

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-84
DA Number	DA21/0629
LGA	Sutherland Shire
Proposed Development:	Demolition of existing structures and construction of a mixed use development, new bowling club facility with two bowling greens and 4 lot Stratum subdivision
Street Address:	101 to 109 Willarong Road, Caringbah (Lots 1 and 3-7 in DP 31460, Lot P in DP 413007, Lots 1 and 2 in SP 85329)
Applicant/Owner:	Caringbah Bowling & Recreation Club Ltd
Date of DA lodgement	6 July 2021
Number of Submissions:	Eight submissions
Recommendation:	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	This application is referred to the Sydney South Planning Panel (SSPP), as the development meets the criteria under Schedule 7.2 and 7.5(b) of State Environmental Planning Policy (State and Regional Development) 2011.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) • State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) • State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment • Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) • Sutherland Shire Development Control Plan 2015 (SSDCP 2015) • Section 7.11 Contributions: <ul style="list-style-type: none"> - 2016 Shire Wide Open Space and Recreational Facilities Contribution Plan - 2016 Community Facilities Plan

List all documents submitted with this report for the Panel's consideration	Appendices: A – Clause 4.6 Height of Buildings B – ARH SEPP / SSLEP 2015 Compliance Table C - Apartment Design Guide (ADG) Compliance Table D - SSDCP 2015 Compliance Table E – DRF Report F – Submissions
Report prepared by:	Lauren Franks – Assessment Officer Sutherland Shire Council
Report date	10 January 2022

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **N/A**
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 following two triggers cause the application to be referred to the SSPP:

- Schedule 7.2 of the State Environmental Planning Policy (State and Regional Development (2011) as the development has a capital investment value in excess of \$30 million.
- Schedule 7.5(b) of the State Environmental Planning Policy (State and Regional Development (2011) as affordable rental housing is proposed under the State Environmental Planning Policy (Affordable Rental Housing) 2009 and the capital investment value is in excess of \$5 million.

PROPOSAL

The application is for the demolition of existing structures and construction of a mixed use development incorporating a new bowling club facility with two bowling greens and three residential flat buildings (RFB) comprising 244 apartments (50% of development's gross floor area to be used as affordable rental housing – i.e. 131 apartments) and 4 lot Stratum subdivision. Two levels of basement car parking are proposed to accommodate 264 cars for the residential component and 68 cars for the exclusive use of the bowling club facility.

The main issues identified throughout the assessment phase include:

- Distribution of bulk across the site.
- Placement of bowling club facility and bowling greens.
- Height of buildings.
- Volume and location of deep soil area.

THE SITE

The subject site is located on the western side of Willarong Road, 400m north of the intersection of Kingsway and Willarong Road. The site comprises eight parcels of land with one dual occupancy, two dwelling houses and registered bowling club with three bowling greens and at grade parking.

ASSESSMENT OFFICER'S RECOMMENDATION

1.0 THAT:

1.1 Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to the maximum building height satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that Clause 4.3 Height of Buildings development standard be varied to 27.76m, in respect to this application.

1.2 That Development Application No. DA21/0629 for the demolition of existing structures and construction of a mixed use development, new bowling club facility with two bowling greens and

4 lot Stratum subdivision at Lots 1 and 3-7 in DP 31460, Lot P in DP 413007, Lots 1 and 2 in SP 85329 at 101-109 Willarong Road, Caringbah is determined by way of approval.

ASSESSMENT OFFICER'S COMMENTARY

2.0 DESCRIPTION OF PROPOSAL

Approval is sought for demolition of existing structures and construction of a mixed use development (244 apartments and bowling club facility with two bowling greens) and 4 lot Stratum subdivision. The development will not be staged, with the Bowling Club ceasing operations during construction. The development will comprise the following:

- Building A: Bowling Club at ground level, with provision of 82 apartments directly above distributed across 8 storeys;
- Building B: 80 apartments across 8 storeys;
- Building C: 82 apartments across 6 storeys;
- 50% of the gross floor area to be affordable rental housing;
- A two level basement that will accommodate 68 car spaces for use by the Club patrons, 264 residential car spaces, three carwash bays (two for residential use and one for the Club), 22 residential motorbike spaces and 30 bicycle spaces.
- Provision of communal open space across four areas – within the 'central plaza' situated centrally between each of the three buildings and three roof terraces (one on each building);
- Removal of 24 trees; and
- Vehicular and pedestrian access is proposed from Willarong Road.

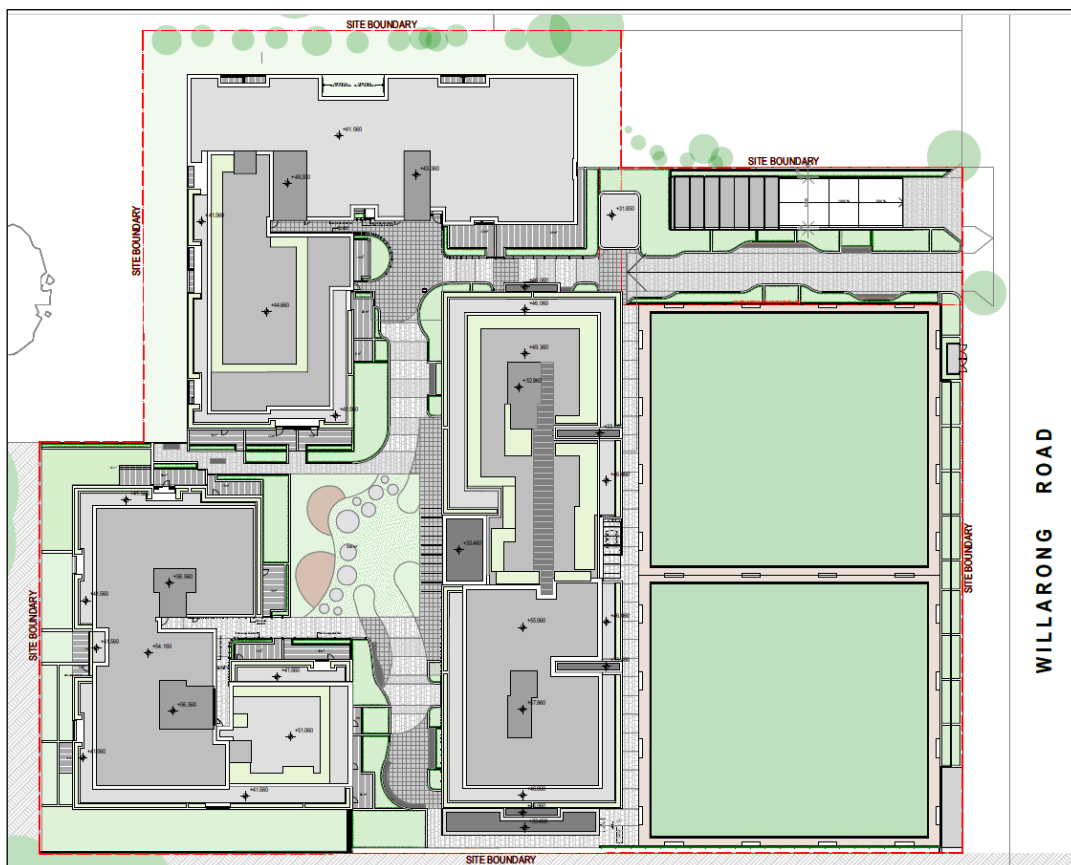


Figure 1: Extract of Site Plan

3.0 SITE DESCRIPTION AND LOCALITY

The site is known as No. 101-109 Willarong Road, Caringbah (Lots 1, 3 -7 in DP 31460, Lot P in DP 413007 and SP 85329).

The site is located on the western side of Willarong Road, midway between Captain Cook Drive and Kingsway. The site is irregular in shape and has a site area of 12,069.2m² (Survey Plan). The site has a frontage to Willarong Road of 92.05m, a combined northern side boundary of 109.7m, a southern side boundary of 123.81m and a combined rear boundary of 110.4m. A cross-fall of approximately 6.4m towards the rear north-western corner. A number of large, mature trees align the northern and western side boundaries.



Figure 2: Locality Plan



Figure 3: Aerial image of site and immediate surrounds

4.0 BACKGROUND

DA16/0388

Prior to concept schemes being prepared for the subject site, land subject to the application (with the exception of No. 101 Willarong Rd) formed part of a greater master plan that encompassed No. 113 Willarong Rd. No. 113 Willarong Rd occupies an area of 29,740m² (while land subject of this application is 12,069m²). Under DA16/0388, the masterplan presented to the SSPP on 22 August 2018 for determination appeared as:



Figure 4: Bowling Club identified in pink below building 'O', with bowling greens and Club parking to the left within this plan.

Following the SSPP's initial deferral of the application, this scheme was ultimately refused by the SSPP on 22 August 2018. The reasons for refusal included access issues relating to Area 5A not being satisfactorily resolved in order for the proposal to benefit from the bonus height and FSR provisions specified within Cl.4.3(2E)(e) and Cl.4.4(2A)(a) of the SSLEP 2015 and numerous non-conformances with SSLEP 2015 in relation to design and statutory compliance issues. Towards the conclusion of the assessment phase of DA16/0388, the Bowling Club sought to withdraw their owner's consent. While the owner and developer of No. 113 Willarong Rd were reluctant to agree to the Bowling Club's withdrawal, upon lodgement of an appeal to the Land and Environment Court, foreseen difficulties during the construction phase were recognised and the Bowling Club's land was deleted from the proposal.

On 7 September 2020, an amended masterplan was approved through a Section 34 agreement, excluding the Bowling Club's land. Approval was granted for a Concept Plan that included an internal road network and 12 buildings envelopes which ranged in height from five to 11 storeys and construction of three residential flat buildings to the rear of the site as Stage one as shown in the plan extract below. Stage 2 and Stage 3 are subject to future DA's.

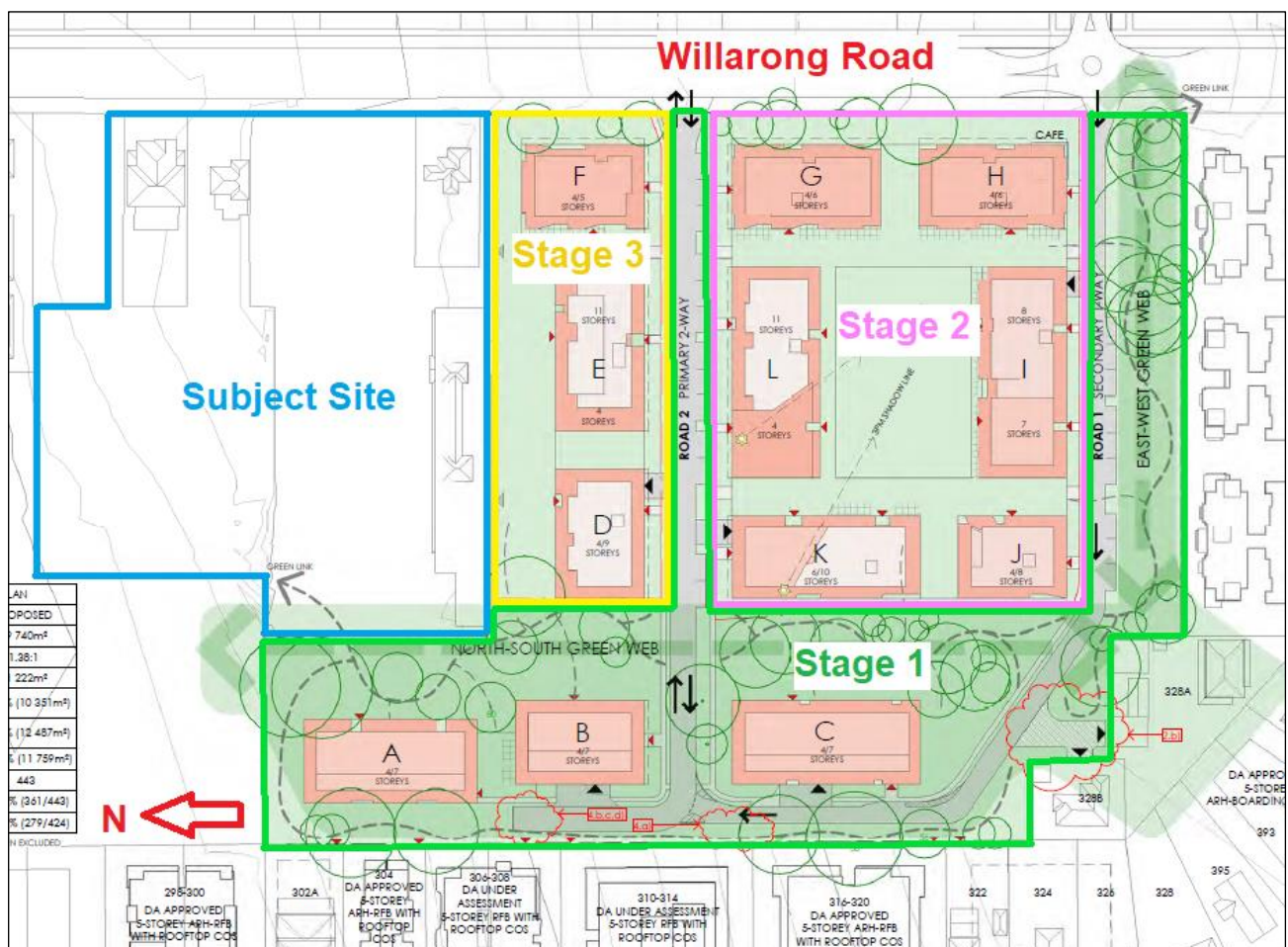


Figure 5: Site Plan of DA 16/0388 approved by the Land and Environment Court.

