

## SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	2019SSH001
DA Number	DA18/1203
LGA	Sutherland Shire Council
Proposed Development	Demolition of existing structures and construction of a residential flat building with basement car parking and affordable rental housing component
Street Address	306 – 308 Taren point Road, Caringbah
Applicant/Owner	CHLY Pty Ltd
Date of DA lodgement	12 October 2018
Number of Submissions	4
Recommendation	Deferred Commencement – Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	The application is referred to the SSPP as the development is for affordable housing under the State Environmental Planning Policy (Affordable Rental Housing) 2009. Development application that have a capital investment value of more than \$5 million for affordable housing purposes meet relevant criteria under the State Environmental Planning Policy (state & Regional Development) 2011 and are required to be determined by SSPP. The applicant's submission indicated the affordable housing component of the development has a CIV of \$5,052,277.00.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (Affordable Rental Housing) 2009</li> <li>State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65)</li> <li>State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>Sutherland Shire Local Environmental Plan 2015 (SSLEP2015)</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment</li> <li>Sutherland Shire Development Control Plan 2015 (SSDCP 2015)</li> <li>Section 7.11 Contributions: <ul style="list-style-type: none"> <li>2016 Shire Wide Open Space and Recreational Facilities Contribution Plan</li> <li>2016 Community Facilities Plan</li> </ul> </li> </ul>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> <li>Architectural, Landscape and Stormwater Plans</li> <li>Clause 4.6 request for Building Height</li> </ul>
Report prepared by	Teille Whiteman - Environmental Assessment Officer Sutherland Shire Council
Report date	

### 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 / No

### 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 / No / Not  
Applicable

*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 / No / Not  
Applicable**

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

**Yes / No / Not  
Applicable**

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**Conditions**

Have draft conditions been provided to the applicant for comment?

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

**Yes / No**

## REASON FOR THE REPORT

The application is referred to the SSPP as the development is for affordable housing under the State Environmental Planning Policy (Affordable Rental Housing) 2009. Development application that have a capital investment value of more than \$5 million for affordable housing purposes meet relevant criteria under the State Environmental Planning Policy (State & Regional Development) 2011 and are required to be determined by SSPP. The applicant's submission indicated the affordable housing component of the development has a CIV of \$5,052,277.00.

## PROPOSAL

The application is for demolition of all existing structures and the construction of a residential flat building (RFB) comprising 32 units (50% to be used as Affordable Rental Housing) over 5 levels with basement car parking at 306 – 308 Taren Point Road, Caringbah.

## THE SITE

The subject site is located on the eastern side of Taren Point Road, north of the intersection of Taren Point Road and the Kingsway. The site comprises 2 parcels of land with a total site area of 1534m<sup>2</sup>. Caringbah Centre and railway station is approximately 550m to the south east.

The site was rezoned from R2 Low Density Residential to R4 High Density Residential under SSLEP 2015 and is situated in the Caringbah North Residential precinct.

## ASSESSMENT OFFICER'S RECOMMENDATION

### THAT:

1. Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to the 16m building height development standard satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that the 16m building height development standard be varied to 19.4m (21.25% variation) in respect to this application.
2. That Development Application No. 18/1203 for demolition of existing structures and construction of a residential flat building with basement car parking and affordable rental housing component at Lot 17 DP 660818, Lot 3 DP 359066 308 Taren Point Road, Caringbah, 306 Taren Point Road, Caringbah is determined by the granting of a deferred commencement development consent subject to the conditions contained in **Appendix A**.

## **ASSESSMENT OFFICER'S COMMENTARY**

### **1.0 DESCRIPTION OF PROPOSAL**

The proposal is for demolition of all existing dwelling houses and ancillary structures on the site and the construction of a residential flat building comprising the following:

- 1 x 5 storey residential flat building comprising 32 units.
- 50% of the gross floor area is to be used as Affordable Rental Housing.
- An apartment mix of 10 x 1 bedroom, 19 x 2 bedroom and 3 x 3 bedroom units (including provision of 6 adaptable and 3 liveable units).
- A two level basement that will accommodate 30 car parking spaces, building services, storage and waste management.
- A rooftop communal open space area.
- Vehicular access is proposed from Taren Point Road into the basement.
- Tree removal

### **2.0 SITE DESCRIPTION AND LOCALITY**

The site comprises 2 parcels of land identified as Lot 17 in DP 660818 and Lot 3 in DP 359066 and fronts Taren Point Road. Existing on the site are 2 single storey dwelling houses, ancillary structures, fencing, pool and vegetation. The site is rectangular in shape with a width of 33.68m and a depth of 45.72m and a total area of 1534m<sup>2</sup>. The land falls from south eastern corner to the north western corner of the site by approximately 2.1m.

Adjoining the rear boundary of the site is 113 Willarong Road, Caringbah which is vacant land zoned R4 High Density Residential under Sutherland Shire Local Environmental Plan (SSLEP 2015) and is currently occupied by landscaping and handstand areas. This site which previously formed part of Caringbah High School, was subject of a development application DA16/01388 for a concept masterplan for staged development was refused by SSPP and is currently under appeal in the NSW Land and Environment Court. It is anticipated the residents of the subject development will be able to traverse over 113 Willarong Road once it is redeveloped. As such, a gate has been provided on the rear boundary to facilitate this movement.

The adjoining site to the north (304 Taren Point Road) was subject of development application approval for construction of a residential flat building with basement parking (DA15/1407) and Modification Application (MA17/0533) approval through Section 34(3)(a) appeal in NSW Land and Environmental Court. Existing on the site is a single dwelling, ancillary structures and landscaping.

The adjoining site to the south (310 Taren Point Road) is subject of a current Development Application (DA19/0756) for the construction of residential flat building over 3 lots. Existing on the site is a single dwelling, ancillary structures and landscaping.

The streetscape is primarily characterised by single dwellings and a number of newer residential flat buildings emerging along the eastern side of Taren Point Road to take advantage of the uplift in zoning to R4 High Density Residential.



### 3.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD) was held on 29 March 2018 regarding this development. A letter was sent to the applicant after this meeting which raised issues with floor space ratio, setbacks, open space, landscaping and the building's appearance.
- The current application was submitted on 12 October 2018.

