

## SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSSH-85
<b>DA Number</b>	DA21/0610
<b>LGA</b>	Sutherland Shire Council
<b>Proposed Development</b>	Demolition of existing structures and construction of a mixed-use development comprising ground level commercial tenancies, 48 residential apartments above and strata subdivision
<b>Street Address</b>	344-346 and 348R Kingsway, Caringbah
<b>Applicant/Owner</b>	344-346 Kingsway Pty Limited
<b>Date of DA lodgement</b>	30 June 2021
<b>Number of Submissions</b>	7 (two from one submitter)
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	The proposed development has a capital investment value of more than \$30 million, estimated at (\$45,126,950.00).
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021.</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).</li> <li>• Apartment Design guide (ADG)</li> <li>• State Environmental Planning Policy (Planning Systems) 2021.</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021.</li> <li>• Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).</li> <li>• Sutherland Shire Development Control Plan 2015 (SSDCP 2015).</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<p>Appendix A – Council's Report to the SSPP dated 8 November 2021 and the relevant Annexures to that report including:</p> <p style="padding-left: 40px;"> <i>Appendix A Correspondence from Transport for NSW</i>  <i>Appendix B - Minutes of the Design Review Forum Meeting</i>  <i>Appendix C - SEPP 65 Design Principles Compliance Table</i>  <i>Appendix D - Apartment Design Guide Compliance Table</i>  <i>Appendix E - Sutherland Shire Development Control Plan 2015 Compliance Table</i>  <i>Appendix F – Correspondence from Sydney Trains</i>  <i>Appendix G – Correspondence from NSW Police</i>  <i>Appendix H - Clause 4.6 – Building Height</i>  <i>Appendix I – Clause 4.6 – Floor Space Ratio</i> </p>
<b>Report prepared by</b>	Tom Mithen
<b>Report date</b>	16 May 2022 (Panel Date: 31 May 2022)

### Summary of s4.15 matters

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

**Yes**

### Legislative clauses requiring consent authority satisfaction

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

**Yes**

### Clause 4.6 Exceptions to development standards

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

**Yes**

**Special Infrastructure Contributions**

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

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

**Not  
Applicable**

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**Conditions**

Have draft conditions been provided to the applicant for comment?

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

**No**

## REASON FOR THE REPORT

This report has been prepared in response to the deferral of determination of the application by the Sydney South Planning Panel ("SSPP") on 22 December 2021. The Panel granted the applicant additional time to submit revised information to address the issues identified in Council's SSPP report dated 8 November 2021. The Panel also requested that Council prepare an Addendum report in response to the issues raised following receipt of the Applicant's revised information.

## THE SITE AND PROPOSAL

The subject site is an irregularly shaped parcel known as 344-346 and 348R Kingsway, Caringbah. It comprises two parcels of land legally described as Lot 1 DP 219784 (1682m<sup>2</sup>) and Lot 11 DP 662946 (411m<sup>2</sup>) and is located on the southern side of Kingsway within the Caringbah Commercial Centre. The south-western boundary of the site abuts the Council owned carpark, situated in the Centre of the Caringbah Commercial Centre.

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

## ASSESSMENT OFFICER'S RECOMMENDATION

### THAT:

- 1.0** That Development Application No. DA21/0610 for Demolition of existing structures and construction of a mixed use (commercial and residential) development and strata subdivision. at Lot 1 DP 219784, Lot 11 DP 662946 344-346 Kingsway, Caringbah, 348R Kingsway, Caringbah is determined by the refusal of development consent for the reasons outlined below.
- a) The application is considered unacceptable pursuant to the provisions of s4.15 1(a)(i) of the Environmental Planning and Assessment Act, 1979, in that the proposed development fails to comply with Clause 4.3(2) – Height of Buildings of Sutherland Shire Local Environmental Plan 2015. The written request pursuant to Clause 4.6 fails to demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.
  - b) The application is considered unacceptable pursuant to the provisions of s4.15 1(a)(i) of the Environmental Planning and Assessment Act, 1979, in that the proposed development fails to comply with Clause 4.4(2)– Floor Space Ratio of Sutherland Shire Local Environmental Plan 2015. The written request pursuant to Clause 4.6 fails to demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.

