

PPSSSH-85 - 344-346 Kingsway, Caringbah

DA21/0610

ASSESSMENT REPORT APPENDICES

Appendix	A	Correspondence from Transport NSW
	B	Minutes of the Design Review Forum Meeting
	C	SEPP 65 Design Principles Compliance Table
	D	Apartment Design Guide Compliance Table
	E	SSDCP 2015 Compliance Table
	F	Correspondence from Sydney Trains
	G	Correspondence from NSW Police
	H	Clause 4.6 – Building Height
	I	Clause 4.6 – Floor Space Ratio

13 August 2021

Ms Manjeet Grewal
Chief Executive Officer
Sutherland Shire Council
4-20 Eton Street
Sutherland NSW

Dear Ms. Grewal,

**PROPOSED DEMOLITION AND CONSTRUCTION OF A MIXED USE BUILDING
344-346 KINGSWAY CARINGBAH**

Reference is made to the abovementioned application which was referred to Transport for NSW (TfNSW) with updated information from the applicant for comment in accordance with clauses 101 and 104 of the *State Environmental Planning Policy (Infrastructure) 2007* and concurrence under section 138 of the *Roads Act, 1993*.

TfNSW has reviewed the submitted application and would provide concurrence to the proposed civil works on the Kingsway frontage under section 138 of the *Roads Act 1993*, subject to Council's approval and the following requirements being included in the development consent:

1. All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited height or depth), along the Kingsway boundary.
2. The stormwater drainage works on the Kingsway shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to developerworks.sydney@transport.nsw.gov.au.

Detailed design plans of the proposed works are to be submitted to TfNSW for approval prior to the issue of a construction certificate and commencement of any road works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

The developer is required to enter into a Works Authorisation Deed (WAD) for the abovementioned works. TfNSW fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works.

3. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

Transport for NSW

27-31 Argyle Street, Parramatta NSW 2150 | PO Box 973, Parramatta NSW 2150

P (02) 8265 6962 | W transport.nsw.gov.au | ABN 18 804 239 602

4. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

5. All vehicles shall enter and exit the site in a forward direction.
6. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2018. Parking Restrictions may be required to maintain the required sight distances at the driveway.
7. The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents.
8. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.
9. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on the Kingsway during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

For more information, please contact Vic Naidu, Land Use Planner, by email at development.sydney@transport.nsw.gov.au.

Yours sincerely,



Brendan Pegg
Senior Land Use Planner
Planning and Programs, Greater Sydney Division

Report and Recommendations of the Design Review Forum Panel

Sutherland Shire Council 26 August 2021

Panel Members: John Dimopoulos, Brendan Randles, Peter Brooker

Council Staff: Meredith Bagnall (ROFF), Carine Elias (Team Leader)

Applicant Team: Ed Blakely, Tony Legge, Jag Bola, Julie Horder, Brigitta Schyms, Navim Pasad, Jeevi

Pre DRF No: ARAP20/0001

DA No: DA21/0610

PAD No: PAD19/0049

Project Address: 344-346 Kingsway, Caringbah,

Proposal: Demolition of existing structures and construction of a mixed use (commercial and residential) development and strata subdivision.

PREAMBLE

A proposal for the site was previously reviewed by Council on the 6th October 2020, and the comments made have been taken into account in framing this report.

The site was viewed by the Panel members prior to the meeting.

The proposal has been considered in relation to the Design Quality Principles of SEPP 65. Detailed matters relating to Principle 5 (Landscape) are not covered by the Panel and will be separately reported by Council Officers.

Issues considered relevant to the proposal are noted below.

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.**

The panel would advise the applicant to submit more specific urban form streetscape analysis that supports the current design decisions that have informed the built form proposed and its fine grain resolution, especially in regards all future possible building envelopes on the NW and the SE neighbouring sites. A fine grain discussion of the proposal's urban merits in this regard could be further argued by Professor Edward Blakely as an addendum to the macro comments made in his 'evaluation Town Centre' report. Similarly, this modelling analysis should justify design decisions that have informed the built form response to the rear lot 348R, and analyse the pros and cons of any future relationships between these two buildings. The issue of extra height should also be explained in this analysis, especially in terms of the streetscape's desired future scale and character, and the public benefit of extra height on such a prominent landmark building.

2. **Public pathway.**

The amenity, user experience and relationship with public land is unclear and requires verification of spatial allocations and resultant amenity. As proposed, it seems that only 2m is provided between street furniture and glazing pinch-points – is this sufficient for a public thoroughfare? This is of concern, especially as the pergola structure and screened wall proposed appears to constrain the greater space that would be experienced if the lane were to be more contiguous with the adjacent bike lane and public land. Could the bicycle path run along the railway boundary [eg., elevated timber deck] to create a much wider and more integrated space that accommodates the two uses into a singular public realm?

3. **Pergola and solar panels.**

The pergola, and its use of integrated solar panels and vertical screens, appears to clutter the space. Could a cantilevered pergola be considered? The performance of the PVC is also questioned, given likely overshadowing from 345-350 Kingsway's future development.

4. **Density Compliance.**

There appears to be a discrepancy between the applicant's FSR and Council's calculations and this need to be clarified to Council's satisfaction. Please note that the pool enclosure must also be included in FSR calculations, which will further increase the currently estimated 10.33% breach of density requirements which in consideration of the bonus FSR being sought is a significant variation that cannot be justified.

5. **Pool and amenity.**

Although the pool is now proposed to be enclosed, it will still have amenity impacts, including visual bulk (especially to adjacent unit), odours and residual noise, as experience tells us that

the door will not always be closed. Its general amenity being located within the overshadowed portion of the site is questionable.

6. Materiality and cost benefit analysis of proposed timber construction.

Given its centrality to the character and sustainability of the proposal, it is essential that the proposal's materiality and technique is conditioned, so as to avoid future removal due to post DA value engineering. If timber structure, external timber shading and glazing battens were to be removed, the proposal would end up as a simple glazed box. In this regard, the Panel requires that additional detail be submitted to show the demarcation between real timber and timber substitute aluminium products, so as to gauge the consistency of the proposal and anticipate future problems in changes to quality and finish.

7. Timber structural system.

As the main visual language, further verification of the structural system proposed is required from the engineers so as to avoid future requests for extra height and problems with façade expression.

8. Integration of timber and glazing.

For similar reasons, the development application needs to include documents that explain the full structural/ integration of timber and glazing details. One of the panel's concern is that the glazing will need to be performance glass, which may encourage the developer to eliminate the need of the timber battens and external solar shading, which is the primary determinant of the building's aesthetics.

9. Residential lobbies.

Residential entries appear to be ill considered. The entry to the T2 core includes extensive and convoluted pathways, constraining both wayfinding and spatial quality appropriate such a dramatic building. To address this issue, it is recommended that the entry be rotated onto the [wrongly named] Willarong Road elevation – perhaps utilizing the expression of the slot above. The other entry would perhaps be better occupying a corner location so as to provide access from the Kingsway, rather than a side path.

10. Vehicle access to neighbouring site.

It is noted that to claim the density bonus, the proposal must facilitate vehicular access to the adjoining site, thereby allowing its future development. To allow for this, the Panel recommends that an appropriately sized removable section of wall is incorporated into the basement's boundary wall, so as to allow basement access to the adjoining property (to be negotiated with future developer).

RECOMMENDATIONS

The Panel is broadly supportive of the proposal, however further design development is recommended to respond to the issues noted above. The issues noted above should be taken into account in a revised proposal to realise an outcome that could be supported by the Panel.

John Dimopoulos

Chair

Appendix C

An assessment of the proposal having regard to the Design Quality Principles of SEPP 65 (Schedule 1)

Design Quality Principles	Assessment
Principle 1: Context and neighbourhood character	The proposal involves the construction of a multi-level mixed-use residential development on the site. The site is key within the Caringbah Centre and forms part of a large parcel set out in Council's redevelopment strategy for the Caringbah Centre. The proposed built form seeks to take advantage of the site opportunity for redevelopment but on a smaller parcel of land than that envisaged by SSLEP 2015. The outcome is a built form not as responsive to the established and anticipated future of the Centre as it could be. Concern is also raised with respect to site isolation of 340 Kingsway and the impact on its future redevelopment potential.
Principle 2: Built Form and Scale	The scale of the proposed building is in excess of that envisaged by the planning controls for the site. The DRF considers that further analysis is required with respect to the streetscape and the future potential building envelopes in relation to the proposed built form. This is addressed in detail in the Assessment Report.
Principle 3: Density	The density of the scheme submitted is in excess of that enabled by SSLEP 2015.
Principle 4: Sustainability	The proposed development has been designed with a specific environmental strategy in mind. An ESD Report (prepared by JHA Services) sets out the design measures proposed to minimise energy and water use, and the intention to create a building which is 'healthy' for the future residents and the environment. Proposed features include rainwater capture and reuse, green walls, rooftop gardens, solar panels and heating for the pool, an EV charging station, high performance glazing, building design and orientation to enable maximum natural light and ventilation, high level insulation.
Principle 5: Landscape	The subject site is located within the B3 Commercial Zone whereby there is no requirement for deep soil landscaping. The applicant has proposed a small deep soil pocket however in the northwest corner to enable planting of a mature tree. Significant landscaping is proposed for the remainder of the development, from ground level planters, vine covered pergolas, rooftop gardens, podium level planting and external green walls on the northern side of the building.
Principle 6: Amenity	The proposal satisfies the minimum ADG design requirements for residential apartments in terms of solar access and ventilation.

Principle 7: Safety	The applicant has considered Crime Prevention Through Environmental Design (CPTED) principles in the design of the project. Concern is raised with respect to the residential lobbies as these need to be carefully considered with respect to the active commercial tenancies and through site link at the ground level.
Principle 8: Housing Diversity and Social Interaction	The proposed development offers a varied apartment typology with 1, 2 and 3 bedroom units of many different sizes. The apartments are generally well-designed having regard to the ADG rules of thumb with solar access and ventilation, albeit some of the proposed balconies are undersized as a result of the inclusion of planters. The development offers future residents a multitude of opportunities for social interaction as part of the development with the podium level swimming pool and gymnasium, as well as the more passive spaces on the roof tops of the buildings.
Principle 9: Aesthetics	The proposed development offers a unique aesthetic with the external timber structure and vertical garden features. Additional detail is required from the applicant however in order to understand the materiality of the building in terms of its structure, engineering and costing. If the timber structure, external shading and glazing battens were to be removed as part of a post-DA costing exercise, the proposed development would result in a significantly diminished architectural form, its uniqueness and expression lost.

