

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-103
DA Number	DA21/1251
LGA	Sutherland Shire Council
Proposed Development	Demolition of existing structures and construction of a mixed use development (health service facility and residential units) with Torrens title and stratum subdivision
Street Address	8-20 Hinkler Road, Caringbah and 319-333 Taren Point Road, Caringbah
Applicant/Owner	Hinkler Avenue No 1 Pty Ltd
Date of DA lodgement	13 December 2021
Number of Submissions	11 submissions were received on first notification. On renotification 4 unique submissions were received, although there were three which copied another submission or repeated from the earlier notification. A total of 15 unique submissions was received.
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	The proposed development has a capital investment value of more than \$30 million, estimated at \$78,168,000.00.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 Chapter 2 State and Regional Development. • State Environmental Planning Policy (Housing) 2021. • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65). • Apartment Design Guide (ADG) • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. • State Environmental Planning Policy (Biodiversity and Conservation) 2021: <ul style="list-style-type: none"> ○ Chapter 2 Vegetation in non-rural areas ○ Chapter 6 Bushland in Urban Areas ○ Chapter 8 Sydney drinking water catchment ○ Chapter 11 Georges River Catchment. • State Environmental Planning Policy (Resilience and Hazards) 2021 <ul style="list-style-type: none"> ○ Chapter 4 – Remediation of Land. • State Environmental Planning Policy (Transport and Infrastructure) 2021 <ul style="list-style-type: none"> ○ Chapter 2 Infrastructure. • Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). • Sutherland Shire Development Control Plan 2015 (SSDCP 2015).
List all documents submitted with this report for the Panel's consideration	Appendix A - Submissions Appendix B - Sutherland Shire Development Control Plan 2015 Compliance Table Appendix C – Housing SEPP Compliance Table Appendix D - SEPP 65 Design Principles Compliance Table Appendix E - Apartment Design Guide Compliance Table Appendix F – Correspondence from Transport for NSW Appendix G – Correspondence from NSW Police Appendix H - General Terms of Approval from Water NSW Appendix I - Minutes of the Design Review Forum Meeting Appendix J - Clause 4.6 – Building Height
Report prepared by	Ros Read of Urban Perspectives on behalf of Sutherland Shire Council
Report date	3 December 2022 (Panel Date: 13 December 2022)

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

Special Infrastructure Contributions

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

Not

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

Applicable

Conditions

Have draft conditions been provided to the applicant for comment?

No

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

REASON FOR THE REPORT

State Environmental Planning Policy (Planning Systems) 2021 Chapter 2 State and Regional Development, 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 and as such is nominated under Schedule 6 "Regionally significant development" of State Environmental Planning Policy (Planning Systems) 2021. The applicant's submission indicates that the proposed development has a value of \$78,168,000.00.

REPORT SUMMARY

The proposal is within the Caringbah Medical Precinct established in clause 6.21 of the Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). Applying clause 6.21, the proposal seeks to include a health services facility (HSF) and residential accommodation located adjacent to Sutherland Hospital and within walking distance of Caringbah Centre. The proposal also includes affordable housing with which Council is supportive and encourages, particularly given the proximity to Sutherland Hospital and established public transport infrastructure.

The proposal applies the benefit of clause 6.21 of SSLEP 2015 which includes an uplift in floor space ratio (FSR) and building height if certain conditions are met. The proposal also seeks the benefit of an uplift in FSR (but not building height) under State Environmental Planning Policy (Housing) 2021 (the Housing SEPP) Part 2 Division 1 for in-fill affordable housing. The in-fill affordable housing is also subject to the State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65) and its guidelines in the Apartment Design Guide (ADG).

Council's view is that the proposal presents as an overdevelopment of the site as a result of seeking to apply the majority of the two obtainable FSR bonus provisions, with the result being that amenity for the future residents is compromised and the interface between the public and private domains is unsatisfactory. The problems largely arise from seeking to add an additional 7th storey to the 6 floors envisaged in clause 6.21 of SSLEP 2021 in order to accommodate the two sets of FSR bonus. This leads to a very high number of ground and Level 1 apartments being below natural ground level, with consequent subterranean interfaces to the public domain, reduced privacy, reduced solar access, an excessive number of stairs and retaining walls and the consequent reduction in the capacity of the setbacks to support substantial landscaping. Various important amenity objectives and criteria in the ADG are also consequently not met, such as solar access, natural ventilation and building separation.

Additionally, the site breaches the height control with habitable elements (not just lift overruns and plant) which impacts on solar access to the neighbours to the south of the site. A reduced yield on the site and an improved design which allows the units below ground level to be elevated and reconsiders orientation to improve solar access and other amenity issues is one Council would look favourably on, particularly given the introduction of affordable housing into the area. Council is supportive of an alternative building layout to that set out in Sutherland Shire Development Control Plan 2015 (SSDCP 2015) Chapter 9, given the proposed amalgamation of 16 lots. It is also supportive of the proposed through site link which will provide public benefits to the surrounding area.

However, the shortfalls with the proposal will create real, and significant amenity impacts within the site and create a poor interface between the public and private domains. The issues are primarily symptoms of a proposal which is too big for the site and the proposal is therefore recommended for refusal.

PROPOSAL

The application is for demolition of existing structures and construction of a mixed use development (health service facility and residential units) with Torrens title and stratum subdivision.

THE SITE

The subject site is located at 6-18 Hinkler Avenue and 319-333 Taren Point Road Caringbah.

ASSESSMENT OFFICER'S RECOMMENDATION

1.0 THAT:

1.1 That Development Application No. DA21/1251 for demolition of existing structures and construction of a mixed use development (health service facility and residential units) with Torrens title and stratum subdivision at Lot 10 DP 15573, Lot 11 DP 15573, Lot 12 DP 15573, Lot 13 DP 15573, Lot 14 DP 15573, Lot 15 DP 15573, Lot 36 DP 15573, Lot 37 DP 15573, Lot 38 DP 15573, Lot 39 DP 15573, Lot 40 DP 15573, Lot 41 DP 15573, Lot A DP 35462, Lot B DP 35462, Lot D DP 35462, S/P 70334 319 Taren Point Road, Caringbah, 12 Hinkler Avenue, Caringbah, 329 Taren Point Road, Caringbah, 20 Hinkler Avenue, Caringbah, 321 Taren Point Road, Caringbah, 10 Hinkler Avenue, Caringbah, 18 Hinkler Avenue, Caringbah, 8 Hinkler Avenue, Caringbah, 333 Taren Point Road, Caringbah, 323 Taren Point Road, Caringbah, 16 Hinkler Avenue, Caringbah, 6 Hinkler Avenue, Caringbah, 325 Taren Point Road, Caringbah, 14 Hinkler Avenue, Caringbah, 327 Taren Point Road, Caringbah, 331 Taren Point Road, Caringbah is determined by the refusal of development consent for the reasons outlined below.

1. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act,) as it fails to satisfy Clause 4.6 of the *Sutherland Shire Local Environmental Plan 2015* (SSLEP 2015), by not adequately demonstrating that compliance with the maximum height of building development standard in Clause 4.3 of SSLEP 2015 is unreasonable or necessary, and that there are sufficient environmental grounds, and by not demonstrating that the proposal will be in the public interest.
2. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy the non-discretionary development standard of Section 18(2)(e) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP), which requires living rooms and private open spaces in at least 70% of the dwellings to receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter, and no clause 4.6 exception

request has been submitted under SSLEP 2015 as is required by virtue of section 4.15(3) of the EP & A Act and clause 4.6 of SSLEP 2015. The application must therefore be refused.

3. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy Section 19(3) of the Housing SEPP, as the proposal fails to demonstrate that the residential development is compatible with the desired future character of the precinct.
4. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy various objectives and design guidance controls in the Apartment Design Guide made pursuant to *State Environmental Planning Policy no. 65 – Design Quality of Residential Flat Buildings* (SEPP 65), leading to poor amenity, including in relation to:
 - (a) Part 3B Overshadowing on neighbouring properties
 - (b) Part 3C Public domain interface
 - (c) Part 3F Visual privacy
 - (d) Part 3G Pedestrian access and entries
 - (e) Part 4A Solar and daylight access
 - (f) Part 4B Natural ventilation
 - (g) Part 4E Private open space and balconies (particularly objective 4E-2 in relation to the ground level private open spaces)
 - (h) Part 4G Storage (insufficient storage areas shown in the basement)
 - (i) Part 4L Ground floor apartments
 - (j) Part 4M Facades
 - (k) Part 4O Landscape design
5. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy the fifth objective of the R4 High Density Residential zone in SSLEP 2015 in relation to providing a high standard of urban design and residential amenity in a high quality landscape setting.
6. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy Clause 6.15 Energy efficiency and sustainable building techniques for commercial and industrial developments of SSLEP 2015, as the proposal fails to demonstrate that the considerations in clause 6.15(2)(a), and (b) have been achieved to an acceptable level.
7. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy Clause 6.16 Urban design - general of SSLEP 2015, as the proposal fails to demonstrate that the considerations in clause 6.16(1)(a), (b), (c), (e) and (g) have been achieved to an acceptable level.
8. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i)

of the EP&A Act, as it fails to satisfy Clause 6.17 Urban design – residential accommodation of SSLEP 2015, as the proposal fails to demonstrate that the considerations in clause 6.17(b), (c), (e), (f) have been achieved to an acceptable level.

9. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as it fails to satisfy the objectives of Clause 6.21(1)(d) Caringbah Medical Precinct of SSLEP 2015, by not ensuring that there are high quality areas of private and public domain, with deep soil setbacks for the planting of substantial landscaping including large scale indigenous trees which will complement the scale of buildings up to 6 storeys.
10. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives and controls of section 9 Streetscape and Built Form of Chapter 9 of *Sutherland Shire Development Control Plan 2015* (SSDCP 2015), in relation to objectives 9.1.1, 9.1.2, and 9.1.6 and in relation to controls 9.2.1, 9.2.4, 9.2.5, 9.2.8 and 9.2.13.
11. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives and controls of section 10 Street Setbacks of Chapter 9 of SSDCP 2015, in relation to objectives 10.1.3, 10.1.4 and 10.1.5 and control 10.2.4.
12. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives and controls of section 11 Side and Rear Setbacks of Chapter 9 of SSDCP 2015, by failing to comply with the setback requirements of the Health Services Facility to the northern boundary and the side setbacks to Hinkler Avenue and Taren Point Road.
13. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives of section 12 Landscape Design of Chapter 9 of SSDCP 2015, in relation to objective 12.1.2.
14. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the EP&A Act, as it fails to satisfy the objectives of section 13 Building Layout and Private Open Space of Chapter 9 of SSDCP 2015, in relation to objective 13.1.1, 13.1.2 and 13.1.3, by providing poor quality private open space to the ground level apartments which are significantly below natural ground level.
15. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(b) of the EP&A Act, as it fails to provide adequate information and an adequate design for the loading facilities for Building B and the Health Services Facility (HSF).
16. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(b) of the EP&A Act, as the location of the hydrant booster will require a loss in on-street parking.
17. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(b) of

the EP&A Act, as neither the blind aisle in the HSF Basement 2 nor the accessible parking spaces are in accordance with the relevant Australian Standards.

18. The application is considered unacceptable because further information is required about a number of key matters including the location of the hydrant booster, inconsistency between plans, the landscape resolution between the subterranean units and the public domain, detailing in the car parks and loading docks, and discrepancies between the view from the sun solar access and the shadow diagrams.
19. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(b) and (e) of the EP&A Act, as it represents as an overdevelopment of the site by virtue of the exceedance of the height control, the poor relationship of the ground floor apartments to the natural ground level which leads to a poor landscaping presentation to the streetscape, the poor internal amenity of the units regarding solar access and ventilation, the poor entry identification for the residential buildings, the unresolved location of the hydrant booster, the inadequate loading docks in the HSF/Building B car park, insufficient information in relation to driveway sections, inadequate compliance with accessible parking layouts and the blind aisle in the Basement 2 of the Health Services Facility, and insufficient information about a number of other matters. The proposal is therefore not in the public interest.

ASSESSMENT OFFICER'S COMMENTARY

2.0 DESCRIPTION OF PROPOSAL

An application has been received for demolition of existing structures and construction of a mixed use development (comprising a health service facility and residential units) with Torrens title and stratum subdivision at 6-18 Hinkler Avenue and 319-333 Taren Point Road Caringbah. Details of the proposal include the following:

- Demolition of all existing structures and all trees on the site as well as some trees on Council's street verge.
- Construction of three towers above a single basement comprised of Building A – mostly affordable residential apartments, Building B – all standard residential apartments, and Building C – a Health Services Facility (HSF).
- Construction of a common but subdivided basement parking area generally of three levels but split over four levels, with two separate entrances. Parking for 312 residential vehicles and 132 medical vehicles is provided (444 in total). The plans indicate there are a total of 459 car spaces with 163 (not the provided 162) car parks in Building B and 146 (not the provided 132) car parks in the HSF.
- Building A will include:
 - 150 car parks and 16 bikes.
 - A loading bay for a HRV.
 - 115 apartments including 56 x 1 bedroom, 53 x two bedroom and 6 x three bedroom apartments.

- Of the 115 apartments, 23 are adaptable (20%), 12 are liveable (10%), and 102 are proposed as affordable housing under the Housing SEPP 2021.
 - Rooftop communal open space.
- Building B will include:
 - 162 car parks and 16 bikes (plans say 163 car spaces).
 - 119 apartments including 34 x 1 bedroom, 71 x two bedroom and 14 x three bedroom apartments.
 - Of the 119 apartments, 24 are adaptable (20%), 13 are liveable (11%), and none are affordable under the Housing SEPP 2021.
 - Rooftop communal open space.
- The Health Services Facility (HSF) includes:
 - 132 car parks and 14 bike spaces (plans say 146 car spaces).
 - Level 1 with a floor to floor height of 4.5 metres and 4 additional levels with floor to floor heights of 3.6m.
 - Two loading bays are proposed in the ground floor car park.
- On the southern side of the HSF is a through site link between Hinkler Avenue and Taren Point Road, which includes landscaping. It is elevated above the private open space of the residential units immediately to the south of it.
- There is a communal open space area between Building A and Building B which includes landscaping elements. Further communal open space is proposed on the rooftops of Buildings A and B.
- Landscaping is proposed in the communal areas and setbacks with as well as tree planting to occur within Council's street verges.
- The proposal was originally lodged as a concept DA with two stages, the first stage proposed to be Building A and Building B and the basement, with the second stage being the HSF. The staging has now been removed from the application.
- Torrens title subdivision into two lots (one for Building A and the second for Building B and the HSF) is now proposed. Stratum subdivision of the Building B/HSF into two lots is also proposed.

A site plan is provided in **Figure 1** below.

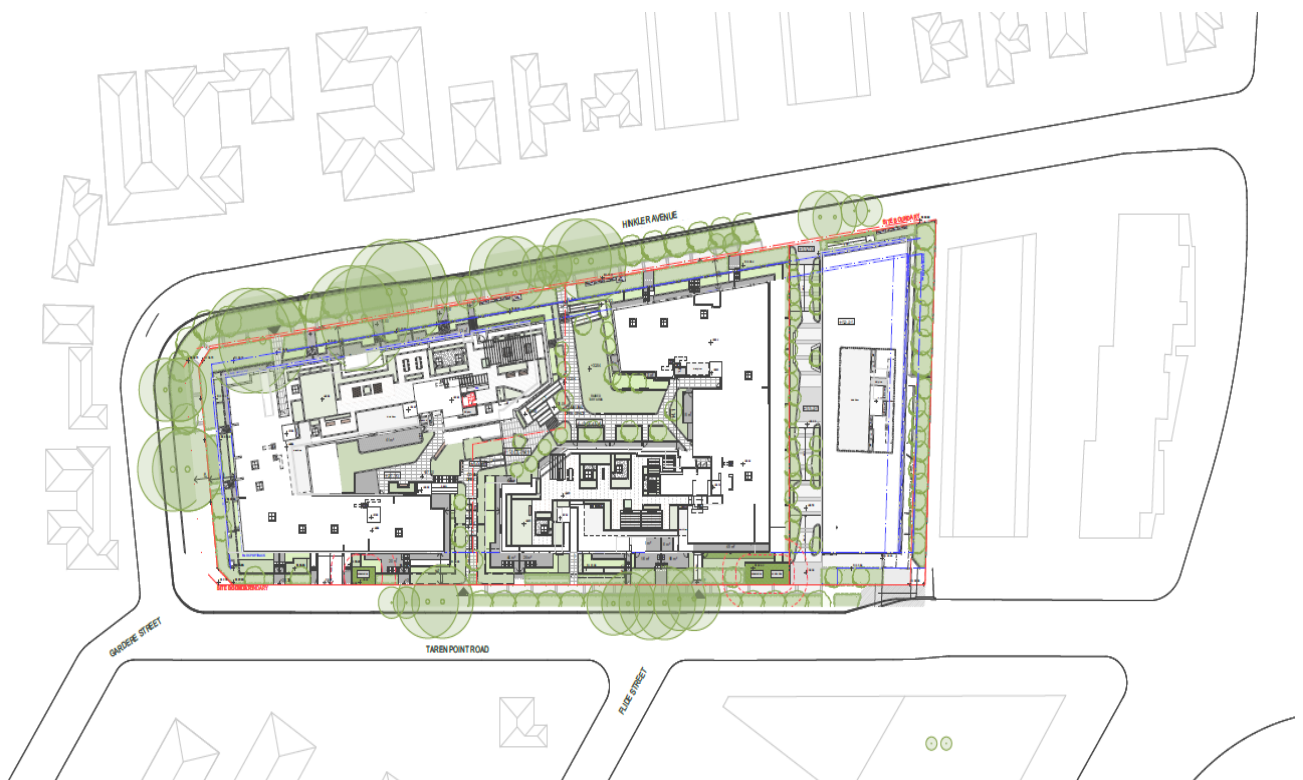


Figure 1: Site Plan

3.0 SITE DESCRIPTION AND LOCALITY

The site is located within a triangular area formed by the eastern and northern side of Hinkler Avenue, the western side of Taren Point Road and the mixed use development at 315-317 Taren Point Road which is directly to the north. The site is a consolidation of 16 lots with a frontage of approximately 170 metres to the west (Hinkler Avenue), 55 metres to the south (Hinkler Avenue), 170 metres to the east (Taren Point Road), and 69.77 metres to the north. The site is irregular in shape, tapering towards the south with a total site area of 9431m².

The site comprises sixteen parcels of land (Lots 10-15 and 36-41 in DP15573; Lots A, B and D in DP 35462; and SP 70334). The land has a fall of approximately 6.14m from the north-western corner to the south-eastern corner, toward the junction of Hinkler Avenue, Taren Point Road and Gardere Street.

Existing on the site are detached dwelling houses, with the exception of two sites which contain dual occupancies. Some properties contain swimming pools, various outbuildings and sheds and vegetation.

Sutherland Hospital is 60 metres to the west – being one lot west of the western side of Hinkler Avenue. To the immediate north at 315-317 Taren Point Road is the recently constructed mixed use development extending from Taren Point Road to Hinkler Avenue. Driveway access is from Hinkler Avenue adjacent to the northern boundary of the site. It includes medical facilities on the ground floor and residential development above. To the north of that building, on the southern side of Kingsway, is a similar modern mixed use building with residential development above medical facilities (416-418 Kingsway).

On the western side of Hinkler Avenue, there are another two recently constructed mixed use buildings with 5 levels of residential accommodation above ground floor medical units. Construction is currently underway on the corner of Hinkler Avenue and Kingsway for further development. Some detached dwellings remain on the western side of Hinkler Avenue, some of which are used for medical purposes.

On the southern side of Hinkler Avenue and the eastern side of Taren Point Road are detached one and two storey dwellings. On the corner of Hinkler Avenue and Taren Point Road is a multi-dwelling unit development and a separate dual occupancy development on Hinkler Avenue. To the south of Hinkler Avenue's dwellings is the Cronulla-Sutherland railway. Gardere Street meets at the junction of Hinkler Avenue and Taren Point Road and has R3 zoned dwellings to its north with the southern side adjacent to the railway line.

The primary regional access is Kingsway which is serviced by multiple bus routes. Caringbah train station is approximately 700 metres walk from the site.

The site is located within the Caringbah Medical Precinct as defined in the Sutherland Local Environmental Plan (SSLEP 2015). Clause 6.21 of SSLEP 2015 allows for an uplift in both height and Floor Space Ratio (FSR) within the site area, provided certain preconditions are met. Chapter 9 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015) makes provisions specifically relating to the Caringbah Medical Precinct.

A locality plan and an aerial photo showing the location of the site and surrounds is shown in **Figures 2 and 3** below. A zoning map is included below in **Figure 4**.

