

## SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSSH-161
<b>DA Number</b>	DA24/0086
<b>LGA</b>	Sutherland Shire
<b>Proposed Development:</b>	Health Service Facility - Construction of a new two storey health services facility (hospital) with associated landscaping works
<b>Street Address:</b>	9-13 Shackel Road, Bangor 2234
<b>Applicant/Owner:</b>	Grimshaw Architects (Michael Jeneke) / Bangor 9 Pty Ltd
<b>Date of DA lodgement</b>	26 February 2024
<b>Number of Submissions:</b>	28, including 21 unique objections
<b>Recommendation:</b>	Refusal
<b>Regional Development Criteria</b>	Clause 5, Schedule 6 State Environmental Planning Policy (Planning Systems) 2021 - estimated development cost > \$5M – Private infrastructure and community facilities
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• Rural Fires Act 1997</li> <li>• Water Management Act 2000</li> <li>• Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).</li> <li>• Sutherland Shire Development Control Plan 2015 (SSDCP 2015).</li> <li>• Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• NSW Rural Fire Service (NSW RFS) Response Letter(s)</li> <li>• Ausgrid Response Letter</li> <li>• Report from the Design Review Panel</li> <li>• Clause 4.6 statements – Building Height / Landscaped Area</li> <li>• Compliance table – Sutherland Shire Development Control Plan 2015</li> </ul>
<b>Report prepared by:</b>	Evan Phillips - Senior Development Planner   Sutherland Shire Council
<b>Report date</b>	18 November 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. Section 4.6 of Chapter 4 of SEPP Resilience and Hazards 2021 -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**

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#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**

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

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#### Conditions

Have draft conditions been provided to the applicant for comment? **Not Applicable**  
**Recommendation**  
**for refusal**

## REASON FOR REFERRAL TO SSPP

The application is identified as Regionally Significant Development in accordance with Clause 5, Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021, as the development is for private infrastructure and community facilities which exceeds a estimated development cost (EDC) of \$5 million. The applicant's submission / EDC is \$26,189,594.00.

## PROPOSAL

The proposal is for the construction of a two to storey, health services facility (hospital), above one level of basement parking. The ground floor level accommodates a mixture of bedrooms and multi-purposed day rooms to be used for a variety functions, from day recovery to additional consultation or treatment spaces. The first floor level contains medical treatment and other supporting rooms.

## THE SITE

The subject site is located off the western side of Shackel Road approximately 90m south of the intersection of Pyree Street in Bangor. The site also adjoins the road reserve of Bangor Bypass to the south.

## ASSESSMENT OFFICER'S RECOMMENDATION

### 1.0 THAT:

- 1.1 That Development Application No. DA24/0086 for Construction of a health services facility (hospital) with associated landscaping works at Lot 1 DP 1047691, Lot 2 DP 1047691, Lot 50 DP 1170531, Lot 51 DP 1170531 9 Shackel Road, Bangor, 9R Shackel Road, Bangor, 13 Shackel Road, Bangor, 9 Shackel Road, Bangor is determined by the refusal of development consent for the reasons outlined below.
- a. The application is unacceptable pursuant to the provisions of Part 1.3 of the Environmental Planning and Assessment Act 1979 – Objects of Act. The development does not demonstrate orderly development of the land due to the site not being suitable for the proposed sensitive land use given the unresolved matters in relation to bushfire and flood risk and a substantial number of unresolved urban design and environmental planning concerns.
  - b. The application is unacceptable pursuant to the provisions s4.47 of the Environmental Planning and Assessment Act 1979 as the land use, being classified as integrated development, has failed to obtain General Terms of Approval from the NSW Rural Fire Service being for a land use identified as for a Special Fire Protection Purpose under Section 100b of the Rural Fires Act.

c. The application is unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as follows:

- i) The proposal is inconsistent with the R2 – Low Density Residential objectives as outlined in Sutherland Shire Local Environmental Plan 2015. The proposal fails to protect and enhance existing vegetation and when considered in the context of a multi dwelling housing typology, the proposal fails to ensure the single dwelling character, landscaped character, neighbourhood character and streetscapes of the zone is maintained and not diminished by the cumulative impact of the development.
- ii) The proposal fails to comply with the maximum 8.5m building height development standard as set out in Clause 4.3 of Sutherland Shire Local Environmental Plan 2015 and applicable objectives of the clause. The height and scale of the non-residential building in the low density residential zones is not compatible with adjoining development, and the desired scale and character of the street and locality. Impacts on nearby properties (including from visual intrusion) have not been minimised.

The submitted justification is not accurate nor well founded and the provisions of clause 4.6(3) have not been achieved and the exception to the development standard is therefore not supported.

- iii) The proposal fails to comply with objectives for floor space ratio as set out in Clause 4.4 of Sutherland Shire Local Environmental Plan 2015. The proposal is not in keeping with the characteristics of the site and the local area, the bulk and scale of the new building is not compatible with the context of the locality. The density and intensity of the land use fails to take into account the environmental constraints and values of the site, the amenity of adjoining land and the public domain, availability of infrastructure to service the site, and the capacity of the road network to accommodate the vehicular and pedestrian traffic the development will generate.
- iv) The proposal fails to comply with the minimum 35% landscaped area required under Clause 6.14 of Sutherland Shire Local Environmental Plan 2015 and the applicable objectives of the clause. The deficiency in landscaped area within the site inhibits the ability for the development to reinforce the desired landscape setting of the locality or provide suitable landscape treatment and landscaped relief between properties. The proposal further presents unacceptable encroachments to trees within and on adjoining lands adversely impacting their health and viability for retention.

The submitted justification is not accurate nor well founded and the provisions of clause 4.6(3) have not been achieved and the exception to the development standard is therefore not supported.

- v) The proposal fails to satisfy the relevant Urban Design objectives of Clause 6.16 and 6.18 of Sutherland Shire Local Environmental Plan 2015 in that high quality design and development outcome for the urban environment of Sutherland Shire has not been attained nor that the natural environment adequately protected. The development fails to adequately acknowledge and fit appropriately within the established low density residential context.
  - vi) The proposal fails to satisfy the objectives of Clause 5.21 / 5.22 (Flood Planning / Special Flood Considerations), along with Clause 6.4 (Stormwater Management) of Sutherland Shire Local Environmental Plan 2015. The application fails to demonstrate the suitability of the site for the proposed sensitive land use or provide suitable information to demonstrate acceptable impacts (both within the site and adjoining properties) during critical design storm/flood events.
- d. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that it fails to comply with the relevant provisions of Sutherland Shire Development Control Plan 2015 with respect to the following chapters:
- Chapter 5 – Multi Dwelling Housing
  - Chapter 36 – Vehicular Access, Traffic, Parking and Bicycles
  - Chapter 38 – Stormwater Management
  - Chapter 39 – Natural Resource Management (Greenweb / Tree and Bushland Vegetation)
  - Chapter 40 – Flood Risk Management
- e. The application is deficient of information to enable Council to carry out a proper and complete assessment. The following information is missing from the application or is considered to be inadequate to enable a complete assessment of the development application.
- Further analysis of the surrounding road network and potential traffic generation / traffic study including car parking provision.
  - Further modelling / detailed Overland Flow and Flood Analysis.
  - Further information in relation to the protection of trees on site and adjoining lands.
  - Hydraulic assessment / design advice, with the support of NSW Fire and Rescue (NSWFR).
  - Further detail relating to the operational aspects of the land use including a detailed operational Plan of Management (POM).
  - Full detailed revised architectural / landscape plans including site plan, floor space ratio and landscaped area calculations.

- Revised / accurate written requests to vary the development standards for building height and landscaped area under Clause 4.6 of Sutherland Shire Local Environmental Plan 2015.

f. Pursuant to the provisions of Section 4.15(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case approval of the development would set an undesirable precedent for similar inappropriate development. Due to impacts espoused in this refusal the application is not in the public interest.

## **ASSESSMENT OFFICER'S COMMENTARY**

### **2.0 DESCRIPTION OF PROPOSAL**

The proposal is for the construction of a new two to three storey health services facility (hospital) above one (1) level of basement parking. This includes:

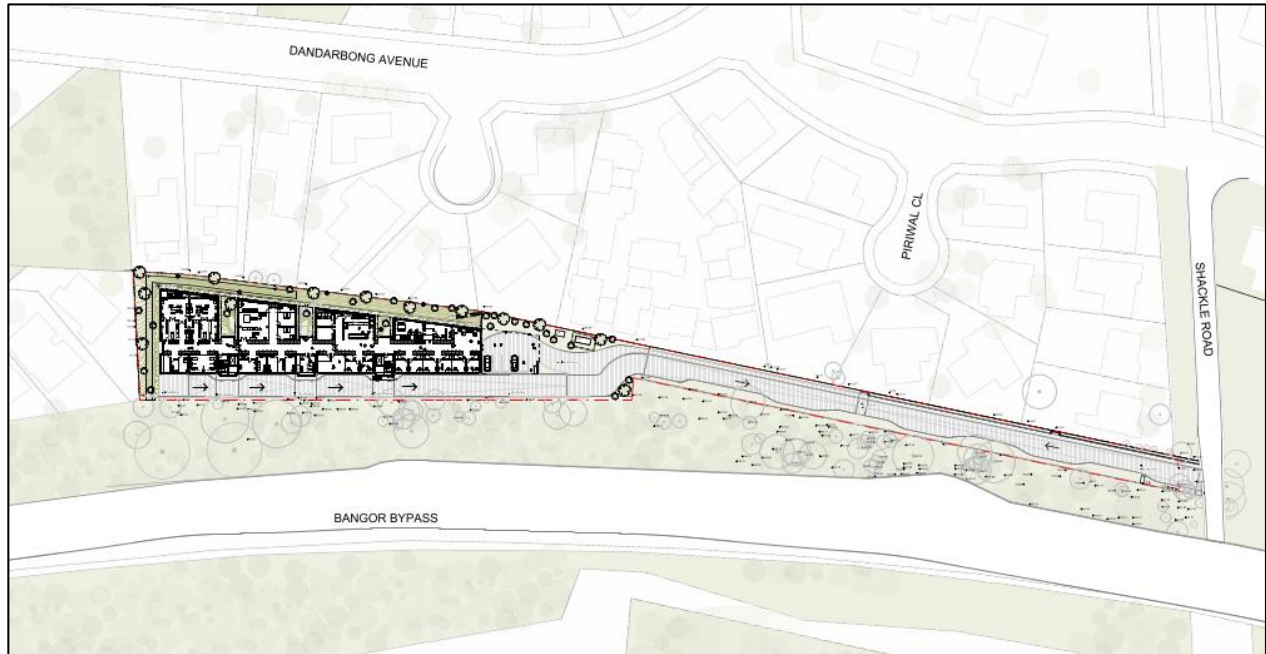
- Basement level: provides 49 parking spaces, including 2 accessible spaces, 3 motorcycle parking spaces, 14 bicycle parking spaces.
- Ground floor level: accommodates a mixture of bedrooms and multi-purposed day rooms, totalling 30 rooms. The plans indicate these will be used for a variety functions, from day recovery to additional consultation or treatment spaces. Three nurses' stations, toilets, including an accessible bathroom, are also provided. This level also accommodates administration spaces including office/meeting rooms, staff rest areas, allied health space, kitchen, storage and cleaning station.
- First floor level: contains the main pedestrian access for the centre which is oriented towards Shackel Road and opens directly to the reception space. There are 5 car parking spaces adjoining the building entry. Two medical treatment rooms are provided. Support spaces are included for prep, scrubs, clean and dirty rooms, utility, storage, sterile stock and 4 recovery rooms. There are also rooms for imaging, pathology, staff, pharmacy, change rooms and recovery.

A single width driveway with a length of approximately 160m is proposed from Shackel Road with passing bays approximately every 30m. The driveway splits to reach the 5 at-grade parking spaces provided at the front of the building and to provide a secondary two way driveway along the southern boundary to access the basement parking level. The proposal requires the removal of eight (8) trees existing on the site and landscaping is proposed around the site's peripheries. The development will be built on two major stormwater flow paths and it is proposed to build a detention basin along the northern and western side of development.

