

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-85
DA Number	DA21/0610
LGA	Sutherland Shire Council
Proposed Development	Demolition of existing structures and construction of a mixed-use development comprising ground level commercial tenancies, 48 residential apartments above and strata subdivision
Street Address	344-346 and 348R Kingsway, Caringbah
Applicant/Owner	344-346 Kingsway Pty Limited
Date of DA lodgement	30 June 2021
Number of Submissions	7 (two from one submitter)
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	The proposed development has a capital investment value of more than \$30 million, estimated at (\$45,126,950.00).
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. 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). Apartment Design guide (ADG) State Environmental Planning Policy (State and Regional Development) 2011. State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP). Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). Sutherland Shire Development Control Plan 2015 (SSDCP 2015).
List all documents submitted with this report for the Panel's consideration	Appendix A – Correspondence from Transport for NSW Appendix B - Minutes of the Design Review Forum Meeting Appendix C - SEPP 65 Design Principles Compliance Table Appendix D - Apartment Design Guide Compliance Table Appendix E - Sutherland Shire Development Control Plan 2015 Compliance Table Appendix F – Correspondence from Sydney Trains Appendix G – Correspondence from NSW Police Appendix H - Clause 4.6 – Building Height Appendix I – Clause 4.6 – Floor Space Ratio
Report prepared by	Amanda Treharne
Report date	8 November 2021 (Panel Date: 16 December 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?

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

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

**Not
Applicable**

Conditions

Have draft conditions been provided to the applicant for comment?

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

No

REASON FOR THE REPORT

State Environmental Planning Policy (State and Regional Development) 2011, requires this application to be referred to the Sydney South Planning Panel (SSPP) as the development has a capital investment value of more than \$30 million. The application submitted to Council nominates the value of the project as \$45,126,950.00.

PROPOSAL

The application is for demolition of existing structures and construction of a mixed use (commercial and residential) development comprising 2 levels of basement parking, 3 ground floor commercial tenancies, 48 residential apartments over 8 levels, a rooftop communal open space, level 1 communal open space with lap pool and covered gymnasium and strata subdivision.

THE SITE

The subject site is an irregularly shaped parcel known as 344-346 and 348R Kingsway, Caringbah. It comprises two parcels of land legally described as Lot 1 DP 219784 (1682m²) and Lot 11 DP 662946 (411m²) and is located on the southern side of Kingsway within the Caringbah Commercial Centre. The south-western boundary of the site abuts the Council owned carpark, situated in the Centre of the Caringbah Commercial Centre.

ASSESSMENT OFFICER'S RECOMMENDATION

1.0 THAT:

1.1 That Development Application No. DA21/0610 for Demolition of existing structures and construction of a mixed use (commercial and residential) development and strata subdivision. at Lot 1 DP 219784, Lot 11 DP 662946 344-346 Kingsway, Caringbah, 348R Kingsway, Caringbah is determined by the refusal of development consent for the reasons outlined below.

- a) The application is considered unacceptable pursuant to the provisions of s4.15 1(a)(i) of the Environmental Planning and Assessment Act, 1979, in that the proposed development fails to comply with Clause 4.3(2) – Height of Buildings of Sutherland Shire Local Environmental Plan 2015. The written request pursuant to Clause 4.6 fails to demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.
- b) The application is considered unacceptable pursuant to the provisions of s4.15 1(a)(i) of the Environmental Planning and Assessment Act, 1979, in that the proposed development fails to comply with Clause 4.4(2)– Floor Space Ratio of Sutherland Shire Local Environmental Plan 2015. The written request pursuant to Clause 4.6 fails to demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.

- c) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed development fails to comply with Clause 6.16(1)(b), (c), (f) and (g) – Urban Design – general and 6.17(b), (c), (d) and (e) Urban design – residential accommodation set out in Sutherland Shire Local Environmental Plan 2015. The proposed development incorporates non-compliant side and rear building setbacks, resulting in a built form outcome which is of an excessively height, bulk and scale, having regard to the existing and desired future character of the Caringbah Centre. The proposal also has the potential to compromise future development of adjoining sites, and creates unacceptable amenity impacts for adjoining properties. Design elements of the building are unresolved which may compromise the overall visual aesthetic of the building.
- d) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that insufficient information has been submitted to Sydney Trains to address Clauses 85 and 86 of State Environmental Planning Policy (Infrastructure) 2007 and concurrence has not been granted.
- e) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that insufficient information has been submitted to Council with respect to site contamination having regard to the requirements of State Environmental Planning Policy 55 (Remediation of Land) (SEPP 55). Council has not been satisfied that the land can be made suitable for the proposed use pursuant to the provisions of clause 7 of SEPP 55.
- f) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, in that approval of the development will result in potential adverse amenity impacts for neighbouring properties in terms of visual and aural privacy and overshadowing.
- g) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as the proposal fails to address the potential noise impacts resulting from use of the communal outdoor gymnasium, with additional information required to meet the requirements specified in Chapter 18 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015).
- h) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as the proposal fails to address key servicing requirements of the development including vehicle access, loading and car parking for the development as set out in Chapter 36 of SSDCP 2015.
- i) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as the proposal fails to address

stormwater management from the site and the necessary geotechnical requirements for the basement levels as required by Chapter 38 of SSDCP 2015.

- j) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, in that approval of the development may result in site isolation of the neighbouring property at 340 Kingsway, Caringbah contrary to Chapter 18 of SSDCP 2015.
- k) The application is considered unacceptable pursuant to the provisions of s4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that approval of the development will create an undesirable precedent and is therefore not in the public interest.

ASSESSMENT OFFICER'S COMMENTARY

2.0 DESCRIPTION OF PROPOSAL

The proposal is for a mixed-use commercial building consisting of the following:

- 2 levels of basement parking – accommodate 77 car parking spaces, 3 motorcycle spaces and storage.
- Storage level – accommodate fire pump room, fire tank, bulk and retail waste storage areas.
- Ground floor – 3 commercial spaces, residential entrances, public toilets and vehicular access to the site.
- Levels 1 to 8 – 48 residential units and communal open space with a swimming pool and outdoor gym on Level 1.
- Roof plan – communal open space comprising garden areas, Jacuzzi, outdoor private cinema and active courtyard.
- Strata subdivision.

A site plan is provided below.

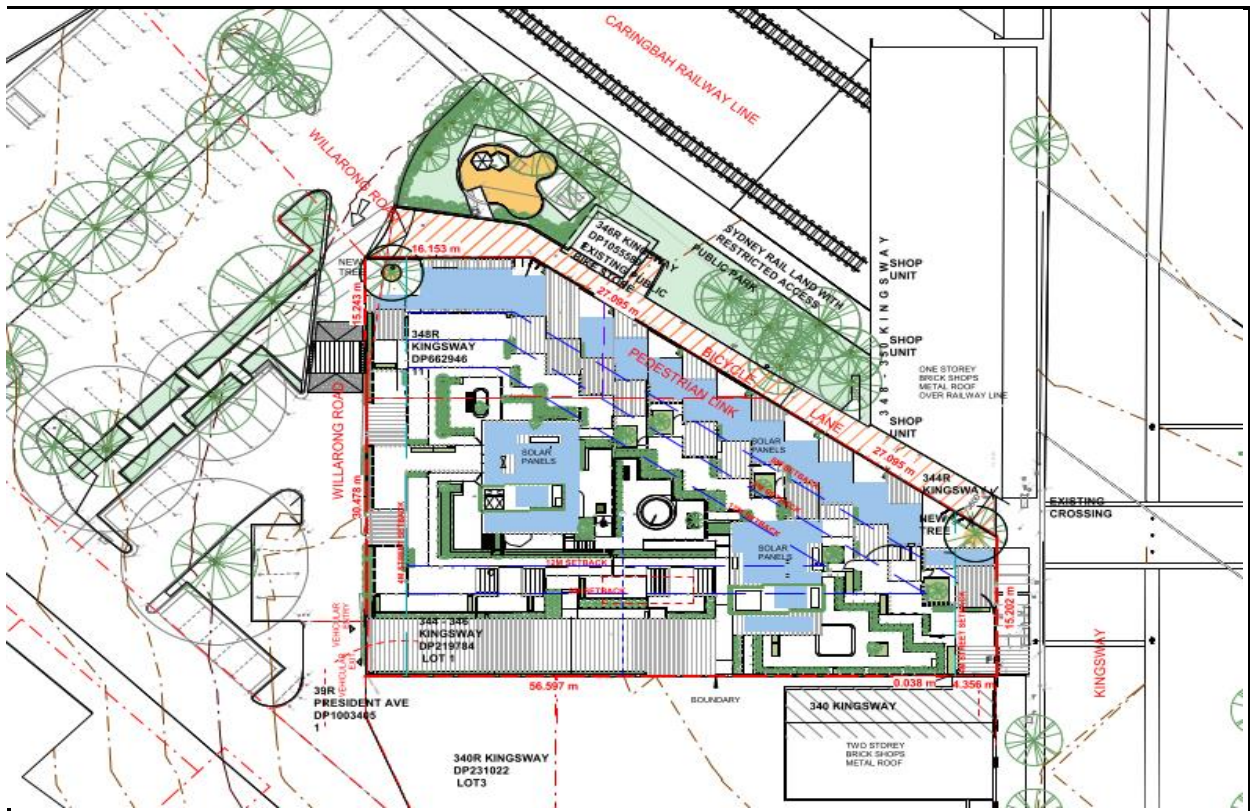


Figure 1: Site plan

3.0 SITE DESCRIPTION AND LOCALITY

The subject site comprises 2 separate lots, resulting in an irregular shaped parcel of land. It has a narrow frontage width to Kingsway of 15.24m, a combined northern boundary of 70.345m, a southern boundary of 60.96m and a western boundary of 45.72m. The total site area equates to 2273m².