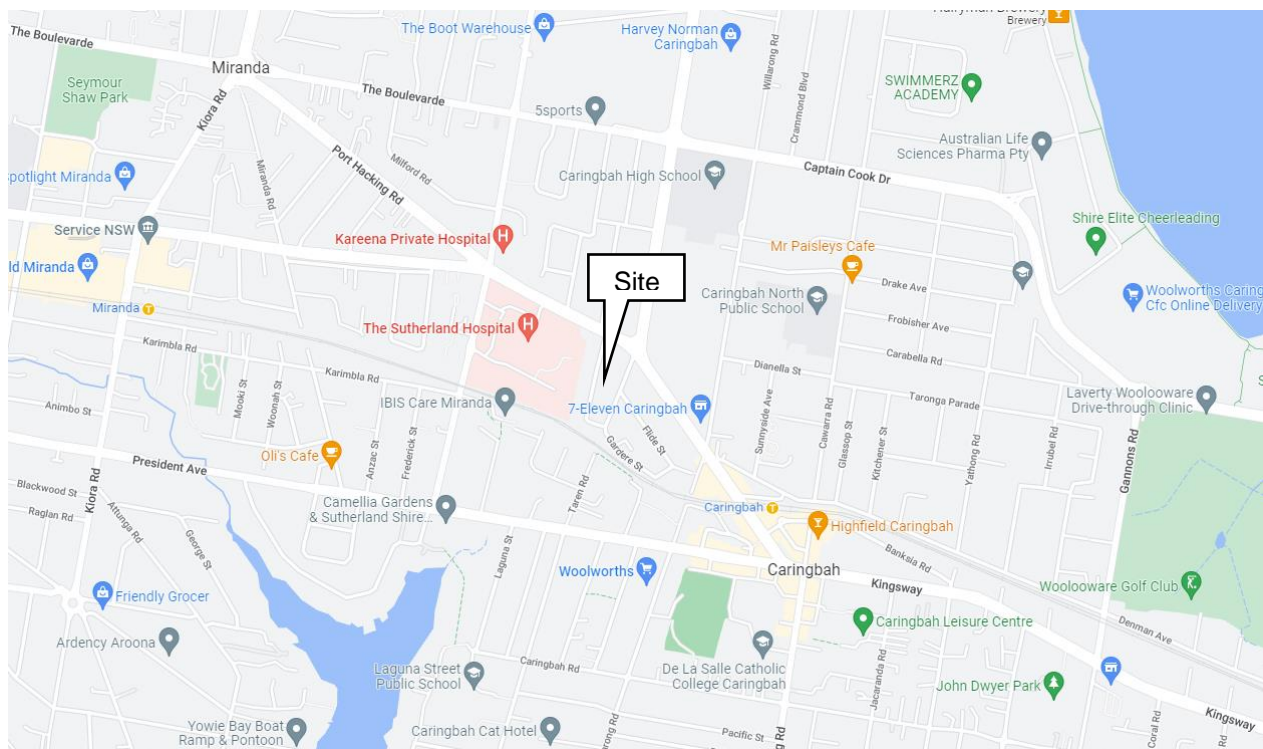


Figure 2: Locality Plan



Figure 3: Aerial Photo

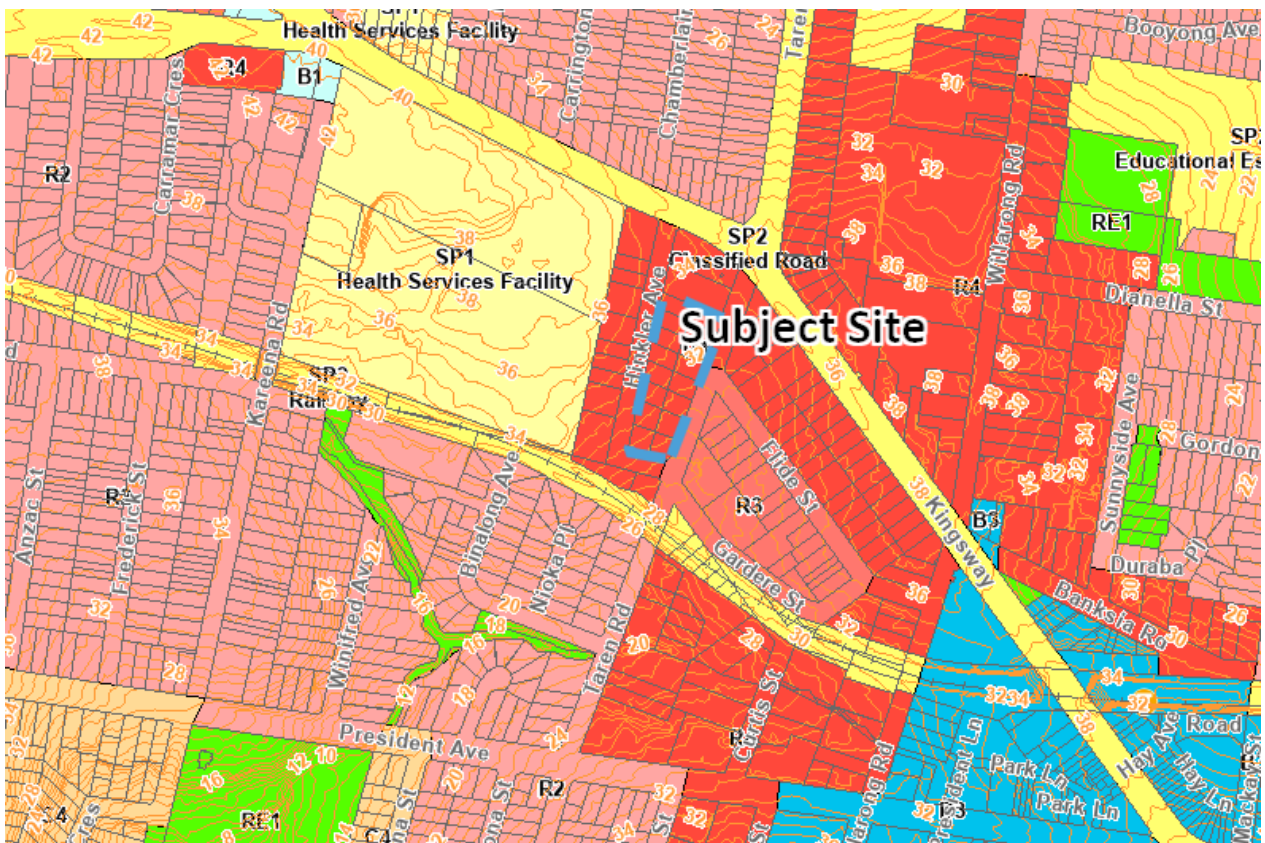


Figure 4: Zoning Map

4.0 BACKGROUND

A history of the development proposal is as follows:

4.1. Pre-Application Discussions

No formal pre-DA meeting was ever held with Council officers for the proposal. Whilst some discussions with Council staff were had, these were preliminary, and no formal advice was provided.

4.2 Application History

- On 22 October 2021 the application was uploaded to the NSW Planning Portal.
- On 23 November 2021 Council requested further documentation which was provided on or about 26 November 2021.
- On 29 November 2021 further documents were requested by Council which were provided on 1 December 2021.
- On 26 November 2021 the Housing SEPP commenced.
- On 2 December 2021 Council sent the invoice for the development application fees which were paid on 9 December 2021.
- The current application is identified on Council's website as being lodged on 13 December 2021.
- The application was placed on exhibition, with the last date for public submissions being 18 February 2022.
- On 7 February 2022 a kick-off briefing was held with the applicant and the South Sydney Planning Panel (SSPP). Issues identified for consideration were:
 - Traffic and parking compliance
 - Building design – articulation, bulk and scale
 - Clarification and details of how the FSR controls have been determined for the mixed-use development, including application of bonus provisions
 - Council and community issues
- On 17 February 2022 the proposal was considered by the Design Review Forum (DRF) of Sutherland Shire Council which considered the proposal in relation to the design quality principles of SEPP 65. The principal comments were:
 - There is no thorough fully contextual urban design analysis and no presentation of options.
 - At the densities proposed the proposal is struggling to provide a satisfactory public through-site link, good street interfaces with necessary landscape character, and acceptable private amenity.
 - Ill-considered through link and unacceptable relationship of the HSF to the adjacent building to the north
 - Poor relationship between the nature and character of the public connection between Hinkler Avenue and Taren Point Road with buried apartments and a long fully glazed medical centre. It lacks attributes that make for a successful extension of the public street network.
 - Massing leads to non-compliance with ADG setbacks.
 - The below street apartments are not supported for privacy reasons.
 - The SSDCP 2015 deep soil setback requirements are not compliant and undermine the objectives

- Common circulation spaces are overly long and circuitous and common street entries are recessed in awkward and unsafe spaces
 - Aesthetically the use of bricks for the base 2 levels is acceptable
 - The staging is confusing in vehicular organisation and the fact that the medical facility which triggers the bonus is the final phase of the staged construction
 - Numerical compliance with deep soil and communal open space is insufficient and the “bonus on top of the bonus” needs to be clarified.
 - The proposal is not supported and is an overdevelopment of the site. It is unlikely that the built outcome can realise the currently submitted FSR for the site. An alternative proposal should contain full illustrative material in its extended urban context, including street elevations of the whole block with existing adjacent buildings that show ground level apartment relationships with the streets.
- A request for information (RFI) was uploaded to the planning portal on 25 March 2022. The RFI requested significant design changes and additional materials to address the key issues identified below:
 - Application of the FSR and height bonus under clause 6.21 of SSLEP 2015.
 - Incorrect calculation of the FSR bonus under the Housing SEPP.
 - No clause 4.6 exception request for the FSR exceedance.
 - Poor landscape area and deep soil provision. No clause 4.6 exception requests.
 - Non-compliance with SSDCP 2015 requirement of 25% of the GFA to be applied to Health Services Facility (HSF).
 - Building height exceedance.
 - Staging of the HSF as stage 2 rather than stage 1.
 - Poor level of amenity and public domain interface with the through-link
 - Non-compliance with building setbacks.
 - Subterranean dwellings on the ground floor, leading to visual privacy and amenity impacts.
 - Insufficient communal open space.
 - Insufficient floor to ceiling heights for the HSF.
 - Various amenity non-compliances under the ADG.
 - Poor layout of the basement car parking and non-compliance with AS2890.6 for accessible car parking.
 - Additional information for Fire and Rescue NSW.
 - Additional information for Transport for NSW for SIDRA analysis on intersections.
 - Additional information for waste collection.
 - On 5 April 2022 a further briefing was held with SSPP. Issues identified for consideration were:
 - The proposed development in its current form is considered excessive for the site as a number of key development standards are not being met or are currently compromised.
 - The FSR for the Housing SEPP should be calculated only for the residential part of the site, not for the whole site.
 - Stage 1 (residential buildings A&B) are separated from the HSF which provides the uplift (but this is in Stage 2). The HSF needs to be developed as part of Stage 1 to access the uplift under clause 6.21 of SSLEP 2015.

- Council's detailed RFI considerations need to be addressed.
 - Inadequate clause 4.6 - justification needs to be substantiated
- On 27 April 2022 the Applicant provided legal advice which in summary concluded:
 - The SEPP (Affordable Rental Housing) 2009 applied rather than the Housing SEPP 2021 because the applicant was "lodged" when it was uploaded to the NSW Planning Portal prior to the commencement of the Housing SEPP 2021; and
 - Detailed the manner in which the FSR was to be calculated over the site.
- On 28 April 2022 the Applicant met with Council officers however the legal advice from the Applicant was not discussed. Some amendments to the proposal were presented by the applicant.
- On 10 May 2022 a further briefing was held with the SSPP. The applicant advised that they would provide amended plans and documentation to Council on 11 June 2022. The issues identified in the Panel briefing of 5 April 2022 were reaffirmed. The key changes to the proposal were:
 - An increase in the deep soil zone to 6m for most of the site.
 - Clarification of landscape calculations.
 - Additional communal open space (and removal of the through-link from those calculations).
 - Analysis of building separation.
 - Additional privacy to the northern interface of the HSF with the adjoining building.
- On 19 and 20 May 2022, further amended plans were submitted to Council (informally for consideration) which included:
 - An increased setback to the north from 3m to 6m, providing a 3m deep soil zone between the HSF and the northern boundary.
 - Deletion of 2 apartments per level to increase the communal open space and increase building separation between the two wings in building B.
 - Deletion of 7 apartments to enable compliant building setbacks.
 - Reduction in ground floor communal open space to be replaced on the rooftop.
- On 13 June 2022 Council advised the Applicant on the following matters:
 - Council considers the application was lodged when the fees were paid on 9 December 2021 and hence the Housing SEPP 2021 applies.
 - Council accepts that the proposal is a single building for the purposes of clause 6.21 of SSLEP 2015.
 - The bonus FSR under the Housing SEPP should apply to the residential component alone.
 - The increased setback of the HSF to 6m is supported.
 - Articulation and visual interest is required to the external façade of the HSF.
 - Further details on the HSF is required. There are too many driveways.
 - The reduced building separation from the additional HSF setback has reduced the communal open space and compromised apartment layouts, design, and reduced ground level communal open space, and solar access.
 - The additional basement setbacks are supported but further design consideration is required due to the private open space, pathways, stairs, retaining walls and stormwater which reduces the ability for the areas to be used for deep soil landscaping.
- On 27 July 2022 the Applicant and Council had a further meeting at which the Applicant presented a

further amended proposal, with the major changes being:

- Amendments to the northern façade of the HSF to improve privacy to the northern neighbour.
- Removal of emergency vehicular passageway on the ground floor through-link and inclusion of an ambulance drop off area in the HSF basement car park.
- 3m deep soil zone to the northern boundary.
- Revised deep soil calculations to 22.3% with a 7.8% additional area.
- Revised communal open space calculations with increased COS on the rooftop, inclusion of COS for the through-link to provide 29.3%.
- Amendment to basement layout and floorplans.
- On 9 August 2022 a further briefing was held with SSPP principally to identify whether the SEPP (Affordable Rental Housing) 2009 or the Housing SEPP 2021 applied, and to determine the manner in which the FSR was to be applied. Key issues discussed were:
 - Commencement of the Housing SEPP was 26 November 2021.
 - DA fees were paid 9 December 2021.
 - Therefore, the DA was not made until after the Housing SEPP 2021 had commenced and therefore the Housing SEPP 2021 applies to the proposed development.
 - The maximum FSR possible is the base SSLEP 2015 FSR + the bonus if all preconditions are met.
 - If preconditions are met the applicable FSR is 2:1 under SSLEP 2015.
 - Bonus FSR 0.5. based on the FSR 2:1. Applies only for the residential component giving a maximum FSR of 2.5:1.
 - Health services facility 25% GFA control is a SSDCP 2015 requirement.
 - To achieve the full 0.5:1 FSR uplift, 50% of the residential GFA is to be affordable housing.
- In early September 2022 the applicant lodged proceedings in the Land and Environment Court (LEC) challenging whether the ARH SEPP 2009 or the Housing SEPP 2021 applied to the proposal. The hearing on the point of law is to be heard by a judge on 9 December 2022.
- On 14 October 2021 the Applicant provided updated architectural plans, BASIX and NatHers, landscape plans, stormwater plans, a clause 4.6 request for building height exceedance, shadow and solar access diagrams, a traffic report, a waste management report and further legal advice. The legal advice concluded that:
 - Compliance with section 18 in the Housing SEPP relating to non-discretionary development standards is optional and no clause 4.6 request is required if compliance is not achieved: and
 - The wording of landscaped area in the Housing SEPP is such that if an open-air recreation facility is located above a building it is still landscaped area and does not need to constitute deep soil. Private terraces have been held to be open air recreational facilities.
- The revised plans were renotified between 18 October 2022 to 3 November 2022.
- On 17 November 2022 following a query from Council about a discrepancy in the north point in the survey to the shadow and view from the sun diagrams, amended solar access calculations shadow diagrams and view from the sun diagrams were provided (Rev C.)
- On 24 November 2022 further amended plans (Rev D) were received to address solar access

compliance. Various units were adjusted so that living areas aligned with building façade lines, a new window was added to a Building B units facing diagonally across to Building A, and suns eye diagrams were provided at 15 minute intervals between 8am to 11am and at 30 minute intervals between 11am and 4pm. A detailed breakdown was included, and other minor related architectural amendments flowed, including an increase in the GFA of Building B by 5m². A plan showing the level of units below natural ground level on the periphery of the site was also provided.

- The principal changes to the proposal in the plans provided in October 2022 / 24 November 2022 to the earlier design are:
 - An additional basement carpark level to building A which is now over three levels;
 - Rearrangement of the traffic flow within the basements for buildings A and B, removing some but not all of the multiple blind aisles for a more circular flow.
 - The basement 1 and ground floor Building B car park level is raised by 450mm. The ground floor car park for Buildings B and C are now level at RL28.05 to now be at the same RL
 - Provision of a MRV loading dock in the HSF and bulky waste area spanning building B and C's basement. The ambulance drop-off position is in the ground floor car park of the HSF.
 - Provision of accessible ramping in the ground level /Level 1 COS and other smaller changes to that area.
 - The COS off Hinkler Avenue and building B's Level 1 are increased from RL31.1 to RL32.04. This has the effect of reducing the extent to which the building B ground floor units are below the street from up to about 2.5 metres to a maximum of more like 1.5m below ground level. It also reduces the number and extent of steps required to access the private open spaces of Building B's Hinkler Avenue Level 1 units.
 - The throat entry to the Hinkler Avenue COS is increased from 12m to 15.5m separation between the western arms of Building A and B arising from the removal of a unit on the southern arm of Building B at this entry.
 - The building separation between the two arms of Building B has increased from 12.7m to 13.8m by the removal of articulation on the Taren Point Road elevation of Building B.
 - The through-site link includes landscaping and is pedestrian only with a slight ramping up from RL32.3 at Taren Point Road to RL33.25 opposite the HSF entry to RL33.70 at Hinkler Avenue.
 - Level 2 of Building B is raised 0.94m higher, reflecting the raising of the Level 1 Building B apartments to reduce their sub-terranean nature.
 - The plans are unclear as to whether Building B has a parapet height of RL54.0 or RL54.4 with the elevations and the roof plan being inconsistent. It is unclear which height the shadow diagrams are based upon. The Building B roof plan indicates the roof height at RL53.84 whereas the elevations indicate it at RL53.89.
 - The HSF northern elevation is faced with aluminium mid bronze privacy screening for the majority of the elevation. On its southern elevation, privacy screening is provided to a lesser extent just on level 5, with the remaining four levels fully glazed.
 - The substations are moved to the Taren Point Road streetside to the south of the through-site link.
 - Minor changes to unit layouts to improve solar access to living areas and the removal of

some architectural window hoods from living areas.

The principal differences between the originally lodged scheme and the scheme proposed under the combination of the plans lodged on 14 October 2022 as amended by plans lodged on 24 November 2022 are as follows:

- Building B and the HSF have been shifted to the south to provide a setback to the boundary increased from 3m to 6m including a 3m deep soil area.
- GFA/FSR:
 - Residential GFA has reduced from 18,852m² to 18,054m² (798m² reduction).
 - HSF GFA has increased from the 4716m² to 4795m² (79m² increase).
 - Total GFA has reduced from 23,568m² to 22,849m² (719m² reduction) with a reduced FSR from 2.5:1 to 2.42:1.
 - Apartments reduced from 242 to 234.
 - HSF represented 20% of total GFA now increased to 21% (25.4% of the pre-Housing SEPP uplift).
- Affordable Units
 - Affordable units are reduced from 49 to 47 units.
 - They originally comprised the whole of Building A plus 3 in Building B level 2. Amended to be all contained in Building A, but there are 13 non-affordable units in Building A (Level 5 and 6) as well.
 - Affordable GFA reduced from 9426m² (50% residential GFA) to 7584m² (42% of residential).
- Building height.
 - Maximum exceedance of Building A increased from 3.3m to 3.4m.
 - Maximum exceedance of Building B increased from 1.7m (lift overrun) to 3.7m. Roof exceedance increased from 0.85m to 1.9m.
 - Maximum exceedance of HSF remained the same at 0.8m (lift core).
- Levels of units below natural ground level (NGL):
 - Building A retains the same FFLs. The north-eastern dwelling at ground floor (A1.G.01) is 1.63m below NGL and the north western (A3.1.04) up to 2.31m below NGL. Of the 14 units which face the street in Building A, 7 of the 8 dwellings on Level 1 of Building A and all of the 6 units on the ground level of Building A are below NGL. 5 of the units are more than 1.5m below NGL.
 - Building B has been raised as part of the amended plans. 10 of the 13 units which face the street or the through-link at Ground and Level 1, are below NGL. On the north-western side near the Hinkler Avenue through-site link (B3.1.05), the unit is 1.7m below NGL. The two units in the south eastern corner on the ground floor of Building B, are 1.63m below NGL (B1.G.01 and B1.G.02). The three units in the middle of the through-link, (B2.1.03, B2.1.02 and B3.1.06) are 1.21m below NGL. This is an improvement on the original scheme which included units in Building B which were up to 2.6m (NW corner) and 2.44m (SE corner) below NGL.
 - Of the 27 units which face the public domain at ground/Level 1, 23 are below NGL (85%)

and 9 are 1.5 metres or more below NGL (33%).

