

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-145
DA Number	DA23/0420
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 July 2023
Number of Submissions	6 submissions were received
Recommendation	Refusal
Regional Development Criteria (Schedule 6 clause 5 of the SEPP (Planning Systems) 2021	The proposed development has a capital investment value of more than \$5 million, estimated at \$71,061,819.
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. <ul style="list-style-type: none"> ◦ Chapter 2 Affordable Housing • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) (despite its repeal and inclusion in the Housing SEPP made on 14 December 2023 • Apartment Design Guide (ADG) • State Environmental Planning Policy (Sustainable Buildings) 2022 • 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 Water Catchments. • 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 – Correspondence 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	14 March 2024 (Panel Date: 25 March 2024)

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 **Refusal recommendation**

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 \$5 million and is development for the purposes of affordable housing and a health services facility under clause 5 of Schedule 6, 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 capital investment value of \$71,061,819.00.

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. Because the application was lodged prior to the amendments made to the Housing SEPP on 14 December 2023, the new provisions providing an incentive for additional building height and other matters introduced by State Environmental Planning Policy Amendment (Housing) 2023 do not apply to the application (see Schedule 7A clause 8 of the Housing SEPP – transitional provisions).

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). As with changes to Chapter 2 of the Housing SEPP, the amendments made to repeal SEPP 65 and to transfer its provisions (and amend them) into Chapter 4 of the Housing SEPP, do not apply to the application as it was lodged prior to their insertion.

Council officer's view is that the proposal presents as an overdevelopment of the site. The inadequate street deep soil setbacks lead to a poor outcome for landscaping such that the proposal cannot meet the preconditions for uplift of FSR and building height under clause 6.21 of the SSLEP 2015. Even if that precondition was met and the SSLEP uplifts did apply, the application of both the uplift under the SSLEP 2015 and the Housing SEPP FSR bonus provisions, together with both inadequate deep soil and building setbacks result in amenity for the future residents being compromised and the interface between the public and private domains being unsatisfactory. In order to accommodate the two sets of FSR bonus (were they both available to the Applicant) the proposal 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, room depth, natural ventilation, master bedroom minimum room sizes, internal storage volumes 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. Although Council is supportive of a through site link, the current proposal is unacceptable due to potential conflicts of use and safety concerns.

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 proposal includes inadequate setbacks and lack of landscaping. 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 NSW *Environmental Planning and Assessment Act 1979* (EP&A Act,) as it exceeds the Floor Space Ratio control in Clause 4.4 of the *Sutherland Shire Local Environmental Plan 2015* (SSLEP 2015), as varied by the provisions of section 17(1) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) as applicable at the date of lodgement, and no clause 4.6 exception request has been submitted under 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 the non-discretionary development standard of Section 18(2)(e) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) (relevantly being the provisions applying at the date of lodgement) , 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.
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 the non-discretionary development standard of Section 18(2)(d) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) (relevantly being the provisions applying at the date of lodgement) , which requires at least 15% of the site area to be deep soil with a minimum dimension of 3m, 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.
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 Section 19(3)(a) of the Housing SEPP (relevantly being the provisions applying at the date of lodgement), as the proposal fails to demonstrate that the residential development is compatible with the desired future character of the precinct.
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 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 3D Communal and public open space
- (d) Part 3F Visual privacy
- (e) Part 3G Pedestrian access and entries
- (f) Part 3H Vehicle access
- (g) Part 4A Solar and daylight access
- (h) Part 4B Natural ventilation
- (i) Part 4D Apartment size and layout
- (j) Part 4E Private open space and balconies (particularly objective 4E-2 in relation to the ground level private open spaces)
- (k) Part 4G Storage
- (l) Part 4L Ground floor apartments
- (m) Part 4M Facades
- (n) Part 4O Landscape design
- (o) Part 4W Waste

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 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.
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 6.15 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.
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 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.
10. 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), (d), (e), (f) have been achieved to an acceptable level.
11. 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.

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 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, 9.1.5 and 9.1.6 and in relation to controls 9.2.1, 9.2.4, 9.2.5, 9.2.8, 9.2.9, 9.2.10 and 9.2.13.
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 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 10.2.3, 10.2.4, 10.2.5, and 10.2.4 (stet).
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 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 and by failing to achieve the required building separation for buildings under the ADG. It also fails to comply with control 11.2.4.
15. 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 and 12.1.5, and in relation to controls 12.2.1, 12.2.9, 12.2.10, 12.2.12.
16. 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, 13.1.3 and 13.1.6, by providing poor quality private open space to the ground level apartments which are significantly below natural ground level and having inadequate waste management facilities for Building B and the Health Services Facility. It also fails to comply with control 13.2.3.
17. 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 17 Safety and Security of Chapter 9 of SSDCP 2015, in relation to objective 17.1.2 and 17.1.4.
18. 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).
19. 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.
20. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(b) of the EP&A Act, as neither the blind aisles in the Basements nor the accessible parking spaces are in accordance with the relevant Australian Standards.

21. 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, dimensions of private open spaces, a correct calculation of the common open space and storage volumes, and privacy treatments to the Health Services Facility.
22. 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 floor space ratio and 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, 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 Basements, 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 –affordable residential apartments, Building B – mostly standard residential apartments with some affordable, and Building C – a Health Services Facility (HSF).
- Construction of a common but subdivided basement parking area generally of three levels with two separate entrances (one under Building A and the other on the norther boundary under the HSF. Parking for 322 residential vehicles and 135 medical vehicles is provided (457 in total).
- Building A will include:
 - 5-7 storeys
 - 159 car parks and 20 bikes.
 - A loading bay for a HRV.
 - 123 apartments including 53 x 1 bedroom, 65 x two bedroom and 5 x three-bedroom apartments.
 - Of the 123 apartments, 25 are adaptable (20%), 12 are liveable (10%), and all 123 are proposed as affordable housing under the Housing SEPP 2021.

- Rooftop communal open space.
- Building B will include:
 - 7 storeys
 - 163 car parks and 20 bikes.
 - 119 apartments including 28 x 1 bedroom, 77 x two bedroom and 14 x three bedroom apartments.
 - Of the 119 apartments, 24 are adaptable (20%), 13 are liveable (11%), and 3 are affordable under the Housing SEPP 2021.
 - Rooftop communal open space.
- The Health Services Facility (HSF) includes:
 - 5 storeys
 - 135 car parks and no bike 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.
 - No loading bays are proposed.
- 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. It is proposed for a drop off area for the HSF and for use by ambulances.
- 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 is lodged as a detailed development application with two development stages. the first stage proposed to be Building A and Building B and the basement, with the second stage being the HSF.
- Torrens title subdivision into two lots (one for Building A and the second for Building B and the HSF) is proposed. Stratum subdivision of the Building B/HSF into two lots is also proposed.

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

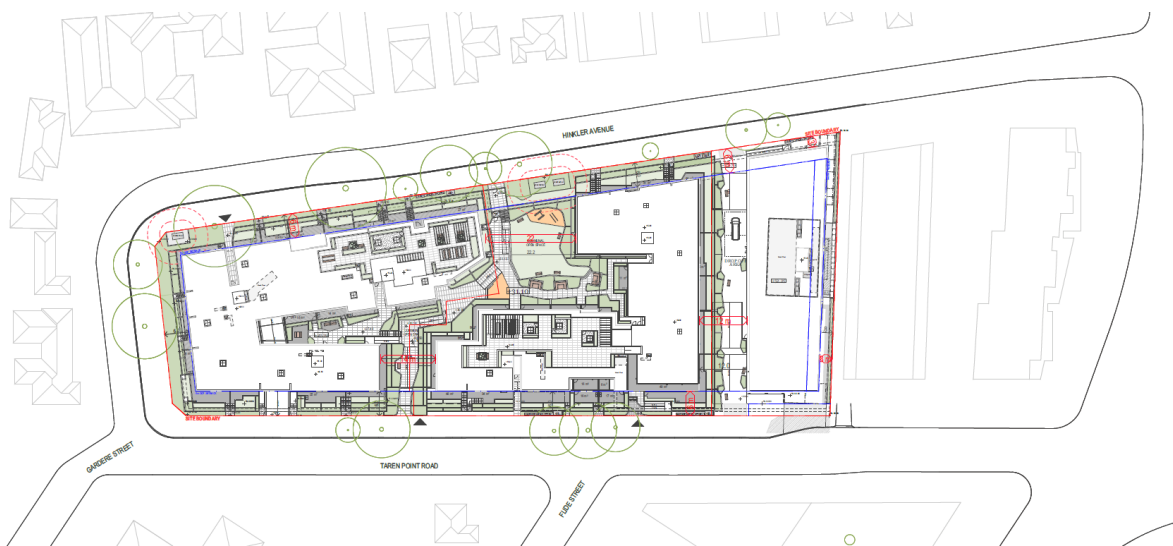


Figure 1: Site Plan

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 and at 15-19 Hinkler Avenue for further development. Two detached dwellings remain on the western side of Hinkler Avenue.

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**.