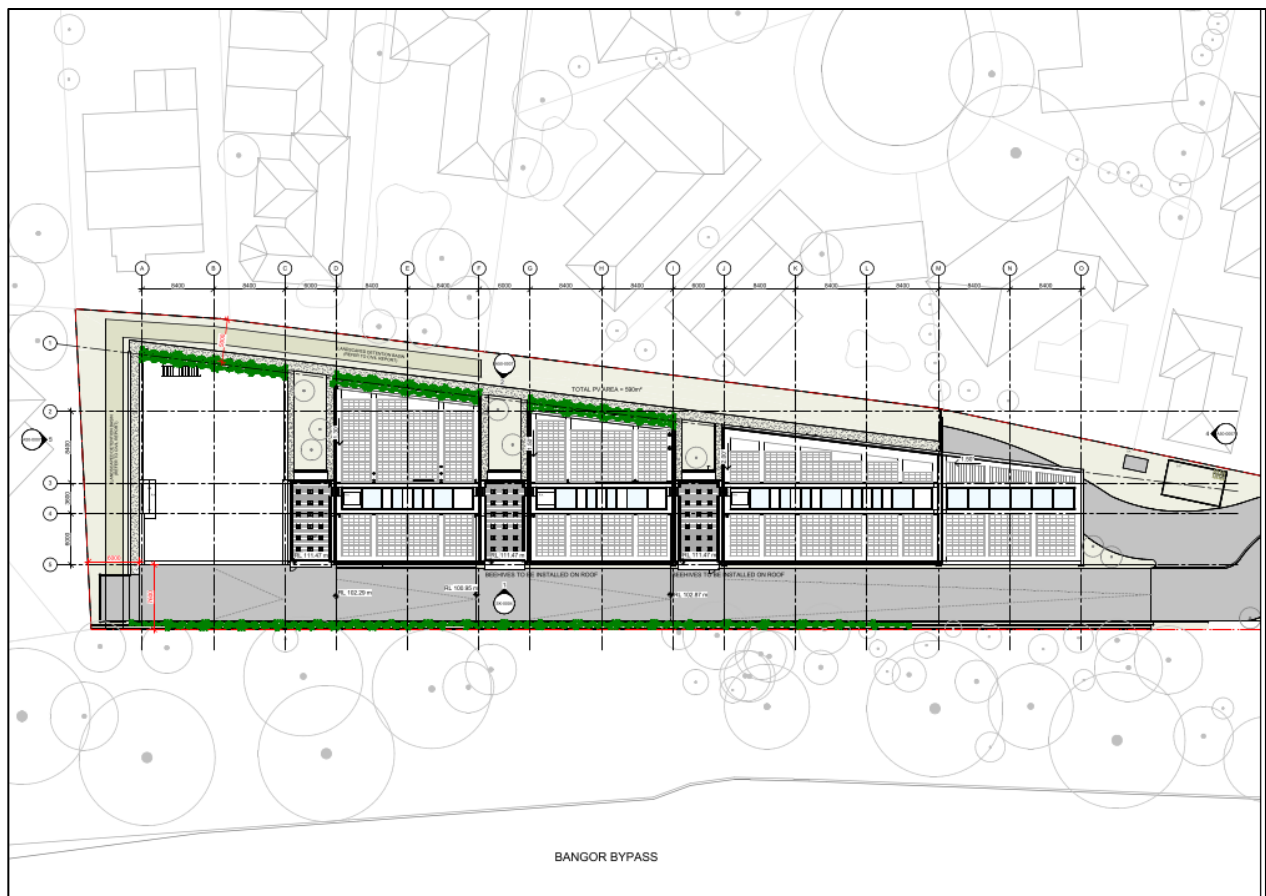
The health services facility (hospital) is proposed to have a potential capacity of 85 people at any one time, including 55 patients and 30 staff and operate for 24 hours with overnight stay.

The application was revised during the assessment. The main change to the development scheme involved the removal of the upper-level treatment and recovery rooms on the western side of the building (including an associated reduction in building height) and its replacement with an outdoor rooftop patio.

Figure 1 and 2 shows the original site plan and revised plan in the location of the developable site portion.



*Figure 1: Original Whole of Site Plan*



*Figure 2: Revised plan in the location of the developable site portion*



*Figure 3: Perspective plan at western side of proposed building.*



*Figure 4: Perspective Plan of eastern side of proposed building.*

### **3.0 SITE DESCRIPTION AND LOCALITY**

The subject site is located off the western side of Shackel Road about 90m south of the intersection of Pyree Street and Shackel Road in Bangor. The site also adjoins the classified road reserve of Bangor Bypass to the south.

The site comprises 4 unconsolidated parcels of land accessible from the western side of Shackel Road. The combined site is irregular in shape and has an area of about 5,802m<sup>2</sup>. The access corridor is 10.3m wide and 160m long and has frontage to Shackel Road. The site is defined as an 'internal lot' under Sutherland

Shire Local Environmental Plan 2015 with the area of the access corridor being approximately 1612m<sup>2</sup> and the buildable portion on the western side of the site with an area of approximately 4190m<sup>2</sup>. The buildable area of the site is 17m long at the eastern boundary, widening to approximately 38m at the western most boundary and is 143m long. The overall depth of the site is approximately 310m in an east west direction.

The land falls about 2 – 4m from the northern boundary to the southern boundary. The Bangor Bypass road corridor adjoins the site to the south and the land is currently devoid of any significant vegetation. There are 3 open drainage channels crossing the site which are mapped as being creeks under Council's mapping system.

Adjoining development comprises predominantly low density residential development and single detached dwellings. Eleven properties adjoin the northern boundary and 1 adjoins the western boundary. There is one medium density development adjoining the site to the north which is not typical of the context. Bangor Primary School is about 100m to the north of the site.

**Figure 3** shows an aerial photo of the subject site and **Figure 4** shows the site and surrounding land use zoning.



*Figure 5: Aerial Photograph of Site*

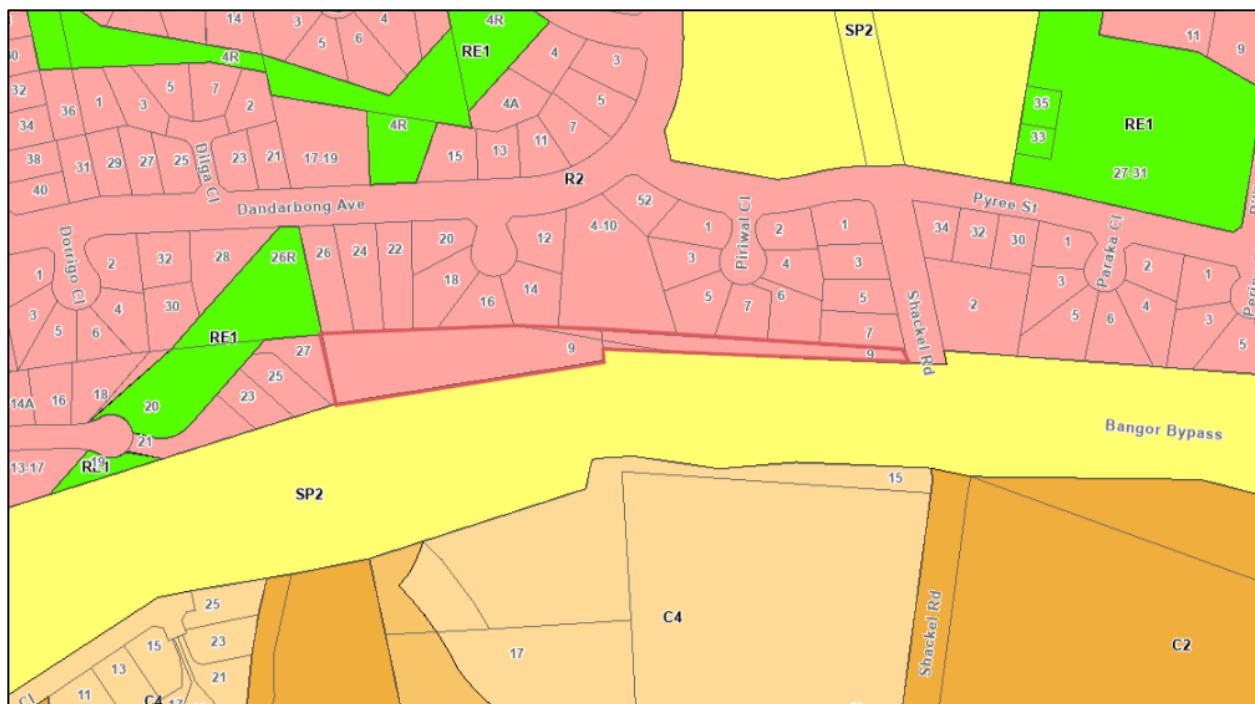


Figure 6: Zoning Map

#### 4.0 BACKGROUND

A history of the development site and proposal is as follows:

- DA17/0532 for the construction of 17 townhouses was submitted on 10 May 2017 and withdrawn on 6 December 2017.
- DA18/0710 for a Community title subdivision of the land into 4 residential lots and 1 community association lot was approved by the Sutherland Shire Local Planning Panel on 7 July 2020.
- A pre-application discussion (PAD) was not held for this development proposal.
- The current application was submitted on 5 March 2024.
- The application was placed on exhibition, from 7 March 2024 until the 8 April 2024.
- The Preliminary Briefing with the Sydney South Planning Panel occurred on 22 April 2024.
- The Sydney South Planning Panel site inspection was undertaken on 24 June 2024.
- Council officers via letter dated 24 July 2024 advised the applicant of extensive concerns arising from assessment. It was recommended that the application be withdrawn to enable sufficient time for the applicant to address the issues. Alternatively, the following matters were requested to be addressed by 22 August 2024 (within 28 Days).
  - Bushfire Risk – The New South Wales Rural Fire Service (NSW RFS) response indicating deficiencies in the submitted bushfire report and the failure to satisfy Planning for Bush Fire Protection 2019 (PBP 2019) including the proposed performance solution to "shelter in place" plan in event of a bush fire. General Terms of Approval have not been issued.

- Stormwater Management & Flood Risk - The basement and continuous linear built form requiring the extreme diversion of two major flow paths not being supported and deficiencies in the Flood Impact Assessment / Catchment Analysis.
- Site Identification – The need to identify the site as an ‘internal lot’ under SSLEP2015 and corresponding application of relevant development standards and controls.
- Building Height – Non-compliance and concerns regarding the linear massing and height of the building within the site and its potential adverse impact upon adjoining properties. This is noting that both SSLEP2015 and SSDCP2015 would envisage single storey development within an internal lot (when multi dwelling standard is proposed) or within a rear site 40% site portion (when SSDCP2015 controls for both multi and single dwellings are imposed).
- Building Density – Notwithstanding numeric compliance across the whole of site, the density of the proposed building is not considered commensurable in terms of density / scale to the developable site portion in which the building is sited (0.62:1).
- Landscaped Area – Incorrect calculation as the access corridor to or from the lot is taken to be excluded from the site area in accordance with SSLEP2015 (further reduced to 19.5%). The deficiency inhibiting the ability for the development to reinforce the desired landscape setting of the locality or provide suitable landscape treatment and landscaped relief between properties (noting further ecological considerations and site being identified as a greenweb support area).
- Setbacks and Finished Levels - The development not achieving a 3m setback from the boundary to the basement inhibiting deep soil landscaping and significant alteration and the raising of the existing levels at the property boundary where adjoining the entry reception / car parking area.
- Design Review Panel - Design changes and a written response to each of the recommendations made by the DRP is required noting that a number of substantial concerns are also raised and resolution of these matters would also result in a different development scheme and urban design outcome than currently presented.
- Landscape / Environmental Considerations – The proposal presenting a number of impacts to trees on adjoining lands (including the public way) and requiring the removal of an established Red Bloodwood (*corymbia gummifera*) within the site which is worthy of retention. The failure to satisfy Council’s Greenweb Support strategy and the need to increase the landscaped area and provide for a successful landscape design / strategy to ameliorate impacts associated with the built form, to soften the abrupt transition of the different building forms / land use typologies and to enhance neighbouring amenity.
- Traffic Impact & Parking – Deficiencies in the submitted traffic and parking assessment including clarification of the specifics of the development, an appropriate analysis of the surrounding road network and potential traffic generation and plan details.
- Contaminated Land – As a result of site observations, investigation in the form of a detailed site investigation (DSI) is required to determine whether the site is suitable for the proposed

development; or whether the site can be made suitable for the proposed development through the implementation of a remediation action plan (RAP).

- Other Design Matters – Absence of a Building Code of Australia (BCA) assessment report and hydraulic information that assesses the capability of the design to achieve BCA compliance and confirm compliance capability with the NSW Fire and Rescue Fire safety guideline – ‘Access for fire brigade vehicles and firefighters.
- Operation / Neighbourhood Amenity – 24 hour operation does not comply with the hours of operation anticipated for this ‘low activity area’ under SSDCP2015 (i.e. Base hours 6am-10pm / Extended hours 6am – midnight). Absence of a detailed Operational Plan of Management (POM) detailing the operational aspects of the land use to inform the planning assessment and to assess associated impacts.
- A letter of response was provided by the applicant 31 July 2024 indicating that insufficient time has not been afforded to respond with full technical detail to each of the matters raised nor sufficient time been provided to engage with specialist consultants.
- An Assessment Briefing with the Sydney South Planning Panel occurred 26 August 2024. The next steps provided by the Panel included.
  - Applicant to submit information to RFS by 9 September 2024
  - If RFS grant's concurrence, then a tentative determination date is set for 3 months from the Assessment Briefing (see below).
  - All outstanding RFI responses are required to be submitted to council by the applicant on or before 7 October 2024.
  - If the RFS does not grant concurrence, the applicant should consider withdrawing the application, or it will be determined, on a date to be advised, based on the information submitted at that time.
- The applicant submitted additional information on the following dates:
  - 6 September 2024 – NSW RFS response letter / technical advice note.
  - 19 September 2024 – Revised architectural plans and accompanying design change letter.
  - 26 September 2024 – Civil / stormwater plans.
  - 2 October 2024 – Detailed Site Investigation (DSI) report.
  - 5 October / 8 October 2024 – BCA Report / Draft and final Fire Engineering Design Report.

## **5.0 ADEQUACY OF APPLICANT’S SUBMISSION**

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

- Further analysis of the surrounding road network and potential traffic generation / traffic study.
- Further modelling / detailed Overland Flow and Flood Analysis.
- Further information in relation to the protection of trees on site and adjoining lands.
- Hydraulic assessment / design advice, with the support of NSW Fire and Rescue (NSWFR).
- Further detail relating to the operational aspects of the land use including a detailed operational Plan of Management (POM).
- Full revised and detailed /co-ordinated architectural / landscape plans including site plan, floor space ratio and landscaped area calculations.
- Revised / accurate written requests to vary the development standards for building height and landscaped area under Clause 4.6 of Sutherland Shire Local Environmental Plan 2015.

## 6.0 PUBLIC PARTICIPATION

The application was notified in accordance with the provisions of Appendix 1 of the Sutherland Shire Community Engagement Strategy 2023 (SSCES) and requirements of the SSPP until 8 April 2024. Council has received 28, including 21 unique objections and a summary of the main issues raised in the submissions is provided below:

- Proposal inconsistent with surrounding low density residential context and zone.
- Site suitability and inappropriate intensity of the land use.
- Building bulk and scale and visual impacts presented to the neighbouring properties.
- Non compliance with development standards and controls.
- Bushfire Safety concerns including resident / neighbourhood evacuation, emergency vehicle access, increased risk to locality.
- Parking and traffic congestion and impact on surrounding road network. Pedestrian safety concerns from increased traffic movements.
- Noise and amenity impacts from operation of the hospital including from 24 hour operation (including light spill, privacy / overlooking and view loss).
- Environmental / ecological concerns including impacts on native wildlife, removal of trees and greenspace.
- Property devaluation.
- Impacts to surrounding neighbourhood during construction.