- **Setbacks and deep soil**
 - The deep soil setbacks to the whole residential site are now 6m wide (increased from variable but in places about 500mm).
 - The northern deep soil setback to the HSF has increased from nil to 3m.
 - The northern building setback has increased from 3m to 6m.
- **Landscaping**
 - 6m side deep soil increased from 9.1% to 16%. 3m wide deep soil increased from 4.5% to 5.4%.
 - Total increase for Housing SEPP deep soil compliance of 15% - increased from 14.5% to approximately 21.4%.
 - Landscaped area originally calculated at 53.3% but included areas not covered by the Housing SEPP. Current provided is 50.2%. This includes communal open space on the rooftop and the through-site link and is compliant with the Housing SEPP.
- **Communal open space (COS)**
 - The communal open space at ground / Level 1 has reduced in size with the placement of the HSF and Building B further to the south.
 - Originally COS was stated to be 30.1% but that included the through site link which was an ambulance driveway. Areas on the rooftop have increased. Current proposal is 29.8% (including the through site link).
 - Increased tree planting within the deep soil setbacks.
- **Parking and access**
 - Number of driveways reduced from 4 from Taren Point Road to 2 - deleting ambulance access in through-site link and the separate vehicular through-route on the northern side of the HSF.
 - Car parking layout is more user-friendly with less blind aisles, although many still remain. The DDA car parking spaces have been removed from the aisles.
 - The down ramp between the HSF and Building B entry has been removed so that the ground floor car park levels are the same.
 - Loading bays have been added to the HSF.
 - An additional basement level is added to Building A.
- **Streetscape – Comparisons of the streetscapes** does not demonstrate any substantive changes other than an increase in the height of Building B, although the HSF is more recessive on Level 5. The 24 November 2022 plans however appear to have removed much of the framing which provided building articulation and interest to the streetscape. The façade treatment to the HSF northern elevation has been markedly changed with the privacy screening.
- Various internal architectural changes to units to reflect the changed building floorplates.

4.3 Preliminary statutory interpretation issues

There have been a number of preliminary matters on which Council has formed a view in order to determine the planning framework for this application. A brief summary is as follows;

4.3.1 Housing SEPP or Affordable Rental Housing SEPP

The application was uploaded to the planning portal on 22 October 2021. Requests for further information were made and the fees were paid on 9 December 2021. The Housing SEPP commenced on 26 November 2021. Council is of the view that as the fees were paid on 9 December 2021 (after the commencement of the Housing SEPP), the application was “lodged” for the purposes of the SEPP on 13 December 2021 and the Housing SEPP and not the ARH SEPP applies to the application. The applicant disagrees with this position and a point of law is to be heard by a judge in the LEC on 9 December 2022.

4.3.2 Non-discretionary development standards under the Housing SEPP

Section 18 of the Housing SEPP includes non-discretionary development standards, which if complied with, prevent the consent authority from requiring more onerous standards for the matters. Section 4.15(2) of the EP & A Act 1979 states that if an environmental planning instrument contains non-discretionary development standards with which the application complies, the consent authority is not entitled to take those standards into further consideration, must not refuse an application on the ground that the development does not comply with those standards, and must not impose a condition of consent which is more onerous than those standards. The discretion of the consent authority is so limited.

Section 4.15(3) of the EP & A Act states as follows:

- (3) *If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards—*
 - (a) *subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and*
 - (b) *a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.*

Council is of the view that the non-discretionary development standards in section 18 of the Housing SEPP are development standards and that where there is non-compliance the consent authority’s discretion is not limited. The applicant may take the benefit of a clause allowing for flexibility and clause 4.6 of the SSLEP 2015 is one such clause. If no clause 4.6 is provided, section 18 acts as a prohibition to approval. Council is therefore of the view that if a development does not comply with the non-discretionary development standards in section 18 of the Housing SEPP, a clause 4.6 exception request is required.

In this case, as there is non-compliance with the solar access non-discretionary development standard in section 18(2)(e) of the Housing SEPP, and no clause 4.6 has been provided, the proposal must be refused.

4.3.3 Bonus FSR under SSLEP 2015 and Housing SEPP

Clause 6.21 of SSLEP 2015 allows for an uplift of FSR (and building height) from the mapped FSR of 0.45:1 by 1.55:1 to provide a maximum FSR of 2:1 if three preconditions are met.

Section 17 of the Housing SEPP allows for an uplift of up to 0.5:1 if at least 50% of the GFA of the building resulting from the development will be used for affordable housing. If affordable housing represents a percentage between 20% to less than 50% the percentage uplift will be reduced accordingly.

Council is of the view that to achieve the full 0.5:1 uplift, 50% of the residential GFA on the site would need to be affordable housing. The Housing SEPP does not apply to the HSF and the uplift under the Housing SEPP must be applied to affordable housing.

Council is of the view that provided the applicant satisfies the requirements under clause 6.21 of SSLEP 2015 for the LEP bonus, the applicant is entitled to apply the Housing SEPP on top of the SSLEP 2015 bonus. In this case, if the applicant obtains the benefit of the uplift under clause 6.21 of SSLEP 2015, and if 50% of the GFA of the residential GFA is to be affordable housing, the maximum FSR applicable to the site would be 2.5:1.

Under the amended documentation the applicant has sought a 0.42:1 uplift under the Housing SEPP. Provided that the clause 6.21 uplift is available, the Council is of the view that the applicant's calculation of FSR under the Housing SEPP is agreed based on the following:

- Allowable FSR under CI 6.21 (9431×2) = 18,862m²
- 4795m² is HSF, leaving 14,067m² as potential residential
- 42% of 14,067m² (for affordable housing) = 5908.1m² of affordable housing before Housing SEPP uplift
- The residential component is increased under Housing SEPP from 14,067m² to 18,054m² = 3987m² increase
- 42% of 3987m² = 1674.5m² additional affordable housing
- Affordable Housing is 5908.1m² + 1674.5 = 7582.6m²
- The applicant has provided 7584m², hence is compliant with the FSR controls.

4.3.4 Application of Clause 6.21 of SSLEP 2015

Clause 6.21 of SSLEP 2015 has three principal pre-conditions to obtain the benefit of the uplift in FSR (from 0.45:1 by 1.55:1 to 2:1, and the uplift in building height from 9m by 11m to 20m. Those preconditions and comments on those matters are carefully considered in section 9.11 of this report. Briefly the preconditions are:

(a) *the building contains a health services facility, and*

Comment: Council is of the view that because there is a single basement, the proposal is a single building for the purposes of clause 6.21. As the proposal contains a HSF this precondition is met.

(b) *the building provides a transitional scale of building height to Flide Street, Caringbah, and*

Comment: The building does not front Flide Street and this is not applicable to the site.

- (c) *the building setbacks are sufficient for the deep soil planting of substantial landscaping, including large scale indigenous trees on Kingsway frontage at Caringbah.*

Comment: As the site does not front Kingsway the requirement is for substantial landscaping (not large scale indigenous trees). Deep soil setbacks have been increased generally to 6m. On balance it is considered that the precondition is met.

4.3.5 Landscaped area

The definition of landscaped area under the Housing SEPP is different from the definition of landscaped area under the SSLEP 2015. Section 18 of the Housing SEPP provides for a non-discretionary development standard in relation to landscaped area. Council is of the view that as the definition is different in the SSLEP 2015, Council is not able to apply more onerous controls under the SSLEP 2015 to the assessment and the Housing SEPP overrides the SSLEP 2015 landscaped area requirement.

4.3.6 Health Services Facility SSDCP 2015 FSR requirement of 25%

Council is of the view that the requirement for 25% of the GFA to be applied to the HSF is a SSDCP 2015 requirement which is subject to section 4.15(3A)(b) of the EP & A Act 1979 and is to be applied flexibly. The HSF GFA is 4795m² which represents 25.4% of the maximum GFA allowable if the development obtains the benefit of the uplift under clause 6.21 of the SSLEP 2015. The HSF represents 21% of the GFA of the proposed development with a GFA of 22,849m². The bonus under the Housing SEPP is required to be applied to affordable housing (see section 17(2) of the Housing SEPP). On the assumption that the proposal obtains the benefit of the clause 6.21 uplift under SSLEP 2015, the fact that it achieves 25.4% of the GFA prior to the Housing SEPP uplift is considered acceptable.

5.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application, and after numerous requests from Council, the applicant has not provided adequate information to Council to enable a thorough assessment of this application. The following information is missing from the application or is considered to be inadequate:

- The Clause 4.6 exception request in relation to exceedance of the building height control under clause 4.3 of SSLEP 2015.
- Clause 4.6 exception request in relation to non-compliance with the non-discretionary development standard relating to solar access set out in section 18(2)(e) of the Housing SEPP.
- Materiality details for the external facades, such as balustrading, the framing set out in the montages, the location of drainpipes and services (e.g. air conditioning condensers)
- Location of clothes drying facilities
- The location of the hydrant booster which is to be relocated to ensure that hardstand parking is located within the site.
- Long sections for all ramps to ensure head height compliance is achieved with AS2890.1 and AS2890.2.

- Details concerning management of the loading dock facility in Building B and the HSF, including the lack of separation between service vehicles and residents of Building B and the staff/customers of the HSF. The loading dock must be able to support an HRV.
- Demonstration that there are suitable turning spaces at the end of blind aisles, particularly in Basement 2 of the HSF.
- The discrepancy between the view from the sun solar access diagrams (issued on 24 November 2022) and the shadow diagrams (issued on 17 November 2022) should be clarified and discrepancies rectified.
- Sections should be provided within the landscaping plans to demonstrate how the difference in levels between the public domain and the residential courtyards is to be managed to those units which are mostly deeply submerged. Sections should be provided between the public domain and the following units: A3.1.04, B3.1.05 and A1G.02; between B3.1.05 and the through site link to the HSF; and between A1.G.01 across the OSD to the pedestrian entry walkway.
- Clarify the parapet height of Building B (RL54.0 or RL54.4) which differs between the elevations (which include both heights) and the roof plan which indicates RL54.0. Clarify which height the shadow diagrams are using. Clarify if the Building B roof height is RL53.84 as per the roof plan or RL53.89 as per the elevations.
- Further details on the operation of the HSF and the management of the through-site link are required.
- Additional matters set out in section 11.16 of this report are required.

6.0 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 409 adjoining or affected owners of the proposal and eleven (11) submission were received. On renotification 4 unique submissions were received, although there were three which copied another submission or repeated from the earlier notification. A total of 15 unique submissions was received.

A full list of the locations of those who made submissions, the dates of their letters and the issues raised is contained within **Appendix “A”** of this report.

7.0 MAJOR ISSUES ARISING FROM SUBMISSIONS

The main issues identified in the submissions are as follows:

- Traffic congestion and parking difficulties
- Overdevelopment.
- Privacy and noise.
- Impacts on amenity
- Affordable housing
- Loss of mature trees
- Lack of clarity and details
- Environmental impacts

Issue 1: Parking

Comment: The general tone of the submissions is that there is insufficient parking, that there is already pressure on parking in the area due to hospital staff parking in the streets, (and sometimes unauthorised parking) and that the proposal will worsen the already difficult problem.

Section 18 of the Housing SEPP includes non-discretionary development standards, which, if met, prevent the consent authority from requiring more onerous standards for those matters. Section 18(2)(f) includes parking provisions at the rate set out in Table 1 in relation to the residential accommodation. The section does not include any provision for visitor parking or accessible parking. The table demonstrates that the proposal is compliant with the Housing SEPP and therefore the consent authority is not able to require more onerous car parking rates for the residential accommodation. Note that the proposal incorrectly states that there are 163 car parks in Building B but in fact there are 162.

Table 1: Parking provision for the residential units under Housing SEPP

Units	Rate	Total Spaces Required	Subtotal required	Provided
Building A				
1 Bedroom	0.5 spaces	28		150
2 Bedroom	1 Space	53		
3 Bedroom	1.5 Spaces	9	90	
Building B				
1 Bedroom	0.5 spaces	17		162
2 Bedroom	1 Space	71		
3 Bedroom	1.5 Spaces	21	109	
Total			199	312

Chapter 9 of SSDCP 2015 control 18.2.1 establishes car parking rates including for residential flat buildings and HSF. In this case, the rates for the residential flat building are subject to the Housing SEPP rates. Control 18.2.5 of SSDCP 2015 states:

“Where a development is identified as Traffic Generating Development then the parking requirement specified in the RTA Guide to Traffic Generating Development shall apply”.

The rates for the HSF car parking under Chapter 9 of the SSDCP 2015 and under the RTA Guide are set out in Table 2. Although the documentation states that 146 car parks are in the HSF, there are actually only 132. However, the application complies with the RTA requirement and therefore is compliant with Council's numerical controls (see Table 2 below).

Table 2: HSF car parking rates

Units	Rate	Total Spaces Required	Provided	Complies?
DCP Health	1 space/35m ² GFA	4795m ² /35 = 137	132	No
RTA	4/100m ² GFA = 120	4795m ² x .025 = 120	132	Yes

Issue 2: Traffic

Comment: Generally, the submitters are concerned about the already present traffic congestion, which arises partly because parking on both sides of Hinkler Avenue and Taren Point Road renders each road effectively a single lane road, leading to congestion. Secondly that the ongoing construction traffic is

compounding these issues. These lead to potentially dangerous situations. The traffic assessment has not taken into account the newer developments and assumes that traffic is not parked on one side of the road. There is concern about the dangers arising from the Building A driveway being opposite the driveway for 17-21 Gardere Street.

Transport for NSW has provided feedback on the updated traffic modelling provided with the application. It requires a dedicated right turn bay from the Kingsway into Hinkler Avenue.

The road widening at Taren Point Road onto Kingsway as foreshadowed in the SSLEP 2015 and Chapter 9 of the SSDCP 2015 has now been completed.

The traffic report has sought to compensate for the new developments in its assessment. It is not evident from the traffic assessment that it is dependent upon one side of the road having no parking as set out in the submission.

The amended documentation has improved traffic flow by the reduction in the number of vehicular entries accessing the site on Taren Point Road from five to two.

17-21 Gardere Street's driveway is opposite the southern boundary of the site, almost opposite Hinkler Avenue. Building A's driveway is approximately 20 metres further to the north. No concern has been raised by Council's engineers as to this proximity.

It is agreed that with parking on both sides of the road, the roads are narrow for the increase in traffic, particularly when trying to accommodate construction trucks and HRVs. If approval for the development is granted, construction traffic is a temporary impact but would be required to be managed by the applicant as part of consent conditions and separate Roads Act approvals with Council.

Issue 3: Overdevelopment and building height

Comment: A number of submissions are concerned about overdevelopment in the area. The building height exceedance is also of concern. Some recommended rezoning to reduce development. Concern is also raised about strains on local infrastructure including schools.

The area has been identified in Council's SSLEP 2015 and SSDCP 2015 for a concentration of residential and health services facilities in this area, with uplifts in FSR and building height controls if certain preconditions are met. SSDCP 2015 sets out the strategy behind these controls and includes a number of controls which seek to ensure that the local area's amenity is preserved. The ability of the applicant to seek to use the FSR uplift under the Housing SEPP does lead to a level of development not accommodated by the SSLEP 2015 and SSDCP 2015 controls. This places pressure on a development to meet the requirements of the ADG and the SSDCP 2015 and Housing SEPP whilst seeking to take advantage of the uplift under the Housing SEPP. Council is supportive of the use of the site for affordable housing and taking advantage of the provisions of the Housing SEPP for those purposes, however it remains important that the development provides for good amenity for all residents.

The issue of building height is considered under the Clause 4.6 exception request in the Assessment Section of the report below.

Council's engineering officers have considered infrastructure. There are concerns raised about the hydrant booster. Transport for NSW require a right turn lane from Kingsway into Hinkler Avenue. Conditions of consent can be included to require undergrounding of power, adjustment of public services, new street lighting. Stormwater plans have been provided and are in accordance with Council's requirements. It is not the place of this application to consider whether local schools have capacity.

Issue 4: Overshadowing

Comment: The submitters indicated that 17-21 Gardere Street has midwinter sun in the afternoon which will be overshadowed by 3pm impacting half their townhouses and also 33A and 33B Hinkler Avenue and the railway reserve. Shadowing could be reduced by increased setbacks and lower building heights on Taren Point Road. Concern is raised that the shadow diagrams do not go past 3pm.

The residential flat buildings are subject to solar access requirements under the ADG, however these do not relate to neighbouring sites, nor do the non-discretionary development standards in section 18(2) of the Housing SEPP. Clause 14 of Chapter 9 of the SSDCP 2015 includes a control for direct sunlight to north facing windows of habitable rooms and to 10m² of useable private open space to not be reduced to less than 2 hours between 9am to 3pm on 21 June. This is why the shadow diagrams do not extend past 3pm. Whilst there is some concern about the accuracy of the shadow diagrams submitted by the applicant, the ones provided on 17 November 2022 and the view from the sun diagrams provided on 24 November 2022, indicate that the windows and private open space of 17-21 Gardere Street will not be impacted by overshadowing until about 1.30-2.00pm, retaining sunlight from 9am through until this time.

The shadow diagrams and view from the sun diagrams indicate that 33 and 33A Hinkler Avenue will start to become overshadowed by the development sometime around 9am (noting inconsistency between the shadow diagrams and the view from the sun diagrams) which will impact the northern façade until about 2.30pm. From floorplans it is likely that the living room faces north and these dwellings will not achieve 2 hours sunlight in midwinter. The rear private open space appears largely unaffected. 33 and 33A Hinkler Avenue is particularly susceptible to overshadowing from the development because it is south of the site. The southern edge of Building A is largely above the height control by up to 1480mm in the south eastern corner. The shadow diagrams indicate that a compliant development would only marginally improve the situation for 33 and 33A Hinkler Avenue.

Issue 5: Reduced amenity

Comment: The submitters have a range of issues (leaving aside those arising from traffic and parking). These include:

- noise and dust from construction traffic – construction would be subject to a construction management plan and conditions of consent
- privacy – no further information is provided. The buildings are set back 6m from the boundary and neighbours on all sides are separated by a street, providing sufficient separation to protect privacy.

The change in height and scale of the development from those existing single dwellings presents a significant change in the number of dwellings and at upper levels, with the ability to look down on the remaining dwellings in Hinkler Avenue and Taren Point Road. Retention of the majority of the existing street trees and additional new planting within the front setback of the site would assist to alleviate the perceived sense of overlooking.

- General loss of amenity – it is agreed that the proposal will change the feel of the area from low density residential to high density. However the site has been zoned for such a purpose since 2015.

Issue 6: Impacts on the natural environment

Comment: Comments include concern for the loss of trees, and potential impacts on and from light spill, the lack of green space, and flooding. An impact assessment on the grey-headed flying fox flying from the E.G. Wodehouse National Camellia Gardens should be conducted.

It is considered that the potential impacts on the grey headed flying fox are beyond the scope of the proposal. The site provides for the required communal open space in accordance with the ADG numerical controls. It is not for this site to provide public gardens, however the proposal does include a publicly accessible through-site link which will includes landscaping.

Council's landscaping officer has considered the loss of trees and notes the design has sought to retain the majority of high endemic trees. A recommendation of planting of 250 replacement trees has been made. Substitution of some of the exotic species in the landscape plan is recommended. The landscape officer however is concerned about the encroachments of the built form and services into the 6m wide deep soil setback which impact on the proposal's ability to sustain landscaping. This is discussed further in the Assessment Section of the report below.

Issue 7: Concern that there are already untenanted medical facilities nearby

Comment: A number of comments were made that there remain untenanted medical services in the immediate vicinity.

The applicant is aware of this and they have stated that their research indicates that a large facility such as that proposed is more likely to attract a long term medical tenant. It provides for a different type of offering than is currently provided in the area and Council is supportive of the HSF being wholly contained within one building.

Revised Plans

The applicant lodged revised plans on 14 October 2022. In accordance with the requirements of SSDCP 2015 these plans were exhibited in the same way as the original application. 4 submissions were received during this notification period (as addressed above).

Revised solar access plans were lodged on 17 November 2022 and further amended plans were lodged on 24 November 2022. In accordance with the requirements of SSDCP 2015 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 comment.

8.0 STATUTORY CONSIDERATIONS

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

The proposed development of a health services facility is not a permissible land use within the zone under the SSLEP 2015. Notwithstanding this, Clause 6.21 of the SSLEP 2015 provides permissibility for health services facilities within the Caringbah Medical Precinct and as such the proposed development is permissible under the SSLEP 2015, with development consent from Council.

Furthermore, section 2.60 of Chapter 2 of State Environmental Planning Policy (Transport and Infrastructure) 2021 provides permissibility for health services facilities within R4 High Density Residential zoned land and as such the health services facility is also permissible under State Environmental Planning Policy (Transport and Infrastructure) 2021 with development consent.

