

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-47
Application Number	RA20/0010 and DA19/0786
LGA	Sutherland Shire
Proposed Development	Demolition of existing structures and construction of a health services facility
Street Address	398-402 Kingsway and 27 Flide Street, Caringbah Lots 7, 8, 9 and 37, DP 8147
Applicant	Irwin Medical Developments Pty Ltd
Date of lodgement	5 November 2020
Number of Submissions	18
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	The application is referred to the SSPP as the development has a capital investment value of more than \$5 million and is nominated under Schedule 7 (5)(b) of SEPP (State and Regional Development) 2011. The application submitted to Council nominates the value of the project as \$20,465,000.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (State and Regional Development) 2011. • State Environmental Planning Policy (Infrastructure) 2007 • Sutherland Shire Local Environmental Plan 2015 • Sutherland Shire Development Control Plan 2015 • Section 7.11 and 7.12 Development Contribution Plans 2016 - Sutherland Shire.
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Appendix A – Sutherland Shire Development Control Plan Compliance Table • Appendix B – Submissions review and issues • Appendix C – Draft Conditions of Consent • Appendix D – Design Review Forum (DRF) comments • Appendix E - Applicant response to Design Review Forum comments • Appendix F – TfNSW Response • Appendix G – Architectural, Landscape and Stormwater Plans
Summary of key submissions	<ul style="list-style-type: none"> • Economic impacts to surrounding businesses and lack of information on future uses; • Break of amalgamation pattern and insufficient attempts to acquire isolated lots; • Traffic and parking concerns • Bulk/scale and inadequate building setbacks • Whether the proposal is consistent with the character of the locality • Impact on property values • Amenity impacts to neighbours by way of overshadowing and traffic noise
Report prepared by	David Sheehan – Development Assessment Officer Sutherland Shire Council
Report date	23 April 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not Applicable

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

Conditions

Have draft conditions been provided to the applicant for comment?

No

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

REPORT SUMMARY

REASON FOR THE REPORT

The application is referred to the SSPP as the development has a capital investment value of more than \$5 million and is nominated under Schedule 7 (5)(b) of SEPP (State and Regional Development) 2011. The application submitted to Council nominates the value of the project as \$20,465,000.

PROPOSAL

The proposal seeks a review of the refused application - DA19/0786, in relation to demolition of existing structures and the construction of a health services facility. Minor amendments have been made to the proposal as part of the current review application in response to the previous reasons for refusal, and are discussed within the body of this report.

THE SITE

The site is comprised of four existing land parcels, with a combined size of approximately 2415.6m². The site is situated within the 'Caringbah Medical Precinct' and is approximately 250m to the east of Sutherland Hospital.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. Pursuant to Section 8.2 of the Environmental Planning and Assessment Act, 1979, Review Application No. 20/0010 be supported
2. Pursuant to Section 8.2 of the Environmental Planning and Assessment Act, 1979, Council's Refusal Notice of Determination dated 17 June 2020 of Development Application No. DA19/0786 for demolition of existing structures and construction of a medical centre at Lots 7, 8, 9 and 37 DP 8147, 398-402 Kingsway and 27 Flide Street, Caringbah be changed.
3. Development Application No. DA19/0786 for demolition of existing structures and construction of a medical centre at Lots 7, 8, 9 and 37 DP 8147, 398-402 Kingsway and 27 Flide Street, Caringbah be approved, subject to the conditions in P&R.

ASSESSMENT OFFICER'S COMMENTARY

1.0 BACKGROUND

- The site has been the subject of an earlier DA (DA15/1401) approved including 396 – 402 Kingsway and 21 – 27 Flide Street, Caringbah for demolition of existing structures and construction of a mixed use development comprising health services and residential apartments. This application lapses on 18 May 2023, (inclusive of an additional 2 years as a result of legislative amendments in relation to COVID 19).
- DA19/0786 was lodged with Council on 11 October 2019 and was determined by way of refusal by the Sydney South Planning Panel on 17 June 2020 for the following reasons:
 1. *The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposal is not of the desired future character envisaged for the Caringbah Medical Precinct locality. The proposal fails to satisfy objectives (1) (a), (d) and (e) of Clause 6.21 under SSLEP 2015.*
 2. *The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposal fails to satisfy Clause 6.16 Urban Design - general of SSLEP2015, as the design, bulk and scale of the building is not in keeping with the desired future character of the Precinct and locality.*
 3. *The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposal fails to satisfy Clause 6.18 Urban Design - non residential development in residential areas of SSLEP2015, as the design results in unacceptable setbacks, use of materials and is of a bulk and scale that is not of the desired future character of the locality.*
 4. *The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, in that the proposal fails to satisfy the controls and objectives for amalgamation of land contained within Clause 5, Chapter 9 of Sutherland Shire Development Control Plan 2015 (SSDCP2015).*
 5. *The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, in that the basement is not compliant with the street and rear basements required under Clauses 10.2.5 and 11.2.4 of Chapter 9 within SSDCP2015, preventing the planting of quality vegetation including canopy trees provided along Kingsway frontage and at the rear of the site.*
 6. *The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, in that the side and rear setbacks are non compliant with Clause 11 of Chapter 9 contained in SSDCP2015. These setbacks will result in unacceptable impacts on adjoining properties, in terms of separation, visual and amenity impacts and the redevelopment potential of adjoining properties.*

7. *The application is considered unacceptable pursuant to the provisions of s4.15(1)(e) of the Environmental Planning and Assessment Act 1979, in that the approval of the development will create an undesirable precedent and is therefore not in the public interest.*
- The current review of determination (RA20/0010) application was lodged with Council on 5 November 2020, and seeks review of the above refused development application (DA19/0786). This application was accompanied by revised plans and documentation responding to the issues raised by the Planning Panel stated above. The proposed changes included:
 - Removal of the rear roof terrace;
 - Removal of the basement protrusion at the rear by increasing the rear basement setback (to upper basement levels) by 3m;
 - Alterations to setbacks at sides and rear on various levels; and
 - Clarifying the quality and extent of landscaping in the rear setback.
 - Council wrote to the Applicant on 8 February 2021 and raised the following issues:
 - impact on neighbouring properties as a result of the break of amalgamation and building envelope pattern;
 - insufficient articulation/ bulk and scale,
 - visual privacy,
 - non-compliant side, front and rear building setbacks and potential overshadowing of neighbouring properties, and
 - landscaping along the rear boundary.
 - The applicant provided further information and amended plans on 2 and 7 March 2021 in response to the matters raised in Council's letter. The amendments comprised additional suns eye diagrams, provision of a potential urban form for the future redevelopment of isolated lots, and the introduction of horizontal screens raised 1m above FFL along the south-east and part of the south west (rear) elevations to address privacy impacts. These amended plans were considered by the Design Review Forum on 11 March 2021, and at the briefing of the Planning Panel on 25 March 2021. Feedback from these meetings was provided to the applicant, and the applicant was encouraged to make amendments to address matters raised. A full copy of the DRF comments provided to the Applicant is contained in **Appendix "D"** and is outlined in Section 9 of the Assessment Report below.
 - During assessment of the application, the assessing officer has requested the applicant to provide a response to neighbour submissions, provide photomontages and details of finished materials, provide further information in relation to the operation of the 'service parking' spaces, to provide evidence of discussion with future tenants or best practice driving the size of floorplates, and to provide justification for the 3.5m floor to floor heights at upper levels in lieu of the 4m specified within the SSDCP 2015.

- On 20 April 2021 the applicant lodged amended plans indicating further articulation to the external façade facing Kingsway, inclusion of vertical tinted glazing panels to the rear elevation, replaced clear glazing with tinted panels to the north-western elevation, and the application of translucent film to levels 2, 3 and 4 along the south-eastern elevation to 1.8m in height.

2.0 SITE DESCRIPTION AND LOCALITY

The site is irregular in shape with a total area of 2,415.6m². It has a primary eastern frontage to Kingsway of 45.72m and a western frontage to Flide Street of 15.24m. Its northern boundary adjoining 404 Kingsway & 29 Flide Street has a length of 79.25m and its southern boundary which adjoins 396 Kingsway has a length of 39.62m. The western rear boundary adjoins 23 & 25 Flide Street and has a length of 30.48m. The main portion of the land upon which the building is to be situated has a fall just over 3.2m from its south-eastern corner (RL36.33) to its north-western corner (RL33.10). The land upon 27 Flide Street continues to fall in a westerly direction a further 2m.

The site is currently occupied by 4 dwelling houses, each being single storey in height. Each lot currently has private vehicular access from their respective road frontage, and are set within a landscaped context which include a number of mature trees. The site is surrounded by single residential dwelling houses. Residential flat buildings exist opposite the site along Kingsway and further north west of the site within the Caringbah Medical Precinct, new buildings (including residential and health service facilities) have been completed and others are under construction.

Adjoining the site to the north is 404 Kingsway and 29 Flide Street. Both lots are part of a DA approval involving 4 lots, 404 to 406 Kingsway and 29 to 31 Flide Street all of which were part of the Site 13 amalgamation plan within SSDCP 2015. DA16/0456 is for the demolition of existing buildings on the 4 lots, construction of a 6 storey mixed use building containing 42 residential units, 2 health services facilities with basement car parking which has not physically commenced on site at the time of writing this briefing report.