**Officer Comment:** The key issues raised by the surrounding residents are generally considered to be substantive in nature and are discussed in further detail in the referral and assessment sections of this report.

## 7.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone R2 Low Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. A health services facility (Hospital) is prohibited and not identified as

a permissible use within the zone.

In accordance with Clause 2.60(1) of State Environmental Planning Policy (Transport and Infrastructure) 2021, Zone R2 is a prescribed zone and development for the purpose of health services facilities (Hospital) maybe carried out by any person on land in a prescribed zone with development consent.

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

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Sustainable Buildings) 2022
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).
- Sutherland Shire Section 7.12 Contribution Plans

## **8.0 COMPLIANCE**

### **8.1. State Environmental Planning Policy (Planning Systems) 2021**

State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) identifies State and Regionally Significant development in NSW. Clause 5, Schedule 6 of the SEPP identifies this application as regionally significant development as it has a capital investment of more than \$5M – Private infrastructure and community facilities. The applicant's submission / EDC is \$26,189,594. As such, the application is referred to the SSPP for determination.

### **8.2. State Environmental Planning Policy (Resilience and Hazards) 2021**

*Chapter 4 Remediation of Land (Previously SEPP 55)*

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.

The application involves a sensitive land use. While it is not included on Council's contaminated land register, Council has reason to believe the site may be contaminated due to the following:

- Suspected asbestos containing material was observed onsite during the site inspection.
- The site is covered with uncontrolled fill material which may contain various contaminants.
- Several stockpiles of material of unknown origin were observed at the site.
- Aerial imagery indicates that parts of the site has historically had agricultural activity on the site.

In response to concerns raised, the applicant has submitted a Detailed Site Contamination Investigation, which concludes:

- The site can be made suitable for the intended land use (hospital);
- Some limited contamination has been identified on the site:
  - Heavy metals within the soil; and
  - Surficial bonded (non-friable) asbestos-containing material.
- Some remediation will be required. A remedial action plan (RAP) must therefore be prepared.
- Some further investigation must be undertaken to determine the extent of the heavy metal contamination to inform the RAP.

The DSI does not state a requirement for an Unexpected Finds Protocol (UFP) which is considered to be warranted for this site, given the extent of uncontrolled fill material and the amount of building and demolition waste observed during the site inspection. Both the RAP and the further investigation can be required by condition. The remediation will likely be limited to the excavation of the affected soil material and hand-picking of visible surficial asbestos containing material. It is likely that the material to be removed falls within the material to be excavated as part of the planned basement carpark.

In conclusion the site can be made suitable for the intended land use (hospital) in accordance with requirements of the Resilience and Hazards SEPP.

### **8.3. State Environmental Planning Policy (Sustainable Buildings) 2022**

State Environmental Planning Policy (Sustainable Buildings) 2022 (the Sustainable Buildings SEPP) encourages the design and construction of more sustainable buildings across NSW. The overarching purpose of the Sustainable Buildings SEPP is to assist NSW's target of achieving net zero greenhouse gas emissions by 2050.

#### *Non-residential Development (chapter 3.2)*

In deciding whether to grant development consent to non-residential development, section 3.2 requires the consent authority to consider whether the development is designed to enable: the minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials, a reduction in peak demand for electricity, including through the use of energy efficient technology, a reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design, the generation and storage of renewable energy, the metering and monitoring of energy consumption, the minimisation of the consumption of potable water.

The proposed development has been designed to respond to the aims of the policy and satisfy the standards for non-residential development. An Ecologically Sustainable Design (ESD) Report has been prepared and is submitted with this application. Development consent must not be granted to non-residential development under the Sustainable Buildings SEPP unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified. A NABERS Embodied Emissions Materials Form has been submitted with the application, and the proposal is satisfactory with regard to this requirement.

#### **8.4. State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 11 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and conservation SEPP) sets out the plan objectives and planning principles for the Georges River Catchment. Part 11.4 includes a number of aims and objectives for the environment and water quality within the catchment. Appropriate stormwater management and water quality measures are proposed and there is likely to be minimal adverse impacts on water quality. Council is of the view that with the implementation of conditions of consent, the proposal would be consistent with the aims and objectives of the Biodiversity and Conservation SEPP 2021.

It is noted that as from 21 November 2022, new Chapter 6 of the SEPP consolidates Chapters 7-11 related to water catchments (including Georges River catchment). The Georges River Catchment is defined as a “regulated catchment.” Division 4 contains controls for development for specific purposes, including at Clause 6.21 (Stormwater Management).

#### **8.5. State Environmental Planning Policy (Transport and Infrastructure) 2021**

##### *Development Permitted with Consent (2.60(1))*

Development for the purpose of health services facilities (Hospital) may be carried out by any person on land in a prescribed zone with development consent. Zone R2 is a prescribed zone and the proposal is a permitted use with consent under the Transport and Infrastructure SEPP. There is no design criteria other than the matters detailed below.

##### *Development likely to affect an electricity transmission or distribution network (clauses 2.47 and 2.48)*

Division 5, Subdivision 2 of the Transport and Infrastructure SEPP relates to development that has the potential to impact on electricity supply. This application involves development carried out in proximity to electricity infrastructure and involves the installation on an electricity substation. As such Council has notified Ausgrid who have recommended conditions of development consent to be imposed in consideration of the proposed development and associated impacts on Ausgrid Infrastructure.

##### *Development with frontage to a classified road (clause 2.119)*

Division 17, Subdivision 2 of the Transport and Infrastructure SEPP relates to land in or adjacent to road corridors or road reserves. Whilst not accessible from the Bangor Bypass road corridor to the south, the site nevertheless shares a boundary to the road corridor which is identified as a classified road on Council's road hierarchy maps.

Before granting consent for development on land which has a frontage to a classified road the consent authority must be satisfied that certain factors have been considered. These factors include safety; efficiency of the road network; design, emission of smoke or dust from the development; nature, volume and frequency of vehicles; and the impact of traffic noise and emissions.

The site is accessed from Shackel Road and while there are concerns regarding the traffic impacts on the surrounding lower order residential roads, the proposal is not anticipated to affect the safety, efficiency or

ongoing operation of the Bangor Bypass classified road. Suitable noise attenuation measures are to be incorporated into the design (refer below).

*Impact of road noise or vibration on non-road development (Clause 2.120) -*

Division 17, Subdivision 2 of the Transport and Infrastructure SEPP also relates to development that may be impacted by road noise or vibration. This application is for a health services facility (hospital) and the site is adjacent to the Bangor Bypass classified road and is also identified on Council's Road and Rail Noise Buffer Map. The impact of road noise and vibration have been considered under clause 2.120.

The application has been accompanied by a noise assessment addressing the relevant acoustic criteria and NSW Department of Planning's Development near Rail Corridors and Busy Roads - Interim Guideline. Subject to conditions, suitable noise attenuation measures are incorporated into the design of the buildings and an acceptable acoustic environment and reasonable amenity will be achieved for future occupants.

*Traffic Generating Development (Clause 2.122) –* Due to the size / capacity of the health services facility (hospital) - (i.e. less than 200 beds) the development is not triggered by Schedule 3 of the SEPP and is not identified as Traffic Generating Development.

#### **8.6. 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.

#### **8.7. Sutherland Shire Local Environmental Plan 2015**

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

<b>Sutherland Shire Local Environmental Plan 2015</b>			
<b>CLAUSE</b>	<b>REQUIRED</b>	<b>PROPOSAL</b>	<b>COMPLIANCE</b>
<b>Cl.4.3 Height of Building</b>	Max 8.5m  Note: Cl4.3(2D) (Internal lot) Max 5.4m (multi dwelling housing)	10.3m	No  (1.8m / 21.17% variation)  Refer to assessment discussion.
<b>Cl.4.4 Floor Space Ratio</b>	Max 0.55:1 (3131m <sup>2</sup> )	0.39:1 (2263m <sup>2</sup> )	Yes

<b>Cl.6.14 Landscaped Area</b>	Site Area as per Clause 6.14 (i.e. excluding handle from calculation of site area (site area approx. 4190m <sup>2</sup> )  Min 35% (1466.5m <sup>2</sup> )	Council Calculation –Approx 15.7% (658m <sup>2</sup> )	No – Refer to assessment discussion. (808.5m <sup>2</sup> shortfall / 55.1% variation)
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### 8.8. Sutherland Shire Development Control Plan 2015

There are no specific SSDCP2015 controls for the land use typology proposed. The application of Chapter 35 “Other Uses” of SSDCP 2015 has the effect of requiring the development to comply with the general development controls that set building form which apply to the predominant use in the zone.

The application proposes to adopt the multi dwelling development controls as the predominant land use within the zone. The characterisation of the area in the immediate locality is predominantly single detached dwellings, noting the site immediately adjoins the rear yards of 11 single dwelling sites and a single storey ‘villa’ housing development. Notwithstanding this, the development controls contained within SSDCP2015 for both ‘single dwellings’ and for ‘multi dwelling housing’ have a similar effect with respect to providing the relevant site planning and built form controls so as to reinforce the low density residential context.

A summary of the main numeric development standards and controls applicable to the application including a compliance checklist relative to these is provided in **Appendix A**

### 9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

#### NSW Rural Fire Service (NSW RFS)

The application is for a ‘special fire protection purpose’ (SFPP) and is integrated development under s100B of the Rural Fires Act. Accordingly, the application was referred to the NSW Rural Fire Service (NSW RFS). Additional information was requested by the NSW RFS to enable further consideration of the proposal.

The applicant provided additional information in relation to the bushfire risk on 6 September 2024 in accordance with the Panel Direction and separate referral to the NSW RFS was made. Council received written advice from the NSW RFS which is attached as **Appendix B**.

In summary, General Terms of Approval have not been granted. The applicant’s response is indicated to be preliminary in nature and remains reliant on a “shelter in place” approach for the proposal which is not supported. Additionally, the deviation from the requirements for Class 9 buildings established by Appendix B of the Addendum to PBP 2019 has not been sufficiently justified.

Further information is requested by the NSW RFS to substantiate the proposed conceptual bush fire design and compliance strategy that demonstrates compliance of the proposal, in its current form, with the performance criteria for Special Fire Protection Purpose (SFPP).

A further fire engineering design report addressing standards of construction was submitted by the applicant on 5 October 2024 (post the Panel Direction above however prior to 7 October 2024 being the timeframe for all other supporting information to be submitted in accordance with the Panel Direction). The NSW RFS have been made aware of this submission via the NSW Planning Portal. At the time of preparing this assessment report, there has been no formal response provided by the NSW RFS.

#### **Department of Planning and Environment – Water (DPE - Water)**

The application was referred to DPE - Water under s.91 of the Water Management Act 2000 on 15 November 2024 to determine the order of the watercourse on the western side of the site and whether the works would require a controlled activity approval. This matter is further discussed in the assessment component of this report. At the time of finalising this assessment formal response had not been received by Council.

#### **Ausgrid**

The application was referred to Ausgrid pursuant to Clause 2.48 of the Transport and Infrastructure SEPP. Ausgrid do not object to the proposal and have recommended conditions of development consent to be imposed in consideration of the proposed development with Ausgrid Infrastructure. A copy of the response is contained in **Appendix C**.

#### **NSW Police Force**

In accordance with the Crime Risk Assessment – Police & SSC Protocol the application was referred to the NSW Police Force. It has been advised that Crime Risk Assessment is not necessary and the crime in the area is currently low and it is expected that the development will have minimum impact on resources.

**Officer Comment:** Notwithstanding the absence of any recommended conditions of consent, consideration to CPTED principles has been given in the assessment of this application. In the event of an approval suitable conditions would be imposed to further enhance safety and security within the development site and immediate surrounds.

#### **Design Review Panel (DRP)**

The application was considered by Council's Design Review Panel (DRP) on 30 May 2024. The Panel acknowledged that some care had been taken in the preparation of the development proposal. However, the Panel considered that the site context and analysis needed further work. It was considered that the site analysis underpinning the proposal was inadequate in some key areas.

It was considered that there were a few fundamentally inappropriate design strategies, and an alternative proposal must be developed that takes more account of the detailed contextual characteristics of the site if support is to be granted by the panel. To progress this application, the DRP recommended further

consideration/clarification on a number of issues. A copy of the DRP report is provided at **Appendix D** and a summary of the main issues raised is as follows:

- *The proposal's lack of acknowledgement of multiple stormwater easements that affect the site and to respond will greatly affect the planning of the current application.*
- *The building is not within the expected typology anticipated (i.e. zoning anticipates residential typology and the proposal is industrial style).*
- *Site planning response approach inhibits tree screening that may have helped in this regard of bulk and scale impacts to neighbours. Suggestions made in relation to building massing / siting.*
- *Council's DCP housing requirements essentially requiring a double level towards the street and a single level beyond to mitigate impacts. Arguments need to be presented and strengthened in this regard.*
- *The scheme in its current design is too large and impactful in its context and a review of the design strategy is needed.*
- *Impacts of light spill to adjoining properties.*
- *Plan detail in relation to fire stair function.*
- *Commitment to battery storage and EV charging stations throughout the carparking.*
- *The landscape response combined with bushfire requirements results in an outcome that is not satisfactory in relation to amenity and response to the building mass and scale.*

Revised Architectural Plans in response to the Design Review Panel were submitted by the applicant proposing the following amendments to the building design.