- The applicant was asked to provide further evidence that the affordable housing component of the development meet the Capital Investment Value criteria to be considered under Environmental Planning Policy (State & Regional Development) 2011 on 13 December 2018.
- This information was provided on 7 January 2019 and the application was registered with SSPP on 17 January 2019.
- The application was placed on exhibition, with the last date for public submissions being 11 February 2019. 4 written submissions were received.
- An Information Session was held on 5 February 2019. No parties attended.
- An appointment with the Design Review Forum was held on 28 March 2019.
- A letter was issued to the applicant requesting additional information and plans on 18 April 2019.
- The SSPP briefing was held on 15 May 2019. Key issues discussed included floor space area, building height, neighbouring character, building separation, privacy and overlooking, deep soil landscaped area, solar access to apartments, waste requirements.
- A meeting with the applicant and design team was held on 22 May 2019. Ongoing correspondence with the applicant occurred after this date regarding the outstanding issues in particular the stormwater drainage design.
- Revised plans were submitted on 6 December 2019.
- A letter was issued to the applicant outlining outstanding issues with the application on 5 February 2020.
- After various draft revisions, the final revised plans were submitted on 24 July 2020.

#### **4.0 ADEQUACY OF APPLICANT'S SUBMISSION**

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to Council to enable an assessment of this application, including a written request to vary the building height development standard under Clause 4.6 of Sutherland Shire Local Environmental Plan 2015.

#### **5.0 PUBLIC PARTICIPATION**

The application was advertised in accordance with the provisions of Chapter 42 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

Council notified the adjoining or affected owners of the proposal and submissions were received from the following properties who raised the same concern:

<b>Address</b>	<b>Date of Letters</b>
310 Taren Point Road, Caringbah	01.02.2019
312 Taren Point Road. Caringbah	11.02.2019
310 – 314 Taren Point Road, Caringbah	11.02.2019
111 Willarong Road. Caringbah	09.02.2019

**Issue: The building height and setbacks resultant from the massing of the bonus FSR impact the amenity of the adjoining properties in terms of visual intrusion, overshadowing and privacy impacts**

*Comment* : The proposed variations to planning controls and the amenity of the adjoining properties is discussed in the 'Assessment' section of this report.

### **Revised Plans**

The applicant lodged a final set of revised plans on 24 July 2020. In accordance with the requirements of SSDCP2015 these plans were not publicly exhibited as, in the opinion of Council, the changes being sought did not intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to provide additional comments as the bulk and scale of the building had been reduced and the extent of the rear setback control is not supported as discussed in section 10.4 of this report.

### **Submission Review Panel (SRP)**

As a result of the submissions received and the issues raised, the Council's SRP concluded that the issues raised were relevant and have been dealt with in the assessment section of the report, Overall it was agreed that the development is an appropriate response to the site.

## **6.0 STATUTORY CONSIDERATIONS**

The subject land is located within Zone R4 High Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a *residential flat building*, is a permissible land use within the zone with development consent from Council.

The following Environmental Planning Instruments (EPIs), Draft EPIs, Development Control Plans (DCPs), Codes or Policies are relevant to this application:

- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55).
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).
- State Environmental Planning Policy (State and Regional Development) 2011.
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).
- State Environmental Planning Policy (Affordable Rental Housing) 2009.
- S7.11 2016 Contribution Plan – Caringbah Centre Precinct.

## **7.0 COMPLIANCE**

### **7.1 State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55)**

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) 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 dwelling houses.

A review of Council's GIS and historical aerial photos has shown that the above residential use has been in place since 1955. A search of Council's records, including historical files, has revealed that the site has had previous residential use.

A search of Council's contaminated land register specifies that the site is not potentially contaminated. However, 113 Willarong Road which is the adjoining property to the east is mapped as potentially contaminated due to mining/excavation, landfill for school site and potential PFAS contamination. As such, a precautionary condition of consent is recommended to manage any unexpected contamination uncovered during construction works.

In conclusion, the site is suitable for the proposed residential use in accordance with requirements of SEPP 55.

### **7.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

State Environmental Planning Policy (Building Sustainability Index) 2004 (BASIX) aims to establish a scheme to encourage sustainable residential development across New South Wales. BASIX certificates accompany the development application addressing the requirements for the proposed building. The proposal achieves the minimum performance levels / targets associated with water, energy and thermal efficiency.

### **7.3 Greater Metropolitan Regional Environmental Plan No. 2- Georges River Catchment**

Greater Metropolitan Regional Environmental Plan No. 2 (GMREP2) includes a number of aims and objectives for the environment and water quality within the catchment. Appropriate stormwater management and water quality measures are proposed and there is likely to be minimal adverse impacts on water quality. Council is of the view that with the implementation of the recommended conditions of consent the proposal would be consistent with the aims and objectives of GMREP2 through conditions of consent.

### **7.4 State Environmental Planning Policy (State and Regional Development) 2011**

State Environmental Planning Policy (State and Regional Development) 2011 identifies State and Regionally Significant development in NSW. Schedule 7 of the SEPP identifies this application as regionally significant development containing an affordable housing component with a value of over \$5 million. As such, the application is referred to the South Sydney Planning Panel for determination.



## **7.5 State Environmental Planning Policy (Affordable Rental Housing) 2009**

The Applicant seeks consent for the RFB pursuant to the Affordable Rental Housing SEPP, under Part 2, Division 1. In-fill Affordable Rental Housing in the form of a residential flat building is permitted if it is located in an “accessible area”. The site satisfies these criteria as it is located within 800m walking distance of the public entrance to Caringbah Railway Station. Further, a residential flat building is permitted with consent under SSLEP 2015.

An assessment of the proposal having regard to the relevant clauses of ARH SEPP is set out in **Appendix “B”** to this report.

## **7.6 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development – Design Quality Principles (SEPP 65)**

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) seeks to improve the design quality of residential flat development through the application of a series of 9 design principles. The proposal is affected by SEPP 65. Sutherland Shire Council engages its Design Review Forum (DRF) to guide the refinement of development to ensure design quality is achieved in accordance with SEPP 65. DRF comments are summarised in section 9 of this report.