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 (Planning Systems) 2021 Chapter 2 State and Regional Development.
- State Environmental Planning Policy (Housing) 2021.
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy (Biodiversity and Conservation) 2021:
 - Chapter 2 Vegetation in non-rural areas
 - Chapter 6 Bushland in Urban Areas
 - Chapter 8 Sydney drinking water catchment
 - Chapter 11 Georges River Catchment.
- State Environmental Planning Policy (Resilience and Hazards) 2021
 - Chapter 4 – Remediation of Land.
- State Environmental Planning Policy (Transport and Infrastructure) 2021
 - Chapter 2 Infrastructure.
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

Section 7.11 Development Contribution Plan 2016

- Section 7.11 Development Contribution Plan 2016 – Caringbah Centre Precinct.

9.0 COMPLIANCE

9.1. State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 identifies State and Regionally Significant development in NSW. Schedule 6 of the SEPP 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.

9.2. State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Housing) 2021 (Housing SEPP) Part 2 Division 1 includes in-fill affordable housing provisions. The SEPP commenced on 26 November 2021. Fees were paid on 9 December 2021 and Council is of the view that the Housing SEPP applies to the proposal and not the previously applying SEPP (Affordable Rental Housing) 2009.

As detailed in section 4.2.2 above, the Council is of the view that if there is non-compliance with a non-discretionary development standard set out in section 18 of the Housing SEPP, a clause 4.6 exception request is required to justify that non-compliance.

The solar access control in section 18(2)(e) requires at least 3 hours direct solar access between 9am to 3pm midwinter to at least 70% of the living rooms and private open spaces of dwellings. Taking into account the caveat that the shadow diagrams appear to be inconsistent with the view from the sun diagrams, and further taking a very generous view and including living spaces and private open spaces which get only the slightest possible touch of sunlight at 12.00pm, it is considered that the number of units satisfying the standard are:

- Building A: 38 of 115 = 33%
- Building B: 30 of 119 units = 25%
- Total: 68 of 234 units comply = 29%

The proposal does not comply with the controls in section 18(2). No clause 4.6 exception request has been submitted for non-compliance and therefore the consent authority is unable to grant consent unless a clause 4.6 satisfying the requirements of the clause, is provided.

Compatibility:

Section 19(3) of the Housing SEPP requires that prior to the grant of consent the consent authority must consider whether the design of the residential development is compatible with (relevantly) - for precincts undergoing transition – the desired future character of the precinct. The desired future character of the precinct is best established in the objectives to clause 6.21 Caringbah Medical Precinct of SSLEP 2015. The objectives with comments are set out in **Table 3**. Whilst most objectives are met, the objective relating to high quality areas of private and public domain with deep soil setbacks for substantial landscaping is not achieved because of the poor relationship with the public domain resulting from the sunken units. A better design, which removed the subterranean dwellings (and their consequent stairs and retaining walls) would make this objective more achievable.

Table 3: Objectives of Clause 6.21 – Caringbah Medical Precinct

Objectives of CI 6.21 SSLEP 2015	Comment
(a) to create a mixed use development precinct that has health services facilities and residential accommodation located adjacent to the Sutherland Hospital and within walking distance of Caringbah Centre,	The proposal includes both health services facilities and residential accommodation as desired.
(b) to provide employment opportunities and promote economic growth for Sutherland Shire through synergies with the existing medical facilities of Sutherland and Kareena Hospitals,	Employment opportunities are anticipated relating to the health services facility.
(c) to be a catalyst for the revitalisation of Caringbah Centre,	The proposal would introduce a large number of workers and residents to the area which would have the capacity to revitalise the Caringbah Centre.
(d) to ensure that there are high quality areas of private and public domain, with deep soil setbacks for the planting of substantial landscaping including large scale indigenous trees which will complement the scale of buildings up to 6 storeys, particularly in the building setbacks adjacent to Kingsway, Caringbah	<p>The public domain has been improved during the application process with the increase in the deep soil setbacks which enables an improved level of landscaping. The proposal has largely sought to include medium height non-indigenous trees within the deep soil setbacks – with a maximum height of 11m. These are not the large scale indigenous trees anticipated by the objective, although the tree species could be conditioned to improve the proposal. The proposed heights of the buildings is around 20m or above. The objective seeks landscaping to complement the scale buildings up to 6 storeys. The HSF is a 5 storey building but the two residential buildings A and B are generally 7 storey buildings. Without substantial landscaping the vegetation will fail to achieve the objective of complementing the scale of the development. As detailed above, it is a concern that the incursions into the deep soil setbacks will prevent the desired level of substantial landscaping being able to be achieved.</p> <p>Further, the private and public domain is unable to achieve the high quality desired by the objective, because of the numerous incursions such as stairs, terraces, retaining walls and services, some of which are a direct result of the subterranean nature of the</p>

Objectives of CI 6.21 SSLEP 2015	Comment
	majority of the units addressing the public domain
(e) to protect the amenity of the adjacent areas by providing a transition to adjacent 2-storey residential development, including reasonable setbacks from side and rear boundaries and the maintenance of a transitional scale of building height to Flide Street, Caringbah,	The site is not adjacent to Flide Street and it is considered that this objective largely refers to the land to the north of Flide Street and is not relevant.
(f) to improve safety and traffic flow by limiting vehicle access from Kingsway, Caringbah, to redevelopment sites.	Safety and traffic flow are of particular concern to the neighbouring submitters, most of whom detail traffic flow concerns due to the narrow nature of the streets and existing congestion. There will be no direct access to Kingsway from the site.

The planning principle in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 commences with some observations and notes that “*there are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing.*” The planning principle provides for two questions in circumstances where compatibility between a building and its surroundings is desirable. In this case, because of the establishment of the Caringbah Medical Precinct, the required compatibility is really towards the desired future character of the precinct, rather than the surrounding sites and it is considered that the *Project Venture* analysis is of little assistance.

Considerable further guidance on the desired future character of the precinct is provided in Chapter 9 of SSDCP 2015. It is clear from Preston J’s judgment in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115, that the DCP cannot operate in a way to define the desired future character for the purposes of an LEP, (he did not consider a SEPP), unless the provisions expressly refer to the provisions of the DCP for that purpose. The Housing SEPP does not do this. However, a consent authority may take into account the DCP in considering the desired future character if it wishes. Some of the notable objectives and statements in the SSDCP 2015 relating to desired future character of the Caringbah Medical Precinct are considered in **Table 4**. The SSDCP 2015 controls which also provide guidance for the desired future character, are considered in the SSDCP 2015 compliance table in **Appendix “B”**.

Table 4: Objectives SSDCP 2015 Chapter 9 – Caringbah Medical Precinct.

Objectives of CI 6.21 SSLEP 2015	Comment
1. The strategy is to develop a cluster of new medical facilities in close proximity to the Sutherland Hospital and within walking distance of Caringbah Centre, whilst also providing more opportunities for residents to find local employment. The proximity to the centre means	The proposal includes both health services facilities and residential accommodation as desired. The provision of affordable housing is strongly supported by Council as a way to help fulfil this strategy.

Objectives of CI 6.21 SSLEP 2015	Comment
that the precinct is an appropriate place to provide additional dwellings as well as medical centres	
2. To create a new area of mixed use developments in a landscaped setting with substantial landscaped building setbacks - large trees and landscaping are intended to soften the visual impact of new development	The proposal intends to have a single building for the HSF, separated from the residential developments. It is considered that this is consistent with the intent of the strategy. The 6m wide deep soil setbacks around the residential units allows for a landscaping environment which, when combined with the street tree planting and existing mature trees in the street, could be capable of providing the landscaped setting which is desired.
The HSF to occupy at least 25% of the floor area	Before the uplift from the Housing SEPP, the HSF provides 25.4% of the GFA to the HSF. The additional FSR arising from the application of the Housing SEPP is required to be applied for affordable housing. Therefore, this strategy objective is met.
3. The public domain and landscape strategy is to improve the public domain with a greater volume of landscaping and improved footpaths. Encourage well lit, safe and pleasant pedestrian paths through and across the site.	The proposed 6m deep soil setbacks should be sufficient to provide the proposed landscaping. The landscaping outcome would be improved however if the units were elevated to be at or slightly above natural ground level rather than subterranean as many are. That design creates a defensive approach to the public domain in the effort to obtain privacy for the sunken apartments. The through site link is a positive aspect to the proposal.
5. The DCP sets out amalgamation requirements, envisaging the amalgamation of 4 lots with the object to promote the efficient use of land and allow design constraints to be more easily resolved. The 4 lots are designed to maximise northerly orientation.	The proposal amalgamates 16 lots, and although not consistent with the plan in the DCP, it provides opportunities for different building layouts and forms as is foreshadowed. It does not prevent northerly aspects, or at least orientations to best take advantage of the sun, being devised albeit it is recognised that the subject proposal presents difficulties in achieving the required solar access for the residential apartments.
8. Building envelopes are suggested. For the site this is 6 storey buildings with 4 storeys on the north and south. The object is to ensure developments are of an appropriate height, mass and building separation to protect solar access potential, improve connectivity and to achieve	The building envelopes are changed, and Council supports a variation given the 16 lot amalgamation. However, the buildings are 7 storeys high with little height variation other than which occurs between the three buildings due to the fall in topography.

Objectives of CI 6.21 SSLEP 2015	Comment
variations in height to provide built form transitions to existing and future adjacent developments.	
9. Streetscapes and built form. The quality and scale of architecture, landscape elements, natural elements and works in the public domain determine the streetscape character. Facades make an important contribution to the streetscape with composition and detailing having an impacts on apparent scale as well as its appearance. Providing an accessible built environment is both a design and legislative requirement	The streetscape quality is diminished by the defensive subterranean nature of the ground and level 1 units. Further details should be provided to ensure that the streetscape elevations as depicted in the montages are actually achieved. Accessibility could be improved by the elevation of the units to ground level, and the lowering of the ground floor communal open space raised turf area to be flat and accessible. This would also assist with safety for all users. The rooftop communal open spaces are supported and accessible.

A compliance table with a summary of the applicable Housing SEPP non-discretionary development standards is contained in **Appendix "C"**. All non-discretionary development standards are met except the solar access to living rooms and private open spaces midwinter (addressed above).

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

Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) 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 dwelling houses. A review of Council's GIS and historical aerial photos has shown that residential use in Hinkler Avenue has been in place since at least 1955 for the southern extent of the subject site and at least 1961 (if not earlier) for the northern extent. The subject site is not listed in Council's contaminated land register.

If the proposal is to be approved, standard environmental conditions of consent addressing the management of site soil/ fill material and the discovery of unexpected finds during excavation and construction can be placed on the consent. In conclusion, the site is suitable for the proposed development in accordance with requirements of the Resilience and Hazards SEPP.

9.4. 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.

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021 includes Chapter 2 Vegetation in non-rural areas which includes both Sutherland LGA and land in the R4 High Density Residential zone. Clearing of land to which part 2.3 applies requires a permit from Council. Chapter 39 of SSDCP 2015 establishes the vegetation to which that part applies. It notes that clearing that is ancillary to development requiring consent will be assessed as part of the development assessment process. Council has considered the arborist report accompanying the proposal. The significant endemic, remnant specimens are located in the Council road reserve and are proposed for retention. The other trees proposed for removal are not of a quality to require major architectural redesign. It is considered that the trees proposed for removal are acceptable.

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021 includes Chapter 6 Bushland in Urban Areas which aims to protect and preserve bushland within urban areas, recognising these areas have natural heritage value, aesthetic value and are a recreational, educational and scientific resource to the community.

This chapter of the SEPP applies to development on land containing or adjoining bushland that is zoned or reserved for public open space purposes. The SEPP defines bushland as 'land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristic of the natural vegetation.

The land is zoned R4 and is adjacent to land zoned SP1 Health Services Facilities, SP2 Railway and R3 Medium density residential and as such the provisions of the Chapter do not apply.

9.7. 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.

An assessment of the proposal having regard to the design quality principles of SEPP 65 is set out in **Appendix “D”** to this report. Generally, the principles are not met (save Principle 8) as summarised below:

- *Principle 1 Context and neighbourhood character:* The proposal is not consistent with the building height, number of storeys, the 3m setback to Hinkler Avenue of the HSF, solar access and cross ventilation non-compliances in the controls. A large number of units are below street level (reducing the potential for large scale indigenous trees) and interfaces between the units and the through-site link are inadequate.
- *Principle 2 Built form and Scale:* The proposed massing strategy has negative outcomes in relation

to units fronting Taren Point Road for solar access, narrow proportions in the southern end of the courtyard, building separation, and the number of units below street level.

- *Principle 3 Density:* The proposal is an overdevelopment of the site.
- *Principle 4 Sustainability:* It meets the minimum BASIX, NatHERS and section J but fails to meet minimum ADG solar access and cross ventilation. Some residential corridors are dependent on artificial lighting 24 hours a day.
- *Principle 5 Landscape:* Central courtyard is tight and overlooked, the raised turf area should be accessible. The open driveway in Building A has a poor interface. Rooftop COS has good solar amenity, but privacy should be demonstrated to the skylights. Units below ground provide a poor interface.
- *Principle 6 Amenity:* ADG objectives are not achieved particularly relating to cross ventilation, solar access, some bedrooms with inadequate windows, exceedance of the maximum 8m living space, building separation and visual privacy. Direct accessible point of entry not provided to 4 units in Building A. Residential entries are concealed.
- *Principle 7 Safety:* Unclear if the courtyard is secured from the street or how it will be managed. Entries to residential buildings are unclear. Lighting is required to the courtyard which may conflict with the units overlooking.
- *Principle 8 Housing Diversity and Social Interaction:* An appropriate mix is provided, and a range of communal spaces are provided.
- *Principle 9 Aesthetics:* A contextually appropriate design intent is provided but further detail sections are required to show details and to ensure that previously proposed design elements have not been eroded in an attempt to improve amenity aspects.

9.8. 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 "E"** to this report. The proposal is not compliant with the following aspects of the ADG:

- Part 3B Overshadowing on neighbouring properties
- Part 3C Public domain interface
- Part 3F Visual privacy
- Part 3G Pedestrian access and entries
- Part 4A Solar and daylight access
- Part 4B Natural ventilation
- Part 4E Private open space and balconies (particularly objective 4E-2 in relation to the ground level private open spaces)

- Part 4G Storage (insufficient storage areas shown in the basement)
- Part 4L Ground floor apartments
- Part 4M Facades
- Part 4O Landscape design

9.9. State Environmental Planning Policy (Transport and Infrastructure) 2021

Impact of rail noise or vibration (Section 2.100)

Division 15, Subdivision 2 of Chapter 2 of the SEPP also relates to development that may be impacted by rail infrastructure that is located close by. This application is for residential accommodation and a health services facility, and the site is within close proximity to the T4 Eastern suburbs and Illawarra rail line and is also identified on Council's Road and Rail Noise Buffer Map.

Section 100 of the SEPP requires Council to consider whether there is likely to be an adverse effect by rail noise or vibration. In this event, the building must be designed to include noise and vibration attenuation measures to minimise impacts to future occupants as per the NSW Department of Planning's Development near Rail Corridors and Busy Roads - Interim Guideline.

The applicant has submitted an Acoustic report which has been reviewed by Council's Environmental Health Officer and found to be acceptable. Suitable conditions could be placed on the development consent.

Impact of road noise or vibration (Section 2.120) -

Division 17, Subdivision 2 of Chapter 2 of the SEPP also relates to development that may be impacted by road noise or vibration. This application is for residential accommodation and a health services facility, and the site is in the vicinity of Kingsway and is also identified on Council's Road and Rail Noise Buffer Map.

The land is within proximity to Kingsway where the annual average daily traffic volume exceeds 20,000 vehicles. The impact of road noise and vibration on the residential accommodation and the health services facility have been considered under section 2.120.

The applicant has submitted an Acoustic report which has been reviewed by Council's Environmental Health Officer and found to be acceptable. It is noted that the acoustic report did not address the relevant acoustic criteria and NSW Department of Planning's Development near Rail Corridors and Busy Roads - Interim Guideline. Suitable conditions could be placed on the development consent.

Traffic generating development (Section 2.122)

Division 17, Subdivision 2 of Chapter 2 of the SEPP also relates to traffic generating development of a size as set out in Schedule 3. The proposal includes more than 75 dwellings and is within 90 metres of a classified road (Kingsway) and therefore the matter is required to be notified to Transport for NSW (TfNSW) under section 2.122 of the SEPP. Before determination the consent authority is required to take into consideration any submission that is made in response to that notice.

TfNSW provided a response on 24 February 2022 which required further modelling for SIDRA network modelling. Following receipt of further information including updated traffic models, TfNSW provided a further response on 11 November 2022. This response specifies the requirement for a dedicated right turn bay to be constructed in the Kingsway to safely store vehicles turning right into Hinkler Avenue. Additional requirements related to these works are set out in their response (refer **Appendix “F”**).

9.10. 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.

9.11. 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 in **Table 5** below:

Table 5: SSLEP Compliance Table

Sutherland Shire Local Environmental Plan 2015			
CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
cl.4.1 lot size	550m ²	Amalgamation proposed	Yes
cl.4.1A Lot width Lot depth	15m 27m	Amalgamation proposed	Yes
cl.4.3 Height of Building	9m subject to Area 7 & cl 6.21 (+ 11m to 20m)	23.7m	No - 3.7m (18.5%) variation Clause 4.6 submitted
cl.4.4 Floor Space Ratio	0.55:1 subject to Area 7 & cl 6.21 (+1.45:1 to 2:1	Additional uplift is sought via the Housing SEPP. 2.42:1 sought	Yes, taking into account the uplift under the Housing SEPP, provided clause 6.21 preconditions are met.
cl.6.14 Landscaped Area	30%	Estimated to be about 21.4%	The Landscape Area control is subject to the standard under the Housing SEPP which is differently and more generously defined. It meets the SEPP Housing 30% control (see Appendix “C”)

Sutherland Shire Local Environmental Plan 2015			
CI 6.21 Caringbah Medical Centre	Area 7	Proposed to adopt the FSR uplift of 1.55:1 to 2:1; and the building height uplift of 11m from 9m to 20m	FSR is compliant. Height exceeds by 3.7m (18.5% variation). Clause 4.6 submitted for height

Clause 6.21 SSLEP 2015 – Caringbah Medical Centre

Clause 6.21 of SSLEP 2015 includes provisions relating to the Caringbah Medical Precinct (Area 7 of the LEP). Clause 6.21(3) provides permissibility for health services facilities within Area 7. Clause 6.21(4) allows for a potential uplift of 11m in building height if preconditions are met. Clause 6.21(5) allows for a potential uplift of 1.45:1 FSR if the same preconditions are met. The preconditions are:

- (a) *the building contains a health services facility, and*
- (b) *the building provides a transitional scale of building height to Flide Street, Caringbah, and*
- (c) *the building setbacks are sufficient for the deep soil planting of substantial landscaping, including large scale indigenous trees on Kingsway frontage at Caringbah.*

The objectives of clause 6.21 are discussed in Table 3 in section 9.2 above.

The proposal is over a single basement, although that basement has a dividing wall between building A and B. It is considered that the proposal is a single building for the purposes of clause 6.21. The proposal includes a health services facility. Criteria (a) is met.

The requirement for a transitional scale of building height to Flide Street is considered to refer to that part of Area 7 which is to the north-east of Flide Street and criteria (b) is therefore not relevant to the site – see **Figure 5** below:



Figure 5: Area 7 under SSLEP 2015

Criteria (c) was not considered to be met by the original proposal which had minimal setbacks. The deep soil setbacks have now been increased to generally be 6m along Hinkler Avenue and Taren Point Road, with a 3m wide deep soil setback on the north, east and west sides of the HSF. The reference to large scale indigenous trees on Kingsway is not relevant to the site.

The original landscape plan included barely any substantial landscaping in the setbacks. The landscaping plan has substantially increased the planting within the setback areas. The current proposal includes 24 trees in the deep soil setbacks, of which 16 are proposed to be by *Pyrus "Chanticleer"*. This is an ornamental Callery pear native to China and Vietnam with a maximum height of 11m. The volume of planting is considered much improved; however the choice of species should be revised – which could be achieved by condition. The landscape officer has indicated it would be possible to condition an appropriate endemic tree planting mix and rates to populate the 6m landscape setback and the communal areas, and to condition further diversity into the shrub and understorey mix to provide greater interest across the site. Conditions could also be provided to improve street tree planting (in number and species mix).

However, the landscape officer has indicated that there are two substantive reasons why the proposal cannot be supported. These are interlinked. Analysis has shown that of the 27 units which face the public domain at ground level, 23 sit below the level of the footpath. 9 of the 27 are 1.5m or more below the public domain with the greatest exceedance being 2.31m for unit A3.1.04. The consequence is that the deep soil setback areas will be burdened by retaining walls and stairs, in addition to the OSD tanks, services, fencing and private open space areas. This limits the ability to enable the planting of substantial trees.

Poor amenity arises from the ground level apartments' sunken interface with the existing levels in the public domain.

