

PRE-GATEWAY REVIEW – Information Assessment and Recommendation Report

LGA:	Sutherland Shire	
Amended LEP:	Sutherland Shire Local Environmental Plan 2015	
Address:	10-14 Merton Street, Sutherland	
Reason for review:	☒ Council notified proponent it will not support proposed amendment	
Is a disclosure statement relating to reportable political donations under s147 of the Act required and provided?	☐ Provided ☒ N/A Comment:	

1. SUMMARY OF THE PROPOSAL

The planning proposal ([Tab 1](#)) seeks to amend the building height and floor space ratio controls applicable to 10-14 Merton Street, Sutherland (the site). The site, comprising Lot 151 DP 1020267 and Lot 152 DP 1020267, currently contains two single dwelling houses and associated outbuildings. The proponent states that the site has a total area of 3147 sqm, while Council notes the site is approximately 3,110 sqm.



Figure 1: Location of Site (outlined in red). Source: Nearmap

The south sloping site is located on the eastern side of Merton Street with Sutherland Public School located directly opposite to the west. Adjoining the site to the east is St Patrick's Primary School and College. There are two single-storey commercial buildings adjoining the site immediately to the north and a residential aged care facility to their east. To the south of the

site, at No.16-18 Merton Street, are two adjoined rows of three storey townhouses which have a setback of approximately 2 metres from the southern boundary of the subject site. The surrounding schools and aged care facility consist of one, two and three storey buildings and have a maximum building height of 20 metres.



Figure 2: Site Location and Context (site outlined in red). Source: Shire Maps

The planning proposal seeks to amend the Sutherland Shire Local Environmental Plan (SSLEP) 2015 applying to the site by increasing the building height from 20 metres to 36 metres and increasing the floor space ratio from 1.5:1 to 3:1. No change is proposed to the site's R4 High Density Residential zoning.

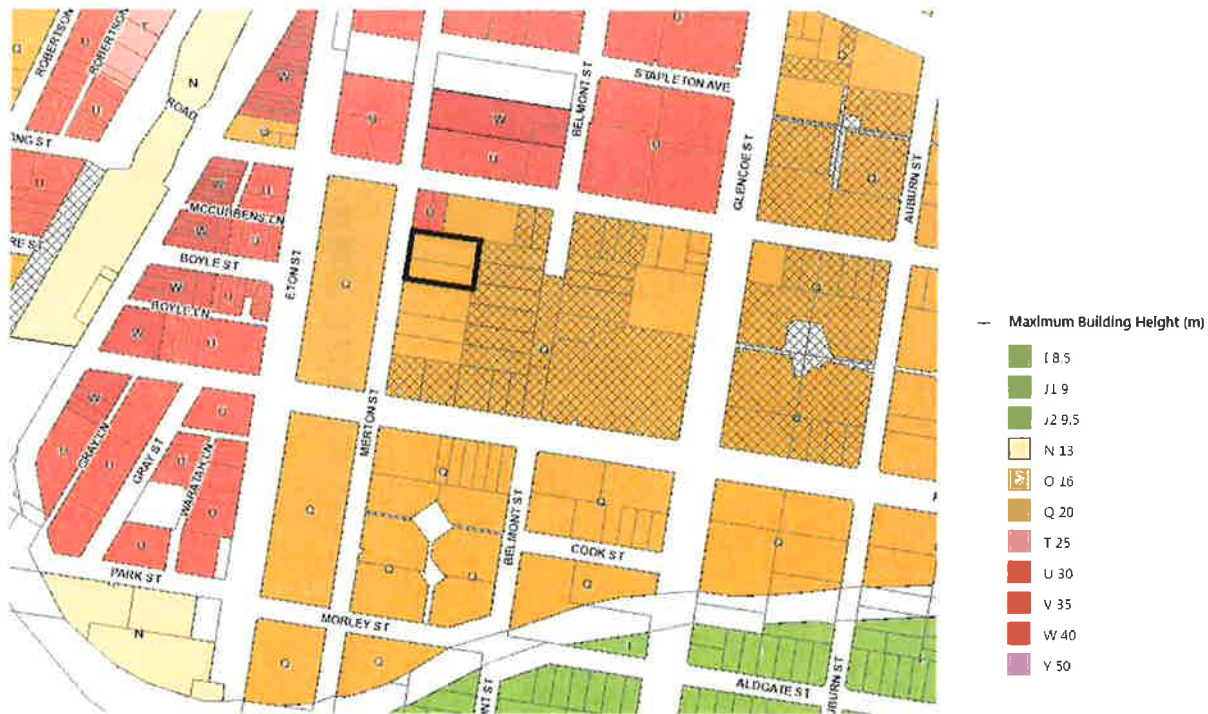


Figure 3A: Current Building Height Control (site outlined in black).
Source: Sutherland Shire LEP Map Viewer