An assessment of the proposal having regard to the design quality principles of SEPP 65 is set out in **Appendix “C”** to this report

## **7.7 Apartment Design Guide (ADG)**

The applicable design guidelines for the proposed development are contained within the ADG, which is based on the 9 design quality principles set out in SEPP 65. The ADG illustrates good practice and these guidelines are largely replicated in Council's DCP. A table with a compliance checklist of the proposal against the ADG design criteria is contained **Appendix “D”** to this report.

## **7.8 State Environmental Planning Policy (Infrastructure) 2007**

*Development with frontage to a classified road (clause 101)*

Division 17, Subdivision 2 of the Infrastructure SEPP relates to land in or adjacent to road corridors or road reserves. The site has a frontage to Taren Point Road 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 relevant matters have been considered and the application is acceptable subject to conditions of consent regarding construction and ongoing use of the building.

#### *Impact of road noise or vibration (Clause 102)*

Division 17, Subdivision 2 of the Infrastructure SEPP 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 Taren Point Road and is also identified on Council's Road and Rail Noise Buffer Map.

The land fronts Taren Point Road where the annual average daily traffic volume exceeds 40000 vehicles. The impact of road noise and vibration on the residential accommodation have been considered under clause 102. To minimise the impact of noise from the road on the future occupants of the development, a condition will be imposed requiring the building to be designed in accordance with State Environmental Planning Policy (Infrastructure) 2007 and 'Development near Rail Corridors and Busy Roads – Interim Guidelines' produced by the NSW Department of Planning.

#### **7.9 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.

#### **7.10 Sutherland Shire Local Environmental Plan 2015**

The proposal has been assessed for compliance against Sutherland Shire Local Environmental Plan 2015. A compliance table with a summary of the applicable development standards is contained below:

<b>Sutherland Shire Local Environmental Plan 2015</b>			
<b>CLAUSE</b>	<b>REQUIRED</b>	<b>PROPOSAL</b>	<b>COMPLIANCE</b>
<b>cl.4.3</b> Height of Building	16m	19.4m	No – 21.25% variation
<b>cl.4.4</b> Floor Space Ratio	1.2:1 (1840.3m <sup>2</sup> )	1.71 (2606m <sup>2</sup> )	No – relies on ARH SEPP
<b>cl.6.14</b> Landscaped Area	30% (460.2m <sup>2</sup> )	21.3% (327m <sup>2</sup> )	No – relies on ARH SEPP

#### **7.11 Sutherland Shire Development Control Plan 2015**

The proposal has been assessed for compliance with SSDCP 2015. A table with a compliance checklist of the proposal against the SSDCP 2015 is contained **Appendix "E"** to this report.

## 8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

### Water NSW

The application was referred to Water NSW pursuant to s.4.47 of the Environmental Planning & Assessment Act, 1979 on the basis of the proposed works constituting Integrated Development. This is because the Geotechnical Report records interception of groundwater which requires a controlled activity approval under s91 of the Water Management Act 2000.

Water NSW provided General Terms of Approval to be include in the development consent.

### Transport for NSW

The application was referred to Transport for NSW (TfNSW) for concurrence in accordance with Section 138 of the Roads Act, 1993 and comment in accordance with Clause 101 of the State Environmental Planning Policy (Infrastructure) 2007.

TfNSW provided concurrence under Section 138 of the Roads Act 1993, for the removal of the existing vehicular crossing and construction of a new vehicular crossing on Taren Point Road, subject to the imposition of conditions of consent.

### Design Review Forum (DRF)

The application was referred to DRF who provided the following comments

- *The submitted landscape areas seem to disagree with Council's assessment –in that some of the areas measured appear to be located above the basement.*
- *Waste management procedure needs to be approved by council to ensure the driveway configuration is adequate without any further impact upon landscape area within the front setback.*
- *The basement garage setbacks are still problematic and inadequate for reasonable landscaping.*
- *The actual range in discrepancy in height is unclear and needs to be clarified.*
- *The appearance of dual driveways with the adjacent neighbour is problematic. It is assumed, given that the current basement setback requirements non-compliance will lead to a 3rd level of parking, measures could be taken to reduce the footprint and thereby increase a separation distance between the two driveways with a more substantial landscaped strip.*
- *The common open space on ground as drawn is unclear and seems not practical or usable.*
- *Certain issues of form were discussed, such as:*
- *The positioning the curving street facing balconies to the building's extremes and with continuous end walls, whilst creating a central depression, serves to exaggerate the feeling of mass and bulk.*
- *The modulating small flanks added to the perimeter of the building are generally acceptable but should be relocated away from the lobby light source to minimise the perceived depth of these walls from the lobby.*
- *The side entrance could be signalled in a stronger language as seen from the street.*

- *The amenity of the level 4 apartment balconies needs to improve. These terraces are very unsheltered and more suitable materials could be used, along with wider planters along the southern sides to better comply with ADG principles.*
- *It is suggested that the spiral stairs and the private rooftop spaces they connect, be removed and a common open space be provided along the eastern end of the roof with the balance being left as roof, thereby allowing protection over the balconies below on level 4.*
- *Some of the buildings in the immediate context of the site that have been recently constructed are let down by a low standard of detail design resolution, construction quality and finish. In response to this, the Panel recommends that the Architect provide sufficient detailed documentation for the building facades and external areas for the DA which should form part of the consent documentation. This should include fully annotated 1:20 scale cross-sections and partial plans of facades, details of typical and important junctions, and details and materials specification of all external works.*
- *Further to this, it is recommended that Council should consider that conditions be included in any development consent to ensure that design quality is carried through to the construction phase of the project. These would include provisions to ensure:*
  - *that prior to any proposed change to external materials and/or details as specified in the approved documents, such proposed change is to be submitted to Council for approval.*
  - *that the Architect of the DA is engaged to undertake regular site inspections and prepare independent reports to Council to verify that design intent is being met.*

Council's Architect is generally supportive of the revised scheme due to the reduction in the overall building bulk and the evolution of the pedestrian entrance and lobby area to improve the pedestrian experience. Council's Architect does note that the minimal basement and driveway setback to the northern boundary is less than ideal to accommodate reasonable landscape features to help soften the development. An increased setback was not requested as the planting schedule indicates appropriate plants to screen and soften the basement entry point. Planters are also proposed on the southern side of the driveway to help soften the driveway area. Further to this, there are deep soil zones elsewhere on the site which will allow for canopy trees to be planted to correspond with the scale of the building.