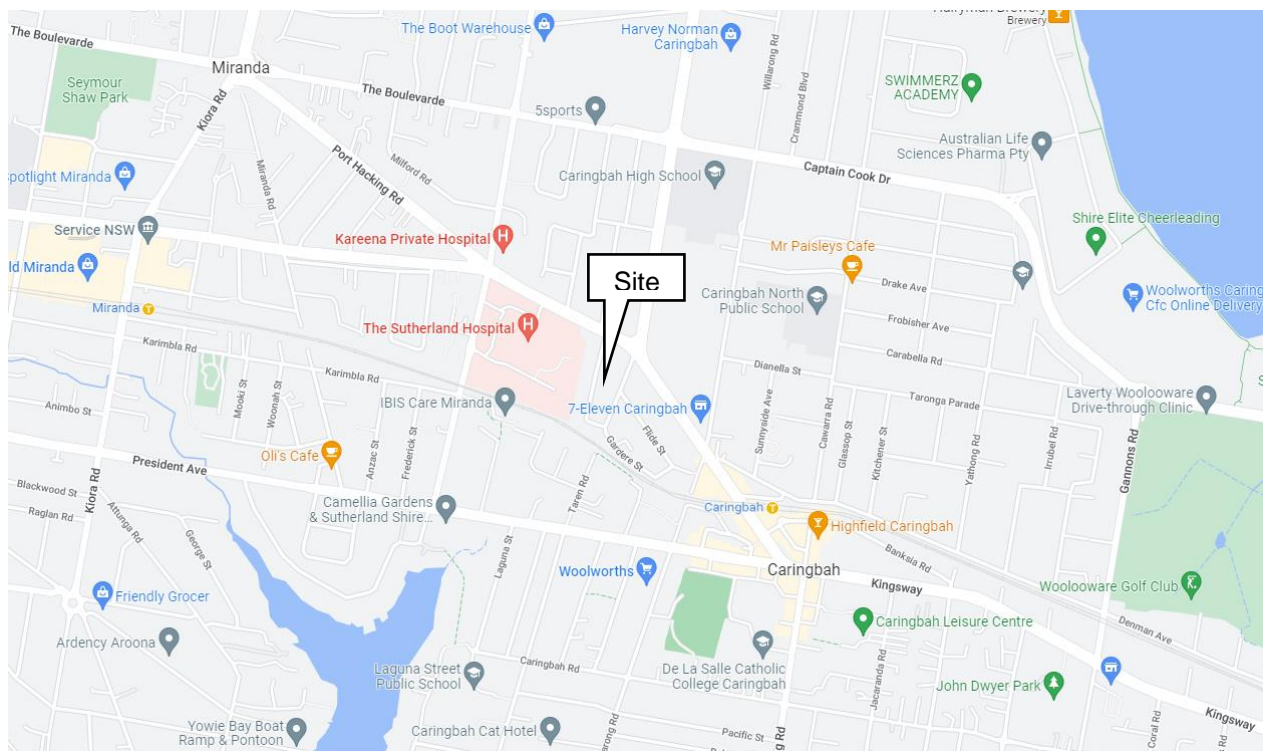


Figure 2: Locality Plan

4.0 BACKGROUND

A history of the development proposal is as follows:

4.1. Pre-Application Discussions

No formal pre-DA meeting was held with Council officers for this development application.

4.2 Application History

4.2.1 Relevant DA History of DA21/1251 (previously refused application).

- DA21/1251 was lodged with Council's on 13 December 2021. It is materially the same as that lodged for this current application (DA23/0420).
- On 6 September 2022 the applicant appealed the deemed refusal of DA21/1251 to the Land and Environment Court (LEC) by Class 1 proceedings. Whilst a section 34 conciliation conference has been held the proceedings remain undetermined.
- On 14 December 2022 the SSPP determined DA21/1251 by way of refusal.
- A jurisdictional question was determined by the Land & Environment Court on 16 December 2022. Judge Moore J held that the application was not made prior to the commencement of the Housing SEPP (*Hinkler Ave 1 Pty Limited v Sutherland Shire Council* [2022] NSWLEC 150) and therefore the Housing SEPP (as of 26 November 2021) applied, rather than the provisions under the SEPP (Affordable Rental Housing) 2009. This pertained to the applicability of provisions that require the retention of affordable housing for a prescribed time period.

4.2.2 Subject Application – DA23/0420

- On 13 July 2023 the applicant uploaded this application DA23/0420 to the NSW Planning Portal. It is materially the same as that lodged for the previous application (DA21/1251)
- Given the application seeks the same development officers have applied previous referral advice to the subject application.
- The application was placed on exhibition, with the last date for public submissions being 5 September 2023. Six unique submissions were received.
- On 28 August 2023 a kick-off briefing was held with the applicant and the Sydney South Planning Panel (SSPP). Issues identified for consideration were:
 - On-going court proceedings relating to DA21/1251 which was refused on 13 December 2022.
 - The current DA23/0420 is materially the same as the previously refused DA.
 - The DA is significantly inconsistent with the site specific SSDCP 2015 controls, with the applicant providing reasons for departures from controls for the arrangement of buildings, separation, street presentation, communal open space, vehicle access.
- On 31 August 2023 the applicant commenced Class 1 proceedings in the LEC for the deemed refusal of DA23/0420. Those proceedings remain active and a s34 conciliation conference is set down for 2 April 2024.
- On 2 November 2023 the Court of Appeal upheld the decision of Moore J in the Land and Environment Court which found that DA21/1251 was “made” on 13 December 2021 for the purposes of whether the SEPP (Affordable Rental Housing) 2009 or the Housing SEPP applied (*Hinkler Ave 1 Pty Limited v Sutherland Shire Council* [2023] NSWCA 264). As a result of this judgment the Housing SEPP provisions applied to DA/21/1251 for the purposes of the affordable housing provisions.

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 Amendments

The application was uploaded to the planning portal on 13 July 2023. On 14 December 2023 the State Environmental Planning Policy Amendment (Housing) 2023 ("Amending SEPP") was published on the NSW legislation website and the relevant provisions commenced on that day. The Amending SEPP relevantly provides an incentive for affordable housing for increased height and FSR above those which applied previously under the Housing SEPP. The Amending SEPP also repealed SEPP 65 and largely brought those provisions under Chapter 4 of the Housing SEPP, whilst also making some amendments to the former SEPP 65 provisions. Clause 8(1) of Schedule 7A of the Housing SEPP (as amended) includes savings and transitional provisions and identifies that amendments made by the Amending SEPP do not apply to a development application made but not finally determined before the commencement date (of the Amending SEPP).

Therefore, the affordable housing provisions of the Housing SEPP that applied at the date of lodgement (13 July 2023) apply. The SEPP 65 provisions in place at 13 July 2023 also apply.

References to the Housing SEPP in this report refer to the Housing SEPP as it applied on 13 July 2023.

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 officers are 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 officers are 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 following non-discretionary development standards in section 18 of the Housing SEPP, and as no clause 4.6 has been provided, the proposal must be refused:

- deep soil in section 18(2)(d); and
- solar access in section 18(2)(e).

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 0.55:1 by 1.45:1 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 officers are 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 officers are of the view that the application does not satisfy the requirements under clause 6.21 of SSLEP 2015 for the SSLEP 2015 bonus. Council officers are also of the view that the applicant is entitled to apply the Housing SEPP bonus on top of any SSLEP 2015 bonus (if it applied). 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. However Council officers are of the view that the preconditions for the SSLEP 2015 bonus FSR are not met.

DA23/0420 seeks a 0.5:1 uplift under the Housing SEPP and proposes half of the residential floors space of 18,852m² as affordable units (9426m²).

If the clause 6.21 uplift is available, Council is of the view that the calculation of FSR under the Housing SEPP would be the following:

- Allowable FSR under CI 6.21 (9431 x 2) = 18,862m²
- 4716m² is HSF, leaving 14,146m² as potential residential
- 50% of 14,146m² (for affordable housing) = 7073m² of affordable housing required before Housing SEPP uplift
- The residential component proposed is increased under Housing SEPP from 14,146m² to 18,852m² = 4706m² increase

- 50% of 4706m² = 2353m² additional affordable housing
- Affordable Housing required is 7073m² + 2535 = 9608m²
- The applicant has provided 9426m² affordable housing, hence is not compliant with the FSR controls under the Housing SEPP.

If the uplift under clause 6.21 is not available, Council officers are of the view that the calculation of FSR under the Housing SEPP would be the following:

- Allowable FSR under SSLEP 2015 is 0.55:1 (9431 x 0.55) = 5187.05m²
- If 50% of the residential GFA is affordable housing an additional 0.5:1 is available
- This represents an FSR of 1.05:1 or a maximum GFA of 9902.55m² with at least 4715.5m² to be affordable housing.
- The application for 23,568m² is 13,665.45m² above the maximum – being a 138% variation to the control.
- No clause 4.6 exception request is included.

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 officers are 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). Only approximately 156m of the street frontage length of approximately 370m (approximately 42%) of the street boundary has a street setback of 6.0m as required by the street setbacks control in section 10 of Chapter 9 of SSDCP 2015. Those 6.0m setback areas are seriously compromised in their capacity to provide deep soil planting of substantial landscaping because of the multiple retaining walls, pathways, stairs, substations and private open space courtyards which are proposed. The landscape plan provides for a total of 5 trees within the setbacks. The objectives of the SSDCP 2015 aim to create opportunities for the planting of canopy trees and landscaping and to ensure new development contributes to the desired future streetscape character.

The proposal has a relatively low compliance with the streetscape character, with significant hard structures and retaining walls within that setback and a lack of proposed canopy trees within the setbacks. This leads to a conclusion that the precondition for the SSLEP 2015 FSR uplift which requires building setbacks sufficient for the deep soil planting of substantial landscaping, has not been 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 officers are 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. The proposal complies with the section 18(2)(c) Housing SEPP landscape requirements.

4.3.6 Health Services Facility SSDCP 2015 FSR requirement of 25%

Council officers are 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.