To date, no Construction Certificate has been issued for DA16/0388 and no subsequent DA has been lodged for Stage 2 or 3.

A history of the development proposal is as follows:

- A pre-application discussion (PAD) was held on 15 December 2020 regarding this development. As a result of this, a formal letter of response was issued by Council on 4 March 2021. The main points contained in this letter related to permissibility, building height, density and distribution of bulk, setbacks, landform, context and neighbourhood character, solar access and cross-ventilation, room dimensions, pedestrian connectivity, aesthetics, storage, plan of management, landscaping design and quantity, building services, traffic, parking and vehicular access and manoeuvring within basement, stormwater design, public domain works, waste generation and collection, land contamination.
- This development application was submitted on 6 July 2021.
- The application was placed on exhibition, with the last date for public submissions being 10 August 2021.
- A kick-off briefing was held 16 August 2021 with the Sydney South Planning Panel (SSPP), Council and the applicant. A record of the briefing outlined the issues discussed and key issues for Council to consider, including the following:
 - Applicant introduces proposal, acknowledging the developer (Landmark Group) are a tier 2 / tier 3 community housing provider.
 - Variation to building height proposed. Options analysis to be provided.
 - Bonus 0.5:1 FSR applied to proposal pursuant to ARH SEPP.
 - Proposal consistent with character in terms of land use and density in that emerging redevelopment is in the form of residential flat buildings along Willarong Rd. However, built form and scale need further assessment.
 - Applicant confirmed deep soil is around periphery and equates to 30% landscaped area. Chair recommends accommodating additional deep soil in communal open spaces
 - Car parking assessment required.
 - Significant cross-fall required with interface issues including drainage, solar access, overshadowing, privacy and overlooking.
- The application was considered by Council's the Design Review Forum (DRF) on 26 August 2021.
- A formal briefing of the SSPP was undertaken at a meeting held on 16 September 2021. Issues raised at the briefing included the following:
 - Interface with neighbourhood context needs to be more carefully considered;
 - Justification for height breach required;
 - FSR bonus of 0.5:1 sought under ARH SEPP in addition to 1.2:1 permitted under SSLEP 2015;
 - Significant excavation up to 3m below street level resulting in sunken ground plane and sub-basement apartments and floor space with lower amenity.
 - Larger ground plane does not mitigate impacts of the excavation, height and bulk, reduced setbacks and lack of landscaping.
- Council's Officers met with the applicant on 30 September 2021 to discuss the comments made by the DRF and SSPP in the two briefing meetings.
- Council's Assessment Officer issued a letter on 8 October 2021 to the Applicant requesting the

following issues to be addressed:

- Additional information to confirm compliant FSR (i.e. 1.7:1 inclusive of 50% bonus permitted under the ARH SEPP).
 - Identification of apartments that will be used as affordable rental housing.
 - Reduction in excavation across the site to improve development's response to the existing ground level and amenity of apartments on lower ground floor.
 - Additional information on management of gymnasium and mitigation of noise impacts to adjoining apartments.
 - Minimum dimensions of required 6m deep soil landscaping areas seldom achieved. Lack of landscaped setting around perimeter of site and within 'central plaza' area.
 - 3m basement setback from boundaries needed to facilitate proper tree planting.
 - Non-compliant building separation and setbacks needs to be addressed.
 - 57.6% of apartments compliant solar access.
 - 37% of apartments compliant with cross-ventilation. Apartment layout, window inlet size and 3.1m floor to floor separation required.
 - Justification for variation to minimum 25% communal open space area.
 - Allocation of storage spaces within basement and identification of spaces within apartments for assessment of volume of spaces.
 - Explanation of what innovative design solutions are employed to corridors where 11 apartments are featured off a circulation core instead of the maximum permitted being eight.
 - Identification of residential visitor car spaces on plans required.
 - Improved integration of building services along site frontage.
 - Retention of Tree 37 (*Angophora Costata*) needed due to being an endemic species.
 - Deep soil planting area within 'central plaza' occupied by playground and decked seating area. Deep soil area not utilised and is needed to be occupied by planting only.
 - Preliminary hydraulic assessment needed.
 - Traffic report required to be updated to comment on access and manoeuvring of the HRV into the loading dock, swept path diagrams, basement ramp head height clearance.
 - Identification parking spaces allocated to livable and adaptable apartments.
 - Evidence of drainage easement agreement from adjoining properties and demonstration that the existing private network is fit for purpose and has sufficient capacity to cater for additional flow.
 - Submission of detailed floor and section plans for the café.
 - Further information on whether the basement construction will be water-tight (i.e. tanked).
 - Submission of a Detailed Site Contamination Investigation.
- The requested amended plans and additional information were lodged gradually across a number of days – i.e. 11th, 16th, 19th and 25th November and 1st December.
 - Council's Assessment Officer requested further information 6 December relating to cross-ventilation, vehicular access and FSR.
 - Amended plans and additional information was lodged 15 December. While a full set of architectural plans identified as revision J were submitted, these plans did not contain the BASIX / NatHERS stamp. It was revealed by way of a comparison that the lower ground floor plan, basement plan and

the submission of three additional cross-ventilation plans were the only differences in the content. Therefore, the approved set of plans have referenced revision H for the most part.

5.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to Council to enable an assessment of this application, including a written request to vary the Clause 4.3 Height of Buildings development standard under Clause 4.6 of Sutherland Shire Local Environmental Plan 2015.

6.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 42 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

Council notified 1,196 adjoining or affected owners of the proposal and eight submissions were received from the following properties:

Address	Date of Letter/s	Issues
10/131 Willarong Rd	28 July 2021	Traffic & Parking
112 Willarong Rd	29 July 2021	Traffic & Parking
108/ 128 Willarong Rd	29 July 2021	Traffic & Parking, Pedestrian Safety
50/137-141 Willarong Rd	30 July 2021	Overdevelopment, Traffic & Parking, Building Height, Loss of Trees / Lack of Deep Soil Planting
4/22-24 Dianella St	3 August 2021	Traffic & Parking, Pedestrian Safety
201/3 Dianella St	4 August 2021	Traffic and Parking
28/137-141 Willarong Rd	9 August 2021	Traffic & Parking, Pedestrian Safety
113 Willarong Rd	14 September 2021	Building Height, Overdevelopment, Out of Character, No consultation regarding potential connection with No. 113 Willarong Rd, Landform, Lack of contribution to Greenweb restoration corridor

Issue 1: Traffic & Parking

Comment: Traffic generated by the proposal has been assessed in a joint meeting between Council's Traffic Engineers and Transport for NSW. While it is acknowledged that an increase in traffic will eventuate by the proposal, the adjoining development at No. 113 Willarong Rd has conditions that require intersection upgrades seeing provision of traffic lights installed at either end of Willarong Rd – i.e. Kingsway and Willarong Rd and Captain Cook Dr and Willarong Rd. This will assist with traffic flow. Refer the 'Assessment' section of report for further discussion with regards to parking.

Issue 2: Pedestrian Safety

Comment : Council's Development Engineer and Traffic Engineer have assessed the proposal in terms of pedestrian safety and imposed conditions requiring provision of a pedestrian crossing in front of No. 126 Willarong Rd and reducing structures and limiting the height of planting at the driveway entry to ensure appropriate sightlines are achieved to pedestrians walking along the footpath and motorists using the driveway ramp.

Issue 3: Overdevelopment

Comment : The proposal contravenes the maximum building height development standard but it generally remains compliant with the development controls and objectives of planning controls within the ARH SEPP, ADG, SSLEP 2015 and SSDCP 2015.

Issue 4: Building Height

Comment : The proposed building height contravenes the maximum 16m building height development standard. This is addressed in the 'Assessment' section of the report.

Issue 5: Loss of Trees / Lack of Deep Soil Planting

Comment : Currently, few endemic trees exist on the site. The existing row of camphor laurels along the rear western boundary are a weed species that appears on Council's list of exempt species. The applicant has modified their proposal to facilitate the retention of Tree 37 – an *Angophora costata* that was initially proposed to be removed and further planting along the perimeter of the site is proposed to offset building bulk.

Efforts have been made by the applicant to increase the volume of available deep soil landscaped area across the site. This has included increasing the width of deep soil area along the front boundary from 2.25m to 3m, increasing basement and building setbacks – most evidently along the southern portion of the western rear boundary. Amendments have also been made to the size of the pocketed deep soil area found within the 'central plaza' area to soften the dominance of the built form when standing between each of the buildings.

Issue 6: Out of Character

Comment : Residential flat buildings are a permissible form of development within the R4 High Density Residential zone. The proposed Bowling Club and greens will replace the current facilities in a like for like arrangement. While the addition of 244 apartments will see redevelopment that is representative of a significant uplift to density within the immediate area, design amendments to the proposal has demonstrated that it achieves the objectives in relation to building height, FSR and landscaping to ensure it represents the desired future character of the North Caringbah precinct.

Issue 7: No Consultation with No. 113 Willarong Rd

Comment : Concern is raised that the proposal includes pedestrian connections into the adjoining property at No. 113 Willarong Rd with no approval given for this to occur by these adjacent owners. The applicant held a registered webinar with surrounding residents as part of community consultation prior to lodgement

of the DA. No. 113 Willarong Rd were invited to attend by way of a letterbox drop. The applicant advised that the owner of No. 113 Willarong Rd did not attend.

Regardless, the proposal has been amended to delete reference to a pedestrian connection with this adjoining property. This connection was shown to allow a future connection to mutually benefit future residents within the subject site and those of No. 113 Willarong Rd and would not have been constructed to allow access without the permission of No. 113 Willarong Rd.

Issue 8: Lack of Contribution to the Greenweb restoration corridor

Comment : Refer 'Assessment' section of report.

Revised Plans

The applicant lodged a final set of revised plans on 15 December 2021.

In accordance with the requirements of SSDCP 2015 these plans were not publicly exhibited as, in the opinion of Council, the changes being sought did not intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment.

Submission Review Panel (SRP)

The submissions received were discussed with the Team Leader and given the nature of the issues raised it was decided that referral to Council's SRP was not required as the determining authority was the SSPP and issues raised in submissions were brought to the attention of the SSPP in the formal briefing meeting held on 16 September 2021.

7.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone R4 High Density Residential under the provisions of the SSLEP 2015. The proposed mixed use development entailing a recreation facility (indoor and outdoor), registered club and residential flat building is a permissible land use on each lot excluding No. 101 Willarong Rd, which does not benefit from a recreation facility (indoor and outdoor) or registered club being permitted on the site which are additional land uses permitted under Clause 4 of Schedule 1 of the SSLEP 2015. No portion of the proposed Bowling Club or greens extend onto No. 101 Willarong Rd, with the basement driveway and planting occurring within this lot only.

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 (SEPP 55).
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).
- State Environmental Planning Policy (State and Regional Development) 2011.
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).
- State Environmental Planning Policy (Affordable Rental Housing) 2009.

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

Section 7.11 / 7.12 Development Contribution Plan 2016

- Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.
- Section 7.11 Development Contribution Plan 2016 – Caringbah Centre Precinct.