Appendix D

An assessment of the proposal against the ADG design criteria

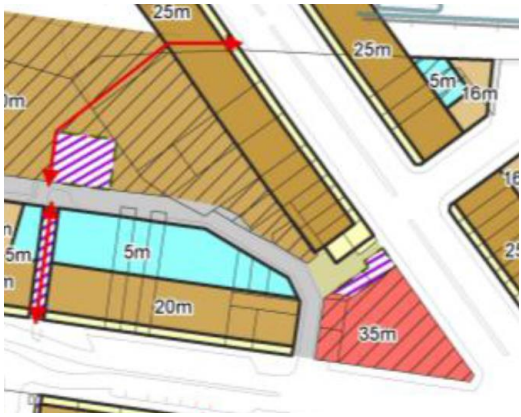
Apartment Design Guide (ADG) –Building Key Design Criteria			
Objective	Design Criteria	Proposal	Complies
2F Building Separation	<p><i>Note development situated on adjoining properties is no greater than 2 storeys in height.</i></p> <p>Minimum required separation distances for buildings are: Up to 12m (4 storeys)</p> <ul style="list-style-type: none"> 12m between habitable rooms/balconies 9m between habitable and non-habitable rooms 6m between non-habitable rooms <p>Up to 25m (5-8 storeys)</p> <ul style="list-style-type: none"> 18m between habitable rooms/balconies 12m between habitable and non-habitable rooms 9m between non-habitable rooms <p>Over 25m (9+Storeys)</p> <ul style="list-style-type: none"> 12m habitable rooms / balconies 6m non-habitable rooms 	<p><i>Northern side</i></p> <p>5m min – Lvl 1, 2, 3</p> <p><i>Southern side</i></p> <p>Nil – Lvl 1, 2</p> <p>9m – level 3</p> <p><i>Western side</i></p> <p>Nil – Lvl 1, 2</p> <p>4m – Lvl 3</p> <p><i>Northern side</i></p> <p>5m min – Lvl 4 (to cover)</p> <p>8m - Lvl 4, 5, 6 (to balconies)</p> <p><i>Southern side</i></p> <p>Nil to 9m – Lvl 4, 5, 6</p> <p><i>Western side</i></p> <p>4m – Lvl 4, 5, 6</p> <p><i>Northern side</i></p> <p>8m min – Lvl 7</p> <p>11m – Lvl 8</p> <p><i>Southern side</i></p> <p>Nil to 9m – Lvl 7</p> <p>Nil to 12m - Lvl 8, roof plan</p> <p><i>Western side</i></p> <p>4m – Lvl 7</p> <p>6m – 8 and roof plan</p>	
3D-1 Communal Open Space (COS)	<p>COS has a minimum area equal to 25% of the site.</p> <p>A minimum of 50% direct sunlight to the principle usable part of COS for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).</p> <p>523m² required</p>	<p>330m² – roof terrace (including landscaping)</p> <p>220m² – level 1 (including swimming pool)</p> <p>Roof terrace will receive 2 hours of solar access</p>	Yes

3E-1 Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements.</p> <p>Where the site area is 650m²-1500m² = min. 3m dimension; and, min. 7% of the site area.</p> <p>146.51m² required</p>	No deep soil proposed B3 Commercial zone	
3F-1 Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Up to 12m (4 storeys)</p> <ul style="list-style-type: none"> • 6m habitable rooms/balconies • 3m non-habitable rooms <p>Up to 25m (5-8 storeys)</p> <ul style="list-style-type: none"> • 9m habitable rooms/balconies • 4.5m non-habitable rooms <p>Over 25m (9+Storeys)</p> <ul style="list-style-type: none"> • 12m habitable rooms / balconies • 6m non-habitable rooms <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room.</p>	<p><i>Northern side</i> 5m min – Lvl 1, 2, 3 <i>Southern side</i> Nil – Lvl 1, 2 9m – level 3 <i>Western side</i> Nil – Lvl 1, 2 4m – Lvl 3</p> <p><i>Northern side</i> 5m min – Lvl 4 (to cover) 8m - Lvl 4, 5, 6 (to balconies) <i>Southern side</i> Nil to 9m – Lvl 4, 5, 6 <i>Western side</i> 4m – Lvl 4, 5, 6</p> <p><i>Northern side</i> 8m min – Lvl 7 11m – Lvl 8 <i>Southern side</i> Nil to 9m – Lvl 7 Nil to 12m - Lvl 8, roof plan <i>Western side</i> 4m – Lvl 7 6m – 8 and roof plan</p>	
3J-1 Car Parking	<p>Sites:</p> <ul style="list-style-type: none"> • Within 800m to railway in metropolitan area or • Within 400m of zone B3 or B4 in nominated regional centre 	Sutherland Shire does not have any Metropolitan Regional (CBD) Centres or Metropolitan Sub-Regional Centres SSDCP2015 rates apply (refer below)	N/A

	The minimum car parking rates set out in Guide to Traffic Generating Development or the requirement prescribed by the Council whichever is lesser.		
4A-1 Solar and Daylight Access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter.	Appears to comply. Sun's eye diagrams may be required.	
4B-3 Natural ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys. Overall depth of cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Complies Complies	Yes Yes
4C-1 Ceiling heights	Habitable rooms = 2.7m	2.7m	Yes
4D-1 Apartment Size & Layout	Minimum internal areas of; <ul style="list-style-type: none"> • Studio = 35m² • 1 bedroom = 50m² • 2 bedroom 70m² • 3 bedroom = 90m² <i>More than 1 bathroom at 5m²</i> <i>A fourth bedroom or more increase by 12m²</i> <i>Habitable rooms to have window with area not less than 10% of floor area</i>	Complies	Yes
4D-2 Room Depth	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Depth exceeded in units 103, 106, 203 and 401	
4D-3 Room Dimensions	Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bed unit 4m for 2 and 3 bed units Master bedrooms - min area of 10m ² other bedrooms 9m ² (excluding wardrobe space) Bedrooms to have minimum dimension of 3m. Width of cross-over or cross through apartments are at least 4m internally to avoid deep narrow layout.	Appears to comply. Dimensions of rooms are to be provided on plans.	


4E-1 Private Open Spaces / Balconies	<p>All apartments are required to have a primary balcony as follows;</p> <ul style="list-style-type: none"> • Studio = 4m² • 1 bedroom = 8m² (depth of 2m) • 2 bedroom = 10m² (depth of 2m) • 3+ bedroom = 12m² (depth of 2.4m). <p>Ground Level / Podium apartments = 15m² (depth of 3m)</p>	<p>Area of primary balcony needs to be adjusted (and excluding planter boxes) etc:</p> <p>103, 107, 203, 206, 301, 402, 403, 404, 405, 801 and 804</p>	No
4F-1 Common Circulation	Maximum apartments of single circulation core = 8	4 per core	Yes
4G-1 Storage	In addition to storage in kitchens, bathrooms and bedrooms the 10m ³ of storage is to be provided for each unit. With at least 50% of the required storage is to be located within the apartment.	Storage plan provided	Yes

Appendix E

Sutherland Shire Draft DCP 2015		
Chapter 18 – B3 Commercial Core - Caringbah		
Residential Flat Building – B3 Commercial Core - Caringbah		
REQUIRED	PROPOSAL	COMPLIANCE
4. Streetscape and Building form		
<p>CI 1.</p> <p>Comply with the relevant building form plan and with the design guidelines for specific sites where shown.</p> 	<p>The building varies from the BEP.</p> <p>The height of the building does not taper down to 20m as recommended in the Potential Built Form Plan.</p> <p>Impacts on redevelopment of neighbouring properties, visual impact from west etc requires further consideration.</p>	No
<p>CI 2.</p> <p>Where a development is proposed with a building envelope which varies from the Preferred Built Form Plan (PBFP), the applicant must demonstrate that the outcomes from the development are as successful, better, than those that would be achieved under the Preferred Built Form Plan in relation to:</p>	The proposal varies from the PBFP.	
<p>a. The building's compliant with SEPP 65 including solar access, building separation and residential amenity.</p>	See ADG Table	
<p>b. whether to surrounding land will be able to achieve its full development potential without compromising the ability to meet SEPP 65.</p>	Insufficient information provided demonstrating 340 Kingsway can be developed to its full development potential.	No

c. whether solar access to footpaths, open space or the public domain is compromised.	Public footpath is located on the northern side of the building.	Yes
d. whether the proposed development is as successful in terms of its transitional relationships to surrounding development, and in particular any heritage items in the vicinity of the site.	Needs to demonstrate how will relate with future development of adjoining properties.	No
CI 3. Where the PBFP identifies a pedestrian arcade, public walkway or other public thoroughfare through a development site, the min width of the arcade, walkway or thoroughfare is to be 6m.	PBFP shows pedestrian access is required through the site. A pedestrian pathway is proposed varying between 5-6m. However, includes planter boxes, tables and chairs. At points this may result in approx. 2m width of pathway.	Further consideration is required to open this space to the northern footpath.
CI 4. Must be designed and sited so that it addresses the street and have a clear identifiable entry.	East elevation – retail 1 addresses the Kingsway with glazed frontage. Northern elevation – retails spaces 1, 2 and 3 include glazed frontages providing an active frontage to the pedestrian pathway. The pathway includes outdoor tables for potential uses. Western elevation – is essentially back of house, however the retail space 3 includes glazing to the rear with two openings. The presentation of these retail spaces to the Kingsway, pedestrian pathway and the rear provide active frontages where required.	Yes
CI 5. Should acknowledge the rhythm and scale of existing shopfronts/small lot subdivisions in vertical façade proportions etc	The eastern boundary (front) addresses the Kingsway. The eastern and western side of the Kingsway include a mix of commercial/retail uses with glazed frontages to the street.	Yes
CI 6. The building form must be articulated to avoid large expanses of unbroken wall, and to visually reduce bulk.	Northern elevation – this has been designed with stepping of the building form and varied materials breaking up the building. Eastern elevation – Nil boundary setback up to level 2 and 4m from level 3 upwards.	See DRF comments

