



SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-104
DA Number	DA21/1131
LGA	Sutherland Shire
Proposed Development	Demolition of existing structures, construction of a light industrial complex containing 116 units with ancillary office space and associated vehicular access, parking and outdoor recreation space.
Street Address	72-78 Box Road, Taren Point, NSW 2229
Applicant/Owner	Mount Street 1 Pty Ltd As Trustee For Mount Street 1 Unit Trust
Date of DA lodgement	11/11/2021
Number of Submissions	13
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	This application is referred to the Sydney South Planning Panel (SSPP), as the development meets the criteria under Schedule 7, 2 of the NSW <i>State Environmental Planning Policy (State and Regional Development) 2011</i> . The development has a capital investment value (CIV) of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 11 Georges River Catchment.</i> • <i>State Environmental Planning Policy (Planning Systems) 2021 Chapter 2 – State and Regional Development</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021 Chapter 2 Coastal Management, Chapter 4 Remediation of Land.</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021 Chapter 2 Infrastructure.</i> • <i>Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).</i> • <i>Sutherland Shire Development Control Plan 2015 (DCP 2015).</i> • <i>Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.</i> • <i>Environmental Planning and Assessment Regulation (2000)</i>
List all documents submitted with this report	Appendices: <ul style="list-style-type: none"> • A - DCP 2015 Compliance Table • B - Submissions Summary • C – Clause 4.6 Request for Building Height exceedance

for the Panel's consideration	
Report prepared by	John Arnold, Town Planning Consultant, Urban Perspectives
Report date	28/04/2022

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)?

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

Not Applicable

Conditions

Have draft conditions been provided to the applicant for comment?

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

No

REPORT SUMMARY

REASON FOR THE REPORT

State Environmental Planning Policy (Planning Systems) 2021, formerly *State Environmental Planning Policy (State and Regional Development) 2011*, requires this application to be referred to the Sydney South Planning Panel (SSPP) as the development is regionally significant development under Schedule 6 as it has a capital investment value of more than \$30 million. The application submitted to Council nominates the capital investment value of the project as \$36,505,000.

PROPOSAL

The application is for demolition of existing structures, construction of a light industrial complex containing 116 units with ancillary office space and associated vehicular access, parking and outdoor recreation space.

THE SITE

The site address is 72-78 Box Road, Taren Point in the Sutherland Shire Council local government area.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

The Development Application No. DA21/1131 for demolition of existing structures, construction of a light industrial complex containing 116 units with ancillary office space and associated vehicular access, parking and outdoor recreation space at 72-78 Box Road, Taren Point is determined by 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 by not demonstrating that the proposal will be in the public interest because it is consistent with the objectives of the IN1 – General Industrial Zone.
2. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as the proposal fails to satisfy Clause 6.1 (3) Acid sulphate soils of SSLEP 2015, as an acid sulphate soils management plan has not been prepared for the proposed works in accordance with the Acid Sulphate Soils Manual and provided to the consent authority to demonstrate that any disturbance of acid sulphate soils resulting from the works will be managed so as to minimise adverse impacts on natural waterbodies, native vegetation and urban and infrastructure activities.
3. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the EP&A Act, as the proposal fails to satisfy Clause 6.4(3) Stormwater management of SSLEP2015, as insufficient information has been provided to enable the consent authority to be satisfied that the proposal avoids any significant adverse impacts of stormwater runoff on adjoining properties and receiving waters.

4. 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 2 and Section 4 of Chapter 28 of the *Sutherland Shire Development Control Plan 2015* (DCP 2015), by providing a design that does not adequately incorporate passive solar design principles and opportunities for access to natural daylight and natural ventilation.
5. 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 9.2 of Chapter 28 of DCP 2015, by not adequately providing for sufficient car parking on site to satisfy the demand for parking.
6. 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 non-compliance with the parking control, the poor internal amenity of the units regarding solar access and ventilation, the non-compliance with the minimum GFA for industrial units under the DCP in respect of any future strata subdivision, and the low ceiling heights of parts of the units, particularly where there is no external outlook. The proposal is therefore not in the public interest.

ASSESSMENT OFFICER'S COMMENTARY

1.0 DESCRIPTION OF PROPOSAL

1.1 Overview

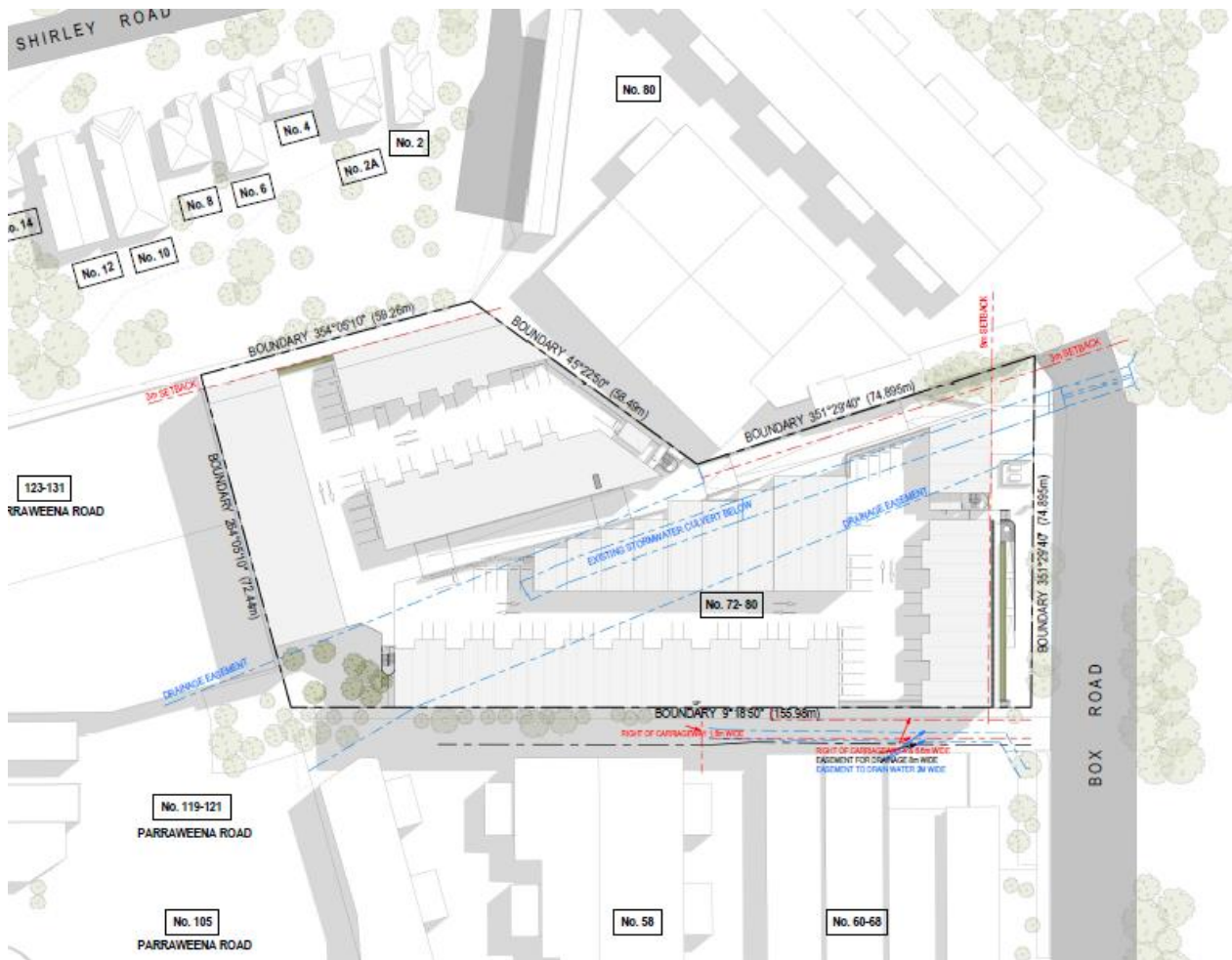
The applicant submitted amended plans dated 4 April 2022, which are provided in full.