The site is located in the Caringbah Centre and is occupied by a two-storey commercial building with car parking at the rear of the site. The parking is accessed from 39R President Avenue, Caringbah via a right of carriageway. 39R is a large parcel comprising a carpark and access roads owned by Sutherland Shire Council (Council) and serves as the 'hub' for parking within the southern part of the Caringbah Centre. To the north of the site, is a public footpath that provides access from the Kingsway to the Council car park at the rear. The railway line is to the north of the public footpath.

Limited natural features exist on the site but the little amount that does consists of endemic species located around the old Council community centre building.

To the west of the Council carpark is an older building containing a Coles Supermarket. Development to the south of the public car park has frontage to President Avenue and includes a McDonald's restaurant and commercial uses. DA19/0333 for redevelopment of the Coles site was approved in the NSW Land and Environment Court in 2020 and will enable the replacement of the Coles building with a new larger Coles, speciality stores and upper level residential apartments.

Development along both sides of Kingsway and opposite the subject site to the east comprises a mix of commercial uses. Pedestrian access to Caringbah Railway Station is opposite the site on the eastern side

of the Kingsway. A large mixed-use building exists to the north-west on the northern side of the railway line.

A locality plan and an aerial photo are provided below.



Figure 2: Site Location and Zoning Plan

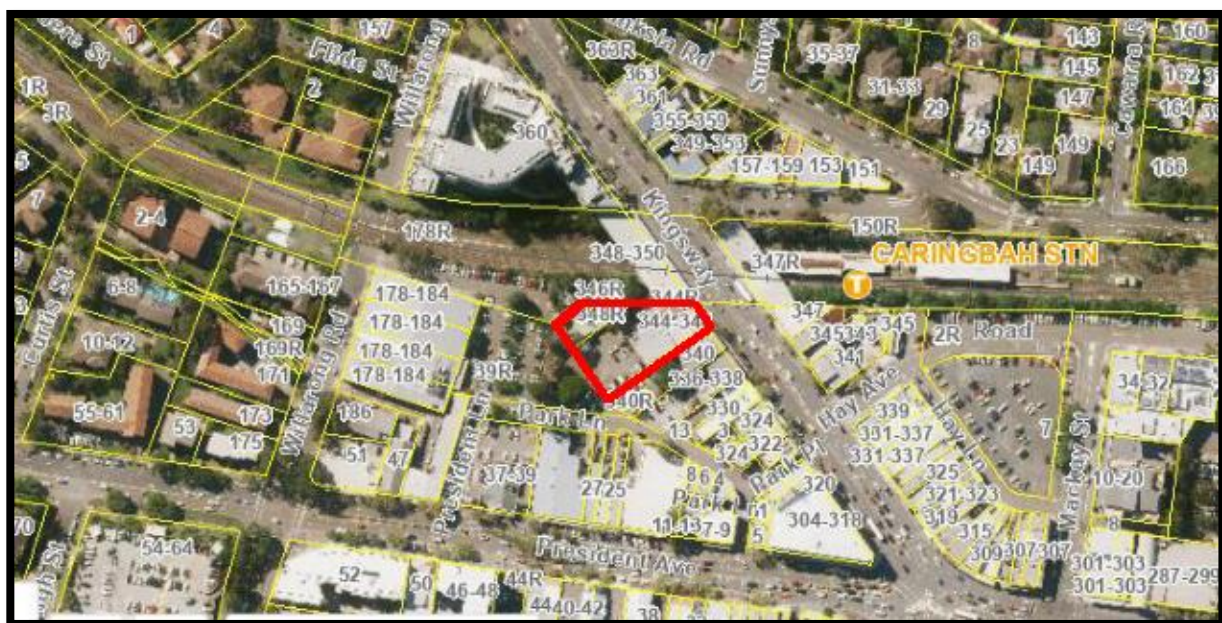


Figure 3: Aerial and location of proposed development

4.0 BACKGROUND

A history of the development proposal is as follows:

- A pre application discussion (PAD) was held on 27 August 2019 for development of the site. A formal letter of response was issued by Council dated 1 October 2019. The main points contained in this letter included staging of the development, zoning, building height, site isolation, built form, streetscape activation and safety, residential amenity, the Sutherland to Cronulla Active Transport Link (SCATL), Sydney Rail matters, building services, engineering matters (drainage, parking, traffic), landscaping and waste management and collection.

- This Development Application was lodged on 30 June 2021.
- The application was placed on exhibition, with the last date for public submissions being 12 August 2021.
- The application was considered by the Design Review Forum (DRF on 26 August 2021)
- A Kick-off briefing was held on 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:
 - The requirement for a Clause 4.6 written request for the breach of Clause 4.3 - height of buildings (SSLEP2015)
 - Sustainability
 - Through site links
 - Communal open space
 - Deep soil provision and the need to balance this with carparking
 - ADG non-compliances
 - Carparking provision,
 - Building setbacks and separation from Willarong Road boundary, consistent with the ADG.
- Correspondence was received from Sydney Trains on 13 September 2021 advising that 'stop the clock' provisions had been utilised and concurrence would not be granted until further information was submitted by the applicant.
- A formal briefing of the SSPP was undertaken at the meeting held on 16 September 2021. Issues raised at the briefing included the following:
 - Building height and FSR non-compliance with SSLEP 2015
 - Non-compliance with the building envelope plan set out in SSDCP 2015
 - Design of the pedestrian link
 - Additional information required for vehicle access to the site across council land
 - Site isolation of No. 340 Kingsway
 - Parking
 - Private open space
 - Adaptable and livable housing
 - Visual privacy concerns
 - Provision of proposed public toilets at the rear of the development
- Council officers wrote to the applicant on 28 September 2021 advising that there were significant concerns with the application and that the proposal would not be supported in its current form. Matters raised included:
 - Non-compliant building height
 - Non-compliant FSR
 - Site isolation of No. 340 Kingsway
 - Streetscape and built form
 - Pedestrian link to the north of the site
 - Building separation
 - Street setbacks
 - Communal open space on Level 1
 - Solar access to the proposed development

- Provision of private open space
 - Insufficient adaptable and livable housing provision
 - Comments raised by the DRF
 - Relationship between residential / commercial carparking
 - Engineering matters including stormwater, loading, vehicular access / stratum plans
 - Landscape matters
 - Building services – Hydraulic Report required
 - Signage for the commercial component of the development
 - Site contamination investigation
- No additional plans or documentation has been submitted to date.
 - The applicant uploaded revised plans onto the portal on 2 and 4 November 2021. However, this report was already being finalised by the first week of November in order to make the deadline for the confirmed meeting. These plans were not considered in this assessment.

5.0 ADEQUACY OF APPLICANT'S SUBMISSION

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

- Sydney Trains documentation and land owners consent
- FSR calculation plans
- Modelling of the redevelopment potential for 340 Kingsway
- Additional modelling of the development with respect to the variation from the SSDCP 2015 building envelope
- Additional information addressing the relationship of the development and nil setbacks with the adjoining site at 39R President Avenue
- Acoustic Assessment of outdoor gymnasium / communal pool area
- Potential Voluntary Planning Agreement (VPA) for proposed public toilets
- Legal access to the development from Park Lane
- An easement for access to drain stormwater into Council's stormwater infrastructure
- Identification of the emergency hardstand requirements for a Specialist Fire Appliance
- Detailed Site Contamination Investigation Report
- Strata subdivision plans

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 81 adjoining or affected owners of the proposal and 7 submission were received from the following 6 properties:

Address	Date of Letter/s	Issues
1 Goondah Road, Engadine	7 August 2021	Site isolation / impact on development potential for 340 Kingsway Overlooking Construction noise and restricted access to existing parking during construction
Shop 3/340-342 Kingsway, Caringbah	8 August 2021	Impact on development potential for 340 Kingsway Loss of privacy Reverse sensitivity concern from future residents of the development to redevelopment of 340-342 Kingsway Inadequate on-site parking provision Impact on available off-site parking Exceedance of height limit Construction impacts – noise, dust and vibration
2 Turtle Road, Caringbah	9 August 2021	Design of the building will limit development potential of 340-342 Kingsway Inadequate side setbacks / ADG and SEPP 65 non-compliant Loss of privacy Reverse sensitivity concern from future residents of the development to redevelopment of 340-342 Kingsway
2 Turtle Road, Caringbah	9 August 2021	Design of the building will limit development potential of 340-342 Kingsway Inadequate side setbacks / ADG and SEPP 65 non-compliant Loss of privacy Reverse sensitivity concern (privacy) from future residents of the development to redevelopment of 340-342 Kingsway
24 Talara Road, Gympie (on behalf on S/P 2403)	11 August 2021	Impact on development potential for 340 Kingsway Loss of privacy from the eastern elevation Inadequate on-site parking and impact on already limited street parking Construction noise, dust and vibration Business interruption during construction
6 First Ave, Willoughby	11 August 2021	Impact on development potential for future

East (2 submissions)		amalgamated 332-340 Kingsway Reverse sensitivity concern (privacy) from future residents of the development to redevelopment of 340 Kingsway Reorient balcony locations Noise impact from pool area / poor location of the pool Overshadowing to 336-340 Kingsway
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7.0 MAJOR ISSUES ARISING FROM SUBMISSIONS

The main issues identified in the submissions are as follows:

- Building height inappropriate for the area.
- Impact on redevelopment of 332 to 340 Kingsway.
- Balconies and pool area facing the southern boundary will impact on redevelopment of 340 Kingsway with regards to privacy and overlooking. The balconies should face west.
- Overshadowing of 340 Kingsway.
- Swimming pool location – will have adverse noise and privacy impacts.
- Insufficient parking.
- Construction Management – noise, vehicle manoeuvrability and dust.

Issue 1: Building Height

Comment: The issue of building height addressed in the Assessment Section of the report below.