- c) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed development fails to comply with Clause 6.16(1)(b), (c), (f) and (g) – Urban Design – general and 6.17(b), (c), (d) and (e) Urban design – residential accommodation set out in Sutherland Shire Local Environmental Plan 2015. The proposed development incorporates non-compliant side and rear building setbacks, resulting in a built form outcome which is of an excessive height, bulk and scale, having regard to the existing and desired future character of the Caringbah Centre. The proposal also has the potential to compromise future development of adjoining sites, and creates unacceptable amenity impacts for adjoining properties. Design elements of the building are unresolved which may compromise the overall visual aesthetic of the building and pedestrian amenity.
- d) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that insufficient information has been submitted to Sydney Trains to address Clauses 2.97 and 2.98 of State Environmental Planning Policy (Transport and Infrastructure) 2021 and concurrence has not been granted.
- e) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that insufficient information has been submitted to Council with respect to site contamination having regard to the requirements of State Environmental Planning Policy (Resilience and Hazards) 2021. Council has not been satisfied that the land can be made suitable for the proposed use pursuant to the provisions of Clause 4.6 of SEPP Resilience and Hazards.
- f) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, in that approval of the development will result in potential adverse amenity impacts for neighbouring properties in terms of visual and aural privacy and overshadowing.
- g) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as the proposal fails to address key servicing requirements of the development including vehicle access and loading for the development as set out in Chapter 36 of SSDCP 2015.
- h) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as the proposed excavation of the basement is likely to intercept groundwater and the proposal does not have General Terms of Approval from Water NSW.
- i) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, in that approval of the

development may result in site isolation of the neighbouring property at 340 Kingsway, Caringbah contrary to Chapter 18 of SSDCP 2015.

- j) The application is considered unacceptable pursuant to the provisions of s4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that approval of the development will create an undesirable precedent and is therefore not in the public interest.

## **ASSESSMENT OFFICER'S COMMENTARY**

### **1.0 PRIOR CONSIDERATION BY THE SYDNEY SOUTH PLANNING PANEL**

The SSPP reasons for deferral of the application are set out as follows:

*The Panel agreed to defer the determination of the matter until required information is provided by the applicant as there are a significant number of outstanding issues identified in Council's assessment report needing resolution before the application can be determined. These include but are not limited to building height including bonus height restrictions, FSR, site isolation, built form and SEPP 65 considerations including residential amenity, streetscape, activation and safety, Sydney Rail matters, building services, SEPP 55 compliance, engineering matters (drainage, parking, traffic, emergency hardstand area), landscaping and waste management and collection.*

*The Panel expects revised information as referred to above to be submitted to Council by the end of January 2022. Council is requested to update their assessment within 4 weeks of the receipt of revised information and provide draft conditions if appropriate to the applicant prior to consideration by the panel. If revised information from the applicant is not provided by the end of January 2022 the Panel may move to determine the DA based on the information currently at hand.*

*When this information has been received, The Panel will determine the matter electronically. The Panel expects an addendum assessment report from Council responding to the material and matters raised above.*

A copy of the original assessment report for the SSPP is included at **Appendix A**. That report is superseded by this Addendum to the extent of the additional information provided by the applicant.

### **2.0 RESPONSE TO THE OUTSTANDING ISSUES**

From January to March 2022, the applicant submitted additional information to Council, including the following:

- Detailed Plans and Sections of the basement levels adjacent the train line, submitted 17 December 2021
- Supplementary Noise Impact Assessment, dated 3 March 2022
- Geo-technical Assessment, dated 9 March 2022
- A plan showing location of the fire service booster and fire truck, dated 1 March 2022

- Geo-technical Assessment for Sydney Trains, dated 9 March 2022
- Draft Construction Noise and Vibration Management Plan, dated 3 March 2022
- Detailed Site Investigation Contamination Report, dated 9 March 2022
- Letter of response to the traffic and parking issues, dated 25 March 2022
- Civil Engineering Plans Issue 02, dated 22 April 2022
- Letter of response to the NSW Police submission, dated 23 March 2022
- Evidence of lodgement of additional information requested by TfNSW and Sydney Trains.

In April and May 2022, the applicant submitted further additional information to Council, including:

- Geo-technical and Vibration Management Plan, dated 21 April 2022
- Geo-technical Assessment, dated 22 April 2022
- Updated architectural Plans (basement and storage plan only).