8.0 COMPLIANCE

8.1 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; and if the site is contaminated, Council must be satisfied that the site is suitable or can be made suitable (i.e. following remediation) for the proposed land use.

A site inspection identified that the site is currently occupied by two dwelling houses, a dual occupancy and a bowling club with at grade parking and three bowling greens. A review of Council's GIS and historical aerial photos has shown that the bowling club, parking and greens has been operational since the 1950's. Each dwelling house was constructed circa 1960. No previous uses were recorded.

A search of Council's contaminated land register specifies that the site is contaminated, however it directly adjoins No. 133 Willarong Rd which is identified on Council's system as potentially contaminated. Following submission of a Detailed Site Contamination Report, Council's Environmental Scientist has concluded that the site is suitable for the proposal Bowling Club, greens and residential development in accordance with SEPP 55.

8.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index) 2004 (BASIX) aims to establish a scheme to encourage sustainable residential development across New South Wales. BASIX certificates accompany the development application addressing the requirements for the proposed building. The proposal achieves the minimum performance levels / targets associated with water, energy and thermal efficiency.

8.3 Greater Metropolitan Regional Environmental Plan No. 2- Georges River Catchment

Greater Metropolitan Regional Environmental Plan No. 2 (GMREP2) 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 the recommended conditions of consent the proposal would be consistent with the aims and objectives of GMREP2.

8.4 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 of the SEPP identifies this application as regionally significant development for two reasons – being, capital investment of more than \$30 million and it will provide affordable rental housing in excess of \$5 million. As such, the application is referred to the South Sydney Planning Panel for determination.

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

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) seeks to improve the design quality of residential flat development through the application of a series of 9 design principles. While DRF consider these nine principles, an assessment has also been carried out in the table below by Council's Assessment Officer:

Design Quality Principles	Assessment
Principle 1: Context and neighbourhood character	<p>The site is well located for a high density residential precinct, positioned within a 700m radius of Caringbah railway station and is a convenient walking distance from shops and offices, Caringbah library, medical services and public transport. The site is also within walking distance to primary and high schools.</p> <p>With regard to the more immediate context of the site, the proposal demonstrates an acceptable design response to adjacent sites (in particular the masterplan approval for No. 113 Willarong Rd), the streetscape and neighbourhood.</p> <p>The constraint of placement of two bowling greens at the street edge does result in the distribution of gross floor area within the rear two-thirds of the site. In responding to the context and future change due to approval of DA16/0388 at No. 113 Willarong Rd, placement of mass in the rear south-western portion of the site through provision of two eight storey residential flat buildings, enable a transition to development on this adjoining property which will reach 11 storeys while dually ensuring a breach in height is respected along the northern edge of the site which has an interface to development which complies with Clause 4.3 of SSLEP 2015 (16m).</p>
Principle 2: Built form and scale	<p>The built form and scale is acceptable in the context of the area, given that the area has been upzoned to allow for greater height and density under SSLEP 2015. The scale will be compatible with a soon to be emerging residential flat development that has gained approval but where construction is yet to commence (No. 99 Willarong Rd and No. 113 Willarong Rd).</p>

	<p>As limited alternate approaches to the planning of the site exists, the combination of a significant front setback of 45.7m and strategic placement of eight storey built form, the proposal achieves the desired future character of the street.</p> <p>The built form is a modern design that is adequately articulated.</p>
Principle 3: Density	The FSR of 1.7:1 for the development is permitted under the Affordable Rental Housing SEPP. The building is adequately articulated and the setbacks provided minimise the bulk of the building when viewed from the street and allow provision of deep soil planting around the side and rear boundaries of the site.
Principle 4: Sustainability	The development incorporates BASIX requirements into its overall design to enhance water and energy efficiency and to provide suitable amenity to the building's future occupants.
Principle 5: Landscape	<p>The proposed development includes deep soil areas in accordance with the Affordable Rental Housing SEPP.</p> <p>Adequate building and basement setbacks have been proposed to ensure landscaping can be provided to establish a tree canopy around the perimeter of the site, achieving a balance of natural and built form elements when viewed from the public domain and surrounding properties. Throughout the assessment process, the deep soil pocket centrally positioned between all three buildings has been enlarged to enhance planting and amendments have been made to facilitate the retention of two established native trees.</p> <p>Perimeter planting on each building's rooftop will also assist in the development's environmental performance, in addition to offering screening.</p>
Principle 6: Amenity	The proposal generally satisfies the provisions of the ADG with respect to appropriate floor plan layouts, cross ventilation, solar access and visual/acoustic privacy.
Principle 7: Safety	The proposed development incorporates suitable Crime Prevention Through Environmental Design (CPTED) principles in the design and provides a wide and open pedestrian entry way to reduce opportunities for concealment.
Principle 8: Housing diversity and social interaction	The proposal provides a mix of apartment types, which encourages diversity including adaptable, livable and 50% Affordable Rental Housing. Communal open space is provided on the roof of each building and within a 'central plaza' with facilities that encourage social interaction amongst residents.
Principle 9: Aesthetics	An appropriate composition of building elements, textures, materials and colours within the development has been generally achieved.

8.6 Apartment Design Guide (ADG)

The applicable design guidelines for the proposed development are contained within the ADG, which is based on the 9 design quality principles set out in SEPP 65. The ADG illustrates good practice and these guidelines are largely replicated in Council's DCP. A table with a compliance checklist of the proposal against the ADG design criteria is contained **Appendix "C"** to this report.

8.7 State Environmental Planning Policy (Infrastructure) 2007

Impact of road noise or vibration (Clause 102) -

Division 17, Subdivision 2 of the Infrastructure SEPP relates to development that may be impacted by road noise or vibration. This application is for a mixed use development that includes residential accommodation.

The land is within proximity to Taren Point Rd where the annual average daily traffic volume exceeds 40,000 vehicles. The impact of road noise and vibration on the residential accommodation have been considered under clause 102. To minimise the impact of noise from the road on the future occupants of the development, a condition will be imposed requiring the building to be designed in accordance with State Environmental Planning Policy (Infrastructure) 2007 and 'Development near Rail Corridors and Busy Roads – Interim Guidelines' produced by the NSW Department of Planning.

Traffic-generating development

Clause 104, Subdivision 2 of the Infrastructure SEPP relates to development that by virtue of size or capacity in accordance with thresholds specified in Schedule 3 must be referred to Transport for NSW (TfNSW) and take into consideration their response in addition to the accessibility of the site including potential traffic safety, road congestion and parking implications. TfNSW are supportive of the proposal subject to conditions.

8.8 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.

8.9 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 controls is contained in **Appendix "B"**.

8.10 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 "D"**.

8.11 Draft Environmental Planning Instruments

Draft State Environmental Planning Policy (Environment) (draft Environment SEPP)

The draft Environment SEPP seeks to simplify the NSW planning system and reduce complexity without reducing the rigour of considering matters of State and Regional significance. The draft SEPP was exhibited between October 2017 and January 2018. The SEPP effectively consolidates several SEPPs including SEPP19, SEPP (Sydney Drinking Water Catchment), and GMREP2 and remove duplicate considerations across EPIs. Relevant considerations have been taken into account against the in-force EPIs in this report.

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*. The applicant has lodged sufficient information and appropriate conditions have been included to ensure that the proposal will satisfactorily address the provisions of draft *Remediation of Land SEPP*.

9 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

Water NSW

Water NSW were referred the application pursuant to Clause 90(2) of the Water Management Act 2000 and required further information to confirm whether the basement was 'tanked' on two occasions.

Water NSW are supportive and have issued their General Terms of Approval.

Transport for NSW (TfNSW)

TfNSW were referred the application pursuant to Clause 104 of the Infrastructure SEPP and were supportive subject to conditions of consent relating to the parking of vehicles during the construction phase, the need for Road Occupancy Licence (ROL) and requirements for the layout of the proposed parking areas (including driveways, grades, turn paths, sight distance requirements in relation to landscaping and / or fencing, aisle widths, aisle lengths, and parking bay dimensions) to accord with AS2890.1-2004, AS2890.6-2009 and AS2890.2-2018

NSW Police

In accordance with the *Crime Risk Assessment – Police & SSC Protocol 2010* the application was referred to NSW Police where the Plan of Management was requested to be amended to better address security and management of anti-social behaviour. Upon reviewing the amended Plan of Management, NSW Police were supportive of the proposal subject to conditions that restricted hours of operation to 'base hours' prescribed within the SSDCP 2015 and modifications to the Plan of Management to alter references to the correct Local Area Command, increase security presence and provision of an alcohol management policy that is to be reviewed by NSW Police prior to operation of the new Bowling Club.

Design Review Forum (DRF)

The application was considered by the DRF on 26 August 2021. Key points taken from this meeting included:

- Inappropriate distribution of building bulk;
- Needs a five / potentially six storey building aligning the street to screen eight storeys behind;
- Playground heavily shaded and potential amenity impacts to residents occurring from its use;
- Too much priority given to the value of the bowling greens, with the value of future residents shown to be of less importance;
- Inclusion of pathways in calculation of communal open space not in accordance with intent of ADG; and
- Inverted balconies insufficient in providing much needed building articulation.

The applicant has responded to the feedback provided by DRF through undertaking an analysis of options for redevelopment of the site. As the Bowling Club is the owner of the subject site (with the exception of No. 101 Willarong Rd), their non-negotiable criterion ruled out many alternate redevelopment options and include:

- Two x competition sized bowling greens with each green achieving uninterrupted solar access during the morning and early afternoon period;
- Visibility of the Bowling Club from the street; and
- Provision of an outdoor terrace with this space, the bowling greens and Bowling Club on the same level and adjacent to each other.

Aside from placement of the bowling greens along the front boundary, the following layouts were explored but failed to meet the Bowling Club's requirements:



Figure 6: Alternate placement of buildings and bowling greens considered for the subject site.

A copy of the DRF report can be found within **Appendix “D”**.

Building Designer

Council’s Building Designer recognised the development’s improved relationship with the existing ground level, however noted that with regards to cross-ventilation, numerous apartments remained non-compliant, requesting that this be addressed via a Natural Ventilation assessment that includes modelling prepared by a suitably qualified specialist engineer to demonstrate the natural ventilation performance of the aforementioned apartments is in compliance with the criteria set out in the ADG.

Building Surveyor

Council’s Building Surveyor noted the applicant’s submission of additional information insinuates that compliance with the *Fire safety guideline – Access for fire brigade vehicles and firefighters* is not a

requirement. This is disagreed as consideration of the guideline is in the public interest. Their remains a concern that a Fire Truck will not be able to service the site in the event of an emergency as passing traffic flow will be blocked irrespective of the application of the 3.5m minimum clearance, as the two-way street is approximately 12m in width and the minimum required hardstand width is 6m. The applicant's letter does not comment on whether there is adequate pressure and flow available to the hydrant/s. Ideally, Council's Building Surveyor would like to request further information, however, in discussion with Council's Development Engineer, identification of potential ways forward were found subject to conditions of consent.

Environmental Health Officer

The application was referred to Council's Environmental Health Officer who initially raised concerns with the acoustic report, content of the plan of management and lack of information in relation to the fitout of the Bowling Club. Following receipt of additional information and an amended acoustic report, Council's Environmental Health Officer is supportive of the proposal subject to conditions.

Environmental Scientist

Council's Environmental Scientist initially raised concerns with the desktop analysis undertaken as part of the Preliminary Site Investigation report, requesting that the investigation include soil and groundwater sampling and that this occur as part of a Detailed Site Investigation. Upon receipt of this report, Council's Environmental Scientist is supportive of the proposal subject to conditions of consent.

Landscape Architect

Council's Landscape Architect requested the inclusion of Tree 37 Angophora to be retained as it is healthy and despite having a lean, this has been gradually occurring over time. Amended plans showed retention of this tree, in addition to increasing the size and opportunities for planting within the 'central plaza' area through an increase in size of the space. Support was given to the proposal subject to conditions. Further discussion on landscaping and planting occurs within the 'Assessment' section.

Development Engineer

The application was referred to Council's Development Engineer who initially requested further information with regards to the internal driveway design, manoeuvring, clearance heights at the top of the basement ramp. Upon review of the amended plans and additional information, Council's Development Engineer has is supportive of the proposal subject to conditions of consent.

Traffic Engineer

Council's Traffic Engineer reviewed the supportive response received by TfNSW and is supportive of the proposal.