Given the above assessment, a question arises as to whether precondition (c) of clause 6.21 of SSLEP 2015 has been met in order to take the benefit of the height and FSR uplift. The clause 6.21(c) requirement is that the setbacks need to be sufficient for deep soil planting of substantial landscaping. It is accepted that the 6m wide setback itself would normally be sufficient. The precondition does not of itself specify that the substantial landscaping need be endemic, or in fact include trees except on Kingsway. That is in contrast to the objective 6.21(1)(d) which states:

- (d) *to ensure that there are high quality areas of private and public domain, with deep soil setbacks for the planting of substantial landscaping including large scale indigenous trees which will complement the scale of buildings up to 6 storeys, particularly in the building setbacks adjacent to Kingsway, Caringbah,*

It is agreed that the species could be conditioned to be acceptable. Despite the incursions into the 6m deep soil setback, the large trees within the Council verge will remain and new trees on the verge can be interplanted in and around the existing mature trees as part of the domain works, given that 10 driveways will be removed. Planting of medium sized trees up to 6m could be planted in the actual site frontage which will enable the long-term retention of trees.

On balance it is considered that the pre-condition (c) has been met and the applicant may take the benefit of the height and FSR uplifts provided by clause 6.21(4) and (5) of the SSLEP 2015. However, because of the difference in the wording of the precondition and the objectives of clause 6.21(1)(d), it is considered that the objectives of the clause are not met by the proposal.

9.12. Sutherland Shire Development Control Plan 2015

The proposal has been assessed for compliance with SSDCP 2015. A compliance table with a summary of the applicable development controls is contained in **Appendix “B”**. Consideration of various objectives relating to the desired future character of the Caringbah Medical Precinct in Chapter 9 of SSDCP 2015 is made in section 9.2 of this report.

10.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

NSW Police Force

In accordance with the *Crime Risk Assessment – Police & SSC Protocol 2010* the application was referred to the NSW Police Force. The response is provided in **Appendix “G”**. CPTED principles were suggested including the following:

- With a significant increase in activity there is an increase in the potential risk of crime, particularly there will be an increase in vehicular and pedestrian traffic.
- Lighting should meet minimum Australian standards, particularly around entry and exit points from buildings, pathways, car park and access/exit driveways.
- Within the development light should be directed towards pathways and gates. The central pathway should provide adequate lighting for pedestrian safety and the DA does not specify lighting.
- Recommended that 3-5m of cleared space is provided either side of residential pathways. Otherwise, it should be stepped back to maximise sightlines.
- The development does not specify access control measures which must be considered.
- Consideration to installing security shutters at the entry to the underground car park. Suggest an intercom and CCTV system.
- Residents should have access cards.
- Quality locks should be used with solid construction doors.
- Underground car parking areas are recommended to be painted white to help reflect light
- CCTV should be used to monitor common areas, access/exit driveways and underground car parks.
- Territorial reinforcement principles should be applied.
- Materials should be selected taking into account removal of vandalism.
- Outdoor common areas should include low barrier vegetation, bright/even lighting, wide/even paving, effective guardianship and absence of entrapment opportunities.
- Clear directional and wayfinding signage and street numbering should be used.
- Security sensor lights are recommended.

- Letterboxes should be fitted with quality lock. A parcel lockbox should be considered.

Comment: If approval of the development is recommended, conditions of consent can be imposed to address these requirements.

Transport for NSW

Correspondence received from TfNSW specifies the following:

1. *A dedicated right turn bay shall be constructed in the Kingsway to safely store vehicles turning right into Hinkler Avenue. This road work shall be undertaken by reallocating lane space between the existing kerbs on Kingsway as generally depicted in the hand drawn sketch provided in **TAB A** for illustration purposes only and is subject to further refinement and change as part of the detailed design review process.*
Note: Although not depicted on the hand drawn sketch, the above road works will likely require a pavement re-sheet on Kingsway to ensure the new line marking is clearly visible and will also require removal of existing on-street parking on Kingsway.
2. *Prior to the release of a Construction Certificate for the first building structure on the subject site, the developer shall submit certified copies of the civil road design plans associated with the dedicated right turn bay on Kingsway to TfNSW for approval and enter into a Works Authorisation Deed.*
3. *The dedicated right turn bay on Kingsway will require vehicle turning restrictions at the Chamberlain Avenue intersection at Kingsway to left turn movements only. Prior to commencing any road works on Kingsway, the applicant shall prepare a Traffic Management Plan (TMP) that assesses the traffic impacts of the vehicle trips displaced by the proposed prohibited right turn movements at this intersection. The TMP shall be submitted to TfNSW and Council for review.*
4. *Prior to submitting the civil design plans for the dedicated right turn bay on Kingsway, the applicant shall undertake community consultation with any residents affected by the proposed right turn prohibition at the intersection of Chamberlain Avenue and Kingsway. This consultation should be undertaken to the satisfaction of Council.*
5. *Prior to the release of any Occupation Certificate, the dedicated right turn bay on Kingsway at the Hinkler Avenue intersection shall be fully constructed and operational.*
6. *All works associated with the proposed development shall be at no cost to TfNSW.*

Water NSW

The application was referred to WaterNSW pursuant to s.4.47 of the EP&A Act, 1979 as works constituting integrated development. The proposal will intercept groundwater and require dewatering. The dewatering work requires a controlled activity approval under s91 of the Water Management Act 2000.

On 2 June 2022, Water NSW provided general terms of approval (GTA's) (**Appendix "H"**) to be included in the development consent.

Following receipt of amended plans in mid-October which involved an additional basement level of car parking, a further referral to WaterNSW was undertaken. As part of this re-referral process the applicant

indicated that they did not wish to do a tanked basement as per the GTA's. WaterNSW indicated that an alternative arrangement to the basement tanking would require 3 months of groundwater monitoring and other work which the applicant does not have time to undertake. They indicated that they would accept the tanked basement and GTA's for now but on the basis of a different design in the future (post approval).

Correspondence from WaterNSW advising that the GTA's issued on 2 June 2022 remain valid with respect to the revised plans.

Design Review Forum (DRF)

The application was considered by the DRF on 17 February 2022 and minutes of that meeting are set out in **Appendix "I"**. The comments were made with respect to the original proposal as follows:

- *There is no thorough fully contextual urban design analysis and no presentation of options. At the densities proposed, the potential grain of the street experience envisaged by the DCP has been traded for a large development that is struggling to provide a satisfactory public through site link, good street interfaces, necessary landscape character and acceptable private amenity*
- *No account taken of the irregular geometry of the site*
- *Accepts that a single medical building might be a more suitable option but it has an unacceptable relationship with the building to the north and the through link*
- *The public connection has buried apartments on the southern side with 7 storeys overlooking a 54m long fully glazed medical centre with 12m between and on the north there is a single entry to the medical facility. It lacks identity and is not designed as a recognisable urban spatial type*
- *Poor relationship between the medical facility and the adjacent building to the north with a 6-9m separation not a 12-18m separation with no opportunity for planting*
- *There is no credible argument to support the reduced setbacks for the medical centre or on Hinkler Avenue*
- *Internal central spaces do not meet ADG setbacks*
- *The tapering in Building A is untenable in its intensity, adjacency, outlook and acoustic environment*
- *Most of the street facing ground floor apartments are set below street level with a poor relationship and is not supported. It impacts on privacy for residents and engagement with the street*
- *Non-compliance with DCP deep soil setback requirement*
- *Use of a brick base to the medical centre is acceptable strategy to pursue across the whole development. The proposal should avoid the current non-vertically articulated forms of 6 and 7 storeys to Taren Point Road between Flide and Gardere Streets*
- *Common circulation spaces at ground level are overly long and circuitous*
- *Common street entries are deeply recessed in awkward unsafe spaces*
- *Staging is confusing for vehicular organisation and the fact that the medical facility which triggers the FSR and height bonus is the final phase*
- *Proposal is not supported – it is an overdevelopment. Burdened by the additional FSR bonus of 0.5:1 for affordable housing under the same height it fails to achieve public or private amenity*
- *Questionable about whether the proposal satisfies the character test of the Affordable Housing*

SEPP

- *It is unlikely that an appropriate built outcome that could be supported by the Panel will be able to realise the currently submitted FSR for the site.*

Council's Traffic Engineer

The application was referred to Council's Traffic engineer who provided the following comments in relation to the latest revised plans:

- Loading dock:
 - There is a lack of information to properly assess the capacity and operation requirements for the medical centre. In relation to the loading bay for Building B / medical centre:
 - Conflict between the loading facilities and all traffic entering the car parks
 - The design vehicle for is not an HRV as would be expected
 - The encroachment of swept paths of service vehicles into two way travelling aisles will prevent circulation of other vehicles
 - Not clear how loading area will operate as there is no dock/support facility
 - Lack of information on measures to manage loading area and prevent service vehicles from entering if the loading dock is already occupied
- Parking – long blind aisle and lack of turning area in Basement 2 of the medical facility car park
- Road works conditions for the public domain can be provided and should incorporate the requirements of TfNSW of 11 November 2022
- Parking management condition is requirement prior to Occupation certificate
- The proposal cannot be supported in its current form and requires resolution of:
 - Information about capacity and use of the loading dock based on a case study of a similar medical facility would be used to determine the appropriateness of the lack of separation between service vehicles and residents of Building B and the staff/customers of the medical centre
 - The design of the loading facility for Building B and the medical centre should include an HRV design vehicle
 - Loading dock management plan at DA stage and included in conditions of consent
 - Blind aisle and lack of turning area in basement 2 of the medical centre

Engineering - Public Domain

The application was referred to Council's Engineering Public Assets Unit who provided the following comments in relation to the latest revised plans:

- *The location and zoning carries specific requirements with respect to Public Domain Upgrades for new development. Concept frontage design is provided in the Public Domain Design Manual (PDDM) Figure CA3 on which the condition will be based.*
- *The applicant is requirement to obtain Property Alignment Levels via a Roads Act Consent process.*
- *The Caringbah Medical Precinct requires all existing overhead utilities to be placed underground and new street lighting provided.*
- *The Construction Traffic Management Plan is acceptable. A construction and site management*

plan dealing with storage of building materials, equipment and machinery is required.

- *Work zones are supportable via a Roads Act application.*
- *The proposed hydrant boosters fronting Hinkler Avenue will result in loss of on-street parking. Loss of parking in the road reserve is not supported. The booster is to be relocated to ensure the required hardstand is located within the property in accordance with Fire & Rescue NSW Fire Safety Guidelines – Access for fire brigade vehicles and firefighters November 2020*

Engineering -

The application was referred to Council's Engineering unit who provided the following comments in relation to the latest revised plans:

- *Construction and site management plan is acceptable. There is sufficient room on site to store building materials, equipment and machinery.*
- *BASIX certificate does not require any alternate water supply system.*
- *Vehicular access-way and parking:*
 - *Basement aisles widths comply with AS2890.1*
 - *Residential parking spaces comply with AS2890.1 user Class 1A*
 - *Proposed disabled visitors and residential spaces do not comply with AS2890.6 as some do not have the correct width and some are in aisles with restricted movement and structural columns. The applicant should declare if they are proposing to use AS4299 for the residential disabled spaces.*
 - *The crossing at 5.8m wide at the kerb and boundary complies with AS2890.1.*
 - *Access to loading bays and the size are in accordance with AS2890.2.*
 - *Long sections of driveway required on all ramps to show compliance with AS2890.1 and AS2890.2*
 - *The number of car spaces fails to comply with SSDCP 2015. Building A requires 177 and 150 are provided. Building B require 197 and 162 are provided. A shortfall of 62 spaces*
 - *Parking assessed under the Housing SEPP and DCP for Health services is acceptable*
- *Stormwater management:*
 - *the concept stormwater drainage design is consistent with BASIX.*
 - *a stormwater treatment device is provided in accordance with Council's requirements*
 - *Three OSD detention tanks are provided, OSD 1 within garden beds, OSD 2 below the communal open space pathway pavement and OSD 3 below the terrace and landscaping in front of Building B with controlled discharge to Taren Point Road piped drainage network.*
- *Pedestrian primary access-way is acceptable against SSDCP 2015 and AS1428.1:2005*
- *Emergency vehicle access – the loss of on-street parking is not acceptable*
- *Recommendation for refusal for the following reasons:*
 - *Parking layout fails to comply with AS2890.6 as the disabled visitor spaces within basement 1 Building A has failed to comply.*
 - *The location of the hydrant booster results in loss of on-street parking. Therefore the application fails to minimise the impact on the road network.*

Building Surveyor

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

- *The BCA assessment of City Plan (25/11/21) and Accessible Building Solutions for access/Premises Standard (15/9/21 confirm the proposal is capable of compliance with relevant legislation and achieving a construction certificate.*
- *Hydrant location is indicated. Coverage is required with a booster and metering locations adjacent to the street boundary fronting Hinkler Avenue.*
- *There is no preliminary hydraulic fire service design which is required to ensure the provision of hydrant and sprinkler infrastructure will not adversely affect the streetscape appearance, site landscaping and the road reserve format/parking.*

Environmental Health

The application was referred to Council's Environmental Health Unit who provided the following comments in relation to the latest revised plans:

- *No objections. The use of the medical tenancies has not been assessed.*
- *An acoustic report by Acoustic Dynamics dated 15 October 2021 includes recommendations made in relation to the design and mechanical plant. Conditions recommended.*

Environmental Science Team

The application was referred to Council's Environmental Scientist who provided the following comments in relation to the I proposal:

- The geotechnical investigation determined that the basement excavation would intercept the groundwater and outlined key geotechnical constraints to the development including groundwater control during construction and long term. A water licence for an aquifer interference activity will be required. The matter should be referred if possible, to Water NSW which does not support drained basement options.
- Standard precautionary environmental conditions are proposed in relation to management of groundwater, potential contaminated land unexpected finds, and management of site soil/ fill material.

Waste

The application was referred to Council's Waste officer who provided the following comments in relation to the original plans:

- Bin carting routes for Building A need to be provided. Further information on the proposed size of bins is required.

In relation to the latest revised plans the waste officer raised no objection to the proposal subject to conditions concerning waste collection.

Landscape Officer

The application was referred to Council's Landscape officer who provided the following comments in relation

to the original plans:

- The arborist report is accurate and the majority of trees proposed for removal are not significant specimens. Retention is very difficult and not of a quality to require redesign. Those proposed for removal within the site may be removed.
- Those proposed for removal in the Council road reserve are approved for removal.
- Those proposed for retention on Taren Point Road and Hinkler Avenue will be successfully retained.
- In relation to the landscape plans:
 - Many units' private open space are subterranean – up to 2.45m below natural ground level.
 - Hob walls at the southern end of Hinkler Avenue should be removed as they consume room for consolidated deep soil planting.
 - The OSD at the southern end of Taren Point Road is +500mm out of the ground and is a poor address to the corner.
- The basement should be setback to align with DCP requirements across the site or basement levels excavated to allow a set down.
- Internal landscaping:
 - is dominated by retaining walls.
 - the turf area is non-compliant at 300mm deep.
 - no areas of consolidated deep soil are provided to support canopy tree planting.
 - shrub and ground cover should include 50% endemic species. Palms and ferns can be accommodated in planter boxes.
- Shared zone
 - The units' private open space on the southern side have a poor relationship with the natural ground level on the shared zone. Palisade fencing would be necessary due to the level change.
 - Paving should incorporate horizontal bands to promote traffic calming.
- The rooftop proposal is supported
- The interface with the public domain is suffering and the quality of the internal landscape areas likewise due to the level / extent of the basement. Appropriate setbacks will assist in resolving issues to allow larger trees to be established.

In relation to the latest revised plans the following comments were provided:

- The setbacks have increased to 6m but they are still burdened by retaining walls, POS area, paved entries, OSD and fences.
- Updated plans with 6m setbacks would improve retention for existing trees.
- 39 trees are proposed to be removed. With Council's 8:1 replacement policy 312 trees would be required, however recommended 250 replacement trees.
- Landscape scheme – public domain interface:
 - Improved but still burdened by retaining walls, OSD tanks, fencing and POS areas.
 - Northern units on Hinkler Ave and southern units on Taren Point Road still 1-1.5m below the existing footpath, which is an improvement but not ideal for privacy and solar access.

- The landscape plan does not propose substantial endemic trees chosen from Council's Native Plant Selector, and proposes a small number of exotic specimen trees in the setbacks instead.
- Landscape Scheme – Internal, Communal Open Space, Medical Centre and rooftops
 - Large retaining walls still existing in the communal areas as there is no allowance for a basement set down.
 - Supports simplified geometry with less tiered retaining walls and increased consolidated areas of soil in planter boxes to support tree planting.
 - Support some exotic specimen trees on the podium but endemic trees should be the dominant theme.
 - Medical centre laneway has a far better interface with adjacent units. *Corymbia maculata* is too large for this environment within a raised planter box.
 - The expansion of the COS on the rooftops is supported as is the design intent.
- It is not possible to condition the majority of issues as it requires a substantial redesign.
- Could condition appropriate endemic tree mix in the 6m landscape setback and communal areas.
- Could condition further diversity in the shrub and understorey.
- Could condition street tree planting at 7.5m internals with a mix of Sydney Turpentine Ironbark Forest species.

“The two key outstanding issues remain as before being, the 6m landscape setback being encroached by the built form, curtilage and services and the apartments interface with the existing levels in the public domain. Neither of these can be appropriately conditioned as the redesign would undoubtedly influence the proposal elsewhere”

Architectural and urban design

The application was referred to an external architect who provided the following comments in relation to the revised plans:

- Height:
 - Building A includes ground floor units below ground level and the building exceeds the height limit. If it were reduced by one level the ground floor units would be located above street level consistent with the ADG recommendations.
 - Building B exceeds the permissible height in the north east corner which is inconsistent with the desired character of the precinct, contributes to overshadowing of the central courtyard and increases the extent of overshadowing of residential properties on the southern side (from Building A)
- Ground floor apartments:
 - The majority of the ground floor apartments are subterranean (23 of 27) with a compromised level of amenity (poor solar access, lack of outlook and compromised privacy). Apartments should be set slightly above natural ground level to allow outlook and not compromise privacy.
 - One apartment is up to 2.31m below natural ground level (Building A north west corner)
 - 9 units are located in excess of 1.5m below street level. [NOTE: Table 6 in section 11.10 below identifies the units' levels in relation to street level].

- Street setbacks / landscape character – the medical centre is within the 6m street setback zone reducing the potential to contribute to the quality of the street. Subterranean units with terraced courtyards further impede the proposed interface with the street and landscape quality of the precinct.
- Chapter 9 DCP – Caringbah Medical Precinct:
 - The Medical centre interface with upper levels of Building B is retained at 12m not the recommended 18m under the ADG.
 - The DCP requires a 9m setback from the northern boundary of the medical centre at levels 1 and 2 and 12m for all other levels. The 6m setback is considerably less, which compromises natural light, outlook and privacy.
- Solar access:
 - The solar diagrams do not provide an accurate representation of the position from the sun. *Following this being pointed out to the Applicant, amended solar access and shadow diagrams were provided. Comments were provided as follows:*
 - The Sun's eye view are more accurate and demonstrate that the units facing Taren Point Road receive less than 1 hour solar access between 9am and 3pm and some units currently claimed to have solar access, will not receive any solar access to living rooms after 9am.
 - There is a discrepancy between the shadow diagrams and sun's eye view diagrams, and it appears that it is the non-compliant height which is contributing to the loss of solar access to the southern neighbour which should be quantified.
 - 43% receive ADG compliant solar access (50 of 115 units in Building A and 52 of 119 units in Building B).
 - Buildings A and B have in excess of 15% of units with no solar access between 9am and 3pm on 21 June and the ADG objectives have not been achieved (19 units in Building A – 16% and 24 units in Building B (20%).
- Acknowledged that the DCP built form strategy would not provide the best design response for an amalgamated site of 16 lots. This should not be used as a comparable built form as they were not designed to take advantage of the opportunities afforded to a 16 lot amalgamation.
- An appropriate built form strategy should be developed. The current strategy to wrap the perimeter of the site with built form fronting both streets with continuous street wall results in a poor level of solar access for the majority of units. ADG objectives for basic level amenity have not been achieved.
- Given the constraints of the site it is unlikely that an appropriate, contextually responsive building form would be capable of accommodating the Housing SEPP FSR bonus in addition to the Council LEP FSR bonus.

Following receipt of amended plans on 24 November 2022, the plans (DA422 Rev D, DA426-429 Rev B, DA430-431 Rev A) were reviewed further for compliance with solar access requirements. Council's architectural consultant made the following comments:

Solar Access

Review of units receiving 2 hours solar access between 9am and 3pm

Drawing DA401D claims ADG compliant solar access to 51% of units in building A and 49% of units in building B. Units claiming 2 hours solar access do not demonstrate that 2 hours of solar access is provided to both living rooms and areas of POS. These units are:

- A2.6.02, A2.6.01, A1.6.05, A1.6.04, A1.6.03, A1.6.02 and A1.6.01
- B3.4.06, B2.4.02, B1.4.03, B1.5.03, B1.6.02, B1.6.01, B1.3.07 and B2.3.05

Building A - 52 of 115 units currently demonstrate ADG compliance **(45%)**

Building B - 51 of 119 units currently demonstrate ADG compliance **(43%)**

Several units located on level 6 claim ADG compliance without detail information to demonstrate compliance. To be included as ADG compliant units each unit must demonstrate the duration and quality of direct sunlight provided to both living rooms and areas of private open space. Many of these units do not appear to provide any solar access to areas of POS.