If the proposal obtains the benefit of the uplift under clause 6.21 of the SSLEP 2015, the HSF GFA is 4716m² which represents 25.0% of the maximum GFA allowable if the development obtains the benefit of the uplift under clause 6.21 of the SSLEP 2015 prior to the uplift under the Housing SEPP. The HSF represents 20% of the GFA of the proposed development with a GFA of 23,578m². 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 25.0% of the GFA prior to the Housing SEPP uplift would be considered acceptable.

However, Council is of the view that the proposal does not obtain the benefit of the uplift under clause 6.21 of the SSLEP 2015. If the proposal does not obtain the benefit of the uplift under clause 6.21 of the SSLEP 2015, the application must be refused for various reasons, including the non-provision of a clause 4.6 for exceedance of the FSR control.

5.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application, 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.
- A clause 4.6 exception request in relation to exceedance of the floor space ratio control under clause 4.4 of SSLEP 2015 as uplifted by section 17 of the Housing SEPP, is required.
- Clause 4.6 exception request in relation to non-compliance with the non-discretionary development

standard relating to deep soil set out in section 18(2)(d) of the Housing SEPP.

- 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 is to be relocated including 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 the provision and management of a loading dock facility in Building B and the HSF, including the separation between service vehicles and residents of Building B and the staff/customers of the HSF. The loading dock must be able to support a heavy rigid vehicle (HRV).
- Demonstration that there are suitable turning spaces at the end of blind aisles.
- 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 on-site detention (OSD) to the pedestrian entry walkway.
- 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 290 adjoining or affected owners of the proposal and six (6) submissions were 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:

- Overdevelopment of the site
- Bulk and scale
- Parking adequacy, including for medical staff
- Amenity impacts
- Congestion of area
- Excessive density
- Excessive height
- Privacy impact

- Congestion impact upon intersections with The Kingsway
- Inadequate width of local roads for significant increase in traffic
- Construction traffic impacts – should be restricted to use of Taren Point Road and no access should be provided from Hinkler Avenue
- Traffic assessment fails to provide counts on local roads and the impact of congestion and disturbance of access for local residents
- Increase in traffic noise on local roads which is not addressed in the acoustic report
- Impact upon property values
- No significant changes from previous application. Previous comments still apply
- Failure to comply with control requiring medical services to be provided on ground level of each building
- The short term provision of affordable housing does not provide any long term solution for the rental housing problem
- Adequacy of communal open space/facilities and lack of details
- Noise impact during construction/length of construction period/impact of concurrent construction with other developments in the area
- Site contamination with asbestos
- Pollution impacts
- Adequacy of local schools to cope with influx of population
- Privacy impacts to houses and units opposite the site
- Inadequate information on type of medical uses proposed
- Concern with stormwater management
- Noise impact from medical facility/impact of 24 hour usage
- The accessibility assessment is based on the old BCA 2019 rather than the new BCA 2022
- Adequacy of notification period

Issue 1: Parking

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	26.5		159
2 Bedroom	1 Space	65		
3 Bedroom	1.5 Spaces	7.5	99	
Building B				
1 Bedroom	0.5 spaces	14		163
2 Bedroom	1 Space	77		
3 Bedroom	1.5 Spaces	21	112	
Total			211	322

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. The documentation states that 135 car parks are for the HSF. Although the HSF parking complies with the DCP requirement, this is superseded by the RTA requirements with which the proposal does not comply (see **Table 2** below).

Table 2: HSF car parking rates

Units	Rate	Total Spaces Required	Provided	Compliance
DCP Health	1 space/35m ² GFA	4716m ² /35 = 135	135	Yes
RTA	4/100m ² GFA	4716/100m ² x .4 = 189	135	No

However, as the proposal meets the non-discretionary development standard in Section 18(2)(f) of the Housing SEPP, car parking provision is not a matter on which the consent authority can require more onerous standards.

Issue 2: Traffic

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.

Transport for NSW (TfNSW) 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.

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 density

Overdevelopment and the building height exceedance is of concern. 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 if combined with an uplift foreshadowed under clause 6.21 of SSLEP 2015, 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 conclusion that Council makes regarding non-satisfaction with the landscaping precondition for clause 6.21 of SSLEP 2015, combined with the application seeking to use those provisions leads to a development which is inadequately mitigated by landscaping and an overdevelopment of the site.

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

Council is of the view that the uplift of FSR under clause 6.21 of the SSLEP 2015 is not available to the applicant under the provided plans. Therefore, the application breaches the FSR control for the site of 1.05:1, (including the Housing SEPP uplift) by 13,665.45m², being a 138% variation to the control. An FSR of 2.5:1 is sought. No clause 4.6 request has been provided for the FSR exceedance and the application must be refused.

Council's engineering officers have considered infrastructure. There are concerns raised about the hydrant booster. TfNSW 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

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

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

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 offer has considered the loss of trees and notes the design has sought to retain the majority of high endemic trees. These are generally within the road reserve, however. The proposal also lacks consolidated pockets of deep soil necessary to support canopy tree planting of a scale to match the built form. This is discussed further in the Assessment Section of the report below.

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

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.

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 (prior to the amendments made on 14 December 2023).

- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) (despite its repeal and inclusion in the Housing SEPP made on 14 December 2023).
- Apartment Design Guide (ADG)
- State Environmental Planning Policy (Sustainable Buildings) 2022
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (despite its repeal and inclusion in the Housing SEPP made on 14 December 2023).
- State Environmental Planning Policy (Biodiversity and Conservation) 2021:
 - Chapter 2 Vegetation in non-rural areas
 - Chapter 6 Water Catchments
- 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 includes affordable housing and health services facilities with a capital investment of more than \$5 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. Those provisions were amended on 14 December 2023, however as detailed in section 4.3.1 above, the savings provisions apply to prevent those amendments applying to a development application lodged but not determined prior to that date.

As detailed in section 4.3.2 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 following analysis is provided against the non-discretionary requirements:

Solar Access

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, it is considered that the number of units satisfying the standard are approximately as set out in Table 3:

Table 3: Approximately compliance with the 3 hour solar access control under the Housing SEPP

Building	Living Rooms	Private Open Space
A	54/123 (44%)	52/123 (42%)
B	36/119 (30%)	47/119 (39%)
Total	90/242 (37%)	99/242 (41%)

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.

Deep Soil

The deep soil control in section 18(2)(d) requires a minimum of 15% of the site with minimum dimensions of 3m to be deep soil. With a site area of 9431m², a minimum of 1415m² is required. The plans show:

- >6m: 854m² (9.1%)
- >3m: 422m² (4.5%)
- +91m² (location not identified)
- Total: 1,367m² (14.5%) – not 1,414m² as stated

The areas identified as >3m includes areas which are less than 3m wide. Excluding those areas and the 91m² in the unidentified location provides a total complying with the 3m minimum of 854m² + 175m² (approx.) = 1029m² (10.9%).

The proposal does not comply with the controls in section 18(2)(d). 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 4**. 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 4: 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 deep soil setbacks provide for an inadequate level of landscaping and only five trees are proposed in the deep soil setbacks. Substantial landscaping has not been provided to complement the scale of the buildings. 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 majority of the units addressing the public domain</p>
(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.

Objectives of CI 6.21 SSLEP 2015	Comment
(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 CJ’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 5**. 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 5: Objectives SSDCP 2015 Chapter 9 – Caringbah Medical Precinct.

Objectives of Chapter 9 SSDCP 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 that the precinct is an appropriate place to provide additional dwellings as well as medical centres	The proposal includes both health services facilities and residential accommodation as desired. The provision of affordable housing is supported by Council as a way to help fulfil this strategy.
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 above ground building for the HSF, separated from the residential developments. It is considered that this is consistent with the intent of the strategy. However, the lack of continuous 6m wide deep soil setbacks around the development, together with

Objectives of Chapter 9 SSDCP 2015	Comment
	the numerous incursions into the setbacks which are provided, do not allow for a landscaping environment which could be capable of providing the landscaped setting which is desired. The objective is not met.
The HSF to occupy at least 25% of the floor area	Before the uplift from the Housing SEPP, the HSF provides 25.0% 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. However, without the uplift under clause 6.21 of SSLEP 2015, the proposal well exceeds the FSR control under the SSLEP 2015 as uplifted by the Housing SEPP.
<p>3. The public domain and landscape strategy is to improve the public domain with a greater volume of landscaping and improved footpaths.</p> <p>Encourage well lit, safe and pleasant pedestrian paths through and across the site.</p>	<p>The proposed deep soil setbacks many of which are less than 3.0m are insufficient to provide the desired landscaping. The landscaping outcome would be improved with 6.0m deep soil setbacks around the entire residential building, at least a 3.0m side setback around the entire HSF and if the units were elevated to be at or slightly above natural ground level rather than subterranean as many are. The proposed design creates a defensive approach to the public domain in the effort to obtain privacy for the sunken apartments. The through site link has the opportunity to provide a positive aspect to the proposal, however the insufficient landscaping and potential conflicts between pedestrians and vehicles is unsatisfactory.</p>
<p>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 design to maximise northerly orientation.</p>	<p>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.</p>
<p>8. Building envelopes are suggested. For the site this is 6 storey buildings with 4 storeys on the</p>	<p>The building envelopes are changed, and Council supports a variation given the 16 lot amalgamation.</p>

Objectives of Chapter 9 SSDCP 2015	Comment
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 variations in height to provide built form transitions to existing and future adjacent developments.	However, the buildings are up to 7 storeys high with little height variation other than that which occurs between the three buildings due to the fall in topography.
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. 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 although they could be expanded.

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 at midwinter, and the provision of deep soil (both of which are 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.