Issue 2: Impact on redevelopment of adjoining sites

Comment: The issue of site isolation is addressed in the Assessment Section of the report below.

Issue 3: Visual and Acoustic Privacy

Comment: All of the submissions raise the issue of a potential loss of privacy resulting from the orientation of balconies to the southern side of the development. There are a number of non-compliances with the building footprint and built form in terms of building separation to a future development to the south. A revised floor layout and balcony layout would be required in some instances.

Issue 4: Overshadowing

Comment: The orientation of the site and the design of the proposed development will result in the overshadowing of the majority of the neighbouring property to the south for most of the day. Some morning sun will be available to the front part of the existing commercial building, through until approximately midday, but this is a fairly small area of the overall property.

Issue 5: Construction Management - Noise, dust and vibration

Comment: Noise, dust and vibration during construction of a major site such as the subject development, is inevitable. Refusal of the application is recommended, however if the SSPP determine that approval should

be issued, for the application, conditions would be imposed requiring compliance with a suite of conditions designed to minimise such impacts and ensure compliance with the relevant standards.

Issue 6: Parking

Comment: The proposed development is compliant with the SSDCP 2015 minimum on-site parking requirements. The subject site is located within the Caringbah Centre and well serviced by public transport, located adjacent to the train station.

Issue 7: Swimming Pool Noise / Privacy Impact

Comment: The proposed development includes a communal open space area including swimming pool and outdoor gym on level 1. The communal space area has a nil setback from the southern side boundary. The location of the pool and its use may have adverse amenity and noise impacts on the units adjoining it as well as the properties to the south, in both the existing situation and having regard to a future redevelopment of this property. The applicant has been requested to submit an acoustic assessment addressing noise from this space however nothing has been submitted to date. Any future proposal should delete the pool or relocate it to another part of the building.

Submission Review Panel (SRP)

The submissions were considered and as a result, revealed that some were substantive in nature. The application is referred to the SSPP for consideration including a complete assessment of the issues raised.

8.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone B3 Commercial Core pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). The proposed development, being a mixed-use development, is a permissible land use within the zone 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 (Building Sustainability Index: BASIX) 2004.
- 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).
- Apartment Design guide (ADG).
- State Environmental Planning Policy (State and Regional Development) 2011.
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

Section 7.11 Development Contribution Plan 2016

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

9.0 COMPLIANCE

9.1 Biodiversity Conservation Act 2016

The Biodiversity Conservation Act 2016 and the Biodiversity Conservation Regulation 2017 outlines the framework for assessment and approval of biodiversity impacts for development that requires consent under the Environmental Planning and Assessment Act 1979.

The assessment of the development has revealed that the Biodiversity Offset Scheme (BOS) threshold is NOT triggered and biodiversity matters have been appropriately assessed via Council's LEP and DCP objectives and controls.

9.2 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.

9.3 State Environmental Planning Policy (Infrastructure) 2007

Development adjacent to rail corridors / Excavation in, above, below or adjacent to rail corridors (clause 85 & 86)

Division 15, Subdivision 2 of the Infrastructure SEPP relates to development that has the potential to impact on rail infrastructure. The subject site abuts land owned by Transport Asset Holding Entity NSW (TAHE) and is adjacent the rail corridor, and accordingly the application was referred to Sydney Trains for their input and concurrence.

Sydney trains has responded with a number of concerns, including the requirement for land owners consent from TAHE as well as numerous engineering and geotechnical information in terms of it's effect on the adjacent rail land. The applicant has responded to the concerns raised by Sydney Trains but is still currently preparing the information and documentation required by Sydney Trains. Council has been advised by Sydney Trains that no concurrence can presently be given until such time as the required information is submitted.

Impact of rail noise or vibration (Clause 87)

Division 15, Subdivision 2 of the Infrastructure SEPP also relates to development that may be impacted by rail infrastructure that is located close by. This application includes residential accommodation and the site is within close proximity to the Cronulla-Sutherland rail line. It is also identified on Council's Road and Rail Noise Buffer Map.

Clause 87 of the SEPP requires Council to consider whether there is likely to be an adverse impact on the proposed development by rail noise or vibration. In this event, the building must be designed to include noise and vibration attenuation measures to minimise impacts to future occupants as per the NSW Department of Planning's Development near Rail Corridors and Busy Roads - Interim Guideline.

The applicant has submitted a Noise Impact Assessment titled *Proposed mixed use development 344-346 & 348 R Kingsway (prepared by Wilkinson Murray, dated: 6 April 2021, ref no.: 2103457)*. The report addresses the relevant acoustic criteria and the NSW Department of Planning's Development near Rail Corridors and Busy Roads - Interim Guideline. The report has been assessed by Council's Environmental Health Team and is satisfactory with respect to mitigation measures to address nearby rail noise and vibration. If the application were to be approved, suitable conditions of consent would be imposed to ensure the noise attenuation measures are incorporated into the design of the building and an acceptable acoustic environment and reasonable amenity is achieved for future occupants.

Development with frontage to a classified road (clause 101)

Division 17, Subdivision 2 of the Infrastructure SEPP relates to land in or adjacent to road corridors or road reserves. The site has a frontage to the Kingsway which is identified as a classified road on Council's road hierarchy maps.

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

The site is proposed to be accessed from the rear via Council's carpark, by way of a ROC which the applicant obtained from Council in 2017/2018. Whilst there are issues with this access from a traffic engineering perspective and the terms of use of the ROC, this could be resolved with revised plans and details and is not anticipated to affect the safety, efficiency or ongoing operation of the classified road. Suitable noise attenuation measures could be incorporated into the design of the residential apartments (refer discussion below). Private open spaces are reasonably located away from the frontage of the site in terms of emission source.

Impact of road noise or vibration (Clause 102) -

Division 17, Subdivision 2 of the Infrastructure SEPP also relates to development that may be impacted by road noise or vibration. This application is for a mixed-use development, incorporating residential accommodation and the site is adjacent to Kingsway (a classified Road). The site is also identified on Council's Road and Rail Noise Buffer Map as affected by both road and rail noise.

The Noise Impact Assessment submitted with the application has been reviewed by Council's Environmental Health Team and is adequate with respect to the assessment and recommendations to mitigate road noise and vibration for the proposed development. Glazing requirements and acoustic treatment would be required to those portions of the building fabric facing the Kingsway to ensure the appropriate amenity levels were achieved, with consent conditions recommended.

Traffic Generating Development (Clause 104)

Clause 104 of SEPP (Infrastructure) 2007 is applicable to the proposal. The proposed development falls into Column 3 of Schedule 3 of the SEPP with the proposed ground level shops exceeding 500m² gross floor area (approximately 608.4m² proposed). The application site has pedestrian access to a classified road

(Kingsway) and the requirement for referral to TfNSW is therefore triggered by Clause 104(2)(b). TfNSW has no objection to the proposal subject to conditions (refer **Appendix “A”**).

9.4 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 as it has a capital investment of more than \$30 million (\$45,126,950.00). As such, the application is referred to the South Sydney Planning Panel (SSPP) for determination.

9.5 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 commercial buildings. A review of Council's GIS and historical aerial photos has shown that the above development has been in place since sometime in the 1950's / 1960's.

A search of Council's records, including historical files, reveals that the site has had various commercial uses over the years. The contaminated land investigation submitted by the applicant (*Stage 1 Preliminary Site Contamination Investigation, 344, 346 & 348R Kingsway, Caringbah by Geo-Environmental Engineering, 24 February 2021*) was a desktop study only and did not involve any intrusive sampling. The report identified potential sources of contamination associated with the site. These include the vehicular accessible parts of the site (potentially resulting in leaks and spills of fuels and oils) and also past uses surrounding the site, including 2 former service stations, printers and dry cleaners (as also listed in Council's contaminated land register).

The environmental consultant's recommendation, that a Detailed Site Contamination Investigation (SCI) is required, is supported by Council. To date the applicant has not submitted the necessary SCI and therefore Council is unable to assess the suitability of the proposed development for the site, having regard to the requirements of SEPP 55.

9.6 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. The proposal is affected by SEPP 65. Sutherland Shire Council engages its Design Review Forum (DRF) to guide the refinement of development to ensure design quality is achieved in accordance with SEPP 65. DRF comments are included in **Appendix “B”** to this report.

An assessment of the proposal having regard to the design quality principles of SEPP 65 is set out in **Appendix “C”** to this report

9.7 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 “D”** to this report.

9.8 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:

CHAPTER 6:			
A. Residential Flat Buildings in B3 Commercial			
Sutherland Shire Local Environmental Plan 2015			
CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
Clause 4.3 – Height of Buildings Located within Area 1 – refer to Clause 4.3(2E)(a) <i>a building on land identified as “Area 1” on the height of buildings map (including the council-owned land at 39R President Ave, 340R and 348R Kingsway, Caringbah) may exceed that height by 5m if the development provides a pedestrian plaza, pedestrian access through the land from Park Lane to Kingsway, Caringbah and vehicular access to 344-346 Kingsway, Caringbah (being Lot 1, DP219784) and 340 Kingsway, Caringbah (being SP13533).</i>	25m max (344 – 346 Kingsway) 20m max (348R Kingsway) The proposed development does not satisfy this clause, as the development does not provide a pedestrian plaza or vehicular access to 340 Kingsway, Caringbah.	32.2m (to the roof top open space and building) (core T2) 33.4m to the lift over run (core T2) 34.25m (core T1) which fall within 30m height of building area.	No
Clause 4.4 - Floor Space Ratio 344 – 346 Kingsway (1682m ² site area) 348R Kingsway	3:1 (5,274.63m ²) 2.5:1 (843.25m ²) 6,117.88m ²	7,248.2m ²	No (18.48% variation)

9.9 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 “E”**.