The adjoining property at 21 Flide Street, (to the south), is the subject of a recently approved 3 storey residential flat building above basement parking under the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009. The development was approved by the Land and Environment Court on 8 May 2008 and contains a total of 9 dwellings, 3 of which are to be set aside as affordable housing.

The site is located at the eastern edge of the Caringbah Medical Precinct. Caringbah railway station is approximately 380m away from the site to the south east. The site was “up zoned” under Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015) allowing a maximum height of 20m and an FSR of 2:1 for development containing health service facilities, otherwise a maximum height of 9m and FSR of 0.55:1 applies for residential purposes allowed under the R4 zone. An aerial photo showing the location of the site and surrounds is shown below.



Figure 1: Aerial Photograph of the site (boundaries are indicated in red)



Figure 2: Caringbah Medical Precinct Amalgamation Plan identified in SSDCP 2015. The site is identified in yellow. The building envelope plan in SSDCP 2015 for site 14 is shown in the top right corner

The proposal is for the demolition of all existing structures and the construction of a five-storey building to be used as health services building. The development includes 5 floor levels to be used for health services and six levels of basement car parking to accommodate 138 parking spaces, 16 bicycle spaces, 6 motorcycle spaces, loading area and waste storage. Basement 1 will also accommodate additional floor area for the use of health services including a 'bunker'. Vehicular access to the basement will be provided via a new driveway within the north western corner of the site off Flide Street, with access controlled via a security roller shutter door, and 2 'service parking' spaces provided adjacent the entry point.

The built form is predominantly comprised of glazed facades all round with shading devices and louvres applied and a central pedestrian entrance provided at ground level accessed from the Kingsway. A site plan is provided below:



4.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the documentation submitted with the application, the applicant has provided adequate information to Council to enable a full assessment of this application.

5.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 42 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015). Council notified 80 adjoining or affected owners of the proposal. Eighteen (18) submissions were received, 12 in objection, and 6 in support. A full list of the locations of those who made submissions, the dates of the letters and the issues raised is contained in **Appendix "B"** of this report.

The main issues identified in the submissions are as follows:

- Economic impacts to surrounding businesses and lack of information on future uses;
- Break of amalgamation pattern and insufficient attempts to acquire isolated lots;
- Traffic and parking concerns
- Bulk/scale and inadequate building setbacks
- The proposal is not consistent with the character of the locality
- Amenity impacts to neighbours by way of overshadowing and traffic noise
- Impact on property values

Issue 1 - Economic Impacts to surrounding businesses and lack of information on future uses

Comment: The proposed use for medical purposes is consistent with the medical precinct designation specified for this site within Council's planning instruments. The application seeks approval for the building 'shell' only. Future uses within the building will be the subject of separate detailed applications.

Issue 2 - Break of amalgamation pattern and insufficient attempts to acquire isolated lots;

Several residents were concerned that the developer has not genuinely attempted to acquire No's 23 and 25 Flide Street, undervaluing those properties, and that approval would set a precedent in the approach which would be undertaken for the development of similar sites nearby.

Comment: The proposal has been accompanied by three independent property valuations, and evidence has been provided indicating that the higher of those valuations was provided to the affected properties. Information has also been provided demonstrating a suitable building envelope across that the isolated lots that may be developed independent of the subject scheme. The application presented to Council for consideration has followed the Karavellas planning principle and the procedure established within Sutherland Shire Development Control Plan 2015 where lots are unable to be acquired. This is not the first development to break the amalgamation pattern and approval of the subject proposal is not considered to lead to a precedent on other sites.

Issue 3 - Traffic and parking concerns

Comment: The proposal will provide the required number of car parking spaces, motorcycle and bicycle spaces indicated within Control 18.2.1 within Chapter 9 of SSDCP 2015, and vehicular entry is obtained via Flide Street as specified within 5.2.1 of Chapter 9 of SSDCP 2015. The applicant has provided a Traffic and Parking Impact Assessment with the subject application which demonstrates that there will be no change in the level of service at nearby intersections as a result of the proposal and future use. Council's traffic and development engineers have not raised any significant concerns in relation to traffic generation.

Issue 4 - Bulk/scale and inadequate building setbacks

Comment: This issue is addressed within the assessment section of this report under the headings '*Urban Design – non residential development*' and also '*Building Setbacks*'.

Issue 5 - The proposal is not consistent with the character of the locality

Comment: This issue is addressed within the assessment section of this report under the heading '*Desired Future Character for the Caringbah Medical Precinct*'.

Issue 6 - Amenity impacts to neighbours by way of overshadowing and traffic noise

Residents also raised issue with the replacement of the rear timber boundary fence with a colorbond fence, construction related disturbance including connection to the sewer which runs along the rear boundaries of No. 23 and 25 Flide Street, and interruption of TV reception.

Comment: The information provided demonstrates that 23 and 25 Flide Streets will receive 2 hours of solar access between 9.00am and 3.00pm on 21 June in accordance with Clause 14.2.a of SSDCP2015. Traffic noise is not considered likely to cause significant impact to neighbours due to the fact that vehicles accessing the development will be doing so at low speeds, with the driveway positioned well below that of neighbouring development. A construction management plan is required with any future construction certificate application. Any works required to be carried out with regards to a sewer line connection forms part of an application to Sydney Water at the construction certificate stage of the development process. The rear boundary fence can be addressed by a suitable condition in the event of approval. There has been no evidence supplied that the proposal will interrupt TV reception, and is considered unlikely and unavoidable by redevelopment in any event which is otherwise consistent with the main planning controls applicable to the site.

Issue 7 - Impact on property values

Comment: Property value is not a matter for consideration under the Environmental Planning and Assessment Act 1979.

Revised Plans

The applicant lodged revised plans on 2 March, 7 March 2021 and 20 April 2021. The physical changes to the built form relate to improvements in external treatment of windows to reduce potential for overlooking into neighbouring properties, to increase built form relief (north-western corner), and to introduce further variation in façade materials and colours. The applicant also provided further details in relation to tree species proposed within the rear setback area in consultation with Council's landscape officer to achieve greenweb objectives, to ensure a suitable setting for the building and to ensure the longevity of trees planted. In accordance with the requirements of SSDCP2015 these plans were not publicly exhibited as, in the opinion of Council, the changes being sought did not intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment.

6.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone R4 High Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a building for health services facility, is a permissible land use within the zone under Clause 6.21(3) of SSLEP2015 with development consent from Council.

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

- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy (State and Regional Development) 2011
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP 2007)
- Sutherland Shire Section 7.11 and 7.12 Development Contribution Plan 2016

6.1 State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55)

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) requires Council to consider whether the land subject to the development proposal is contaminated. If the site is contaminated Council must be satisfied that the site is suitable or can be made suitable (i.e. following remediation) for the proposed land use.

A site inspection identified that the site is currently occupied by dwelling houses. A review of Council's GIS and historical aerial photos has shown that the above has been in place since 1943. A search of Council's records, including historical files, has revealed that the site has had no other previous uses. A search of Council's contaminated land register specifies that the site is not potentially contaminated. In conclusion, the site is suitable for the proposed residential use in accordance with requirements of SEPP 55.

6.2 State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 identifies State and Regionally Significant development in NSW. Schedule 7(5)(b) of the SEPP identifies this application as regionally significant development as it relates to private infrastructure and community facilities (health services facility) with a capital investment of more than \$5 million. As such, the application is referred to the South Sydney Planning Panel for determination.

6.3 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:

Sutherland Shire Local Environmental Plan 2015			
CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
Height of Building	20m (9m with 11m bonus)	Max. 19.9m	Yes
Floor Space Ratio	2:1 (4831.2m ²) (0.55:1 and bonus 1.45:1)	2:1 (4831m ²)	Yes
Landscaped Area	30% (724.68m ²)	30.6% (738.5m ²)	Yes

6.4 Sutherland Shire Development Control Plan 2015

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

6.5 Draft Environmental Planning Instruments

Draft State Environmental Planning Policy (Remediation of Land) (Draft Remediation of Land SEPP)

The draft Remediation of Land SEPP seeks to repeal and replace SEPP55 in relation to the management and approval pathways of contaminated land. The draft SEPP was exhibited between January and April 2018. New provisions will be added which will:

- require all remediation work carried out without the need for development consent to be reviewed and certified by a certified contaminated land consultant,
- categorise remediation work based on the scale, risk and complexity of the work, and
- require environmental management plans relating to post remediation, maintenance and management of on-site remediation measures to be provided to Council.

The site and proposal has been assessed against the provisions of SEPP55 and likelihood of contamination is low. The proposal is satisfactory with regard for the provisions of draft *Remediation of Land SEPP*.

7.0 SPECIALIST COMMENTS AND REFERRALS

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

Transport for NSW

Concurrence was requested from Transport for NSW (TfNSW) pursuant to cl. 101 of ISEPP 2007 and Section 138 of the Roads Act, 1993 on 5 January 2021. A response was received on 28 January 2021 advised that concurrence will be provided subject to conditions. A copy of this response and conditions are appended (**Appendix 'F'**).

Design Review Forum (DRF)

The application was referred to DRF and the comments provided are shown in italics below.