SEPP (Sustainable Buildings) 2022 commenced on 1 October 2023 and repeals SEPP (Building Sustainability Index: BASIX) 2004. Clause 4.2(1)(a) of SEPP (Sustainable Buildings) 2022 contains savings and transitional provisions which provide that that policy does not apply to a development application submitted on the NSW planning portal but not finally determined before 1 October 2023. As the DA was submitted prior to 1 October 2023 SEPP (Building Sustainability Index: BASIX) 2004 continues to apply to the application.

9.5. State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 2 Vegetation in non-rural areas

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's 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 Chapter 6 Water Catchments

State Environmental Planning Policy (Biodiversity and Conservation) 2021 includes Chapter 6 Water Catchments which applies to land (relevantly) in the Sydney Drinking Water Catchment and the Georges River Catchment, within which the site is located. The Chapter requires the consent authority to consider a number of matters regarding water quality, stormwater and impacts on the regulated catchments and requires the consent authority to be satisfied the development ensures that the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial and the impact on water flow in a natural waterbody will be minimised. It also requires consideration of impacts to aquatic ecology.

The application has been referred to Water NSW due to the likely aquifer interference as groundwater will be removed from at least one aquifer.

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

As detailed in Section 4.3.1 above, State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) will continue to apply to the DA despite the recent repeal of SEPP 65 and transfer and amendment of its provisions into Chapter 4 of the Housing SEPP. SEPP 65 and the ADG seek 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, the street setbacks of 6.0m, the northern setback of the HSF, solar access and cross ventilation 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. Insufficient street deep soil setbacks lead to insufficient landscaping to provide good amenity for the buildings and streetscape. The three vehicle entries in the north-east corner reduce availability for landscaping to ameliorate the bulk of the HSF. There is no possibility for landscaping on the northern side of the HSF to provide privacy for the building to the north.
- *Principle 6 Amenity:* A number of ADG objectives are not achieved particularly relating to cross ventilation, solar access, exceedance of the maximum 8m living space dimension, building separation and visual privacy. Residential entries are concealed. A large percentage of the ground and level 1 units are below street level leading to privacy concerns and a poor public domain interface. Long and circuitous circulation spaces at ground level are not naturally lit or ventilated.
- *Principle 7 Safety:* Unclear if the courtyard is secured from the street or how it will be managed. Entries to residential buildings are unclear and deeply recessed leading to safety concerns. Lighting is required to the courtyard which may conflict with the units overlooking. The through site link has unacceptable conflicts between pedestrians, ambulances, and the drop off zone for the HSF leading to safety concerns. Three vehicle entries on the north-east corner on Taren Point Road create confusion for drivers and safety concerns.
- *Principle 8 Housing Diversity and Social Interaction:* An appropriate mix is provided and a range of

communal spaces are provided. The provision of affordable housing is supported. The communal open space at ground level could be improved by providing a more level space at the entry off Hinkler Avenue. The communal open space area between the east and west sections of Building A provide for a very narrow communal open space area with potential acoustic conflicts for the adjoining residents.

- *Principle 9 Aesthetics:* The buildings provide insufficient articulation to reduce the bulk of the design from the public domain. No thorough, fully contextual urban design analysis is provided. The HSF fully glazed north, and south elevations are long and create privacy concerns. The through site link lacks an identity, with inadequate soft and hard landscaping materials and plantings to create a welcoming public space.

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 3D Public domain interface
- Part 3F Visual privacy
- Part 3G Pedestrian access and entries
- Part 3H Vehicle access
- Part 4A Solar and daylight access
- Part 4B Natural ventilation
- Part 4D Apartment size and layout
- Part 4E Private open space and balconies (particularly objective 4E-2 in relation to the ground level private open spaces)
- Part 4G Storage
- Part 4L Ground floor apartments
- Part 4M Facades
- Part 4O Landscape design
- Part 4W Waste

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 2.100 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. If the application were to be approved, 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 subject to conditions. 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 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 to the previous DA21/1251 on 24 February 2022 which required the applicant to undertake further modelling for SIDRA network modelling. Following receipt of this information (including updated traffic models), TfNSW provided a further response on 11 November 2022. This response specified the requirement for a dedicated right turn bay to be constructed in the Kingsway to safely store vehicles before turning right into Hinkler Avenue. Additional requirements related to these works were set out in their response.

TfNSW has been a party to the appeal on DA21/1251 and further design development around the necessary road works has occurred.

Subsequent to the above TfNSW was referred the subject DA23/0420 on 15 October 2023 and provided comment pursuant to CI 2.122 of the SEPP. TfNSW advised that:

- *The proposed development's traffic generation will impact the surrounding classified network by the intensification of road users turning right from the Kingsway (classified road) onto Hinkler Avenue to access the development.*
- *The intensification of road users turning right from The Kingsway onto Hinkler Avenue will result in safety implications, including due to the potential to further increase the likelihood of rear end and side swipe accidents. This will inevitably result in a reduction to road safety for existing and future road users.*

TfNSW also noted that the proposed development, in terms of development yield, parking provision, vehicular ingress/egress, traffic generation and traffic modelling (which was last updated in 2021) appears to be identical to DA21/1251. TfNSW understands that the traffic modelling submitted by the proponent in relation to DA23/0420 is the same as that submitted in relation to DA21/1251. TfNSW raised this concern of the intensification of road users turning right from the Kingsway onto Hinkler Avenue and the consequent safety implications with the proponent by way of letter dated 11 August 2023 (a copy of which is enclosed). TfNSW suggested "Proposed Road Works" (as defined in the 11 August 2023 letter) which TfNSW considers may ameliorate the impacts of the increased traffic generation of the proposed development. However, the Proposed Road Works do not appear to have been incorporated into DA23/0420.

Accordingly, TfNSW repeats the advice provided in TfNSW's letter of 11 August 2023 in that the content of the submission TfNSW provided with respect to DA21/1251 also applies to this DA. TfNSW draws the Council's attention to:

- *The concerns with the proponent's modelling as identified under the sub-heading "Applicant's modelling"; and*
- *The "Proposed Road Works" which TfNSW considers may ameliorate the impacts of the increased traffic generation of the proposed development as identified under the sub-heading "Amelioration - Proposed Road Works".*

Given TfNSW has concluded that the proposed development subject of the DA will generate increased traffic and impact the surrounding classified network by the intensification of road users turning right from the Kingsway, and applying the safe systems approach to mitigate the impacts of the proposed development, should the consent authority be minded to approve the application, TfNSW would require that the application be amended to incorporate the Proposed Road Works and the conditions provided in Attachment C to the enclosed letter dated 11 August 2023 included in any Development Consent.

A copy of the TfNSW comments is included at **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 6** below:

Table 6: SSLEP 2015 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. The clause 6.21 preconditions are not met - 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. 2.5:1 sought. 23,578m ² proposed using the Housing SEPP and Cl 6.21	No, the clause 6.21 preconditions are not met. With the full Housing SEPP uplift, the control is a maximum of 1.05:1 (9902.55m ²). Exceedance is 13,675.45m ² or a 138% variation to the control.
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")
Cl 6.21 Caringbah Medical Centre	Area 7	Proposed to adopt the FSR uplift of 1.45:1 to 2:1; and the building height uplift of 11m from 9m to 20m	As the preconditions for uplift relating to deep soil setbacks is not achieved, the uplift is not available. Therefore, FSR is not compliant, and no clause 4.6 request is included. Height exceeds by 14.3m (259% 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) is not considered to be met due to its minimal street setbacks. This is considered in section 4.3.5 above. The reference to large scale indigenous trees on Kingsway is not relevant to the site.

The landscape plan includes insufficient substantial landscaping in the setbacks. The amendments to the setbacks and landscaping plan which enabled Council to consider that the landscaping precondition of

section 6.21 (4) and (5) fulfilled in relation to DA21/1251, does not apply to this DA23/0420. DA21/1251 had increased the street setbacks to 6.0m for all but the HSF street frontage and provided improved landscaping in the street setbacks. Those improvements are not contained in DA23/0420.

Additionally, analysis has shown that a majority of the units which face the public domain at ground level, sit below the level of the footpath with height differences up to 2.4m. As a consequence, the already inadequate deep soil setback areas will be burdened by retaining walls and stairs, in addition to the OSD tanks, services, substations, fencing and private open space courtyard 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.

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,*

Whilst species could be conditioned to be acceptable, the low percentage of the site with the deep soil setbacks required by the DCP and the burdens of the incursions into those areas by retaining walls, substations, stairs, courtyards and the like, will make it difficult to establish substantive landscaping as is required. It is accepted that 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.

It is considered that the landscaping pre-condition under clauses 6.21(4) and (5) have not been met and the applicant therefore cannot take the benefit of the height and FSR uplifts provided by clause 6.21(4) and (5) of the SSLEP 2015. Additionally, the objectives of clause 6.21(1)(d) 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

The previous DA21/1251 was referred to the NSW Police Force in accordance with the *Crime Risk Assessment – Police & SSC Protocol 2010*. The Police provided CPTED principles 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.

As the subject proposal under DA23/0420 is identical to that version the Police reviewed under DA21/1251 no new referral was considered necessary. The Police response is provided in **Appendix “G”**.

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

Transport for NSW

Correspondence received from TfNSW is as set out above in Section 9.9 above with the full copy contained in **Appendix F**.

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 4 December 2023, Water NSW requested that Council stop the clock on the application to enable the applicant to provide additional information to inform the assessment. A copy of the WaterNSW response is contained at **Appendix “H”**. Additional information was provided by the applicant on 21 December 2023. An updated referral to WaterNSW was undertaken in January 2024.