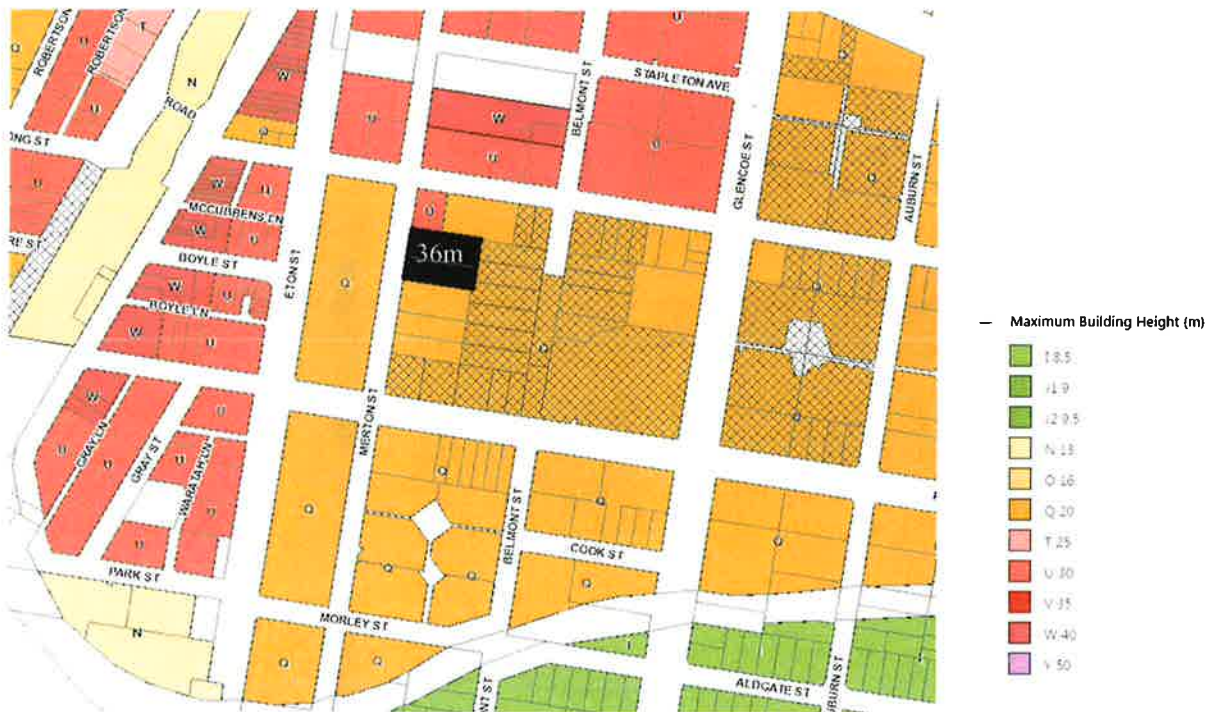


Figure 3B: Proposed Building Height Control (site coloured in black).
Source: Sutherland Shire LEP Map Viewer