The DRF also raised concern about the design quality of the development being compromised through the construction phase. To address this concern a condition of consent is recommended requiring a registered Architect to oversee the construction of the building.

### **Landscape Architect**

Council's Landscape Architect has undertaken an assessment of the amended plans supports the amended proposal subject to conditions of consent. One condition of condition recommended cannot be imposed as it restricts the height of the front courtyard fences to 1.5m above natural ground level. If this was adopted for apartment G.01 the fence would only be 1m above the finished level of the courtyard area. This would be a poor privacy and security outcome for this apartment. The proposed courtyard fence for this apartment is 2m above existing ground level and 1.5m above the finished courtyard level. This is a consequence of the topography and the proposed single ground floor plate. The fence is an acceptable

outcome for this site as it is predominantly open form and will be screened by landscaping in the front setback and in planters to the north.

#### **Development Engineer**

Council's Development Engineer has undertaken an assessment of the amended plans and support for the application was given subject to conditions of consent.

#### **Environmental Health**

Council's Environmental Health Officer has undertaken an assessment of the application and support for the application was given subject to conditions of consent.

#### **Building Surveyor**

Council's Building Surveyor has undertaken an assessment of the application and support for the application was given subject to conditions of consent.

#### **Waste Management Officer**

The application was referred to Council's Waste Management Officer and support for the application was given subject to conditions of consent.

### **9.0 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.

#### **9.1 Affordable Rental Housing State Environmental Planning Policy 2009 (ARH SEPP)**

To incentivise affordable housing development Division 1 of the ARH SEPP permits additional gross floor area and reduced deep soil landscaped area and parking. Within these parameters the development must still be consistent with SEPP 65 and the character of the local area.

As detailed in **Appendix "B"** to this report, the applicant has taken advantage of the bonus gross floor area and the reduced landscaping and parking requirement. The resulting development remains compatible with the objectives of SEPP 64 and the local character envisaged in local planning controls. In particular, the prominent built form is 5 storeys which is the scale encouraged by the 16m height limit and is consistent with the residential flat buildings recently constructed along Taren Point Road. The roof top structures that breach the height limit, do not impact the desired 5 storey scale and is deemed acceptable as discussed in section 10.2 of this report. The development is also compatible with the local character in terms of building massing, separation and street alignment established by the proposed setbacks which is discussed in detailed in section 10.4 of this report. The architectural style is also compatible with the desired character of the area especially as the building is sufficiently articulated and treated to relieve bulk and scale and complement the existing development in the area.

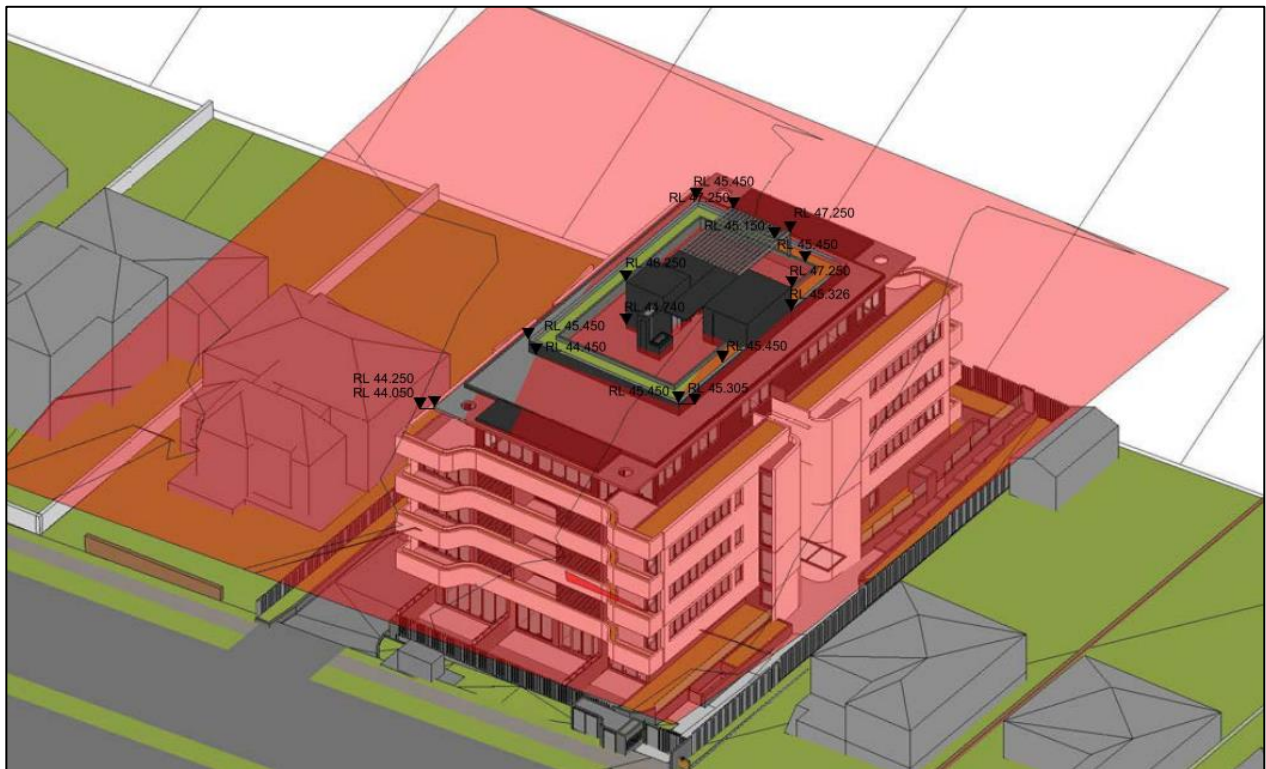
The building is also situated in a landscaped setting afforded by the deep soil zones provided around the building footprint. It is noted that the amount of deep soil landscaped area is approximately 100m<sup>2</sup> greater than the minimum required by the ARH SEPP. This provides adequate area for plants of varying heights to be positioned around the building to be consistent with the desired landscaped character envisaged for the Caringbah North Precinct.