9.10 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 SEPP 55 and the site is likely to be contaminated. The applicant has not lodged sufficient information for Council to assess the suitability of the proposal with respect to SEPP 55 and as such the provisions of draft *Remediation of Land SEPP* would remain unmet.

10.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

Sydney Trains

The application was referred to Sydney Trains for concurrence with respect to the SEPP (Infrastructure) 2007. Sydney Trains first responded to Council on 13 September 2021 with a Stop the Clock (STC) letter advising that the applicant was required to obtain land owner's consent from Transport Asset Holding Entity (TAHE) or alternatively, provide amended plans demonstrating no reliance, use or works within TAHE land. Sydney Trains also set out the information (engineering and geotechnical documentation) they require for continued assessment of the application.

The applicant responded to Sydney Trains by email dated 24 September 2021, providing additional information for consideration.

On 4 November 2021, Sydney Trains provided advice to Council informing that the applicant has not responded fully to the STC matters. Sydney Trains stated that they have no issue with respect to granting an extension of time for the applicant to complete preparation of the required information but that at the

present time both land owners consent and concurrence cannot be issued on the proposed development due to a lack of information provided to date. A copy of the Sydney Trains correspondence is included at **Appendix “F”**.

Transport for NSW

The proposal was referred to TfNSW as required under Clauses 101 and 104 of SEPP (Infrastructure) 2007 and for concurrence with respect to Clause 138 of the Roads Act, 1993. TfNSW advised that they would provide concurrence to the proposed civil works on the Kingsway frontage, subject to Council's approval and subject to a number of conditions of consent. A copy of the TfNSW response is included at **Appendix “A”**.

NSW Police Force

In accordance with the *Crime Risk Assessment – Police & SSC Protocol 2010* the application was referred to the NSW Police for comment. The Police responded by letter dated 28 July 2021 and have no objection to the proposed development subject to additional Crime Prevention through Environmental Design (CPTED) matters being considered. A copy of the NSW Police correspondence is included at **Appendix “G”**.

Design Review Forum (DRF)

The application was considered by the DRF on 26 August 2021 who provided the following comments:

The submission goes some way to addressing the issues noted previously about the consideration of context, ground level activation, and the problems of scale, mass and articulation of the street frontages and urban fit. However, there remain significant concerns with various aspects of the proposal, as noted below:

1. *Urban scale and built form.*
2. *Public pathway.*
3. *Pergola and solar panels.*
4. *Density Compliance.*
5. *Pool and amenity.*
6. *Materiality and cost benefit analysis of proposed timber construction.*
7. *Timber structural system.*
8. *Integration of timber and glazing.*
9. *Residential lobbies.*
10. *Vehicle access to neighbouring site.*

A full copy of the DRF comments are included in **Appendix “B”**.

Property Services

The application relies on access via a right of carriageway across Council owned land and therefore the proposal was referred to Council's Property Services Team for comment. The Property Services Team advised that the proposed development will require an easement for drainage. Agreement to this dealing on title can only be granted by Council via a report to Council. This process can take several months. The

applicant should be directed to submit an application for use of Council land and contact Property Services to discuss the process and likely consideration to Council. This is likely to be significantly higher than the consideration given to the carriageway easement in 2017/18.

The applicant already benefits from a right of carriageway however the plans show the exit from the carpark to be wider than the easement rights. The easement is 6m wide and the traffic report refers to a 6.7m egress. The applicant will either need to reduce the size of their carpark entrance or discuss increasing the easement width. This needs to be arranged prior to approval through DA consent.

The traffic design also relies on a right turn egress, which does not follow their rights of travel to the left. The design should be such that the ingress and egress can be contained to their easement footprint even if in practice (while Council continues to operate the carpark adjacent) it is more practical to turn right.

It is noted that there are public toilets proposed as part of the design. It is unclear whether these are part of a Voluntary Planning Agreement (VPA) as the applicant has not entered into any discussions with council regarding these toilets. The proposal would need to be referred to Council's Assets Team for comment when this is clarified.

Strategic Planning

The site is key in the redevelopment of the Caringbah Town Centre and therefore the application was referred to Council's Strategic Planning team for input. A number of concerns with the application with the application were highlighted as follows:

- Maintaining the pedestrian access to the Kingsway from the Council car park is an important aspect of SSDCP 2015.
- Maintaining an average setback to the pedestrian lane of at least 6m is supported. Enclosure of the space is not supported (and the SCATL may be located here).
- The outdoor dining/seating would be better located towards the building.
- The outdoor area need not be publicly owned.
- There has been no strategic planning discussion on the provision of public toilets on the site – this would be subject to discussions with Shire Infrastructure and would need to be the subject of a VPA
- The bonus provisions of SSLEP2015 4.3(2E)(a) have not been met (as the site does not include the Council car park).
- The proposed blank elevations need appropriate treatment.

Environmental Science Team

The application was referred to Council's Environmental Science Team for comment. The contaminated land investigation undertaken by the applicant's consultants was a desktop study only and did not involve any intrusive sampling. The report identified a potential source of contamination associated with the site from the vehicle accessible parts of the site (potentially resulting in leaks and spills of fuels and oils) and also historical uses which once adjoined the site, including 2 former service stations, printers and dry cleaners (also listed in Council's contaminated land register).

The environmental consultant recommended that a Detailed Site Contamination Investigation be undertaken. This recommendation is supported, and the applicant should be requested to provide the necessary report.

Environmental Health

The application was referred to Council's Environmental Health Unit who advised that additional information was required with respect to the proposed outdoor gym. Detail is required with respect to whether or not the gym will be used as a recreational exercise area or an area utilising free weights and/or pin loaded weight stacks.

In the event that the gym is intended to accommodate the use of this equipment, acoustic attenuation must be considered and a revised acoustic assessment prepared. The acoustic assessment must consider the potential noise and vibration impacts to localised sensitive noise receivers within the complex. Consideration to noise sources such as operating times, music, voices, resistance machines, structure-borne impact sound from dropped free weights and dropped pin loaded weight stacks on resistance machines shall be included.

Engineering (Assessment Team)

The application was referred to Council's Assessment Team Engineer who provided the following comments.

Vehicular Access

- i) Legal access from Park Lane is to be demonstrated into lot 11 DP662946 (348R Kingsway). The right of carriageway registered in DP1236360 only grants access to Lot 1 DP219784 from Park Lane.
- ii) Swept path diagrams are required to demonstrate how a vehicle enters/exits spaces 16R & 33A.
- iii) Swept path diagrams are to demonstrate they are able to enter and exit the site (via the ROW) into Park Lane and out on to President Ave as they do not have a legal right to turn right when exiting and head towards Willarong Road.
- iv) Architectural plans are to provide basement ramp grades and changes in grade in accordance with AS2890.1
- v) The proposed loading bay is to be provided for a minimum Medium Ridged Vehicle (MRV) in accordance AS2890.2 including head clearance. Council is willing to accept that the MRV reverses into the site from Park Lane and leaves in a forward direction via Park Lane to President Ave.
- vi) The hydraulic report is to detail the location of the Emergency vehicle hardstand requirements for a "Specialist Fire Appliance" as defined in Fire & Rescue NSW Fire Safety Guideline Access for Fire Brigade Vehicles and Firefighters Version 05.01 issued 17 November 2020.

Stormwater

- i) The proposed stormwater discharge into Council's existing stormwater infrastructure within Lot 1 DP1003405 (Council car park) will be required to be covered by an easement to drain water in favour of the subject property. It is recommended the application commence the process with

Councils property services team as soon as possible to ensure the site can legally drain.

- ii) The proposed rainwater tanks within the garden beds adjoining the pool area on proposed Level 1 are to be shown on the Architectural plans including sections to understand how the tanks and gardens will operate.

Other matters

A Strata plan and Stratum Plan are to be provided for assessment.

Landscape Officer

The application was referred to Council's Landscape officer who had a number of concerns with the proposal. These included the following:

- Inconsistency between architectural plans and landscape plans;
- Stormwater plans show rainwater tanks in the location of the planter beds that are shown to provide screen planting to Unit 108 from the communal pool area. This location for the rainwater tanks will need to be revised;
- The building façade shows climbers supported by wires to the full heights of the building. This may not be possible as no details of the support structures holding the vines has been provided. It would seem likely that multiple planters at differing levels (with irrigation) would be needed as it is unlikely that a single planting at ground level would grow up to the top of the building especially as the site would be exposed to the environmental extremes of wind and heat.
- Additional screen planting for Units 104, 105 and 108 from the communal pool area;
- Pool location is on the shady side of the building and is also proposed to have a roof over it, further diminishing the use and enjoyment of this space unless it is heated;
- The pedestrian link into the Council's carpark area is disjointed from the current and future pedestrian desire lines that pedestrians will use;
- Planters supporting the green walls on the facade will need adequate planter soil depth, drainage, on-going fertilizing and irrigation to support the climbers in the long term. Their location hasn't been specified. From the plans supplied it is unclear how all this will occur.
- The garden planters specified on the architectural plans are undersized in terms of soil volumes and are different to those specified on the Landscape plans. Depths are to comply with what is required in SSDCP 2015.
- The planters shown on the architectural plan over the condenser units will be too shallow to be effective. These planters are under glass and won't receive any rainwater to maintain them.
- The proposed roof top areas appear to have plenty of activities proposed for the communal open space. This may need to be conditioned to ensure their installation.

Building Surveyor

The proposed development was referred to Council's Building Surveyor. A preliminary assessment from a Hydraulic Consultant is required addressing the requirements for a hydrant booster (if required), the type and size it will be, its location and that of the proposed emergency vehicle hardstand. The handstand requirements will need to be considered in reference to the NSW Fire and Rescue Guidelines.

Waste Management

The proposed development was considered by Council's Waste Management Officer and no significant concerns were raised subject to conditions and resolution of the required engineering matters.