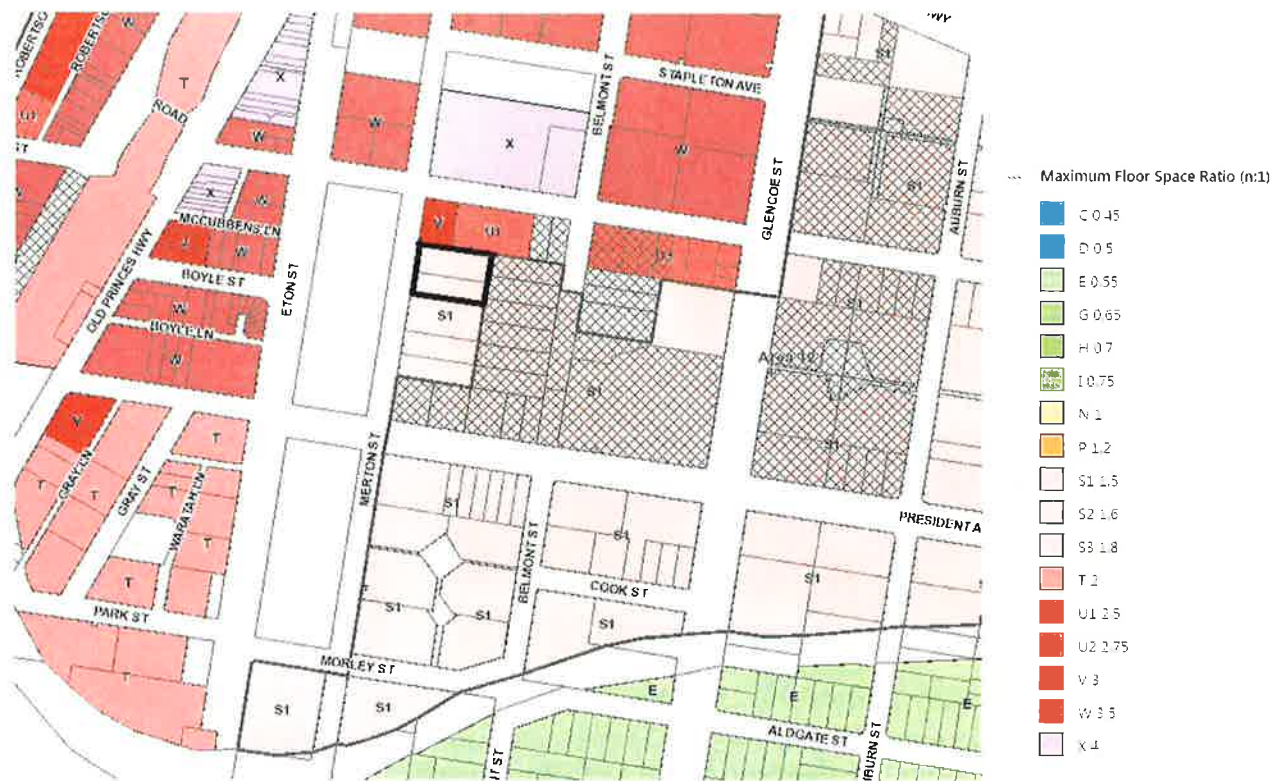


Figure 4A: Current Floor Space Ratio Control (site outlined in black).
Source: Sutherland Shire LEP Map Viewer



Figure 4B: Proposed Floor Space Ratio Control (site outlined in black).
Source: Sutherland Shire LEP Map Viewer