- **Height Reduction:** lowering of the height of the building at the southwest corner by converting the area previously designated for treatment rooms into an outdoor rooftop patio to bring the building below the 8.5m height limit.
- **Vertical Gardens:** Incorporation of vertical gardens along the solid walls on the northwest boundary and on the inside face of the bushfire protection wall along the vehicle ramp.
- **Installation of Beehives:** Installation on the roofs above the core areas to enhance biodiversity and plant health.

**Officer Comment:** An assessment of the urban design considerations including applicant's response to the commentary of the DRP is contained within the assessment component of this report.

### **Traffic Engineer**

Council's Traffic Engineer has reviewed the submitted Traffic and Parking Assessment and has identified a number of deficiencies. This prevents a detailed assessment of the proposal with respect to site suitability and traffic related impacts.

Clarification of the specifics of the development, hours of operation, maximum number of patrons and staff numbers at any given time is required to be considered to properly inform the traffic analysis. Details/plans for the proposed vehicle crossing at Shackle Road and the carpark ramp width need to be provided and be to a width that suits the level of activity of this development.

Clear swept path diagram/s of the MRV entering and exiting the carpark in a forward direction need to be provided. The report currently shows that the MRV is unable to enter the allocated service bay, with the MRV path being on top of the kerb or running through the wall. The carpark will also need to provide a dedicated turning area. This means that when the carpark is full, all vehicles could enter and exit in a forward direction.

Further analysis of the surrounding road network and potential traffic generation and parking is also required, and a more robust traffic study is required addressing the following:

- Traffic generation and parking numbers should be extrapolated from an appropriate traffic study of comparable development(s), size, location, and accessibility.
- The adequacy of access via Shackle Road for the scale of this development needs to be addressed, given the narrow road widths and lack of footpath for pedestrian access. Should the development have a high level of pedestrian movement to and from site, a solution to enable safe pedestrian movements is required.
- SIDRA analysis is required for the intersection at Dandarborg Ave/Menai Rd and Pyree St/Shackle Rd for AM and PM peak.
- Due to the increase of traffic generation from the proposed development a safety analysis is required for Pyree St/Shackle Rd intersection. The narrow road widths, proximity to school, and parking at Pyree St can become an issue with increased turning movements at this intersection. Consideration of gap checks, sight distance checks, and pedestrian and parking survey during school drop off and pick up times is required.

**Officer Comment:** The applicant was made aware of the above noted concerns via letter dated 24 July 2024. The amended plans submitted by the applicant include the provision of a turning head / area to the western side of the driveway / basement. There has been no formal response to the other concerns (including further analysis).

### **Engineering (Assessment Team)**

Council's Engineer has undertaken an assessment of the application and a summary of the comments provided are below.

Construction & Site Management Plan – Application acceptable subject to suitable conditions of development consent.

Vehicular Access-way and Parking Area design - The vehicular access-way and associated park layout has been assessed against AS2890.1:2004, AS2890.2:2018, AS2890.6:2009 and Chapter 36 of SSDCP2015. Further information in line with the recommendations of the traffic engineer as noted above is required to demonstrate an acceptable outcome.

Fire Protection - Fire protection strategy assessed against Division 4.3 Sections 4.15(1)(c), Section 4.15(1)(e) and Section 4.17 of the Environmental Planning & Assessment Act, AS2419.1:2005, NSW F&R document "Access for Fire Brigade Vehicles and Firefighters", and NSW F&R document "Fire hydrants for minor residential development". The drawings indicate a NSW F&R Appliance hardstand area upon the Road carriageway which is inconsistent with the NSW F&R document "Access for Fire Brigade Vehicles and Firefighters" and the fire statement does not address street potable water pressure and flow rate.

Property and Easements - Proposed building abuts the western boundary, requiring expungement of an existing drainage easement. The consolidation of the land parcels will also be required via conditions of consent.

Stormwater Management - The Stormwater management was assessed against AS3500.3:2003, Chapter 38 of SSDCP 2015 and Council's Stormwater Management Environmental Specification 2009 and fails to consider the southern half of the development site as undeveloped (i.e. assumes that the surface is concrete or asphalt). The stormwater drainage design is to include on site detention (OSD) and a revised stormwater design is required.

Flood Assessment - further modelling / detailed Overland Flow and Flood Analysis is required to demonstrate to Council's satisfaction that no impacts would occur to surrounding properties in the applicable critical design storm/flood events; and specify finish floor level requirements to the Flood Planning Levels etc. The above aspects had also not been adequately addressed in the preparation of this proposal,

Note: The A Flood Impact Assessment / Catchment Analysis is required in accordance with the NSW Flood Risk Management Manual and Clause 5.22 of Council's Sutherland Shire Local Environmental Plan 2015 (SSLEP2015). Standard Instrument—Principal Local Environmental Plan (2006 EPI 155a) - NSW Legislation

This clause applies to sensitive and hazardous development located between the Flood Planning Area (1% + freeboard) and up to the Probable Maximum Flood, and other land considered by Council to be subject to risk/evacuation risk. Given the nature of the development (health services facility / hospital), the development must be assessed as sensitive development for which this clause applies for 1% flows and the PMF events. The Flood Impact Assessment and Catchment Analysis is to address all requirements and including Blockage of pit-inlet/pipe/channel hydraulic structures and consideration for future building footprints, evacuation requirements and associated overland flow paths.

### **Waste Management Officer**

The application was referred to Council's Waste Management Officer for assessment. The Waste

Management Report and proposed method of on-site collection is supported subject to the imposition of suitable conditions of development consent.

## **Environment**

The application was referred to Council's Environmental Scientist with respect to Acid Sulfate Soils (ASS), contaminated land and ecological related matters. The site does not meet the criteria for acid sulfate soil assessment contained within SSLEP 2015 for sites located within a Class 5 Acid Sulfate Soils area as the development is unlikely to lower the local water table.

With regard to site ecology, including vegetation, the submitted Ecological assessment has been reviewed. While the main portion of the site in the location of the proposed building is largely unvegetated except for a single tree, the area south of the site, between the site boundary and Bangor Bypass, is more densely vegetated. The flora and fauna assessment recommends an exclusion zone for this area and for tree protection measurements to be implemented which needs to be further reviewed. The landscaping on site should comply including with the requirements of Greenweb – Support (all new tree plantings and 80% of understorey plants to be locally indigenous species).

The applicant submitted a Detailed Site Investigation which addresses the concerns regarding the adequacy of the applicant's submission addressing the Resilience and Hazards SEPP. This has been discussed above in the compliance component of this report and suitable conditions of consent are recommended in the event of an approval.

## **Building Surveyor**

Council's Building Surveyor has reviewed the proposed development with respect to compliance with relevant construction codes and access standards.

The submitted compliance checklist report by BSGM Consulting Building Surveyors dated 4 October 2024 confirms a mix of deemed to satisfy and performance solution approaches. The report confirms the proposal can comply with the BCA and will be subject to construction documentation that will provide appropriate details to demonstrate compliance.

The proposal indicates a basement water tank and a sprinkler system that form part of the proposal however, a preliminary hydraulic fire service design has not been found within the supporting information.

The lengthy internal driveway and NSW Fire and Rescue (NSWFR) appliance access/manoeuvring within the site appears to potentially be of concern. It is standard for Council to request hydraulic design advice, with the support of NSWFR to ensure that required fire service infrastructure will not affect the overall design and streetscape appearance.

A Hydraulic assessment is requested to be prepared by a suitably qualified hydraulic engineer to confirm compliance capability with AS2419.1/ AS2118.1, the NSWFR Fire safety guideline – 'Access for fire brigade vehicles and firefighters', addressing the points below:

- The location of the required booster assemblies.
- The location/size of any required radiant heat shield.
- The location, dimensions, and grade of the emergency vehicle hardstand.

It must also be demonstrated if there adequate pressure and flow available to the hydrant/s, and whether a suction-connection outlet is required. This must be confirmed via a letter/certificate from the hydraulic engineer and must include a copy of the Sydney Water Statement of Available Pressure and Flow.

## **Environmental Health**

The application was referred to Council's Environmental Health Unit who provided comments in relation to building design, fitout and neighbourhood amenity (including acoustic report). Generally, no objections to the development proposal have been raised in respects to internal design; however, additional information relating to the operational parameters of the land use is required to further inform the assessment.

## **10.0 ASSESSMENT**

A detailed assessment of the application has been carried out having regard to the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979. The following matters are considered important to this application.

### **10.1. Overview**

The site is located within Zone R2 – Low Density Residential and the objectives of the zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To protect and enhance existing vegetation and other natural features and encourage appropriate bushland restoration particularly along ridgelines and in areas of high visual significance.*
- *To allow the subdivision of land only if the size of the resulting lots retains natural features and allows a sufficient area for development.*
- *To ensure the single dwelling character, landscaped character, neighbourhood character and streetscapes of the zone are maintained over time and not diminished by the cumulative impact of multi dwelling housing or seniors housing.*

In principle, a proposal for a health services facility (hospital) which will provide for essential care and a larger public and social benefit to the community is encouraged in the Local Government Area. There are difficulties in providing for a development scheme which can respond to the environmental constraints of this particular site and be sympathetic to the established low density residential context with demonstrated minimal cumulative impacts. The development site is irregular in shape and is accessed by a long narrow access way from Shackel Road. The land is identified under SSLEP2015 as an internal lot which means a

lot to which there is no practicable means of vehicular access by motor vehicle or to which the only practicable means of vehicular access is by way of an access corridor.). As discussed in the assessment section of this report, the site is not considered to be suitable for the sensitive land use given the unsuccessful resolution of the environmental risks / constraints, building form and anticipated impacts to the surrounding environment. There is a deficiency in information provided to adequately address planning concerns arising in the assessment. The proposal fails to protect and enhance existing vegetation and when considered in the context of a multi dwelling housing typology, the proposal fails to ensure the single dwelling character, landscaped character, neighbourhood character and streetscapes of the zone is maintained and not diminished by the cumulative impact of the development.

### **10.2. Bushfire Risk**

The New South Wales Rural Fire Service (NSW RFS) has reviewed the proposal in accordance with Section 100B of the Rural Fires Act. It has been advised that the proposed performance solution (including a "shelter in place" plan in event of a bush fire) does not adequately demonstrate compliance with the specific objectives for development of this type established by 6.2 of Planning for Bush Fire Protection 2019 (PBP 2019). Based on the information submitted, it is not demonstrated that the subject site is an appropriate location / design for the sensitive land use proposed due to this environmental risk.

### **10.3. Flood Risk & Stormwater Management**

Clause 6.4 of SSLEP 2015 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces and on-site stormwater retention thereby minimising the impacts on stormwater runoff. Further, the site is mapped in Council's draft overland flood study. As the proposal is located on land which is potentially affected by flooding, Clause 5.21 of SSLEP 2015 must be considered. Clause 5.21 requires Council to be satisfied of certain matters prior to development consent being granted. These matters include compatibility with the flood risk; impact on flooding behaviour; measures to manage risk to life; impact on the environment; and social and economic costs.

The proposal does not maximise permeable surfaces and there is a need for the site to create formal drainage easements and to maintain the existing capacity and functionality of the upstream easements benefitting Council as overland flow paths within the site. An assessment of the information originally submitted with application has been undertaken. The easternmost drainage swale within the site (in the location of the driveway) is generally acceptable and could be piped with the creation of an associated easement. The configuration of the basement and continuous linear built form however requires the extreme diversion of two major flow paths which is depicted in the following survey and stormwater diagrams.



acknowledges, however, that this strategy may not be compatible with the building use and typology proposed. It is concluded that the subject site is not suited to the development as proposed.

#### 10.4. Height of Buildings

The proposed development fails to comply with the SSLEP 2015 numerical development standard for height specified under clause 4.3(2).

Clause 4.3 'Height of Buildings' of SSLEP2015 specifies a maximum 8.5m building height for development within the zone. It is requested by the applicant that a variation to this development standard be granted pursuant to Clause 4.6 to permit a maximum building height of 10.3m which equates to a numerical variation of 1.8m and a percentage variation of 21.17%.

The application has been amended during the assessment. The design change included lowering of building height at the western side. This converted the area previously designated for treatment rooms into an outdoor rooftop patio to bring the building below the 8.5m height limit. Notwithstanding this, the building maintains a height breach that is now limited to roofing over each of the vertical circulation cores and central toilet facility at the southern building edge. The proposal also now introduces a parapet to the perimeter to the roof and whilst not specified in the amended plans, the greatest extent of building height is scaled to be approximately 11.4m (numeric variation of 2.9m and percentage variation of 34.1%). These changes are depicted in the figures below.

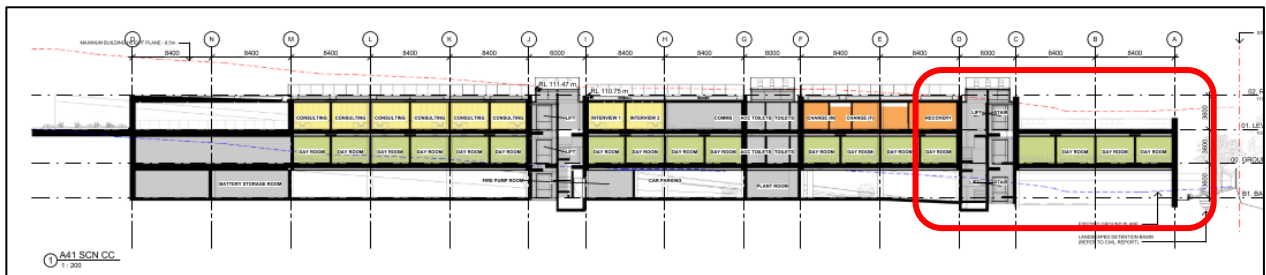


Figure 9: Revised Section Plan with removal of upper floor at western end (right of figure).