Throughout the assessment phase, concern existed that the manoeuvring of trucks at the basement entry point posed a high collision risk with cars. This entry point needed widening. The amended Traffic Report individually confirms that AS2890.1 and AS2890.6 are achieved. However, this is a technical manual and doesn't go far enough to address safety. In opening up the entry point to the basement, there was identification for a need to include a further two loading bays (one x HRV and one x MRV) to ensure removalists and deliveries associated with the residential component were catered for. These can be

achieved through re-organisation of the bin room and OSD tank. While the TfNSW' Guide to Traffic Generating Development would see a need for six loading bays, this is considered excessive given the provision of parking is reduced due to the residential parking rate being reduced under the ARH SEPP. It was recognised that regular deliveries associated from vehicles including keg truck would require the HRV loading bay. With 244 apartments provision of loading bays for small and medium sized trucks is reasonable to expect to facilitate moving. The applicant has submit a loading bay management plan that is tied to the consent.

Public Assets Engineer

Council's Public Assets Engineer is supportive of the proposal, recommending a condition of consent that specified works needed within the public domain.

Waste Officer

Council's Waste Officer is supportive of the proposal subject to conditions.

10 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 Height of Buildings

The proposed development fails to comply with the development standard for height. Clause 4.3(2) of SSLEP 2015 stipulates a maximum building height of 16m for this site. All three proposed buildings exceed the maximum building:

- Building A - 27.76m, representing a non-compliance of 11.76m (76.55%)
- Building B – 25.89m, representing a non-compliance of 9.89m (61.8%)
- Building C – 22.05m, representing a non-compliance of 6.05m (37.85%)

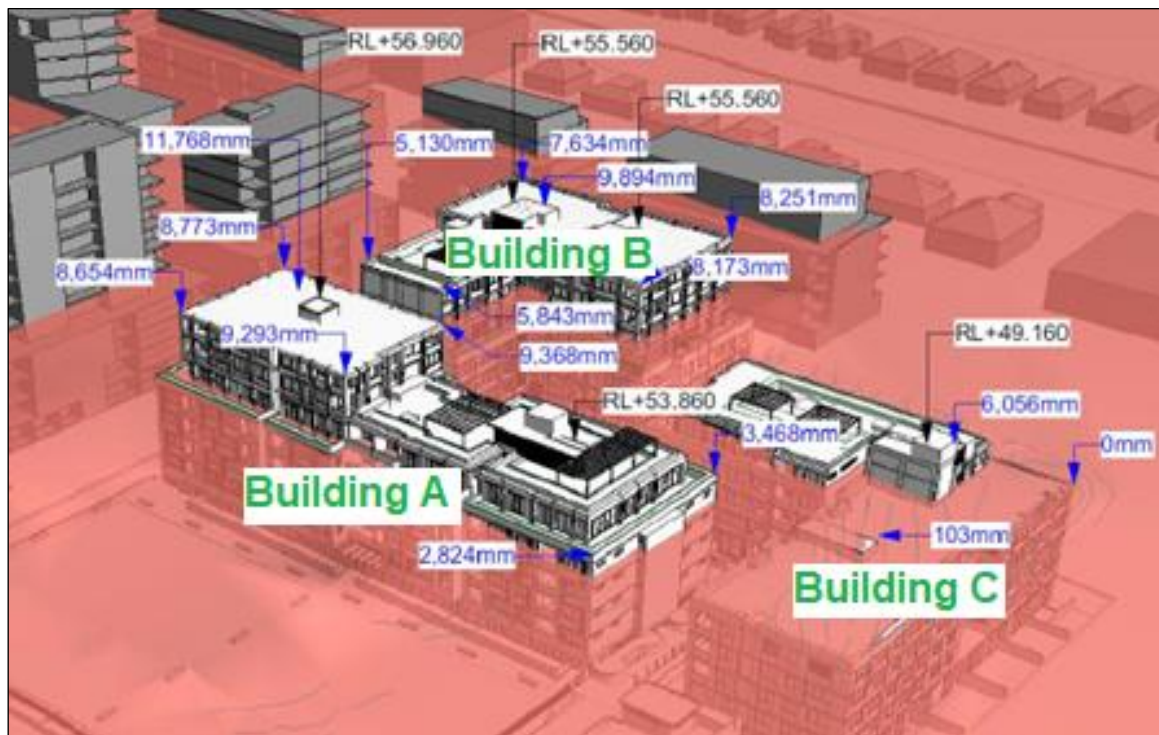


Figure 7: 16m height blanket with protruding portions of the building above the maximum permitted building height shown in white.

Building A is eight storeys in height, with the eighth storey confined to the southern side of the building. The tallest point on the building is a lift overrun. The bulk of the seventh storey is primarily confined to the southern side of the building where four apartments are proposed with a rooftop communal open space extending northwards to occupy approximately 60% of this storey and is slightly lower in building height. The sixth storey also protrudes above the maximum permitted 16m building height development standard and has a floor plate that is slightly recessed from levels directly below. At the fifth storey, a minor protrusion above the permitted 16m building height occurs at the northern edge of Building A due to the topography of the land.

Similarly, Building B is a total of eight storeys. Building B is situated in the rear south-western corner of the site and unlike Building A, has a floor plate that remains fairly consistent in size from the ground floor to the seventh storey. At the eighth storey the eastern portion of this floor is a rooftop communal open space area providing relief in the scale of the building when viewed from the 'central plaza' area situated at ground level between all buildings. Due to the subject land sloping towards the rear, two and a half storeys protrude above the maximum building height line.

The following plan extract depicts the footprint of the eighth storey of Building A and B and their position within the site:

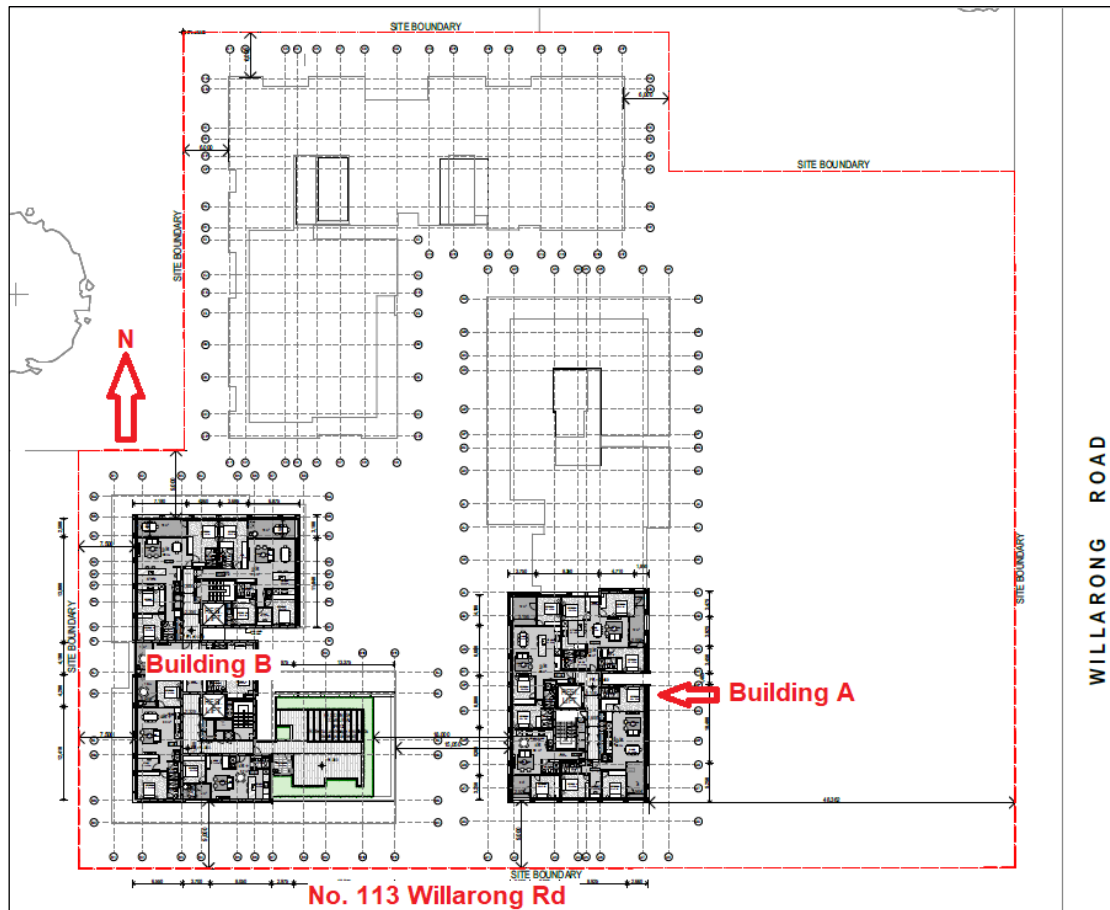


Figure 8: Level 7 (eighth storey) floor plan of Building's A and B

Building C is an L-shaped building that is seven storeys. The portion of the building along the northern boundary is compliant with the 16m building height development standard. Where the building extends along the western boundary, a variation occurs to facilitate a seventh storey and rooftop communal open space.

The following plan extract depicts the footprint of the eighth storey of Building A and B and their position within the site:

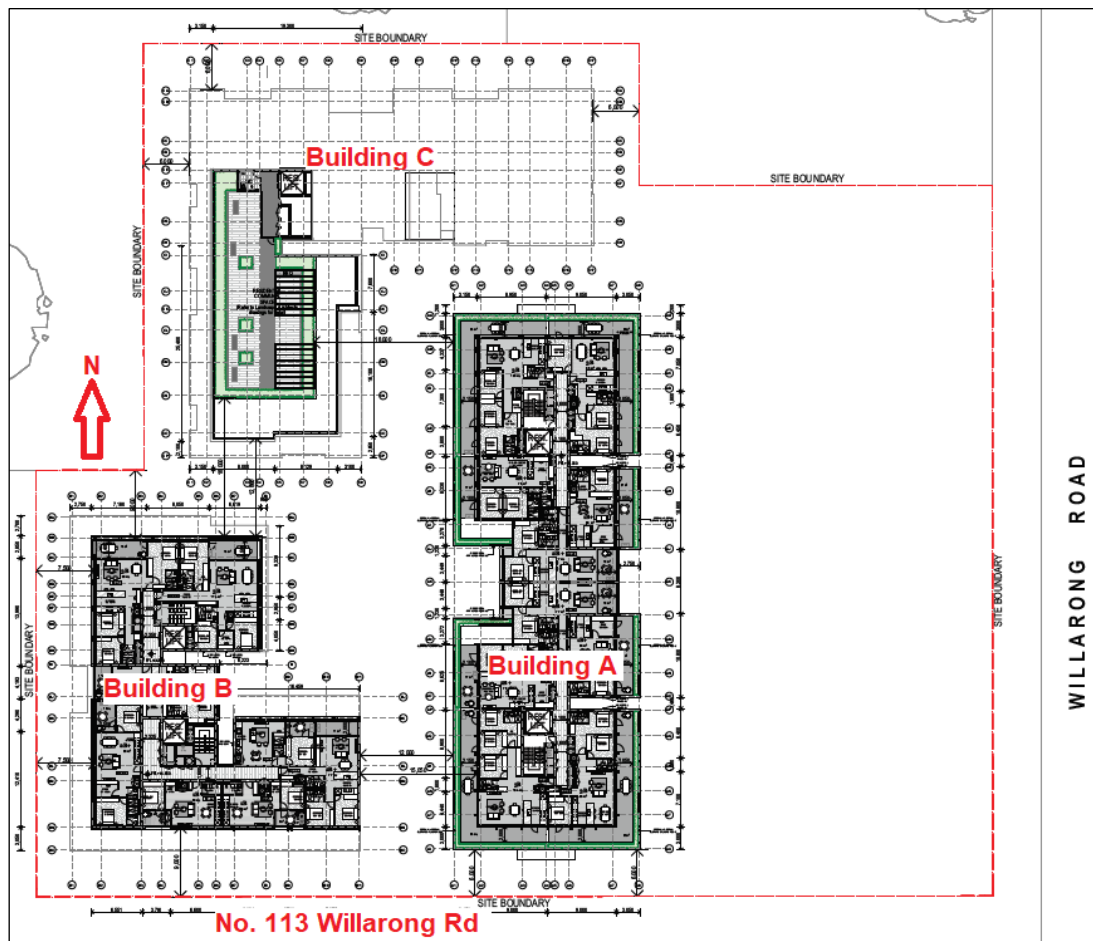


Figure 9: Level 6 (seventh storey) floor plan of Building C

The decision to pursue a proposal where significant non-compliance with the maximum 16m building height occurs stems from a knowledge that the adjoining property at No. 113 Willarong Rd has an approval for a total of 12 residential flat buildings that range between four and 11 storeys. The highest point of the building is 37.05m.