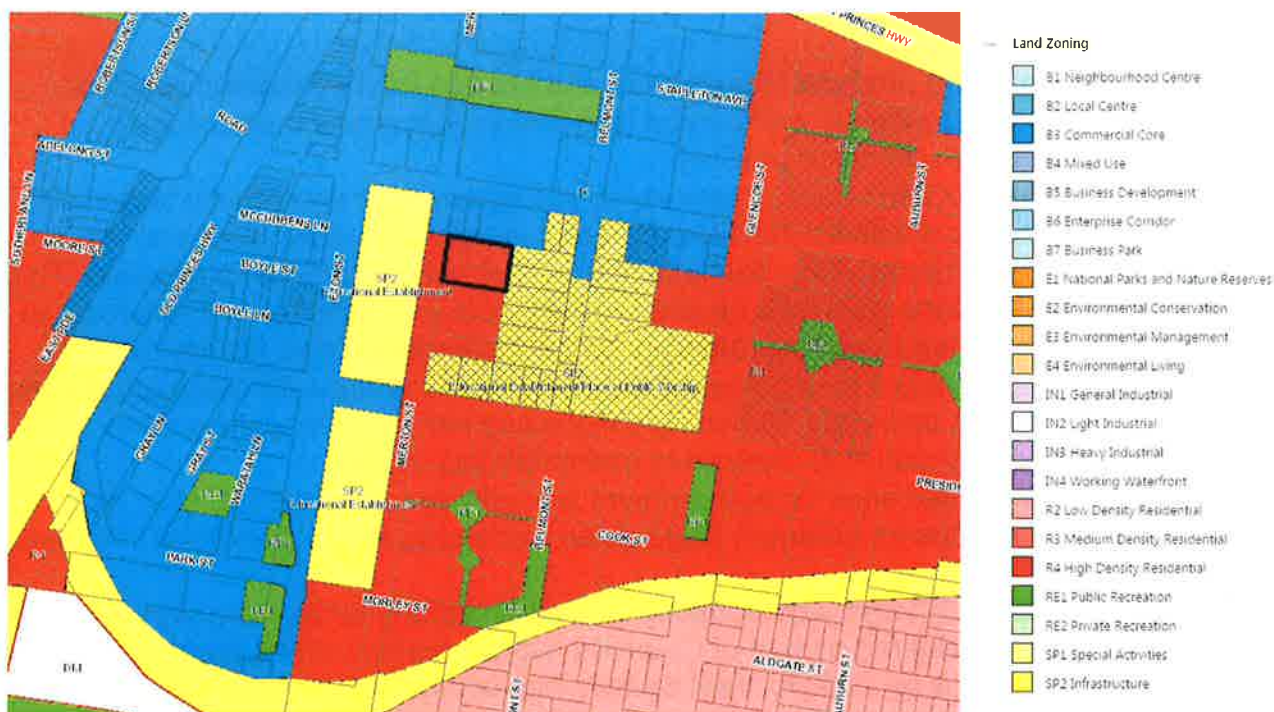


Figure 5: Current and Proposed Zoning (site outlined in black).

Source: Sutherland Shire LEP Map Viewer

Strategically, the site is well located with good access to commercial and retail services, schools and public transport routes. Sutherland Station is approximately a 5-minute walk (400 metres) north-west of the site. The site is located on the fringe of the Sutherland commercial core and is adjacent to B3 Commercial Core zoned land to the north. The adjacent commercial properties, 152-154 Flora Street, do not front Merton Street and currently consist of 1-2 storey developments however controls allow for a maximum building height of 30 metres. The two storey aged care facility, 144-150 Flora Street, is also zoned B3 Commercial Core and has a maximum building height of 20 metres.

The Department recognises the opportunity the site offers in terms of providing additional housing in a location well located close to public transport, retail and services. However, based on evidence provided with the planning proposal, the Department is concerned that the proposal is likely to have an undesirable impact on the character and amenity of the area. Key concerns include excessive bulk and scale and overshadowing impacts on neighbouring properties.

2. REQUIREMENTS UNDER SECTION 55 OF THE EP&A ACT

2.1 Objective and intended outcomes:

The applicant states the objective of the proposal is to allow for a 36 metre residential building above basement car parking. The proposal does not include a clear list of intended outcomes.

2.2 Explanation of provisions:

The proposal seeks to amend the following provisions of the SSLEP 2015 relevant to 10-14 Merton Street, Sutherland:

- increase the floor space ratio (FSR) on the site from 1.5:1 to 3:1; and
- increase the maximum building height control on the site from 20m to 36m.

Note: At the time the planning proposal was prepared and submitted to Council (December 2014), SSLEP 2006 was the current LEP.

2.3 Justification:

The proponent states the proposal is supported and justified for the following reasons:

- The subject site is supremely well located adjacent to Sutherland town centre commercial and administration precincts.
- The site is within a 250m radius of the railway station which is significantly closer than other sites further to the south that were included in a previous town centre study.
- Six (6) storey height limits within Sutherland have not been viable for many years. This has been proven by the poor take up of development in that zone. An improvement to site viability is required to activate development in Sutherland Town Centre.
- The site has been subject to ongoing refinement of building forms for many months in a quest to examine its capability. Preliminary modelling has evolved to exhaustive modelling and overshadowing analysis to understanding impact.
- Many of the earmarked sites for development are unlikely to ever be taken up as development sites due to extremely fragmented ownership and high existing commercial yields.
- This site is sufficiently large, appropriately located and ready for development and these sites should be considered as part of Council's overall strategy which seeks to provide 10,100 new dwellings by 2036 to meet Sydney Metropolitan Strategy targets.
- The proposal seeks to complement the State Government's and Council's initiative to stimulate jobs and provide new higher density in town centres.
- The Sydney Metropolitan Plan notes Sutherland as a key growth centre in the Shire over the next 25 years and even notes its potential to become a major centre.
- This proposal will assist in providing a more affordable and smaller housing option than the more traditional large house which has underpinned much of the Shire for many decades.

2.4 Mapping:

The proposal includes a zoning map for the site relevant under SSLEP 2006. It also includes proposed mapping for the site showing controls relevant to the draft SSLEP 2013 Version 3 (this was the most recently exhibited version of the SSLEP at the time the proposal was submitted to Council in December 2014). Some additional mapping and images are also provided within the attached Urban Design Report (UDR) ([Tab 2](#)). Updated mapping relevant to SSLEP 2015 will need to be provided should the proposal progress.