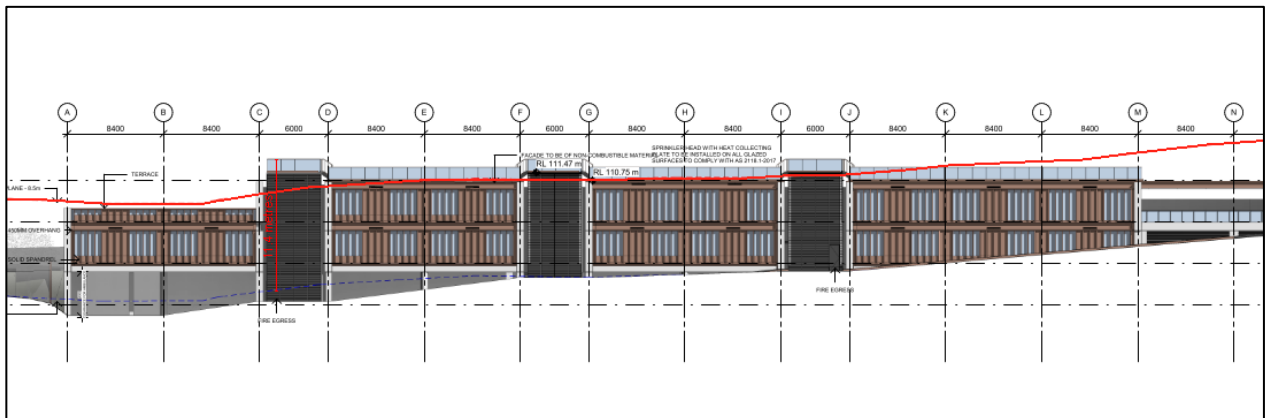


Figure 10 Revised South Elevation Plan depicting 8.5m building height plane.

#### Clause 4.6 Exceptions to Development Standards

The applicant has submitted an original request to vary the development standard pursuant to Clause 4.6 of SSLEP 2015. Clause 4.6 of SSLEP 2015 allows the consent authority to provide an appropriate degree of flexibility in the application of certain standards to development, and where flexibility would achieve better outcomes in particular circumstances.

It is noted that amendments were made to clause 4.6 and the Regulations which modified the requirements for applicants seeking to contravene a development standard. These changes came into effect on 1 November 2023. The consent authority no longer needs to be satisfied that the development is in the public interest because it is consistent with the objectives of the standard and the zone, and the Planning Secretary's concurrence is no longer required.

Savings provisions under Schedule 6 of the Regulations provide that the new sections apply only to development applications made on or after 1 November 2023. As this application was made after 1 November 2023, the new wording of clause 4.6 applies.

The following represents the assessment of the request made under this clause to contravene the height of buildings development standard:

#### **Clause 4.6(1) – Objectives of Clause 4.6**

The objectives of clause 4.6 of the SSLEP 2015 are listed as follows:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

#### **Clause 4.6(2) – Operation of Clause 4.6**

The operation of Clause 4.6 in relation to the variation is not limited by the terms of Clause 4.6(8) of the LEP, and the development standard for height of buildings is not a development standard that is expressly excluded from the operation of Clause 4.6.

#### **Clause 4.6(3) – The Applicant's written request**

Clause 4.6(3) requires the applicant to provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:

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

Of relevance to Clause 4.6(3)(a), in **Wehbe V Pittwater Council (2007) NSW LEC 827** Preston CJ sets out

ways of establishing that compliance with a development standard is unreasonable or unnecessary.

The applicant's justification invokes the first of the five methods set out in Wehbe, in that:

1. *The objectives of the standard are achieved, despite the non-compliance with the standard;*

A Clause 4.6 variation to justify the non-compliance has been prepared by Planning Ingenuity (REF M230389). A full copy of this request has been included in **Appendix E** of this report. The applicant is seeking to vary the maximum 8.5m building height development standard to a maximum 10.3m at the south western side of the building.

**Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:**

The applicant's written statement seeks to utilise the first of the Wehbe principles to demonstrate that the breach is unreasonable or unnecessary and provides the following response against the objectives of Clause 4.3 (replicated below)

*4.3(1) The objectives of this clause 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.”*

In response to the above, the applicant provides the following:

*Objectives (a)(i) and (ii) are similar and refers to "compatible" with adjoining development and consistent with local character with relation to proposed building scale (height). It is considered that "compatible" does not promote "sameness" in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of Roseth SC in Project Venture Developments Ply Ltd v Pittwater Council [2005] NSWLEC 191:*

*"22 There are many dictionary definitions of compatible. 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. "*

*The primary reason for contravening the Height of Building control is the topography of the site. As shown in the height blanket diagrams provided, the proposed development only extends above the maximum building height limit at the core locations and at the south western corner of the site, where the ground level falls and the site is at its lowest. The remainder of the proposed development sits entirely below the building height limit.*

*Importantly, the proposed development sits below the height plane along the northern elevation where the site adjoins residential development. Indeed, when viewed from the adjoining residential properties to the north, the proposal will appear either one or two storeys in height, consistent with the scale of residential development within the immediate locality.*

*Furthermore, the proposed development has been designed and sited so that it appears as a single storey development when viewed from the street frontage and sits significantly lower than the building height plane at the street front elevation. Notably, due to the constraints of the site, being the topography and narrow site frontage, the proposal has been setback well into the rear of the site, with the bulk of the development located towards the adjoining reserve, hidden from neighbouring properties.*

*Overall, the proposal sits at a bulk and scale which is appropriate for the site and compatible with development within the immediate and surrounding locality. The proposal represents a highly articulated built form achieved through varied setbacks, fenestration, and materials, as well as landscaping, particularly around the site boundaries, which softens the built form and reduces the overall visual bulk of the development.*

*The proposal is therefore consistent with Objectives (a)(i) and (ii).*

*Objective (a)(iii) requires that the scale of the buildings complements any natural landscape setting of the buildings. The subject site has been previously cleared and as such the proposal will enhance the landscape setting of the site through the provision of new tree plantings and native vegetation, particularly along the site boundaries. As such, redevelopment of the subject site will dramatically enhance the natural features on site and the interface of the built and natural environment.*

*Specifically detailed in the submitted Landscape Plan, the subject site will provide a range of landscape species, including canopy trees to achieve positive contribution to the streetscape and local environment, and replace the trees required for removal to accommodate the proposed development.*

*Importantly, the proposal is adjoined by the reserve to the south east, which contains large canopy trees that reach a height consistent with or greater than the height of the proposed development. As such, the*

*proposal will sit well within the site, between the residential development to the north west and the large canopy trees to the south west, stepping down the topography and providing an appropriate transition between the development and nature reserve.*

*The proposal is therefore consistent with Objective (a)(iii).*

*Objectives (b), (c) and (d) are similar in that they seek to control amenity related impacts derived from development. They seek to:*

*In relation to form and size of the proposed industrial development, it is evident from the plans that the building arrangement on the site complies with the setback requirements of the SSDCP 2015 and the FSR development standard under SSLEP 2015 which demonstrates that the form and building envelope can be reasonably anticipated by the relevant planning controls. The proposed height variation does not bring with it a form of development on the site that is incompatible with the scale of buildings anticipated by the controls or inconsistent with the desired future character for the locality.*

*In terms of objective (b), the height breach does not result in an adverse additional overshadowing and will fall predominantly over the subject site and the rooftops of surrounding developments, noting the nil side and rear setbacks. The extent of variation will create no notable overshadowing impacts.*

*In terms of objective (c), overshadowing and visual bulk have been considered above. With regard to privacy, the height breach does not result in any additional adverse privacy impacts. The area of height breach does not contain any habitable rooms that will allow views into neighbouring properties, whilst overlooking is limited to the rooftops of neighbouring properties only. Furthermore, the proposal has been designed to minimise acoustic impacts through materials and orientation of windows and openings away from neighbouring properties. The proposed use will be subject to operational controls and management to ensure acoustic impact to neighbouring properties is reduced as far as practicable. The additional visual and acoustic privacy impacts when compared to a height compliant building are considered to be insignificant or nil.*

*With regard to view loss, the height breach does not result in an adverse additional view loss. Due to the topography of the site and locality, any view loss would result from the height compliant portions of the development, which sit next to the residential properties, whilst the non-compliant elements are sited away from neighbours, towards the reserve.*

*The proposed development is therefore consistent with objectives (b), (c) and (d) of the development standard.*

*Objective (e) This has been previously addressed under objectives (a)(i) and (ii).*

*To achieve an appropriate transition between the adjoining residential developments, the proposed development has been designed to located the bulk of the development towards the adjoining reserve. The*

*proposed development sits below the height plane along the northern elevation where the site adjoins residential development. Indeed, when viewed from the adjoining residential properties to the north, the proposal will appear either one or two storeys in height, consistent with the scale of residential development within the immediate locality and providing a transition in building scale to the three storey portion of the development.*

*The proposed development is therefore consistent with objective (f) of the development standard.*

### **Council Officer comment**

The variation request specifies which of the Wehbe tests it relies on and makes reference to the caselaw to argue that compliance with the control is unreasonable and unnecessary in the case. The request is structured as tested in the caselaw. In addressing the 1<sup>st</sup> Wehbe test (that the objectives of the standard are achieved notwithstanding the non-compliance) the variation request undertakes an assessment of the built and natural context of the site, however, as discussed below, it inadequately demonstrates the capability of the proposal in achieving the relevant building height objectives.

### **Clause 4.6(3)(b) That there are sufficient environmental planning grounds to justify the contravention of the development standard:**

In relation to the consideration of sufficient environmental grounds specified at clause 4.6(3)(b), the applicant makes the following statements:

### **Applicant comment**

*The built form of the proposal responds, as far as practicable, to the existing topography of the site and locality, stepping down the site and achieving height compliance for the majority of the development. The proposed development only extends above the maximum building height limit at the core locations and at the south western corner of the site, where the ground level falls and the site is at its lowest. The remainder of the proposed development sits entirely below the building height limit.*

*The proposed development presents a similar bulk and scale of development as that approved on the site under DA 18/0710. Indeed, the proposal will actually sit 4.4m lower than the approved building envelope at various points since it has been designed to respond better to the topography of the site, stepping down the site and locating bulk away from the residential neighbours. Furthermore, the proposal provides building setbacks which far exceed those approved under DA18/0710. Particularly with regard to the western boundary, the proposal provides a 6m building setback, compared to the 1.5m setback previously approved, which, taken up to 8.5m, would have a significantly greater impact with regard to visual bulk and amenity to the neighbouring properties than the proposed development.*

*The extent of variation sought is 1.8m or 21.17% and would be visually difficult to perceive the difference between the proposal and a building with compliant height when viewed from streetscape or adjoining properties. Indeed, when viewed from the streetscape the proposal will present as a single storey built form, sitting well below the maximum building height limit for the site. Furthermore, the proposed development*

*sits below the height plane along the northern elevation where the site adjoins residential development. Indeed, when viewed from the adjoining residential properties to the north, the proposal will appear either one or two storeys in height, consistent with the scale of residential development within the immediate locality.*

*The proposal complies with the FSR development standard of 0.55:1, with a proposed 0.45:1 FSR. The proposed height variation will not result in any additional GFA which will increase the perceivable visual bulk and will be consistent the desired character of the locality with minimum impacts onto the amenity of adjoining properties.*

*The proposal delivers a high quality urban and architectural design which clearly exhibits design excellence, despite the non-compliance. That is, the proposal has undergone in-depth site analysis, numerous iterations and refinement to reach the proposed outcome. The arrangement of bulk and scale and subsequent building height non-compliance have been informed by the topography of the site and the nature and character of surrounding development. As such, the proposed non-compliance is considered the most appropriate response to the site and its context, whilst protecting the amenity of neighbouring properties and public domain.*

*The maximum extent of non-compliance is appropriately integrated into the overall building form. The non-compliance is located to the rear of the site, where the site adjoins the nature reserve, and as such will not be visually jarring as the built form is situated within a well-articulated mass. The non-compliant elements are incorporated into the contemporary architectural character and will be finished in materials that is compatible with the character of the locality.*

*It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:*

*The extent of variation sought is 1.8m or 21.17% and would be visually difficult to perceive the difference between the proposal and a building with compliant height when viewed from streetscape or adjoining properties. Indeed, when viewed from the streetscape the proposal will present as a single storey built form, sitting well below the maximum building height limit for the site. Furthermore, the proposed development sits below the height plane along the northern elevation where the site adjoins residential development. Indeed, when viewed from the adjoining residential properties to the north, the proposal will appear either one or two storeys in height, consistent with the scale of residential development within the immediate locality.*

*The proposal complies with the FSR development standard of 0.55:1, with a proposed 0.45:1 FSR. The proposed height variation will not result in any additional GFA which will increase the perceivable visual bulk and will be consistent the desired character of the locality with minimum impacts onto the amenity of adjoining properties.*

*The proposal delivers a high quality urban and architectural design which clearly exhibits design excellence, despite the non-compliance. That is, the proposal has undergone in-depth site analysis, numerous iterations and refinement to reach the proposed outcome. The arrangement of bulk and scale and subsequent building height non-compliance have been informed by the topography of the site and the nature and character of surrounding development. As such, the proposed non-compliance is considered the most appropriate response to the site and its context, whilst protecting the amenity of neighbouring properties and public domain.*

*The maximum extent of non-compliance is appropriately integrated into the overall building form. The non-compliance is located to the rear of the site, where the site adjoins the nature reserve, and as such will not be visually jarring as the built form is situated within a well-articulated mass. The non-compliant elements are incorporated into the contemporary architectural character and will be finished in materials that is compatible with the character of the locality.*

*It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:*

*The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*

- a. To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment (1.3(b));*
- b. To promote the orderly and economic use and development of land (1.3(c));*
- c. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).*