	<p>Western elevation – Nil stepping back to 4m. Articulated with stepping of the building form, terraces etc providing articulation</p> <p>Southern elevation –Designed with blank wall for the front portion and then steps back from the boundary. This will allow building to be built on adjoining property.</p>	
<p>CI 7. Where a development has 2 or more frontages, vehicular access shall be from the lowest order road. Vehicular access is to be from a rear lane where such is provided.</p>	Vehicular access is proposed from the rear of the site via 39R President Avenue. Additional information is required.	Yes
<p>CI 8. Highly reflective materials are not acceptable for roof or wall cladding.</p>	Highly reflective materials not shown.	Yes
<p>CI 9. Where a basement car park extends above the natural ground level, it is to be designed to ensure that podiums and vehicular entries do not dominate the overall design of the building or streetscape. Basements and podiums are to be integrated into the architectural design of the building.</p>	Car parking is proposed underground within basement 1 and 2.	Yes
<p>CI 10. Development should contribute to a comfortable pedestrian environment with improvement to signage, lighting, planting, awning cover and seating, where appropriate. Frontage works are to be designed and constructed in accordance with Council's Public Domain Design Manual.</p>	The building is designed with an active frontage to the Kingsway and northern side boundary.	Yes
<p>CI 11. Ground floor residential uses are only permitted on streets where an active street frontage is not otherwise required and where it is demonstrated that subject satisfactory amenity for building occupants can be</p>	Commercial spaces proposed on the ground level.	Yes

achieved, particularly in relation to privacy and impacts from noise and traffic.		
CI 12. Where a development has a blank end wall, it must have a high quality finish that makes a positive contribution to the appearance of the centre, should it potentially remain exposed in the long term.	A high blank wall is proposed to the southern side boundary. Proposed to be finished with timber look vertical battens.	Yes
5 Amalgamation Requirements		
CI 1. Redevelopment of land identified in the Caringbah Amalgamation Map as being subject to an amalgamation requirement, is to follow the identified amalgamation pattern. Both sites do not form part of an amalgamation plan under the DCP, however sites from 336-338 Kingsway to the south east from part of an amalgamation plan and therefore 340 Kingsway will become isolated.	Council has concerns that if the subject sites are developed and the lots (304 to 336 Kingsway) which are south east of 340 Kingsway are developed as per the amalgamation plan under the DCP, 340 Kingsway may become isolated in the future. Additional information is required demonstrating whether 340 Kingsway could be redeveloped in isolation and whether it would reach its full development potential.	No
		
CI 2. 20m lot width If narrower lot proposed, the development must: <ol style="list-style-type: none"> provide for required parking on the site, usually in an underground car park, that 	15.2m – eastern front boundary 27.09m and 16.15m – northern side boundary 45.72m – western boundary 56.59m – southern boundary	No Yes Yes Yes

<p>allows for vehicles to leave in a forward direction;</p> <p>b. provide appropriate access and servicing facilities, loading, storage and waste management areas;</p> <p>c. respond to the local context.</p> <p>Development sites with frontage width less than 20m may not allow for the full FSR to be realised.</p>	<p>Parking provided within two basement levels accessed via the rear of the site. Vehicles are able to enter/exit in a forward direction.</p> <p>Additional information is required demonstrating adequate manoeuvrability will be achieved within the ROC over 39R President Avenue.</p> <p>The building form is visually dominant and needs to considered impacts on adjoining properties.</p>	
6. Street Setbacks		
<p>CI 1.</p> <p>Unless specifically identified in the Caringbah Potential Built Form Plan, Caringbah “Specifies Site” guidelines, or a clause:</p> <p>Nil – first two storeys to the street with a wall height of 8-10m to an active street frontage.</p>	<p>Nil – Levels G, 1 and 2 (3 – roof over level 2)</p> <p>10.55m</p>	Yes
<p>CI 2.</p> <p>4m – upper storeys (above the two storey wall height)</p>	<p>4m – levels 3 to roof level</p>	Yes
8.1 Landscape		
<p>CI 1.</p> <p>Existing street trees in good health are to be retained and protected.</p> <p>1 tree with a mature height of 6m to be planted at maximum spacing of 5m planted at least 1m from the kerb and/or footpath.</p>	<p>Trees proposed to be removed / unlikely to be retained due to building footprint and works.</p> <p>Two new trees proposed on the ground floor level.</p>	Yes
<p>CI 2.</p> <p>Planting proposed on podiums, roof tops or within planters must contain a min of 600mm of soil depth.</p>	<p>Additional depth is required for planting on the roof.</p>	No
<p>CI 3.</p> <p>Where planting is proposed on that part of a basement which extends beyond the building</p>	<p>Planting proposed over the basement.</p>	

footprint, roof tops or within planter boxes must contain a min soil depth.		
CI 4. Where trees are proposed on roofs or planter boxes an area of 3m x 3m per tree must be provided.	Additional information required.	
CI 5. Appropriate paving must be provided to driveways, walkways, entries, fire egress points garbage bin enclosures, letter boxes, clothes lines and under pergolas.	Paving proposed to the pedestrian link on the ground level.	Yes
8 Active Frontages		
CI 1. Active frontage at footpath level in accordance with the Caringbah Centre Active Frontage Map. <i>Frontage to Kingsway – active</i> <i>Frontage to northern laneway – semi active</i> <i>Rear to car park – semi active</i>	The building has been designed with active frontages to the front and northern side boundary. The rear has been designed with glazing to a retail space.	Yes
CI 2. Active frontage must be at footpath level along the length of the building.	Active frontage provided to the full length of the eastern frontage and northern side.	Yes
CI 3. Semi active locations where active commercial premises or retail frontages are required but need not be continuous.	Provided	Yes
CI 4. Vehicle entrance and service areas are not to be located in active street frontages.	Service area proposed at the rear. Acceptable	Yes
CI 5. Continuous awning must be provided along shop front and active street frontage.	Awning provided along the Kingsway, partially over the northern footpath the units on level 1 provide cover over the ground level at the rear	Yes
9 Side and Rear Setbacks		
CI 1. Unless identified in Caringbah Potential Built Form Plan (CPBFP). Nil – side and rear setbacks	See ADG Table	
CI 2.	Ground floor uses nil setback to Kingsway	Yes

Where an active street frontage is required, nil boundary setbacks are required for all ground floor uses.		
CI 3. Building separation for residential uses be in accordance with SEPP 65 and the ADG 2015.	See ADG table	
10 Building and Site Layout		
CI 1. Incorporate passive solar building design including the optimisation of sunlight access the minimisation of heat loss and energy consumption, to avoid the need for additional artificial heating and cooling.	Residential units have been designed orientated toward the east, north or west.	Yes
CI 2. All loading, unloading and manoeuvring of vehicles shall take place within the curtilage of the site, vehicles are to enter and exit the site from a rear laneway wherever possible and in a forward direction at all times. Where other arrangements for loading and unloading of vehicles are proposed, they may be acceptable where:	1 commercial delivery bay within the site. Additional information is required demonstrating adequate manoeuvrability for vehicles including a MRV. Car parking provided within basements 1 and 2 – capable of entering/exiting in a forward direction.	No Yes
a. There is a low intensity of commercial use;	3 commercial spaces on the ground floor level	Yes
b. The proposed arrangement maintains a safe and convenient pedestrian and traffic environment.	Pedestrian access to the building can be gained from western and northern sides of the site.	Yes
CI 3. Loading areas shall be located to avoid on street loading and be available for use at all times.	Loading and unloading is proposed to be carried out within the site.	Yes
CI 4. Non residential and residential land uses in the same development shall be sited and designed to not adversely affect residential amenity of building occupants.	Two separate cores have been provided to access the residential units on the upper levels. The residential corridors and are long and convoluted and required further consideration.	Yes No
11 Shop Top Housing & Residential Flat Buildings		
CI 1.	Refer to ADG table	

Residential units in accordance with the principles of SEPP65 and the ADG.		
CI 3. The side and rear setbacks must result in a development that:		
a. Provides adequate resident amenity – including privacy, solar access and ventilation;	Refer to ADG table	
b. Responds to the local context and streetscape, providing adequate separation from existing and future adjoining development;	Further consideration to be given to how the building form will fit and relate to development on adjoining properties and in the local context.	No
c. Does not prevent a neighbouring site from achieving its full development potential and optimal orientation;	Further consideration to be given to redevelopment of the southern and western adjoining properties.	No
d. Has architectural merit.	See DRF Comments	
CI 4. Shop top housing is to be sited and designed to maximise direct sunlight to north-facing living areas and all private open space areas.	Orientated toward the east and north	Yes
CI 5. A variety of dwelling types – one, two and three plus bedrooms particularly in large developments.	7 one bedroom units 14 two bedroom units 27 three bedroom units	Yes
CI 6. Living rooms and POS for at least 70% of residential units / 2 hours of direct sunlight between 9am and 3pm.	See ADG Table	
CI 8. Dwelling entries shall be distinguished from commercial/retail premises.	Separate residential and commercial entries provided with the development. However the long corridors to the lifts of the residential units requires further consideration.	No
CI 9. Primary/patio with direct access from the living area with the following sizes: Studio – 4m ² / nil depth 1 bed – 8m ² /2m 2 bed – 10m ² /2m 3 bed – 12m ² /2.4m	Area of primary balcony needs to be adjusted (and excluding planter boxes) etc: 103, 107, 203, 206, 301, 402, 403, 404, 405, 801 and 804 (See ADG table)	
CI 10.	Balconies designed to step with the building form.	

Balcony design is to be integrate into the architectural form and detail of the buildings.		
CI 12. Balcony balustrades should respond to the location, being designed to allow views and passive surveillance of the street while maintaining visual privacy and allowing for a range of uses on the balcony.	Balconies designed with a mixture of glazing and timber louvres.	
CI 13. Suitable clothes drying facilities shall be provided and not be visible from a public place and have access to sunlight.	Drying facilities not shown on the plans.	No
CI 14. Secure space in a small scale shop top housing development must be provided for each dwelling in accordance with the following table: Studio apt – 4m ³ 1 bed apt - 6m ³ 2 bed apt – 8m ³ 3 bed apt – 10m ³ At least 50% of the required storage is to be located within the dwelling and accessible from circulation or living spaces.	Storage shown within units and basement.	Yes
CI 15. COS should have a min area equal to 25% of the site for residential flat buildings and shop top housing with a floor space ratio of 2:1 or greater. Where residential flat buildings and shop top housing have a floor space ratio of less than 2:1, 100m ² of communal open space is required. (required 523m ²)	330m ² – roof terrace (including landscaping) 220m ² – level 1 (including swimming pool) Roof terrace will receive 2 hours of solar access	Yes
CI 16. COS should have a minimum dimension of 3m, and large developments should consider greater dimensions. (Space must incorporate shelter, furniture and facilities suitable for outdoors, and if provided at ground level include canopy trees)	A large swimming is located on level 1. This pool may have adverse amenity impacts on the residential units within the development and future development on adjoining properties.	No