Council's assessment of the additional information against the recommended reasons for refusal is provided below:

### **Building Design**

#### **Recommended reasons for refusal**

- a) *The application is considered unacceptable pursuant to the provisions of s4.15 1(a)(i) of the Environmental Planning and Assessment Act, 1979, in that the proposed development fails to comply with Clause 4.3(2) – Height of Buildings of Sutherland Shire Local Environmental Plan 2015. The written request pursuant to Clause 4.6 fails to demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.*
  
- b) *The application is considered unacceptable pursuant to the provisions of s4.15 1(a)(i) of the Environmental Planning and Assessment Act, 1979, in that the proposed development fails to comply with Clause 4.4(2) – Floor Space Ratio of Sutherland Shire Local Environmental Plan 2015. The written request pursuant to Clause 4.6 fails to demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.*
  
- c) *The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed development fails to comply with Clause 6.16(1)(b), (c), (f) and (g) – Urban Design – general and 6.17(b), (c), (d) and (e) Urban design – residential accommodation set out in Sutherland Shire Local Environmental Plan 2015. The proposed development incorporates non-compliant side and rear building setbacks, resulting in a built form outcome which is of an excessively height, bulk and scale, having regard to the existing and desired future character of the Caringbah Centre. The proposal also has the potential to compromise*

*future development of adjoining sites, and creates unacceptable amenity impacts for adjoining properties. Design elements of the building are unresolved which may compromise the overall visual aesthetic of the building.*

#### Applicant's Response

The applicant contends the proposed development is an innovative design that will serve as a focal point in revitalising the Caringbah Town Centre. They contend that the proposed building height and FSR is appropriate for the site, and the development should be supported by Council in accordance with the current design.

#### Council's Comments

The applicant has not made any changes to the building design to address the concerns raised by Council in relation to the built form and urban design, or the departure from the Building Height and FSR development standards under SSLEP 2015. The Council assessment report (8 November 2021) contains an in-depth assessment of the proposal, having regard to the applicant's written request seeking an exception to the development standards. The assessment set out in this report is still applicable and can be relied upon in this instance to assess the proposal in relation to the built form and urban design outcome for the site.

### **Sydney Trains**

#### Recommended reason for refusal

- d) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that insufficient information has been submitted to Sydney Trains to address Clauses 85 and 86 of State Environmental Planning Policy (Infrastructure) 2007 and concurrence has not been granted.*

#### Applicant's Response

The applicant has provided additional geotechnical information to Sydney Trains in relation to the impact of the proposed development on the adjacent rail infrastructure along the northern boundary of the site.

#### Council's Comments

The additional information requested by Sydney Trains was submitted in accordance with the requirements under State Environmental Planning Policy (Transport and Infrastructure) 2021. Sydney Trains has indicated that the information now submitted is likely to lead to concurrence, although this concurrence had not been received at the time of preparing this report. As the application is recommended for refusal, the initial reason for refusal identified in the original assessment report must be retained.

### **Contamination**

#### Recommended reason for refusal

- e) The application is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of*

*the Environmental Planning and Assessment Act 1979, in that insufficient information has been submitted to Council with respect to site contamination having regard to the requirements of State Environmental Planning Policy 55 (Remediation of Land) (SEPP 55). Council has not been satisfied that the land can be made suitable for the proposed use pursuant to the provisions of clause 7 of SEPP 55.*

#### Applicant's Response

A Detailed Site Investigation (DSI) Contamination Report in accordance with the contamination requirements under State Environmental Planning Policy (Resilience and Hazards) 2021 has been submitted with the application.

#### Council's Comments

Council's Environmental Science Team advises that the DSI has not been reviewed by an appropriately qualified and experienced environmental consultant and is therefore not acceptable due to the lack of environmental certification. The recommended reason for refusal is therefore retained.

#### **Amenity Impacts**

##### Recommended reason for refusal

- f) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, in that approval of the development will result in potential adverse amenity impacts for neighbouring properties in terms of visual and aural privacy and overshadowing.*

#### Applicant's Response

The applicant contends that the development should be supported in accordance with the current design.