Public Domain Assets

The proposed development was considered by Council's Public Domain Assets Team. Concerns were raised with regard to the outdoor eating and planter boxes within the 6m wide thoroughfare, and manoeuvrability for vehicles (whether SRV or HRV) within the ROC over 39R President Avenue.

11.0 ASSESSMENT

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

11.1. Height of Buildings

Clause 4.3(2) of SSLEP 2015 stipulates two different height of buildings for the site. This is a consequence of the site straddling two height boundaries within SSLEP 2015. The majority of 348R Kingsway is within Area 'Q', identified as allowing a maximum height of 20m, with a small portion on its north-eastern side and the rest of the site at 344-346 Kingsway falling within Area 'T' on the SSLEP 2015 map, which permits a maximum building height of 25m. This is shown in Figure 4 below.

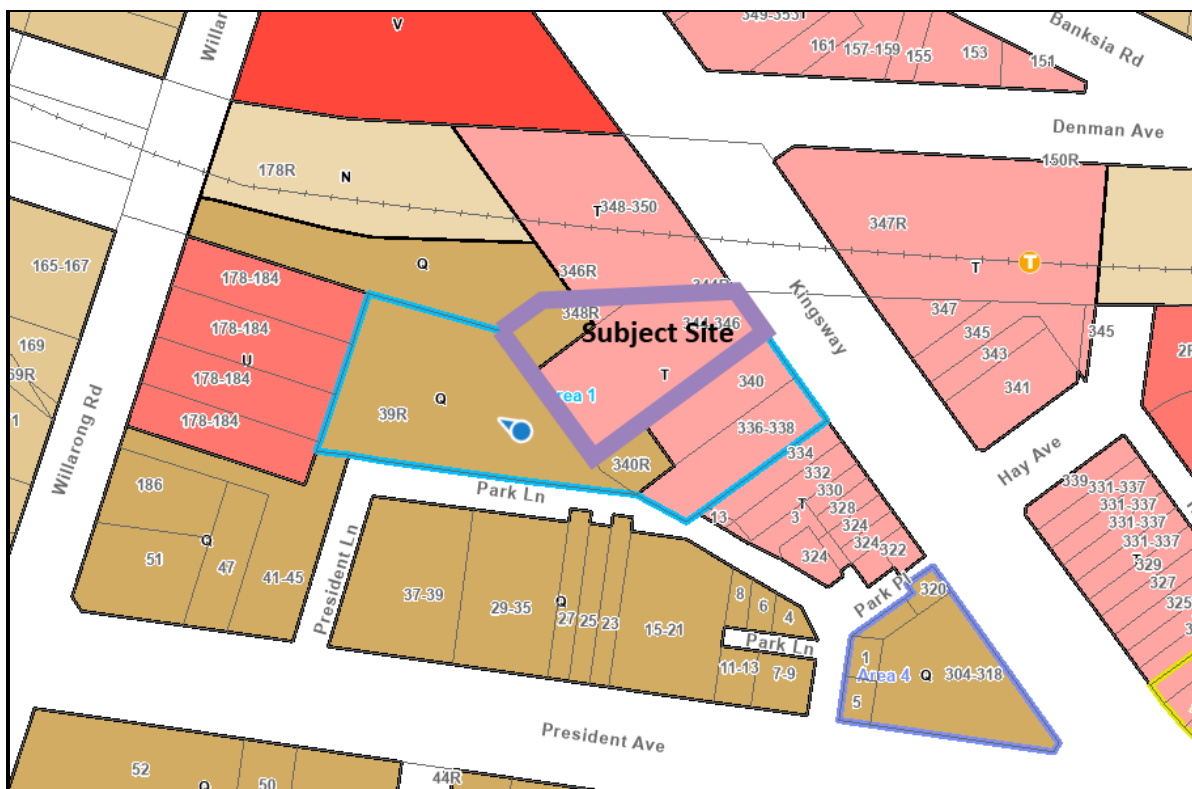


Figure 4 – Excerpt from Height Plan from SSLEP 2015

Also applicable to the site is Clause 4.4(2E) which states as follows:

(2E) Despite subclause (2), the height of the following buildings may exceed the maximum height shown

for the land on the Height of Buildings Map by an additional amount specified below, but only in the circumstances so specified—

- (a) *a building on land identified as “Area 1” on the Height of Buildings Map (including the council-owned land at 39R President Avenue, 340R and 348R Kingsway, Caringbah) may exceed that height by 5 metres if the development provides a pedestrian plaza, pedestrian access through the land from Park Lane to Kingsway, Caringbah and vehicular access to 344–346 Kingsway, Caringbah (being Lot 1, DP 219784) and 340 Kingsway, Caringbah (being SP 13533),*

The proposed development does not satisfy sub-clause 2E, as the proposed development does not include all lots within ‘Area 1’ or provide a pedestrian plaza and vehicular access to 340 Kingsway, Caringbah. The proposed development should be amended to comply with the maximum building heights permitted by clause 4.4(2).

The applicant disagrees with Council’s view on sub-clause 2E and its previous advice as part of PAD19/0049 in relation to how the additional building height should be distributed across the site, having regard to the provision of the required public domain works. This discussion is set out in the Statement of Environmental Effects (SEE) and the Clause 4.6 exception to the development standard (a copy of which is attached as **Appendix “H”**).

Having regard to the above, the proposed development fails to comply with both of the maximum building height development standards, as follows:

25m max (344 – 346 Kingsway) – 32.2m (to the roof top open space and building - core T2) (28% variation)
- 33.4m (to the lift over run - core T2) (33.6% variation)
20m max (348R Kingsway) - 34.25m (core T1) which falls within the 30m height of building area. (14% variation)

The varied building height of the development is demonstrated in the height plane diagram provided by the applicant in their Clause 4.6 exception, an excerpt of which is included (see below).

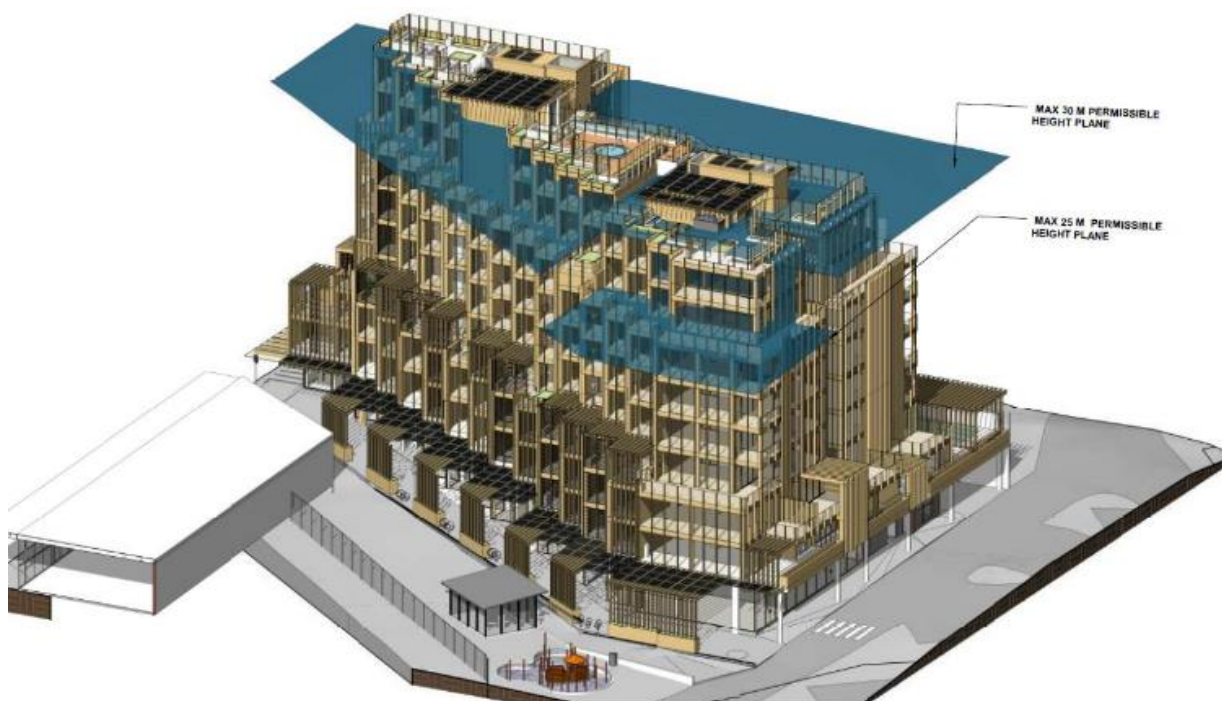


Figure 5: Height Plane diagram

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

Subject to Clause 4.6(3) development consent may be granted for development that contravenes a development standard but only on the basis of a written request from the applicant seeking to justify the contravention. The written request must demonstrate the following:

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

In terms of Clause 4.6(4) consent must not be granted for development that contravenes the standard unless the written request has adequately addressed the matters in subclause (3).

The applicant has submitted a written request in accordance with the requirements of Clause 4.6(3) of SSLEP 2015 and therefore Council is able to consider this contravention and determine if it is considered unreasonable or unnecessary in the circumstances of the case. The key points in the applicant's Clause 4.6 are provided below with the complete document included at **Appendix "H"**.