The main components of the amended proposal are summarised as follows and described in detail in the sections below:

- demolition of all existing structures on the site and removal of trees;
- construction of 116 individual industrial tenancies, with a total gross floor area (GFA) of 15,533.9 m², which comprises:
 - 10,526.7 m² of industrial and warehouse facilities;
 - 4,952.7 m² of ancillary office space; and
 - 54.5m² of waste/bin storage room.
- vehicular access and provision of 245 car spaces;
- landscaping and open space; and
- construction to address stormwater and flooding.

An excerpt of the proposed site plan is provided in Figure 1.1 below.

Figure 1.1 – Excerpt of proposed site plan (Source: Rothelowman)



1.2 Demolition

The application proposes the demolition of the existing buildings on the site, which comprise a main factory building facing Box Road and a number of smaller sheds around the site.

1.3 Construction and operation

The application proposes the construction of 116 industrial and warehouse units, comprising:

- 73 industrial units varying in size from approximately 57m² to 128m², with 14 on the ground floor, 32 on level 1 and 27 on level 2, each with mezzanine office space ranging from approximately 15m² to 42m², and with each unit comprising bathroom and toilet; and
- 43 warehouse units varying in size from approximately 117m² to 245m², with 18 on the ground floor, nine on level 1 and 16 on level 2, each with mezzanine office space ranging from approximately 42m² to 47m², and with each unit comprising bathroom and toilet.

The proposed development comprises a six storey (including three storeys of mezzanine office space) building, interconnected by split level access and parking. Other ancillary services include a bin room, lifts, electricity/comms rooms, pump room, switchboard room and fire tunnel. The building materials comprise concrete, cladding in grey, green and bronze, with a surfmist colour roof.

There is a setback to the front northern boundary with Box Road by 9.0 m, save for the incursion of very minor articulation elements. The setback to the western boundary adjacent to the Shirley Road residences is 3.0 m, and a nil setback to that part of the western boundary which faces north west. The driveway ramp on the western side has a nil setback, although the building setback is otherwise 7.57 m in the front (north western) portion of the building. There is a nil setback on the rear (southern) and eastern boundaries.

The maximum height of the building at natural ground level is 18.8 m.

No details on hours of operation have been provided.

1.4 Access and parking

A new driveway and crossover is proposed from Box Road on the north-western corner of the site, in the general location of the existing site access. A two way ramp up to level one is provided from the main entry on entering the site with a further ramp towards the middle of the site provide access to level 2. A total of 245 car parking spaces are provided across the three levels with a loading dock provided on the ground floor.

1.5 Landscaping and open space

The proposed development provides 1,144m² of landscaped open space, including an area of part of the natural water course in the south-east corner of the site, a 3.0m landscaped setback along the western boundary adjacent to the residential properties on Shirley Road, a further landscaped setback on the western boundary at the front of the site and the landscaped area in the front setback of the site.

The arboricultural impact assessment identifies 81 trees, including on neighbouring properties and within the Council road reserve. The application proposes the removal of the majority of the trees on the site. A group of seven *Melaleuca quinquenervia* (Paperbark) trees are to be retained although the majority of these are in the neighbouring land in the north west corner adjacent to the site. The four *Melaleuca quinquenervia* (Paperbark) trees in the Council verge are to be retained. There are various *Casuarina glauca* in the south-east corner near the open drainage channel which appear to be proposed for retention and supplementation. All remaining trees are proposed for removal, including an assemblage of *Casuarina glauca* adjacent to the western boundary with the Shirley Road residences.

1.6 Stormwater and flooding

The proposed development involves the construction of a suspended ground floor slab elevated approximately 1.1 m to the front of the site and 1.3 m to the rear of the site, to form a 50 m wide flood overland flow path through the site. In addition, the driveway has been located over the alignment of the Council drainage culvert with lift out concrete panels (7-8 m wide) to provide access for future maintenance.

2.0 SITE DESCRIPTION AND LOCALITY

The address is 72-78 Box Road, Taren Point and is legally described as Lot 44 Section C DP 8529.

The site is an irregular shape with a frontage of 74.02m to Box Road, a depth of 156.00m along the eastern boundary, a rear width of 72.40m and varying widths along the irregular western and north western boundary. The total site area is 11,430.6m² and there is a minor fall from rear (south) to front (north) of approximately 0.15m on a site that is gently undulating and generally flat save for the drainage line running

through the site.

The site is currently occupied by a large warehouse and office building. There is a hard stand car parking area at the front portion of the site along the western boundary which provides for vehicular parking and much of the rear of the site is also occupied by hard stand parking areas and miscellaneous sheds.

Vehicle access to the site is currently available via a driveway from Box Road, which leads through to the southern portion of the site. Pedestrian access is also from this road frontage. The driveway leads to parking areas at the front half of the site and the storage/transport depot area at the rear of the site. The site is serviced by electricity, sewer, water and telecommunications.

There is vegetation along the unmade watercourse at the rear of the site comprising mostly *Casuarina glauca* (Swamp Sheoaks), whilst there are also other trees along the western boundary of the site. At the northern (front) part of the site fronting Box Road is a grassed area.

There is a 20m wide and variable easement for trunk stormwater drainage of which Sutherland Shire Council (Council) is the beneficiary, and which runs diagonally through the site from the south-eastern corner to north-western corner. At the southern end of the site, the easement contains an open watercourse for a short length which extends from the southern neighbouring properties at Lot 16 Sec C DP 8529 and Lot 1 DP 532021. Shortly into the site the water course is converted into an enclosed box culvert of approximately 4m in width for the remaining of the site extent. The box culvert is a Council asset. The extent of the easement is shown in Figure 1.1 above.

The site is located on the southern side towards the northern end of Box Road within the suburb of Taren Point and within the Sutherland Shire local government area (LGA). It is close to Caringbah and approximately 2.2km north of Caringbah train station. The site is approximately 20km south of the Sydney CBD.

The primary regional road access to the site is via Taren Point Road, approximately 200m to the east of the site along Box Road. Taren Point Road is also serviced by local bus services that connect to the Sydney rail network at Miranda and Rockdale.

Taren Point includes a mix of employment, industrial, recreation, retail and housing uses. The commercial areas predominantly comprise the large format retail premises along Taren Point Road, with the majority of land to the east of Taren Point Road comprising industrial units. The northern part of Taren Point comprises predominantly residential uses.

Adjacent to the east (side) of the site is 60-68 Box Road, which has frontage to Box Road and to the rear is 58 Box Road. At the front is a large warehouse with industrial units to the rear. Adjacent to the front west of the site is 80 Box Road, which contains a warehouse and industrial units. Adjacent to the rear west of the site is the rear of six residential properties at Shirley Street, being numbers 2-10. Adjacent to the south (rear) of the site is 123-131 Parraweena Road, which comprises a large warehouse building. On the opposite (northern) side of Box Road is Gwawley Park.

The location of the site and surrounding area is shown in the Figure 2.1 below.