1. *Amalgamation: The breaking of the DCP amalgamation pattern [i.e. non-utilisation of the Flide street lots] has meant the loading up of the Kingsway lots with floor space which the Panel considers results in poor amenity impacts, particularly to the 406-404 Kingsway and future 23-25 Flide St neighbours. The amalgamation plan shows a required north-western side setback between the buildings of 18 metres above the second level. The proposal has 5 levels proposed [equalling 6 residential levels] with a separation of only 10m and 12m to 406-404 Kingsway (see Sections C-C and D-D). Although privacy issues have been adequately managed by good use of glass selection, the ribbon window glazing and translucent glass still provides a light-spill issue, as well as solar obstruction and bulk, at a closer distance than would normally occur from a residential building, at both this, the south-eastern and south-western side setbacks, The proposal also presents a Kingsway streetscape character that is too bulky and not stepped back on upper floors as shown in the DCP Building Envelope Plan.*
2. *Setbacks and minimal planting will impact future development, especially to the rear. The southern setback to the level 5 volumes [facing the Flide street lots], which varies from 17m and 11.6m, could be reduced to the required 9m, with the extra FSR gained being offset vertically along the south-western (rear) setback and allowing a further increase to current setbacks of 3m and 4.6m respectively. This would again minimise intensity of light-spill and more importantly allow for more mature planting being possible in the greater width. The panel felt that a clearer shadow analysis needs to be presented to show that the habitable rooms of the approved units on 404-406 Kingsway and the future south-eastern and south-western neighbours receive the minimum ADG solar requirement of 2 hours. It was unclear why the front setback did not comply with the DCP control for the articulation zone.*

3. *Desired future character, issues of bulk and articulation seemed to the Panel to be the most pressing of the proposal's issues. As correctly stated by the applicant, a 100% medical building wasn't anticipated in the DCP. Therefore, the unintended consequence of this is that a building with a 100% commercial aesthetic cannot be positively contributing to council's contextual expectations and vision of a cohesive desired future character. The commercial character of the glass and aluminium facades on this mid-block site, with little articulation vertically or horizontally, is inappropriate in a predominantly residential context. Various suggestions were discussed, but the essential point of the argument was that some kind of manipulation of the form [rather than the delicate screen attachments to the flat façade] which should also respond to the articulation zone requirement by council. Vertical planters, that pushed in and out, would help animate the façade as noted above and create a sense of, or message, of a green focussed medical centre. The side modelling was seen as appropriate and the applicant was encouraged to explore the option of continuing this form of articulation of building elements around to the front, where it was absent. It was also suggested to push the top level of the Kingsway form [or parts thereof] toward the rear to assist with the perception of bulk issue, and to create a front terrace[s] that, as the client mentioned this would be the designated medical specialist level[s], and would serve as a breakout space/amenity.*
4. *Daylight and sunlight access (internal). The concentric hierarchy of planning of the interior spaces is noted but, the approximate 30m x 30m floorplate, having some facades opaque, screened, high lit only, or obscured, will generally result in both poor outlook and daylighting with a reliance on artificial light, notably to the main lobby area [Note that ADG, as a guide for residential development, requires max 8m depth for habitable rooms]. It was suggested that a larger lobby [possibly with void or a deeper, glazed recess] could be incorporated to provide for this amenity to occur around the circulation core of the building. This might also be achieved by the sliding of the lift block closer to the front entry point to include the current glazing in the proposed footprint.*
5. *The panel felt that entry into the building should be more direct and central [with a hopeful provision of a café], and thus, by minimising the doubled circulation space from the 2 current proposed side entries, and providing for a central entry and café sightline, create an area of high amenity, with 2 or 3 new mingling areas for smaller groups of people.*
6. *Signage design strategy [as per the previous DRF comments] wasn't clear and will need to be articulated in further documentation. This relates in particular to vertical building signage and building name/logo.*
7. *Sustainability. Consider PV panels on the roof and provision for electric cars. Consider the reflectivity impacts of façade materials.*

RECOMMENDATIONS

The Panel does not support the proposal in its current form. To be clear, the Panel acknowledges the re-submission goes some way to addressing the issues noted previously about the consideration of context, ground level activation, side setbacks, materiality, landscape and solar issues, however, the problems of scale, mass and articulation of the street frontage, relating particularly to the problem of the desired future character, remains as the primary concern.

The above comments were provided to the applicant on 23 March 2021. On 25 March 2021, Council wrote to the applicant and strongly suggested preparation of amended plans to address the issues raised by the DRF and Planning Panel. On 29 March 2021 the applicant provided a written response to the matters raised by DRF. This is attached at **Appendix “E”**.

On 20 April 2021 the applicant provided amended plans in response to issues relating to the external presentation of the building. Those plans were referred to Council’s Architect who advised that the changes made to the development demonstrate an improvement in the proposed aesthetic, however there remains concerns whether the expressed character is suitable in the predominately residential environment, given the curtain wall construction typology, geometric boxed design, and heavy reliance on landscaping provided in constrained setback areas. The architect recommended that the design approach could be further amended as discussed at DRF with a recessed uppermost floor to accommodate balcony spaces with edged planters that allowed ‘greening’ of the building facades to be established, along with planter features at lower levels to benefit amenity of future occupants and provide a ‘humanising’ effect to the building’s presentation. Whilst this approach is generally supported, it has not been adopted as discussed within the 8.2 Urban Design (non-residential) section of this report.

Landscape Officer

The application was referred to Council’s landscape technician who advised that soil volume is no longer an issue as a result of amendments to plans and would be acceptable for larger growing trees. Species selection have been discussed between Council’s landscape officer and the applicant’s consultant and suitable conditions recommended in this regard.

Environmental Health

The application was referred to Council’s Environmental Health Unit and no significant concerns were raised.

Engineering (Assessment Team)

The application was referred to Council’s Assessment Team Engineer who raised no significant concerns, subject to standard conditions of consent in the event of an approval.

Traffic Engineer

DA19/0786 was referred to Council's Traffic and Transport Engineer and no significant concerns were raised with regards to traffic generated from the proposed development. The revised development submitted with this review application made no significant changes to vehicular entry or the parking arrangements and a re-referral to the officer was not considered necessary.

Waste Management

The application was referred to Council's Waste Management Officer and no significant concerns were raised, subject to conditions of consent in the event of an approval. These conditions specify the design requirements of the waste storage area (proposed on basement level 2), and to ensure the design of the on-site collection area (proposed on basement level 1) will accommodate a small rigid waste collection vehicle. The proposal is capable of compliance with these requirements.

8.0 ASSESSMENT

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

8.1 Desired Future Character for the Caringbah Medical Precinct

This issue formed the first refusal reason where it was determined that the proposal is not of the desired future character for the Caringbah Medical Precinct and would fail to satisfy objectives 1(a),(d) and (e) of Clause 6.21, SSLEP 2015.

Clause 6.21 specifically relates to the Caringbah Medical Precinct. This clause enables an additional land use, health services facilities, on land within the precinct (identified as 'Area 7') and provides incentives in the form of additional height and floorspace if:

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

The proposal satisfies the above pre-requisites. The building will contain a health services facility and steps down in scale toward Flide Street and the immediately adjoining properties to the rear. In relation to point (c), building setbacks at the ground floor will accommodate the deep soil zone anticipated by SSDCP 2015 to the sides and rear boundary (with No. 23 and 23 Flide Street), and will facilitate the planting of large scale indigenous trees within Kingsway frontage.

The objectives of clause 6.21 referred to in refusal reason 1 are examined further below.

- (a) *to create a mixed use development precinct that has health services facilities and residential accommodation located adjacent to the Sutherland Hospital and within walking distance of Caringbah Centre,*

The proposal is considered to contribute to the mixed use development precinct with the provision of health services facilities in an area identified as being suitable for such use. Notably, the planning instrument does not place an upper limit on the amount of the site which can be occupied for that use, nor does it specify that residential development must be provided on the site. This objective is deemed satisfied.

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

The application provides 4m wide, deep soil setbacks to the north-west and south-eastern sides which is consistent with the required setbacks stipulated within SSDCP 2015. Deep soil setbacks are also provided to the Flide Street and Kingsway frontages, and although it is noted that the basement will encroach 775mm into the Kingsway front setback area, this area corresponds with the entry pathways above and will not affect the overall provision or quality of landscaping within the setback area. All setback areas are to be landscaped with substantial indigenous trees, which a species schedule that will contribute to Council's broader greenweb strategy for this location. Importantly, the amendments made within this revised design to provide a 3m setback from the upper basement/lower ground floor level to the rear boundary with 23 and 25 Flide Street, which will permit an at grade area for successful planting of significantly sized vegetation rather than the previous raised planter bed. The applicant intends to plant this area with a variety of shrubs and trees which Council's landscape officer is supportive. Overall, the proposal will incorporate 30.6% of the site as deep soil landscaped area which is in excess of the 30% required by clause 6.14 of SSLEP 2015, and all deep soil areas are consolidated areas capable of supporting reasonable sized vegetation to complement the scale of the building. The amendments made to the proposal are considered to resolve the issues previously raised in relation to objective (d), and, for the aforementioned reasons, the objective is deemed satisfied.