CI 17. A communal rainwater tank and pump should be located in COS. COS areas must be provided with a water efficient irrigation system and taps at a minimum 25m intervals connected to the rainwater tank. Each private open space at ground level must be provided with a tap connected to the rainwater tank.	Additional information is required addressing the rainwater tanks proposed on level 1. (See engineering comments)	No
12 Adaptable Housing		
CI 1. <ul style="list-style-type: none"> Developments of 6 or more dwellings – 20% adaptable 10 required	8 Units 101, 102, 103, 104, 201, 202, 203, 204,	No
12 Liveable housing		
CI 1. <ul style="list-style-type: none"> Developments of 6 or more dwellings – 10% of dwellings. 5 required	2 units 301, 303,	No
13. Visual and Acoustic Privacy		
CI 1. Locate, orientate and design new development to ensure adequate visual privacy between buildings, and between buildings and adjacent private open space.	The use of the communal swimming pool may will likely have adverse impacts on the residential units proposed immediately adjacent to the pool. Vertical timber louvers are proposed on the elevations of the building. More detail required.	No
CI 2. Use building design to increase privacy without compromising access to light and air.	Design relies on vertical timber louvres.	
CI 3. All noise generating equipment such as air conditioning units etc must be designed to protect the acoustic privacy of residents and neighbours.	A revised acoustic report is required addressing the use of the swimming pool, and details of the exercise area including weights.	No
CI 4. Residential development adjacent to a rail corridor or a busy road as identified on the Road and Rail Noise Buffer Map should be sited and designed to include noise and	The application was referred to Sydney Trains. Appropriate conditions will apply.	Yes

vibration attenuation measures to minimise noise and vibration impacts.		
14. Safety and security		
CI 1. The design of development is to incorporate <i>Crime Prevention Through Environmental Design(CPTD)</i> principles.	Development designed with active frontages on the ground floor to the east and north and semi active to the west. Separate residential access are provided on the ground floor. Retail and residential parking should be separate within the basement	
15. Parking		
CI 1. Car parking shall be provided in accordance with the following : Residential Flat Building: (Zone B3) <ul style="list-style-type: none"> • Minimum 1 space/maximum 3 spaces per dwelling • No visitor parking ? spaces required	58 car parking spaces	Yes
1/30m ² retail premises 20 spaces required	20 car parking spaces	Yes
CI 4. Motorcycle parking 1 / 25 car spaces	3 spaces	Yes
CI 5. Bicycle parking 1 / 10 car spaces for first 200 spaces, then 1 space per 20 parking spaces 8 spaces required	Nil	No
CI 7. Bicycle parking facilities must address the design principles.	Insufficient information provided.	Yes
CI 8. 5.5m min vehicular crossing	6.8m	Yes
CI 9.	See engineering comments	

The design of the all vehicle access ways shall enable all vehicles to enter and leave the site in a forward direction.		
11.2 Waste Management Requirements.		
<p>CI 2.</p> <p>The residential waste generation rate per dwelling is 120 litres per week of general waste plus 120 litres per week of recycling. The general waste and recycling needs per dwelling in multi-unit developments with 20 or more apartments can be reduced in accordance with the waste generation rates in Table 1 below Twice weekly collections of 240L bins by Council (by arrangement with Council) can reduce the number of bins required.</p> <p>Garbage (delete what doesn't apply):</p> <p>3 bedroom apartment of greater= 120L 2 bedroom apartment=100L 1 bedroom apartment =80L</p> <p>Recycling (delete what doesn't apply):</p> <p>3 bedroom apartment of greater= 120L 2 bedroom apartment=120L 1 bedroom apartment = 80L</p>	Council's waste management officer has raised no issues subject to engineering matters are addressed.	Yes
<p>CI3</p> <p>In the case of large residential flat and mixed use developments, multiple bin storage areas may be required. Residential waste must be kept separate from commercial waste.</p>	Waste storage areas provided for residential, commercial and bulk waste.	Yes
<p>CI 7.</p> <p>Developments must be designed so that bins do not need to be wheeled more than 75 metres.</p>	Acceptable	Yes
<p>CI 15.</p> <p>For residential developments containing 20 or more dwellings a hard waste storage area with minimum area 14 sq m must be</p>	Provided	Yes

provided. Hard waste consists of discarded items of bulky household waste which are awaiting removal.		
---	--	--

13 September 2021

The General Manager
Sutherland Shire Council
Locked Bag 17
Sutherland NSW 1499

ATTENTION: DEVELOPMENT ASSESSMENT TEAM

Dear Sir/Madam,

**‘REQUEST FOR INFORMATION – STOP THE CLOCK’
STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007
DEVELOPMENT APPLICATION – DA21/0610 (CNR-25606)
344-346 & 348R Kingsway Caringbah NSW 2229**

“Demolition of existing structures; construction of new mixed use commercial and residential building, with two basement parking levels and communal open space.”

I refer to Council’s Planning Portal referral requesting comments and concurrence for the above development application (DA) in accordance with Clause 45 and Clause 86 of *State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)*.

Council is advised that Sydney Trains, via Instrument of Delegation from the Secretary of Transport and from TAHE (Transport Asset Holding Entity), has been delegated to act as the rail authority for the heavy rail corridor, electrical supply authority, and Agent on behalf of the Land Owner; and to process the review and concurrence for this development application.

Sydney Trains has undertaken an initial assessment of the proposed development as provided through the Planning Portal. Sydney Trains is not in a position to make a decision on the granting of concurrence until additional information that meets Sydney Trains requirements are prepared and submitted to Sydney Trains for review. Further, additional information is required from the Applicant due to the proposal indicating works situated within TAHE land, in relation to the proposed laneway, playground, and car parking (including tree) works.

Therefore, Sydney Trains requests that Council ‘stop-the-clock’ on the assessment of this proposal until such time as the applicant consults with Sydney Trains and/or provides the additional documentation to Sydney Trains standards, as detailed below:

A1. *Land Owners Consent:*

- a. The Applicant is requested to obtain written Land Owners Consent from TAHE (Transport Asset Holding Entity), or alternatively lodge amended plans showing no reliance, use or works of or within TAHE land.
- b. The formal request for Land Owners Consent should include the full DA package, provided via a Cloud or File Sharing system and emailed to DA_sydneytrains@transport.nsw.gov.au.

A2. *Engineering and Technical documentation:*

- a. Geotechnical and Structural report/drawings including rail specific potential impacts.
- b. Numeric modelling analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.
- c. Construction methodology with details pertaining to structural support during excavation.
- d. Cross sectional drawings (both architectural and structural) showing the rail corridor including nearest rail tracks & infrastructure, ground surface, sub soil profile, proposed basement excavation and structural design of sub ground support (i.e. footings/piles/anchors etc.) adjacent to the rail corridor.
 - i. Separate cross sectional drawing in relation to the proposed park works in proximity to the 33kV High Voltage Aerial Line.
- e. Detailed Survey Plan (in plan and section) showing the relationship of the proposed development with respect to rail land and infrastructure.
- f. Drawings/details showing anti-throw mechanisms for all openings (windows, balconies, open space, terraces and the like), within 20m of and facing the rail corridor.
- g. All measurements are to be verified by a Registered Surveyor.

It is noted that the most up to date and recent DA plans and reports, which are before Council, are to be submitted with the request for Land Owners Consent. This is to ensure that what is consented to by the land owner, is in fact the exact and proper proposal on the subject site, and what is subsequently determined by Council.

Sydney Trains requests contact from the applicant in accordance with the above via email to DA_sydneytrains@transport.nsw.gov.au; and provision of the additional information within 1 month of this letter unless an alternative time frame is agreed to.

Yours sincerely,

**Sarah Anderson
Town Planning Officer**

D/2021/988398



ISSUE:

Development Application No. DA21/0610 demolition of existing building at 344 – 346 Kingsway & 348R Kingsway, Caringbah, submitted by Senior Constable Christopher Shade Reg'd No. 27402.

BACKGROUND:

See attached file.

COMMENT:

Development Application No: DA21/0610

Proposal: Demolition of existing structures and construction of a mixed-use development and strata subdivision into 51 lots at 344-346 Kingsway and 348R Kingsway, Caringbah.

Property: 344-246 Kingsway & 348R Kingsway, Caringbah.

Police Ref: D/2021/988398

We refer to your development application which the demolition existing structures and construction of a mixed-use development and strata subdivision into 51 lots at the above locations

After perusing the paperwork, the following suggested treatment options are submitted for consideration including a number of Crime Prevention through Environmental Design (CPTED) factors that should be considered in this development.

Surveillance

The attractiveness of crime targets can be reduced by providing opportunities for effective surveillance, both natural and technical. Good surveillance means that people can see what others are doing. People feel safe in public areas when they can easily see and interact with others. Would-be offenders are often deterred from committing crime in areas with high levels of surveillance.

Miranda Local Area Command

34 Kingsway, Cronulla

Telephone 02 9527 8199 Facsimile 02 9527 8137 E/Net 58199 E/Fax 58137 TTY 9211 3776 (Hearing/Speech impaired)

ABN 43 408 613 180

NSW POLICE FORCE RECRUITING NOW 1800 222 122

WWW.POLICE.NSW.GOV.AU/RECRUITMENT

- **Lighting and Technical Supervision**

Lighting should meet minimum Australian standards. Effective lighting contributes to safety by improving visibility, increasing the chance that offenders can be detected and decreasing fear. Special attention should be made to lighting the entry and exit points from the buildings, pathways throughout the site, car park and access/exit driveways.

The access/exit driveways need to be adequately lit to improve visibility and increase the likelihood that offenders will be detected and apprehended. At the same time throughout the site transition lighting is needed to reduce vision impairment, i.e. reducing a person walking from dark to light places.

Security lighting should not illuminate observers or vantage points. Within the residential complex, observers are likely to be “inside” dwellings. Light should be projected away from buildings towards pathways and gates – not towards windows and doors. Additionally, the central pathway through the complex should provide adequate lighting for pedestrian safety. The attached development application does not specify such lighting considerations.

- **Landscaping**

The safety objective of “to see and be seen” is important in landscaped areas. Research and strong anecdotal evidence suggests that vegetation is commonly used by criminals to aid concealment through the provision of entrapment pockets. Dense vegetation can provide concealment and entrapment opportunities.

Species can be selected for different locations on the basis of their heights, bulk and shape. A safety convention for vegetation is: lower tree limbs should be above average head height, and shrubs should not provide easy concealment. It is recommended that 3-5m of cleared space be located either side of residential pathways. Thereafter, vegetation can be stepped back in height to maximise sightlines.

Given the inclusion of shrubs and trees throughout the site within the proposed development, it must be emphasised that the vegetation be kept trimmed and maintained at all times.