- "1. *The principal height non-compliance (7.2m) occurs at the transition between the two height limits within the site at the north west corner of the site where the outside facade of the corner apartments breach the 25m height limit and above the roof top communal open space where lift overruns, safety balustrading and shade structures exceed the 30m height limit (4.25m - T1 & 3.4m - T2).*

2. *It is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character.*
3. *The proposed development creates minimal additional shadow impacts at 9am and 12pm midwinter to the carpark or neighbouring commercial properties, compared to a compliant development scheme. The degree of shadow is therefore what would be reasonably expected of development on the subject site. There are no shadow controls within the SSDCP Chapter B3 Commercial Core - Caringbah as some impacts are anticipated given the height and density controls expected in the locality. Additionally, because the most significant height breach is contained within the northern side of the building and over the roof top communal open space, the additional height does not adversely affect solar performance of the development internally.*
4. *The height breach does not result in any additional privacy impacts. The area of height breach does not contain window openings that will allow views into neighbouring properties.*
5. *The height breach facilitates arrangement of floor space on the site in a manner that is effective in providing high levels of amenity to occupants of the development. The staggered building façade and provision of multiple balconies to each apartment provides a high level of amenity. The unique design assists with solar access to all apartments and achieves excellent cross ventilation with only two (2) single aspect apartments within the development. The proposal will achieve enhanced accessibility, exceptional sustainability initiatives and improved water retention and planting.*
6. *The proposed development meets the objectives of the development standard and meets the objectives of the B3 Commercial Core zone (as further detailed below);*
7. *The proposed building envelope has been carefully considered and is supported by an Urban Design Report by Roberts Day Consulting and a peer review by Professor Edward Blakely both of which identify the careful consideration of the site analysis, the merits of the design and the positive built form outcomes based on the current design approach. The proposed height variation enables this beneficial approach to massing of the building and the unique and sustainable design to be achieved. The proposal provides for an appropriate scale and form that reflects the desired future character for development fronting Kingsway and will make a positive contribution to the streetscape. The positive outcomes on Architectural, Planning and Urban Design Grounds can be summarised as follows:*

- *Creates high amenity to improve the pedestrian experience, permeability, visibility, connectivity and safety;*
- *The building is not a uniform cube but creates a unique exemplary building which will contribute to the desired future character of the streetscape;*
- *Internally the building delivers a complete live, work and play environment with retail, café uses, recreation and work from home space all key requirements in Place Creation;*
- *The design focus has been on creating a sustainable building incorporating rain water retention, green power, photovoltaic panels and engineered timber structure which should set a precedent for other buildings;*
- *Council's strategic directions are incorporated in the proposed development by softening the hard edge of Kingsway creating a more pleasant environmental form with open spaces;*

- *The roof area is a small useable park setting for individuals, families and visitors each area is sculpted into the building environment inviting use by the residents;*
 - *The style of this building adds significant value to the entire area; and*
 - *The building enhances and acts as a catalyst for future nearby re-development of the area. In its proposed form, this building with shops and cafes is a feature for the area inviting new developments and the revitalising the Kingsway.*
8. *The height non-compliance is partially a function of the different development standards that straddle the two sites.*
9. *The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*
- a. *The proposal includes an ecologically sustainable development approach to apartment living using many environmentally sound design features as detailed in the Ecologically Sustainable Design (ESD) Report submitted with the application (1.3b);*
 - b. *The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for commercial and residential uses (1.3c);*
 - c. *The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context and will promote a unique design approach to new development along the Kingsway. The proposal can be positively distinguished from recently completed development as it presents a unique built form that will present a building of design excellence (1.3g).*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the sustainable design approach, the upgrade of the pedestrian link and the use of winter gardens and green walls in providing an urban oasis in the middle of the Kingsway, which is currently lacking buildings of exemplary design. The additional height (and FSR) allow for a development that achieves this rather than providing a development that strictly complies but does not provide any visual interest or vibrancy to the commercial core. The additional height has several other benefits specific to the site and the development as provided above.

Whilst the proposed development represents a unique building design, the additional building height required to achieve this 'uniqueness' is excessive and will be out of character with the established and anticipated built form outcomes within the Caringbah Town Centre. Future development of remaining underutilised sites within the Centre and in the immediate vicinity of the site will be expected to maintain a 20m to 25m height limit. Whilst there are specified sites within the Centre where greater height is permitted, such as the prominent corner of Kingsway and President Avenue and at the northern end of the Centre with the already established Meriton development, these are not the norm and have been identified for greater height as a result of a comprehensive overall urban design analysis of the Centre. The location of the subject site, within a low-level strip of commercial buildings and the civic carpark space behind it, will result in a built form anomaly if a varied maximum building of 32 to 34m is permitted.

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

- (a) *to ensure that the scale of buildings:*
 - (i) *is compatible with adjoining development, and*
 - (ii) *is consistent with the desired scale and character of the street and locality in which the buildings are located or the desired future scale and character, and*
 - (iii) *complements any natural landscape setting of the buildings,*
- (b) *to allow reasonable daylight access to all buildings and the public domain,*
- (c) *to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,*
- (d) *to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,*
- (e) *to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings in those zones,*
- (f) *to achieve transitions in building scale from higher intensity employment and retail centres to surrounding residential areas.*

The maximum permitted building height for the site is 25m, with a smaller portion of the site, intended to achieve a maximum of 20m. Whilst sub-clause 2E permits an additional 5m of building height for the provision of a key through site link and related public domain works, the maximum desired height for a building on the site is 30m. This maximum height has been established as the most appropriate having regard to the location of the Caringbah Centre and the relationship of the Centre to surrounding built form as well as further afield. The proposed development exceeds this maximum building height by up to 4.2m. There is no stepping down in height to the 20m (as required by SSLEP 2015 or the accompanying BEP in SSDCP 2015). This is an integral part of the plan for the buildings adjoining the Council carpark, to ensure solar access is retained and a reduced building scale from that of the taller buildings fronting the Kingsway. A development of the height proposed, without the benefit of an acceptable (and required pedestrian link) would not be compatible with existing development nor with the desired future scale and character of development in the vicinity of the site.

The building design, whilst unique, fails to address multiple servicing issues, including vehicle access, stormwater and loading. The building setbacks are not sufficient to the north having regard to the Sydney Trains land and the isolation of the neighbouring site at 340 Kingsway, results in unacceptable amenity impacts for this property. The additional building height fails the consistency test with respect to the building height objectives of the development standard and cannot be supported in this instance.

The proposed development is located on land located within the B3 Commercial Core zone. The objectives of this zone are as follows:

Zone B3 Commercial Core

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

- *To strengthen the viability of existing commercial centres through increased economic activity, employment and resident population.*
- *To create an attractive, vibrant and safe public domain with a high standard of urban design and public amenity.*
- *To enhance commercial centres by encouraging incidental public domain areas that have a community focus and facilitate interaction, outdoor eating or landscaping.*
- *To provide for pedestrian-friendly and safe shopping designed to cater for the needs of all ages and abilities.*

The additional building height above 25m is premised on the overall development of land within Area 1 – and not just the subject site. Whilst the applicant takes a different view to this, an assessment of the through site pedestrian link, which is required in order to earn the additional building height, indicates a design which fails to meet the key objectives for the link. The intended 6m open and accessible path is compromised by the stepped building footprint to the north and multiple planters and seating. The proposed public domain works, with the raised crossing to the rear, is contrary to the natural pedestrian and cycle desire lines already established adjacent the subject site. CPTED concerns are raised with respect to the staggered building elevation and the numerous areas to ‘hide’ stretching along the entire length of the link. The proposal therefore fails to create a safe public or enhanced domain outcome contrary to a number of the B3 zone objectives.

The applicant’s written submission fails to demonstrate that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case. It also fails to demonstrate sufficient environmental planning grounds to justify varying this development standard.

The proposed development is not in the public interest as the proposal fails to comply with the objectives for both height and the B3 zone.

The proposed variation does not raise any matters of State or regional environmental planning significance as the development standard is relevant only to the local site and Sutherland Shire context.

In conclusion, the variation to the height development standard fails to satisfy all relevant parts of Clause 4.6 and therefore the variation cannot be supported.

11.2. Floor Space Ratio

Clause 4.4(2) of SSLEP 2015 stipulates two different maximum floor space ratios (FSR) for the site. This is a consequence of the site straddling two FSR boundaries within SSLEP 2015. The majority of 348R Kingsway has a maximum 2.5:1 maximum FSR, with a small portion on its north-eastern corner permitted up to 3:1. 344-346 Kingsway is permitted a maximum 3:1 across the whole parcel. (Refer to the FSR Map from SSLEP 2015 at Figure 5 below).

In terms of Clause 4.6(4) consent must not be granted for development that contravenes the standard unless the written request has adequately addressed the matters in subclause (3).

The applicant has submitted a written request in accordance with the requirements of Clause 4.6(3) of SSLEP 2015 and therefore Council is able to consider this contravention and determine if it is considered unreasonable or unnecessary in the circumstances of the case. The key points in the applicant's Clause 4.6 are provided below with the complete document included at **Appendix "I"**.

"Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the following planning grounds are submitted to justify contravening the maximum FSR:

- 10. It is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character;*
- 11. The proposed development meets the objectives of the development standard and meets the objectives of the 83 Commercial Core zone (as detailed above under Zone objectives);*
- 12. The proposed building envelope has been carefully considered and is supported by the controls within the ADG and the DCP. The building design has been carefully resolved to ensure the massing has regard to the various frontages including the Kingsway, the pedestrian access and the potential appearance of the building when viewed from the public car park to the rear;*
- 13. The additional floor area proposed does not adversely change the character of the development in terms of streetscape and character. The scale and form of the development when viewed from each street frontage reflects that desired by the planning controls and is consistent with the desired future character of surrounding development as exhibited in the detailed photomontages submitted with the application which consider the future context. The additional FSR on the site is generally "internalised" on the site and will not be readily perceptible from the public domain or surrounding properties. That is, the proposal adopts front setbacks to the Kingsway and rear setbacks to Willarong Road that are anticipated by the DCP controls. These characteristics of the envelope primarily influence appearance and character of the development. The articulation of the building façade along the pedestrian path and north elevation achieves optimum environmental conditions for the occupants of the building. The FSR that results from this envelope exceeds the numeric control but is considered to be consistent with the primary building envelope controls.*
- 14. The site dimensions and geometry allows for an outcome where the additional FSR does not adversely affect the site or neighbouring sites. The property is bounded by three public spaces, including the Kingsway, the public car park to the rear and the pocket park adjoining the railway line.*
- 15. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*

- a. *The design seeks to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment (1.3b),*
 - b. *The proposal promotes the orderly and economic use and development of land through the redevelopment of a underutilised site for commercial and residential uses (1.3c);*
 - c. *The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3g).*
16. *As identified above, the additional FSR proposed by the application is located predominantly within the building envelope identified by Council's primary controls, DCP provisions and operation of ADG requirements. The additional GFA and its impact is not perceived anywhere from the public domain nor are there any unreasonable environmental or amenity impacts on adjoining properties. These circumstances create an opportunity in which additional high quality and highly accessible residential dwellings can be provided within a high performing and well resolved building. The provision of high-quality residential dwellings in a highly accessible location, within a site which can accommodate the additional density without the creation of adverse impacts or any perception of additional density is a planning benefit and further the objectives set out in the Plan for Growing Sydney.*
17. *From an urban design perspective, the proposed building has a clear and identifiable benefit to the streetscape and provides a clear direction for the desired future character of the area in establishing new buildings of architectural, sustainable and environmental merit. The inclusion of many sustainable building features including the green walls to mitigate urban heat island effect, water recycling, controls systems to maximum building performance, solar photovoltaic systems for battery recharge are all included within the building design providing a planning benefit which is sufficient to justify the additional FSR sought."*

Utilising Council's FSR calculations, the additional 1130m² of GFA above the permitted maximum equates to the top two levels of the proposed development. This is substantial in terms of an exceedance and when considered in combination with the excessive building height, demonstrates an overdevelopment of the site. Whilst the ESD rooftop and elevational treatments are applauded, these elements could be achieved with a reduced FSR and building height, resulting in a building more compatible with the scale of existing buildings and the anticipated and desired future buildings.

Whilst the site has an unusual location, with a frontage to Kingsway and the rail corridor to the north, its rear abuts land owned by Council and a standard commercial property to the south. To achieve the FSR proposed, the built form pushes into the setbacks to the north, presents a NIL boundary setback to part of the south boundary and a 4m setback to the part of the western boundary. On Level 1 of the building, private and communal open space extends to the southern and western side boundaries, presenting considerable limitation on any future redevelopment of either adjoining site. Insufficient analysis has been provided to Council with respect to the future development potential of these sites in relation to the proposed design

and whether the setbacks proposed are sufficient to enable this. Visual and aural privacy concerns, overshadowing and visual dominance are guaranteed impacts on these adjoining properties and the justification for the extent of additional GFA within the proposed building simply cannot be supported. The objectives of the floor space ratio development standard set out in Clause 4.4(1) of SSLEP 2015 are as follows:

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

As stated above, the building footprint resulting from the need to accommodate the additional GFA, is excessive and results in a building height and scale incompatible with the established or desired future character of the Caringbah Town Centre. The proposal will compromise the amenity for surrounding properties and fails to contribute a satisfactory public domain outcome, despite this being a key driver for redevelopment of the site.

The proposed development is located within zone B3. The objectives of this zone are as follows:

Zone B3 Commercial Core

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the viability of existing commercial centres through increased economic activity, employment and resident population.*
- *To create an attractive, vibrant and safe public domain with a high standard of urban design and public amenity.*
- *To enhance commercial centres by encouraging incidental public domain areas that have a community focus and facilitate interaction, outdoor eating or landscaping.*
- *To provide for pedestrian-friendly and safe shopping designed to cater for the needs of all ages and abilities.*

The additional floor area proposed is substantially greater than the maximum set out in SSLEP 2015. Whilst the intended ESD quality of the development and its aesthetic is a positive design element, it cannot form the basis for such a gross non-compliance with the maximum floor space limits established for the centre. The proposed development does not 'comfortably' accommodate the additional GFA on the site, needing to

push to the southern and western boundaries to accommodate private and communal open space as well as some of the built form. The staggered built form to the north, whilst visually interesting, steps into the adjoining rail corridor setbacks to the north, and overall, requires building height up to 9m higher than the maximum permitted building height to facilitate the desired GFA.

In addition to these issues, the proposed development impinges on the future development potential of the site to the south, known as 340 Kingsway. If this site is isolated by redevelopment of 332-228 Kingsway, the less than satisfactory southern side setbacks will further compromise the potential for redevelopment of this site. Communal open space is proposed with a NIL boundary setback on both Level 1 and the top level of the building, presenting significant limitations for this property. The drive to enable additional GFA on the site has resulted in less room at ground level for the required width of the pedestrian link, compromising the safety and vibrancy of this space and diminishing its contribution to the wider Caringbah Centre. The proposal is consequently inconsistent with the relevant objectives of the B3 zone.

The applicant's written submission fails to demonstrate that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case. It also fails to demonstrate sufficient environmental planning grounds to justify varying this development standard.

The proposed development is not in the public interest as the proposal fails to comply with the objectives for both FSR and the B3 zone. The proposed variation does not raise any matters of State or regional environmental planning significance as the development standard is relevant to the local context of the site and the Sutherland Shire only. In conclusion the variation to the FSR development standard fails to satisfy all the relevant parts of Clause 4.6 and therefore the variation cannot be supported.

11.3. Earthworks

The proposal includes extensive earthworks as a result of the two basement levels and therefore Clause 6.2 of SSLEP 2015 is applicable. Clause 6.2 requires certain matters to be considered in deciding whether to grant consent. These matters include impacts on drainage; future development; quality and source of fill; effect on adjoining properties; destination of excavated material; likely disturbance of relics; impacts on waterways; catchments and sensitive areas and measures to mitigate impacts.

The relevant matters in Clause 6.2 have not been addressed. In particular the report submitted with the application, titled "*Geotechnical Desktop Study Report, 344 The Kingsway, Caringbah*" by SMEC, 23 January 2020, provides limited information on the subsurface conditions and design recommendations for the proposed development. The report includes recommendations for additional geotechnical investigation to be undertaken, which Council considers must be completed prior to further assessment of the application.

At the date of writing this report, no additional geotechnical report has been submitted. The matters within Clause 6.2 have therefore not been satisfactorily addressed.

11.4. Stormwater Management

Clause 6.4 of SSLEP 2015 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable

surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. These matters have not been addressed, in particular the proposed stormwater discharge into Council's existing stormwater infrastructure within Lot 1 DP1003405 (Council's car park) will be required to be covered by an easement to drain water in favour of the property. The applicant would be required to commence the process with Council's Property Services team as soon as possible to ensure the site can legally drain in the manner proposed.

It is also noted that the rainwater tanks are proposed within the garden beds adjoining the pool area on Level 1. This location is less than ideal and an alternative location should be found.

11.5. 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 fails to satisfy a number of the matters for consideration, set out as follows:

Site Isolation

Lots known as 340, 344 to 346, 348R Kingsway do not form part of an amalgamation plan under SSDCP 2015 (outlined in red), however sites south east of 340 Kingsway do form part of amalgamation plans, as shown below:

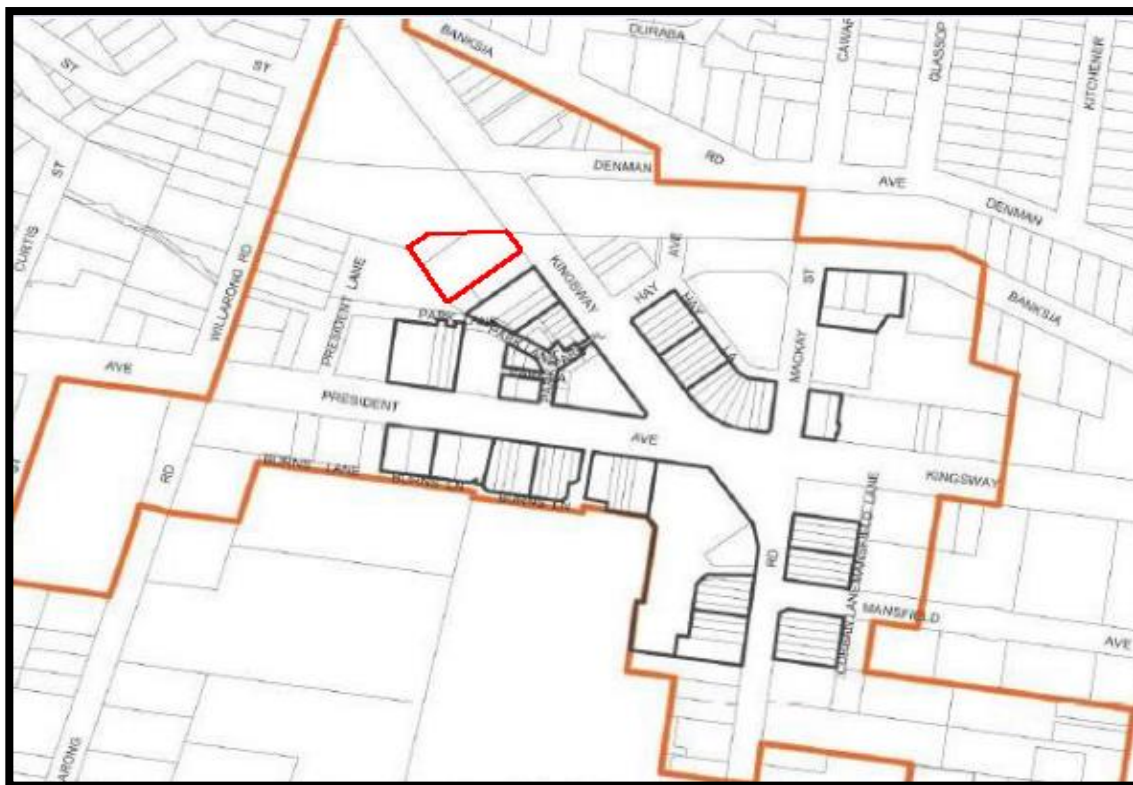


Figure 7: Extract of amalgamation plan from SSDCP 2015

Concern is raised with respect to the subject proposal in the event that the lots to the south east (304 to 336 Kingsway) are developed as per the amalgamation plan within SSDCP 2015. This would isolate 340 Kingsway. The applicant was requested to provide additional information demonstrating that 340 Kingsway

could be redeveloped in isolation and whether the site could reach its full development potential, but this information has yet to be submitted.