No further correspondence has been received from WaterNSW at the time of preparing this report.

Design Review Forum (DRF)

The application was not referred to the Design Review Forum as it is materially the same as that which it considered on 17 February 2022 under DA21/1251. Minutes of that meeting are set out in **Appendix “I”**. The comments made with respect to the original proposal of DA21/1251 and which remain applicable are 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 not referred to Council's Traffic engineer as it is materially the same as that which it considered under DA21/1251. In relation to the originally lodged DA21/1251 plans, Council's traffic engineer provided the following comments:

- 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 not referred to Council's Engineering Public Assets Unit as it is materially the same as that which was considered under DA21/1251. In relation to the plans lodged for DA21/1251, the Engineering Public Assets Unit provided the following comments:

- *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*
- *Conditions were proposed.*

Engineering -

The application was not referred to Council's Engineering unit as it is materially the same as that which it considered under DA21/1251. In relation to the originally lodged DA21/1251 plans, Council's engineering unit provided the following comments:

- *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 fail to 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*
 - *Long sections are required on all ramps to ensure head height compliance with AS2890.1 and AS2890.2*
 - *The number of car spaces appears to comply with SSDCP 2015 but require confirmation.*
- *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 proposed hydrant boosters fronting Taren Point Road and Hinkler Avenue will result in the loss of on-street parking is not acceptable. They must be relocated to*

ensure hardstand parking is within the site as per Fire and Rescue NSW Fire Safety Guideline – Access for fire brigade vehicles and firefighters Nov 2020.

- *Recommendations included:*
 - *Ramp long sections required for height clearance compliance with AS2890.1 and AS2890.2*
 - *DDA residential parking spaces to comply with AS2890.6 or AS4299, remove structural columns between the space and shared area, and remove the shared zone in the aisles*
 - *Disabled spaces should comply with AS2890.6*
 - *Swept paths required for basement ramp along the eastern boundary of Building B to show adequate room for passing on the curved section*
 - *Basement grades in the HSF are to comply with AS2890.1 in the north-east corner from Taren Point Road*
 - *The discharge pipeline in the road reserve must be RCP or mild steel pipe*
 - *Hydrant boosters must be relocated*

Building Surveyor

The application was not referred to Council's Building Surveyor as it is materially the same as that which was considered under DA21/1251. In relation to the originally lodged DA21/1251, Council's building surveyor 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.*
- *The applicant should provide details about whether a hydrant and sprinkler booster assembly is require, the type and size, the location and the location of the proposed emergency vehicle hardstand.*

Environmental Health

The application was not referred to Council's Environmental Health Unit as it is materially the same as that which it considered under DA21/1251. In relation to one of the later sets of plans provided under DA21/1251, Council's environmental health officer who provided the following comments:

- *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 not referred to Council's Environmental Scientist as it is materially the same as that which was considered under DA21/1251. In relation to the originally lodged DA21/1251 plans, Council's environmental scientist provided the following comments:

- *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 not referred to Council's Waste officer as it is materially the same as that which was considered under DA21/1251. In relation to the originally lodged DA21/1251 plan's Council's waste officer advised that bin carting routes for Building A need to be provided. Further information on the proposed size of bins is required.

Landscape Officer

The application was not referred to Council's Landscape officer as it is materially the same as that which was considered under DA21/1251. In relation to the originally lodged DA21/1251 plans, Council's landscape officer provided the following comments:

- *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.*
 - *The substations are close to the main entry from Hinkler Avenue*
 - *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.*

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 one of the preconditions relating to deep soil setbacks and substantial landscaping is not met and the height uplift to 20m under clause 6.21 of SSLEP 2015 cannot therefore be applied.

The proposal seeks a maximum height of 23.3 metres – 3.3m above the maximum height or a variation of 16.5% if the building height incentive is applicable under SSLEP clause 6.21(4). **Figure 6** below indicates the extent of the height non-compliance in that circumstance. The greatest height exceedance arises from the lift overrun on Building A (3.3m). Some other exceedances arise from lift overruns on Buildings B and C, and part of the habitable area of dwellings being above the height plane (e.g. up to 0.85m for the north eastern corner of Building B and up to 1.45m for the south eastern corner of Building A.) The HSF has a height exceedance of 0.8m from the lift overrun.



Figure 6: Height blanket diagram looking from the east (DA421 Rev A)

Figures 7 and 8 demonstrate the extent to which the height exceedances are encroaching into habitable space.

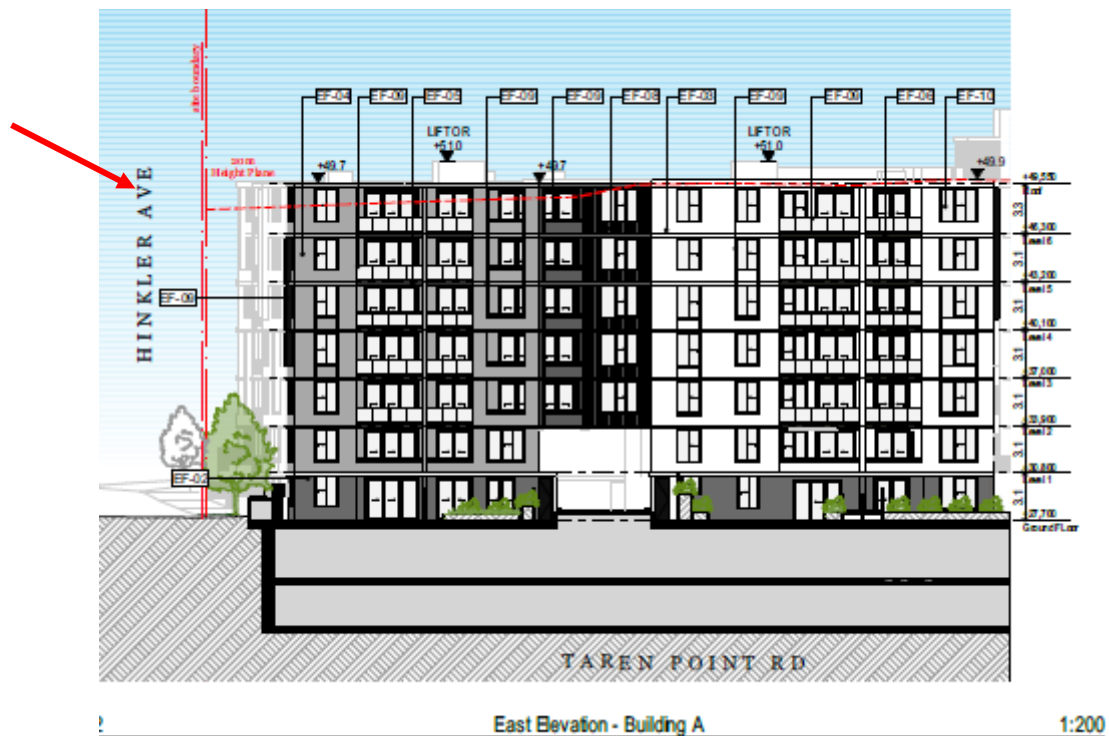


Figure 7: East elevation of Building A (DA301 Rev A)

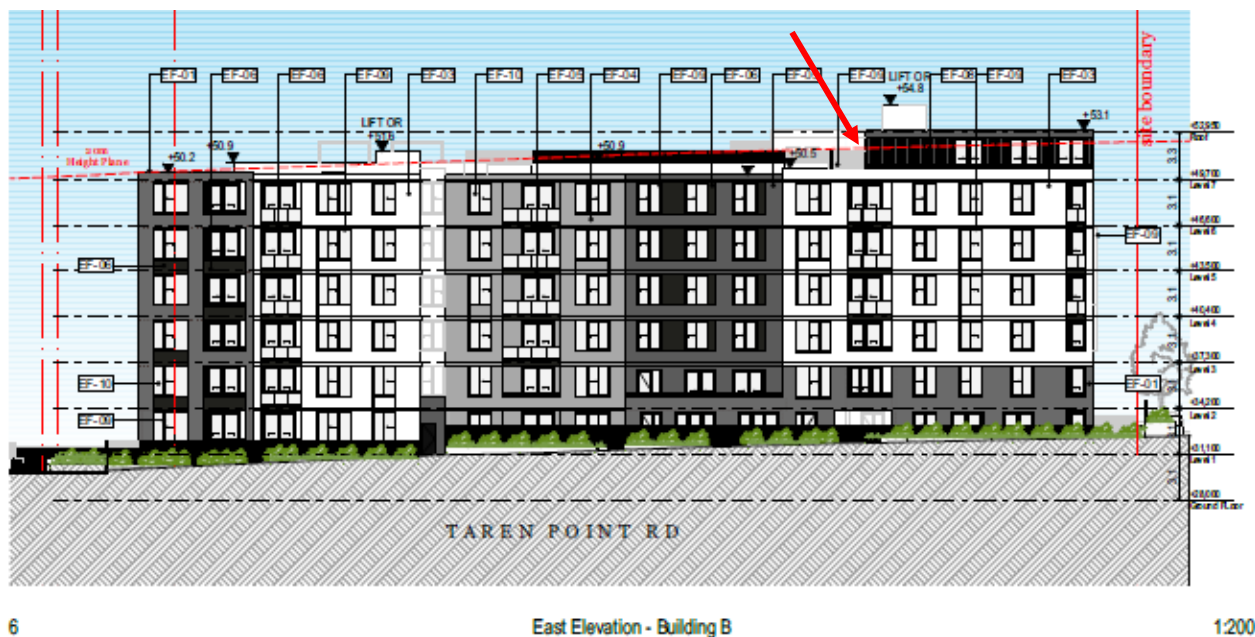


Figure 8: East elevation of Building B (DA303 Rev A)

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

On 1 November 2023 the provisions of clause 4.6 of SSLEP 2015 were amended by an amendment to the Standard Instrument LEP, an amendment to the EP & A Regulation 2021 and amendments to environmental planning instruments through SEPP (Exceptions to Development Standards) 2023. Development applications lodged prior to 1 November 2023 but not determined continue to be assessed under the clause 4.6 provisions as applied at the date of lodgement - see clause 8(1) of the Standard Instrument (Local Environmental Plans) Order 2006.