2.5 Community consultation:

The proponent proposes to carry out community consultation in accordance with the Gateway determination. A public exhibition period of 28 days is recommended should the proposal proceed to Gateway. Additionally consultation with the following public authorities is recommended: Transport for NSW, Roads and Maritime Services, Sydney Water and other relevant utility authorities, Department of Education and Communities and NSW Department of Health.

In the covering letter ([Tab 3](#)) submitted to the Department with the pre-Gateway review, the applicant notes consultation has occurred with Council regarding amended building form and reduced controls for the site. A meeting was held between Council's Mayor, General Manager and Director of Planning on 17 June 2016 regarding amendments to the proposal that would result in a reduced scale development. An increase in FSR from 1.5:1 to 2.5:1; and an increase in the building height from 20m to 30m was proposed.

According to the applicant these controls received initial/informal support from Council. However, Council included no reference to this meeting, or reduced controls, within its 29 September 2016 response to the pre-Gateway review. As the role of a pre-Gateway review is to

consider the planning proposal as submitted to Council, the Department considers this information to be outside the scope of the pre-Gateway review.

3. VIEWS OF COUNCIL AND AGENCIES

3.1 Comments from Sutherland Shire Council

The Department received Council's response to the pre-Gateway review on 29 September 2016 (Tab 4).

Council considered the planning proposal at its meeting on 21 March 2016 and resolved not to support the proposal because it:

- would result in development that is inconsistent with the character, bulk and scale of surrounding development;
- would unreasonably overshadow existing residential buildings to the south; and
- fails to demonstrate that future units will meet the minimum amenity standards established by the Apartment Design Guidelines (ADG).

In its response to the pre-Gateway review, Council reiterated its opposition to the proposal, noting concerns regarding:

- the ability of the proposal to achieve a reasonable transition in scale to the surrounding lower density residential buildings;
- higher density development on the site would compromise the ability to preserve a reasonable level of amenity for existing residents of 16-18 Merton Street; and
- the proposal has failed to consider the immediate planning context, which is largely a lower density residential area.

Furthermore, Council raises concern that the built forms presented do not meet the requirements of the ADG, particularly with respect to building separation/setbacks, solar access, and communal open space, noting the proposal has not addressed the impacts of greater development on the site to the north; particularly building separation requirements. Council concluded the proposal has not demonstrated compliance with its Housing Strategy, strategic merit, nor individual merit. It notes the proposal does not adequately consider the immediate planning context and will result in adverse impacts to adjoining properties.

Recent Planning History

Council notes the development standards applicable to 10-22 Merton Street were carefully considered during the preparation of SSLEP 2015. The first exhibited version of the then SSLEP2013, was exhibited between March and May 2013 and showed an increase of height and density from 3 storeys and 1:1 FSR to 20 metres (6 storeys) and 1.5:1 FSR. Council then increased the height and density to 40 metres and 4:1 FSR for the second exhibition of the draft plan, which occurred in August and November 2013. In September 2013, Council referred this draft SSLEP to the Minister for an independent review. The April 2014 Independent Review Report suggested the increased height and FSR controls (as outlined in the draft SSLEP) were not consistent with good planning practice. It was noted that these decisions should not have been taken without shadow diagrams to illustrate the impact of the proposed height limit.

In response to the recommendation made by the independent review, Council prepared detailed shadow diagrams to determine the amenity impacts of proposed development up to 40 metres and 3:1 FSR. The shadow diagrams highlighted a 40 metre height limit would result in detrimental overshadowing impacts on the existing residential flats to the south and the school

to the west. Council then reduced the FSR to 3:1, but retained the 40 metre height limit for the third exhibition of the draft plan in September and October 2014.

Throughout this period, Council officers undertook significant design analysis and advised that the scale of development as exhibited was not appropriate. The conclusions reached were that the proposed built forms would compromise the ability to achieve a reasonable transition in scale to the surrounding lower density residential flat buildings and would compromise a reasonable amenity for residents of 16-18 Merton Street. In essence, development at the height and density exhibited would result in a large built form that would stand as a tower in its immediate context. Council therefore concluded the most suitable height for the land was 20 metres and 1.5:1 FSR. The site was subsequently zoned R4 High Density Residential under the new Sutherland Shire LEP 2015, permitting a maximum FSR of 1.5:1 and a 20m height limit.

In 2013, Council had nominated an area of Sutherland including 10-22 Merton Street, as an Urban Activation Precinct. However this was never progressed.