Pursuant to Clause 4.3(2E)(e) and Clause 4.4(2A)(a) of the SSLEP 2015, No. 113 Willarong Rd benefits from an additional 14m building height and FSR of 0.3:1 where a development on its site incorporates vehicular access to all lots sharing a western rear boundary to its site fronting Taren Point Rd. These bonuses allow redevelopment of No. 113 Willarong Rd utilising an overall building height of 30m and FSR of 1.5:1.

Identification of No. 113 Willarong Rd as 'Area 5' as referred to within Clause 4.3(2E)(e) and Clause 4.4(2A)(a) of the SSLEP 2015 and properties requiring vehicular access referenced as 'Area 5A' is shown in the following plan extract:

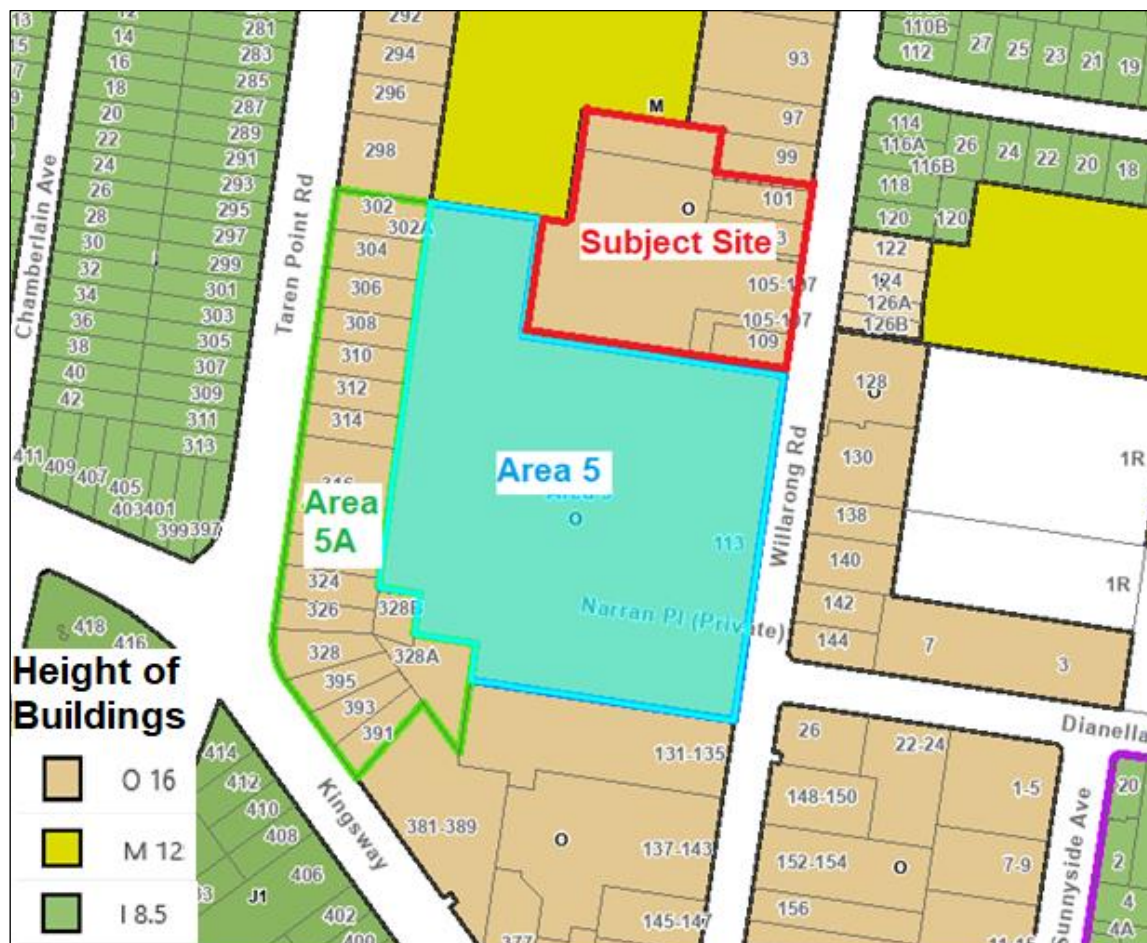


Figure 10: Location of Subject Site in relation to No. 113 Willarong Rd (Area 5) and the properties identified within Area 5A.

Approval of DA16/0388 does not fulfil the requirements of Clause 4.3(2E)(e) and Clause 4.4(2A)(a) of the SSLEP 2015 as not all adjoining lots are provided with vehicular access – only No. 328A and No. 328B Taren Point Rd were provided with a vehicular entry point from No. 113 Willarong Rd.

The objectives of the height of buildings development standard set out in Clause 4.3(1) of SSLEP 2015 are as follows:

- (a) to ensure that the scale of buildings:
 - (i) is compatible with adjoining development, and
 - (ii) is consistent with the desired scale and character of the street and locality in which the buildings are located or the desired future scale and character, and
 - (iii) complements any natural landscape setting of the buildings,

The proposal has appropriately considered the context surrounding the subject land. Approval of a five storey residential flat building on the adjoining property to the north-east at No. 99 Willarong Rd has been recognised and is a driver behind the proposal being compliant with the 16m building height along the northern side of the site, ensuring this sensitive interface is respected. The proposed bowling greens are positioned at the front of the site and building bulk is confined to the rear two-thirds of the site, resulting in Building A and B having a similar front setback to an 11 storey residential flat building approved at No. 113

Willarong Rd. Allowing Building A and B to extend to eight storeys will enable a transition to future development on this adjoining site.

The applicant noted in a pre-DA meeting that the proposal could be adapted to comply with the 16m building height development standard, however this would see the deletion of a pocket of deep soil area featured centrally between all three buildings as Building B's footprint would enlarge. While this alternate proposal was not been tested in terms of compliance with the apartment design guide to understand the level of amenity achieved to each apartment, it was foreseen that an exemplary outcome in terms of freeing up space at the ground level for additional deep soil area to establish a natural landscape setting around the buildings would be achieved through permitting a narrower and taller built form to eight storeys.

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

The three residential flat buildings situated on No. 113 Willarong Rd which align the shared southern boundary, form part of a masterplan approval, with only their building envelope approved. Assessment of the design of these buildings will be subject to a future DA as part of Stage 3. Situated on No. 113 Willarong Rd is a communal open space along the shared southern boundary with the subject site. This area is 14m wide and is one of two designated communal open space areas within No. 113 Willarong Rd. The separation between Building A and B, in conjunction with a large front setback of 45.7m allows this space to remain capable of access to reasonable daylight. No overshadowing of the public domain will occur from portions of the development exceeding the maximum 16m building height limit.

(c) to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,

With regards to view loss, consideration is given to the view sharing principle that was established by Tenacity Consulting vs Warringah (2004) NSWLEC 140. The first step is to consider the view to be affected. The applicant has prepared a series of photomontages that illustrate the potential obstruction to views of the city some 20km in the distance, Botany Bay and district views as a result of the development reaching eight storeys. Two extracts from the series of photomontages is shown below:

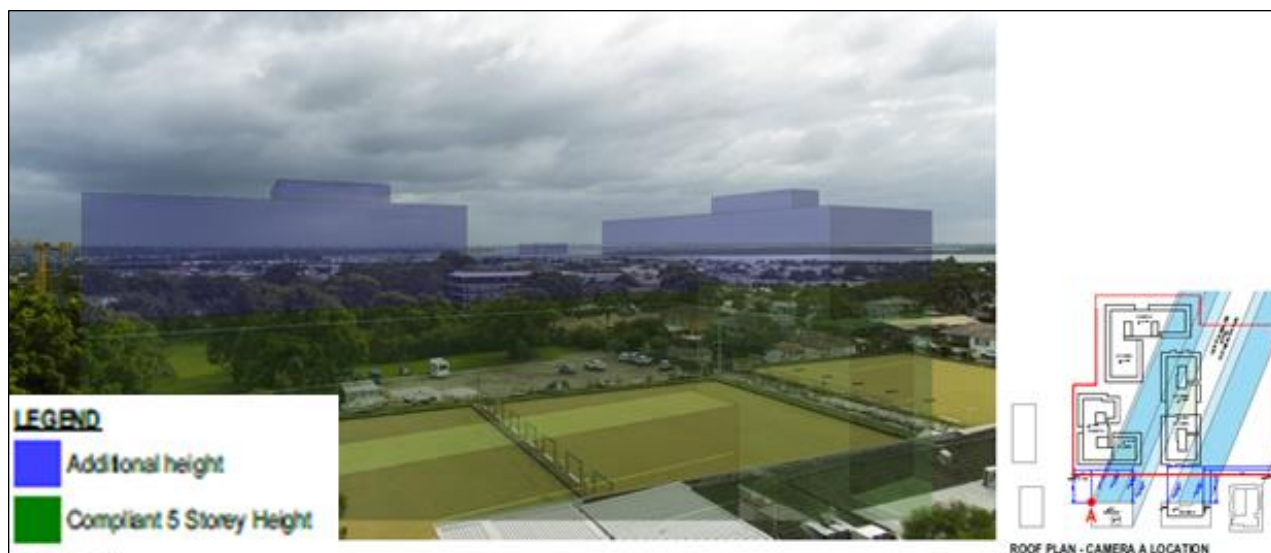


Figure 11: Potential view loss from approved but yet to be constructed residential flat building at No. 113 Willarong Rd. Photomontage provided by applicant from a height of RL49.4, equivalent to an approximate sixth storey.



Figure 12: Potential view loss from approved but yet to be constructed residential flat building at No. 113 Willarong Rd. Photomontage provided by applicant from a height of RL56.1, equivalent to an approximate eighth storey.

The second step is to consider what part of the property the views are obtained, with the third step assessing the extent of the impact from these rooms. Given a DA for development within Stage 3 of No. 113 Willarong Rd's has not been lodged to Council, it is unknown what rooms / balconies a potential loss in view will be experienced.

While an increase in view loss is demonstrated, the built form is broken up between Building A and B. The 45.7m front setback also ensures that any future view loss is concentrated. Building A runs north to south so having a narrower edge along the southern boundary assists in minimising this obstruction in terms of range. The total length of Building A and B parallel to the shared boundary with No. 113 Willarong Rd is 58m (acknowledging that the southern side boundary is 123.8m).

The fourth step is to assess the reasonableness of the proposal. It is accepted that the proposal's contravention of the building height will have a greater impediment to views from No. 113 Willarong Rd. However, the uniqueness of the site in needing to accommodate two functional and well-placed bowling greens at the front of the site for the benefit of Club patrons and members must be accepted, and in doing so consideration given to the distribution of bulk to reflect a form that meets the objectives of Clause 4.3 in lieu of the prescribed maximum of 16m. It must also be accepted that the views of an adjoining property for a development that has yet to be commenced and the floor layout is unknown have a reduced weight in this situation.

In relation to the portion of the development contravening the 16m height limit with respect to privacy, the development incorporates recessed balconies or in relation to Level 5 (sixth storey) of Building A, balconies edged with planter boxes, facilitating an acceptable relationship with development to the south and west.