*The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the height variation will ensure the development responds, as far as practicable, to the topography of the site. Strict compliance with the development standard is considered a disproportionate outcome given the limited amenity impacts to surrounding development. Architectural detailing and choice of materials, as well as the location of the non-compliant portions of the development, ensure the minor additional height is not visually jarring from the public domain or neighbouring properties, and not immediately obvious.*

#### **Council Officer comment**

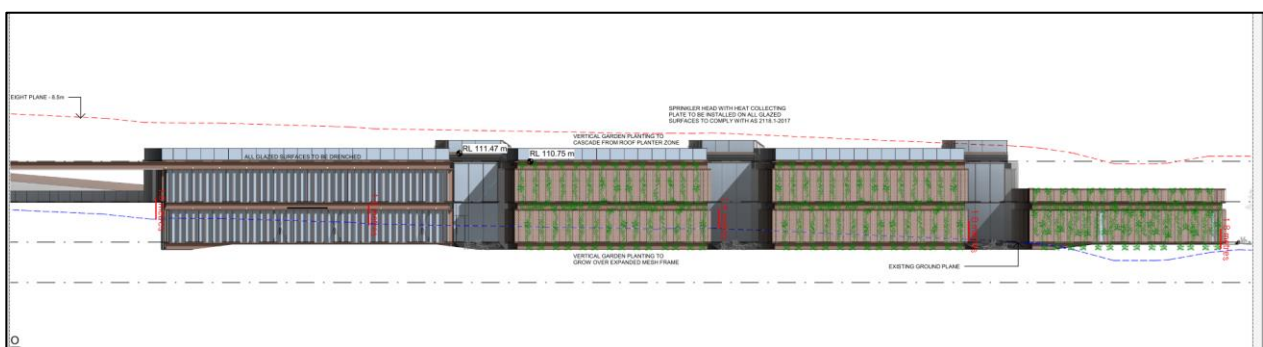
The application applies the broader 8.5m height standard which is correct and the applicable standard under SSLEP2015. When the standards / controls for both multi dwelling and single dwelling land uses are considered, building height would be controlled differently noting under SSLEP2015 a maximum height for 'multi dwelling housing' on an internal lot is 5.4 metres and SSDCP2015 applies a 60% maximum depth of 2 storey development control (regardless of both land use typologies).

The extent of non-compliance across the development has been reduced in the amendments to the design. There is however no revised Clause 4.6 justification and dimensions on plan provided by the applicant do

not accurately identify the full breach in building height and extent of noncompliance.

The building form presents as single storey in part to the adjoining properties to the north and projects to a 2 storey form as it extends to the western side due to the fall in the land. The application has been revised by removing the main offending portion of built form, with the resulting non compliance limited to roofing over each vertical circulation core, central toilet facility and roof parapet at the southern building edge.. The north setback is also depicted to be increased from 5m to 5.1m. When considering the offending / non compliant building elements 'in isolation', these could be considered generally acceptable breaches in building height given the respective centralised location within the site and distance from the site boundaries. There is an absence of impacts associated with these point variations over the 8.5m height plane including loss of significant or iconic views as further discussed in the assessment of this report. There is no detrimental impact from the offending portions in terms of privacy and overshadowing to adjoining properties given the orientation of the site.

The broader consideration of the objectives of the development standard and zone for the building as a whole indicates, however; that the height and scale of this non-residential building in the low density residential zone is not compatible with adjoining development, and the desired scale and character of the street and locality, impacts on nearby properties from visual intrusion have not been minimised. The linear built form, albeit compliant with building height at the northern elevation and articulated with recesses is not of an appropriate design typology as envisaged in the zone. This perspective is resonated in the commentary provided by the Design Review Panel and the built form is not contextually appropriate in terms of height and scale for the locality. The development is of a scale and nature that fails to maintain the natural landscape setting of the locality, contrary to the statement submitted by the applicant. The building will present as a visually abrupt form to a number of immediately adjoining properties including from their respective private open spaces with openings within the elevation needing to be controlled to minimise opportunity for overlooking and light spill. The figure below is the northern elevation of the building and visible built form above existing ground level at the common fence line.



*Figure 11: Northern elevation and height plane diagram*

Of relevance in the applicant's submission is the reference to a prior development consent (DA18/0710) pertaining to the land to substantiate the proposed massing of built form within the site. It is noted that this development consent is a different land use typology being for 4 resulting residential lots presenting differing impacts. The approved plan of DA18/0710 is depicted in the diagram below.

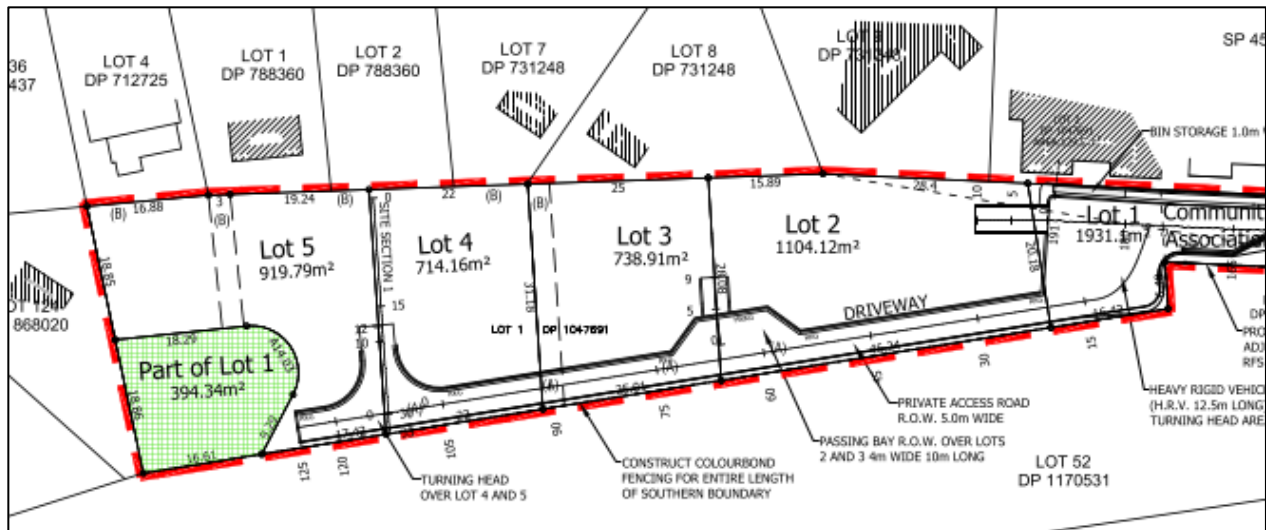


Figure 12: Approved Plan of Subdivision DA18/0710

The emphasis relates to the massing of future dwellings presented in consideration at the time for assessment. This indicative building envelope plan depicted in the figure below, shows theoretical building envelope parameters to demonstrate that future residential development is possible within each new lot as envisaged by the development standards and the zone.

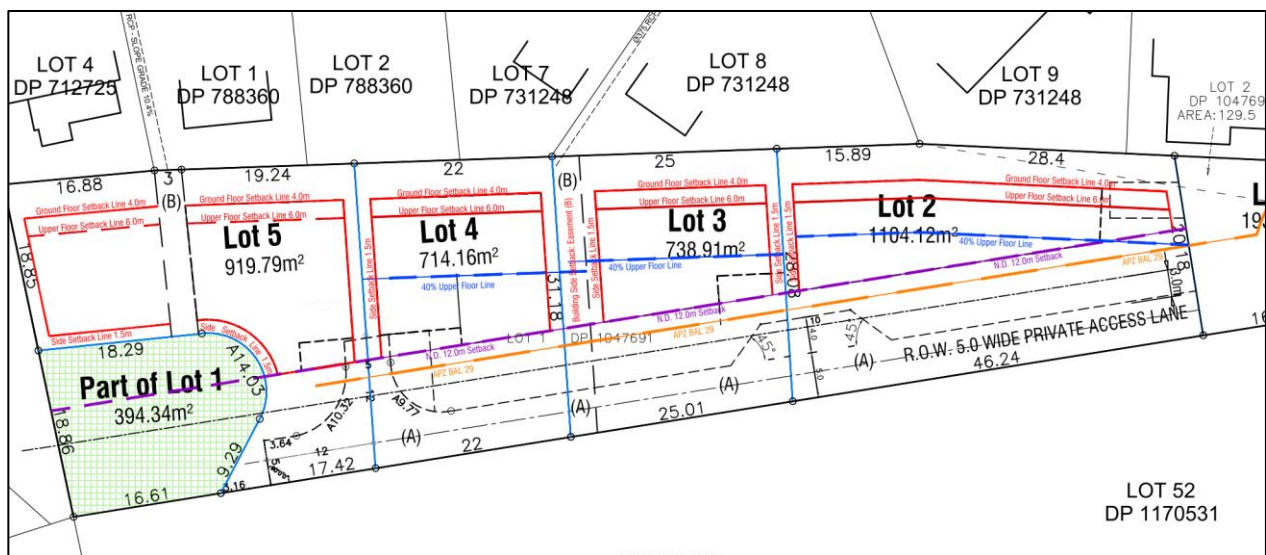


Figure 13: Indicative building footprints / envelopes considered under DA18/0710 for assessment noting area of Lot 5 on western side of easement line noted in assessment report to be as a rear yard / possible location for a secondary dwelling)

The final form of the future development under this development consent is subject to separate approval pathways and are not approved or represent an actual development outcome for the sites. Of note in the concept plans is the clear break up separation between future building forms and site / landscape coverage along with the application of the 60/40 depth of 2 storey development control / alignment on the future land parcels which would limit massing towards the northern boundary.

The unique circumstances of the proposal have been inadequately identified to justify the departure from the development standard, relevantly, the proposed built form and surrounding development which forms the context and character of the site and its locality. The applicant has not adequately addressed and demonstrated how the identified environmental planning grounds specifically relate to the subject matter, scope and purpose of the EP&A Act.

#### Conclusion - Clause 4.6 Assessment

There has been no revised Clause 4.6 justification to address the amended design to enable suitable consideration of the proposed variation to the development standard. While there would be scope to consider point variations in isolation and circumstance, given the above, Council officers are not satisfied that the provisions of clause 4.6(3) have been achieved and the variation is therefore not supported.

### **10.5. Floor Space Ratio**

Clause 4.4 'Floor Space Ratio' of SSLEP2015 specifies a maximum 0.55:1 FSR for the development site. The application, as lodged, denotes compliance with the development standard at 2603m<sup>2</sup> / 0.45:1 as the correct 'whole of site' area is used for the purpose of the calculation. There has been an approximate 340m<sup>2</sup> reduction in gross floor area in the amended plans submitted by the applicant. Whilst a revised calculation plan has not been provided by the applicant, Council's calculation of the revised FSR is approximately 2263m<sup>2</sup> / 0.39:1. When excluding the area of the access handle (which cannot be reasonably developed), the proposal is calculated to achieve approximately 0.54:1 on the 'developable site area'. The density of the revised building is more commensurable in terms of density to the developable site portion in which the building is sited.

Achieving numeric compliance is not however a precursor to a development satisfactorily achieving the objectives of the development standard which are as follows:

- (a) to ensure that development is in keeping with the characteristics of the site and the local area,*
- (b) to ensure that the bulk and scale of new buildings is compatible with the context of the locality,*
- (c) to control development density and intensity of land use, taking into account—*
  - (i) the environmental constraints and values of the site, and*
  - (ii) The amenity of adjoining land and the public domain, and*
  - (iii) the availability of infrastructure to service the site, and*
  - (iv) the capacity of the road network to accommodate the vehicular and pedestrian traffic the development will generate, and*
  - (v) the desirability of retaining the scenic, visual, and landscape qualities of the area.*

As further discussed below there is a desire to reinforce the landscape qualities of the area and the configuration of the building, including the concentration of density, attributes to inhibiting this ability. The development is not in keeping with the characteristics of the local area and the bulk and scale of the building is not compatible with the context of the locality. The density and intensity of land use should be better controlled and have direct regard to the environmental constraints and values of the site, the amenity of adjoining lands and the capacity of the road network to accommodate the vehicular and pedestrian traffic

the development will generate. The proposal is not considered to adequately satisfy the relevant objectives contained in clause 4.4 of SSLPP 2015 in this respect.

#### 10.6. Landscaped Area

Clause 6.14 'Landscaped Area' of SSLEP2015 specifies a minimum 35% landscaped area for development within the zone. It is requested by the applicant that a variation to the development standard be granted pursuant to Clause 4.6 to permit a landscaped area which equates to 31.67% (1837.16m<sup>2</sup>) of the total site area and a percentage variation of 9.5%.

The submission also notes a landscaped area of 27.02% (1567.4m<sup>2</sup>) when excluding above basement landscaping which is a 463.3m<sup>2</sup> shortfall in landscaped area or a 22.8% variation to the development standard.

The below diagrams show the provision of deep soil landscaped area within the site as originally proposed noting there has been no submission of a revised landscape plan.



Figure 14: Deep Soil Landscaped Area Plan



Figure 15: Detailed Landscape Plan

#### Clause 4.6 Exceptions to Development Standards

The applicant has submitted a request to vary the development standard pursuant to Clause 4.6 of SSLEP 2015. Clause 4.6 of SSLEP 2015 allows the consent authority to provide an appropriate degree of flexibility in the application of certain standards to development, and where flexibility would achieve better outcomes

in particular circumstances. The following represents the assessment of the request made under this clause to contravene the landscaped area development standard:

#### **Clause 4.6(1) – Objectives of Clause 4.6**

The objectives of clause 4.6 of the SSLEP 2015 are listed as follows:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

#### **Clause 4.6(2) – Operation of Clause 4.6**

The operation of Clause 4.6 in relation to the variation is not limited by the terms of Clause 4.6(8) of the LEP, and the development standard for landscaped areas is not a development standard that is expressly excluded from the operation of Clause 4.6.