- **Access Control**

Physical and symbolic barriers can be used to attract, channel or restrict the movement of people. They minimise opportunities for crime and increase the effort required to commit crime. By making it clear where people are permitted to go or not go, it becomes difficult for potential offenders to reach and victimise people and their property.

Illegible boundary markers and confusing spatial definition make it easy for criminals to make excuses for being in restricted areas. The proposed development application does not specify access control measures throughout the development. It is, however, crucial that these access control measures be considered.

Consideration should be given to installing security shutters at the entry to the underground car park area. It is noted that the following 'can be conditioned' - *"where security measures to car parks are provided an intercom system shall be installed for visitors to gain entry. This system shall incorporate a CCTV system to ensure that the visitor space availability can be determined"* (Annexure B, SSDCP 2006 Compliance Table, p.15). This security control measure should strongly be considered prior to approval of this development application.

Police would recommend that all residents are allocated access cards to provide temporary activation of security shutters to the basement area. This security access control measure could also be used to gain access into the pool area – access/safety control measures are not specified within the development application.

The proposal does not specify the type of locks to be fitted to roller doors within the basement car park area. Police would recommend that garage doors are designed and installed to the Australian Standards, fitted with quality locks. Within the local area, a common modus operandi of break and enter offenders whilst targeting premises of similar nature, is to access the residential premise via the garage area. Hence, quality deadlock sets should be fitted to internal doors leading from the garage area into individual townhouses. Storage doors within the garage area should also be fitted with quality deadlocks.

Police recommend that the underground car parking areas be painted white to greatly help to reflect light. Painted facilities not only look larger and more spacious than unpainted car parks, but can greatly reduce the number of lights required to illuminate the car park and on-going energy costs.

Police would suggest the use of CCTV to monitor the common areas, access/exit driveways and underground car parks to ensure resident safety and security.

Internal residential entrance doors and frames should be of solid construction. These doors should be fitted with quality deadlock sets, which comply with the Australian/New Zealand standards and Fire Regulations (Australian Building Code) to enable occupants to escape in emergency situations such as a fire. Consideration should be given to installing key operated locks to windows. In addition to this, consideration should be given to installing locks that allow for windows and doors in a partially open position.

Territorial Reinforcement

With few exceptions, criminals do not want to be detected, challenged or apprehended. For offenders, the capability of guardianship (to detect, challenge or apprehend) is an

important consideration. It is argued that residents are more effective as guardians (crime deterrents) than passing members of the community.

Territorial reinforcement can be achieved through: Design that encourages people to gather in public space and to feel some responsibility for its use and condition

- ✓ Design with clear transitions and boundaries between public and private space
- ✓ Clear design cues on who is to use the space and what it is to be used for. Care is needed to ensure that territorial reinforcement is not achieved by making public spaces private spaces, through gates and enclosures.

• **Environmental Maintenance**

Clean, well-maintained areas often exhibit strong territorial cues. Rundown areas negatively impact upon perceptions of fear and may affect community confidence to use public space and ultimately, it may affect crime opportunity. Vandalism can induce fear and avoidance behaviour in a public space, therefore the rapid repair of vandalism and graffiti, the replacement of car park lighting and general site cleanliness is important to create a feeling of ownership. Ownership increases the likelihood that people will report or attempt to prevent crime.

Many graffiti vandals favour porous building surfaces, as 'tags' are difficult to remove. Often a ghost image will remain even after cleaning. Easily damaged building materials may be less expensive to purchase initially, but their susceptibility to vandalism can make them a costly proposition in the long term, particularly in at-risk areas. This should be considered when selecting materials for construction.

The overall design of the outdoor "common areas" should include low barrier vegetation, bright/even lighting, wide/even paving, effective guardianship and an absence of entrapment opportunities. In addition to visible street numbering at the entrance to the complex, and throughout, this development should contain clearly signposted directional signage to assist both visitors and emergency services personnel.

Other Matters

Lighting

Offenders within the area target this type of development, both in its construction phase and when the units are occupied. Police would recommend the use of security sensor lights and a security company to monitor the site while construction is in progress.

Car Park Security

One of the major issues that have been brought to Police attention in this Local Government Area is the prevalence of offenders breaching the security access to the car park areas, and breaking into the vehicles. Due to the isolation of the garages,

these offences are not usually noticed by the owners until much later. It is suggested that this area be monitored by CCTV and appropriately sign-posted to deter potential offenders.

Way-finding

Wayfinding in large environments such as this proposed development site can be confusing. Design and definitional legibility are an important safety issue at these locations. Knowing how and where to enter and exit, and find assistance within the development, can impact perceptions of safety, victim vulnerability and crime opportunity. Signage should *reinforce*, but not be an alternative to legible design.

Letter boxes

Mail/identity theft costs the community millions of dollars annually and thieves thrive off residents leaving their letter box unlocked. It is highly recommended the letter boxes are constructed of quality material and be fitted with quality and robust locks.

Letter boxes that are positioned on the outside of the complex are easily accessible by offenders using master keys and residents leaving letter boxes unlocked, therefore access to the complex letter boxes should be in a separate secure room located in the foyer area of the entrance.

A security swipe card system or similar would ensure only resident access to this area would reduce mail theft. It is strongly recommended that CCTV cameras be installed to cover the entry into this area which will be an additional deterrent for thieves.

The NSW Police Force (NSWPF) has a vital interest in ensuring the safety of members of the community and their property. By using recommendations contained in this evaluation any person who does so acknowledges that:

- It is not possible to make areas evaluated by the NSWPF absolutely safe for the community and their property*
- Recommendations are based upon information provided to, and observations made by the NSWPF at the time the evaluation was made*
- The evaluation is a confidential document and is for use by the Council or the organisation referred to on page one*
- The contents of this evaluation are not to be copied or circulated otherwise than for the purpose of the Council or the organisation referred to on page one.*
- The NSWPF hopes that by using recommendations contained within this document, criminal activity will be reduced and the safety of members of the community and their property will be increased. However, it does not guarantee that the area evaluated will be free from criminal activity if its recommendations are followed.*

RECOMMENDATION:

There are no objections to this proposal however it is recommended the above Crime Prevention Through Environmental Design (CPTED) should be considered in this development.

CA Shade

Christopher Shade
Senior Constable
Crime Prevention Officer
Sutherland Shire Police Area Command
28 July 2021
Ph: 9542 0841

1) Crime Co Ordinator, Sergeant Millington – Sutherland PAC

I agree with the comments made by S/C Shade and recommend that careful consideration is given to the issues outlined above.

R. Millington
R. Millington
Sergeant
Sutherland Shire PAC
29 July 2021.

Bradbury

2) Crime Manager, Detective Chief Inspector ~~Panizza~~ – Sutherland PAC

Senior Constable Shade has assessed the Development Application and raised a number of areas to be considered from a crime prevention and safety perspective, which I support and agree need to be applied in the decision process of the Development Application.

GB

Gavin Bradbury
Detective Inspector
Sutherland Shire PAC
20th August 2021

3) Meredith Bagnall – Sutherland Shire Council

ANNEXURE C

Clause 4.6 – Height of Buildings Standard Variation



Clause 4.6 Variation Statement – Maximum Height (Clause 4.3)

The Development Standard & Proposed Variation

Clause 4.3(2) SSLEP 2015 relates to the maximum Height of Buildings requirements and refers to the *Height of Buildings Map*. The subject site is identified on the relevant map as straddling two boundaries with No. 348R Kingsway falling partly within area 'Q' which permits a building height of 20m and a small portion of that site and the remaining sites at Nos. 344-346 Kingsway falling within area 'T' which permits a building height of 25m. Building height is defined as:

“building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
 - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

Figure 17 below indicates where the boundary change in permissible building height is located within the site, which was provided by Council’s mapping unit based on a survey provided by the applicant. The hatched area illustrates the small part of the site where the 20m maximum building height applies. The remainder of the site has a 25m maximum building height.

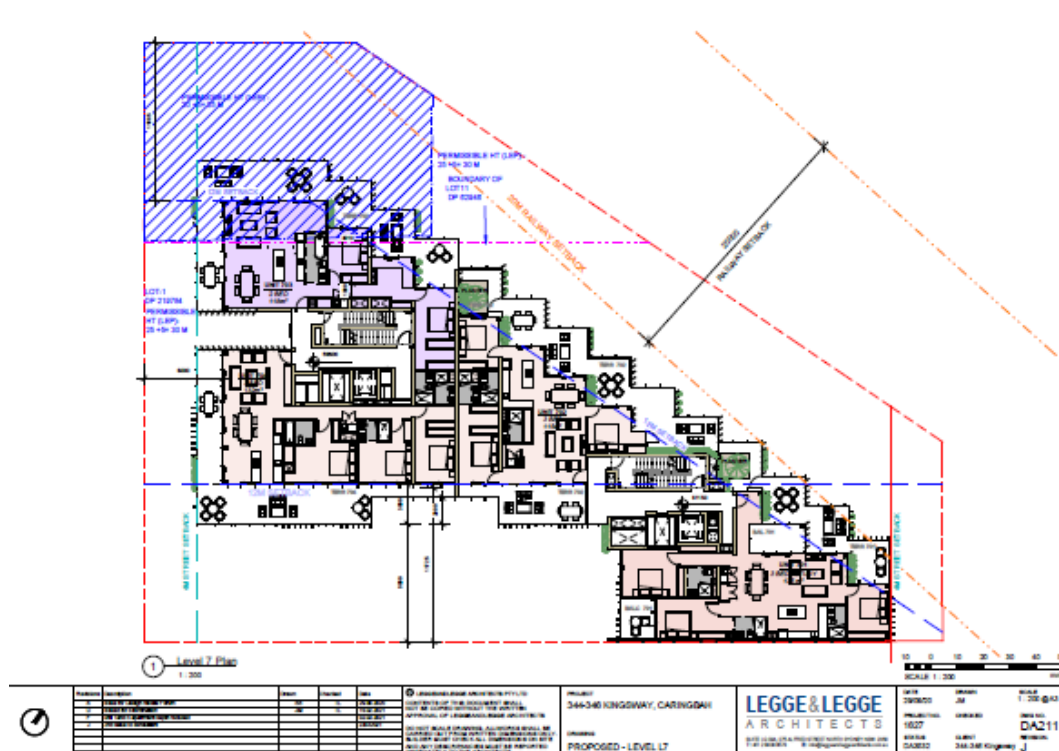


Figure 17 Permissible building height mapped on site plan (Level 7)

Also applicable to this site is Clause 2(E) which states the following in relation to building height:

(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),*

While Council’s Pre-DA letter indicated that the height bonus of 5 metres is only permissible where all the sites are redeveloped, we take a different view. The control in Clause 2(E)(a) above does not indicate that all the requirements must be delivered as part of one development parcel. In fact, unlike other sites mentioned within the permissible height increases under Clause 2(E) there is no requirement to amalgamate the sites. Furthermore the sites are not identified in Chapter 18: B3 Commercial Core – Caringbah, Part 5 ‘Amalgamation requirements’ as forming part of a larger amalgamation site. In addition, it is noted that No. 336 Kingsway which is included within Area 1 (see Height of Building Map at **Figure 18** below) also forms part of an amalgamation pattern under Part 5 ‘Amalgamation requirements’ (see Amalgamation pattern at **Figure 18** below) with No. 332-334 Kingsway. Amalgamation of the sites in Area 1 is further constrained by land ownership and constrained development potential with the majority of the land falling within Council ownership as public car park. There appears to more logic in the sites being developed individually and delivering pedestrian plaza, pedestrian access and vehicular access particularly given the above and the different height and density requirements for the six sites that form Area 1.