With regards to overshadowing, it can be foreseen that the lower levels of two buildings positioned to the south of Building A and B on No. 113 Willarong Rd will be partially impacted, with the most severe impact occurring at 11am midwinter as illustrated below:

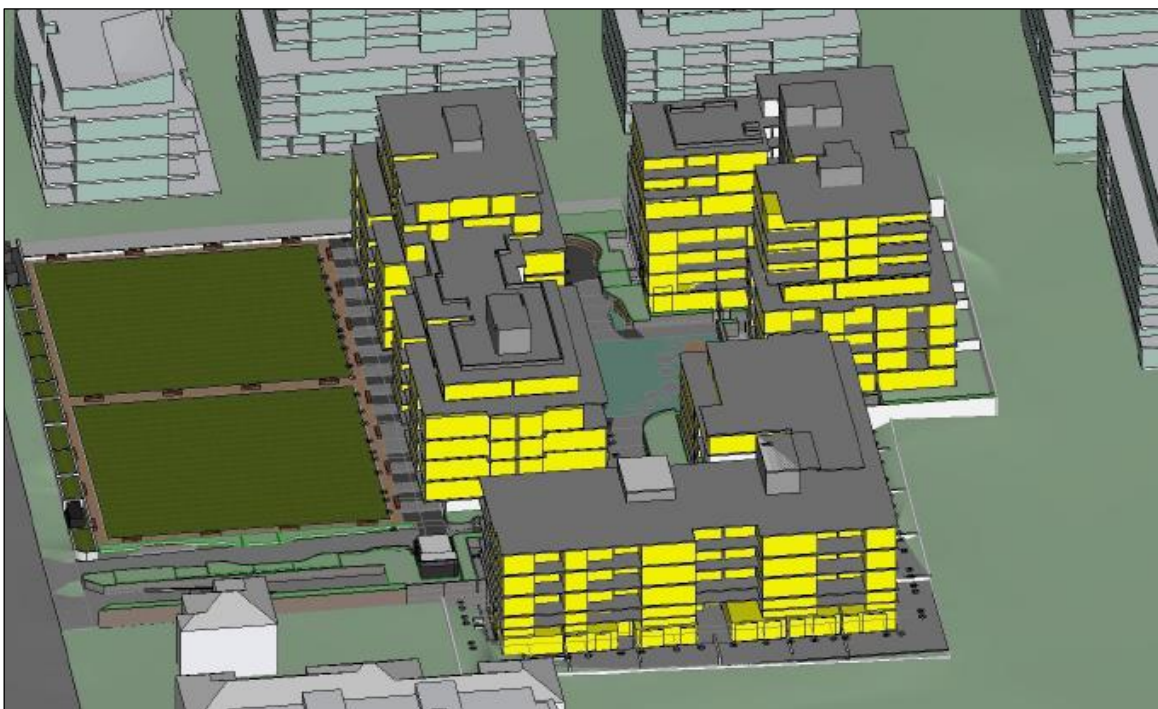


Figure 13: Level of obstruction to solar access gained to built form approved on No. 113 Willarong Rd at 11am midwinter.

This impact is intermittent but short lived. At 3pm midwinter, obstruction to solar access moves to other portions of the building so the impact will not relate to the same apartment at all times of the day. It must also be accepted that No. 113 Willarong Rd is situated to the south so it is inevitable that overshadowing will occur, even with a compliant built form, which may see a wider built form within the 16m height envelope and consequently cause overshadowing to become wider and fall within individual apartments longer.

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

Owing to the increased front setback and placement of eight storey buildings adjacent to future development on No. 113 Willarong Rd that extends to 11 storeys, minimal adverse visual impacts from the street or adjoining properties other than No. 113 Willarong Rd will occur. No visual impact will occur from any waterway or public reserve.

- (e) *to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings in those zones,*

The subject site is within a R4 High Density Residential zone and while a Bowling Club is proposed on the ground level with accompanying bowling greens, the remaining land use is residential and it is this component which protrudes above the maximum 16m building height.

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

This objective is irrelevant to the proposal as no employment or retail centre adjoins or is within close surrounds to the site.

The Clause 4.6 provided has been assessed against Clause 4.6(3)(a) and (b) as follows:

- a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Compliance with the development standard is considered to be unnecessary, as the portions of the building which contravene the maximum 16m building height are adequately positioned on the site to minimise adverse impacts to adjoining residential development that exists or has been approved with a compliant building height. Adequate separation distances are achieved with approved residential development on No. 113 Willarong Rd which itself exceeds the maximum building height beyond the bonus (an additional 14m) in which the site was afforded under the SSLEP 2015 but did not strictly meet all requirements to enable this height to be afforded).

Therefore, it is considered that the proposal is consistent with both the objectives of the development standard and zone and therefore will unlikely result in significant impacts upon the street and adjoining properties in terms of visual intrusion, privacy and overshadowing.

- b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposal will unlikely create significant impacts upon adjoining properties, streetscape and the character of the locality, as the non-compliant portions are adequately set back from the street and inset from the

building edge at upper levels.

The applicant's written submission demonstrates that compliance with the height development standard is unreasonable and unnecessary in the circumstances of the case. It also demonstrates sufficient environmental planning grounds to justify varying this development standard. The proposed development is in the public interest due to enabling the retention of an existing Bowling Club while dually providing affordable rental housing. The proposed variation does not raise any matters of State or regional environmental planning significance. In addition, there is no public benefit to maintain the building height development standard in the circumstances of this case.

In conclusion the variation to the height development standard satisfies all relevant parts of clause 4.6 and therefore the variation can be supported.

10.2 Floor Space Ratio

Clause 4.4(2) of SSLEP 2015 stipulates a maximum floor space ratio (FSR) of 1.2:1 for the site. Clause 13 of the ARH SEPP permits an additional FSR of 0.5:1, as 50% of the gross floor area will be used for Affordable Rental Housing. This equates to 131 affordable rental housing apartments and allows a gross floor area of 20,517.64m². The amended proposal complies with maximum 1.7:1 FSR by approximately 167m².

10.3 Building Separation and Setbacks

Building A and Building C separation

Between levels 1 and 3 (2nd to 4th storey) extending in a north-south direction, a 9m setback exists where a 12m setback is prescribed by the ADG. The distance is applied as a high sill window is positioned along a northern wall of Building A to maximise opportunities for sunlight.

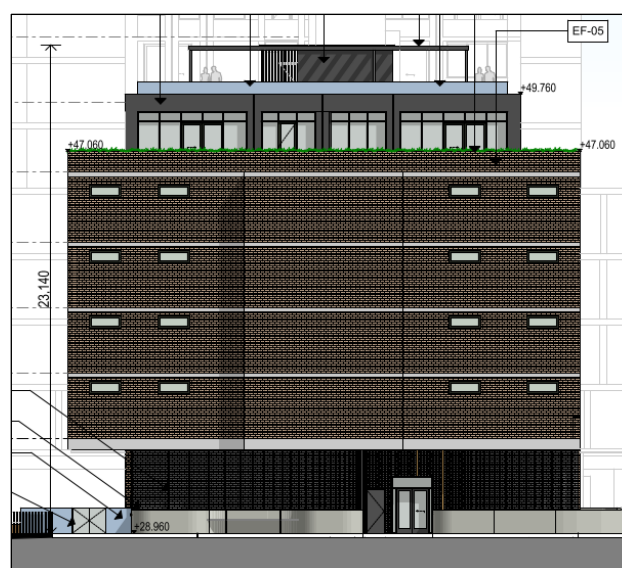


Figure 14: Northern elevation of Building A, where high sill windows are proposed that cause a non-compliance for building separation.

The high sill height relieves privacy issues between apartments on the same level but as overlooking from apartments on a higher level within Building C, a design change condition is recommended for these windows to have a slight 'hood' of between 200-400mm protruding above the window to avoid this downward, directional overlooking.

Between each building's level 4 (5th storey) extending in an east-west direction, a 12m setback is proposed. A 18m is required to accord with the ADG. This represents a variation of 6m and is shown in the plan extract below:

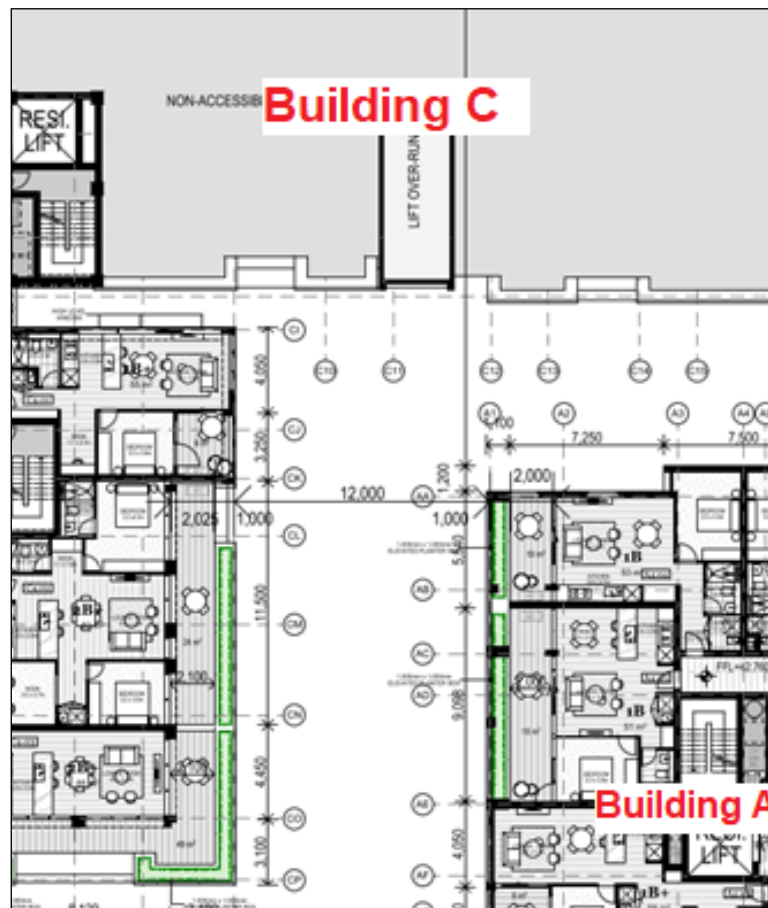


Figure 15: Building separation at level 4 (5th storey) – 18m required.

While provision of a planter box aids privacy through screening and the floor levels are offset from each other (Building A is set at RL42.76 while Building C is RL41.58), these are all the measures which can be applied to the design for the apartment shown in the plan extract above within Building A. While desirably the one bedroom apartment in the north-western corner of Building A shown in the extract above would greatly benefit from being re-orientated to the north to capitalise on a district view and sunlight, the apartments narrowness restricts the layout of the space from working successfully.

Building B and Building C separation

A 7.5m separation distance is proposed at level 1 to 3 (2nd to 4th storey) where 12m is required, representing a non-compliance of 4.5m. The portion of the building in which this distance occurs is minor, with the distance widening to 9m to represent a 3m separation.

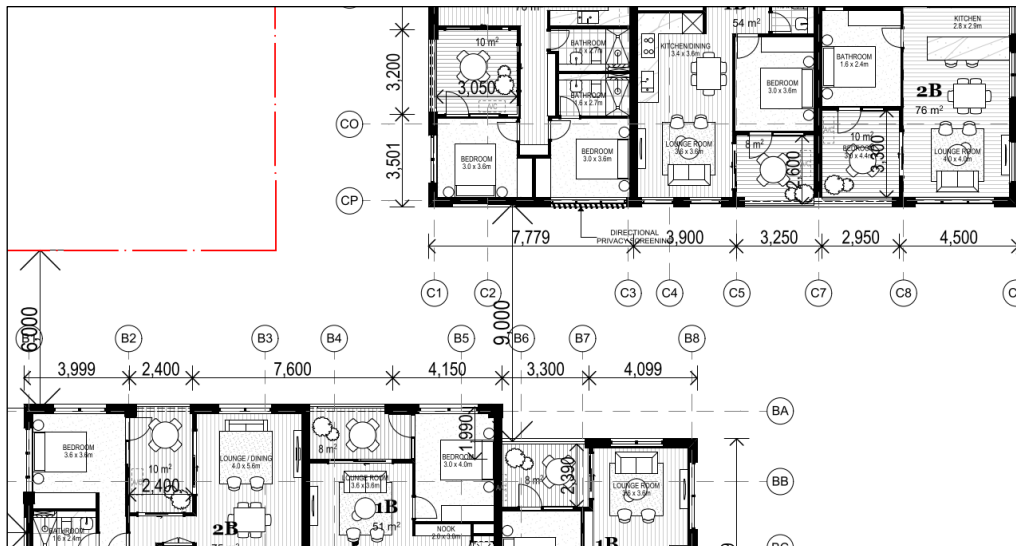


Figure 16: Building separation at level 1-3 (2nd to 4th storey) – 12m required.

For the majority of the non-compliance, the separation occurs with a bedroom which is seldom used aside from sleeping purposes.