- (e) *To protect the amenity of the adjacent areas by providing a transition to adjacent 2-storey residential development, including reasonable setbacks from side and rear boundaries and the maintenance of a transitional scale of building height to Flide Street, Caringbah*

The assessment officer's report of DA19/0786 states in relation to this objective that the variation of the amalgamation pattern and building envelope plan results in reduced setbacks from the side and rear boundaries resulting in unacceptable impacts surrounding properties. Further, the officer concluded that the isolation of lots to the rear would likely impact their full development potential, and place pressure upon the envisaged 4 storey height limit on those lots to provide a scale transition.

The proposed side setbacks are consistent with the building separation requirements specified within Chapter 9 of SSDCP 2015, and/ or as anticipated by the Building Envelope Plan. It is noted that the proposal deviates from the Building Envelope Plan in relation to the north-western side which anticipates a 2 storey medical height, and a 14m setback provided to the upper floors. The intent of this envelope is to maintain building separation between the upper level residential components as required under the Apartment Design Guide, and to provide for solar access to the lower 4 storey components at the upper levels to the rear (Flide Street). The proposal will attain the required building separation to approved (but yet to be constructed) development adjoining on the north-western side, and relies on the identified Building Envelope Plan to achieve the separation to the south-east. It is noted that windows along both side elevations, where they align with residential development are treated with 'no vision glass panels' and/ or louvres to ensure that visual privacy is maintained. The upper fifth level of the building is concentrated toward Kingsway, maintaining the stepping toward Flide Street, and the envisaged 4 storey envelope on the rear lots. The applicant has provided suns-eye diagrams which demonstrate that the required solar access will be provided to the rear, and that greater than 70% of apartments in their scheme would achieve compliance with the ADG in a four storey form, with 25% medical at the lower level. See Figure 4 and Figure 5 below.

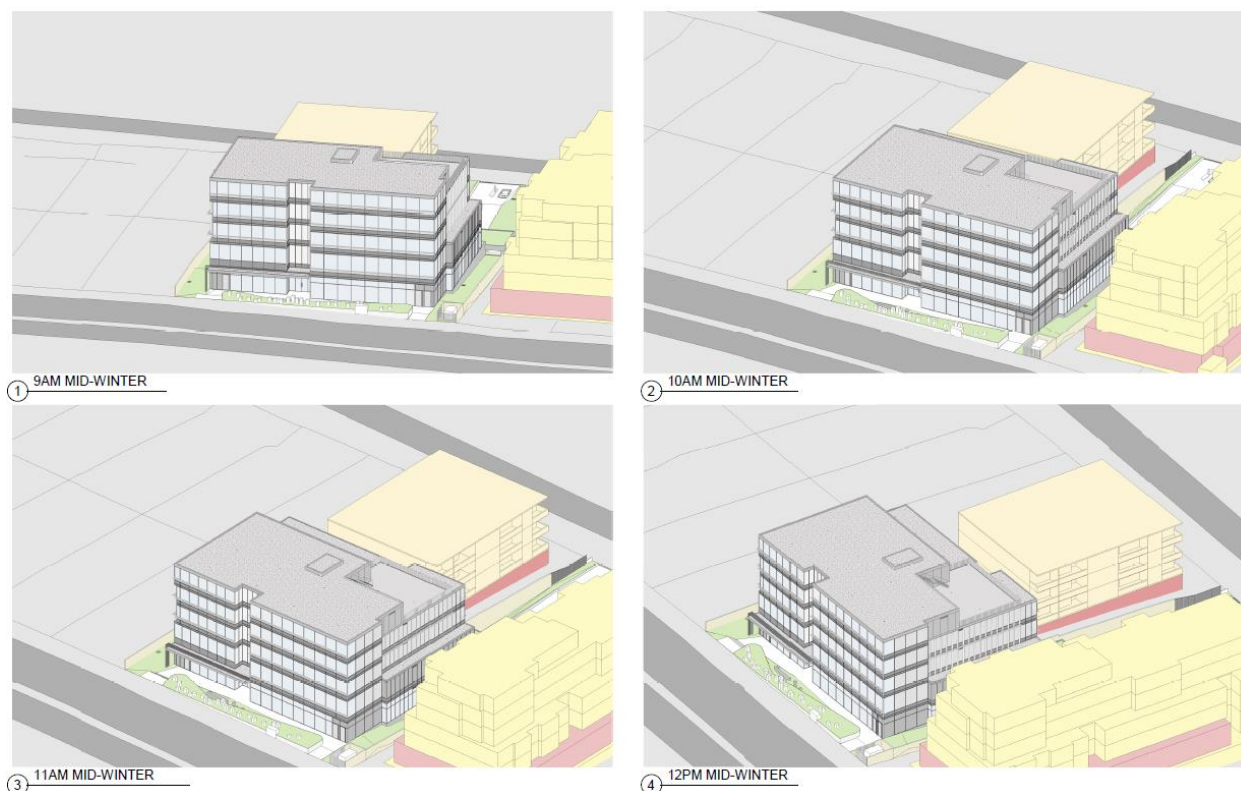


Figure 4: Suns eye diagram Midwinter 9AM to 12PM



Figure 5: Suns eye diagram Midwinter 1PM to 3PM

The revised plans and documentation have provided a viable potential envelope for the rear lots which can achieve the full development potential without additional height. The proposal has been designed with setbacks which are consistent with those permitted by the SSDCP 2015 and overlooking and visual amenity impacts have been ameliorated to some extent by the glass treatment and physical attachments to the building. For these reasons, the revised proposal is deemed consistent with objective (e).

Whilst the design of the building is geometrically 'boxy' in form, and contains facades that are larger than would otherwise be typical of a residential form, the applicant has made significant amendments to the scheme in an attempt to produce a building aesthetic that is more sympathetic to its residential context. The health service facility use is permissible in the zone, the development achieves consistency with the main planning standards and the building will sit in a well landscaped setting. These are the express desired objectives stated for this precinct and as such the proposal, as amended, is considered consistent with the desired future character envisaged for the Caringbah Medical Precinct. It is recommended that refusal reason 1 is no longer contended.

8.2 Urban Design (non-residential)

This issue formed the second and third refusal reasons where it was determined that the proposal fails to satisfy the urban design clauses 6.16 and 6.18 of SSLEP 2015. The reasons in relation to cl. 6.16 state that the design, bulk and scale of the building is not in keeping with the desired future character of the Precinct and locality, and, in relation to cl. 6.18, the design results in unacceptable setbacks, use of materials and is of a bulk and scale that is not of the desired future character of the locality.

The applicant has provided photomontages of the proposed development to assist Council and the Panel's understanding of the amended proposal. These are provided below at Figure 6, Figure 7, and Figure 8.



Figure 6: Photomontage of the building looking toward the south-east and north-east (Kingsway) elevations



Figure 7: Photomontage of the building looking toward the north-east (Kingsway) and north-west elevations



Figure 8: Photomontage of the building looking toward the south-west (Rear) elevation

Clauses 6.16 and 6.18 of SSLEP 2015 contain certain matters of consideration relating to urban design. Clause 6.16 applies to all development, whilst cl. 6.18 provides additional considerations for non-residential development in residential areas. Both clauses are relevant to the subject proposal and tables are provided below with an assessment of the proposal against those considerations.

Clause 6.16 – Urban Design - general	
In deciding whether to grant development consent for any development, the consent authority must consider the following:	
(a) the extent to which high quality design and development outcomes for the urban environment of Sutherland Shire have been attained, or will be attained, by the development,	<p>The proposal is consistent with the primary planning standards applicable to the site and land use. The development design has been predicated on the provision of large floorplates which the applicant's research indicates are required and necessary to attract the desired medical operators. The applicant has increased modulation of external facades to provide visual interest, building relief and reduce the extent of large flat building planes evident in the previous proposal. During assessment of the current application, the applicant has attempted to reduce the commercial aesthetic with the introduction of a bronze colour to the central band of the building and a visual break to ribbon glazing obtained via replacement of some glazed panels along the Kingsway frontage. These changes are positive and will assist to provide a building with reduced apparent bulk when viewed from neighbouring buildings and within the streetscape.</p> <p>The applicant has also now satisfactorily addressed privacy impacts, with a combination of glass treatments, louvres, and horizontal attachments.</p> <p>Whilst these changes do not entirely satisfy the matters raised by the DRF, the building is considered a high quality design which will deliver the specified medical facility development outcome sought for this locality, with defensive arrangements to protect neighbouring residential amenity. The revised development incorporates sufficient setbacks to accommodate reasonable sized landscaping to offset and ground the development within a landscaped setting which is also a key development outcome for this locality.</p>