Figure 2.1 Site and location (Source: SixMaps)



3.0 BACKGROUND

A history of the proposed development is provided as follows:

- The site has been the subject of several earlier DAs. Current consents relating to the site comprise:
 - DA16/0261 - Change of use of part of an industrial site for truck parking (transport depot) - APPROVED - 12/08/2016
 - A/18/0540 - Ancillary works to an existing industrial development – APPROVED – 14/02/2019
 - MA19/0127 - modification to DA18/0540 - modify conditions 13A and 16A and associated plans to allow for adjustments to the kerb and planting area – APPROVED – 25/07/2019
- There was no formal pre-DA meeting held between the applicant and Council in relation to the current DA.
- The applicant undertook informal pre-lodgement discussions with Council's engineers in relation to the proposed stormwater and flooding solution.
- The current DA was submitted on 11 November 2021.
- The application was placed on exhibition, with the last date for public submissions being 11 January 2022. A total of 13 submission objecting to the proposal were received.
- The proposal was considered by the Design Review Forum on 7 February 2022.
- The kick-off briefing with the Sydney South Planning Panel was held with the applicant on 7 February 2022 and a further briefing by Council to the Panel was provided on 15 March 2022.
- A request for further information (RFI) was provided to the applicant on 9 March 2022 requesting additional information be submitted by 7 April 2022.
- Additional information was provided by the applicant on 5 April 2022, which comprised:
 - cover letter response;

- amended statement of environmental effects;
 - amended Clause 4.6 request (building height);
 - amended architectural plans;
 - amended landscape plans;
 - traffic consultant letter;
 - amended arborist report;
 - flood impact report and emergency response plan;
 - flood consultant response letter;
 - structural engineer response letter;
 - civil engineer response letter;
 - detailed site investigation and acid sulphate soils assessment;
 - amended design report;
 - ecological assessment; and
 - fire hydrant response.
- The applicant submitted further information on 26 April 2022. This was not requested by Council and comprised:
 - Taren Point amenity study;
 - acid sulphate soils letter;
 - further traffic consultant letter; and
 - further amended Clause 4.6 assessment.

The amenity study, acid sulphate soils letter and further amended Clause 4.6 assessment were considered in this assessment. There was not sufficient time for Council's Traffic and Public Domain Services team to review the traffic letter and provide comments and, therefore, it has not been considered in this assessment.

4.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the statement of environmental effects, plans and other documentation submitted with the application, adequate information has not been provided to enable Council to undertake a thorough assessment of this application. The following information is missing from the application or is considered to be inadequate:

- Asbestos management plan (missing).
- Vegetation management plan (missing).
- Acid sulphate soils management plan (missing)
- Certain details in relation to stormwater and flooding (missing)
- Clause 4.6 assessment (height) (inadequate)

5.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 42 of *Sutherland Shire Development Control Plan 2015* (DCP 2015). Thirteen (13) submissions were received, and the main issues identified in the submissions are detailed in Section 6.0 below. A full list of the locations of those who made submissions, the date/s of their letter/s and the issues raised is contained within Appendix B of this report.

6.0 MAJOR ISSUES ARISING FROM SUBMISSIONS

The main issues identified in the submissions are as follows:

- Height:
 - Improvement of flooding inadequate justification to exceed height limit.
 - 6-storeys not three – out of keeping with surrounding 2-storey development.
 - Overshadowing/overbearing of rear of residential properties on Shirley Road and units at 58-60 Box Road.
- Flooding, stormwater and drainage:
 - Loss of vegetation and increase in impervious areas will exacerbate flooding.
 - Easement under building difficult to maintain.
 - Previous development rejected because of flooding.
 - Potential for stormwater to discharge onto adjoining lots – need for bund/flood wall.
- Landscaping:
 - Inadequate landscaping buffer to rear of residential properties on Shirley Road.
 - Replacement fencing not provided to rear of residential properties on western boundary.
- Design:
 - Need for articulation of long elevations, particularly 61m western elevation.
 - Details of mechanical ventilation not provided – potential for adverse impacts (ie noise/pollution) to adjoining residents and future occupants of the building.
- Solar access/ventilation:
 - Over half of the units will not have access to natural daylight.
 - No access to natural ventilation – potential for amenity impacts (ie noise, vehicle emissions).
- Noise:
 - Gap in western elevation will exacerbate noise to adjoining residents in Shirley Road.
- Hours of operation:
 - Potential amenity impacts on adjoining residents – should be restricted to 8am – 5pm Monday – Friday.
- Parking:
 - Inadequate parking - does not properly reflect usage of the development and the requirement for staff parking.
- Traffic and access
 - Box Road narrow and no surplus parking available to accommodate additional parking requirements.
 - Unacceptable increase in traffic on local road network – requirement for additional turning lanes at Taren Point Road/Box Road intersection.
 - Traffic safety concerns due to narrow width of Box Road, no footpath and potential for interaction with users of Gwawley Park, including the need for bus access.
 - No access for trucks over 9m to upper levels and limited unloading areas – resulting in trucks parking/unloading in Box Road.
- Overdevelopment
 - Excessive height, inadequate parking/access, inadequate landscaping, drainage and flooding
 - Adverse impact on property prices.

Issue 1: Building height

Comment: The applicant has provided a clause 4.6 request regarding the height exceedance. This is considered in Section 10.1 below. It is considered that the request has not demonstrated that the matters to be demonstrated by clause 4.6(3)(a) have been satisfactorily demonstrated. Nor has the clause 4.6 satisfied clause 4.6(4)(a)(ii) in relation to consistency with the objectives of the zone.

Issue 2: Flooding, stormwater and drainage

Comment: Council's engineers have carefully considered the flooding and stormwater issues. The application includes significant detail about the proposed manner in which the stormwater and flooding is proposed to be managed. However, as detailed in section 9.0 and 10.4 below, some matters remain of outstanding concern for Council.

Issue 3: Landscaping

Comment: A revised landscape plan was provided which includes additional plantings of screening *Alcasuarina littoralis* Black She-oak in the 3m setback between the building and the residential properties. Replacement fencing could be detailed as a condition of consent. It is considered that additional height of landscaping in these planters would assist in alleviating some of the light spill which may reduce the amenity particularly for 6 Shirley Road.

Issue 4: Design

Comment: Articulation in the western façade facing the Shirley Road properties is provided by the gap for the driveway/parking which is to include a planter box. The revised design includes angled windows to provide light to Level 1 and yet maintain visual privacy to the Shirley Road residences which is a substantive improvement on the original design. There is little articulation to the eastern façade and southern façade, however that is not uncommon in an industrial setting.

Issue 5: Solar access/ventilation

Comment: It is agreed that the solar access and natural ventilation to many of the units is unacceptable. This matter is further discussed in section 10.5 below.

Issue 6: Noise

Comment: An acoustic assessment has been provided. Council's environmental health officer is comfortable that a condition could be included in a consent for a further acoustic report post construction with validation results and/or recommendations to achieve acceptable noise levels.

Issue 7: Hours of operation

Comment: The application has not included any hours of operation. The noise impact assessment sets out project intrusiveness and project amenity noise levels and project noise trigger levels. The noise modelling included some operations during the night, however relies upon all roller shutter doors being closed between 6pm and 7am. Whether that is a realistic assumption is a matter which would need to be addressed when a development application is lodged for use of the site. The modelling indicated that the sleep disturbance

could be met although further post-occupancy analysis would be required.

Issue 8: Parking

Comment: Parking is considered to be insufficient, even applying the manner of parking calculation advanced by the applicant. This matter is further discussed in Section 10.2 below. The additional information provided by the applicant on 26 April 2022 is not considered in this assessment as it arrived too late for Council's engineers to properly advise.