The applicant has lodged a written request (Clause 4.6 Building Height Development Standard, Sutherland & Associates Planning, May 2023) 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.

It is Council's position that the height exceedances are considerably more than those set out by the applicant in the clause 4.6 and in **Figures 6-8** above, because Council considers that the precondition of the height uplift under clause 6.21(4) of SSLEP 2015 has not been satisfied with regards the deep soil street setbacks allowing for substantial landscaping. Council is of the view that the height exceedances are 11 metres greater than those set out in the clause 4.6. As no clause 4.6 exception request has been provided which addresses the height control of 9.0m the application cannot be approved.

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 applicant's 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:

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 are 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.

Council considers that the height control is 9m and the height control uplift under clause 6.21 (4) of SSLEP 2015 is not available to the applicant because of the failure to meet the third precondition requiring building setbacks sufficient for deep soil planting of substantial landscaping. The whole of the development other than the landscape areas at ground level, exceed the height limit of 9m. The failure to meet the precondition leads to non-compliance with multiple objectives of the building height development standard, because there is insufficient landscaping to ameliorate the impact of the proposal on the environment. It directly leads to non-compliance with objectives 4.3(1)(a), (c), and (d) of SSLEP 2015.

The height variations from the 9m control are up to 14.3m or a 259% variation to the control. Such a variation to the control is not identified, considered or justified in the clause 4.6 request.

In the event that the SSPP is of the view that the landscape precondition is met and the application has the opportunity to take advantage of the uplift under clause 6.21(4) of the SSLEP 2015, the following assessment applies to the clause 4.6 request:

- Whilst it is acknowledged that there are parts of the proposal which are below the height limit, the exceedance extends to within the GFA of Building A includes parts of 4 or 5 units (the streetscape east (DA300 Rev B and East Elevation Building A DA301 Rev B are inconsistent), Building B covers at least 2 units. 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 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.)

- In relation to objective (a), the clause 4.6 incorrectly states that the proposed development provides generous deep soil setbacks as required by the DCP. The DCP requires 6m deep soil setbacks to the street and a minimum 9 northern boundary setback, with a minimum 3m basement setback on that boundary. The proposal has a nil basement setback on the northern boundary and a 3m setback of the above ground elements and is not consistent with the DCP on the northern boundary.
- 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.
- 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.
- The clause 4.6 has failed to demonstrate that objectives (a), (c) (d) and (e) of clause 4.e of SSLEP 2015 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. Even if the proposal did have the benefit of the building height control uplift under clause 6.21 of SSLEP 2015, the exceedances include a portion of the units of Level 7 of Building B and a 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 7 and 8** 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.

In any event, it is considered that the building height uplift under clause 6.21 does not apply to the proposal, and all of the above ground elements of the building other than landscaping elements exceed the 9m height limit.

There are sufficient environmental planning grounds to justify contravening the development standard (Cl.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 are 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. The grounds are prefaced on an assumption that the height control is 20m, whereas Council is of the view that the preconditions for the height incentive under clause 6.21(4) of the SSLEP 2015 have not all been met, and the height control is therefore 9m. The areas of encroachment are across the whole of the site (excluding ground level landscape and communal open space areas). The 3D massing diagrams and Urban Design Statement referenced are of little assistance given that they reference the incorrect height limit.

Even if it is considered that the clause 6.21 pre-conditions are met and the height control is 20m, the clause 4.6 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. Those design decisions include a large number of the ground floor and Level 1 units being significantly below natural ground level and below the footpath level. 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, let alone a height departure of 14.3m and a departure from the permissible gross floor area which also arises from the insufficient deep soil setbacks and inability to take advantage of the FSR uplift under clause 6.21(5) of SSLEP 2015.

The clause 4.6 successfully argues 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)(i) and (ii) 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 a potentially important improvement for the precinct, which could be supported by Council if the various conflicts between pedestrians and vehicles were removed and if landscaping was improved to that area, 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 the clause 4.6 has not demonstrated sufficient environmental planning grounds to justify exceedance of the height standard, whether that height standard is 9m or 20m.

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), (c), (d) and (e).

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 242 dwellings, with a variety of dwelling sizes. It provides adaptable and liveable 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 and 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 are subject to clause 5.1 of SSLEP 2015. 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 the Building C basement not extending within the acquisition area 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 yet to be completed but expectations are that this would occur as per the plan set out in SSDCP 2015 (refer **Figure 9** below) similar to the sites to the north. No further details about any proposed dedication are included in the proposal documentation.

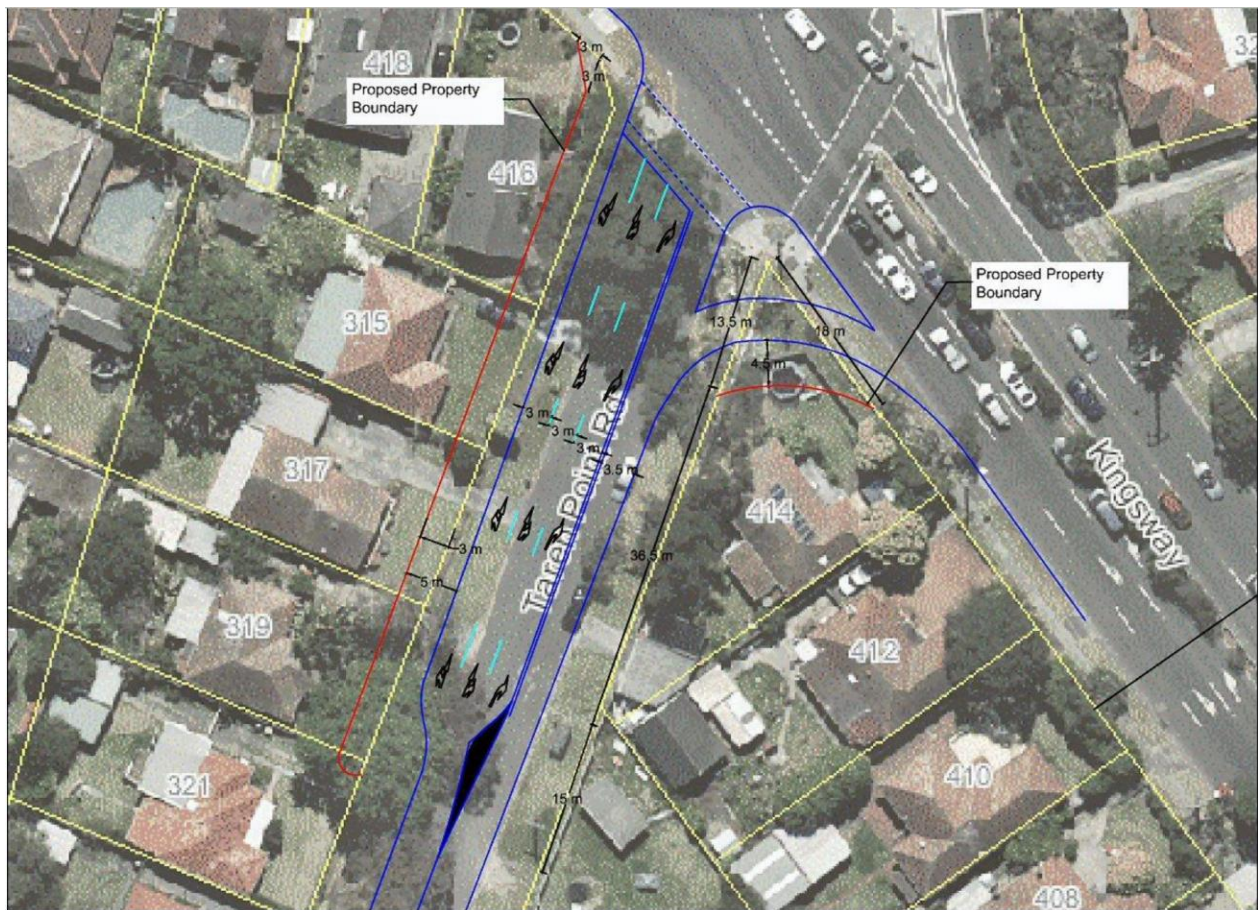


Figure 9: Map 4 of SSDCP 2015

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, greater landscaping which could allow for compliance with the preconditions of clause 6.21 of SSLEP 2015 and an improved streetscape and public domain interface.

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.

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, 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.

No sun shading is provided to the northern windows of the HSF to reduce solar ingress and reduce reliance on air conditioning.

The proposal therefore fails to achieve the objective of maximising the useful lifecycle of buildings and achieving energy efficient and ecologically buildings.

The failure to consider photovoltaic cells and electric vehicle charging is also a lost opportunity with the residential 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 natural environment will be enhanced by the development, the extent to which the development responds to the natural landform of the site, and the principles of CPTED. Additionally in relation to the HSF, the application does not integrate into the locality, will not respond to the local character and relate to the scale streetscape, setbacks or other accommodation in the locality. Due to the lack of a loading area within the HSF and Building B, the locality will not be protected from detrimental traffic-related impacts and noise from the development.