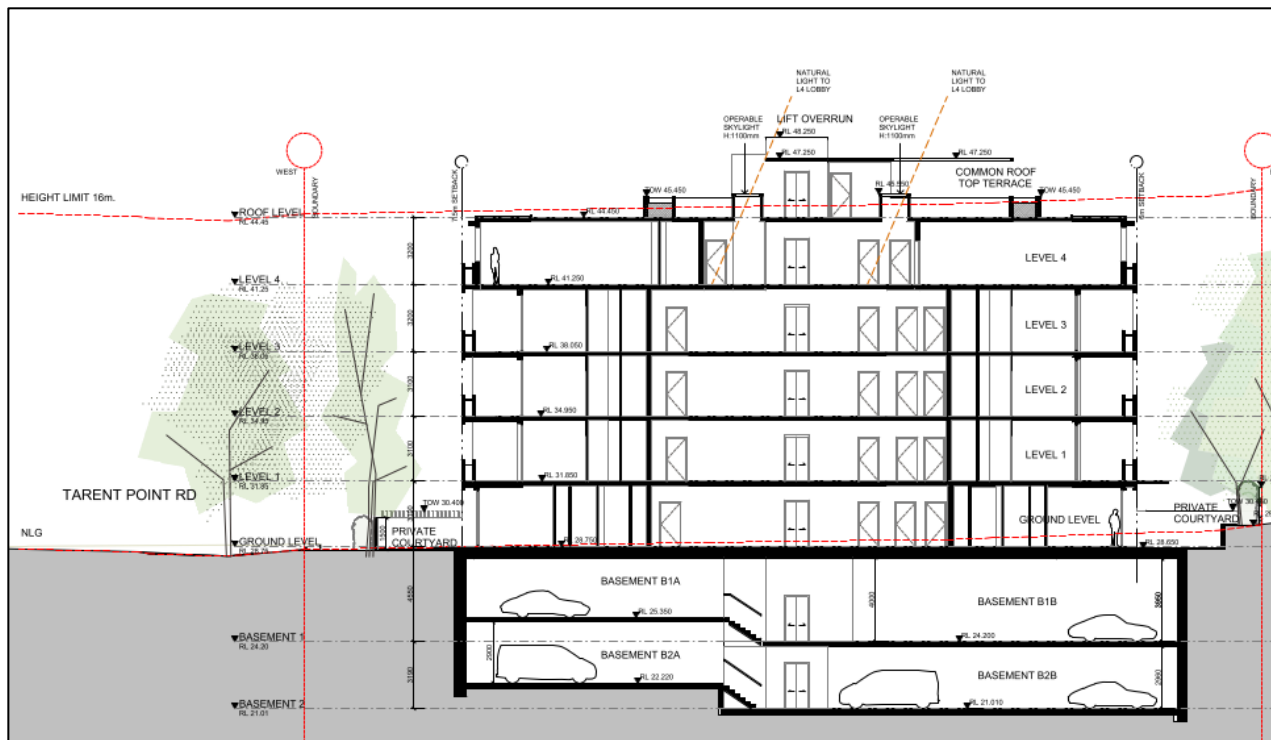
The development is deemed to satisfy the ARH SEPP for the reasons outlined above and the detailed assessment of numerical controls in **Appendix “B”** to this report.

## 9.2 Height of Buildings

Clause 4.3 of SSLEP 2015 stipulates a maximum height of 16m for this site. The building has a maximum height of 19.4m (21.25% variation) to the top of the lift shaft and overrun which provides access to the communal roof top terrace. The height limit is also breached by other portions of the roof terrace being the fire stair, shade structure, WC and balustrade.

The north-western corner of the roof over Level 5 also breaches the height limit by approximately 0.2m.





Breach of height shown dotted

The objectives of the height of buildings development standard set out in Clause 4.3 (1) of SSLEP 2015 are as follows:

- (a) *to ensure that the scale of buildings:*
  - (i) *is compatible with adjoining development, and*
  - (ii) *is consistent with the desired scale and character of the street and locality in which the buildings are located or the desired future scale and character, and*
  - (iii) *complements any natural landscape setting of the buildings,*
- (b) *to allow reasonable daylight access to all buildings and the public domain,*
- (c) *to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,*
- (d) *to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,*
- (e) *to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings in those zones,*
- (f) *to achieve transitions in building scale from higher intensity employment and retail centres to surrounding residential areas.*

The development remains consistent with the objectives of the Building Height development standard for the reasons discussed below.

The proposed development is located within zone R4 High Density Residential. The objectives of this zone are as follows:

**Zone R4 High Density Residential**

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the supply of housing that meets the needs of the Sutherland Shire's population, particularly housing for older people and people with a disability.*
- *To promote a high standard of urban design and residential amenity in a high quality landscape setting that is compatible with natural features.*
- *To minimise the fragmentation of land that would prevent the achievement of high density residential development.*

The development remains consistent with the objectives of the R4 High Density Residential zone for the reasons discussed below.

The applicant has lodged a written request in accordance with the requirements of Clause 4.6 of SSLEP 2015.

A full copy of this request is attached at **Appendix "F"** and the most relevant section is reproduced below:

*".....is considered that there is an absence of significant impacts of the proposed non-compliance on the amenity of future building occupants, on area character and on neighbouring properties. The non-compliance will not be readily visible from the public domain or surrounding sites, does not contribute significantly to overshadowing and does not impact any significant views. To require strict compliance would mean removing parts of the building without resulting in a real planning benefit to neighbourhood character or amenity. In fact, removal of units would be counterproductive as it would result in the loss of affordable rental accommodation within the locality."*

The Clause 4.6 provided has also been assessed against Clause 4.6(3)(a) and (b) as follows:

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

Section 4 of the applicant's Clause 4.6 variation request demonstrates compliance with the development standard is unreasonable and unnecessary for this development remains consistent with both the objectives of the development standard and zone.