Figure 18 Height of Buildings map and Caringbah Centre Amalgamation Pattern

The proposal includes the improved pedestrian access through the land from Park Lane to the Kingsway and therefore an increased building height is afforded to the site, allowing 25m on the small parcel of land at No. 348R Kingsway and a 30m building height for the remainder of the site and the land at No. 344-346 Kingsway. Of note to Area 1 is the Caringbah Centre Strategy Map under the SSDCP Chapter 18: B3 Commercial Core Caringbah, provided at **Figure 19**, which identifies the location of the pedestrian plaza (brown hatched area at centre of car park), improved pedestrian link (blue dash) and the primary cycle route (red dash).



Figure 19 Caringbah Centre Strategy Map

The project Architect explored the option of a through site link as suggested in the guidance but careful consideration of the merits of such a link resulted in the current design. Evidence of this process is outlined in the Architect's Design Verification Statement where the proposed benefits of the current proposal are compared to an internal site link and are reproduced below at **Figure 20** for clarity.

Internal Site Link Option	New Open Site Link Option
1. Dark with powered lighting	1. Bathed in daylight
2. Claustrophobic	2. Open to park or plants
3. Less unit visibility from street	3. Flexible internal layout
4. Isolation of retail servicing	4. Safe delivery to cafes
5. Minimal al fresco dining zone	5. Deep dining niches
6. Poorly ventilated corridor	6. Naturally vented zone
7. Limited access to cycles	7. Permeable bike entry
8. No room for bike racks	8. Bike racks integrated
9. Reliance on cameras for safety	9. Lobbies & retail visible
10. Reduced access to vegetation	10. Climbers and planters
11. Pedestrians limited site lines	11. Open road visibility
12. Partial visibility of kids park	12. Café kids park views
13. Slim usable podium deck	13. Deep terrace/balcony
14. Internal reverberation	14. No corridor echoes

Figure 20 Merits of open site link compared to internal site link

The retail frontage is vibrant, well lit, with night soffit lighting, accessible, shaded and cooled during hotter days by green creepers and integrated misting. The robust street furniture with integrated omni base lighting make it visible and safe for the public with soffit mounted lighting and security cameras.

Retail and Residential lobbies are tall glazed entries that are lockable or with card entry for security and safety. Illuminated wayfinding signage post show clear division between cycle and pedestrian access. A demountable bollard to the cycle lane prevents private vehicles using it illegally.

The proposal clearly delivers the improved pedestrian link along the northern boundary of the site, separating pedestrians from cyclists who also use this connection between President Avenue and Kingsway. The design focus is upon integrating the pedestrian link with the building forecourt area, providing improved safety and a sense of place.

The detailed design forms part of the Landscape Plans prepared by *Ground Ink Landscape Architects* and is detailed on the 'Ground floor landscape plan and section- LDA-04' including the design theme, materials and finishes. The remaining deliverables, being the plaza and access to No. 340 Kingsway can still be achieved through development of the remaining sites that form part of Area 1, all of which are under Council's ownership and control.

Notwithstanding the additional height afforded by Clause 2(E) of the SSLEP 2015, the proposal exceeds the permissible height of 25m and 30m, with a height of 32.2m to the roof top open space and building (maximum 7.2m) which falls within the 25m height of building area (Core T2), 33.4m to the lift overrun (Core T2) and 34.25m (Core T1) which fall within the 30m height of building area. The height variations can largely be attributed to the provision of the lift overrun to access the rooftop communal open space and the proposed shelter/shade structure above the seating areas. As indicated below at **Figure 21**, Section DD supports that the building is largely located within the maximum height limit and the projecting elements are limited to the lift overrun and shade structures over part of the rooftop terrace and a small portion of the parapet where the natural ground level falls away adjacent to the northern boundary. The non-compliance is generally limited to the centre of the building and is fully compliant with the height requirements permitted by Clause 2E at the street frontage to Kingsway and when viewed from the Council carpark to the rear.

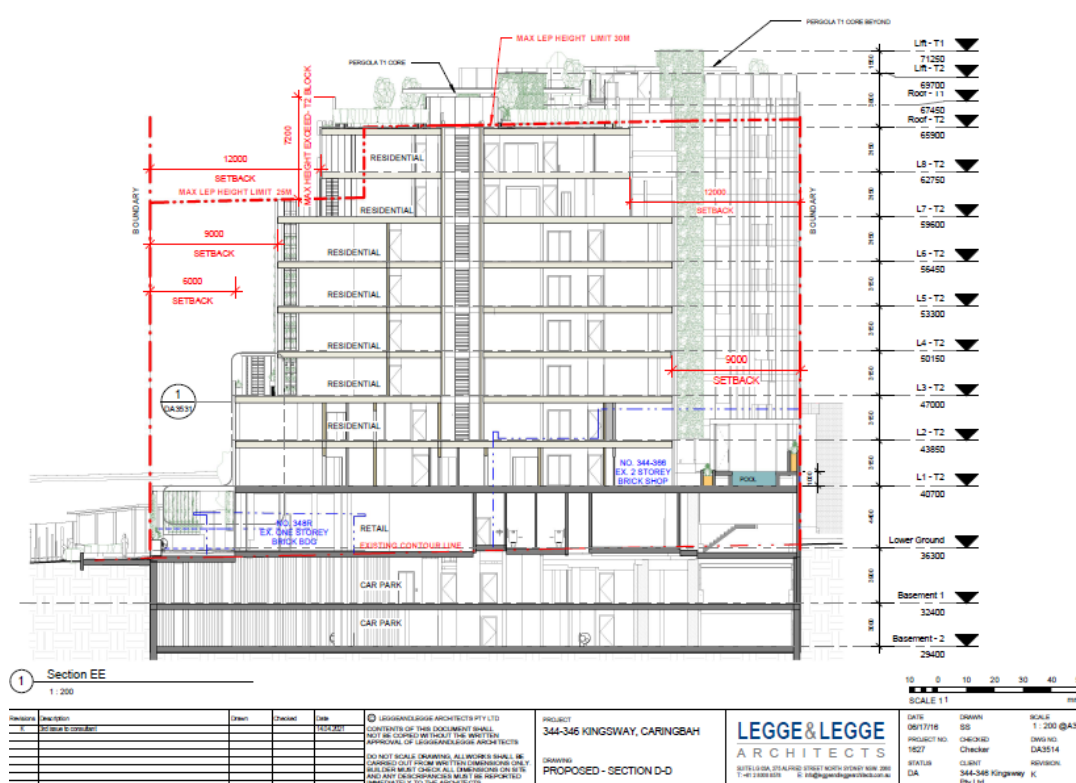


Figure 21 Height non-compliance (Section DD)

In order to support the extent of the non-compliance height blanket diagram has also been prepared and is provided at **Figure 22** below.

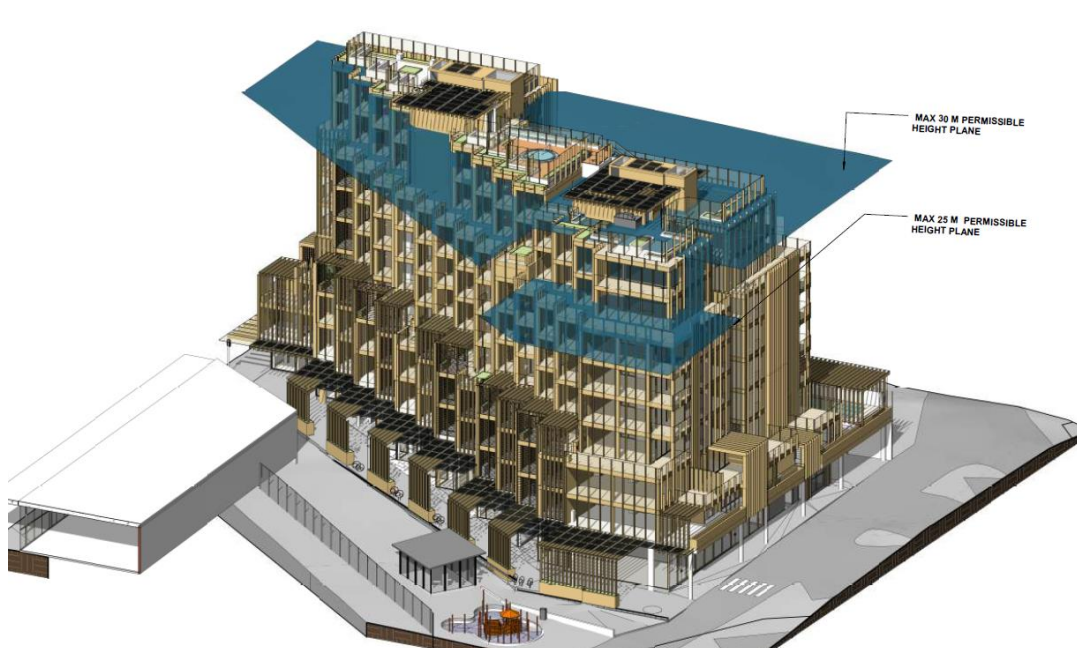


Figure 22 Height blanket diagram

As indicated in **Figures 21 and 22** the principal height non-compliance occurs at the transition between the two height limits at the north west corner of the site where the outside facade of the corner apartments exceeds the 25m height limit with a height of 32.2m, a variation of 7.2m. In addition, part of the roof top open space including the two lift cores and attached pergola structures exceed the 30m building height limit by 4.25m (Core T1) and 3.4m (Core T2) above the 30m height limit. The non-compliance relates mostly to the safety balustrades and shade structures over the roof top communal open space with the upper level of the building designed to comply with the height requirement and therefore results in a building that is generally consistent with the scale of development expected at the site. Maximum height control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

Clause 4.6 Objectives

The objectives and provisions of clause 4.6 are as follows:

“4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

(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.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4."