#### **Clause 4.6(3) – The Applicant's written request**

Clause 4.6(3) requires the applicant to provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:

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

Of relevance to Clause 4.6(3)(a), in **Wehbe V Pittwater Council (2007) NSW LEC 827** Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary.

The applicant's justification invokes the first of the five methods set out in Wehbe, in that:

1. *The objectives of the standard are achieved, despite the non-compliance with the standard;*

A Clause 4.6 variation to justify the non-compliance has been prepared by Planning Ingenuity (REF M230389). A full copy of this request has been included in **Appendix E** of this report. The applicant is seeking to vary the minimum 35% landscaped area development standard that applies to the site. The applicant requests a landscaped area which equates to 31.67% (1837.16m<sup>2</sup>) of the total site area and a percentage variation of 9.5%.

**Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:**

The applicant's written statement seeks to utilise the first of the Wehbe principles to demonstrate that the breach is unreasonable or unnecessary and provides the following response against the objectives of Clause 6.14 (replicated below)

- (a) to ensure adequate opportunities exist for the retention or provision of vegetation that contributes to biodiversity and, in the case of trees, enhances the tree canopy of Sutherland Shire,*
- (b) to minimise urban run-off by maximising permeable areas on the sites of development,*
- (c) to ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained,*
- (d) to ensure that landscaping carried out in connection with development is sufficient to complement the scale of buildings, provide shade, screen parking areas and enhance workforce amenities.*

**Applicant comment**

*Compliance with the minimum landscaped area development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in the assessment below. The objectives and relevant provisions of Clause 6.14 are as follows;*

*Objective (a) - The proposal will require the removal of select trees on the site and adjoining reserve to accommodate the proposed development, however, these trees will be adequately replaced with new habitat tree plantings on both the subject site and the reserve. The proposal will ensure that there is no loss of canopy cover and that the replacement tree plantings will be appropriate native species that contribute to the biodiversity of the locality.*

*Importantly, a Flora and Fauna Impact Assessment has been prepared by Kingfisher and is submitted with this application. The Assessment concludes that the proposal will not have a significant impact on threatened species or ecological communities, or their habitats, and as such will not have any adverse impacts in terms of the biodiversity of the site and locality. Furthermore, as stated within the Assessment, the proposal does not trigger entry into the Biodiversity Offsets Schemes (BOS) under the NSW Biodiversity Conservation Regulation 2017.*

*Overall, the proposal will provide an enhanced landscape setting across the site when compared to the existing site conditions, most notably the fact that the site has been largely cleared, in accordance with a previous development consent. As per the Landscape Plan submitted with this application, the proposal incorporates landscaped setbacks with native plantings for stabilisation, as well as to create new habitats and add visual interest to the development through breaking up, and in some case, screening the built form.*

*The submitted Landscape Plan details the proposed species across the site that will enhance the landscaped character of the site and local environment.*

*Objective (b) - The proposed development has been designed to maximise permeable areas of the site as far as practicable. Due to the irregular shape of the site and the need to provide suitable vehicle access and a bushfire protection buffer, a large driveway is required along the south eastern boundary of the site,*

*however, permeable spaces have been maximised elsewhere through landscaped setbacks and permeable paving to reduce stormwater runoff.*

*Furthermore, the proposed development includes a detention basin along the northern and western side of the development which will assist with stormwater runoff from nearby areas.*

*Objective (c)- The site has been previously cleared in accordance with the approved DA which allowed for the removal of the majority of trees existing on the site. The proposed development will enhance the existing landscape arrangements on the site through the provision of new trees, shrubs and plantings to soften the built form and minimise the visual impact of the development.*

*The proposed landscape design will complement the built form and enhance the visual aesthetic of the development when viewed from adjoining properties and the street. From the street frontage, the development will not be overly visible due to the shape of the site and topography of the land, however, new landscaping proposed at the street frontage will improve the landscape character and streetscape presentation of the site.*

*The proposed boundary landscaping and courtyard gardens provide a level of screening to the development, whilst also adding to the visual interest of the facility when viewed from the adjoining sites.*

*Objective (d) -The proposed landscaping within the site boundaries has been provided to reduce the perceived bulk and scale of the development, providing a soft transition to the built environment. The at-grade parking area is to be screened by landscaping to the north, whilst the bulk of parking on the site is provided within the basement to ensure the parking on the site does not dominate the development.*

*Furthermore, the basement parking level will not be visible to the adjoining residential properties due to the topography of the site and landscaping proposed around the facility. The proposed development has been designed to ensure a high level of amenity is enjoyed by both employees and patients. Consultation suites and multi-purpose rooms have been designed to maximise views towards the proposed landscaped areas to improve the experience within these spaces.*

### **Council Officer comment**

The applicant addresses the 1<sup>st</sup> Whebe test (that the objectives of the landscaped area development standard are achieved notwithstanding the non-compliance) and the variation request undertakes an assessment of the landscape and natural context of the site, which inadequately demonstrates the capability of the proposal in achieving the relevant landscaped area objectives and the CI 4.6 does not meet the necessary test with respect to Clause 4.6(3)(a). The quantum of landscaped area within the site is unacceptable, adequate tree protection cannot be achieved and the CI 4.6 justification is inaccurate and contingent on planting above the basement. These matters are further discussed in this report below.

**Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard.**

### **Applicant comment**

*In this instance, there are sufficient environmental planning and design grounds to justify the proposed contravention of the landscaped area development standard as follows:*

- 1. The proposed development fails to meet the minimum landscaped area as a result of the need to provide level driveway access to the basement car park in response to the difficult topography of the site. The proposed driveway covers a large portion of the site as a result of the irregular shape of the allotment and the site topography, which have been carefully considered in the design of the proposed driveway and overall built form. To allow for basement parking to be accommodated within the site whilst limiting the extent of excavation, the proposed driveway continues along the south eastern boundary of the site to the basement entry, where vehicles can enter the car park entry which sits relatively close to the existing ground level.*
- 2. The proposed driveway along the south eastern boundary of the site also provides a bush fire protection buffer for the development, which is important to ensure the safety of occupants of the facility.*
- 3. The proposal will enhance the existing landscaping on the site. The bulk of trees on the site were removed in accordance with the previous DA approval on the site. The proposal will provide a new landscape scheme which complements the built form, whilst also enhancing the variety of trees and plants on the site through new native plantings. Where the proposal does require tree removal, replacement trees will be planted, both on the site and adjoining reserve.*
- 4. The proposal will improve permeability on the site thereby reducing stormwater runoff through the provision of permeable landscaped areas, including permeable pathways, and a detention basin to prevent runoff and reduce flood impacts.*
- 5. The proposed development will include the provision of new canopy trees, shrubs and ground covers across the site, including within the front setback area. The proposed landscaping detailed in the submitted Landscape Plan will ensure the landscaped character of the site and locality will be enhanced. That is, as the density of the site increases, so does the quality of the landscaped area and quantity of plantings.*
- 6. The non-compliance is not caused as a result of excessive density, noting that the floor space ratio is well within the 0.55: 1 maximum allowable for this site.*
- 7. The social benefits of providing a health services facility and additional employment opportunities for the community should be given weight in the consideration of the variation request. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of floor space or parking within a well located and well-designed development, particularly considering the proposal achieves compliance with the maximum FSR for the site and extent of parking required actually falls short of Councils requirements. This is a disproportionate response to the relatively minor impacts created by the landscaped area non-compliance.*
- 8. The proposed variation will not have an adverse impact on the amenity of adjoining properties but will provide an improved landscaped setting for the occupants and streetscape. The proposal provides for a significantly superior landscape scheme which screens and softens the proposed development, whilst*

*providing visually interesting landscaped outlooks from the facility.*

*The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly given the minor extent of variation, topography of the site, and the irregular shape of the allotment. The minor landscaped area non-compliance does not significantly impact the amenity of the neighbouring properties (when compared to a compliant development) and the proposed landscaping on the site is considered sufficient to soften and screen the built form, and will not have any impact on the biodiversity values of the site or locality.*

### **Council Officer comment**

The applicant's submission identifies constraints associated with the site, however, this is considered to be an inadequate reason to justify the departure from the development standard. The applicant inadequately demonstrates how the identified environmental planning grounds specifically relate to the subject matter, scope and purpose of the EP&A Act.

In the first instance, the application incorrectly calculates landscaped area in accordance with SSLEP2015. In the case of an internal lot, any access corridor to or from the lot is taken to be excluded from the site area in accordance with Clause 6.14. The application applies a 'whole of site' site area for the purpose of the calculation.

The applicant's Clause 4.6 also incorrectly includes landscaping above the basement where there is a soil depth of between 600mm and 800mm. Under SSLEP2015 landscaped area "*means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area*". Council's interpretation of the definition and consistent application of the development standard does not include planting over a basement or on podium in the calculation, rather landscaping in only deep soil natural areas of a site (i.e. not over a structure).

In addition to the above discrepancies, amended plans were submitted by the applicant during the course of assessment and provide for a vehicular turning head adjoining the internal driveway / basement entry at the western boundary which further erodes the total quantum of landscaping within the site. No revised calculation or Clause 4.6 justification has been provided for consideration.

The landscaped area of the site when excluding the access corridor and located upon the subsequent 'developable site portion' (approx. area 4190m<sup>2</sup>) is calculated by Council to be approximately 658m<sup>2</sup> (15.74%).

The objectives of the Zone R2 Low Density Residential are set out in the "overview" discussion above. The assessment of the proposal against, and the satisfying of the objectives as previously discussed remains relevant in this this assessment of landscaped area. Of specific relevance is the deficiency in landscaped area within the site inhibits the ability for the site to protect and enhance existing vegetation and encourage appropriate bushland restoration.

In consideration of the objectives of the landscaped area development standard set out in Clause 6.14 of SSLEP 2015 are provided below with a brief analysis against the proposal:

- (a) to ensure adequate opportunities exist for the retention or provision of vegetation that contributes to biodiversity and, in the case of trees, enhances the tree canopy of Sutherland Shire,*
- (b) to minimise urban run-off by maximising permeable areas on the sites of development,*
- (c) to ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained,*
- (d) to ensure that landscaping carried out in connection with development is sufficient to complement the scale of buildings, provide shade, screen parking areas and enhance workforce amenities.*

Site coverage is dictated by the proposed building / basement footprint and the extensive driveway surfacing and site servicing arrangement. Of the proposed landscaped area, a significant portion is provided within the western and northern setbacks being co-located with the proposed overland flow path as a grassed swale. Green walls have been introduced in the development scheme to soften the built form given there is an inability to provide for substantive planting external to these areas. The proposal will also result in a number of unresolved impacts to trees on adjoining lands (including the public way) and requires the removal of an established Red Bloodwood (*corymbia gummifera*) within the site which is worthy of retention. This impact on vegetation including a failure to satisfy Council's Greenweb Support strategy is further discussed in the assessment of this report.

The deficiency in total landscaped area within the site inhibits the ability for the development to reinforce the desired landscape setting of this specific locality or provide suitable landscape treatment and landscaped relief between properties. The site coverage within the 'developable site portion' would be required to be significantly reduced to conform to the development standard and to reinforce the objectives of the clause. There is a direct need to increase the landscaped area within the site and there is also an opportunity to further reinforce the ecological values of the site in the location of degraded ephemeral watercourse on the southwest side of the site. An increased landscape provision would provide for a more successful landscape design / strategy is to ameliorate impacts associated with the built form, to soften the abrupt transition of the different building forms / land use typologies and to enhance neighbouring and internal staff and occupant / patient amenity.

#### Conclusion - Clause 4.6 Assessment

There has been no accurate Clause 4.6 justification submitted by the applicant or revised Clause 4.6 justification (including revised calculation plan / landscape plan) to address the amended design to enable suitable consideration of the proposed variation to the development standard. The site coverage within the 'developable site portion' is unacceptable and the proposal should be amended by lodgement of a future application. An increase in the landscape provision would enable further opportunities to provide appropriate separation to the boundaries including adjoining vegetation to ensure retention and landscape relief between properties. Given the above, Council officers are not satisfied that the provisions of clause 4.6(3) have been achieved and the variation is therefore not supported.

### **10.7. Site Planning and General Urban Design**

The application proposes to adopt the multi dwelling development controls as the predominant land use within the zone pursuant to Chapter 35 of Sutherland Shire Development Control Plan 2015 (SSDCP2015). The core objective of the zone is to ensure that the single dwelling character, landscaped character, neighbourhood character and streetscape of the zone is maintained over time and not diminished by the cumulative impact of multi dwelling housing.

While the building may be fit for its intended purpose, the Design Review Panel has made direct commentary in terms of the impact and fit / character of the building being not within the expected typology anticipated by Council's controls. The controls anticipate a residential typology and the industrial style aesthetic in the current design presents as harsh and overbearing, particularly in such a green setting/outlook. When considering the development in the context of a multi dwelling housing development typology, the proposal fails to satisfy the objectives of the zone noting the development standards / controls contained within SSLEP2015 and SSDCP2015 (for both 'single dwellings' and for 'multi dwelling housing') have effect of limiting the scale of buildings on internal lots so as to minimise adverse impacts and to allow for development within a well-established landscaped setting.

The building will present as a visually abrupt form to a number of immediately adjoining properties including from their respective private open spaces with openings within the elevation needing to be controlled to minimise opportunity for overlooking and light spill. The introduction of the outdoor rooftop patio in the location of the upper-level treatment and recovery rooms on the western side of the building would also require further design and operational resolution to ensure there is no adverse overlooking and amenity impacts to adjoining properties from the use of the space.