Objective 4A-1, Design guidance:

To maximise the benefit to residents of direct sunlight within living rooms and private open spaces, a minimum of 1m2 of direct sunlight, measured at 1m above floor level, is achieved for at least 15 minutes.

It is recommended that internal sun studies of each unit are provided to demonstrate ADG compliance with both the duration and quality of solar access.

Units receiving no solar access between 9am and 3pm (Maximum of 15%)

Further detailed information is also required to demonstrate that the proposed skylights for the top level do not create privacy issues with the communal roof garden and do not impede the quality of COS.

Units that receive no solar access between 9am and 3pm currently claiming solar access:

- B2.1.03, B2.2.02, B2.3.02, B2.3.01, B2.3.01, B3.3.07, B2.4.02, B2.4.01 and B3.4.07

Units that will receive no solar access:

- 11% of units in building A (achieved)
- 21 % (25 of 119 units) Building B (not achieved)
- 16% (38 of 234) overall – (not achieved)

Commentary of units receiving 2 hours solar access between 10am and 4pm

The revised proposal now claims solar access to 71% of units between 8am and 4pm on the 21st June. The criteria proposed by the applicant allows an 8 hour time frame in which to provide solar access whereas the ADG sets out a 6 hour time frame.

For west facing units to claim 2 hours of solar access between 8am and 4pm they must receive solar access to living rooms and private open space between 2pm and 4pm. However, the living room windows of these units are not visible on suns eye view diagrams at 2pm (See **Figure 6**)



Figure 6: 2pm Extract from DA422 D

For east facing units claiming 2 hours of solar access between 8am and 4pm they must receive solar access to living rooms and private open space between 8am and 10am. However, the living room windows and balconies of the majority of these units are not visible on sun's eye view diagrams at 10am (See **Figure 7** below).

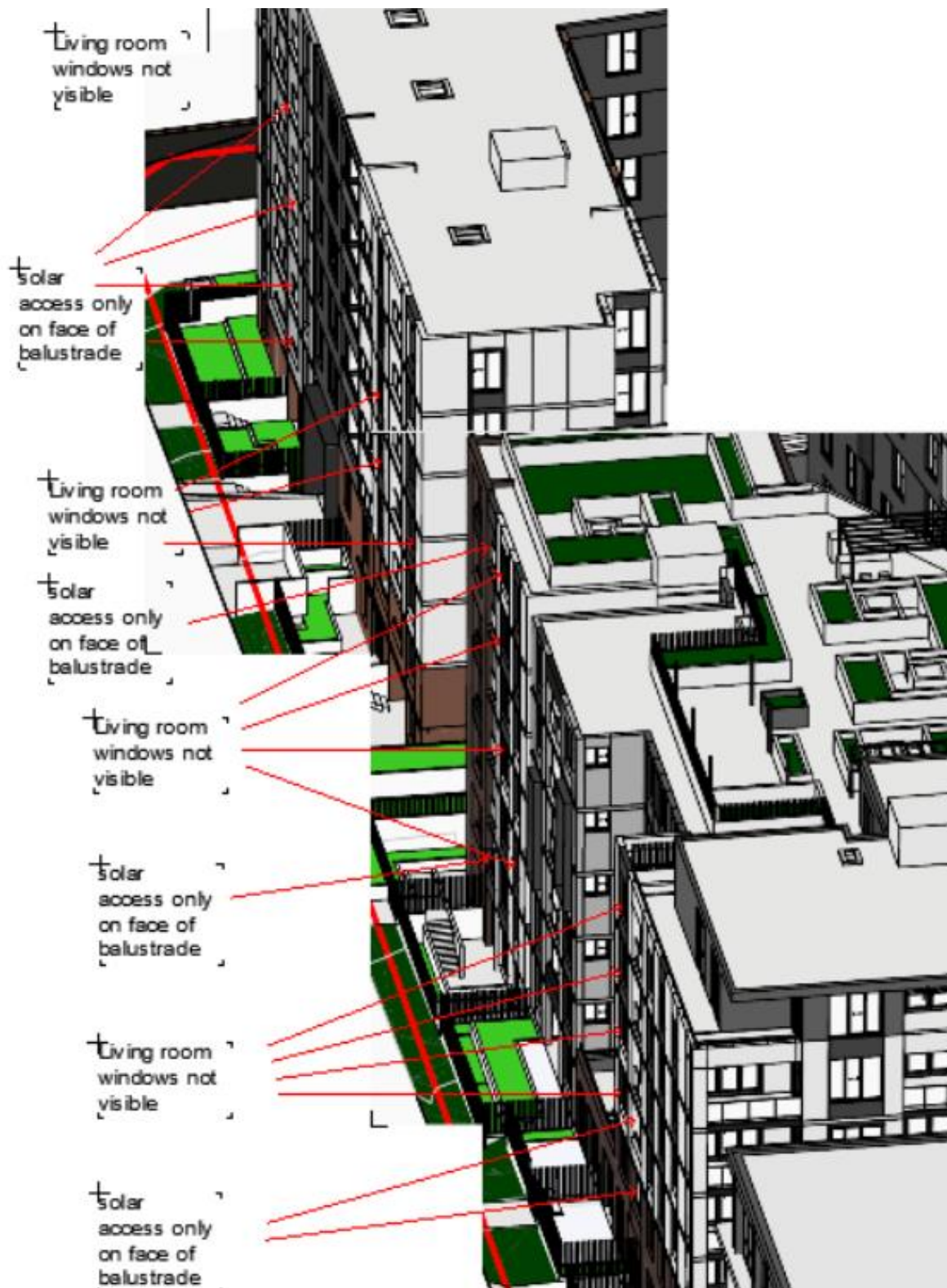


Figure 7: 10am Extract from DA422 D

The 71% solar access claimed also includes roof top unit's dependent upon sky lights that appear to receive no solar access to areas of POS and do not demonstrate ADG compliance regarding the extent and quality of solar access (refer to detail comments above). When these factors are taken into account the proposal will not provide solar access to 70% of units between 8am and 4pm as claimed.

Accuracy of shadow diagrams

The position of shadows is not consistently depicted between suns eye view diagrams and shadow diagrams. The drawing extracts below (**Figure 8**) highlight the discrepancy between shadow diagrams and suns eye view diagrams. This issue should be clarified to allow the impact upon the neighbours to the south to be accurately determined. This is particularly important given that the proposed non-compliant height appears to be contributing to the loss of solar access to the southern neighbour. The impact upon the southern neighbour should be quantified (extent of solar access now available to the neighbour between 9am and 3pm) and the proposal refined to minimise loss of solar access to the neighbour.

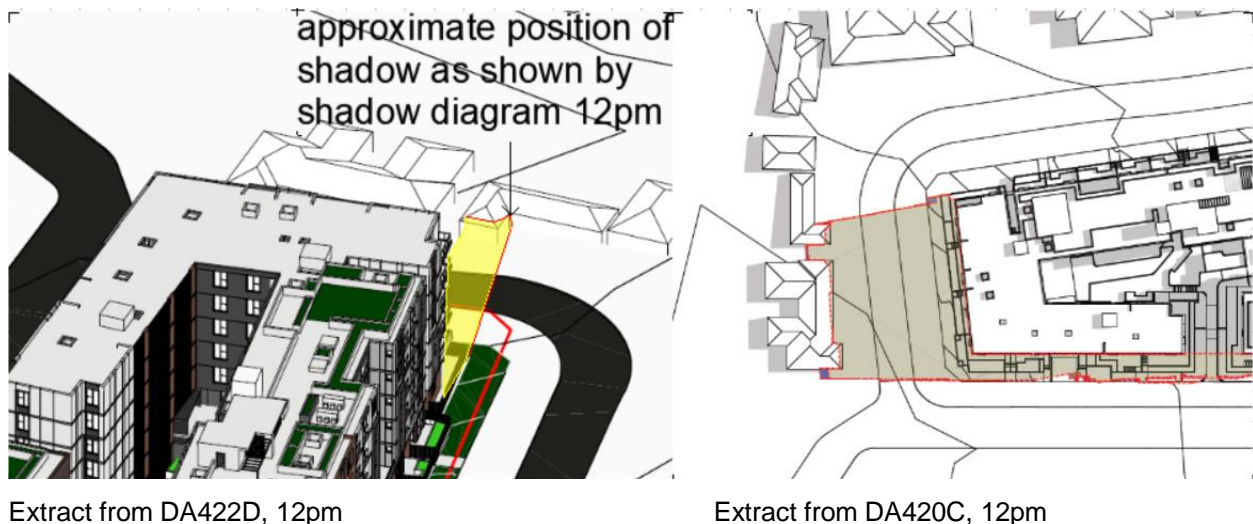


Figure 8: Discrepancy in shadow diagrams and suns eye view

The building appears to have been stripped of much of its framing to help improve solar access. The impact of this on the aesthetic of the building has not yet been demonstrated. Revised perspectives should be provided.

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. Height of Buildings

The proposed development fails to comply with the development standard for height. Clause 4.3(2) of SSLEP 2015 stipulates a maximum height of 9m for this site. Clause 6.21 of SSLEP 2015 stipulates that the height of a building can be an additional 11m higher (totalling 20m) if certain criteria are met. Consideration of those criteria is set out in section 9.11 above with the conclusion that the preconditions are met and the height uplift to 20m under clause 6.21 of SSLEP 2015 can be applied.

The proposal seeks a maximum height of 23.7 metres – 3.7m above the maximum height or a variation of 18.5%. **Figure 9** below indicates the extent of the height non-compliance. The greatest height exceedance arises from the lift overruns on Level B (3.7m) and Building A (3.4m). Some other exceedances arise from

amenities provided to allow for accessibility and amenity to the communal open space on the roof (e.g. to 1.65m on Building A). Some of the exceedance arises from part of the habitable area of dwellings being above the height plane (e.g. up to 1.9m for the north eastern corner of Building B and up to 1.48m for the south eastern corner of Building A.) The HSF has a height exceedance of 0.8m from the lift overrun.



Figure 9: Height blanket diagram looking from the east (DA421 Rev B)

Figures 10 and 11 demonstrate the extent to which the height exceedances are encroaching into habitable space.

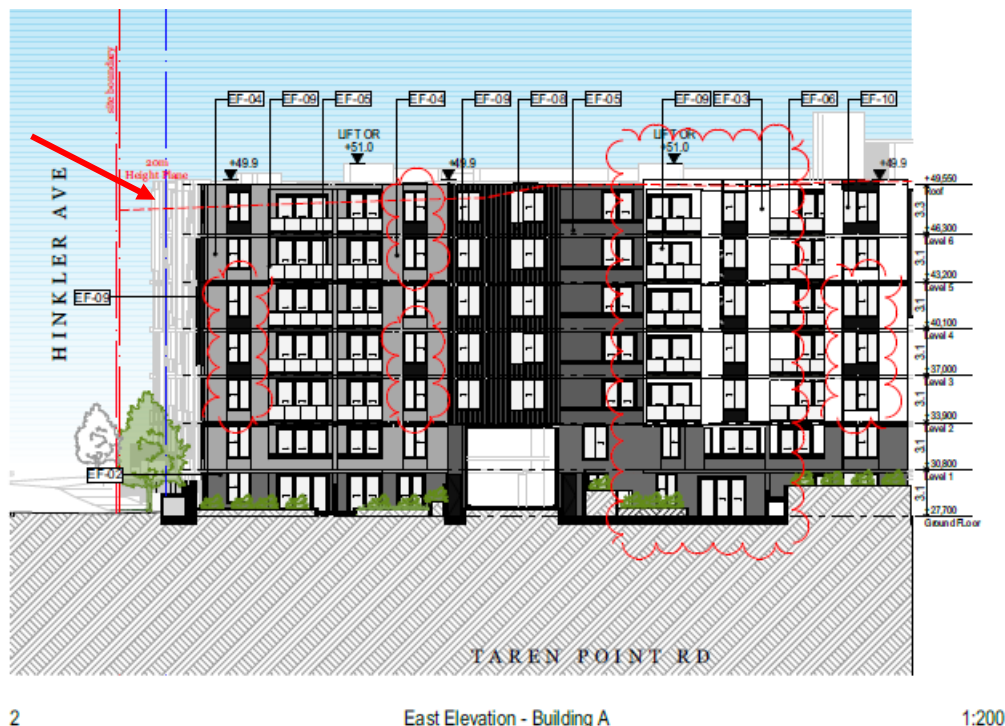


Figure 10: East elevation of Building A (DA301 Rev D)

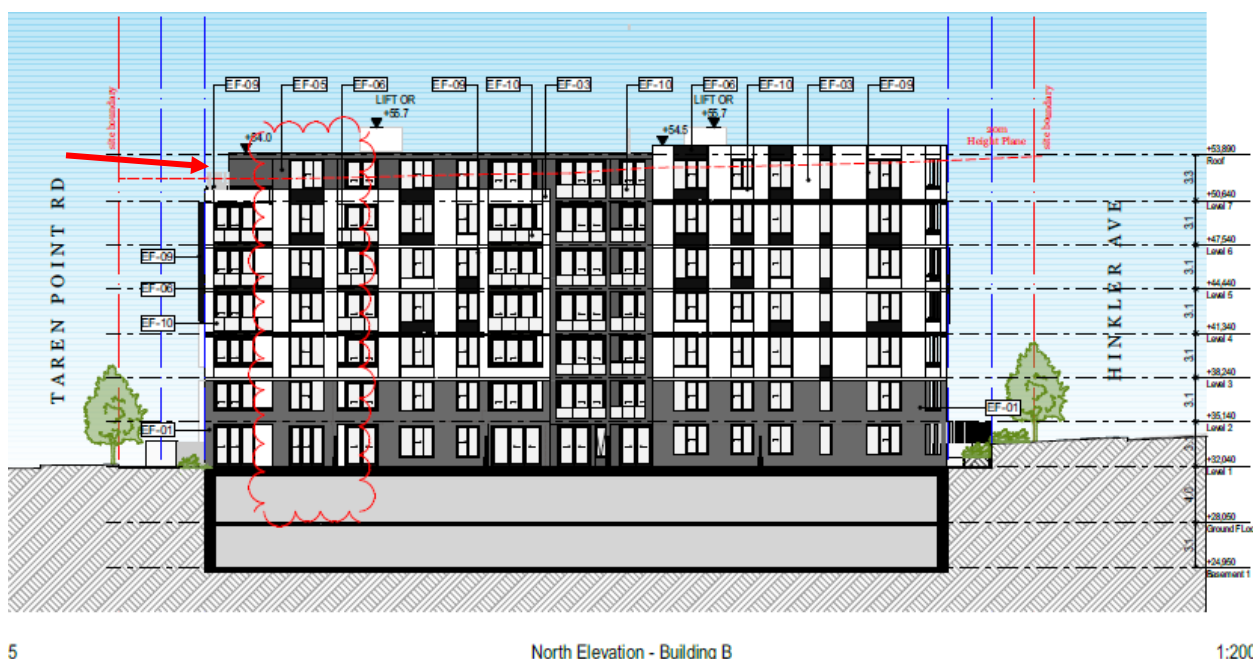


Figure 11: North elevation of Building B (DA303 Rev D)

Clause 4.3(2) is a 'development standard' to which exceptions can be granted pursuant to clause 4.6(2) of SSLEP 2015.

The applicant has lodged a written request (Clause 4.6 Building Height Development Standard, Sutherland & Associates Planning, October 2022) in accordance with the requirements of Clause 4.6 of SSLEP 2015. A full copy of this request is provided at **Appendix "J"**. A discussion of the clause 4.6 heads of consideration as they relate to the variation sought and the written submission, is provided below.

Compliance with the Standard is unreasonable or unnecessary (Cl.4.6(3)(a) SSLEP2015)

The written request must show that compliance with the standard is unreasonable or unnecessary. The written request submitted with the subject application provides that the contravention is justified on the basis that "Test 1, 3 and 4" of the Whebe test (*Whebe v Pittwater Council* [2007] NSWLEC827) has been achieved.

Test 1:

The applicant principally sought to rely on Test 1 – that the objectives of the standard are achieved notwithstanding non-compliance with the standard.

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 most relevant points listed in the submission in relation to the objectives are reproduced below:

In relation to the consideration of compatibility, the Land and Environment Court matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 provides guidance in relation to the meaning of compatibility and also establishes a planning principle to guide this consideration. Commissioner Roseth explains that there is frequently confusion about sameness and compatibility, and specifically provides that:

(a)The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

Accordingly, an acceptable visual impact is achieved where the proposed additional height is considered to exist in harmony with its surroundings. In this instance, the additional height is localised to relatively modest areas of the development as it will be viewed from the street, and is also balanced by areas of the building and street wall which are below the height control. The proposed scale of the development is generally that which is expected by the building height control and the proposed development will definitely achieve a harmonious relationship within the emerging context of the site, and will in fact achieve a more harmonious outcome with the building to the north than the current circumstance.

The subject proposal is consistent with the intended scale of development. The proposed height variations are predominantly point encroachments which result from the cross fall across the site and are more than equally balanced by areas of the building which are under the height control. The predominantly 6 storey scale of the development is precisely the anticipated scale of development by the planning controls.

The proposed extent of the height variation does not meaningfully impact the relationship between the scale of the development and the natural landscape setting around the buildings. The proposed development provides generous deep soil setbacks as required by the DCP.

The proposal is therefore compatible with the height and scale of surrounding and nearby development, and consistent with the desired scale and character of the street and locality notwithstanding the height variations.

(b) to allow reasonable daylight access to all buildings and the public domain.

The proposed development ensures a high level of solar access is available to all buildings and the minor nature of the height variations does not result in any meaningful difference in relation to solar access impact to the street. Figures 14, 15 and 16 illustrate the shadow as a result of the proposal development, including a comparison with the LEP building height plane. The shadow diagrams demonstrate that the additional shadow cast as a result of the proposed height variation is minimal and not meaningful, particularly having regard to the orientation of the site, the surrounding road, and the fact that the shadow only falls across opposite properties for a very short period of time. Furthermore, the areas of exceedance are also generally offset by the areas where the development is below the height plane. The proposal has been demonstrated to achieve the objective 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.

Loss of Views

The subject and surrounding sites are located within the Caringbah centre and there are no identified view corridors over the subject site. Whilst the upper level apartments on the northern adjacent site might presently enjoy an outlook to the south over the subject site, this would only be as a result of the presently undeveloped nature of the subject land, and the proposed height variations will not result in any material adverse impact to views.

Loss of Privacy

The subject site only has one adjacent neighbour which is immediately to the north of Building C. Building C is in fact below the height control along its entire northern side and the proposed height of the development does not result in any loss of privacy.

Overshadowing

As discussed under Objective (a), the proposed development ensures a high level of solar access is available to all buildings and the minor nature of the height variations does not result in any meaningful difference in relation to solar access impact to the street. Figures 14, 15 and 16 illustrate the shadow as a result of the proposal development, including a comparison with the LEP building height plane. The shadow diagrams demonstrate that the additional shadow cast as a result of the proposed height variation is minimal and not meaningful, particularly having regard to the orientation of the site, the surrounding road, and the fact that the shadow only falls across opposite properties for a very short period of time. Furthermore, the areas of exceedance are also generally offset by the areas where the development is below the height plane.

Visual Intrusion

The proposed height variations are particularly minor and do not result in any meaningful impact in relation to visual intrusion when compared with a strictly compliant height.

- (d) *to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves.*

A visual impact is considered to be changes to the scenic attributes of the landscape or vista as a result of an introduced element or building and the associated changes in the human visual experience of the landscape.

An acceptable visual impact is achieved where the proposal is considered to exist in harmony with its surroundings. In this instance, the achievement of a harmonious relationship of the proposal within its context has been demonstrated in the urban design discussion above in this Clause 4.6 Written Request. The proposal will fit comfortably within the identified urban design principles for the site and will in fact provide a significantly improved outcome compared with that which is anticipated by Chapter 9 of the SSDCP.

The proposed height variations are particularly minor and are balanced by the areas of the development which are below the height control such that the visual impact of the proposed buildings is minimised when viewed from adjoining properties and the street.

- (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.*

The only non-residential building within the development is Building C which is predominantly well below the height plane and therefore is compatible with the scale of residential buildings in the zone.

- (f) *to achieve transitions in building scale from higher intensity employment and retail centres to surrounding residential areas.*

This objective is not applicable to the proposed development.

.....