<p>(b) the extent to which any buildings are designed and will be constructed to—</p> <p>(i) strengthen, enhance or integrate into the existing character of distinctive locations, neighbourhoods and streetscapes, and</p> <p>(ii) contribute to the desired future character of the locality concerned,</p>	<p>As mentioned above, the building is consistent with the principal planning standards and controls, and will provide a building which provides an active street frontage to Kingsway. The use will add to the vitality of the locality and strengthen the core purpose of the precinct. The proposal will contribute to the streetscape via the provision of a well landscaped front setback, and a building which in its amended form now provides for articulation and visual relief.</p>
<p>(c) the extent to which recognition has been given to the public domain in the design of the development and the extent to which that design will facilitate improvements to the public domain,</p>	<p>The street facing elevation, as amended, is well-articulated, and the landscape design will provide for an extension of the public domain on both Kingsway and Flide Street. In situ concrete seating within the frontage will provide incidental opportunities for visitors and staff to the site to enjoy the well landscaped setback area.</p>
<p>(d) the extent to which the natural environment will be retained or enhanced by the development,</p>	<p>The development will incorporate a significant number of trees, shrubs and native ground covers which have been selected to contribute to Council's greenweb strategy.</p>
<p>(e) the extent to which the development will respond to the natural landform of the site of the development,</p>	<p>Natural ground levels are to be retained around the building, and the areas either side of the driveway entry will be suitably landscaped to offset any retaining structures.</p>
<p>(f) the extent to which the development will preserve, enhance or reinforce specific areas of high visual quality, ridgelines and landmark locations, including gateways, nodes, views and vistas,</p>	<p>The subject site is not identified as being an area of high visual quality, or is considered likely to interrupt significant views or vistas.</p>
<p>(g) the principles for minimising crime risk set out in Part B of the Crime Prevention Guidelines and the extent to which the design of the proposed development applies those principles.</p>	<p>The main entry point to the development allows for casual observation by both the public and occupants. Entry to the basement will be controlled access, and basement levels have been designed with wide aisles and lobby areas, and minimal areas for concealment.</p>
<p>Clause 6.18 – Urban Design – non residential</p>	
<p>Development consent must not be granted for development to which this clause applies unless the consent authority has considered the following:</p>	
<p>(a) the extent to which any proposed non-residential accommodation and its design will integrate into the locality,</p>	<p>This is not relevant to the subject proposal as the application does not include non-residential accommodation. The proposal is consistent with the express desired use within the Caringbah Medical Precinct.</p>

(b) the extent to which any such accommodation will respond to the local character, and relate to the scale, streetscape, setbacks and use of materials of other accommodation in the locality,	As per above, accommodation is not proposed and this is not relevant to the current application.
(c) the extent to which the residential amenity of the locality will be protected from detrimental traffic-related impacts and noise associated with the development.	There are no adverse traffic impacts as demonstrated by the traffic and parking assessment submitted with the review application and issues in this respect have not been raised by Council's engineers or the RMS. In relation to noise, the applicant provided an acoustic assessment with DA19/0786 which concluded that noise produced within the building at full operation will be inaudible from neighbouring buildings.

The matters specified within Clause 6.16 and 6.18 have been considered. The development, as amended, provides a built form which is consistent with Council's main planning controls, will sit in well landscaped surrounds and resolves prior concerns in relation to privacy implications, bulk and scale. It is noted that the design and its integration with neighbouring development could conceivably be improved via an additional setback at the fifth floor as suggested by the DRF, and the introduction of planters at the building edge and attached to the front façade at lower levels. Such changes would have benefits by way of reducing the apparent street building wall height, would assist to 'soften' the building, and would also introduce aspects that would be typical within a residential building typology and R4 High Density Residential context. In considering such amendments, the recessed component of the fifth floor would need to be achieved without sliding that floor further to the rear to obviate a breach of the height envelope, and therefore would necessitate a reduction in floor area – something the applicant has advised will affect the operable needs of future medical tenants. In addition, the applicant has expressed a strong objection to the use of a green wall for maintenance reasons, and asserts that this approach is not suitable for this building typology. It is their opinion that a green wall will fail in time, and will leave permanent scars upon the building. The applicant has proffered a solution which incorporates solid aluminium panels in a bronze finish to replace every second window pane on the third and fourth floor. Whilst a recessed setback and landscaped building edge as envisaged by DRF is potentially a superior outcome, this may be achieved at the expense of a viable medical use upon the fifth floor. In this instance, and for the reasons identified, the existing design and articulation elements are considered satisfactory.

Based on the amendments made to the proposal, it is recommended that the reasons for refusal numbered 2 and 3 be no longer contended.

8.3 Amalgamation and Building Envelope Plan

Refusal reason 4 states that the proposal fails to satisfy the controls and objectives for amalgamation of land contained in Clause 5, Chapter 9 of SSDCP 2015.

The site is identified as forming part of Site 14 (6 lots) within the Caringbah Medical Precinct Amalgamation Plan. The proposal is to vary the amalgamation and Building Envelope Plan for site 14 and construct a building fronting Kingsway over 3 lots with vehicular access from a fourth lot along Flide Street (see Figure 9 below).



Figure 9: Caringbah Medical Precinct Amalgamation Plan identified in SSDCP 2015. The site is identified in yellow. The building envelope plan in SSDCP 2015 for site 14 is shown in the top right corner

Applications seeking to vary the amalgamation pattern must provide information indicating that fair financial offer/s have been made to the owner/s of sites not incorporated in the designated amalgamation pattern. Furthermore, if no agreement can be reached, the applicant must provide schematic diagrams of how the isolated lots can be developed.

Further, the planning principles contained in the LEC judgement of *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 (Karavellas) can be used to consider development amalgamation/site isolation. In short, the general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

1. *Firstly, is amalgamation of the sites feasible?*
- a) *Step 1: negotiations to commence at an early stage prior to lodging an application.*

With DA19/0786, the applicant provided a copy of an email (from a real estate agent to the applicant) advising that an offer of \$1,300,000 was given to 23 and 25 Flide Street in September 2019, however these offers were rejected.

As part of the current review application, the applicant provided copies of letters dated 15 October 2020, (from the applicant) detailing an expression of interest to purchase 23 and 25 Flide Street, along with proof of registered mail postage to those addresses. An offer of \$1,300,000 was made to each property owner along with an offer of payment of reasonable legal fees.

- b) *Step 2: details of negotiations between the owners to be detailed, including offers, based on independent valuations and may include reasonable expenses incurred by the owner of the isolated property in the sale.*

A statutory declaration, dated 29 October, was submitted by the Applicant detailing the efforts to acquire 23 and 25 Flide Street. That declaration states that discussions with the owner of 25 Flide Street took place on 22 October 2021. The declaration indicates that the purchase price sought by the owner of No. 25 Flide Street was more than double the figure (\$3,000,000) identified within the independent property valuations and was considered unreasonable. The statement indicates that a question was posed whether the neighbour might be willing to meet halfway, however this was also declined and the discussions stalled amicably. The declaration indicates that as at the 29 October no response had been received from the adjoining owner at No. 23 Flide Street, however based upon previous offers made to that property it was unlikely that they would be interested in selling their land. The review application was submitted to Council on 5 November 2020. In response to neighbour notification, No 23 Flide Street advised they were in hospital during this period, however similar to No. 25 Flide Street, they also believed the value of the land to be significantly greater than that offered.

The information submitted with the development application includes the following:

- Three independent valuations of 23 and 25 Flide Street, prepared by CBRE Valuations Pty Ltd, Malcolm Gunning, and Mangioni Property Valuations and Consultancy Pty Ltd.. Each valuation considered Clause 6.21 of SSLEP 2015 and recommended a similar valuation price for each property, with an upper valuation of \$1,300,000 each..
- Copies of Letters of Offer to No. 23 and No. 25 Flide Street, and evidence of registered mail postage
- Letter from Justin Ressler dated 15 October 2020 indicating the properties are valued at a similar value to his previous valuation (submitted with DA19/0786) of \$1,150,000 each.
- Statutory declaration from the Applicant dated 29 October 2020 as detailed above.

- Statutory declaration from Justin Ressler dated 29 October 2020 indicating that he and a colleague visited the owners of No. 23 and 25 Flide Street on 9 October 2020 to discuss sale of their property to the Applicant. In relation to No. 23 Flide Street, it is stated that a contact card was left with the wife who would discuss with her husband as they were busy at the time. In relation to No. 25 Flide Street, the owner was asked what they would be willing to sell their property for. The owner advised \$3,000,000 and not a penny less. The statement indicates that Mr. Ressler offered \$1,300,000. The owners advised they would not accept that offer as they would be unable to replace what they have for that sort of money, and are currently renovating their bathroom and quite happy to stay.
- c) *Step 3: the level of the negotiation and any offers for the isolated site to be given weight in the consideration in the assessment. Weight is to be given to the level of negotiation, the reasonableness of the offer and relevant planning requirements.*

The information submitted with the application indicates that several attempts have been made to acquire No. 23 and 25 Flide Street. It appears that the main reason for negotiations failing is not that the owners of No. 23 and 25 Flide Street are unwilling to sell, it is that they are unable to sell at the price offered. The price offered has been based upon the upper limit provided by independent property valuations. Further, each of the properties is a similar size to No. 17 Flide Street, Caringbah, which sold on 25 March 2019 for \$1,020,000. No. 17 Flide Street is situated three properties to the south-east of No. 23, and is subject to the same zoning, amalgamation requirements and development potential as the subject lots.

Clause 5 of Chapter 9 SSDCP 2015 provides that a reasonable offer for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on 3 independent valuation reports. The applicant has complied with this requirement.