#### Council's Comments

As stated previously, the applicant has not made changes to the building design to address the concerns raised in relation to the built form and urban design and the departure from the Building Height and FSR development standards under SSLEP 2015. It is considered that the excessive building height and scale and the inadequate building setbacks result in unreasonable amenity impacts to neighbouring properties in terms of visual and aural privacy and overshadowing. The original SSPP assessment report (**Appendix A**) contains an in-depth assessment of the proposal having regard to the applicant's written request seeking an exception to the development standards. The assessment set out in the report is still applicable and can be relied upon in this instance to assess the proposal in relation to the potential amenity impacts to neighbouring properties. The recommended reason for refusal is therefore retained.

#### **Acoustic Impacts**

##### Recommended reason for refusal

- a) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of*



*the Environmental Planning and Assessment Act 1979, as the proposal fails to address the potential noise impacts resulting from use of the communal outdoor gymnasium, with additional information required to meet the requirements specified in Chapter 18 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015).*

#### Applicant's Response

The applicant submitted a supplementary Noise Impact Assessment addressing the operational noise generated by the future use of the outdoor spaces, including the pool and outdoor exercise area on Level 1 and the communal rooftop area.

#### Council's Comments

Council's Environmental Health Officer advises that the supplementary Noise Impact Assessment is satisfactory and raises no objection to the proposal, subject to the imposition of appropriate conditions. The concerns in relation to potential acoustic impacts have now been satisfactorily addressed and the original recommended reason for refusal can now be deleted.

### **Traffic, Parking and Access**

#### Recommended reason for refusal

- b) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as the proposal fails to address key servicing requirements of the development including vehicle access, loading and car parking for the development as set out in Chapter 36 of SSDCP 2015.*

#### Applicant's Response

The applicant submitted a response to the traffic and parking issues raised by Council, including a swept path analysis, additional details regarding ramp grade and height clearance and a Car Park Management Plan to manage and control vehicle movements within the car park.

#### Council's Comments

Initial concerns with the proposal in terms of car parking and the basement design have been addressed to Council's satisfaction. Suitable manoeuvring has been indicated for the loading area for a Small Rigid Vehicle (SRV) and Medium Rigid Vehicle (MRV) but insufficient headroom is provided for either size truck. The issue with legal access to the proposed development via the Right-of-Carriageway (ROC) to 348R Kingsway in the north-western part of the site also remains unresolved. The original reason for refusal must therefore remain, albeit with the minor amendment to remove reference to car parking.

### **Stormwater Management**

#### Recommended reason for refusal

- c) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, as the proposal fails to address stormwater management from the site and the necessary geotechnical requirements for*

*the basement levels as required by Chapter 38 of SSDCP 2015.*

#### Applicant's Response

The applicant submitted updated engineering plans including information in relation to stormwater management from the site and Geo-technical assessment including groundwater conditions.

#### Council's Comments

Council's Development Engineer advises the proposed stormwater treatment device has been designed in accordance with Council's stormwater requirements. An easement to drain stormwater to the existing stormwater infrastructure on Council land will be required. Council's Development Engineer has also requested Section Plans of the on-site stormwater detention (OSD) tank and planter boxes on Level 1 to ascertain how this arrangement would work in relation to depth of the tanks and soil for landscaping.

The applicant's geotechnical assessment submitted with the application indicates that groundwater is likely to be intercepted as a result of excavation for the basement and therefore it will require temporary dewatering. This aspect of the development triggers referral to Water NSW as Integrated Development under s90 of the Water Management Act 2000 seeking its General Terms of Approval (GTAs). This information has only recently come to the attention of Council following the applicant's submission of a detailed geotechnical report. The above recommended reason for refusal has been modified to remove the reference to stormwater management. A new reason for refusal has been added in lieu of groundwater impacts and there being no GTAs granted by Water NSW.

#### **Site Isolation**

##### Recommended reason for refusal

- d) The application is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979, in that approval of the development may result in site isolation of the neighbouring property at 340 Kingsway, Caringbah contrary to Chapter 18 of SSDCP 2015.*

#### Applicant's Response

The applicant considers the issue of site isolation is not justified on the basis that the site is not on the Amalgamation Plan in SSDCP 2015.

#### Council's Comments

Whilst it is acknowledged the site is not on the Amalgamation Plan in SSDCP 2015, the sites to the southeast (304 to 336 Kingsway) could be redeveloped as per the Amalgamation Plan, which would isolate 340 Kingsway. The applicant has not provided any additional information to demonstrate whether 340 Kingsway could be redeveloped in isolation and reach its full development potential. The recommended reason for refusal is therefore retained.