11.2. Urban Design (Residential Buildings)

Clause 6.17 of SSLEP 2015 contains certain matters of consideration relating to urban of 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, privacy and visual intrusion, the extent to which the streetscape will be improved (having regard to the subterranean nature of many of the ground level apartments and the insufficient street setbacks), 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 landscape 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. The ability to meaningfully include Greenweb plantings is severely constrained however by the reduced boundary setbacks, and the multiple incursions into the proposed deep soil setbacks due to retaining walls, substations, services, courtyards and staircases.

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 approximately 39 trees. Replacement trees at Council's policy of 8:1 would require 312 replacement trees.

11.7. Subdivision and staging

The application proposes staging with the first stage to include Building A and B and the basement car parking and the second stage to include the HSF. The Application is seeking to rely upon the FSR and building height uplift under Clause 6.21 of the SSLEP 2015. Those uplifts rely upon construction of the HSF, and therefore a staging program which delays the construction of the HSF is unacceptable if reliance is made upon the clause 6.21 uplifts.

Council considers that the uplifts under clause 6.21 of SSLEP 2015 are not available under the proposal due to failure to meet the preconditions of that clause. The uplift in FSR under the Housing SEPP is not contingent upon the construction of an HSF. If, despite the exceedance of the building height control of 9m, and the exceedance of the FSR control under the SSLEP 2015 as increased under the Housing SEPP, approval is to be granted, Council considers that some form of staged approach could be considered, because the proposal is not taking advantage of the clause 6.21 uplifts.

The application plan DA103 includes Torrens title subdivision into three lots as follows:

- Lot A of 3572m² for Building A and part of the ground floor communal area
- Lot B of 3821m² for Building B
- HSF of 2,040m²

The proposed lot subdivision plan does not make provision for the subdivision of approximately 60m² being the part which is been identified in SSLEP 2015 for land acquisition at the northern end of Taren Point Road.

The Statement of Environmental Effects states the application seeks subdivision as follows:

- Torrens Lot for Building A (with reciprocal rights for common spaces with Building B)
- Torrens Lot for Building B (With reciprocal rights for common spaces with Building A) and C
 - Stratum Lot 1 containing Building B
 - Stratum Lot 2 containing Building C

That arrangement is not set out in the provided plans. The staging is inconsistently set out between the application documents – for instance the stormwater plans indicate the HSF car park as part of Stage 2. The subdivision boundary is inconsistent with a number of design elements such as planter boxes and no indication easements for support and drainage and recreation use are provided to support such a subdivision application.

If approval of the application is considered, conditions would need to be implemented with respect to staging of the issue of subdivision certificates. If such consent did rely upon the uplift under clause 6.21 of SLEP 2015, conditions would also need to be imposed to ensure that staging of the subdivision certificates ensured 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.

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 does not meet 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.

There are multiple deficiencies with the parking and loading facilities, including:

- Further details are required in relation to driveway and ramp sections to ensure suitable height clearances are achieved in accordance with AS2890.1 and AS2890.2.
- There are multiple blind aisles without turning spaces which do not comply with AS2890.1:2004.
- The car parking layout is not logical and requires amendment.
- The entry driveway under the HSF does not align with the ramp into Building B's car park.
- Swept path diagrams are required for the basement ramps to show cars can pass on the curved sections.
- The DDA residential parking spaces do not comply with AS2890.6 of AS4299 and the shared zone within the driveway aisles is not supported. The structural columns between the DDA space and shared area should be removed.
- The disabled visitor spaces do not comply with AS2890.6.
- Only two accessible parking spaces have been provided for the HSF with a GFA of 4,716m², and another is required.
- No bicycle parking is provided for the HSF. SSDCP 2015 Chapter 9 section 18.11 requires 1 bicycle space per 10 car spaces. With 135 car spaces, 14 bicycle spaces should be provided.
- No electric vehicle charging points have been provided in any part of the basement car parking.
- There is no loading area in the HSF/Building B and no provision for HRV vehicles to turn.
- No details are provided as to how entry to Building B is to be restricted from users of the HSF.

The provisions for waste collection are unsatisfactory for reasons including:

- The submitted waste management plan refers to and includes plans from the amended drawings for DA21/1251 rather than the plans forming part of DA23/0420. It incorrectly refers to a health services waste area, a waste chute room location and bin collections systems for the health services building which are not included within the plans for DA23/0420
- Collection of waste from Building B via three locations in Building B, dragging that waste to a service

lift under the HSF to get to the loading area on the northern side of the HSF is impractical and inefficient.

- There is no capacity within the basement of Building B for garbage collection trucks to service the building.
- Swept paths for garbage truck movements within the site are required.
- Bin carting routes for all buildings are required.

11.9. Solar Access

The ADG is guidance provided under SEPP 65, and the ADG 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.

An analysis provided by Council indicates the approximate 2 hour solar access is as set out in **Table 7**:

Table 7: Approximate compliance with the 2 hour solar access guidance under the ADG

Building	Living Rooms	Private Open Space
A	65/123 (53%)	66/123 (54%)
B	54/119 (45%)	60/119 (50%)
Total	119/242 (49%)	126/242 (52%)

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 (see **Table 3** in Section 9.2 above). 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: 8/123 units have no solar (7%)
- Building B: 10/119 units have no solar (8%)
- Total: 18 units have no solar (7.4%), therefore there is compliance with the ADG control

An analysis provided by Council indicates that actual compliance with the no solar access controls is approximately:

- Building A: 12/123 units have no solar access (9%) - complies
- Building B: 23/119 units have no solar access (19%) – does not comply
- Total: 35 units have no solar access (14%) - complies.

Therefore, as a total, the development complies with the ADG for the percentage of units which receive no solar access, although Building B alone, does not.

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

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. See example in **Figure 10** below.

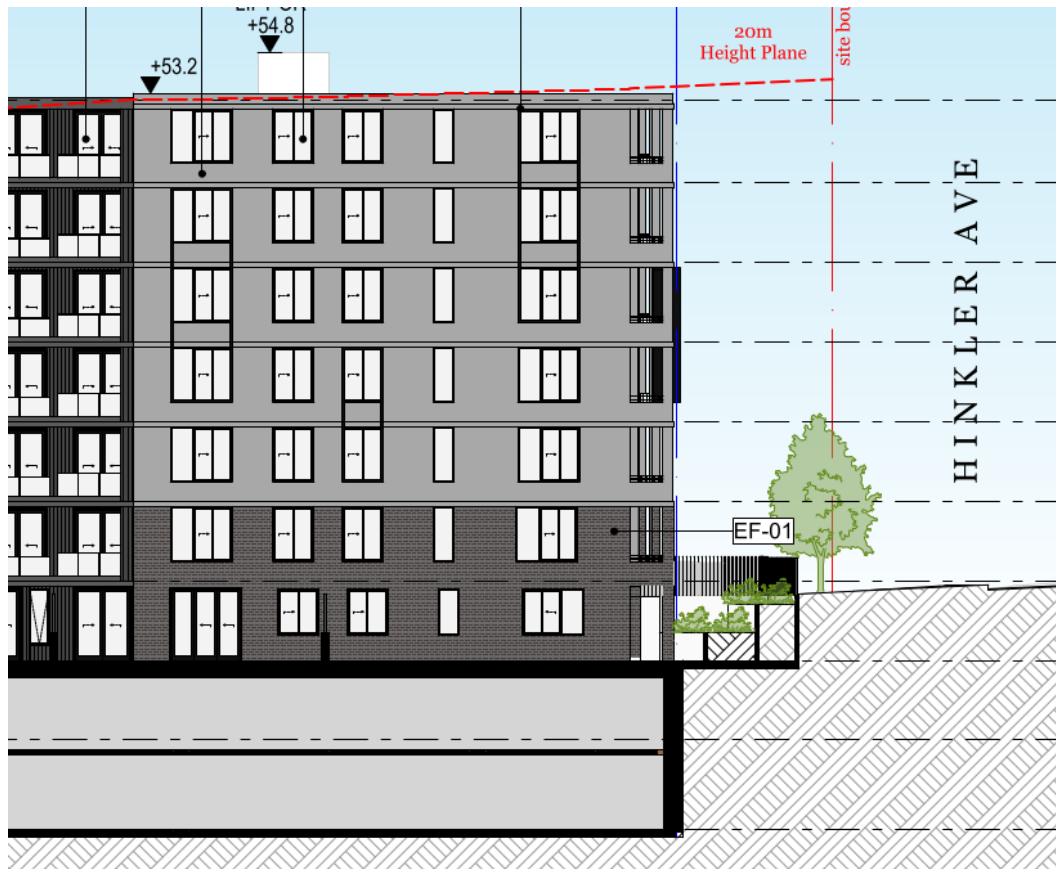


Figure 10 – North Elevation of Building B showing relationship to street level.

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.

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. 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 A (**Figure 11**) for the north west corner of Building A where Level 1 adjacent to the Hinkler Avenue Communal open space entry is not visible (only 5 of 6 levels are visible).