4. PROPOSAL ASSESSMENT

4.1 STRATEGIC MERIT ASSESSMENT

A Plan for Growing Sydney

A Plan for Growing Sydney was published in December 2014, around the same time this planning proposal was submitted to Council. The original proposal therefore does not provide an assessment against the Plan. An assessment against *A Plan for Growing Sydney* was included within the covering letter attached to the proposal. Should the proposal progress to Gateway, it is recommended a detailed assessment of consistency with *A Plan for Growing Sydney* is included within the proposal document.

The applicant's submission notes the proposal is consistent with the Metropolitan Strategy; given Sutherland is earmarked to potentially grow to become a Major Centre. It also notes the Draft Subregional South Strategy identifies the Local Government Area (LGA) to grow by approximately 10100 additional dwellings by 2031, with 80% of these located close to centres. In this regard the proposal is consistent with the Metropolitan Strategy as it will increase housing supply in an area that has been identified as a potential growth hotspot.

The site is located in the South Subregion and is identified as being within an Urban Renewal Corridor. The site is located within an established local centre close to Hurstville and Kogarah Strategic Centres. The proposal is considered generally consistent with the directions and principles of *A Plan for Growing Sydney*, as it seeks to accelerate housing supply and local housing choices in a local centre well serviced by public transport.

Specifically, the proposal is consistent with the following directions and actions in the Plan:

- Direction 2.1, and Actions 2.1.1 and 2.1.2, as it would increase local housing supply and choice in an established centre serviced by frequent public transport;
- Direction 2.2, and Action 2.2.2, as it would facilitate urban infill and increase housing production around a local centre and transport corridor;
- Direction 2.3, Action 2.3.3, as it would provide a range of housing choices to suit different needs and lifestyles;
- Direction 3.1, as it would promote the provision of new housing within an established Sydney suburb;

- Direction 3.3, as it would support a healthy built environment by providing housing in walking distance to public transport and existing employment and services; and
- South Subregion priority, as it would help to accelerate housing supply, choices and affordability and build great places to live.

Local Strategy

In August 2014, Council published a Housing Strategy as a framework to guide to future housing supply to 2031. The Housing Strategy aims to increase the potential for small dwellings to be developed, particularly in locations close to centres with good access to jobs, shops, public transport, health facilities, community centres and parks. The Strategy focuses density in the commercial core of centres, allowing density to 'step down' to lower density areas. Greater development standards for the site would allow for increased housing supply, as well as the opportunity for the provision of smaller dwellings. However, as this risks creating adverse amenity impacts on the immediate locality, the proposal is considered to be only partially consistent with the local Housing Strategy.

Section 117 Directions

The proposal is consistent with the following relevant Section 117 directions:

- Direction 3.1 Residential Zones;
- Direction 3.4 Integrating Land Use and Transport; and
- Direction 7.1 Implementation of A Plan for Growing Sydney (2014).

SITE-SPECIFIC MERIT ASSESSMENT

Existing land use

The site is located on Merton Street, a street characterised predominately by low and medium density development. The site is located on a section of Merton Street which falls to the south. As noted above, the site is immediately adjacent to its south to a relatively new (10 year old) three-storey townhouse development at 16-18 Merton Street. The townhouse development includes extensive habitable rooms facing north. To its east and west the site is further surrounded by low density SP2 Educational Establishment zoned land. This land is developed largely for school purposes and consists of 1-3 storey buildings and extensive open space play areas. To the site's north is a low rise residential aged care development and two one storey commercial shop buildings. A maximum building height of 20 metres applies to the aged care and school sites. Given the age and use of adjoining development, redevelopment of the precinct is considered unlikely in the short to medium term.

Approved and likely future use of land

On 15 June 2016, DA15/1032 was approved for the demolition of an existing dwelling and construction of a 6 storey residential apartment building at 10 Merton Street, Sutherland. Further, on 30 June 2016, DA16/0833 was lodged for the construction of a new 6 storey residential flat building at 12-14 Merton Street, Sutherland and is currently under consideration by Council. These proposals are permissible with Council's consent within the R4 High Density Residential zone and comply with the relevant provisions of SSLEP 2015. The development of the site under the current controls therefore appears to be a viable option, contrary to the stated views of the applicant.

Council notes the site is constrained both by its topography and the location of adjoining development. The development on the land to the site's south has a setback of only 2 metres from its boundary making it difficult to achieve a very large building on the subject site. As this

section of Merton Street is sloping to the south, overshadowing impact from new development on properties to the south will be significant. The Department is of the view that redevelopment of the site needs to maintain a reasonable degree of solar access to the neighbouring building.