#### **Public Interest**

##### Recommended reason for refusal

- e) *The application is considered unacceptable pursuant to the provisions of s4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that approval of the development will create an undesirable precedent and is therefore not in the public interest.*

#### Applicant's Response

The applicant has not made any amendments to the design to address the reason for refusal.

#### Council's Comments

Whilst the additional information provided by the applicant addresses some of the technical issues raised by Council, the primary concerns in relation to the built form and urban design remain. The original SSPP report contains an in-depth assessment of the proposal, noting the subject site is a key site within the Caringbah Town Centre. It is therefore imperative that any future development on the site is compatible with the built form outcomes anticipated by the planning objectives and controls to ensure it achieves a satisfactory public domain outcome for the site. The assessment set out in the SSPP report is therefore still applicable and can be relied upon in this instance to assess this proposal in relation to public interest.

An assessment of the proposed development in light of the additional information provided by the Applicant is contained further below in Section 10 of this report.

### **4.0 BACKGROUND**

A detailed history of the development since lodgement is contained in the original SSPP report attached to the Objective file. The following background is provided since deferral of the application by the SSPP on 22 December 2021.

- *4 February 2022* – the SSPP granted a six week extension for the applicant until 11 March 2022 to submit the requested additional information;
- *17 March 2022* – the applicant submitted additional Geo-technical information to Sydney Trains
- *23 March 2022* – SSPP advised the applicant that the additional information would be required by 25 March 2022;
- *25 March 2022* – the applicant provided additional information to Council
- *2 May 2022* - the applicant uploaded additional information to the Planning Portal with respect to geotechnical and vibration monitoring.
- *9 May 2022* - Sydney Trains advised that the last information submitted by the applicant on 6 May 2022 is likely to lead to concurrence, subject to conditions, within the coming weeks.

### **5.0 PUBLIC PARTICIPATION**

The original application was advertised in accordance with the provisions of the SSDCP 2015. The additional information submitted did not materially change the application as originally submitted and no re-notification of the application was required.

### **6.0 STATUTORY CONSIDERATIONS**

The subject land is located within Zone B3 Commercial Core pursuant to the provisions of Sutherland

Shire Local Environmental Plan 2015 (SSLEP 2015). The proposed development, being a mixed-use development, is a permissible land use within the zone with development consent from Council.

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

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).
- Apartment Design guide (ADG).
- State Environmental Planning Policy (Planning Systems) 2021.
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

#### **Contributions Plans**

- Sutherland Shire Section 7.12 Development Contributions Plan 2016

### **7.0 COMPLIANCE**

All previous assessment of the application against the EPI's, DCP, Codes or Policies undertaken as part of the SSPP report remain relevant except where specifically superseded in this report as a result of new information provided by the Applicant.

#### **7.1 Environmental Planning Instruments**

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

A Detailed Site Investigation Contamination Report (DSI) in accordance with the contamination requirements under the Resilience and Hazards SEPP has been submitted with the application. Council's Environmental Science Team have advised that the DSI has not been reviewed by an appropriately qualified and experienced environmental consultant and is therefore not acceptable due to the lack of environmental certification. On this basis, the provisions of the SEPP have not been met.

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

##### *Clauses 2.97 & 2.98 - Development adjacent to rail corridors / Excavation in, above, below or adjacent to rail corridors*

Division 15, Subdivision 2 of the SEPP relates to development that has the potential to impact on rail infrastructure. The subject site abuts land owned by Transport Asset Holding Entity NSW (TAHE) and is adjacent the rail corridor, and accordingly the application was referred to Sydney Trains for their input and concurrence. Sydney Trains has not yet granted its concurrence, albeit this is likely in the coming weeks as it appears that the information they require may now have been submitted.

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

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65) and the accompanying Apartment Design Guide (ADG) seeks to improve the design quality of residential flat development through the application of a series of 9 design principles. The proposal is affected by SEPP 65. Sutherland Shire Council engages its Design Review Forum (DRF) to guide the refinement of development to ensure design quality is achieved in accordance with SEPP 65.

The originally lodged application was considered by the DRF on 26 August 2021 and whilst it indicated broad support for the proposal, it did request further design development to respond to issues in relation to scale and built form, public access, amenity, materiality and detailed design.

