstrate compliance with Australian Standard AS2890, Chapter 36 from the SSDCP2015 and Council's Active Transport Strategy requirements.

A request for more information and the issues raised above were drawn to the applicant's attention in the RFI but no response has been provided. As such, the proposal is therefore not supported.

11.6. Waste Management

The application cannot be supported due to a lack of information to enable an assessment of compliance against Council's Environmental Specifications for waste collection and other relevant guidelines. Insufficient information was provided demonstrating waste collection can be undertaken in an efficient, effective manner, the need for swept paths details to ensure the minimum vertical clearance for the waste collection vehicle, and clarification on waste collection operations.

The architectural and the waste management plans failed to establish that there is sufficient vertical clearance in the waste collection area adjacent to Building A to allow for bin collection. Concerns were raised regarding vehicular conflict between the waste collection operations for the future tavern and its access, particularly as the access doors to the loading zone for waste collection, Building B open inwards. This will create a conflict point as the waste collection vehicle will need to wait within the basement access portal area until the doors open and for the vehicle then to reverse into the loading/unloading zone. Commercial and residential vehicles entering and leaving the basement to and from Veno Street will be impeded by the stationary waste collection vehicle.

Issues were also raised with the waste management report and the plans contained within as they did not align with the architectural plans. For example:

- The architectural plans did not show how bins will be able to move from the bin storage area to the waste collection zone.
- 240L bins were shown on the plans whereas the report showed 660L.
- Stacked bins were not supported.
- No swept paths for the waste vehicle were shown.
- The report did not specify the type of vehicle used to service the site.

These issues were drawn to the applicant's attention in the RFI, but no response has been provided. As such, the proposal is therefore not supported.

11.7. Earthworks

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

The relevant matters have not been addressed, in particular:

- The impacts to the watertable as a result of the excavation.
- The lack of information on the plans showing tree protection and structural root zones for onsite and offsite vegetation not only from the proposed excavation and building works, but from the construction and installation of drainage infrastructure.

These issues were drawn to the applicant's attention in the RFI, but no response has been provided. As such, the proposal is therefore not supported.

11.8. Stormwater Management

Clause 6.4 of SSLEP 2015 and Chapter 38 from SSDCP2015 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. These matters have not been addressed. Council's Engineering Section do not support the proposal due to a lack of information to enable an assessment of compliance as discussed in Sections 8 and 9 in this report.

These issues were drawn to the applicant's attention in the RFI, but no response has been provided. As such, the proposal is therefore not supported.

11.9. Terrestrial biodiversity

The subject land is identified as containing 'Biodiversity' on the Terrestrial Biodiversity Map and therefore Clause 6.5 of SSLEP 2015 is applicable. Clause 6.5 requires Council's assessment to consider certain matters. Council must consider the potential adverse impact of the development on vegetation/ flora, fauna, biodiversity and habitat. Of further consideration is the conservation and recovery of flora and fauna and their habitats and the potential to fragment or diminish the biodiversity structure, function and connectivity of the land.

The application fails to satisfy the relevant matters for consideration, in particular sufficient information to demonstrate that the proposal will have minimal impacts upon onsite and offsite vegetation. The application and the accompanying arborist report have not accurately calculated and/or delineated the tree protection and/or the structural root zones and therefore it cannot be established if the encroachment into the trees proposed to be retained is less than 10%.

The application has also failed to provide a pruning assessment to assess the level of impacts to nearby trees. Therefore, the extent of canopy reduction during the construction and the occupation stages of the development cannot be established. The application does not satisfy Clause 6.5 of SSLEP2015 as the applicant has failed to provide the necessary level of information to enable a comprehensive assessment of impacts.

Further, Clause 6.5 requires Council to be satisfied of certain matters prior to development consent being granted. These matters include the design of the development to avoid or minimise the impact; management to minimise the impact if it cannot be avoided and mitigation if the impact cannot be minimised. These matters have not been addressed as highlighted above and in Section 8 of the report where Council's Landscape Officer has advised substantial deficiencies in the level of information and plans to enable a comprehensive assessment of impacts for both onsite and offsite vegetation.

These issues were drawn to the applicant's attention in the RFI, but no response has been provided. As such, the proposal is therefore not supported.

11.10. Threatened Species

Threatened species are particular plants and animals that are at risk of extinction and include threatened populations and endangered ecological communities. Threatened species, populations and ecological communities are protected by the Biodiversity Conservation Act 2016, NSW Fisheries Management Act 1994 and the Commonwealth Environmental Protection and Conservation of Biodiversity Act 1999. Council has mapped the known threatened species, populations and endangered ecological communities. Following a review of this information and an inspection of the site it is concluded that the proposed development will not result in any significant impact on threatened species, populations and endangered ecological communities. A review of Council's mapping shows that a *Miniopterus australis*, commonly known as the Little Bent-winged Bat, was sighted at 1 Strickland Street in January 2018 (approximately 74m north-east of the site).