The building remains consistent with the objectives of the development standard and the zone as the prominent built form, being the 5 residential levels, comply with the 16m height limit and desired 5 storey scale. The 16m height limit is breached by the communal roof top terrace including the lift, fire stair, WC, weather protection and balustrade. All of these structures are setback from the edge of the roof to be recessive and not highly visible from the public domain or the adjoining properties. Centralising the roof top terrace structures also mitigates overlooking to surrounding properties and minimises the additional shadow cast on the adjoining properties. The applicant has provided shadow diagrams, attached at **Appendix "G"**, that compare the shadow cast from a compliant and proposed building form. These shadow diagrams show that the roof top structures do extend the shadow cast to the south, however the properties to the south still receive complaint solar access.

The north-western corner of the roof over Level 5 also breaches the 16m height limit up to 200mm. This will not be perceivable in the overall bulk and scale of the building and is located to the north of the site limiting overshadowing of adjoining properties.

Considering the above, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

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

Section 5 of the applicant's Clause 4.6 variation request demonstrates that there are sufficient environmental planning grounds to justify the height variation. In particular, the roof top structures that breach the height limit are necessary to provide equitable access to a functional roof top terrace that encourages social interaction between the residents without compromising the amenity of adjoining properties or the public domain as discussed above.

For the building to comply with the height limit the terrace would have to be relocated to the ground level or level 4. This would reduce the overall gross floor area of the development (including the quantum of affordable housing gross floor area) or require greater encroachments into the minimum setback requirements. This was not required as the development remains consistent with the objectives of the building height development standard and the land zone as outlined above.

It is also noted that the building height cannot be reduced by lowering the ground floor plate further into the ground as this would prevent waste collection in the basement and would require the redesign of the stormwater drainage system due to the location of the OSD tank. Lowering the floor plate would also impact the amenity of the southern apartments as they would cut in further below the natural ground level.

The proposal currently shows the southern side of the building is cut into the site, with the ground floor level being up to 1m below the existing ground level. This design reduces the overall building height along the southern side of the site, slightly relieving overshadowing and visual intrusion impacts to the south. However, as the land falls to the north the north-western corner of the roof over Level 5 breaches the height limit by approximately 200mm. This could be resolved by a number of design changes which may

reduce the footprint of the building and the amount of dwellings. But on balance, these changes were not required due to the lack of any significant impact on adjoining properties or the public domain.

Considering the above, the written request demonstrates that there are sufficient planning grounds to vary clause 4.3 of SSLEP 2015 relating to building height.

The applicant has demonstrated that compliance with the development standard is unreasonable and unnecessary and there are sufficient planning grounds to vary clause 4.3 of the SSLEP 2015. The development is in the public interest as the proposal complies with the objectives for both height and the R4 zone. The proposed variation does not raise any matters of State or Regional Environmental Planning significance. In addition there is no public benefit to maintain the building height development standard in the circumstances of this case. The variation to the height development standard satisfies all relevant parts of clause 4.6 and therefore the variation can be supported.

### **9.3 Urban design**

Clauses 6.16 and 6.17 of SSLEP 2015 contain certain matters of consideration relating to urban design. The relevant matters have been considered as a part of the assessment and are outlined below.

SEPP 65, ADG, SSLEP 2015 and SSDCP 2015 contain relevant matters of consideration relating to urban design and residential amenity. The development respects the zoning and desired future character of the area of the Caringbah North precinct. The application was considered by the DRF and amendments have been made in response to the recommendations made. The proposal is generally of a density, height, bulk and scale anticipated in the zone.

Buildings in a landscape setting is also anticipated in the locality. To achieve this, deep soil pockets are provided around the building to establish planting of different scales to soften built form, enhance privacy and improve the amenity of the ground floor units from pedestrians and traffic noise. The planting forward of the building line is also important to offset the hydrant and substation structures required to service the development. It is unfortunate that due to the site planning the hydrant booster structure and substation are not located in the far corners of the site. This is an undesirable outcome. To try and make these structure visually recessive conditions of consent are recommended to limit walls height around the structures and a charcoal colour finish so the structures are visually recessive within screen planting. A separate entry path has not been provided from the street to G.01 to maximise opportunity for planting around the substation.

Matters relating to ecologically sustainable development, energy efficiency and sustainable building techniques have been considered and the proposal incorporates appropriate measures and construction techniques in conjunction with the development. A rain water tank is also provided to water the communal open space, particularly planter boxes on the slab.

The Crime Prevention through Environmental Design (CPTED) principle aims have been considered with regards to potential safety and security issues associated with the design of the development. The proposed new works provide suitable opportunities for both active and passive surveillance. The development is considered appropriate subject to suitable conditions of consent incorporating additional CPTED treatment measures including lighting in the entrance space leading up to the lobby as the modulating flanks create opportunity for concealment.

The provision of adaptable housing and an accessible built environment are required to be provided in accordance with SSDCP 2015. The residential entries respond appropriately to the existing levels in the public domain. Adequate facilities and provisions (e.g. parking, sanitary facilities) are accommodated within the development to enable an accessible built environment (including parking).

Considering the above, the proposal is considered to be an acceptable outcome in terms of Urban Design requirements contained in clauses 6.16 and 6.17 of SSLEP 2015.

#### **9.4 Setbacks**

The ADG specifies minimum building setbacks to achieve building separation, solar access and visual privacy. The bulk of the building complies with the ADG setbacks, except for the following variations which are a result of the site planning and the bonus floor space ratio afforded by the ARH SEPP.

##### *First 4 levels - Modulating side flanks are setback 4.5m instead of 6m to the southern boundary*

The modulating side flanks added to the southern edge of the building contain habitable rooms and are setback 4.5m instead of 6m from the boundary. The area of the flanks represents approximately 20% of the total area of the first 4 levels southern elevation. The remainder of the southern elevation complies with the 6m side setback requirement. A majority of the southern elevation complies with the setback requirement and there is adequate separation between the proposed building and the property to the south. This maintains openness between buildings when viewed from the street, whilst not being visually intrusive when viewed from the adjoining property. The setback also allows for trees to be planted along the southern boundary to soften the built form.