Issue 9: Traffic and access

Comment: The majority of the traffic and access issues have been resolved with the amended plans. Transport for NSW is working with the applicant to obtain a model which is satisfactory to it. The traffic matter of concern remains the deficiency in car parking proposed on the site, which, if not improved could have impacts on Box Road as described by the residents.

Issue 10: Overdevelopment

Comment: The proposal includes 116 industrial and warehouse units. The proposed development includes 56 of the 116 units (48.3%) that are less than the minimum 150 m² for a strata subdivision of strata units. Although no subdivision is proposed, the control seeks to ensure that the units are of a size which is sufficient to provide a reasonable floorspace for activities. The site exceeds the height control by 2.8m – a 17.5% variation to the control. A large number of the units have very poor access to daylight and natural ventilation due to the three level form of the building. Insufficient parking has been provided for the units proposed. The ceiling heights for the offices, although perhaps meeting BCA requirements do not provide for acceptable amenity in some of the units. It is agreed that the development is an overdevelopment of the site. The impact on property prices is not considered to be a matter requiring consideration under section 4.15 of the EP & A Act, particularly given that the proposal is within the IN1 General Industrial zone.

Revised Plans

The applicant lodged revised plans on 5 April 2022. In accordance with the requirements of DCP2015 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.

7.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone IN1 – General Industrial pursuant to the provisions of *Sutherland Shire Local Environmental Plan 2015*. The proposed development, being a light industrial use, is a permissible land use within the zone with development consent.

The following Environmental Planning Instruments (EPIs), Development Control Plan (DCP), Codes and Policies are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 11 Georges River Catchment.*
- *State Environmental Planning Policy (Planning Systems) 2021 Chapter 2 – State and Regional*

Development

- *State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 2 Coastal Management, Chapter 4 Remediation of land.*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 2 Infrastructure.*
- *Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).*
- *Sutherland Shire Development Control Plan 2015 (DCP 2015).*
- *Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.*

8.0 COMPLIANCE

8.1 State Environmental Planning Policy (Planning Systems) 2021 Chapter 2 – State and Regional Development

State Environmental Planning Policy (Planning Systems) 2021 Chapter 2 State and Regional Development (formerly State Environmental Planning Policy (State and Regional Development) 2011) 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 value of more than \$30 million. As such, the application is referred to the Sydney South Planning Panel for determination.

8.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 11 Georges River Catchment

State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 11 Georges River Catchment (formerly the Greater Metropolitan Regional Environmental Plan No. 2 Georges River Catchment) includes a number of aims and objectives for the environment and water quality within the catchment. The general principles are provided below:

8 General principles

When this Part applies the following must be taken into account:

- (a) the aims, objectives and planning principles of this plan,*
- (b) the likely effect of the proposed plan, development or activity on adjacent or downstream local government areas,*
- (c) the cumulative impact of the proposed development or activity on the Georges River or its tributaries,*
- (d) any relevant plans of management including any River and Water Management Plans approved by the Minister for Environment and the Minister for Land and Water Conservation and best practice guidelines approved by the Department of Urban Affairs and Planning (all of which are available from the respective offices of those Departments),*
- (e) the Georges River Catchment Regional Planning Strategy (prepared by, and available from the offices of, the Department of Urban Affairs and Planning),*
- (f) all relevant State Government policies, manuals and guidelines of which the council, consent authority, public authority or person has notice,*
- (g) whether there are any feasible alternatives to the development or other proposal concerned.*

Specific planning principles of the chapter relate to acid sulphate soils, and flooding. Part 11.3 includes planning requirements which set out specific matters for concern which are listed for consideration by the consent authority when determining a development application. Those matters include flood control works and industry.

As detailed in Section 10.3, 10.4 and 10.6 below, the applicant has failed to adequately address the stormwater and flooding requirements of Council's engineers and has not provided an acid sulphate soils management plan or a vegetation management plan. In the absence of this information, Council cannot therefore be satisfied that the proposal is consistent with the aims and objectives and the guiding principles of this chapter of the SEPP.

8.3 State Environmental Planning Policy (Resilience and Hazards) 2021

Coastal management

Chapter 2 of the NSW *State Environmental Planning Policy (Resilience and Hazards) 2021* seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management consistent with the NSW *Coastal Management Act 2016*. Chapter 2 of the SEPP applies to land within the coastal zone across NSW. All foreshore land within the Sutherland Shire is identified as being within the coastal zone, in some instances the coastal zone extends beyond waterfront properties. In addition, much of the Sutherland Shire foreshore is identified as being within the coastal environment area and the coastal use area.

Before granting development consent on any land within the coastal zone the consent authority must be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. Council is not satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on that land or other land because

The northern portion of the site is within the coastal zone and is also identified on the SEPP map as proximity to a coastal wetland, coastal environment area and coastal use area.

Development on land in proximity to coastal wetlands or littoral rainforest

As the site is identified as being land in proximity to coastal wetlands or littoral rainforest on the SEPP map the consent authority cannot grant development consent unless it is satisfied that the proposed development will not significantly impact on:

- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or*
- (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland.*

Development on land within the coastal environment area

The site is identified as being land within the "coastal environment area" on the SEPP map. This requires the consent authority to consider certain factors before development consent is granted. These factors include the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment; coastal environmental values and natural coastal processes; the water quality of the marine estate (within the meaning of the *Marine Estate Management Act 2014*); marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms; existing public open

space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; Aboriginal cultural heritage, practices and places and the use of the surf zone.

These factors have been considered in the assessment of this application and as the impact of the development on flooding and stormwater cannot be adequately assessed given that inadequate information has been provided, the impact of the development it is not able to be determined as to whether it can be minimised, or the development be managed to mitigate that impact.

Development on land within the coastal use area (clause 14)

The site is identified as being land within the “*coastal use area*” on the CM SEPP map. This requires the consent authority to consider certain factors and be satisfied of certain requirements before development consent is granted.

Specifically, the consent authority must consider whether the proposed development is likely to cause an adverse impact on existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; overshadowing, wind funnelling and the loss of views from public places to foreshores; the visual amenity and scenic qualities of the coast, including coastal headlands; Aboriginal cultural heritage, practices and places, and cultural and built environment heritage.

These factors have been considered in the assessment of this application and as the impact of the development on flooding and stormwater cannot be adequately assessed given that inadequate information has been provided, the impact of the development it is not able to be determined as to whether it can be reasonably avoided, the development is designed, sited and managed to minimise that impact.

The applicant has failed to adequately address the stormwater and flooding requirements of Council's engineers and has not provided an acid sulfate soils management plan or a vegetation management plan. In the absence of this information, Council cannot therefore be satisfied that the proposal meets the requirements of Chapter 2 of the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

Remediation of land

Chapter 4 of the NSW *State Environmental Planning Policy (Resilience and Hazards) 2021* 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 (ie following remediation) for the proposed land use.

The property is currently listed in Council's contaminated land register as being ‘Contaminated Land’ and the description on Part 5 of the section 10.7 certificate reads as follows:

“Council has received evidence that indicates the land has been affected from contaminants as a result of the use of this land for a contaminating activity(s). Remediation may be required prior to development of the land or as part of the continued use of the land. Please contact Council for further information.”

The above determination is based on information contained in contaminated land investigation reports that have been submitted to Council as part of previous development application, over recent years.

The applicant did not provide a contaminated land investigation as part of the original application. This was requested in Council's RFI to the applicant and a detailed site contamination assessment was subsequently provided. The potential contaminated land matters have been appropriately addressed, however, the assessment identified that an asbestos management plan is required, and this has not been provided.