Building separation

The submitted plans indicate the rear boundary of the development adjoins Willarong Road, however the rear boundary adjoins an internal lot known as 39R President Avenue (owned by Council). Clause 10.2.3 within Chapter 18 of SSDCP 2015 stipulates building separation for residential uses should be in accordance with those recommended in the ADG. The applicant has failed to submit adequate information to Council in terms of how the proposed development would impact or relate with future development on adjoining sites and not impact on the redevelopment of 39R President Avenue.

Building Design

The proposed building design is unique for the Caringbah Centre and for the Sutherland Shire. The ESD objectives are positive and the DRF were encouraged with respect to a number of the building elements. A number of issues remain with the design however, as set out in detail in the DRF minutes at **Appendix “G”**. At a macro level, the overall scale of the building and its relationship with adjoining development needs further review. At a more micro level, decluttering of some of the external materials or ESD elements in the façade and related to the pedestrian through site link are recommended, along with considerable further information regarding the proposed timber construction, how this will work in structural terms, and the integration of timber and glazing.

Pedestrian Link

Redevelopment of the site requires the provision of a 6m wide pedestrian link on the site. The application includes a pedestrian link of varied width, with elements of the building, planter boxes and tables and chairs encroaching into the link and reducing its width in parts to approximately 2m. Design of the link needs to set the planters and outdoor seating closer to the building, adjacent to the commercial spaces. This would enable the northern side of the pedestrian path / link to open up and merge with the existing public footpath adjoining the northern boundary of the site. No enclosure of the link will also be permitted, as this is intended to be an open thoroughfare.

In addition to this, the proposed new tree within the north western corner is not in a suitable location as it impacts on future cycle way and pedestrian movements.

The proposed pedestrian link (raised crossing) into the Council's car park is disjointed from the current and future desire lines that pedestrians will use. The bike track lane is also much wider in this location and would be the likely path that people would take rather than the proposed offset pedestrian link. The proposed arrangement does not adequately support pedestrian movements between Kingsway and the car park, with Council's preference being that the new raised pedestrian crossing be relocated to the north to align with the proposed pedestrian link and cycleway.

11.6. Greenweb

The subject site is adjacent to land identified as being 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 adjacent land to the north and north-west is identified as a Greenweb restoration area. Having regard for the nature of the proposed development, planting along the northern side of the development and thru-site link could have included native species which would enhance this corridor. As refusal is recommended, no conditions will be imposed in this instance.

11.7. Threatened Species

Threatened species are particular plants and animals that are at risk of extinction and include threatened populations and endangered ecological communities. Threatened species, populations and ecological communities are protected by the Biodiversity Conservation Act 2016, NSW Fisheries Management Act 1994 and the Commonwealth Environmental Protection and Conservation of Biodiversity Act 1999.

Council has mapped the known threatened species, populations and endangered ecological communities. Following a review of this information and an inspection of the site it is concluded that the proposed development will not result in any significant impact on threatened species, populations and endangered ecological communities.

11.8. Archaeological Sensitivity

Council records indicate that the subject site is rated low in terms of Archaeological Sensitivity. A site inspection did not reveal any evidence of shell material or significant sandstone features within the development zone. The proposal does not warrant an Aboriginal Archaeological Study being undertaken.

11.9. Tree Removal

The proposed development involves the removal of 7 trees on the subject site as well as a further 1 tree (Tuckeroo) on Council's land, adjoining the site. No objection is raised to the tree removal within the site. If approval was to be granted, the applicant would need to apply for permission from Council to remove the tree Council land.

The proposal includes two pockets of deep soil planting in the north west and south west corners of the site, which are shown to have two trees planted in them. The submitted Landscape plans make no reference to these planter areas or the species of trees to be planted in them. This element would need to be clarified with any future application.

11.10. Vehicle Access / Parking and Loading and Unloading

Vehicle access to the proposed development is intended to be obtained via Council's carpark (39R President Ave) and Park Lane. Whilst the applicant has an existing ROC across Council land which provides access to 344-346 Kingsway, the conditions of the easement do not grant access to 348R Kingsway. It is Council's view that the legal rights don't transfer over when the lots become consolidated, and therefore the applicant is required to obtain an additional easement over 344-346 Kingsway (Lot 1 DP219784) to facilitate legal access to Lot 11 DP662946 (No. 348R Kingsway).

In addition to the above, swept path diagrams would also be required to be submitted demonstrating that all vehicles are able to enter and exit the site (via the ROC) to Park Lane and President Ave, as the site does not have a legal right to turn right when exiting the site towards Willarong Road. The Traffic Report submitted with the application incorrectly identifies the aisles within the Council car park to be Willarong Road. This is actually not the case and is instead a property known as Lot 1 DP1003405 and not road reserve. Vehicles entering / leaving the site to / toward Willarong Road is therefore not supported as they don't have a legal right.

The proposed development provides on-site car parking to meet the requirements of SSDCP 2015 however vehicle access to a number of the spaces would require clarification with swept path diagrams, as well as additional detail regarding the proposed traffic light system on the internal ramp between the basement levels. No details of the system have been provided or an analysis of the waiting bay or queuing requirements to enable this system to work. This may impact on the provision of on-site parking if some spaces had to be removed to facilitate compliance.

Further design consideration also needs to be given to ensuring that the residential parking areas are secure. The residential parking (including storage) should be located separate and secured from the commercial parking spaces within the basement.

The loading dock for the proposed development is shown as accommodating an SRV sized truck. This is unacceptable for a development of this scale. The proposed development is required to facilitate a HRV sized truck in accordance with AS2890.2 (including head clearance). This will require a redesign of the development and the submission of swept path diagrams which show that a HRV sized truck can manoeuvre into and out of the loading dock area (within the ROC), entering and exiting the site in a forward direction via Park Lane to President Avenue and taking into consideration the existing parking bays to the west in Council's car park.

11.11. Hours of operation

The applicant has specified hours of operation for the proposed ground level commercial tenancies is broadly stated as 7am to 9pm Monday to Wednesday and 7am to 10pm Thursday through Sunday. The subject site is located within the Caringbah Town Centre which is identified as a High Activity Area within Chapter 37 of SSDCP 2015. The proposed hours are within the range of base hours permitted within Ch 37.3.2.1 for commercial premises.

11.12 Public Toilets

The proposed development includes the provision of public toilets on the ground floor at the rear of the building facing Council's carpark. Whilst Council may consider such a proposal, insufficient information has been provided by the applicant addressing the maintenance and management of the toilets and whether a VPA is proposed with the application in order to enable these. If a VPA for public toilets is proposed, Council would require that the toilets are maintained, cleaned and managed as part of the future strata body and the relevant specifications and requirements for the facility would be provided by Council with the VPA. As no VPA has been submitted, it is assumed that the provision of toilets as shown on the plans would be to simply serve tenants and customers of the commercial tenancies.

12.0 DEVELOPMENT CONTRIBUTIONS

The proposed development (if approved) will introduce additional residents to the area and as such will generate Section 7.11 Contributions in accordance with Council's adopted Section 7.11 Development Contribution Plan. These contributions include:

Regional Contribution:	\$238,822.40
Local Contribution:	\$681,177.60

These contributions are based upon the likelihood that the development would require or increase the demand for regional and local recreational space and infrastructure facilities within the area. It has been calculated on the basis of 48 new residential units with a concession of 2 existing allotments. As refusal of the application is recommended, no conditions will be imposed unless it is resolved that approval of the application is appropriate.

13.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

Section 10.4 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts in excess of \$1000. In addition, 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.

14.0 CONCLUSION

The subject land is located within Zone B3 Commercial Core pursuant to the provisions of SSLEP 2015. The proposed development, being a mixed-use development, is a permissible land use within the zone with development consent.

In response to public exhibition, 7 submissions were received. A number of the matters raised in the submissions are substantive and have been discussed in the body of the report. As refusal of the application is recommended, the concerns have been addressed at this stage.

The proposal includes variations to both the maximum building height development standard and the maximum FSR development standard contained within Clause 4.3(2) and 4.4(2) of SSLEP 2015 respectively. The variations have been discussed and neither is considered acceptable for the reasons outlined in this report.

The subject site is a key site within the Caringbah Centre. The objective in redevelopment of the site for Council is for the northern boundary to facilitate improved pedestrian access from the Kingsway through to Council's carpark and retail areas. The SCATL will run parallel to the rail corridor, with the intention being that the subject site provide a generous 6m wide pedestrian link adjoining this, thereby ensuring a future linkage for both pedestrians and cyclists throughout the southern side of the Caringbah Centre. Successful provision of this link enabled bonus building height of up to 5m but only as part of a wider site redevelopment as set out in SSDCP 2015. The subject site represents only part of this wider site, and whilst some height increase may have been appropriate if the required through site link was acceptable, the subject proposal

seeks additional height above this and fails to deliver on an acceptable pedestrian link. Further analysis work is required to be undertaken with respect to the adjacent properties, and the relationship of the subject site and its redevelopment potential, in relation to these properties.

The application has been assessed having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The application will result in potential significant impacts on the environment and the amenity of nearby properties. Following assessment, Development Application No. DA21/0610 cannot be supported for the reasons outlined in this report.