The Height of Buildings development standard is not “expressly excluded” from the operation of clause 4.6 and development consent can therefore be granted to the subject application despite the contravention of the Height of Buildings development standard.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

In *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

The objectives of the standard are achieved notwithstanding non-compliance with the standard:

- 1. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 2. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 3. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 4. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to *Wehbe* and states:



“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Compliance with the maximum height of building development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out within this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. Clause 4.6(4)(a)(ii) is addressed below.

Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

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 building height:

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 car park 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.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(4)(a)

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in detail below). Clause 4.6(3)(b) is also addressed above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed below.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out (Clause 4.6(4)(a)(ii))

Objectives of the development standard

The objectives and relevant provisions of clause 4.3 are as follows, inter alia:

"4.3 Height of buildings

(1) The objectives of this clause are as follows:

(a) *to ensure that the scale of buildings:*

(i) *is compatible with adjoining development, and*

(ii) *is consistent with the desired scale and character of the street and locality in which the buildings are located or the desired future scale and character, and*

(iii) *complements any natural landscape setting of the buildings,*

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

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

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

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

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

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map."*

The *Height of Buildings Map* nominates a maximum height of 25m for the portion of No. 348R Kingsway, 30m for the remainder of that site and the larger parcel at No. 344-346 Kingsway. The specific location of the different heights applicable have been mapped by Council's mapping unit based on the site survey and therefore indicates precisely where the transition in permissible height applies within the development parcel. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a maximum height of 34.25m (Core - T1) and 33.4m to the lift overrun (Core -T2) for the lift overruns and attached shade structures provided for the roof top communal open space area and exceedances along the northern façade (32.2m) where the reduced building height of 25m applies.

Objectives (e) and (f) are not applicable to the proposal. In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of clause 4.4 are addressed in turn below.

Objective (a):

The proposed encroachment into the maximum building height is not considered to be excessive and will not substantially change the appearance of the proposal within the locality, nor will the additional height be readily apparent or obvious to the casual observer at street level or from adjoining properties, due to the height exceedance being concentrated above the roof top communal open space, to the central portion of the building and relating to lightweight shade structures, balustrades and a small portion of the building only. The building has been designed to relate to the scale and form of other existing and future mixed use developments within this part of the Caringbah commercial core, where the development is located. It is noted that objective (a) refers to being "compatible" with adjoining development. It is considered that "compatible" does not promote "sameness" in built form but rather requires that development fits

comfortably with its urban context. Of relevance to this assessment are the comments of Roseth SC in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191:

“22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.”

The proposed encroachment into the maximum building height affects only the centre of the building where two lift cores at each end of the roof top space extend above the building and a section of roof shade structure that extends over the BBQ seating area. A number of the glass balustrades surrounding the roof top communal open space also sit above the 25m & 30m height limit. The building has been designed to comply with the building height at the street edge to Kingsway with a maximum height of 12m and the 30m height limit permitted beyond the 4m setback for the upper levels. The siting and scale of the building addresses the Kingsway and is compatible with the likely future development along the street frontage. The non-compliant portion is located at the centre of the building where each lift core extends to facilitate access to the communal open space for all occupants and visitors to the site. The encroachments will not be perceptible from neighbouring sites. The proposal seeks to deliver the improved pedestrian link sought through council's LEP and DCP controls.

The zone objectives promote the provision of a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community. The proposed development is a well-designed, mixed use scheme which seeks to retain the existing street tree adjacent to the site and will contribute to an improved urban form for this section of the Caringbah commercial core. The building is innovative in terms of its sustainability and seeks to provide a building of design excellence as a benchmark for other new mixed use developments in this locality.

Accordingly, it is considered that the scale of the building is compatible with adjoining development, the desired future character of the locality and the natural setting. The height breach does not offend this compatibility in any noticeable way. The proposal therefore satisfies Objective (a).

Objective (b):

In terms of daylight access to buildings and the public domain, the proposed height non-compliance does not contribute towards any significant additional overshadowing of the adjoining public domain or neighbouring properties. In fact, a shadow study has been undertaken of the impact the proposed building would have on the adjoining sites and while some overshadowing is anticipated given the site orientation there is no significant impact to sunlight access for any surrounding development particularly once the street wall building and height and density for neighbouring sites has also been met. The design of the proposal ensures that any neighbouring development can achieve the minimum requirements of the ADG in terms of solar access. The height non-compliance does not lead to a greater loss of sunlight to the neighbouring sites compared to a compliant proposal. It is noted that the site orientation, street wall building form and commercial core location will inevitably lead to some overshadowing of neighbouring sites. This outcome is recognised in the lack of controls for solar access under the Caringbah Commercial Core and therefore it is considered that the requirements of objective (b) are met.

Objective (c):

In terms of views, the height of the building will not result in any significant additional view loss compared with a compliant building. The surrounding lands do not afford any significant views from or across the site. Therefore, the proposed development will not result in loss of any significant views from adjacent properties.

In terms of privacy, the non-compliance will not have any additional impacts on adjoining properties as the height increase affects the roof top lift overruns and provides for shading to the roof top terrace and does not increase wall





height or window height within the building. The site is surrounded on two sides by road frontages (Kingsway and Willarong Road) and in the case of the longest façade faces the pedestrian link and railway line, a blank parapet wall extends along the southern boundary which will eventually be shared with the neighbouring site to the south once it is redeveloped. The proposal will not compromise the use and enjoyment of neighbouring properties, enabling the adjacent properties to be developed in a similar fashion. The examination of the proposal in this report demonstrates that there will be no unreasonable detrimental impact to privacy and daylight access for neighbouring properties. The development will enhance the interface with the public domain.

In relation to solar access, this has been addressed in relation to Objective (c) above.

Objective (d):

Matters of visual bulk have largely been addressed in relation to Objective (a). In essence, it is considered that given the location of the proposed non-compliance, architectural treatment of the building in terms of setbacks, materials and viewing points from which the non-compliances would be seen, visual impacts will be minimal. The proposed development provides for a floor space ratio that is above the maximum permissible however, much of the non-compliance is generated from the labyrinth of internal corridors that extend from the two circulation cores and are not excluded from the calculation of floor space ratio under the definition. The building also seeks to provide a greater number of three bedroom apartments which have a larger floor area and seek to fill the void in family housing which is often underrepresented in unit developments. Overall the bulk of the building is consistent with what will be developed on neighbouring sites as the proposal still seeks to achieve the setbacks, height limits to street and other built form controls. Accordingly, the proposal satisfies Objective (d).

The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.

Objectives of the Zone

Clause 4.6 (4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of the Zone B3 Commercial Core, and a response to how the proposal meets the objectives is provided as follows:

- *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 zone objectives overlap to a large extent with the objectives of the height control and have been addressed above. Further to that, it is considered that the proposal directly responds to the housing, employment and social needs of the community by providing a high quality mixed-use development within close proximity of public transport. 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, as discussed above it is considered that there is an absence of significant impacts of the proposed non-compliance on the amenity of future building occupants, on area character and on neighbouring properties.





On “planning grounds” and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve “a better outcome for and from development”, it is considered that the proposal meets the building height and massing objectives for the site and locality. The proposed lift overrun and non-compliant roof structure do not impact on solar access, views or outlook and will provide for unrestricted access to all dwellings and the roof top communal open space within the development.

Therefore, on balance, the proposal is considered to achieve a planning purpose of enhancing access and amenity for all dwellings within the site in the absence of any additional adverse impacts.

Ultimately, the proposal provides for a better outcome for and from the development and the variation is worthy of support. Further justification is provided herewith.

The Concurrence of the Secretary has been obtained (Clause 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

The public benefit of maintaining the development standard (Clause 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height, as such there is no public benefit in maintaining strict compliance with the development standard. Whilst, the proposed buildings exceeds the maximum building height, the proposal encroachments have no impacts beyond that of a complaint building height.

Conclusion

Therefore, for the reasons outlined within the variation request, there are sufficient environmental planning grounds to support the proposal and it would be unreasonable and unnecessary to require strict compliance with the Height of buildings development standard. Furthermore, this clause 4.6 variation request clearly demonstrates that the proposal will be in the public interest given that the development is consistent with relevant objectives of both the standard and the land use zone. On this basis, the requirements of clause 4.6(3) and (4) are satisfied and Council has the power to grant variation to the development standard.





ANNEXURE D

Clause 4.6 – Floor Space Ratio



Clause 4.6 Variation Statement – Floor Space Ratio (Clause 4.4)

The Development Standard & Proposed Variation

Clause 4.4(2) of the Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) relates to the maximum Floor Space Ratio for a building on any land and refers to the Floor Space Ratio Map. The subject site is identified on the relevant map (FSR_001FA) as having a maximum floor space ratio of 2.5:1 (Area U1) and affecting portion of No. 348R Kingsway and 3:1 (Area V) for a small part of No. 348R Kingsway and all of No. 344-346 Kingsway as shown on the FSR Map below at **Figure 23** (subject site outlined in yellow).

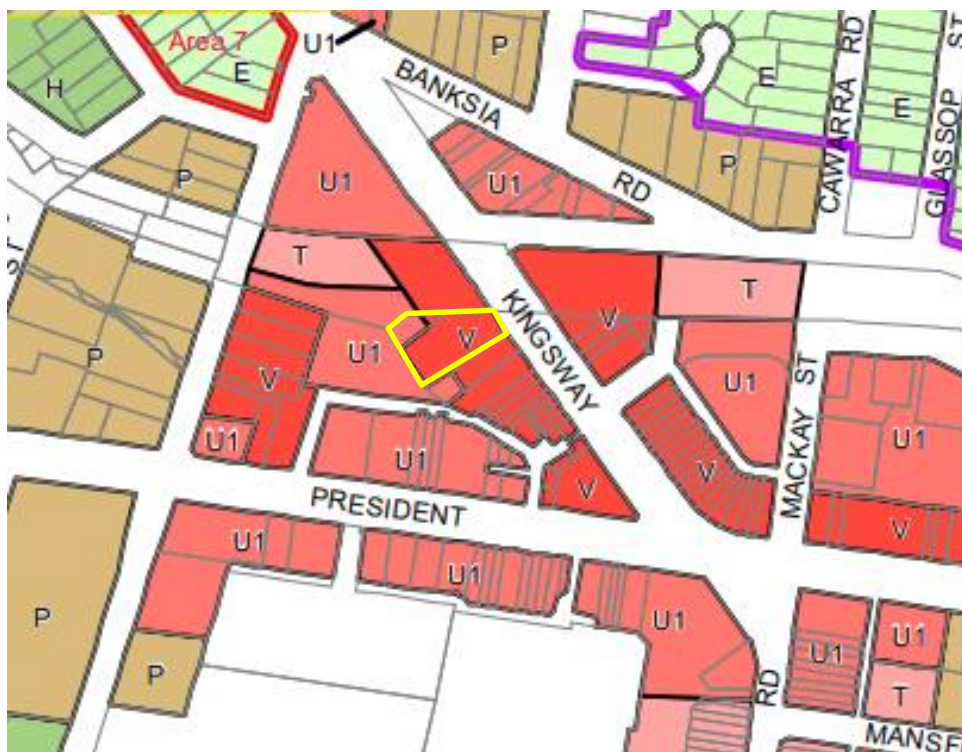


Figure 23 FSR Map extract (site outlined in yellow)

Gross Floor area is defined as:

“the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
- but excludes:*
 - (d) any area for common vertical circulation, such as lifts and stairs, and*
 - (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*

- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

The following table at **Figure 24**, indicates how floor space ratio has been calculated for the sites given the two different controls that apply.