Proposed use of land

The proposal seeks to facilitate a 10-11 storey apartment building consisting of approximately 100 units above underground car parking.

Current development controls applying to the site under SSLEP 2015:

Control under SSLEP 2015	Explanation
Zoning	R4 High Density Residential
Height	20 metres
FSR	1:5:1
Landscaped Area	30%

The proposal seeks to amend the development controls for the site as follows:

Control under SSLEP 2015	Explanation
Zoning	R4 High Density Residential
Height	36 metres
FSR	3:1
Landscaped Area	30%

Built Form and Overshadowing

The UDR attached to the proposal assessed 3 types of built form to compare impacts and SEPP 65 compliance against height to FSR ratios of 40m/3:1 (option 1), 36m/2.9:1 (option 2) and 30m/2.6:1 (option 3). From the modelling the study concluded that the 36m/2.9:1 ratio (option 2), in the scaled tower form as presented, would result in the least effect to the immediate and local amenity, specifically to the adjoining school and townhouse development to the south. Façade diagrams of the preferred built form (option 2 - 36m/2.9:1) are presented below:

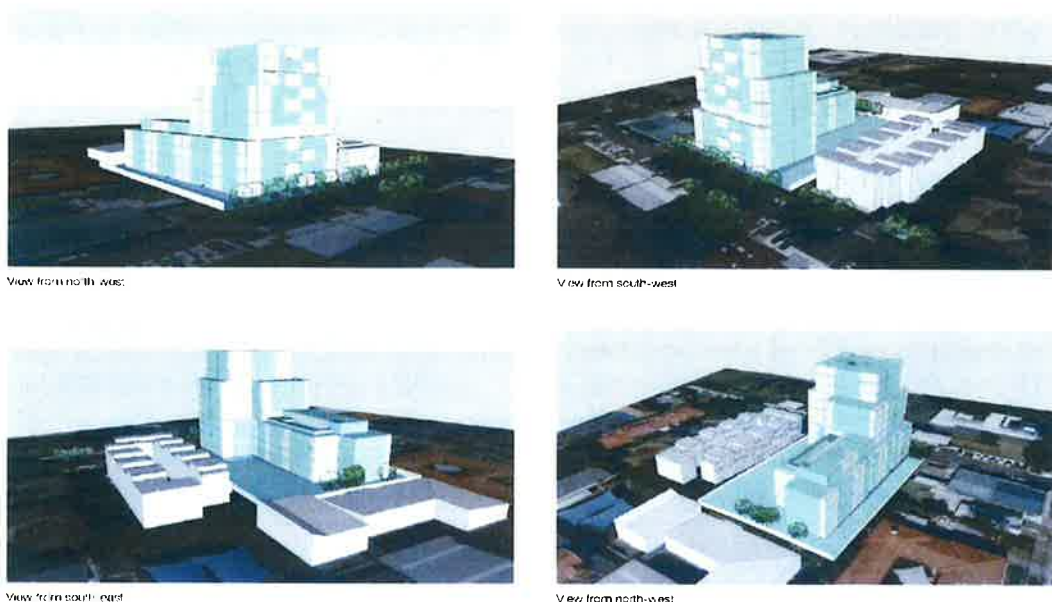


Figure 6: Option 2 - 36m height & 2.9:1 FSR - Built Form Façade.

Source: Urban Design Report by Geoform Design 2014

The proponent considers the amenity impacts of the development reasonable in the current context. The proposal acknowledges that the overshadowing analysis in the UDR illustrates that the development will result in overshadowing impacts on adjoining properties. It notes that the proposed impacts will be reduced and refined during the DA stage.

The proponent also notes that issues associated with overlooking and privacy to the school and southern properties, can be considered further at the DA stage. It also notes that the proposed stepped building form and substantial upper level setbacks will greatly assist in minimising any unacceptable overlooking.

Council notes the proposal has not demonstrated compliance with the ADG in achieving the minimum solar access and ventilation requirements. Further, no account is taken of overshadowing from potential 30m and 20m buildings that can be accommodated on the adjoining sites to the north. Whilst such impacts would need to be assessed at the DA level it is considered likely that a significant level of over shadowing will be created by these neighbouring buildings. This factor must be taken into account to determine an appropriate built form for the subject site. The Department agrees with Council's view that for these reasons the planning proposal has not demonstrated that the proposed increase in height and density will result in a building that will provide an adequate level of amenity for future residents.