In summary, strict compliance with the maximum 20m height of buildings development standard is considered to be unnecessary and unreasonable in the circumstance of this site as discussed below:

- The development presents to all streets in accordance with the envisaged scale of development for the site by the planning controls and other recently approved developments under the same controls.*
- The areas of encroachment to the height plane are predominantly the result of the cross fall of the site and a more than balanced by the many areas which are below the height plane.*

- *The areas of variation for the corners of the building and lift overruns are only relatively minor and the roof levels are predominantly below the 20 metre height control.*
- *The plant areas and lift overruns are located centrally within the buildings such that they will not be readily visible from the public domain.*
- *The greatest extent of the height variation is for lift overruns which provide access to additional roof top common open space and a significantly enhanced outdoor amenity for the residents.*
- *The proposed areas of variation do not result in any adverse impact to adjacent properties.*
- *The variation to the height plane is also a result of a desire to improve the amenity of the development by providing roof top common open space which enjoys excellent solar access.*
- *The non-compliance with the height control ultimately improves the urban form of the development as it allows a consistent development across the entire site and facilitates an efficient form of development for the site which responds appropriately to the topography of the site.*
- *The proposed variation allows for the most efficient and economic use of the land.*
- *Council has consistently allowed minor variations to the height control within the precinct, and whilst the development standard has not been “destroyed”, there is an abandonment of strict compliance with the control where merit can be demonstrated.*
- *Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.*
- *Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.*

Comment: Compatibility with the desired future character of the area is considered in section 9.2 of this report. Whilst it is acknowledged that there are parts of the proposal which are below the height limit, the exceedance in Building B covers 9 units (about half of the floor plate of Building B) and about 6 units on Level 6 of Building A (about a quarter to a third). These are not “point encroachments”, nor “relatively modest areas” as described in the clause 4.6. They represent a significant area. It is agreed that the areas of greatest exceedance are the lift overruns which are placed centrally within the site and unlikely to be visible from the street. It is disagreed that the proposal is predominantly 6 storeys (for the residential part) as approximately a half of the residential buildings have 7 storeys of residential dwellings. Whilst it is agreed that the height exceedance somewhat arises from the cross fall of the site, the application has not considered stepping the building to accommodate the fall in the land rather than relying upon very large level slabs. Given the separation of the lift core areas, such an approach could reduce the height exceedances.

With a significant proportion of the building being 7, not 6, storeys with significant portions of the top level habitable space above the height limit, the clause 4.6 is not convincing that it is compatible with adjoining development and consistent with the desired scale and character of the street and locality, particularly when taking into account the height exceedances which have been approved in the precinct which are limited to

lift overruns and communal open space areas (see discussion on Test 4 below.)

The clause 4.6 states that a high level of solar access is available to all buildings and the public domain. It is agreed that the shadow diagrams included in the clause 4.6 request show that the additional shadows cast by the protruding height elements have a relatively small impact on solar access for the neighbouring buildings. Although the site itself receives poor solar access, that is not itself a result of the exceedance of the height standard. Due to the uncertainty of the accuracy of the shadow diagrams it is unclear how much the property to the south is affected by the height exceedance.

In relation to objective (d) and the visual impact of the height exceedance, it is acknowledged that there are advantages to an alteration to the site layout from the SSDCP 2015, however that does not address the visual impact. The height exceedances by the habitable areas are only slightly recessed on the north eastern corner of Level 7 of Building B by virtue of the balcony. No such treatment to minimise the visual impact from the height exceedance has been applied to other areas of habitable space height exceedance.

Other aspects of the discussion about the height objectives are well justified in the clause 4.6. However, the clause 4.6 has failed to demonstrate that objective (a) and (d) are achieved by the development.

Test 3:

The applicant also sought to rely upon Test 3 *“the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.”* The clause 4.6 states

strict compliance would simply result in a significant reduction in the delivery of affordable housing which is contrary to the objects specified in section 5(a)(i) and (ii) of the EP&A Act in particular in that strict compliance would not promoting [stet] the social welfare of the community or achieve the most orderly and economic use and development of land.

Comment: It is agreed that if strict compliance was required the likely result is that there would be a significant reduction in affordable housing as it would reduce the additional gross floor area available to the site and therefore reduce the extent to which additional FSR under the Housing SEPP would be relied upon. The reference to section 5(a)(i) and (ii) of the EP & A Act appears to be an error. The objects of the Act are in section 1.3 and the delivery and maintenance of affordable housing is objective (d). Even prior to the amendments to the EP & A Act which changed the numbering, objects 5(a)(i) and (ii) did not refer to affordable housing. The appeal to this test is therefore somewhat confused.

Test 4:

The applicant also sought to somewhat rely upon Test 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.”* The clause 4.6 details six developments within the Caringbah Medical Precinct where approval has been granted for height exceedances of up to 3.9 metres. The clause 4.6 states that whilst the control has not been destroyed there is a pattern of abandonment of strict compliance with the 20m height control within the precinct.

Comment: It is acknowledged that these height exceedances have been approved. Without exception, the height exceptions listed have been limited to lift overruns, rooftop communal open space features, and communal open space parapets. None have included any area which form part of the habitable space of residential units. They are therefore distinguishable from the request made in this application which includes a significant portion of the units of Level 7 of Building B and a significant portion of the Level 6 units in the south-eastern part of Building A, as above the height limit. Some of those units have about half of that floor level above the height plane (see **Figures 10 and 11** above). The clause 4.6 is not convincing with respect to Test 4 as the exceedance sought includes different elements of the development than those which have previously been approved as cited. It is not agreed that the standard has been virtually abandoned or destroyed.

There are sufficient environmental planning grounds to justify contravening the development standard (CI.4.6(3)(b) SSLEP2015.

The written request must show that there are sufficient environmental planning grounds to justify contravening the development standard. The environmental planning grounds should by their nature, relate to the subject matter, scope and purpose of the EP& A Act 1979 including the objectives in section 1.3. The most relevant points listed in the submission regarding environmental planning grounds are reproduced below:

The environmental planning grounds to support the proposed height variation are:

- The development presents with a scale to all streets in accordance with the envisaged scale of development for the site by the planning controls and other recently approved developments under the same controls.*
- The areas of variation for the corners of the building and lift overruns are only relatively minor and the roof levels are predominantly below the 20 metre height control.*
- The plant areas and lift overruns are located centrally within the buildings such that they will not be readily visible from the public domain.*
- The 3D massing diagrams prepared by DKO Architects as well as the Urban Design Statement prepared by Matt Pullinger demonstrate that the proposed development and height departure still achieves an appropriate contextual fit which is compatible with the adjoining development and the future streetscape.*
- The proposed areas of variation do not result in any adverse impact to adjacent properties.*
- The non-compliance with the height control ultimately improves the urban form of the development as it allows a consistent development across the entire site, facilitates an efficient form of development for the site which responds appropriately to the topography of the site, and supports the alternative urban design approach to the site and the many benefits that are achieved as discussed and demonstrated in Section 4.3 of this Clause 4.6 Written Request.*
- The areas of encroachment to the height plane are predominantly the result of the cross fall of the site and a more than balanced by the many areas which are below the height plane.*
- The variation to the height plane is also a result of a desire to improve the amenity of the development by providing roof top common open space which enjoys excellent solar access.*

- *The proposed variation allows for the most efficient and economic use of the land.*
- *Council has consistently allowed minor variations to the height control within the precinct, particularly for lift overruns.*
- *Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.*
- *The proposed development demonstrates a high quality outcome for the site which will result in the delivery of an integrated community of buildings, with the achievement of an integrated, cohesive and optimised urban design 'precinct' outcome for the subject and adjacent sites.*

The objects specified in section 5(a)(i) and (ii) of the EP&A Act are:

'to encourage:

- i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- ii) the promotion and co-ordination of the orderly and economic use and development of land...'*

The proposed development is consistent with the aims of the Policy and the objects of the EP&A Act in that:

- *Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any significant additional benefits to the owners or occupants of the surrounding properties or the general public.*
- *Strict application of the height control would directly result in a significant reduction in the provision of affordable housing on the subject site.*
- *Strict compliance would require a prevent the achievement of a high quality outcome for the site including the delivery of through site link.*

The proposed variations to the building height development standards allows for the most efficient and economic use of the land. On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliances with the building height development standards in this instance.

Comment: The clause 4.6 has failed to demonstrate a number of the environmental grounds being made, such as that the variation for the corners and lift runs are only relatively minor and that roof levels are predominantly below the 20m height control, and that the proposal is of a scale in accordance with other recently approved developments. It has not been successful in demonstrating that the development responds appropriately to the topography of the site because it has not demonstrated that the height exceedance resulting from the cross fall of the site is simply a result of the cross fall – it is also a result of the design decisions. A number of the cited grounds do not relate to the height exceedance but to the development as a whole.

In relation to the reference to the Urban Design Statement prepared by Matt Pullinger it is noted that the statement states “*the resolved development proposal maintains the permissible gross floor area, mix of uses and heights of buildings,...*”. The statement clearly did not consider a design which at that stage included a height departure.

The clause 4.6 successfully argues that provision of the rooftop common open space will be enhanced by the height exceedance and that plant and lift overruns are not readily visible from the public domain.

The clause 4.6 again refers to the former section number (5(a)) of the EP & A Act when discussing the objectives. It is agreed that if the height exceedance is not approved there are likely to be benefits to the general public which will not be delivered, such as the delivery of affordable housing, although that objective is not raised in the clause 4.6 at all. Although the through site link is an important improvement for the precinct, is strongly supported by Council and is unique to the site, the clause 4.6 does not demonstrate why that through site link would be unable to be provided unless there was a height exceedance.

Having regard to the above it is not clear that the clause 4.6 has demonstrated sufficient environmental planning grounds to justify exceedance of the height standard.

The applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3) (Cl.4.6(4)(a)(i) of SSLEP2015)

Council must be satisfied the matters listed in 4.6(3) (a) and (b) are adequately addressed in the written submission in order for the development to qualify for approval (Cl.4.6(4)(a)(i)). The written request does not adequately address clause 4.6(3) (a) and (b) as discussed above. Clause 4.6(4)(a)(i) is not satisfied.

The proposal will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone (Cl.4.6(4)(a)(ii) of SSLEP 2015)

The consent authority is required to satisfy itself as to whether the proposal is in the public interest because it is consistent with the objectives of the relevant development standard and the objectives of the relevant zone (Cl.4.6(4)(a)(ii) of SSLEP2015), in this case the R4- High Density Residential Zone.

The objects of the standard have been discussed above and the development is found not to be consistent with objective (a) and (d).

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 proposal provides 234 dwellings, with a variety of dwelling sizes. It provides adaptable and livable housing compliant with Council's requirements and a large amount of affordable housing. The proposal also includes a health services facility. In this regard most of the objectives are met. Because of the sunken nature of the ground floor and Level 1 units with consequent poor amenity in terms of privacy, solar access and presentation to the public domain, and the poor level of compliance with solar access and cross ventilation controls in the ADG, it is not considered that the proposal meets a high standard of urban design and residential amenity required of the objective and is therefore not consistent with an important objective of the zone.

The proposed development is not consistent with the objectives of the building height development standard or one of the objectives of the R4 zone and is therefore not in the public interest. The proposal therefore fails to satisfy all relevant parts of Clause 4.6, and the variation is not supported.

The concurrence of the secretary has been obtained (Cl.4.6(4)(b) of SSLEP2015)

Under cl. 64 of the Environmental Planning and Assessment Regulation 2000 (now repealed), the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS18-003 issued on 21 February 2018, to each consent authority that it may assume the Secretary's concurrence.

The applicant's written submission fails to demonstrate that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case. It also fails to demonstrate sufficient environmental planning grounds to justify varying this development standard.

The proposed variation does not raise any matters of State or regional environmental planning significance.

In conclusion the variation to the height development standard fails to satisfy all relevant parts of Clause 4.6 and therefore the variation cannot be supported.

11.2. Land Reservation

Part of Lots 10 and 11 in DP35463 (being 319-321 Taren Point Road) are identified as being for land acquisition and is subject to clause 5.1 of SSLEP 2015 (see SSDCP 2015 road widening requirements in **Figure 12** below). Clause 5.1A requires that development consent must not be granted to any development on land which is identified for such acquisition unless the consent authority is satisfied that the development is of a kind or is compatible with development of a kind that may be carried out on land in an adjoining zone

and that the use will cease no later than 5 years after development consent is granted. A series of considerations are set out to assist in making that determination.

The proposal indicates by virtue of its draft Torrens Title subdivision plan that it is possible to dedicate that part which is identified in the SSLEP 2015 for land acquisition. The basement is proposed to that boundary and the HSF above is setback approximately 2.5m from the area. The road widening intended for this part of Taren Point Road has occurred as evidenced from the sites to the north at 416-418 Kingsway and 315 Taren Point Road. A further part of the road widening will occur in the frontage of 319 Taren Point Road, but likely not that area shown in the north-east corner of 321 Taren Point Road. No further details about any proposed dedication are included in the proposal documentation.

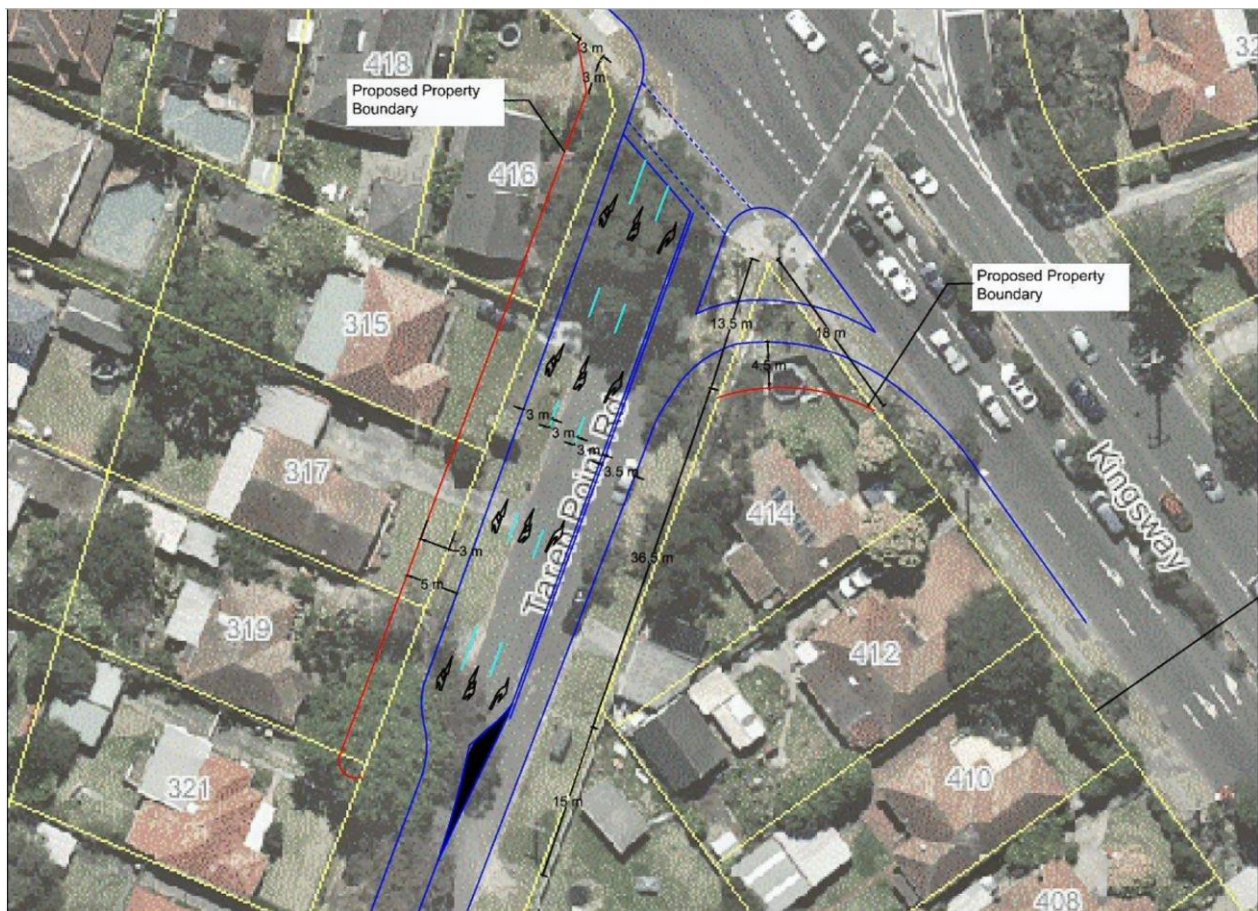


Figure 12: Map 4 of SSDCP 2015

11.3. Amalgamation and site layout

It is accepted that the proposal does not comply with the amalgamation plan in the SSDCP 2015 Chapter 9, and that the opportunities arising from a 16-lot amalgamation can provide for an improved site layout than that set out in the SSDCP 2015. Given the amenity impacts arising from the proposed site layout, consideration should be given however to an alternative layout which allows for greater amenity to residents.

11.4. Location of medical centre within a single building

It is agreed that other sites within the Caringbah Medical Precinct have had some difficulty leasing the single ground floor level HSF and that placing all of the HSF within a single stand alone building may provide for

additional advantages for future tenants. Council is supportive of the HSF being placed wholly in a single building as proposed.

11.5. Earthworks

The proposal includes earthworks and therefore Clause 6.2 of SSLEP 2015 is relevant to the application. 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 been considered and the application is acceptable subject to conditions relating to management of groundwater and construction dewatering, unexpected finds and/or groundwater contamination and the management of site soil. Any consent would also be required to comply with Water NSW's GTAs.

11.6. 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 and would be subject to conditions of consent in the event that approval is granted for the application.

11.7. Energy Efficiency and sustainable building techniques

Clause 6.15 of SSLEP 2015 contains matters for consideration relating to ecologically sustainable development and energy efficiency and sustainable building techniques. It is relevant only to the HSF. The relevant matters have been considered as a part of the assessment of the application and the proposal is considered to be acceptable. A Section J energy efficiency report has been provided specifically addressing the commercial section of the proposed development. It concludes that the proposal is consistent with the deemed to satisfy provisions of the BCA in regard to energy efficiency and is anticipated to satisfy the objective of Section J, to reduce greenhouse gas emissions by efficiently using energy. Louvres are proposed to the north façade of the majority of the HSF which will reduce solar ingress, and on Level 5 of the south facing façade.

The proposal has not taken advantage of the roof space on the HSF to provide photovoltaic cells. On the roof plan there is reference to mechanical plant and various initials which are not further explained, however given the full sun which this rooftop will obtain it is considered that the proposal has failed to adequately incorporate details to reduce the potential energy consumption during the lifecycle of the building.

The car park of the HSF provides for no charging of electric vehicles. Whilst this may not be mentioned in SSDCP 2015, from a practical viewpoint it lacks insight into the way in which electric vehicle uptake will advance in the near future and this should be considered for all car parks within the HSF. Failure to include such detailing may ultimately impact upon the attractiveness of the building for leasing or purchase.

The proposal therefore fails to achieve the objective of maximising the useful lifecycle of buildings and

achieving energy efficient and ecologically buildings.

11.1. Urban design

Clauses 6.16 and 6.18 of SSLEP 2015 contain certain matters of consideration relating to urban design. The application has failed to satisfy these matters for consideration, in particular in relation to high quality design and development outcomes in the urban environment, the extent to which the buildings are designed to contribute to the desired future character of the locality, the consideration of the public domain, the extent to which the development responds to the natural landform of the site, and the principles of CPTED.

11.2. Urban Design (Residential Buildings)

Clause 6.17 of SSLEP 2015 contains certain matters of consideration relating to urban design relating to residential buildings. The application has failed to satisfy these matters for consideration, in particular in relation to impacts on the adjoining land in terms of overshadowing, the extent to which the streetscape will be improved (having regard to the subterranean nature of many of the ground level apartments), the extent to which adverse impacts in terms of height, scale and siting will be minimised, and the extent to which the proposal integrates with a well-designed landscaped setting.

11.3. 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 could be included in relation to additional Greenweb plantings.

11.4. 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.

11.5. 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.

11.6. Tree Removal

The proposed development involves the removal of 39 trees. Replacement trees at Council's policy of 8:1 would require 312 replacement trees. As the proposal retains the majority of the high value endemic street trees a reduction to a replacement of 250 replacement trees has been recommended.

11.7. Subdivision and staging

The original application proposed staging with the first stage to include Building A (or Building A and B) and the second stage to include the HSF. The Applicant was advised that as the FSR and building height uplift under Clause 6.21 of the SSLEP 2015 relied upon construction of the HSF, this approach was unacceptable. The amended documentation has since removed reference to staging.

The application now includes Torrens title subdivision into three lots as follows:

- Lot 1 of 3558m² for Building A and part of the ground floor communal area
- Lot 2 of 5814m² for Building B and the HSF
- Lot 3 of 60m² being the part which is been identified in SSLEP 2015 for land acquisition at the northern end of Taren Point Road.