This non-compliant building separation continues at level 4 (5th storey), however the distance relates to balconies only – each being edged with a planter box as shown below:

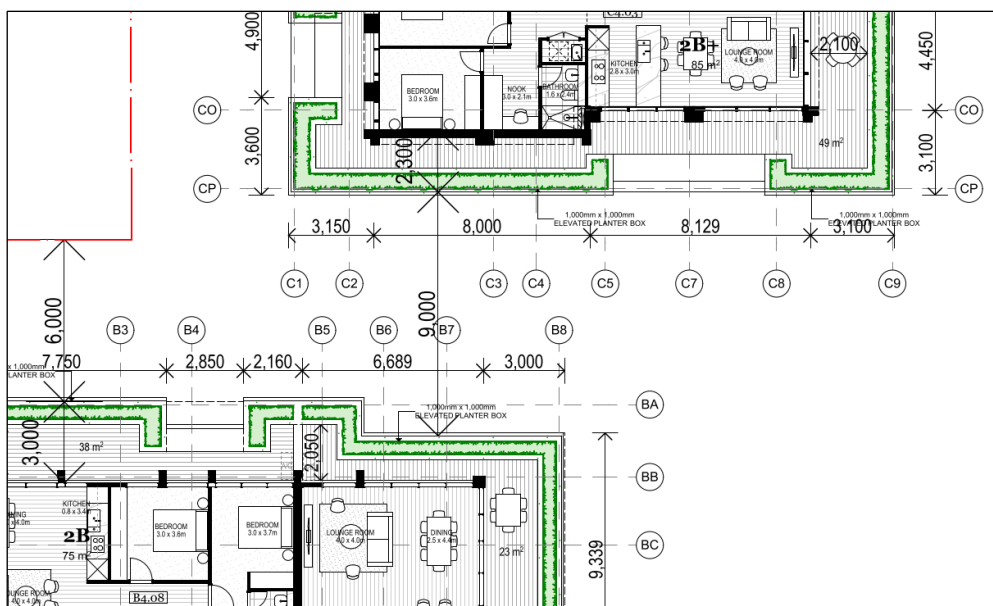


Figure 17: Building separation at level 4 (5th storey) – 18m required.

Setbacks

The ADG prescribes a side setback of 6m to habitable rooms / balconies and 3m for non-habitable rooms for the 1st four storeys and 9m and 4.5m respectively from the 5th storey.

The following non-compliances occur along the southern side setback:

- Building A: 6m setback proposed to living rooms representing a 3m shortfall at level 4 and 5 (5th and 6th storey).
- Building B: 6m setback proposed to balconies representing a 3m shortfall at level 4 (5th storey).

The following non-compliances occur along the northern side setback (inclusive of portion of 'side' boundary protruding mid-way along the western rear boundary) and eastern setback to the rear of No. 99 Willarong Rd:

- Building B: 6m setback proposed to a balcony representing a 3m shortfall at level 4 (5th storey).
- Building C: 6m setback proposed to balcony and living room representing a 3m shortfall at level 3 (5th storey).

The following non-compliances occurs along the western rear setback:

- Building B: 4.5m setback proposed to living rooms and balconies representing a 1.5m shortfall at the ground level to level 4 (1st five storeys).
- Building B: 7.5m setback proposed to living rooms and balconies representing a 1.5m shortfall at level 5 to level 7 (6th to 8th storey).
- Building C: 6m setback proposed to balcony representing a 3m shortfall at level 4.

While setback distances to the south and west boundaries are non-compliant on multiple levels, approved building envelopes to buildings to the south and south-west featured on No. 113 Willarong Rd demonstrate that separation distances will comply with the ADG. These separation distances are not equitable between each property but the intent of the ADG is achieved in relation to privacy, outlook, ventilation and solar access. The provision of a greenweb corridor and communal open space featured along the shared boundary with No. 113 Willarong Rd (entirely situated on this adjoining property) and perimeter planting within the subject site within each setback will ensure the maximisation of this space for planting.

With regards to the setback in the north-eastern corner of Building A, the application of a 6m setback at level 3 (5th storey due to lower ground and ground floors being proposed) sees the building achieve this setback for 15m. The ADG prescribes that a 6m setback apply up to a height of 12m (4 storeys). This is illustrated below:

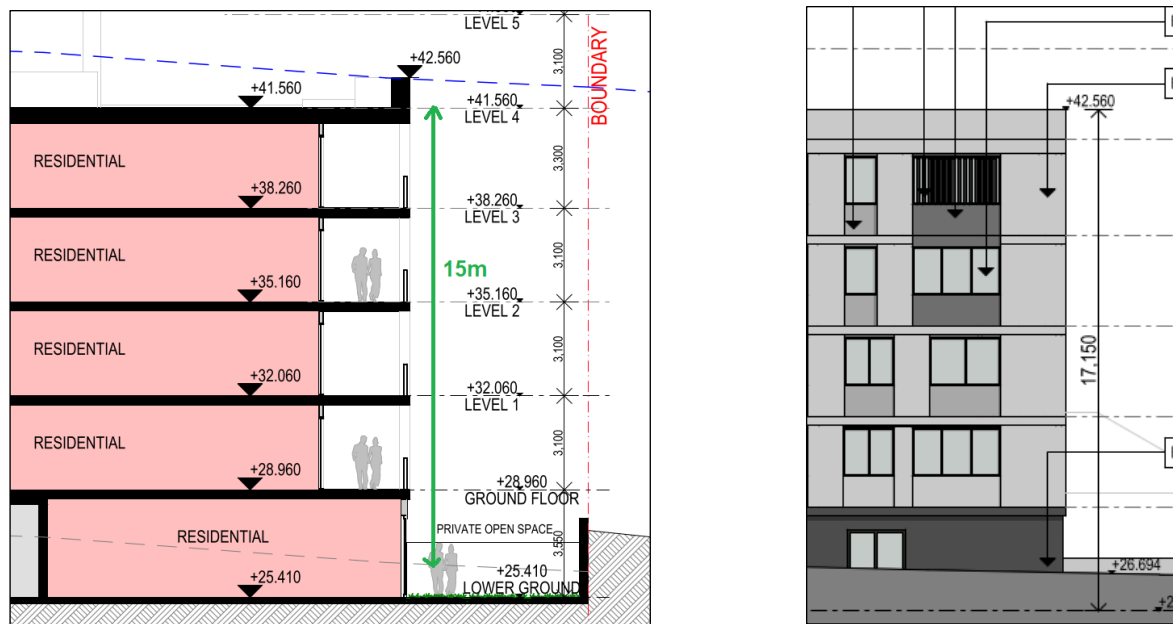


Figure 17: 15m height of 6m setback applied to north-eastern corner of Building A (or 16m when including parapet), measured to No. 99 Willarong Rd and No. 97 Willarong Rd.

No. 99 Willarong Rd is currently developed with a dwelling house and has recently gained approval for a residential flat building with rear setbacks of 6m. A multi dwelling housing development exists to the north at No. 97 Willarong Rd comprising single and two storey dwellings.

Basement Setback

Clause 3.2 of Chapter 6 of SSDCP 2015 requires a 3m basement setback from side and rear boundaries where the basement construction (in exclusion of the driveway) extends beyond the building footprint. Compliance is achieved along the rear and northern side boundary. However, the southern side setback has a nil setback for a length of 75m.

The aims behind these development controls are to ensure privacy to adjoining properties is maximised, visual intrusion from building bulk is minimised and that an opportunity for ample deep soil zones is achieved. The basement remains fully concealed below the existing ground level and within this area of the site, the bowling green is positioned above so no opportunity for deep soil planting exists.

10.4 Solar Access

The ADG and SSDCP 2015 prescribe that 70% (171) of apartments achieve a minimum of 2 hours solar access to living areas and private open space. The proposal results in 57.3% (140) of apartments as compliant with this control. Many apartments comply with solar access to living areas but not their private open spaces. It is evident that apartments with living rooms accessed from the recessed part of the balcony struggle to comply such as A4.02:

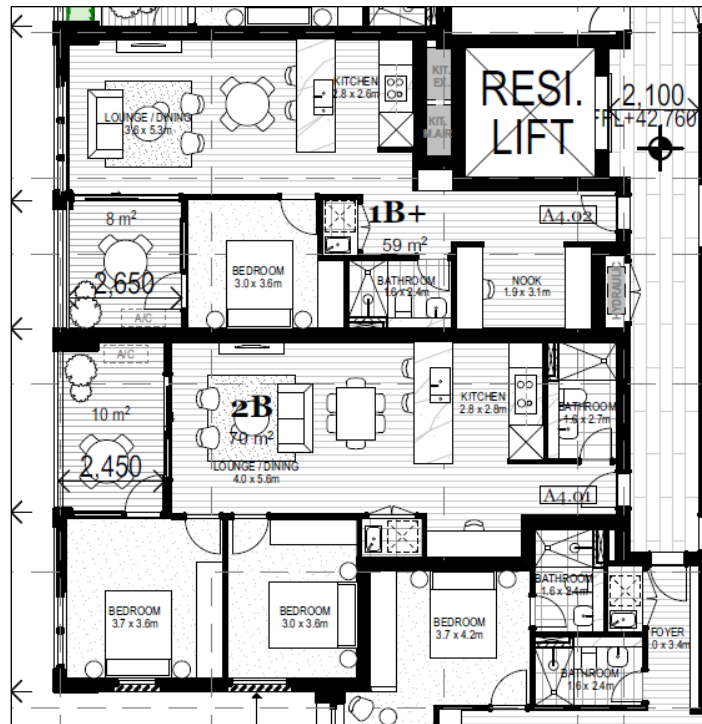


Figure 18: Apartment comparison with living area windows positioned at the rear of the balcony (2B apartment in plan extract) struggling to achieve 2 hours solar access.

Conversely, various apartments struggle to receive 2 hours solar access to balconies. This occurs marginally as a non-compliance, relating to C1.03 and C2.03.



Figure 19: Solar access at 11am gained to C1.03 and C2.03, with balconies situated on the southern end not visible from sun's eye diagram.

Non-compliance is supported for the following reasons:

- 11% of apartments receive no solar access to habitable rooms, compliant with the maximum 15% prescribed by the ADG.

- 25 apartments overlooking the bowling greens within Building A are marginally non-compliant. As no buildings are situated to their east, these apartments receive uninterrupted solar access prior to 9am; and
- Many apartments receive the minimum to their living area or balcony, just not in combination of each space.

10.5 Parking

Visitor parking

The SSDCP 2015 stipulates that one visitor car space is required per four dwellings. This equates to 61 car spaces being required. 48 spaces are proposed (two are to be dually used as car wash bays), representing a shortfall of 13 spaces (21.3%).

The ADG provides that for sites within 800m of a railway station in Sydney, car parking rates from the Guide to Traffic Generating Development can be applied. This Guide identifies rates for “Metropolitan Regional Centres” and a “Metropolitan Sub-Regional Centres” where visitor parking is required at a rate of one space per five units.

The Applicant references the Department of Planning's Practice Note as:

“those centres defined in A Plan for Growing Sydney as a CBD, Regional City Centre or Strategic Centre should apply the Metropolitan Regional Centre (CBD) rates of the GTTGD, while the remaining Sydney centres serviced by railway or light rail stations should be classified as a Metropolitan Subregional Centre for the purposes of the GTTGD.”

Upon applying this Practice Note, Caringbah would be identified as a Metropolitan Subregional Centre. However, this Practice Note has no statutory weight and to date, Council have not applied this rate to development within the Sutherland Shire.

Council in its DCP may be inconsistent with SEPP 65 / ADG requirements in accordance with Clause 6A of SEPP 65 which specifies what objectives, design criteria and design guidance Council must be consistent with - car parking is one matter in which Council's DCP can be inconsistent.

Given that a reduced residential parking rate is applied to the proposal and a bicycle lane will be constructed in front of the site, to re-allocate one of the four excess resident spaces to a visitor parking space would not be ideal in the circumstances as parking on Willarong Road directly in front of the site is in high demand at all times of the day and evening. That aside, the proposal is supported with a shortfall to 49 cars as was originally proposed with the DA. To further deplete this to 48 cars (two of which used as a carwash bay) whilst increasing the number of apartments by one is not supported. Therefore, the original number is to remain by way of conditions.

Carwash bays

The SSDCP 2015 requires developments with 10 or more dwellings to have one designated carwash bay

with minimum dimensions of 3m x 7.6m. Additional carwash bays are required in development in excess of 30 dwellings at a rate of one per 20 dwellings. Applying this control sees a minimum 12 carwash bays required. Two are proposed, which are shown as being for dual use as visitor spaces. A shortfall is accepted due to reduced residential parking being required under the ARH SEPP, subsequently resulting in less cars requiring use of the carwash bay. However, to dually use these spaces as visitor spaces when a shortfall in visitor parking is proposed is not supported as it is foreseen that the availability of the carwash bays may be rare. Subsequently, a condition is recommended for the carwash bays to be solely built for this purpose only.