2. *Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?*

The isolated lots are capable of being consolidated, and together they achieve a frontage width of 30.48m, which exceeds the 26m minimum width specified within clause 5.2.3 of Chapter 9, SSDCP 2015. During the assessment of the subject application, the applicant has provided 2 indicative redevelopment schemes for No. 23 and 25 Flide Street, one with 100% medical over floor levels, and another with 25% medical on the lower floor and three levels of residential above. Both schemes are indicated below.

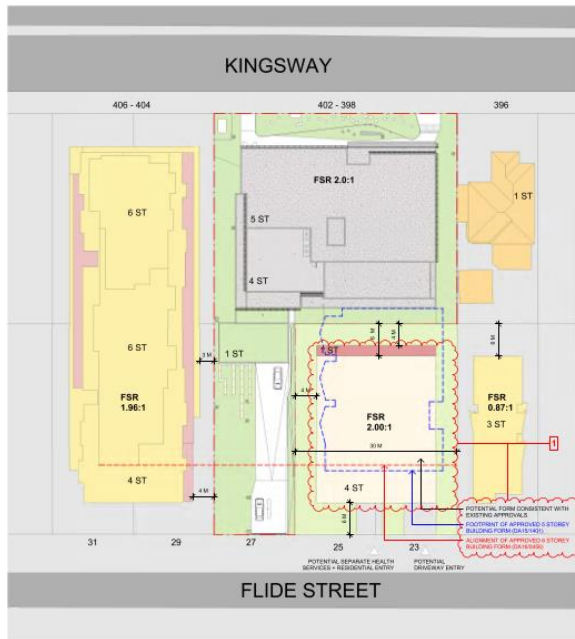


Figure 10: Potential redevelopment - 75% Residential and 25% Medical

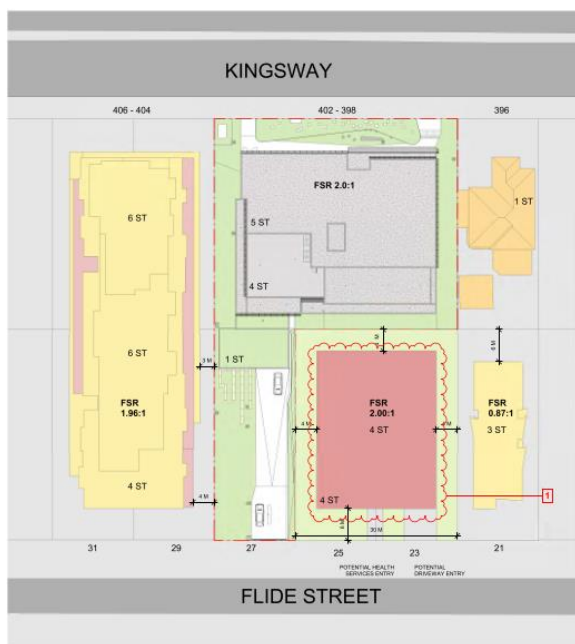


Figure 11: Potential Redevelopment - 100% Medical

Although indicative, both schemes demonstrate that it is possible to produce floorplates that will achieve close to the maximum permissible floorspace, maintain the 4 storey height identified in the building envelope plan, and are capable of compliance with the setback and landscape area requirements. Further, overshadowing diagrams have been prepared which demonstrate that 73% of apartments within that design will achieve the Apartment Design Guide required solar access to a living and private open space area. Such a scheme will maintain the stated transition in building height to Flide Street.

Although the proposal will break both the amalgamation pattern and the building envelope plan, it is noted that there are several nearby developments approved which have also varied both. The applicant has demonstrated genuine attempts to acquire the isolated lots, and in the absence of being able to integrate those lots, has demonstrated a viable redevelopment scheme which will enable those lots to be developed independent of the subject proposal, and still meet the objectives and desired intent specified for the precinct within the SSDCP 2015.

As a consequence of the break of the amalgamation pattern, the width of the subject site facing Flide Street is 15.24m, which falls well short of the 26m specified. The SSDCP 2015 states that this width is required in order to facilitate a development that:

- a. *Provides for safe and appropriate access and servicing facilities – vehicular parking, access, storage and waste management areas.*
- b. *Provides for a high standard of resident amenity – including privacy, solar access, ventilation, and landscaped setbacks.*
- c. *Responds to the local context, including providing adequate separation from existing and future adjoining development.*

The proposed use of 27 Flide Street is for vehicular access and landscaping only. No concerns have been raised by Council's development engineer or the waste officer with respect to the matters raised in point a. above. With respect to points b and c, the use of that space for access and landscaping only is consistent with the building envelope plan, and will ensure there is a reasonable landscaped break between future development upon adjoining lots.

It is noted that an improved planning outcome could plausibly be achieved with a shared driveway arrangement with future development upon No. 23 and 25 Flide Street, reducing the number of vehicular access points from Flide Street and providing increased area for landscaping within the front setback area. Whilst there is a slim nexus to the subject development and the break of the amalgamation pattern, this option has not been pursued as it would be difficult to maintain controlled access to the site, particularly if the redevelopment of upper levels of the adjoining properties contain residential uses, and also to achieve the grades necessary for entry and vehicle servicing to the adjoining basement level, maintain sight lines and for safe control and design of the intersection. In any event the site width of the isolated lots achieves the 26m width specified within the SSDCP 2015 deemed to accommodate safe entry and egress. No concerns are therefore raised in this regard, and the site width for both sites is considered reasonable in this instance.

The applicant has provided information with the current review application which demonstrates that amalgamation is not currently possible, however the lots are capable of being carried out independently without impact the redevelopment of the isolated lots, or affect the desired outcome for the site and locality.

As a result of the information provided with the current application, it is recommended that reason for refusal No. 4 no longer be contended.

8.4 Building Setbacks

Rear and Street Setback

Refusal reason 5 determined that the basement was not compliant with the street and rear basements required under Clauses 10.2.5 and 11.2.4 of Chapter 9 within SSDCP 2015, and would prevent the planting of quality vegetation including canopy trees provided along Kingsway frontage and at the rear of the site.

Clause 10.2.5 states:

Basement underground car parks may be allowed within the articulation zone of the street setback, provided the structure is considered in conjunction with the overall landscape design.

This aspect of the proposal remains unchanged from the plans considered with DA19/0786. The proposed position of the basement is 5.225m from the front setback, where a 6m setback is required. This setback is consistent with that of an earlier consent (DA15/1401) approved on this site. Although it is noted that the basement will encroach 775mm into the Kingsway front setback area, this area corresponds with the entry pathways above and will not affect the overall provision or quality of landscaping within the setback area. Landscape plans indicate that this area is to be landscaped with substantial indigenous trees, which a species schedule that will contribute to Council's broader greenweb strategy for this location and supported by Council's Landscape Officer.

Clause 11.2.4 states:

That part of a basement construction which extends beyond the building footprint must be set back a minimum of 3m from 3m from side and/or rear boundaries.

The amendments made within this revised design provide a 3m setback from the upper basement/lower ground floor level to the rear boundary with 23 and 25 Flide Street, which will permit an at grade area for successful planting of significantly sized vegetation rather than the previous raised planter bed. The landscape plans indicate that this area will accommodate a variety of shrubs and trees which Council's landscape officer is supportive.

Overall, the proposal will incorporate 30.6% of the site as deep soil landscaped area which is in excess of the 30% required by clause 6.14 of SSLEP 2015, and all deep soil areas are consolidated areas capable of supporting reasonable sized vegetation to complement the scale of the building. The amendments made to the proposal are considered to resolve the issues previously raised in relation to basement

setbacks at the rear, and it has been adequately demonstrated that the proposed setbacks will not prevent the planting of quality vegetation including canopy trees within either of those setback areas. Based on the amendments made to the proposal, it is recommended that the reasons for refusal number 5 no longer be contended.

Side and rear setbacks

Refusal reason 6 determined that the proposal was to be refused due to non-compliant side and rear setbacks with Clause 11 of Chapter 9 in SSDCP 2015, and that this would result in unacceptable impacts on adjoining properties in terms of separation, visual and amenity impacts and the redevelopment potential of adjoining properties.

Since the refusal of DA19/0786, the applicant has made significant amendments to side and rear setbacks, and has provided additional privacy measures to address overlooking concerns. Such amendments include a further 2m setback to levels 3, 4, and 5 along the north-western side, to produce a 6m setback to the side boundary along the majority of this elevation, whilst maintaining the 4m setback to the lower floors as envisaged by the building envelope plan. The rear setback with 23 and 25 Flide Street has been increased at levels 2, 3 and 4 from 3m to 4.75m (south-eastern side), and from 1.89m to 3m at levels 2 and 3 (south-western side). The side setback along the south-eastern elevation maintains a 4m setback to glass line and louvres which is consistent with the setback identified within the building envelope plan, with minor protrusions into the setback area for horizontal privacy attachments only. In addition, the applicant has also amended plans to provide a 1.1m deep recessed corner within the north-western portion of the building, which aids a transition to future development on the adjoining property at 404 to 406 Kingsway.

In making the above amendments, and to offset floorspace, the applicant has:

- reduced the depth of the central recess provided above the entry by approximately 1m which will have limited impact as the depth of the recess at 1m will achieve the intended modulation within that façade;
- Reduced the setback at Levels 1 and 4 of the south-west side of the rear elevation to coincide with the increased 3m setback at levels 2 and 4; and
- Placed additional floor area at the south-eastern side of Level 5, within the position of the removed covered terrace area.