Figure 11: Extract of montage of Hinkler Avenue looking south east demonstrating the number of levels visible from the street to Building A

11.11.Amenity for residents

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

- Non-compliant separation distances between units.
- Only approximately 53% of Building A units and 45% of Building B units achieve 2 hours of solar access midwinter between 9am and 3pm to their living areas.
- Only approximately 45% of Building A units and 50% of Building B units achieve 2 hours of solar access midwinter between 9am and 3pm to their private open space.
- Approximately 9% of Building A and 19% of Building B units (14% overall) have no solar access midwinter between 9am and 3pm to both living rooms and private open spaces.
- A large number of units that interface with the public domain sit below the level of the street. The most significant level change is approximately 2.35-2.4m in the north-western corner of both buildings A and B. This leads to a poor street interface, poor solar access, privacy concerns and retaining walls and stairs within the 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.
- 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.
- Inadequate storage is provided internally to the units and the volume of storage in the basement is not clearly identified. The storage schedule in plan DA419 is inconsistent with the floor plans.

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.

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

11.13. 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 which may not be reduced with an articulation zone. On Hinkler Avenue the HSF is provided with an approximate 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 B). 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 montages, the HSF will create an uneven setback street presentation which will be adverse to the objectives of section 10 of SSDCP 2015 Chapter 9 which seek 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. No provision has been made for this as a separate lot within the draft Torrens title subdivision plan. If that draft Lot 3 is dedicated or acquired by 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 3m (including no deep soil). Articulation is within the 6m setback. 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. Additionally, there are no proposed privacy measures to the adjoining property to the north.

11.14. 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 not been met. Only approximately 156m of the street frontage length of approximately

370m (approximately 42%) of the street boundary has a street setback of 6.0m, and it is therefore considered that there are insufficient deep soil setbacks sufficient for substantial landscaping to meet the precondition. The setback of the HSF is only 3m to the street and almost wholly burdened by ramps, services, and an awning. The HSF northern setback has no deep soil.

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:

- There is insufficient deep soil setbacks provided to the development as a whole to provide substantial landscaping.
- 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.

11.15.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 breach of the building height control in SSLEP 2015 clause 4.3.
- A clause 4.6 exception request is required for breach of the floor space ratio control in SSLEP 2015 clause 4.4 as uplifted by section 17 of the Housing SEPP.
- A clause 4.6 exception request is required for non-compliance with Section 18(2)(d) (deep soil) and 18(2)(e) solar access, of the Housing SEPP.
- The floor space uplift sought due to the provision of affordable housing under State Environmental Planning Policy (Housing) 2021 has been incorrectly calculated including the floor space of the Health Services Facility. A new calculation is required excluding the floor space of the Health Services Facility.
- Clarification is required as to why the following components of the development have not been included in the GFA calculation:
 - The access hallway to the north-eastern component of Building A;
 - The lobby to the southernmost lift core of Building B fronting Taren Point Road; and
 - The horizontal components of the fire isolated corridors.

- An updated GFA calculation plan is required including these elements of the development as GFA.
- Identification of all proposed affordable apartments on the plans is required, along with a plan showing the CAD calculation of the GFA of the residential component of the development and the GFA of the affordable apartments.
- Building separations between the buildings internally and between the HSF and the residential building to the north of the site should be amended to comply with the ADG recommendations in order to provide sufficient acoustic and visual privacy.
- 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)
- To ensure the architect's design intent is realised, larger scale detail sections (minimum 1:20) should be provided to assist in providing a better understanding of the quality of finish being proposed. The sections should show balcony /balustrade details, soffit finishes and material junctions. Types of balustrades, handrails, screens and fences must be clearly documented.
- Long sections for all ramps are required to ensure head height compliance is achieved with AS2890.1 and AS2890.2.
- A loading dock facility is required in Building B and the HSF, which includes 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.
- The location of the hydrant booster does not allow for access via a hardstand within the site. Information is required to show how access is achieved to the booster without loss of on-street parking.
- Swept paths are required to show the suitability of the turning spaces at the end of the blind aisles, particularly in Basement 2 of the Health Service Facility and for garbage servicing.
- Updated plans for communal open space which removes areas of less than 3m in width, removes areas which are not properly identified as communal open space in accordance with the ADG recommendations, Shadow plans must illustrate that a minimum of 50% of the communal open space achieves a minimum of 2 hours between 9am to 3pm on 21 June.
- Accurate storage calculations which align between the plans and the schedule must be provided for both external and internal storage. The unit should have storage which is compliant with the ADG recommendations.
- Dimensions of the balconies must be provided to demonstrate compliance with the private open space recommendations of the ADG.
- Master bedrooms should comply with the ADG recommended minimum size of 10m² plus robe, which some do not.
- Room depths to glazing should be reconsidered to provide an open plan area which does not exceed 8m from glazing as recommended by the ADG.
- Details of the location of clothes drying facilities is required. If clothes drying on balconies is proposed, the provision of screening devices will be required which may further reduce the solar access available to apartments and increase the visual bulk of the development.
- The solar access plan in DA401 is inadequate because:
 - it has not been revised from the plan originally provided with DA21/1251, despite the applicant

acknowledging during the assessment of DA21/1251 that the solar access plans were incorrect due to the incorrect placement of the north arrow in the survey;

- it does not differentiate between solar access to the living areas and solar access to the private open spaces of the units (separate calculations are required under the ADG and the Housing SEPP);
 - DA401 merely seeks to demonstrate solar access provision for 2 hours under the ADG. No plan demonstrates compliance for 3 hours as required under the Housing SEPP;
 - A review of the view from the sun diagrams in DA422 indicates that the numbers of units identified as receiving 2 hours solar access is incorrect and inflated. A revised calculation is required reflecting the view from the sun diagrams in DA422 provided in this application DA23/0420.
 - The number of units receiving no direct sunlight is identified as 8 in building A and 10 in Building B. A review of DA422 indicates there are approximately 12 units in Building A and 23 units in Building B with no solar access.
 - The impacts from the sun hoods does not appears to have been included in the assessment in DA401.
 - Drawing DA401A does not accurately quantify the extent of solar access demonstrated in suns eye diagrams (DA422A) or provide assessment in accordance with the objectives of the ADG.
 - Solar access in DA401 is quantified between 8am and 3pm, mid-winter not 9am and 3pm mid-winter as required.
- Insufficient information has been provided to quantify the extent of over shadowing of the neighbouring buildings to the south. A detailed solar analysis (suns eye view preferred) that shows habitable room location, areas of POS and quantifies the solar access available to the neighbouring properties is required. It must also quantify the extent of solar access now available to the neighbour between 9am and 3pm and the amount following the proposal with the proposal refined to minimise loss of solar access to the neighbour.
 - Internal sun studies of each unit provided to demonstrate ADG compliance with both the duration and quality of solar access.
 - 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.
 - The HSF includes no privacy treatments to the northern neighbour. Privacy treatments to the HSF must be identified to Building B and to the building to the north of the site.
 - There is no management plan provided for maintenance and management of the through-site link.
 - Further details are required as to whether the area which is identified for acquisition by Council and whether it is to be subject to a separate Torrens Title Lot.

- Further details are required regarding the proposed subdivision with updated subdivision plans required that address the concerns identified in this report.
- The proposed staging is not acceptable and must be removed so that the HSF is built at the same time as the residential units.
- The BASIX certificate refers to the incorrect number of apartments.
- The Waste Management Report addresses plans which are inconsistent with the plans lodged with the Application.
- The Arborist Report contains inconsistencies in relation to the retention/removal of street trees.
- The Geotechnical Investigation and Groundwater Impact Assessment Reports reference updated plans to be supplied shortly (May 2023), indicating updated reports would be required when the plans were provided.
- Elevations are not provided for the western internal elevations of Buildings A and B and the eastern internal elevation of Building B.
- 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 most deeply below ground level. Sections should be provided between the public domain and all units below street level and the through site link to the HSF drop off area and between A1.G.01 across the OSD to the pedestrian entry walkway.
- Insufficient information has been provided to clearly demonstrate the level difference between the public footpaths within the public domain and proposed ground and lower ground floor units. An overlay of the survey should be provided on Level 1, ground and lower ground floor plans. Ideally design levels of future street foot paths should also be provided.
- Inadequate streetscape elevations are provided. Streetscape elevations should include the two adjoining developments to the north of the site to allow assessment of the compatibility of the height and bulk of the development in its context.
- A section through the site showing the outline of the development on 11 Hinkler Avenue is required to allow assessment of the compatibility of the height and bulk of the development in its context.
- A section through Building A showing the outline of the development on 17-21 Gardere Street is required to allow assessment of the compatibility of the height and bulk of the development in its context.
- Detail sections should be provided to determine if skylights located within the communal open space compromise the privacy of residential units and provide ADG compliant cross ventilation / solar access to residential units.

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:	\$483,470.00
Local Contribution:	\$1,496,529.00
Total:	\$1,980,000.00

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 116 new residential units (noting 242 units total but 126 affordable housing units which don't get levied) 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, the 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 6 households (with 6 unique submissions). 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.

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 the required amenity.

The proposal relies upon the uplift of FSR and building height under clause 6.21 of the SSLEP 2015. The application has failed to provide building setbacks sufficient for deep soil planting of substantial landscaping and therefore has not satisfied the preconditions of the clause for those uplifts. The application therefore seeks to rely on a height limit which is 11m higher than the control and an FSR which is 1.45:1 greater than the control.

This results in a building height exceedance of up to 14.3m or a 259% variation. The proposal includes a request for 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.

The application seeks an FSR of 2.5:1. The combination of the FSR control in clause 4.4 of the SSLEP 2015 and the uplift under clause 17(1) of the Housing SEPP provides for an FSR control of 1.05:1. There is a 13,665.45m² exceedance of the GFA allowable being a 138% variation to the control. No clause 4.6 exception request has been provided and the application must therefore be refused.

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. DA23/0420 cannot be supported for the reasons outlined in this report.

The officer responsible for the preparation of this Report is the Senior Manager, Development Services who can be contacted on 97100333.