8.4 State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2, Part 2.2, Division 17, Subdivision 2, Section 2.121 of the NSW *State Environmental Planning Policy (Transport and Infrastructure) 2021* relates to traffic generating development. The section requires that before determining a development application for traffic generating development, the consent authority must give written notice of the application to TfNSW and take into consideration any submission that the TfNSW provides in response to that notice. As the proposal will involve greater than 200 motor vehicles, the application was referred to TfNSW during the assessment period.

Section 2.121 also requires the consent authority take into consideration:

- (i) *any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and*
- (ii) *the accessibility of the site concerned, including:*
 - (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) *the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and.*
- (iii) *any potential traffic safety, road congestion or parking implications of the development.*

As such, Council has sought referral comments from TfNSW, who have advised that they are working with the applicant to resolve outstanding issues. This is considered further in Section 9.0 below.

8.5 Sutherland Shire Local Environmental Plan 2015

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

Sutherland Shire Local Environmental Plan 2015			
CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
4.3 Height of Building	16 m	18.8 m	No. 2.8 m – 17.5% variation
4.4 Floor Space Ratio	1.5:1 (17,145.9 m ²)	1.36:1 (15,533.9 m ²)	Yes
6.14	10%	10%	Yes

Landscaped Area	(1140 m ²)	(1140 m ²)	
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8.6 Sutherland Shire Development Control Plan 2015

The proposal has been assessed for compliance with DCP 2015. A compliance table with a summary of the applicable development controls is contained in **Appendix A**.

9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

Water NSW

Water NSW provided referral comments on the original application and requested further information in relation to dewatering, including volume of water to be extracted, duration of water take and the method of measuring/recording water take. They also sought confirmation that the structures below the predicted highest groundwater table are waterproof. Additional information was provided to Water NSW as part of the amended application and a further referral response was provided, which confirmed that, for the purposes of the NSW *Water Management Act 2000*, no further investigation is required.

Transport for NSW

Transport for NSW (TfNSW) provided referral comments on the original application, which required the applicant to address the following matters:

- Undertake network modelling of Taren Point Road / Box Road and Taren Point Road / Parraweena Road.
- Consider mitigation works at the intersection of Taren Point Road / Box Road to ensure the level of service (LoS) is maintained.
- Develop a Green Travel Plan to encourage users of the development to adopt sustainable transport modes.
- Undertake an assessment of the existing footpaths to the site.

Additional information was provided to TfNSW as part of the amended application, including the applicant's traffic model. Further comments from TfNSW were provided indicating further information was required in relation to the SIDRA modelling, however subsequently TfNSW indicated that the issues had been addressed and TfNSW was working with the applicant to finalise the model.

Design Review Forum (DRF)

The application was referred to the Design Review Forum who provided the following comments:

- Visual impact and privacy issues to the rear of the neighbours' properties.
- Angled roof design on the western side near the residences is unacceptable.
- Breach in building height unacceptable due to the sensitive nature of adjacent residential properties.
- Suggest increase width of setback to adjacent residential properties to allow space for additional tree planting.
- High level headlight spill from vehicles manoeuvring about the open-ended driveway aisles unacceptable.

- Potential for garbage, vermin and odour issues associated with the elevated building - bioswales and a more considered landscaped solution is encouraged to mitigate potential rubbish deposit during runoff.
- Inadequate natural light – requires more purposeful ‘light snorkels’ to get light down to the lowest level is encouraged.
- Wayfinding and street signage lacking and requires simplification.
- Vehicle movement dominates the internal circulation areas, which raises concern regarding pedestrian safety.
- Parking allocation, in terms of its relationship to FSR definition, needs to respond to actual truck sizes per level, and their associated areas shown clearly and numerically on the plans to align with FSR allowance.
- Size of each unit and FSR calculations of all levels need to be clearly shown on drawings.
- Definition of high tech industries is ambiguous, resulting in uncertainty on types of uses that may eventuate.
- Control of reducing solar heat gain into the internal areas requires further design consideration given the north facing aspect of some units.
- Steepness of ramps has potential to restrict the use of forklifts between levels.
- Existing Swamp Oaks and site trees need to better integrate into the development.
- Consider integrating a mix of uses, community and retail events and the creation of communal space, shaded eating area next to a takeaway/ shop, with outdoor seating, shared kitchen, recreation facility etc.
- Refine the façade details both externally and internally.
- Include more consolidated and purposeful use of landscape, specifically along the front of Box Road warehouses, minimising ramps etc to create larger and more consistent planting pockets for trees.
- Ensure all traffic management and truck movements are clearly shown and confirm parking requirements as per the DCP minimum requirements.
- Ensure landscaping calculations satisfy LEP definitions.
- Ensure natural daylight into office spaces complies with DCP requirements.
- Indicate all clear ceiling heights in sections to assure that appropriate clearances are provided for trucks / office spaces etc.
- A well considered signage strategy is required due to the extent and variety of the indoor spaces.

The DRF recommended further detailed design development to respond to the above issues to refine and improve the proposal.

Environmental Health (Assessment Team)

The application was referred to Council’s Environmental Health Unit who did not raise any objections to the proposal. Given the potential for additional generation of mechanical noise once fit out of the individual units are complete it was recommended that a further acoustic assessment would need to be submitted and further noise mitigation measures may be required.

Environmental Science (Assessment Team)

Referral comments were provided by Council’s Environmental Assessment Officer, which identified that the application had not adequately addressed the Coastal Management SEPP or the Georges River REP and

that the following additional assessments were required:

- Detailed site contamination investigation.
- Acid sulphate soils assessment, including soil sampling.
- Ecological assessment.
- Vegetation management plan.

Further comments were provided on the amended application, which identified that the following assessments were required:

- Acid sulphate soil management plan for a small portion of the site.
- Asbestos management plan, as recommended in the detailed site contamination investigation provided.
- Vegetation management plan, as recommended in the ecological assessment provided. The offset area for replanting of the Swamp Oak Floodplain Forest should be provided onsite via a Vegetation Management/Rehabilitation Plan for the open creek line rather than offsite as recommended by the ecological assessment.

On 26 April 2022 the applicant provided additional advice from the geotechnical consultants who stated that because no deep excavations (only piling), is proposed in the location of the borehole with potential acid sulphate soils (PASS), no Acid Sulphate Soils Management Plan was required. Council's Environmental Science officer has noted that because there is the potential for groundwater to be intercepted and clause 6.1(3) of SSLEP 2015 requires an Acid Sulphate Soils Management Plan in the circumstances, Council cannot grant consent prior to its receipt. The officer also noted that the vegetation management plan remains outstanding.

These management plans have not been provided.

Traffic (Assessment Team)

Referral comments were provided by Council's Traffic and Public Domain Services team which raised issues in relation to traffic, access and parking. In relation to parking, a significant shortfall of 155 car parking spaces was identified based on the minimum rates in Council's DCP. 400 car parking spaces are identified as being required by the DCP.

The applicant provided further justification and information as part of the amended application, which is further discussed in section 10.2 below. Further referral comments were received which confirmed issues in relation to traffic and access had either been addressed or could be conditioned. In relation to parking, the applicant provided a further justification for the proposed shortfall in parking. Council's Traffic and Public Domain Services Team reiterated that the application of the minimum rates in Council's DCP 2015 had been applied correctly and the shortfall in the provision of car parking remains.

On 26 April 2022, the applicant provided further traffic details. Council's officer was not provided with sufficient time to respond to that report prior to the date when this assessment report was required to be finalised. It therefore does not form part of this assessment.

Engineering (Assessment Team)

Referral comments were provided by Council's engineers on the original application, which raised concerns in relation to stormwater, flooding and vehicular access. Further documentation was requested. A Flood

Impact Report and Flood Emergency Response Plan were provided by the applicant.