The applicant asserts in their statement that the ADG is not relevant to the proposed building in relation to building setbacks on the basis that this form of development does not fall within development categories (being residential apartment buildings, shop top housing and the residential component of mixed use buildings). The applicant further argues that in the event that the ADG is applied, it should be applied on the basis that the north-western side and rear portions of the building be treated as 'non-habitable' walls for the purpose of setbacks as they contain opaque and translucent glazing and louvres.

Control 11.2.b of Chapter 9, SSDCP 2015 guiding upper level setbacks was amended in 10 July 2019 (Amendment No.4) to refer directly to the ADG to avoid inconsistency with that document. Previously the separation distances were stated directly within the control, with 12m between buildings required for floors above 2 storeys up to a height of 4 storeys, and 14m for storeys above that. The clear intent of the control is to ensure there will be reasonable building separation between buildings within the residential zone context. It is considered reasonable to accept the non-habitable to habitable proposition, having regard for the use of the proposed building, being non-residential which wasn't anticipated for upper levels within the DCP, and also in relation to the defensive treatments to side and rear elevations to maintain privacy for neighbouring developments. When applying the setbacks in this manner, the development will achieve the required separation distances.

It is accepted that the SSDCP 2015 anticipates that the lower two levels will contain medical uses, and that there will be some degree of mutual overlooking. Notwithstanding, the applicant has sought to respond to Council's concern for the interim situation where adjoining lots contain residential development. The applicant proposes to provide a translucent film to 1.8m in height to levels 2, 3 and 4 of the south-eastern elevation. Whilst this is acceptable for level 2, levels 3 and 4 will require a more permanent solution and a condition is recommended requiring translucent no vision glass (GL3). A similar interim approach should be taken to the first floor along the north-western elevation, as it will be possible to overlook adjoining rear gardens, and there is no guarantee that the approved development will take place. A suitable condition is proposed requiring translucent film be applied until such time as a medical use is completed facing that elevation.

Whilst the overall building remains boxy in form, the amendments made are targeted such that they will break up the side and rear elevations into smaller components. As mentioned above, the side and rear setbacks are either consistent with the building envelope, or with the separation distances for non-habitable buildings to habitable and as such it is recommended that the reason for refusal No. 6 is no longer contended.

Suggestions by Council's architect and the DRF to recess the fifth level would assist to further moderate the mass of the building, and are desirable, however for the reasons specified earlier in this report have not been adopted.

8.5 Precedent and comments in relation to DRF

Refusal reason 7 determined that approval of the development would lead to an undesirable precedent and would not be in the public interest. In this respect it is noted that the proposal complies with the principal planning controls for height, floorspace and landscape area. The development is also consistent with the broad setbacks established by the building envelope plan and/or ADG (when applying the non-habitable test). The use is one which is desired and encouraged within the Medical Precinct, and it has been satisfactorily demonstrated that, despite varying the amalgamation pattern and building envelope

plan, it will be possible to redevelop the isolated lots to their full potential and maintain the required 4 storey height limit along Flide Street.

It is debatable as to whether the changes made to the external elevations are sufficient to alleviate the concerns raised by Council and the DRF as to whether the development will comfortably sit in a mixed use/ high density residential context. DRF and Council's architect suggest that further amendments are required. It is agreed that further changes in material, increased setbacks and possibly green walls would improve the relationship with adjoining development and residential context. Whilst the revised plans have not adopted these recommendations, the changes are deemed sufficient to the extent that the building will have an acceptable streetscape appearance which will complement and contribute to evolving character of the Caringbah Medical Precinct.

For these reasons it is agreed with the applicant's contention that this development, as amended, is no longer considered an unwelcome precedent or contrary to the public interest.

8.6 Other Matters

8.6.1 Use of the building and neighbour amenity

The application form states the proposal is for the review of a health services facility. The traffic report provided indicates that the use of the building will include a cancer treatment centre at lower ground, extended hours medical centre at level 1 and specialist medical centre use at levels 2 to 5. Insufficient information was provided including, the internal layout of each floor, an operational management plan addressing the use of each floor level, hours of operation and staff numbers. The applicant has previously confirmed that the application is not for the use of the building and would accept a condition requiring development application/s be submitted for future use of the building. It is considered reasonable to also impose conditions limiting the hours of operation, loading and unloading requirements, noise, and criteria for parking allocation in this consent, to maintain residential amenity in the event that the development is able to be activated through a first use of premises under SEPP (Exempt and Complying Development Codes) 2008. The majority of these conditions are standard. In relation to hours of operation, it is noted that the traffic report indicates that the Specialist Medical Centre ceases operation at 6PM, however provides no guidance in relation to the extended hours medical centre or cancer treatment centre. Chapter 37 of SSDCP 2015 – Late Night Trading provides guidance for suitable hours of operation to minimise impacts for neighbours. The subject site is identified as a low activity area for the purposes of this chapter and provides the following 'base' hours for medical centres:

	High	Intermediate	Low
Medical Centres	6am to 1am	6am to midnight	6am to 10pm

Figure 12: Base Trading Hours specified for medical centres within 3.2.1, Chapter 37, SSDCP 2015

In the absence of detailed information regarding the operation of the application, it is considered appropriate to limit the hours to those specified within the SSDCP 2015.

8.6.2 Green roof

Two service parking spaces are proposed at the rear with a green roof over setback 835mm – 850mm from the side boundaries of the site. The intent of the green roof is to soften the appearance of the structure when viewed from surrounding properties and Flide Street. The success of the green roof is reliant on maintenance and no maintenance plan has been provided with the application. To ensure the longevity of this part of the proposal, and to ensure that this aspect will contribute rather than derogate from its surroundings, a condition is considered necessary outlining minimum design, installation, access, irrigation and maintenance requirements. The condition is also to specify that access to this area is for maintenance only due to the potential privacy impacts that would otherwise result due to its elevated nature and proximity to boundaries.

8.6.3 Floor to Floor Heights

The proposal seeks to have 3.5m floor to floor heights at levels 3-5, where SSDCP 2015 requires a minimum of 4m for medical uses. In response to this issue, the applicant has advised:

“4m floor – floor heights are required when large heavy machinery or a preponderance of overhead services is required. Examples are diagnostic centre (MRI machines and the like), day hospital, radiation oncology. These uses always seek to occupy the lower floors of a building. B1, L1 and L2 cater for these uses with 4m floor – floor heights. Other users such as medical oncology, mental health, pathology and specialist clinics can and do operate in standard 3.5m floor – floor heights.”

In response to further questioning the applicant provided the following:

“Nowhere in the Australasian Health Facility Guidelines is there a requirement for 4m floor – floor heights. The existing health services facility at 531-533 Kingsway Miranda is approved and operates with 3.5m floor – floor heights above ground floor level.”

The intent of the control is to ensure that the finished internal ceiling heights will be suitable for a variety of medical uses. The SSDCP 2015 was devised with the objective of encouraging medical use at lower levels and offering residential above as a way of realising this outcome. To ensure that the residential development was not built to the detriment of the medical component, the SSDCP 2015 was stringent with the heights to ensure that this objective was not derogated. The proposal is for a 100% medical building and provides the required heights at lower levels in accordance with the DCP. The applicant has provided evidence which confirms, despite the upper floor levels not meeting the 4m floor to floor heights, those levels will facilitate medical uses which are less sensitive to height requirements. This is reasonable and accepted.

8.6.4 Overshadowing

Clause 14.2.5 of Chapter 9 contained in SSDCP 2015 stipulates for neighbouring properties that '*direct sunlight to north facing windows of habitable rooms and 10m² of useable private open space areas of adjacent dwellings should not be reduced to less than 2 hours between 9.00am and 3.00pm on 21 June*'.

Overshadowing from the building will reduce solar access to north facing living spaces of the existing dwelling at 396 Kingsway to less than 2 hours between 9am and 3pm, however will achieve the required 2 hours to the rear garden. This is largely as a result of the orientation of the site. It is also noted that the SSDCP 2015 anticipates that 396 will be redeveloped, with the lower 2 floors dedicated for medical use. Whilst larger side setbacks would reduce the impact somewhat, the south eastern side setback is consistent with the recommended amalgamation and building envelope plan for Site 14 and the applicant's shadow diagrams indicate that the proposal will maintain greater than 2 hours the anticipated location of residential development on that lot as envisaged by the SSDCP 2015 and as such the development is deemed acceptable. See Figure 13 and Figure 14 below.