The modulating flank elements do not adversely impact the amenity of the adjoining property in terms of privacy and overshadowing. Visual and acoustic privacy impacts are ameliorated as the bedroom windows look towards the front and rear boundary and not to the side boundary. Overshadowing of the southern adjoining property is the result of the complaint building envelope as discussed in section 10.7 of this report.

The DRF were generally supportive of the modulating side flank elements. Their only concern was the perceived depth of these walls and limited light within the building's lobby area. Council's Architect believes the revised design resolves these issues as the 'canyon like' appearance of these walls has been reduced through the shortening in the depth of the walls into the building which is beneficial to the overall aesthetic. Also, it is noted that these walls are about the southern elevation, and as such, light is reflected and not direct so the walls will have minimal impact on light quality within the lobby areas.

*Rear elevation balconies are 4.5m instead of 6m to 9m to the rear boundary*

The balconies on the rear elevation of the building are setback 4.5m to 6m from the rear boundary instead of 6m (Ground Level - Level 3) or 9m (Level 4). The rear setback variation is supported on the ground level as it will not be visible or impact the amenity of adjoining properties. The rear setback variation on levels 1 – 4 is not supported as the balconies are located at the outer edge of the building and visually extend the length of the building when viewed from the neighbouring properties. The upper level balconies that encroach into the 6m rear setback will also increase overshadowing and potential for overlooking of adjoining properties. Privacy screens would only exacerbate overshadowing and add the overall bulk of the building.

To resolve these impacts, a deferred condition of consent is recommended requiring that the rear balconies are setback 6m from the rear boundary and the planter boxes are setback 5.5m from the rear boundary to maintain the landscaped articulation feature. This will have implications for apartment layouts and the GFA distribution between affordable and market apartments which will have to be resolved by the applicant.

*Level 4 – Balconies and 2 rear living rooms setback are 6m instead of 9m*

The uncovered section of all Level 4 balconies encroach into the 9m side and rear setback. However, the bulk of Level 4, being the covered balconies and internal floor space, remains setback 9m to modulate the built form to reduce the vertical scale of the building, overshadowing and overlooking. Planter beds are also provided along the edge of these balconies to minimise opportunity for overlooking.

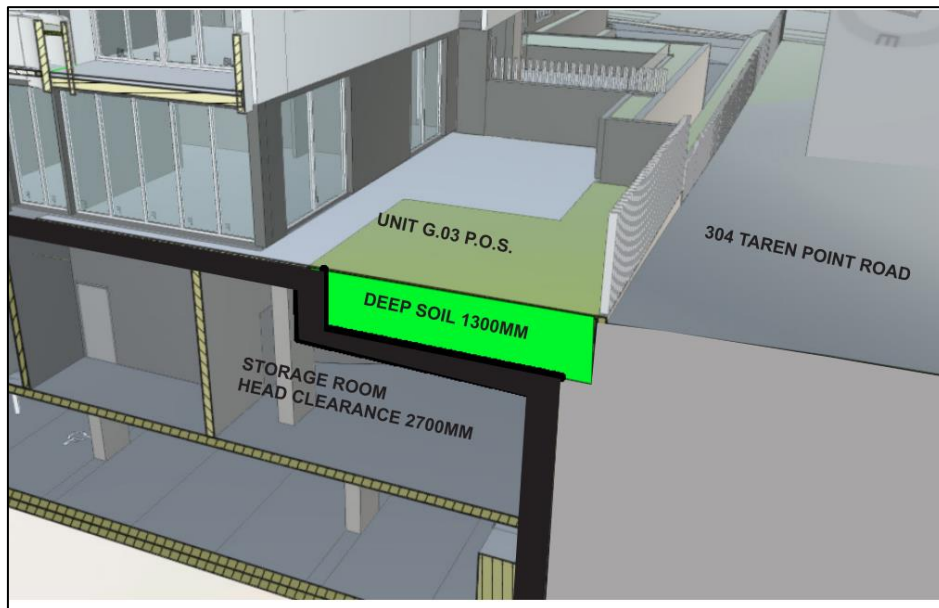
The living areas to apartment 4.02 and 4.03 are setback 6m instead of 9m from the rear boundary. This is supported as the built form is centralised and will be mostly perceivable from the vacant site to the rear and not the adjoining properties to the north and south. The lack of an increased upper storey setback to these living rooms means that the centre of the rear elevation will have an unbroken 5 storey vertical scale. To obscure the vertical scale of this section the building 2 canopy trees are to be planted immediately on the rear boundary. No design changes are required to mitigate overlooking from the living room windows which currently look onto a vacant site. If the adjoining site to the east is developed it is highly likely a road will be constructed along the western boundary adjoining the subject site.

In summary, apart from the 4.5m rear setback variation, the variations are supportable providing articulation to the building form without adversely impacting on the adjoining properties. The resultant built form is compatible with the desired local character and does not prevent a neighbouring site from achieving its full development potential.

## **9.5 Basement setback**

The SSDCP 2015 requires a 1m driveway setback to side boundary and a 3m basement setback from side and rear boundaries. The objective of this development control is to minimise opportunity for ample deep soil zones around the building footprint to alleviate visual intrusion and overlooking impacts.

The proposal does not comply with these setback controls as the driveway and northern side of the basement is only setback 900mm from the northern site boundary. This setback is supported as an appropriate landscaping solution using shrubs will soften the basement entry and driveway area. There are also other landscaping pockets around the perimeter of the site for more substantial planting to offset the overall scale of the building. This includes a soil depth of 1.3m over the north-eastern corner of the basement which encroaches into the 3m setback requirement.



Considering the above, the driveway and basement setback variation is supported.

## 9.6 Privacy

Objectives of the ADG, SSLEP and SSDCP 2015 stipulates that new development is to maximise visual privacy to adjoining properties.