Further comments were provided on the amended application, which noted that the DA is supportable from a flood risk management perspective. The comments however identified the following unresolved issues:

- The easement at the southern end should be realigned to facilitate the construction of the factory building and all the footings and piling must be outside the zone of influence of the culvert.
- Further details about the weight and specification of the removable beam/lifting panel should be provided.
- An alternative measure to the penstock valve approach must be provided to ensure the adequate future maintenance of the culvert and two access points are required.
- The terms of the drainage easement need to be reviewed and updated, in consultation with Council's legal team and property services team, to confirm Council's right to maintain and replace part or all of the culvert when necessary, noting that replacement of the entire length of culvert could take in the order of six months and require the site to be closed down for the duration.
- The architectural plans must reflect the Flood Impact Assessment's recommendation to remove mounds along the western boundary which may be restricting overland flows from the Shirley Road properties.
- The Flood Emergency Response Plan is required to be updated based on the updated flood modelling and should consider installing a flood warning device and a flood level indicator near the driveway entrance.
- Rainwater tanks that harvest roof water for irrigation purposes required to be provided.
- Further information is required on the drainage of the rear gardens of the residential properties in Shirley Road to address discrepancies in ground levels.

Landscape (Assessment Team)

Council's Landscape Architect provided referral comments on the original application that identified the proposal as a gross overdevelopment of the site with no meaningful areas for tree planting or landscaping and the unacceptable loss of existing trees to the western boundary that could assist in screening the development from adjacent residential properties.

Further comments dated 6 April 2022 were provided on the amended application which did not object, in principle, to the amended proposal (primarily as a result of the proposed driveway solution, which is to be constructed on piers) and included recommendations that could be conditioned, including in relation to the landscape plan.

Waste (Assessment Team)

Council's Policy and Strategy Officer noted a discrepancy between the waste management plan and the traffic report in how the waste would be collected, but supported the approval of the development, subject to conditions.

Building Design (Assessment Team)

Council's Building Designer provided referral comments on the original application which raised concerns in relation to the built form and scale, density, landscaping, internal amenity (including ceiling heights and daylight access), and the interface with the residences on Shirley Road (including the setback, visual and

acoustic privacy). The officer sought changes to the entry and location of the substation and staff communal area.

Further comments on the amended application were provided, which raised the following concerns:

- The two-storey glazed 'shopfronts' are not appropriate for the intended warehouse use and whilst industrial uses can have a small retail component (max 10% of the floor area) the LEP definition of warehouse (which is proposed for these front units) does not allow any retail.
- The minimum ceiling heights provided is a poor outcome and does not address Council's DCP 2015 requirements in terms of amenity and the amended proposal maintains internalised units that does not demonstrate that sunlight access and ventilation has been optimised.
- The proposed 3 m building setback to the residential properties on the western boundary is insufficient to provide an appropriate landscape buffer between the two zones, noting that the 3 m setback in the DCP 2015 is a minimum.
- The breach of the building height at the edges of the site is not supported.

Assets (Assessment Team)

Referral comments were provided by Council's Internal Referral Assets Team in relation to works within the road reserve. No objections were raised, and standard conditions recommended.

10.0 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 NSW *Environmental Planning and Assessment Act 1979*. The following matters are considered important to this application.

10.1 Building height

The proposed development fails to comply with the development standard for height. Clause 4.3(2) of SSLEP 2015 stipulates that the height of a building on land is not to exceed the maximum height shown for the land on the Height of Building Map, which for the site is 16 m.

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 proposed development is located within zone IN1 – General Industrial. The objectives of this zone are as follows:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enhance the visual appearance of the employment area by ensuring new development achieves high architectural and landscape standards.*
- *To minimise the impact of development in the zone on areas of environmental significance.*

The applicant has provided a written request pursuant to Clause 4.6 of SSLEP 2015 to vary the maximum height of building standard from 16 m to a maximum of 18.8 m. The written request submitted by the applicant has been amended twice and the most recent version dated April 2022 is provided in **Appendix C**.

Pursuant to Clause 4.6 (3) of SSLEP, in granting consent for a development that contravenes a development standard, the consent authority must have received a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

In relation to part (b), the applicant identifies that there are sufficient environmental planning grounds, in terms of the improved flooding solution, to justify contravening the development standard. The environmental planning grounds and the benefit from the improved flooding solution is not disputed and is well set out in the clause 4.6 request. However, it is considered that the applicant has failed to address part (a) in demonstrating that the development standard is unreasonable and unnecessary in the circumstances of the case.

As identified in the applicant's written request, the most commonly invoked way to establish that a development standard was unreasonable or unnecessary is satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC827, which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard. It is considered that, for the following reasons, the applicant's clause 4.6 request has failed to demonstrate that the proposal is consistent with the objectives of the maximum building height standard. The clause 4.6 request itself is required to demonstrate that the matters in clause 4.6(3) have been adequately addressed (see *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 per Preston CJ [at 51]. Statements setting out conclusions about matters do not demonstrate the matters required to be demonstrated. The request itself does not meet the requirements of the clause because it has not demonstrated within the document that

the objectives of the standard are achieved, notwithstanding non-compliance with the control, because:

- It has not been adequately demonstrated that overshadowing to, and visual intrusion of, the adjacent residential properties is appropriate (Objective (1)(c)).
- It has not been adequately demonstrated how the height exceedance of 2.8 m is compatible with the adjoining development, including the adjoining industrial development to the east and south (Objective (1)(a)(i)).
- The request does not demonstrate that reasonable daylight access to all buildings (including the proposed building) is achieved (Objective (1)(b)).
- The request does not consider how the height exceedance is consistent with the desired scale and character or the desired future scale and character of the street and locality (Objective (1)(a)(ii)).
- The request does not consider how the proposal achieves a transition in building scale from high intensity employment to surrounding residential areas (Objective (1)(f)).

It is noted that the written request relies heavily upon a conclusion that shadowing could have been worse than it is and yet the building height still be compliant. That is only sustainable if the DCP 2015 requirement for a 3 m setback to the residential properties is ignored.

Pursuant to Clause 4.6(4) (a) (i) of SSLEP 2015, the consent authority must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives for development within the zone in which the development is proposed to be carried out. It is considered that the applicant has failed to demonstrate that the proposal is consistent with the following objective of the IN1 zone:

- *To minimise any adverse effect of industry on other land uses.*

As detailed above, it has not been demonstrated that shadowing and visual intrusion to the adjacent properties is acceptable, that the height exceedance is compatible with adjoining development, that the height exceedance is consistent with the desired scale and character or the desired future scale and character of the street and locality, or that there is an appropriate transition to the surrounding residential area.

In conclusion, the variation to the height development standard fails to satisfy all relevant parts of Clause 4.6, other than clause 4.6(3)(b), and therefore the variation cannot be supported.

10.2 Parking

Section 9.2 of Chapter 28 of DCP 2015 requires that car parking be provided in accordance with the following:

For industries including Light Industries:

- *1 space per 100 m², with a minimum of 2 spaces for each industrial unit.*
- *Any ancillary office component to an industrial development shall provide 1 space per 30 m² of gross floor area.*

Based on these requirements, the following parking requirements apply to the proposal:

- 116 units (minimum 2 spaces for each industrial unit) = 232 car parking spaces.
- Ancillary office component (4,952.6 m² @ 1 space per 30 m² of gross floor area) = 165 car parking spaces.
- Total car parking spaces = 397.