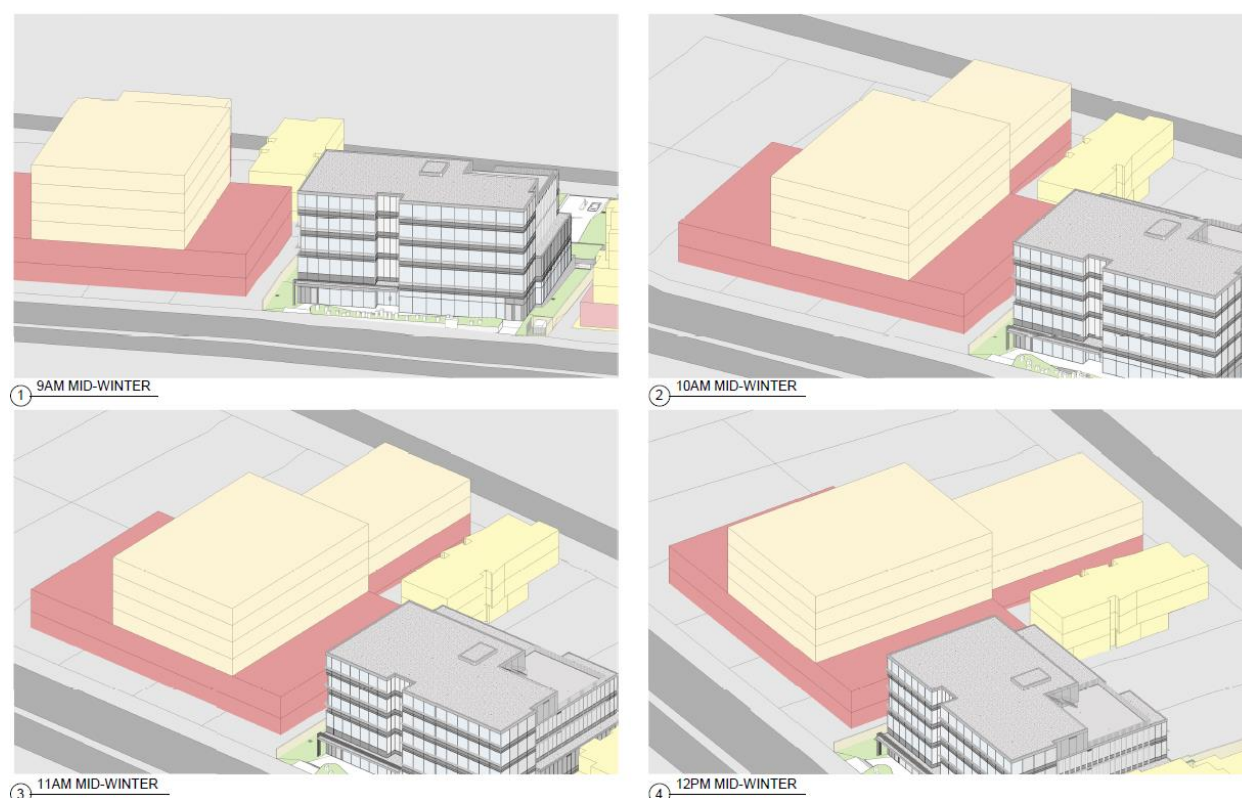


Figure 13: Sun's eye shadow diagram midwinter 9AM to 12PM

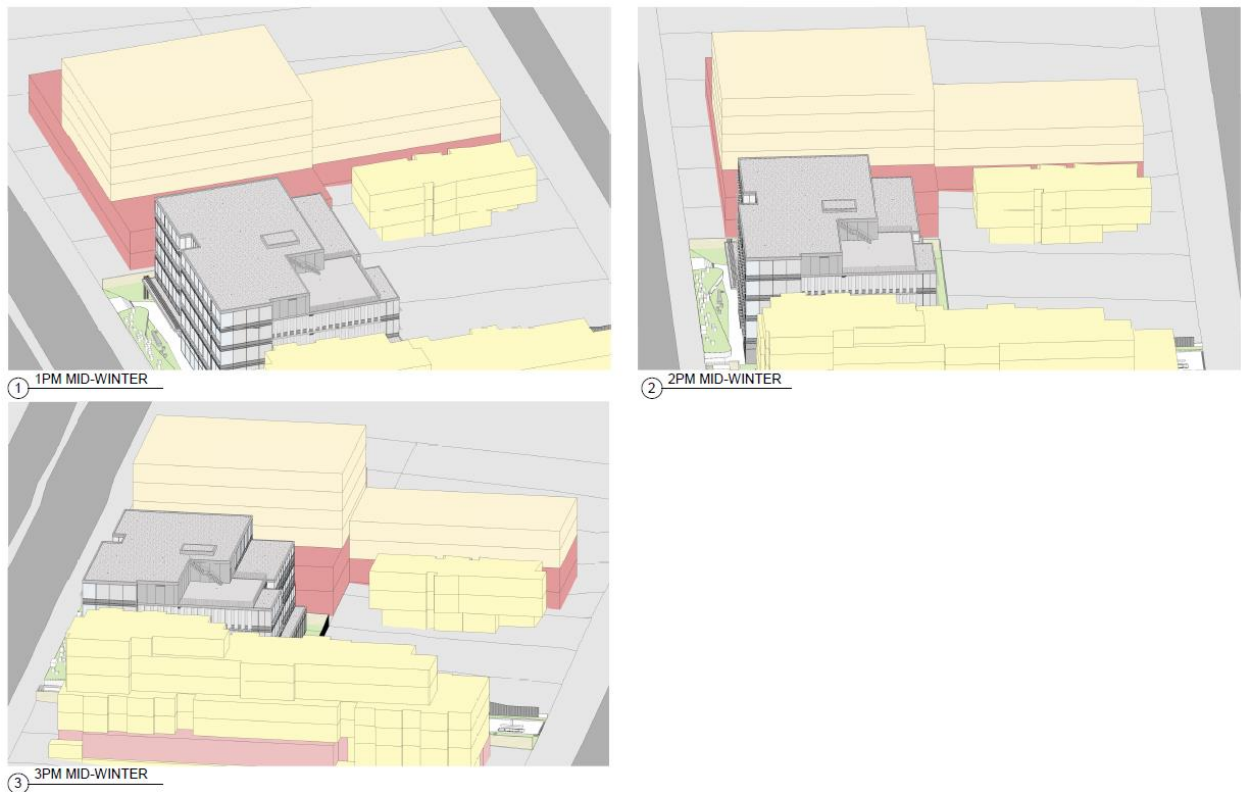


Figure 14: Sun's eye shadow diagram midwinter 1PM to 3PM

8.6.5 Earthworks

The proposal includes earthworks and Clause 6.2 of SSLEP 2015 requires certain matters to be considered in deciding whether to grant consent. These matters include impacts on drainage; future development; quality and source of fill; effect on adjoining properties; destination of excavated material; likely disturbance of relics; impacts on waterways; catchments and sensitive areas and measures to mitigate impacts. The relevant matters have been considered and the application is acceptable.

8.6.6 Stormwater Management

Clause 6.4 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. These matters have been addressed to Council's satisfaction.

8.6.7 Energy Efficiency and sustainable building techniques

Clause 6.15 of SSLEP 2015 contains matters for consideration relating to ecologically sustainable development and energy efficiency and sustainable building techniques. The relevant matters have been considered as a part of the assessment of the application and the proposal is considered to be acceptable.

8.6.8 Greenweb

The subject site is identified within Council's Greenweb strategy. The Greenweb is a strategy to conserve and enhance Sutherland Shire's bushland and biodiversity by identifying and appropriately managing key areas of bushland habitat and establishing and maintaining interconnecting linkages and corridors. The subject site is identified as a Greenweb restoration area. Having regard for the nature of the proposed development conditions have been included in relation to additional Greenweb plantings.

9.0 DEVELOPER CONTRIBUTIONS

The proposal has a value greater than \$100,000 and will thus would 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 \$20,465,000 (the estimated cost of development identified on the development application form). The Section 7.12 contribution for the proposed development would be \$204,650.00.

10.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

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

11.0 CONCLUSION

The proposed development is for demolition of existing structures and construction of a medical centre at Lots 7, 8, 9 and 37, DP 8147, Lot 8 DP 8147, 398 to 402 Kingsway, Caringbah, and 27 Flide Street, Caringbah.

The subject land is located within zone *R4 High Density Residential* pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a building to accommodate health services facilities, is a permissible land use within the zone subject to the proposal satisfying the requirements of Clause 6.21 under SSLEP 2015.

In response to public exhibition, 18 submissions were received including 6 letters of support.

The proposal includes revisions to the proposal previously considered by the Planning Panel. These amendments could be seen to be minor in nature when compared with the overall proposal, however these are targeted such that they will soften the built form, provide additional building separation, increase the ability to provide landscaping about the building (particularly to the rear) and, importantly, address visual privacy issues. The revised application has been assessed against the previous reasons for refusal and it is determined that those matters have been satisfactorily resolved. It is debatable as to whether the changes made to the external elevations are sufficient to alleviate the concerns as to whether the development will comfortably sit in a mixed use/ high density residential context. It is agreed that further

changes in material, increased setbacks and possibly green walls would improve the relationship with adjoining development and residential context. Whilst the revised plans have not adopted these recommendations, the changes are deemed sufficient to the extent that the building will have an acceptable streetscape appearance which will complement and contribute to evolving character of the Caringbah Medical Precinct.

The application has been assessed having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. Following assessment, the subject Section 8.2 Review Application (RA20/0010) of Development Application No. 19/0786 can be supported for the reasons outlined in this report.

The officer responsible for the preparation of this Report is the Manager, Major Development Assessment (Mark Adamson), who can be contacted on 9710 0333.