A basement and continuous linear built form within the allotment is not acceptable due to the stormwater / flood constraints. There are also concerns regarding the linear massing and height of the building within the site that will adversely impact upon adjoining properties as previously discussed in the height component of this report. The design provisions of SSDCP2015 seek to minimise alteration to the landform including for excavation within a site for basements immediately adjoining the property boundaries. The proposed development in part does not achieve a 3m setback from the boundary to the basement which inhibits the ability for adequate deep soil landscaping and for landscape relief. There will be significant alteration, including excavation and the raising of the existing levels at the property boundary where adjoining the entry reception / car parking area which is inconsistent with SSDCP2015. Subsequently this will present an adverse impact to the adjoining properties.

The provisions of SSLEP2015 including Clauses 6.16 / 6.18 and SSDCP2015 which contain certain matters of consideration relating to urban design have been considered as a part of the assessment of the application and the proposal is not considered to be acceptable.

### **10.8. View loss**

A number of residents have raised concern regarding the visual outlook to the proposed built form which is discussed in the assessment of the report above. A specific concern from No. 1 Piriwal Close Bangor to the

north of the subject site has raised the concern of the loss of view. The location of the property in proximity to the subject site / proposed works along with the general orientation of the view aspect over adjoining residential lands and the boundary of the subject site along with photographs of the views which are currently enjoyed is provided in the Figures below (noting further photographs from other affected areas of the dwelling are also considered in the assessment of the application and are contained on file).





Figure 16, 17, 18 – View aspect and photographs from ground / first floor

An assessment of the view loss undertaken in accordance with the planning principle established by Senior Commissioner Roseth in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 is provided below.

***Step 1 - The first step is the assessment of views to be affected.***

The view from the first floor comprises a panoramic ridgeline view aspect over the subject site / and adjoining lands extending in a south to southwest direction including of the Woronora Heights residential lands, Woronora River / Valley including bushland and Barden Ridge residential lands. The ground floor view is predominantly only of distant vegetation. The views in the broad are local district views and are not considered to be an iconic view.

***Step 2 - The second step is to consider from what part of the property the views are obtained.***

First floor views are obtained from a bedroom and secondary living room space and connecting balcony / terrace from both seated and standing positions. The views obtained from the ground floor level are from the ground floor kitchen, and external terrace and yard area from primarily a standing position.

***Step 3 - The third step is to assess the extent of the impact.***

Based on proposed height / finished RL of the development and survey information of the adjoining buildings between the subject site and No.1 Piriwal Close Bangor, the view aspect from the ground floor level is likely to be minimally affected (i.e. finished height of proposal is below the height of the adjoining villa houses). The view aspect affected from the first floor will comprise of foreground views, primarily of the existing vegetation/ bushland between Bangor Bypass and the subject site. The broader view aspect currently enjoyed is anticipated to be maintained. The approximate impact from the first floor is depicted in the diagram below and the view loss is considered to be minor.



Figure 19 – Anticipated loss of view

**Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact.**

Notwithstanding the concerns raised in relation to building height discussed in the assessment above, the height non-compliance and siting of the building does not attribute to any significant loss of view and a compliant form would not result in the retention of the foreground view of the vegetation / bushland between the subject site and Bangor Bypass to any significant degree. The broader panorama view is anticipated to be maintained. In light of the retention of the view aspect, nature of the views in question (being over multiple residential properties / boundaries), the impact presented (i.e. being minor), the proposal is considered to be reasonable and acceptable with respect to view loss.

### 10.9. Greenweb and Tree Impacts

SSLEP2015 and SSDCP2015 place a significant emphasis on landscape character and design. The site forms also part of Council's Greenweb Support strategy and the immediate locality accommodates *Sydney Hinterland Exposed Sandstone* vegetation communities and as such consideration must be given to appropriate planting and tree preservation within and adjoining the site. 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.

With the exception of an established Red Bloodwood (*corymbia gummifera* – Tree 45) the site has been largely cleared and is devoid of established vegetation. This tree is however of high retention value and currently makes a positive contribution to the landscape character of the site / locality, to biodiversity and the tree canopy of the Sutherland Shire. The tree is within the footprint of the proposed building, and the basement design / linear built form at ground level inhibits any opportunity to retain this tree.

The proposal also presents a number of impacts to trees on adjoining lands including the public way. The submitted arborist report notes a major encroachment into the Tree Protection Zone (TPZ) of adjoining trees 37 and 41 exceeding the maximum 10% of the Australian Standard and a structural root zone

encroachment. Construction methodology is proposed to be deployed to ameliorate these impacts, however as noted in the arborist recommendation that such design coordination with the architect, engineer and project consulting arborist to ensure viable tree retention has not yet occurred. The impact of the footings required for the 4m high non-combustible wall noted in the bushfire report which is proposed to be constructed along the southern lot boundary (commencing at the junction of the south and west lot boundaries and extend for 128m toward the east) needs to also be further considered as the adjoining trees have a very large area of transpiration historically and the development must not adversely impact upon their respected viability.

There is a noted ephemeral watercourse on the west side of the site. In the submitted Flora and Fauna Assessment the watercourse is observed as being highly degraded, likely as a result of urban runoff and previous clearing and is invaded by weeds. The site and watercourse is not mapped as Environmentally Sensitive Land or accommodating Riparian Corridors under SSLEP2015 and SSDCP2015. Riparian Corridors are mapped offsite on the TfNSW land to the south and across the Bangor Bypass which then extend into the Woronora River. The watercourse forms a drainage line which is a component of Council's stormwater drainage system as the drainage lines currently capture stormwater from the residential development to the north of the site and channels this stormwater into engineering structures /culverts at the TfNSW road reserve. The applicant has not nominated the works within vicinity to the watercourse as works on waterfront land and integrated development for the purpose Water Management Act 2000. However, for completeness, a separate referral has been made to determine the order of the watercourse and whether the works would require a controlled activity approval. At the time of finalising this assessment formal response had not been received by Council. Notwithstanding the above, the extent of built form and extreme diversion of this drainage line is not supported and coupled with the deficiency in landscaped area discussed above, there could be opportunity to retain this feature into the broader landscape design and strategy of the site.

The selection of proposed plant species is generally acceptable and can be reinforced via the imposition of conditions of consent (i.e. to ensure all new tree plantings and 80% of understorey plants to be indigenous species in accordance with SSDCP2015).

The deficiency in landscaped area, however, inhibits the quantum of Greenweb plantings which should be theoretically realised on site. Bushland habitat and biodiversity has not been maximised in the development scheme and the proposed development fails to reinforce Council's Greenweb strategy. It is noted that resident submissions have identified that the subject site and local area accommodates a range of local wildlife notwithstanding the findings of the flora and fauna assessment.

#### **10.10. Traffic Impact**

SSLEP 2015 and SSDCP 2015 contain certain matters for consideration relating to transport accessibility, traffic impacts and car parking. There are no prescribed parking rates for the proposed land use within the zone and the application is to be informed and supported by a traffic study.

The submitted Traffic and Parking Assessment has been reviewed and there are a number of deficiencies noted to enable a detailed assessment of the proposal with respect to site suitability and traffic related impacts. The provision of parking in submitted traffic assessment adopts the SSDCP2015 parking rate of 1 per 30m<sup>2</sup> of gross floor area (GFA), yet calculates the car parking requirement based on the internal net lettable area (NLA). 54 spaces are proposed and in the revised scheme and while 47 spaces are required based on the NLA, there is a substantial difference when the development control is applied in terms of GFA. SSDCP2015 would require a minimum 75 spaces in conjunction with the development.

While the applicant has amended the design to include the provision of a turning head / area to the western side of the driveway / basement to enable an MRV to enter and exit the site in a forward direction, there has been no formal response to the other concerns raised. Further analysis of the surrounding road network and potential traffic generation and parking is required. This needs to be in the form of a robust traffic study including further clarification of the specifics of the development / use to properly inform the traffic and parking analysis.

The suitability of the site and surrounding road and pedestrian routes (including the cumulative impact of the surrounding residential and educational land uses) has been considered and the proposal is not considered to be acceptable. It has not been adequately demonstrated that the surrounding road network is adequate to accommodate the proposed land use without causing any unacceptable traffic generation, parking stress or general risk to the public (including to patrons of the hospital).

#### **10.11. Operation**

Chapter 41 of SSDCP2015 identifies the land use as a form of development requiring a Social Impact Assessment and evaluation. The chapter identifies forms of development likely to have a significant social impact and requires that the social impacts of such development be identified, and appropriate processes and procedures put in place to manage those impacts. The applicant has submitted a Social Impact Evaluation addressing SSDCP2015 and the applicable heads of consideration. Appropriate processes and procedures are recommended to be put in place to manage possible social impacts and to ensure that the potential impact of new development on existing development and local communities is acknowledged, actioned and monitored.

The co-existence of the proposed land use with adjoining low density residences can be problematic, as these uses can clash when co-located. While the proposal provides a benefit to the community at large by providing health care, the proposal is of an intensity which conflicts with the land use typologies typically anticipated in the zone and by SSDCP2015. A 'hospital' being a subset of a 'health services facility' by definition, is an activity which can be considered to cater more broadly than for local needs.

The site is located within a 'low activity area' under Chapter 37 of SSDCP2015 (Council's Late Night Trading Policy). Premises which are suitable in these areas are those which meet local needs. The proposed 24-hour operation falls outside of both the 'base' and 'extended hours' specified within SSDCP2015 for a low activity area' (i.e. Base hours 6am-10pm / Extended hours 6am – midnight). The health services facility (hospital) is proposed to have a potential capacity of 85 people at any one time, including 55 patients and

30 staff and operate for 24 hours with overnight stay. The proposed operations, treatments or consultations are not to occur past midnight or before 6am in accordance with the SSDCP2015 extended hours.

There is however no detailed Operational Plan of Management (POM) detailing the operational aspects of the land use to assist in the planning assessment of the associated impacts anticipated to arise from (including suitability of the site / location for 24 hour operation). A POM was requested to provide detail of the organisational structure of the facility to determine whether the intensity of the land use and proposed 24 hour operation is acceptable having regard to the interface with surrounding lands including; vehicular traffic routes (i.e. hours of operation, staffing / patron numbers including during change-over and extended hours of operation outside of SSDCP2015, hours of access to premises, and all relevant management responses, procedures and actions relating to noise, light spill and amenity, waste management, site access / servicing, safety and security).

It has not been demonstrated that the proposal will have or manage its impacts upon surrounding residential neighbourhood..

#### **10.12. Acid Sulfate Soils**

The subject site is identified as within 'Class 5' on the Acid Sulfate Soils Maps and the provisions of Clause 6.1 are therefore applicable. The objectives of this Clause are to ensure that development does not disturb, expose or drain acid sulphate soils and cause environmental damage. Within Class 5, the trigger under SSLEP 2015 is works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the watertable is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 land. The development site is located above the 96m contour and the closest adjoining Class land is located approximately 300m to the south towards the Woronora River watercourse. Given the nature of the proposed works and depth of proposed basement excavation well above 5m AHD there is unlikely to be an impact on the water table on adjacent Class land.

#### **10.13. Earthworks**

The proposal includes earthworks and therefore Clause 6.2 of SSLEP 2015 is applicable. 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 basement is set in part on the northern boundary. Whilst inconsistent with SSDCP2015, impacts to adjoining properties could be dealt appropriately with conditions of consent in relation to Geotech, dilapidation reporting in the event of an approval.

#### **10.14. Archaeological Sensitivity**

Council records indicate that the subject site is rated medium 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 application has been accompanied by an Aboriginal Due Diligence Assessment and a site inspection revealed no evidence of shell material or significant sandstone features within the development zone. Notwithstanding the above, should consent be granted, the development would be

subject to a precautionary condition in the event of any unexpected finds during development works.

## **11.0 DEVELOPMENT CONTRIBUTIONS**

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

This contribution is based upon the proposed cost of the development and has been calculated at 1% of \$26,189,594.00 (the estimated cost of development identified on the development application form). Therefore, the Section 7.12 levy for the proposed development is \$261,895.94.

The Housing and Productivity Contribution (HPC) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 applies to certain development applications made on or after 1 October 2023 which generate additional infrastructure demand within the Greater Sydney Region. The contribution is intended to allow for the successful coordination and funding of state and regional infrastructure across our State's high growth areas to create better connections to communities, access to jobs, improve liveability and build a strong economy.

A housing and productivity contribution is required for development for which development consent is granted if it involves development of any of the following classes-

- (a) residential development
- (b) commercial development
- (c) industrial development.

A health services facility (Hospital) does not fall under the above defined classes / land uses under the standard definition and as such, the HPC is therefore not applicable.

## **12.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS**

Section 10.4 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts in excess of \$1000. In addition, Council's development application form requires a general declaration of affiliation. In relation to this development application a declaration has been made that there is no affiliation.

## **13.0 CONCLUSION**

The subject land is located within Zone R2 Low Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. A health services facility (Hospital) is not identified as a permissible use within the zone. In accordance with Clause 2.60(1) of State Environmental Planning Policy (Transport and Infrastructure) 2021, however, zone R2 is a prescribed zone and development for the purpose of health services facilities (Hospital) is permissible on land in a prescribed zone and may be carried out with development consent.

In response to the public notification, 28 submissions were received, including 21 unique objections. The matters raised in these submissions have been discussed in this report.

The proposal includes variations to the building height and landscaped area development standards contained within SSLEP2015 which are not considered to be acceptable in the circumstances presented.

There remain a number of critical planning concerns identified which indicates that the site is not suitable for the proposal. The assessment also reveals that the building typology / overall urban form / site coverage is unacceptable. There is a deficiency in the supporting information inhibiting the ability for the application to appropriately address planning concerns. A re-design of the proposal will be required for the development to adequately acknowledge and fit appropriately within the established low density residential context and natural environment and to also demonstrate that cumulative impacts presented to the surrounds can be acceptable.

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 any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. DA24/0086 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 9710.0333.