It is noted that the revised plans reduced the office area which has lead to a reduction in the required number of car spaces from 400 to 397. The proposal includes a total of 245 car parking spaces, a shortfall of 152 space. In calculating this requirement, the applicant assumed that car parking requirements could be based on the gross floor area of units and the minimum requirement of 2 car parking spaces for each unit was not relevant to the proposal given the relatively small size of the units. In addition, the 43 warehouse units, were calculated based on the DCP 2015 requirement for 'warehouse or distribution centres', at 1 space per 300 m².

The applicant's argument that the minimum 2 spaces should not apply and that the warehouse units should be calculated at 1 space per 300 m² is not supported given that the 2 spaces is a minimum requirement and the 1 space per 300 m² is intended for larger 'warehouses or distribution centres', not for small light industrial/warehouse units as proposed.

The applicant provided additional information as part of the amended application, which included a comparison to a recently approved industrial development (DA19/0491), which applied the more conservative rate of 1 space per 300 m² for warehouse units. However, it is noted that a revised traffic report was submitted for DA19/0491, which applied the minimum 2 car parking spaces for industrial units. Assuming this methodology, the proposal would require the following:

- 73 industrial units (minimum 2 spaces for each industrial unit) = 146 parking spaces.
- 43 warehouse units (5,267 m² @ 1 space per 300 m² of gross floor area) = 18 parking spaces.
- Ancillary office component (5,038 m² @ 1 space per 30 m² of gross floor area) = 168 car parking spaces.
- Total = 332.

Even if the above methodology was adopted, there would still be a shortfall of 87 spaces. Notwithstanding, the applicant's comparison with the DA is not supported as it is not a comparable development. It comprises only 20 units, of which only 5 are classified as warehouses and is therefore not a similar type and size to the proposal.

Given the significant shortfall of parking, the proposal is considered to be an overdevelopment of the site that would not be in the public interest and contrary to Council's relevant parking provisions in Section 9.2, Chapter 28 of DCP 2015.

10.3 Acid Sulfate Soils

The site is mapped as Class 3 acid sulphate soils in accordance with Clause 6.1 of SSLEP 2015. Consequently, any works more than 1 m below the existing ground level triggers the requirement for an acid sulphate soil assessment to be undertaken.

Stormwater concept plans identify that a proposed underground stormwater device will likely be positioned to a depth greater than 1m below ground level. Therefore, this depth of excavation requires an acid sulphate soil assessment.

The acid sulphate assessment submitted with the original application is not considered to be an acceptable assessment as it was not undertaken in accordance with the requirements of current guidelines. The data in the report is based on geotechnical data only (taken from the geotechnical report submitted with the original application) and does not provide an appropriate assessment of acid sulphate soils. There was no soil sampling and analysis undertaken for acid sulphate soil conditions and the assessment recommended that further acid sulphate soil sampling and testing be undertaken to confirm the presence of acid sulphate soils, and to determine if an acid sulphate soil management plan is required based on the likely soil disturbance.

The applicant provided a detailed site investigation and acid sulphate soil assessment as part of the amended application, which recommended that, due to the presence of potential acid sulphate soils in the location of a borehole (BH16), an acid sulphate soils management plan should be prepared during construction if excavations into soils below the water table in that location are proposed. Based on this recommendation and given that the extent of excavation has not been confirmed, development consent cannot be granted pursuant to Clause 6.1(3) of SSLEP 2015, until an acid sulphate soils management plan has been prepared in accordance with the relevant guidelines and Council is satisfied that any disturbance of acid sulphate soils resulting from the works will be managed so as to minimise adverse impacts on natural waterbodies, native vegetation and urban and infrastructure activities.

10.4 Stormwater and flooding

Clause 6.4 of SSLEP 2015 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 and minimising the impacts on stormwater runoff. In relation to stormwater and flooding, Council's engineers have identified the following unresolved issues:

- The easement at the southern end should be realigned to facilitate the construction of the factory building and all the footing and piling must be outside the zone of influence of the culvert.
- Further details about the weight and specification of the removable beam/lifting panel should be provided.
- An alternative measure to the penstock valve approach must be provided to ensure the adequate future maintenance of the culvert and two access points are required.
- The terms of the drainage easement need to be reviewed and updated, in consultation with Council's legal team and property services team, to confirm Council's right to maintain and replace part or all of the culvert when necessary, noting that replacement of the entire length of culvert could take in the order of six months and require the site to be closed down for the duration, which is unacceptable.
- The Flood Emergency Response Plan is required to be updated based on the updated flood modelling and should consider installing a flood warning device and a flood level indicator near the driveway entrance.
- The architectural plans must reflect the Flood Impact Assessment's recommendation to remove mounds along the western boundary which may be restricting overland flows from the Shirley Road properties.

- Rainwater tanks that harvest roof water for irrigation purposes required to be provided.
- Further information is required on the drainage of the rear gardens of the residential properties in Shirley Road to address discrepancies in ground levels.

In the absence of these issues being resolved, development consent cannot be granted pursuant to Clause 6.4(3)(c) of SSLEP 2015, as Council cannot be satisfied that the application would avoid significant adverse impacts of stormwater runoff on adjoining properties and receiving waters.

10.5 Solar access and amenity

The proposal is for an intensive industrial development, which comprises three storeys plus three storeys of mezzanine office level (6-storeys) with a total of 116 small warehouse and industrial units (noting that 56 of the units do not meet the minimum gross floor area of 150m² for a factory/warehouse unit in a strata development under the industrial subdivision requirements of DCP 2015).

Many of the units and associated office spaces are internalised and receive no daylight, access to direct natural ventilation, or have any desirable outlook to provide reasonable amenity for future occupants. Internalised spaces will be dark and reliant on artificial lighting and mechanical ventilation rather than passive means. This is contrary to the following objectives and controls in Chapter 28 of Council's DCP 2015 (refer compliance table in Appendix A):

Objectives

- *Ensure development incorporates passive solar design principles.*
- *Locate and design buildings so that reliance on artificial light sources is minimised.*
- *Design buildings to allow for potential use of solar energy.*
- *Ensure the design of landscaped areas sensible manages micro-climate.*

Controls

- *Incorporate passive solar building design principles into development, including optimising of sunlight access and natural ventilation and minimising heat loss, to avoid the need for additional artificial heating and cooling. For example, give careful consideration to the orientation and layout of the building and the location and design of window openings to incorporate sun shading devices and to facilitate summer cooling by cross ventilation.*
- *Wherever possible, provide for the potential use of solar energy collectors by incorporating pitched roofs with optimal solar access.*
- *Office space within each separate industrial unit should be designed so that daylight is provided to office areas.*
- *Provide skylights wherever possible to improve energy efficiency.*

As part of the amended application, the applicant referred to a recently approved development (DA19/0941) at 60-62 Alexander Avenue, Taren Point, which was said to be worse in terms of solar access provision. Whilst not requested by Council, the applicant submitted a 'Daylight Amenity Summary', which reviews the level of natural light provided to the proposal in comparison to DA19/0941. The analysis assesses daylight access as meeting one of the following three criteria:

1. *Direct daylight is assessed as any opening within 4 m of a window, opening to the sky.*
2. *Indirect daylight is assessed as any point beyond 4 m from a direct daylight source, whereby within the room natural light is clearly visible, or a view to the sky is provided.*
3. *Zero access to natural light is assessed as spaces where none of the conditions above can be met.*

The source or validity of the criteria is not verified in the analysis and therefore the 4m distance referred to is arbitrary. Council's DCP 2015, Section 4 in Chapter 28, describes daylight as follows:

"Daylight consists of two types of light: skylight – diffuse light from the sky – and sunlight – direct beam radiation from the sun. The amount and quality of daylight changes with the time of day, season and weather conditions..."