The building has been sited and designed to minimise overlooking and noise impacts on the adjoining properties. This is mainly achieved through building separation and the orientation of most apartments to either the front or rear boundary. However, both side elevations of the building have a lot of secondary living room windows that look onto the adjoining properties. It was firstly suggested to the applicant for the sill height of these windows to be raised to at least 1.2m above the floor level to minimise overlooking. This was adopted on the revised plans. However, after further assessment a condition of consent is recommended to further reduce the amount of glazing on the side elevations to minimise opportunity overlooking. This includes increasing the sill height of living room windows to limit overlooking whilst not compromising natural light. Lowering the sill height of kitchen windows to minimise opportunity for overlooking and provide additional wall area for storage opportunity. The changes to the windows are particularly important on the northern elevation due to the limited screen planting proposed due to the minimal basement and driveway setback. This reduction of glazing is also important to improve the useability of the apartments which currently have very small kitchen areas with limited storage potential.

There are also potential privacy impacts from the ground floor of the development as the private open space area of G.02 and G.03 are raised above the basement and have minimal setback to the side boundary. To mitigate privacy impacts from the balcony to G.02 a condition of consent is recommended to install a 1.6m high screen to prevent overlooking. A design change condition is also recommended to prevent overlooking from apartment G.03 as the finished level of the northern private open space area is raised up to 800mm above the existing ground level for the basement and to enable the stormwater pits to drain into the developments stormwater system. To mitigate overlooking the applicant has proposed a non-standard 2.5m high boundary fence. The height of this fence will be excessive when viewed from the adjoining property, especially when redeveloped as the southern side of the development is likely to be cut into the ground as proposed for this development. As such, a condition of consent is recommended to restrict the boundary fence height to 1.8m, add additional privacy screening and enhance landscaping mitigate privacy impacts.

Subject to the condition specified above, the development will have not unreasonable privacy impacts on the adjoining properties.

#### **9.7 Overshadowing of southern adjoining property**

The SSDCP 2015 requires that the neighbouring properties living room windows and private open space area (10m<sup>2</sup>) receive at least 2 hours solar access between 9am and 3pm at mid-winter. The development currently complies with this as the front living room windows will gain solar access from 12pm and at least 10m<sup>2</sup> of the back yard will receive solar access between 9am – 3pm mid-winter.

Submissions received from the southern adjoining properties raised concern about the proposed development limiting solar access to the residential flat building currently under assessment at 310 – 314 Taren Point Road (DA19/0756). Since the neighbour notification period the building has been revised to reduce overall bulk and scale, reducing the amount of overshadowing. However, as the street runs north to south, all sites once redeveloped with residential flat buildings will result in considerable overshadowing to the site immediately adjacent on the southern side. The extent of the overshadowing is not from the centralised height breach or the side flanks encroaching into the side setback, but from the complaint envelope of the building as shown in the Shadow Study at **Appendix "G"**. Overshadowing is unavoidable without significantly restricting the footprint and envelope of the building which would compromise the development potential of the site.

Considering the above, the proposal is therefore considered acceptable in the circumstances.

#### **9.8 Waste Management**

Council's Environmental Specification for Waste Collection for New Multi-unit Dwellings and Residential Flat Buildings requires waste to be collected on site by a heavy ridged vehicle (HRV) (being the size of Council's waste collection trucks). As the development is located on a classified road the RMS requires that all vehicles enter and exit the development in a forward direction.

This would be a poor streetscape outcome as a significant run of exposed driveway would be required to for a HRV to access the basement. The head height in the basement would also have to be raised which would have implications for the finished ground floor levels resulting in a poor relationship with natural ground level and a further height variation. The HRV manoeuvring would also require another level of basement for car parking and there would be even less area around the building for landscaping and private open space areas.

To overcome the above issues a variation to the Environmental Specification is supported subject to the waste being collected by private contractor with a smaller truck. This will be reflected in a condition of consent.

#### **9.9 Earthworks**

The proposal includes earthworks and Clause 6.2 of SSLEP 2015 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 been considered and the application is acceptable subject to conditions of consent.

#### **9.10 Stormwater Management**

Clause 6.4 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 been addressed to Council's satisfaction.

#### **9.11 Greenweb**

The subject site is identified within Council's Greenweb strategy. The Greenweb is a strategy to conserve and enhance Sutherland Shire's bushland and biodiversity by identifying and appropriately managing key areas of bushland habitat and establishing and maintaining interconnecting linkages and corridors.

The subject site is identified as a Greenweb restoration area. Having regard for the nature of the proposed development conditions have been included in relation to additional Greenweb plantings.

#### **9.12 Archaeological Sensitivity**

Council records indicate that the subject site is rated low 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.

## 10.0 DEVELOPMENT CONTRIBUTIONS

The proposed development will introduce additional residents to the area and as such will generate Section 7.11 Contributions in accordance with Council's adopted Section 7.11 Development Contribution Plan. These contributions include:

Regional Contribution:	\$58,748.20
Local Contribution:	\$181,251.80

These contributions are based upon the likelihood that this development will require or increase the demand for regional and local recreational space and infrastructure facilities within the area. It has been calculated on the basis of 14 new residential units with a concession of 2 existing allotments. The 14 affordable housing units have been excluded in accordance with the Development Contribution Plan.

## 11.0 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 Council's development application form requires a general declaration of affiliation. In relation to this development application no declaration has been made.

## 12.0 CONCLUSION

The subject land is located within Zone R4 High Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a *residential flat building*, is a permissible land use within the zone with development consent.

The residential flat building contains affordable housing apartments and utilises the bonus gross floor area and reduced landscaped area as specified in the ARH SEPP. The proposal requires a variation to the building height development standard which is supported as the requirements of clause 4.6 of the SSLEP 2015 have been satisfied. A variation is proposed to setbacks controls, which is generally supported except for the rear setback to balconies. Subject to conditions of consent, the development is considered suitable for the site being consistent with the desired character of the area whilst limiting impacts on the built and natural environment.

In response to public exhibition, 4 submissions were received. The matters raised in these submissions have been discussed in the report above and dealt with by design changes or conditions of consent where appropriate.

The application has been assessed having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The application will not result in any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. 18/1203 may be supported for the reasons outlined in this report.

## RESPONSIBLE OFFICER

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