According to the NSW Office of Environment and Heritage (OEH) , the bat is listed as vulnerable in New South Wales, but not listed as a threatened species pursuant to the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999. There have been no known sightings of the bat on the subject site, and it appears that the vegetation type on the subject land is different to the floristics of the vegetation located at 1 Strickland Street, particularly as the subject site contains sparse vegetation compared to the site where to bat was sighted.

Based on the merits of the proposal, it is concluded that the development will have minimal impacts upon the bat and no further assessment or consideration of potential impacts is required.

11.11. Heritage

There are two items of local heritage significance that are located opposite the site, being:

- Item 1708 House, 1 Wilson Parade, Heathcote.
- Item 1706 Former Railway Cottage, 1328 Princes Highway, Heathcote.

The mapping extract below shows the location of the two heritage items and their location in relation to the development site:



Image 15: Mapping extract showing the site highlighted in yellow and the two items of local heritage significance

Council's Heritage Officer has advised that the proposal will have minimal impact upon the setting and the significance on both items as they are located on the other side of the Princes Highway, which provides an appropriate visual separation buffer.

11.12. Archaeological Sensitivity

Council records indicate that the subject site is rated medium in terms of Archaeological Sensitivity. A site inspection did not reveal any evidence of shell material or significant sandstone features within the development zone. The proposal does not warrant an Aboriginal Archaeological Study being undertaken. If approval could be granted, standard conditions of consent would be imposed to ensure appropriate actions are undertaken in the event of remains and/or artefacts are unearthed during the construction phase.

12.0 DEVELOPMENT CONTRIBUTIONS

- a) 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 7.12 Development Contribution Plan 2016. This contribution is based upon the proposed cost of the development and has been calculated at 1% of \$70,715,000. (the estimated cost of development identified on the development application form). If consent were recommended, a Section 7.12 levy for the proposed development of \$707,150.00 would be applicable.
- b) As an assessment of compliance cannot be undertaken having regard to the gross floor area, the Housing and Productivity Contribution amount cannot be established.

13.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

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

14.0 CONCLUSION

The subject land is located within the E1 Local Centre Zone pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being shop top housing, is a permissible land use within the zone with development consent.

In response to the public notification, 18 submissions were received. The issues raised regarding traffic impacts, building height, compatibility, character, vegetation impacts and drainage are considered substantive.

The proposal includes two written contraventions to the maximum building height afforded by the HSEPP. The assessment of the application has established that the argument within Clause 4.6 requests is not agreed with for the following reasons:

- The application does not benefit from the additional gross floor area and/or the additional building height permitted by the HSEPP as the proposal fails to provide the minimum 10% of floor area to be used for affordable housing.
- Both requests fail to adequately address the provisions of Clause 4.6(3).
- The proposal is inconsistent with the objectives of the building height development standard within Clauses 4.3 from SSLEP2015.
- The proposal is inconsistent with the E1 zone objectives.
- Based on the merits of the application, the Clause 4.6 is not well founded and are not supported.

The proposal includes a significant number of variations to the controls contained in the ADG and the SSDCP2015. These variations are not supported as the application lacks merit and the proposed building form and density do not complement or is within the future character of the locality as permitted and envisaged by the SSLEP2015, and particularly as the application does not benefit from the building height and floor space uplift permitted by the HSEPP.

It is acknowledged that the site is appropriately zoned for higher density development, which is complemented by the site's large area and proximity to public transport services, however, the proposed scheme is significantly higher and of a higher density than that espoused by planning controls and the future character of Heathcote Village. It is recognised that the design incorporates a number of infill affordable housing apartments in response to the housing shortfall. The provision of infill affordable housing is considered to be much needed not only in throughout the Sydney Metropolitan and broadly across the state. In the circumstances of this application and the location of the site, the provision of additional housing stock should not be at the expense of the future desired character and urban design outcomes permitted and envisaged by the applicable environmental planning instruments and planning controls that relate to the site and this type of development form.

There are very few developments within the Heathcote Village exceeding three storeys. The village is low density in character and the proposal has failed to comprise a building that is compatible with the surrounding land use activities and to act as a transitional building form to the surrounding residential neighbourhood.

The application has been assessed having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The application will result in any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. DA24/0369 cannot be supported for the reasons outlined in this report.

The officer responsible for the preparation of this report is the Senior Manager, Development Services (Sue McMahon) who can be contacted on 9710 0333.