10.6 Bowling Club

Planning of Site

The existing Caringbah Bowling and Recreation Club is falling into disrepair, and with dwindling membership numbers, has limited ability to sustain its operations into the future. To futureproof the Bowling Club, aligning itself with a developer was a sensible idea. The Bowling Club is a private club (rather than a community facility open to all members of the public).

As the owner of all lots forming the subject site (with the exception of 1/101 Willarong Rd – being one dwelling forming a dual occupancy), the Bowling Club's criterion were instrumental to the approach taken to redevelop the site. This key criterion included having a strong presence and visibility from the streetscape and ensuring solar access to the bowling greens was gained in the morning and early afternoon period – key times when competition on the greens were held.

Hours of Operation

The Bowling Club's current hours of operation are:

- Monday 2pm to 6pm;
- Tuesday 10:30am to 9pm;
- Wednesday 11am to 9pm;
- Thursday 11:30am to 9pm;
- Friday 11:30am to 9pm;
- Saturday 9am to 9pm; and
- Sunday 9:30am to 7pm.

The applicant has identified the proposed hours of operation as:

Area of Bowling Club	Sunday to Thursday	Friday and Saturday
Internal areas	7am to 10pm	7am to midnight
Outdoor terrace	7am to 10pm	7am to 10pm
Bowling greens	7am to 9pm	7am to 9pm

These proposed hours are a considerable expansion from the current hours of operation, suggesting that the Bowling Club's operations will see a considerable shift and focus on evening trading. The evening periods are of concern to NSW Police, and when assessing these proposed hours against Chapter 37 Late

Night Trading within the SSDCP 2015, approval of these hours rely on 'extended hours' for licenced premises and not 'base' hours. These appear in the SSDCP 2015 as:

Licenced Premises - Base Hours	Monday to Saturday	Sunday
Indoor	6am to 10pm	10am to 9pm
Outdoor	10am to 10pm	10am to 9pm
Licenced Premises – Extended Hours	Monday to Saturday	Sunday
Indoor	6am to midnight	6am to midnight
Outdoor	6am to 10pm	6am to 10pm

The subject site is not within a mapped Caringbah Centre within the SSDCP 2015. The mapped area sets resident expectations for 'high' and 'intermediate' activity areas – which are largely confined to the B3 Commercial Core zoned areas. The subject site is situated within a R4 High Density Residential zone, with residential development particularly close by and upon application of the SSDCP 2015, the site is categorised as being within a 'low' activity area and does not sit on the periphery of sites identified as 'high' or 'intermediate' activity areas.

The site does not benefit from a location that is surrounded primarily or solely by commercial land uses so particularly careful consideration needs to be given to all measures (including hours of operation) that will mitigate anti-social behaviour. The applicant has amended their Plan of Management to tighten the operations of the Bowling Club, addressing areas of concern raised NSW Police.

The Bowling Club will be the only commercial activity in this immediate area. The 'Base Hours' are what may reasonably be expected. While the 'Extended Hours' may be considered, there is no guarantee that these are afforded – otherwise making the 'Base Hours' superfluous.

The applicant has been made aware of the NSW Police and Council's concerns with regards to hours of operation, responding by noting that:

"Section 4.15(3A) of the Environmental Planning & Assessment Act 1979 provides that:

(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority—

*(a) if those provisions set standards with respect to an aspect of the development **and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development"***

By imposing the 'Base Hours', these would not be more onerous and is consistent with the SSDCP 2015. It is accepted that the SSDCP 2015 does allow reviewable and one year trial conditions where it is uncertain

about the impacts of the proposed development on adjoining land uses if applying the 'Extended Hours' is appropriate.

Within the Statement of Environmental Effects, reference is made to Waverly Bowling Club due to its similarities in terms of scale and arrangement of land uses where the Bowling Club is situated at the ground floor with 55 seniors' apartments directly above and adjacent to the Bowling Club. In drawing comparisons, the approved hours were a contentious aspect of the proposal during the Land and Environment Court proceedings. The outcome being that it is appropriate for the following hours of operation:

Area of Bowling Club	Monday to Sunday
Internal areas	7am to 10pm *
Outdoor terrace	7am to 9pm
Bowling greens	9am to 8pm

*Note: A one year trial period condition allowing indoor areas to operate until 11pm was imposed.

From these findings and considering the mix of low, medium and high density residential development surrounding the site, it is recommended that the base hours be applied to an approval to see how the proposal operates before issuing approval for extended hours upfront. While the Plan of Management has been updated and further details disclosed to mitigate risk, NSW Police have significant concerns with the proposal's proximity to residents. There is no impediment to the Applicant lodging a Section 4.55 application 6 months after opening to apply for extended hours.

Fitout of Club

In Council's letter dated 8 October 2021, the applicant was requested to provide detailed floor and section plans for the cafe are requested to be submitted for review. While identification of a grease trap within the basement is provided, the remaining information has been requested to be addressed via a condition of consent due to time pressures in the assessment of the proposal. This approach is supported by Council's Environmental Health Officer.

10.7 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.

10.8 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 a standard where Council can address outstanding issues via conditions of consent.

10.9 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.

10.10 Urban Design (Residential Buildings)

Clauses 6.16 and 6.17 of SSLEP 2015 contain certain matters of consideration relating to urban design. The relevant matters have been considered as a part of the assessment of the application and the proposal is considered to be acceptable.

10.11 Urban Design (Non-residential)

Clauses 6.16 and 6.18 of SSLEP 2015 contain certain matters of consideration relating to urban design. With respect to the Bowling Club and greens component, the relevant matters have been considered as a part of the assessment of the application and the proposal is considered to be acceptable.

10.12 Landscaping

Tree Removal

Council's Landscape Architect requested the removal of a row of Camphor Laurel trees along the rear western boundary due to this species appearing on Council's tree register as 'exempt' species thereby not requiring approval for their removal and providing no assurance for their longevity.

Two endemic trees will be retained situated around the perimeter of the site – to the north and west of Building C. These will be supplemented by additional perimeter planting to establish a landscape setting around each building.

In total, 24 trees are approved for removal. To compensate for the removal of these trees, 75 replacement trees are recommended to be planted by way of a condition of consent. A further 29 replacement trees are required by way of a 'Deed of Agreement' for offsite planting to be undertaken by Council. This is in accordance with a Council resolution made on 18 July 2016.

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. The approved masterplan at No. 113 Willarong Rd incorporates a Greenweb zone that traverses the site:

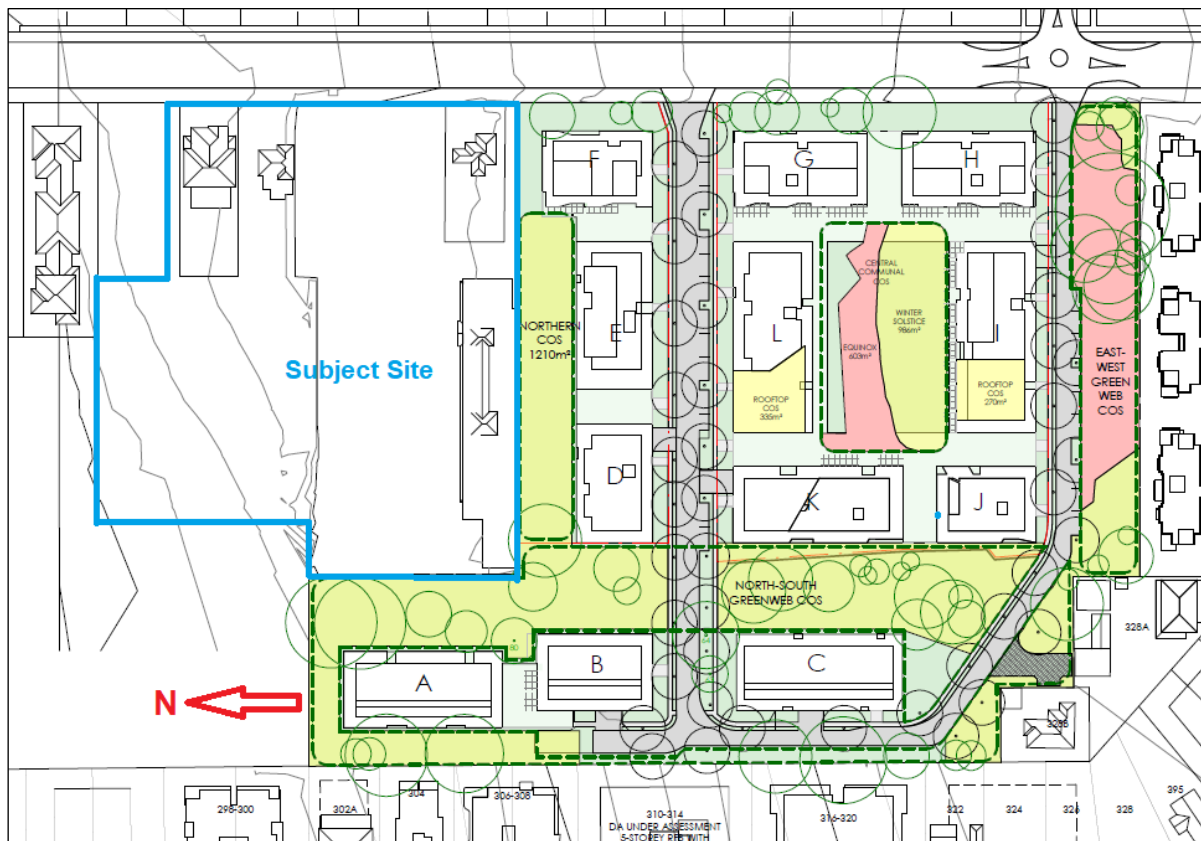


Figure 16: Greenweb corridor approved on adjoining property as part of Masterplan. Corridor shown in pale green.

All properties along the western side of Willarong Rd and the eastern side of Taren Point Rd are identified as a Greenweb restoration area. The anomaly to the pattern of lots along each street is No. 113 Willarong Rd so it is logical to expect a widened and elongated corridor of planting. While the subject site also an anomaly in terms of site size when compared to surrounding lots, its square-like shape makes it difficult to achieve the same level of corridor. To acknowledge the site's greenweb categorisation, substantial perimeter planting is proposed in conjunction with a 335m² deep soil pocket featured centrally between all three proposed buildings.

10.13 Archaeological Sensitivity

Council records indicate that approximately 1/3 of the site along the front is rated "low" in terms of Archaeological Sensitivity. The remaining rear portion of the site is rated "high". A site inspection did not reveal any evidence of shell material or significant sandstone features within the development zone. The proposal does not warrant an Aboriginal Archaeological Study being undertaken.

11 DEVELOPMENT CONTRIBUTIONS

The proposed development will introduce additional residents to the area and as such will generate Section 7.11 Contributions in accordance with Council's adopted Section 7.11 Development Contribution Plan. These contributions are based upon the likelihood that this development will require or increase the demand for regional and local recreational space and infrastructure facilities within the area.

Section 7.11 Contributions for the affordable rental housing component of the development (i.e. 131

apartments – 50% of development's gross floor area) receive an exemption on the basis that it will provide significant social, economic and environmental benefit to the local community in terms of providing housing that is affordable. Given the dominant use of the site will be residential development, the secondary use of the Bowling Club does not attract Contributions.

The following Section 7.11 Contributions applies:

Regional Contribution:	\$552,281.90
Local Contribution:	\$1,587,718.10

It has been calculated on the basis of 113 new residential apartments with a concession of six existing allotments due to two dwelling houses and a dual occupancy existing on the site and two lots occupied by the Bowling Club that are of a size capable of accommodating a dwelling. The total Section 7.11 Contributions is \$2,140,000.

12 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 CONCLUSION

The subject land is located within Zone R4 High Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a mixed use development entailing a recreation facility (indoor and outdoor), registered club and residential flat building, is a permissible land use within the zone with development consent.

In response to public exhibition, eight submissions were received. The matters raised in these submissions have been dealt with by design changes or conditions of consent where appropriate.

The proposal includes variations to building height, solar access, natural ventilation, building setbacks and separation, vehicular access, manoeuvring and servicing requirements. These variations has been discussed and while the majority can be adequately justified in support of a variation, conditions have been imposed in some instances to improve the outcome of manoeuvring and residential amenity.

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 not result in any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. DA21/0629 can be supported.