	Site Area	Allowable FSR	Max. GFA	Proposed Area	Proposed FSR
FSR No. 348R	336m ²	2.5:1	840m ²	-	-
FSR No. 344-346 + 348R	1682m ² + 85m ² Tot = 1787m ²	3.0:1	5,301m ²	-	-
Combined FSR	2103m ²	-	6,141m ²	6775.8.1m ²	3.22:1

Figure 24 FSR calculations

Of note from the calculations is that the proposal results in an FSR of 3.2:1, which exceeds the control by 634.8m², a variation of 10.337%. The maximum FSR development standard is not “expressly excluded” from the operation of Clause 4.6 and development consent can therefore be granted to the subject application despite the contravention.

Objectives and Provisions of Clause 4.6

The objectives and provisions of Clause 4.6 are as follows:

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(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.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 6.17 or 6.18.

The Floor space ratio development standard is not "expressly excluded" from the operation of clause 4.6 and development consent can therefore be granted to the subject application despite the contravention of the Floor space ratio development standard.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is

therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6)

Compliance with the Development Standard is unreasonable or unnecessary in the circumstances of the Case (Clause 4.6(3)(a))

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on numbers 1 and 3 for the purposes of this Clause 4.6 variation [our underline]):

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ refers to *Wehbe* and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Compliance with the maximum FSR development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in this statement. Objectives (b) and (c) of the control would be thwarted if strict compliance was required. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. Clause 4.6(4)(a)(ii) is addressed above.

Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

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 B3 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.

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly the unique building articulation and façade which contribute to the favourable urban design outcome and the inclusion of many sustainable design features. In addition, the proposal unlike many other residential flat building and shop top housing developments seeks to provide a greater number of three bedroom apartments which are often underrepresented in this building typology. The additional FSR allows for a development that achieves larger family size apartments, rather than providing a fully compliant floor area which removes many of the unique internal and external design features resulting in a compliant scheme that is poorly articulated, does not contribute to a better urban environment or meet the demands of families who cannot afford larger family homes in the area. The site dimensions and geometry are also unique and enable a building that can provide additional FSR in a manner where it is largely internalised and does not adversely impact the character of the streetscape.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(4)(a)

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) above (and furthermore in terms of meeting the objectives of the development standard, this is addressed below). Clause 4.6(3)(b) is also addressed above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(i). The matters in Clause 4.6(4)(a)(ii), being the public interest are addressed below.

The Proposed Development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out (Clause 4.6(4) (a)(ii)).

Objectives of the development standard.

The objectives and relevant provisions of clause 4.4 are as follows, inter alia:

- (1) (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 generate, and
 - (v) the desirability of retaining the scenic, visual, and landscape qualities of the area.

In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 4.4 are addressed in turn below.

Objective (a): “to ensure that development is in keeping with the characteristics of the site and the local area”

Notwithstanding the variation to the maximum floor space ratio development standard the proposal reflects a built form that is in keeping with the characteristics of the site and local area. The character envisaged by the Caringbah Commercial Core under the SSDCP 2015 is to provide for mixed use developments, incorporating ground floor shops and retail uses with residential uses above. The proposal meets this key objective and will help to revitalise the centre, it will also deliver an improved pedestrian link and in doing so will increase pedestrian activity between the Kingsway and President Avenue via a much safer and more vibrant environment with cafes/shops at ground

level. Overall the proposal achieves a key improvement to the public domain by achieving a much improved pedestrian and cycle link through the Caringbah commercial core.

Objective (b): “to ensure that the bulk and scale of new buildings is compatible with the context of the locality”

The proposed bulk and scale of the new building will be compatible with the context of the locality and proposes a building that will fit in with the emerging character. The Caringbah Commercial Core currently has a mix of buildings ranging from single storey shops over the railway line to eight and nine storey buildings along the Kingsway. The strategy for the commercial core envisages increased heights and density close to public transport, shops and services which is reflected in the final design for the site. Careful consideration has been given to the context of the locality through the Urban Design Report which has informed the final building design. The proposal reaches a maximum height of nine storeys, providing improvements to the pedestrian experience, usability, permeability and connectivity to the site. Further redevelopments on Council land will see the delivery of a “Green Plaza” over part of the public car park. The proposed built form will respond to the emerging character and is considered to be compatible with the context of the locality.

Objective (c): “to control development density and intensity of land use, taking into account—

(i) the environmental constraints and values of the site, and

The proposal will result in the loss of approximately 10 trees within portion of the site (No. 348R Kingsway) which are unable to be retained due to the planning controls and the desire to achieve basement car parking. However, replacement planting is proposed with two large indigenous trees proposed to be planted at either end of the pedestrian pathway within a deep soil zone.

(ii) the amenity of adjoining land and the public domain, and

The amenity of the adjoining land and the public domain will be improved through widening of the pedestrian link, separating bicycles from pedestrians and providing landscaping and an active frontage to a principal thoroughfare within Caringbah commercial core. The proposed built form is consistent with the street wall building pattern envisaged along the Kingsway and proposes a building of design excellence that will contribute to a more vibrant and safe urban centre.

(iii) the availability of infrastructure to service the site, and

The site is well served by existing infrastructure and an increase in density and intensity of land use will not compromise this availability.

(iv) the capacity of the road network to accommodate the vehicular and pedestrian traffic the development will generate, and

The Traffic and Parking assessment report provided with the application supports that the proposed development will not impact negatively upon the capacity of the road network to accommodate the vehicular and pedestrian traffic the development will generate. The site is ideally located in close proximity to Caringbah train station and incorporates sufficient bicycle parking that the design will also encourage alternative modes of travel to and from the site.

(v) the desirability of retaining the scenic, visual, and landscape qualities of the area.”

The proposal will improve the scenic and visual qualities of the area by erection of architecturally unique building which incorporates environmentally sustainable building materials and green walls. While some vegetation, including two large native species, will be lost the provision of two deep soil zones at each end of the pedestrian access will also result in the provision of two native replacement trees which will contribute to the areas landscape

qualities. The green walls, roof top planting and ground level planting will also ensure the landscape quality of the area is improved.

The proposal satisfies Objective (c) as it minimises adverse environmental effects on adjoining properties.

Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone B3 'Commercial Core', and a response as to how the proposal meets the objective is provided as follows:

- *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.*

The proposal will provide for ground level commercial/retail uses with residential apartments above, providing a mix of uses which is encouraged by the permissible uses in the zone and will serve the needs of the local and wider community.

- *To encourage appropriate employment opportunities in accessible locations..*

The proposal will provide for renewal on the subject site in a manner that will facilitate a range of services or employment uses to be provided within the ground floor tenancies.

- *To maximise public transport patronage and encourage walking and cycling.*

The subject site is located in a highly accessible area, with excellent access to public transport. The proposal maximises density on the site, in an appropriate development form, and accordingly will maximise potential for public transport patronage as well as walking and cycling. The proposal provides a compliant number of parking and bicycle spaces and therefore is in line with what the planning controls promote with regard to modal split.

- *To strengthen the viability of existing commercial centres through increased economic activity, employment and resident population*

The proposal will strengthen the viability of the existing commercial core by providing an active street frontage to Kingsway which returns along the pedestrian access to the public car park at the rear. The retail/café tenancies will contribute to economic activity and increase employment opportunities, while the provision of 48 apartments will also support the economic environment in Caringbah and the viability of the existing commercial centre.

- *To create an attractive, vibrant and safe public domain with a high standard of urban design and public amenity.*

The building is innovative in both architectural and environmental design and will make a positive contribution to an attractive, vibrant and safe public domain. This is supported by Ed Blakely's letter 'Creating Great Spaces for Great Places, Caringbah as a Place making Opportunity' which details the urban design and public amenity features that have been incorporated into the design from an early planning stage and have led to a building of significant urban design merit.

- *To enhance commercial centres by encouraging incidental public domain areas that have a community focus and facilitate interaction, outdoor eating or landscaping.*



The proposal enhances the commercial core by incorporating public domain improvements along the existing public pathway, providing shops and cafes that are orientated towards the thoroughfare and incorporating high quality landscaping. The design will facilitate interaction and outdoor dining which will enhance the commercial centre.

- *To provide for pedestrian-friendly and safe shopping designed to cater for the needs of all ages and abilities*

The proposal will contribute to significant improvements in the pedestrian environment by providing safe and level access to the new retail and restaurant/café premises, a wider pedestrian thoroughfare between the Kingsway and the public car park to the rear which is separated from the cycle path, an active frontage which achieves safer by design requirements ensuring the pedestrian environment receives surveillance from shops and apartments and improvements to the paving and landscaping which will cater for the needs of all age and abilities.

The proposed development is consistent with the objectives of Zone B3 in that it will result in the development of a variety of commercial uses on the ground floor in a highly accessible area. These uses will be compatible with the residential apartments creating a mix of uses which will contribute to the economic strength along this section of the Kingsway. The proposal will create an attractive, vibrant and safe public domain through the delivery of a well-designed pedestrian link between the Kingsway and Willarong Road to the rear. The level pedestrian access which is separated from the existing cycle route will achieve a pedestrian friendly and safe shopping environment.

The FSR variation is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

The concurrence of the Secretary has been obtained (Clause 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

Contravention of the maximum FSR development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

The public benefit of maintaining the development standard

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum FSR. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed building FSR exceeds the maximum permitted on the site by 10.337% (634.8m²) the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.





Conclusion

Having regard to all of the above, it is our opinion that compliance with the maximum FSR development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.