Alternative Proposal

In its cover letter submitted with the pre-Gateway review the proponent has suggested that an alternate built form with a 30m building height and 2.5:1 FSR may be more appropriate for the site. The proponent has provided an amended UDR showing amalgamation of the land and a nine storey building. Whilst this built form is likely to reduce amenity and overshadowing impacts it is still considered an overdevelopment in the context of the site.



Figure 7: Preferred built form as presented in amended UDR June 2016

Source: UDR prepared by Aleksander Design Group

Heritage

Sutherland Public School, located directly west of the site, is heritage listed. The heritage buildings are concentrated towards the Flora Street and Eton Street frontages and as such, are

not located within the streetscape context of the site. This local heritage is therefore not considered to be a major issue in the context of this planning proposal.

Public transport

The site is well serviced by public transport infrastructure. The site is within approximately 400 metres walking distance of Sutherland Train Station, with regular services to Cronulla, Hurstville, Kogarah, Central and Bondi Junction. The site is also within walking distance of regular bus services providing connections to various locations including Miranda, Engadine and Cronulla.

Traffic and car parking

The proposal suggests appropriate car parking can be provided within a basement parking area. A traffic study has not been provided with the planning proposal. It is recommended the proponent undertake a traffic assessment should the proposal proceed to Gateway.

Infrastructure and Services

The site has access to existing infrastructure, utilities and services. As the proposal would intensify development on the site, it is recommended that relevant state infrastructure service providers are consulted, including Sydney Water, Energy Australia, NSW Department of Health and NSW Department of Education and Communities, should the proposal proceed to Gateway.

4 BACKGROUND SUPPORTING INFORMATION

1. Adequacy of existing information

The proposal is supported by the following documentation:

- pre-Gateway review application form;
- email notification from Jordan Windenstrom at Sutherland Council dated 17 June 2016;
- planning proposal, prepared by DDC Urban Planning dated December 2014;
- UDR by Geoform Design dated December 2014;
- site survey dated December 2014;
- UDR shadow modelling expert opinion by Steve King dated December 2014;
- timeline of events and meetings;
- copies of all relevant correspondence between the proponent and Sutherland Council; and
- a copy of the Council report of refusal dated 21 March 2016 prepared for the proposal.

Is the supporting information provided more than 2 years old? Yes No ☒

If 'yes', explain/detail currency of information

Is there documented agreement between the proponent and the council regarding the scope/nature of supporting information to be provided? Yes ☐ No ☒

Is there evidence of agency involvement in the preparation of any supporting information or background studies?

Yes ☐ No ☒

2. Requirement for further information

No further information is required.

5 CONCLUSION

The proposal demonstrates strategic merit in that it provides additional housing on a site that has strong public transport links, good access to jobs and services, open space and community facilities. It is generally consistent with objectives and directions under *A Plan for Growing Sydney*, relevant State Environmental Planning Policies, section 117 Directions and local policies.

However the proposal fails to demonstrate site-specific merit as the proposed bulk and scale of development is considered excessive and out of character with its immediate context, with likely adverse local amenity impacts. The Department considers the future built form of the site should facilitate a more appropriate transition of scale to allow a reasonable amenity to surrounding properties, specifically the existing residential flats at 16-18 Merton Street.

The Department considers the redevelopment of the consolidated site under the existing controls to be appropriate in the current context. However, in view of the strategic merit of the proposal, it is recommended the proposal be referred to the Sydney East Joint Regional Planning Panel for independent review.

It is **recommended** the Panel consider the following issues in making its recommendation as to whether the planning proposal should proceed to Gateway:

- the bulk and scale of the proposed development in relation to the current, and likely future, scale and character of the area;
- overshadowing and amenity impacts on surrounding properties, particularly the residential development at 16-18 Merton Street;
- the requirements of the ADG and potential impacts resulting from greater development to the north of the site; and
- the feasibility of the redevelopment of the site under existing controls.

RECOMMENDATION

It is recommended that the Deputy Secretary form the opinion that the request is **eligible** for review and the request should **proceed** to review by the Sydney East Joint Regional Planning Panel.

Endorsed by:



Karen Armstrong 4/11/16
Director, Sydney Region East



Ashley Albury 14-11-2016
Acting Executive Director, Regions



Marcus Ray
Deputy Secretary
Planning Services

26/11/2016