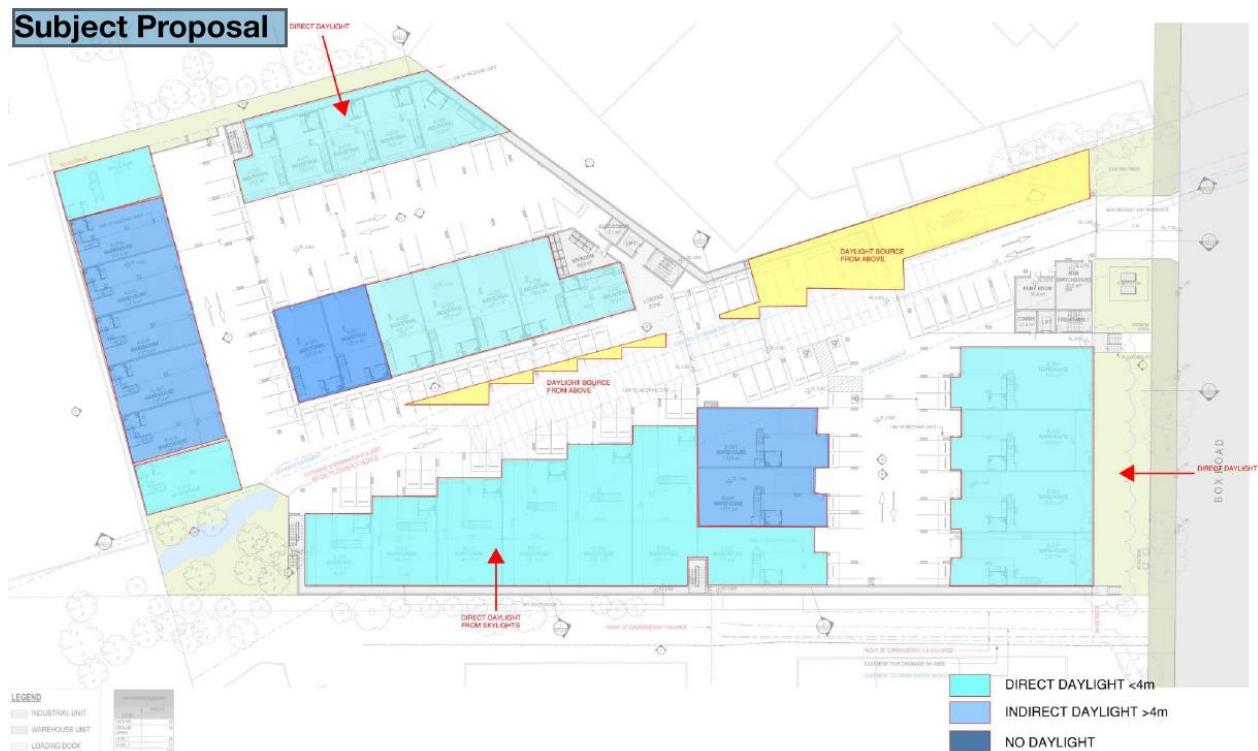
The Applicant's Daylight Amenity Summary does not indicate at what time of the year the study is assessing. Notwithstanding, the assessment identifies that 17 of the units will have indirect access to daylight, which has been assessed as being beyond 4m from a direct daylight source. Of those offices which are described as having indirect access to sunlight, this includes 11 units (A-G14-A-G18 on the ground floor; A-113-A117 and B108 on the first floor) where the only access to light is from a window of less than 1m wide, which is onto the driveway area on the ground and first floors and which only provides daylight to the office. Given that 10 of those offices are 13.505m deep, the amount of daylight penetrating the unit is extremely minimal. Additionally, A-G13, which is described as having daylight access, only has daylight access to the office and not the industrial unit.

The assessment has incorrectly failed to identify three units (including their offices) which receive no daylight at all because there are no windows (A-106, B-105 and B-109 on the first floor). It is also evident that the light providing direct daylight access to 5 units on the ground floor (A-G03-A-G07) could only ever be a very passing glimpse of sunlight as the sun finds its way through the small light wells next to the driveway. Given that A-101 – A-106 on level 1 next to the driveway have no windows facing onto the driveway from which the analysis indicates that direct access is achieved, it is unclear how these can be said to have direct daylight. Using the applicant's own figures, the number of units with indirect daylight should be revised to 20 (17.2% of the 116 units) with a further 3 units (3.5%) having no daylight or natural ventilation at all.

This is considered to be an unacceptable outcome and contrary to the relevant objectives and controls of DCP 2015 identified above. It will provide a poor level of amenity to more than a fifth of all of the proposed units, leaving aside any discussion of the level of solar amenity actually achieved by some of the remaining units which the applicant has indicated have direct daylight. An extract of the analysis of the ground floor plan is provided below in Figure 10.1.

With the small level of windows, including many which open only into the car parking area, natural ventilation of fresh air is considered to be poor for many of the units.

Figure 10.1 Excerpt of daylight analysis showing ground floor of the proposal (Source: Rothelowman)



10.6 Ecological significance

Pursuant to Clause 2.3(2) of SSLEP 2015, the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. An objective of the IN1 General Industrial zone is to 'minimise the impact of development in the zone on areas of environmental significance'.

The ecological assessment provided as part of the amended application identified that the proposal will result in the removal and/or modification of approximately 0.12ha of Estuarine Swamp Oak Forest, consistent with the threatened ecological community of the Swamp Oak Floodplain Forest listed under the NSW *Biodiversity Conservation Act 2016*. The total clearing of 0.12ha does not trigger the Biodiversity Offset Scheme, nor the requirement for a BDAR under the *Biodiversity Conservation Act*. The ecological assessment identified that there were no threatened ecological communities listed under the EPBC Act (Cth). The assessment recommended that an offset area for replacement planting (with an offset ratio of 2:1) be provided with a vegetation management plan to be prepared for the revegetation and maintenance of the offset site. An offset area has not been identified and a VMP not provided.

Therefore, it has not been adequately demonstrated that the proposal will minimise the impact of development in the zone on an area of environmental significance pursuant to Clause 2.3(2) of SSLEP 2015.

11.0 DEVELOPMENT CONTRIBUTIONS

The proposed development has a value of greater than \$100,000. In order to provide high quality and diverse public facilities, the proposed development will attract Section 7.12 Contributions in accordance with Council's adopted Section 7.12 Development Contribution Plan 2016.

This contribution is based upon the proposed cost of the development and has been calculated at 1% of \$36,505,00.00 (the estimated cost of development identified on the development application form). Therefore, in the event the application is supported, the Section 7.12 levy for the proposed development is \$365,050.00.

12.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

Section 10.4 of the EP&A Act requires the declaration of donations/gifts in excess of \$1,000. 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 or donations.

13.0 CONCLUSION

The subject land is located within Zone IN1 – General Industrial (pursuant to the provisions of SSLEP 2015). The proposed development, being a light industrial use, is a permissible land use in the zone with development consent.

In response to public exhibition, 13 submissions objecting to the proposal were received.

The proposal includes a variation to the maximum height of building development standard in SSLEP 2015. The clause 4.6 exception request does not provide sufficient information or justification to justify a variation to the development standard as required by that clause.

The application has not provided sufficient information to allow for all issues to be adequately assessed in accordance with Section 4.15 of the EP&A Act. The proposal is considered to be an overdevelopment of the site that will not be in the public interest. Following assessment, it is recommended that Development Application No. DA21/1131 not be supported for the reasons outlined in this report.

RESPONSIBLE OFFICER

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