Stratum subdivision of Lot 2 is proposed on all levels to separate Building B and the HSF, with the boundary being the southern edge of the through link. If approval of the application is considered, conditions would need to be implemented with respect to staging of the issue of subdivision certificates in order to ensure the residential component of the development occurred either simultaneously with the HSF, or secondary to it, to avoid the issue of segmenting the site after the FSR and height benefits had been obtained from the larger parcel and to prevent 'double dipping' of the subsequent subdivided parcels. A covenant restricting floor space may also be imposed.

11.8. Parking and Loading

The residential accommodation complies with the number of car spaces required under the Housing SEPP and the consent authority cannot seek any further car parks. The car parks provided for the adaptable dwellings do not meet the requirements of AS2890.6. The proposal meets the required number of car parks for the HSF under the SSDCP 2015 which overrides its own table with provisions from the RTA Guide to Traffic Generating Developments, with which the proposal is compliant.

Further details are required in relation to driveway sections. The loading area in the HSF/Building B is unsatisfactory because it does not include the facility for an HRV, does not demonstrate that conflicts between users of the HSF and Building B can be managed appropriately with the loading bay, and the encroachment of swept paths for service vehicles entering into two-way traffic aisles for other vehicles is unacceptable. The HSF car parks include a long blind aisle without a turning area.

11.9. Solar Access

The applicant seeks to demonstrate compliance with the ADG solar access provisions by demonstrating that if the period is adjusted to 8.15am to 4pm, there is compliance exceeding 70%, and that the requirement for no more than 15% of units with no solar access is achieved. A discrepancy between the north point and

the solar access plans were identified and the applicant advised of this. As a result, on 17 November 2022, the applicant provided amended shadow and view from the sun diagrams. On 24 November 2022, a further set of plans was provided with removal of hoods and relocation of various living areas to the façade to assist in improving solar access compliance.

There remains a discrepancy between the shadow diagrams and the view from the sun diagrams as illustrated below. The shadow diagram shows shadows extending to 31 Hinkler Avenue to the south, however the view from the sun diagram does not show any shadowing to the same site (refer **Figures 13** and **14** below).

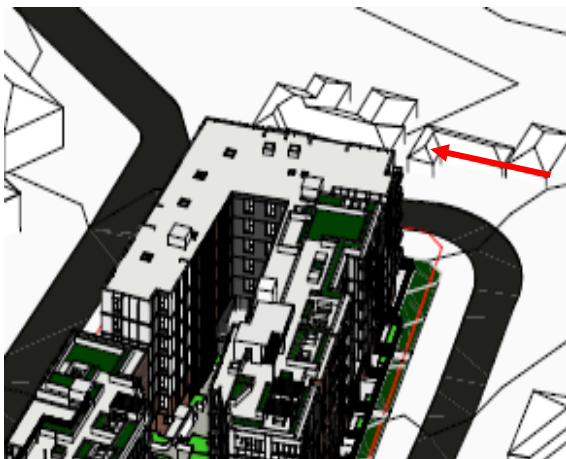


Figure 13: 12.00pm Extract from DA422 Rev D (24/11/22)



Figure 14: 12.00pm Extract from DA420 Rev C (17/11/22) (rotated)

The ADG is guidance provided under SEPP 65 and does not create development standards. The design criteria, however, is for at least 70% of units to receive 2 hours direct sunlight to living room and private open spaces between 9am and 3pm midwinter, not 8.15am and 4pm as proposed by the applicant. The applicants' own calculations under the plans provided on 24 November 2022 (Rev D) indicates that:

- Building A: 59/115 units comply with the ADG (51%)
- Building B: 59/119 units comply with the ADG (49.6%)
- Total: 118 comply 50.4% comply – a 28.0% variation to the control

Analysis by Council's architectural consultant states that actual compliance (including the roof top skylights which themselves do not demonstrate compliance) is:

- Building A: 52/115 units comply with the ADG (45%)
- Building B: 51/119 units comply with the ADG (43%)
- Total: 103 comply 44% comply – a 37% variation to the control

Additionally, it is noted that A2.6.06 on Level 6 of Building A and B1.6.05 in Building B have their skylights over the bedrooms rather than the living rooms.

Section 18(2)(e) of the Housing SEPP contains a non-discretionary development standard requiring 3 hours not 2 hours compliance. The application does not include any assessment under this control, and it clearly does not comply. As the non-discretionary development standard is a development standard, and no clause 4.6 exception request has been provided, the application must be refused.

The ADG also includes a requirement for a maximum of 15% of units to receive no solar access between 9am to 3pm midwinter. The applicant's calculations show:

- Building A: 13/115 units have no solar (11%)
- Building B: 16/119 units have no solar (16%)
- Total: 29 units have no solar (12.4%), therefore there is compliance with the ADG control

Analysis by Council's architectural consultant states that actual compliance with the no solar access controls (including the roof top skylights which themselves do not demonstrate compliance) is:

- Building A: 13/115 units have no solar access (11%) - complies
- Building B: 25/119 units have no solar access (21%) – does not comply
- Total: 38 units have no solar access (16.2%) and therefore it fails to comply with the ADG.

11.10. Ground and Level 1 units - presentation to the public domain

The applicant and Council agree that there are a large number of ground floor and level 1 apartments which are set below both the existing natural ground level and the public domain level at the boundary.

The applicant has provided a plan showing that all 8 of the units on the ground floor are below ground (up to a maximum of 1.63m) and 14 of 19 units facing the public domain and through site link are below ground level (to a maximum of 1.5m). This plan (provided on 24 November 2022 as DA432 Rev A), was provided with the following note “[that it] identifies the natural ground levels at each of the apartments where they interface with the Public Domain”. From viewing the survey, it appears that the majority of heights have been calculated from a location approximately 6m inside the boundary – at the edge of the setback.

Council's appointed architect has provided an alternate analysis which show all 8 ground floor units to be below ground (up to a maximum of 1.63m) and 15 of the 19 units on Level 1 as below ground (to a maximum of 2.31m). From viewing the survey, it appears that the majority of heights have been calculated from a location approximately on the boundary.

The relevance of units being below ground is that it impacts on amenity by virtue of a lack of privacy from the public domain, solar access and natural surveillance. These are all matters which relate to the interface with the public domain. Section 3C of the ADG advises that dwellings slightly elevated by up to 1m from the footpath have enhanced privacy. Objective 3F-2 (visual privacy) includes design guidance to raise apartments/private open space above the public domain. Objective 4A-1 regarding solar access seeks to optimise the number of apartments getting solar access.

Whilst there is scope for dispute about the exact measurement below ground level, the relevance is how the units interact with the public domain. In this regard, it is considered that the comparison ought to be to the boundary with the public domain. The analysis by Council's appointed architect consultant is therefore deemed more relevant. Table 6 demonstrates the difference between the two sets of analysis. The greatest levels below ground are on the north western corners of Building A and Building B, and the north eastern corner of Building A.

Table 6: Comparison of floor levels to the interface with the public domain

Unit	Applicant	Council	Applicant's calculation of level compared to Council's (+ = higher)
Ground			
A1.G.01	-1.63	-1.63	0
A1.G.02	-1.26	-1.63	+0.37
A2.G.01	-0.67	-0.57	-0.1
A2.G.02	-0.2	-0.57	+0.37
A2.G.03	-0.8	-0.45	-0.35
A2.G.04	-0.99	-1.3	+0.31
B1.G.01	-1.5	-1.34	-0.16
B1.G.02	-0.99	-1.34	+0.35
	8 Below	8 Below	
Level 1			
A2.1.05	+0.8	+0.13	+0.67
A2.1.06	+0.3	-0.3	+0.6
A2.1.07	-0.2	-0.3	+0.1
A2.1.08	-0.6	-1.2	+0.6
A3.1.01	-0.7	-1.2	+0.5
A3.1.02	-1.3	-1.61	+0.31
A3.1.03	-1.3	-1.61	+0.31
A3.1.04	-1.7	-2.31	+0.61
B3.1.01	-1.27	-1.56	+0.29
B3.1.03	-1.32	-1.59	+0.27
B3.1.04	-1.37	-1.59	+0.22
B3.1.05	-1.5	-1.7	+0.2
B3.1.06	-1.21	-1.21	0
B2.1.02	-1.21	-1.21	0
B2.1.03	-0.7	-1.21	+0.51
B2.1.04	-0.7	-0.04	-0.66
B1.1.05	+0.47	+0.49	+0.02
B1.1.06	+0.47	+0.49	+0.02
B1.1.07	+0.47	+0.91	+0.44
	14 Below	15 below	

Unit	Applicant	Council	Applicant's calculation of level compared to Council's (+ = higher)
Total	22/27 below	23/27 below	

Whichever analysis is taken, it is clear that the vast majority of ground floor and level 1 apartments are set below natural ground level and/or the public domain. Council calculates 9 are 1.5m or more below ground and the applicant calculates this at four. Retaining walls within the deep soil setbacks and private open spaces of the units will be required which impacts on potential landscaping. A defensive response to landscaping between the public domain and the through site link to the apartments is evident as a result of seeking to obtain visual privacy to the private open spaces and dwellings at ground level. This is demonstrated by the montage in DA319 Rev B (**Figure 15**) for the north west corner of Building B where Level 1 adjacent to the through site link is not visible (only 6 of 7 levels are visible), nor is Level 1 on the north east corner of Building A adjacent to the pedestrian entry (only 5 of 6 levels are visible).



Figure 15: Extract of montage of Hinkler Avenue looking south east demonstrating the number of levels visible from the street

11.11. Amenity for residents

The proposed residential developments are suffering from poor amenity, including:

- Non-compliant separation distances between units.
- Only 45% of Building A units and 43% of Building B units achieve 2 hours of solar access midwinter between 9am and 3pm.
- 11% of Building A and 21% of Building B units (16% overall) have no solar access midwinter between 9am and 3pm.
- Only 50% of Building B units have the required natural cross ventilation (not the ADG 60% minimum).
- Of the 27 units that interface with the public domain 22 or 23 units sit below the level of the street. The most significant level change is 2.31m (applicant says 1.7m) and 9 units (applicant says 4) are located at 1.5m or more below street level. This leads to a poor street interface, poor solar access, privacy concerns and retaining walls and stairs within the 6m deep soil zone.
- The use of large single slabs across falling topography, and the attempt to fit two sets of bonus FSR provisions onto the site whilst trying to limit the height exceedance is driving the design to have subterranean apartments with poor amenity.
- Some units have poor window provision:
 - Unit A2.G.01 contains a full-size bedroom with no window;
 - Unit A2.1.01 only has a highlight window servicing a bedroom (contrary to objective 4A-2 of the ADG)
 - A number of units contain habitable rooms (studies) with no access to a window (contrary to objective 4D-1 of the ADG).
- A number of units exceed the maximum combined living/dining distance from the window of 8m (contrary to figure 4D-3 of the ADG).
- Building separation within the central courtyard does not meet the ADG separation requirements.
- Visual privacy of Unit A3.1.05 is compromised by its proximity to the access ramp overlooking its private open space and living room

11.12. Pedestrian access and accessibility

Residential entries are generally concealed from the street without identifying lobby entries and will be reliant upon signage to direct visitors to appropriate entrances.

Direct and accessible points of entry are not provided to all units. Units A1.G.01, A1.G.02, A1.1.01 and A1.1.02 front Taren Point Road but do not appear to have an accessible path of travel provided from Taren Point Road.

The central courtyard raised turf area should be developed as an accessible space that can be utilised by all occupants.

11.13. Street Presentation, Architectural details

In the final set of plans provided on 24 November 2022 the applicant sought to improve solar access to various units – particularly on the eastern façade. This has resulted in the apparent removal of much of the framing that provided a more resolved street presentation, and which was providing an acceptable street

articulation. Further perspectives are required to demonstrate the impact on the streetscape of these changes. **Figures 16-18** below demonstrate the changes:



Figure 16: Montage DA320 Rev B from October 2022 plans showing eastern façade with window framing



Figure 17: Extract from DA426 Rev A – 8.30am eastern façade from 17 November 2022 plans



Figure 18: Extract from DA426 Rev B – 8.30am eastern façade from 24 November 2022 plans

11.14. Setbacks

Section 10 control 10.2.3 of SSDCP 2015 Chapter 9 requires a minimum 6m street setback from Hinkler Avenue and Taren Point Road. This setback is not to be reduced with an articulation zone. On Hinkler Avenue the HSF is provided with a 3m setback, into which articulation extends by about 0.5m. An awning at ground level extends across most of the setback (shown in the north elevation – medical on DA305 Rev C). The setback includes a ramp access across approximately half of the frontage, with the remaining frontage containing services at the street.

The site to the north has a 6m setback, as do the proposed residential buildings to the south. As demonstrated in the montage DA321, the HSF will create an uneven setback street presentation which will be adverse to the objectives of section 10 of SSDCP 2015 Chapter 9 - to establish desired spatial proportions of the street and define the street edge.

The combination of these matters means that the objectives in section 10.1 cannot be achieved, namely, to create opportunities for the planting of canopy trees and landscaping, and to ensure that the development contributes to the desired future streetscape character.

The HSF setback to Taren Point Road is 6m with articulation extending into that setback. Approximately two thirds of the Taren Point Road frontage of the HSF is subject to SSLEP 2015 land reservation acquisition controls. Provision has been made for this as Lot 3 within the draft Torrens title subdivision plan. If that draft Lot 3 is dedicated to Council the setback to the HSF will mostly be 3m on Taren Point Road (less articulation). The site to the north has a 6m setback from the land acquisition area. It would provide for a

more logical street setback if the HSF Taren Point Road setback was retained to the same line as the building to the north.

The northern setback of the HSF is 6m (including 3m deep soil). Articulation is within the 6m setback. This is increased from the original proposal which had no deep soil and a 3m setback to the northern boundary. Control 11.2.1.a.i of Chapter 9 of the SSDCP 2015 requires a 9m setback at ground level on the northern boundary of the blocks between Hinkler Avenue and Taren Point Road, with floors above 4 storeys to be set back a further 3m in order to achieve the ADG building separation requirements for buildings 5 storeys and above. The proposal does not meet these controls. It seeks to meet the objectives of section 11 of the SSDCP 2015 by including privacy louvres across nearly the full extent of the northern façade, however the ADG separation distance is not achieved.

It is noted that any reduction in the floor plate of the HSF would require recalculation of the FSR to ensure that the DCP requirement of at least 25% of the pre-Housing SEPP FSR, remains assigned to the HSF.

11.15. Landscaping

It is considered that the precondition for building height and FSR uplifts under clause 6.21(4) and (5) of the SSLEP 2015 have been met by providing 6m wide deep soil setbacks sufficient for substantial landscaping. That however does not apply to the Hinkler Avenue setback of the HSF which is only 3m and almost wholly burdened by ramps, services, and an awning.

It is considered that the objective 6.21(1)(d) of SSLEP 2015 which seeks to ensure high quality areas of private and public domain, with deep soil setbacks for the planting of substantial landscaping including large scale indigenous trees which will complement the scale of buildings up to 6 storeys, has not been achieved. The reasons for this conclusion are:

- The residential buildings are generally 7 storeys.
- The setbacks are heavily impacted by services, pathways, retaining walls steps, pathways and private open space areas.
- It is acknowledged Control 10.2.4 [stet] of Chapter 9 of SSDCP 2015 allows for private courtyards to be located in the front setback provided their design does not compromise the potential for large scale indigenous trees to complement the scale of the building. However, because of the large number of dwellings which are below ground requiring retaining walls, this will inevitably hamper the ability of the areas to provide the large scale indigenous trees desired by the objective.

Further details are required for sections of the landscaped areas as detailed below are required to understand the impact of the retaining walls on the ability for the desired landscaping to be achieved.

11.16. Further information

Further information is required in relation to the proposal including on the following matters:

- A clause 4.6 exception request is required for non-compliance with Section 18(2)(e) of the Housing SEPP.
- Materiality details for the external details, such as balustrading, the framing set out in the

montages, the location of drainpipes and services (e.g. condensers)

- Location of clothes drying facilities.
- The location of the hydrant booster which is to be relocated to ensure that hardstand parking is located within the site.
- Long sections for all ramps are required to ensure head height compliance is achieved with AS2890.1 and AS2890.2.
- Details concerning management of the loading dock facility in Building B and the HSF, including the lack of separation between service vehicles and residents of Building B and the staff/customers of the HSF. The loading dock must be able to support an HRV.
- Demonstration that there are suitable turning spaces at the end of blind aisles, particularly in Basement 2 of the HSF.
- The discrepancy between the view from the sun solar access diagrams (issued on 24 November 2022) and the shadow diagrams (issued on 17 November 2022) should be clarified and discrepancies rectified.
- Internal sun studies of each unit provided to demonstrate ADG compliance with both the duration and quality of solar access.
- Further detail information is required to demonstrate that the proposed skylights do not create privacy issues with the communal roof garden and do not impede the quality of COS. Plans should be reviewed to ensure the location of skylights is over the living areas not bedrooms.
- The impact of overshadowing upon the southern neighbour should be quantified (extent of solar access now available to the neighbour between 9am and 3pm) and the proposal refined to minimise loss of solar access to the neighbour.
- Revised perspectives showing the aesthetic of the building following removal of some of the framing under the plans provided on 24 November 2022.
- A legible overlay of the survey on the ground floor/first floor plans to provide clarity for the nature of the street interface with the proposed street facing units
- Sections should be provided within the landscaping plans to demonstrate how the difference in levels between the public domain and the residential courtyards is to be managed to those units which are mostly deeply submerged. Sections should be provided between the public domain and the following units: A3.1.04, B3.1.05 and A1G.02; between B3.1.05 and the through site link to the HSF; and between A1.G.01 across the OSD to the pedestrian entry walkway.
- Clarify the parapet height of Building B (RL54.0 or RL54.4) which differ between the elevations (which include both heights) and the roof plan which indicates RL54.0. Clarify which height the shadow diagrams are using. Clarify if the Building B roof height is RL53.84 as per the roof plan or RL53.89 as per the elevations.
- Lighting details for the communal spaces, including the courtyard, the through-site link and the rooftop COS to ensure that safety and security for the residents and users is maintained whilst ensuring that lighting does not result in unreasonable impacts on adjoining residents (both within the site and for neighbours).
- There are no details concerning the proposed HSF use, its operating hours, acoustic attenuation, light spill management, or management generally. Such details are necessary given the interface with residential dwellings on all sides of the proposed building. Without such details a separate

development application for use of the HSF will be required if consent were to be granted for the development.

- There is no management plan provided for maintenance and management of the through-site link.
- Further details are required as to whether Lot 3 in the Torrens Title is to be dedicated to Council.

12.0 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:	\$568,211.60
Local Contribution:	\$1,731,788.40
Total:	\$2,300,000.00

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 234 new residential units with a concession of 17 existing allotments (including one dual occupancy).

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, Council's development 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 Zone R4 High Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being demolition of existing structures and construction of a mixed-use development (health service facility and residential units) with Torrens title and stratum subdivision, is a permissible land use within the zone with development consent.

The application was placed on public exhibition and submissions were received from 9 households (with 11 unique submissions). On renotification 4 unique submissions were received, although there were three which copied another submission or repeated from the earlier notification. A total of 15 unique submissions was received. The matters raised in these submissions have been discussed in this report and principally include parking and traffic with lesser concerns about overdevelopment, amenity, privacy and noise, solar access, and environmental issues.

The proposal includes a variation to the building height control under clause 4.3 of SSLEP 2015. This variation has been discussed and is not supported for the reasons outlined in the report.

A development which includes a substantial affordable housing component is supported, given the site's proximity to public transport, shops and work opportunities related to the Caringbah Medical Precinct. The placement of the health services within a single building is also supported as providing a large floor plate capable of supporting medical facilities which cannot be accommodated in the medical floor space currently available in the precinct. The reconfiguration of the buildings on the site contrary to the SSDCP 2015 Chapter 9 amalgamation plan is capable of support if that reconfiguration provides for good amenity for both residents and the HSF. Unfortunately, the current proposal has failed to achieve this.

The yield sought for the affordable housing under the Housing SEPP on top of the bonus FSR uplift under SSLEP 2015 clause 6.21 is presenting difficulties with achieving acceptable amenity and streetscape outcomes both within and external to the site. A reduced yield would potentially enable a positive development outcome on the site, provided care was taken to address the shortcomings in relation to amenity which have been highlighted in this report.

Alternatively, further height breaches must be considered along with the associated bulk and scale impacts on streetscape and local character, and potential additional solar impacts. Further work on apartment amenity would also be required. A Cl. 4.6 variation for further height breaches would need to demonstrate the proposal has merit, is consistent with the objectives of the development standard being varied and the zone. The consent authority needs to be satisfied that the non-compliance with the development standard will result in a better planning outcome. In assessing a request for a variation, the consent authority must be satisfied that the application is within the public interest, and meets environmental, social and economic outcomes. At this time there is no provision to vary a development standard (Cl.4.6) on the basis of the application providing affordable dwellings.

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 significant impacts on the environment or the amenity of nearby residents and the residents of the development. Following assessment, Development Application No. DA21/1251 cannot be supported for the reasons outlined in this report.

The officer responsible for the preparation of this Report is the Manager, Major Development Assessment who can be contacted on 9710.0333.