An assessment of the proposal having regard to the design quality principles of SEPP 65 and the accompanying ADG criteria is set out in SSPP report. The applicant has not made any amendments to the design or provided any additional information to respond to the DRF comments. The assessment set out in the original SSPP report is therefore still applicable and can be relied upon in this instance to aid in the assessment of this proposal in relation to the requirements under SEPP 65.

*Sutherland Shire Local Environmental Plan 2015 and Sutherland Shire Development Control Plan 2015*

No changes have been made to the current design to address the concerns raised in relation to the built form and urban design and the departure from the Building Height and FSR development standards under SSLEP 2015. The SSPP report contains an in-depth assessment of the proposal having regard to the applicant's written request seeking an exception to the development standards.

There are several environmental considerations within both SSLEP 2015 and SSDCP 2015 which were considered in the SSPP report. An assessment of the relevant provisions of SSLEP 2015 and compliance with the relevant chapters of SSDCP 2015 is contained within the Assessment section of the SSPP report.

The assessment set out in the SSPP report is therefore still applicable and can be relied upon in this instance to aid in the assessment of this proposal in relation to the built form and urban design outcome for the site and the environmental impacts to the surrounding area.

## **8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS**

All previous comments submitted by public authorities are contained within the SSPP report and are still applicable to the assessment of this application, except as follows:

### **8.1 Sydney Trains.**

Sydney trains has been reviewing additional information submitted by the applicant over the past few months. They have advised Council officers that they are likely to issue a conditional concurrence in the next couple of weeks, but nothing had been received at the time of preparing this report.

## **8.2 WaterNSW**

A review of the applicant's recently submitted geotechnical report by Council's Environmental Scientist has indicated that referral of the application is required to WaterNSW as integrated development under s90 of the Water Management Act 2000. The Geotechnical Assessment identifies that a dewatering management plan, groundwater quality testing and groundwater inflow modelling may be required for WaterNSW to assess groundwater modelling. It is too late in the assessment process to refer the application to WaterNSW at this stage. Given that Council is recommending refusal of the application, an additional reason for refusal has been added to address this shortfall.

The supplementary information submitted by the applicant was referred to the following internal specialists for assessment and the following comments were received:

## **8.3 NSW Police**

Whilst the NSW Police did not object to the subject proposal, they provided a number of matters for consideration and / or potential consent conditions relating to CPTED principles in the event that the development was approved. The applicant submitted a response to the matters raised by NSW Police, addressing design elements such as CCTV, natural surveillance, external lighting, directional signage, safe access around the development and the pedestrian through site link, environmental maintenance and materiality in terms of anti-graffiti paint etc., way finding etc. If the SSPP determined that the application should be approved, these matters can be addressed as consent conditions.

## **Engineering**

Council's Development Engineer has advised that the proposal is still unsatisfactory with respect to the following:

- the legal access via the Right-of-Carriageway (ROC) to 348R Kingsway in the north-western part of the site, noting that the application should not be supported until legal access is resolved.
- increased head height to 4.5m is required within the loading dock to accommodate a MRV, noting that this cannot be conditioned as it would affect the built form of the development.
- provision of an easement to drain stormwater to the existing stormwater infrastructure on Council land.
- Section Plans of the OSD tank and planter boxes on Level 1.

## **Environmental Health**

Council's Environmental Health Officer advises that the supplementary Noise Impact Assessment is satisfactory and raises no objection to the proposal, subject to the imposition of appropriate conditions. The concerns in relation to potential acoustic impacts have now been satisfactorily addressed.

## **Environmental Scientist**

Council's Environmental Science Team have advised that the DSI has not been reviewed by an appropriately qualified and experienced environmental consultant and is therefore not acceptable due to the lack of environmental certification. Also, the geotechnical report indicates that groundwater will be intercepted during excavation. Therefore, the proposal must be referred to Water NSW as Integrated Development under s90 of the Water Management Act 2000.

## **Strategic Planning**

Council's Strategic Planning officer has provided advice in relation to the relevance of the planning documents the applicant had identified in support of the proposed building height and scale, including the *Draft Caringbah Strategy*, *Community Strategic Plan*, *Better Placed* and *Greener Places NSW Government Architect* and the *South District Plan*. Whilst these planning documents provide guidance on the future scale, density and design of the Caringbah Centre, the strategies do not affect development outcomes until the LEP and DCP is amended in accordance with statutory requirements, which mandates community consultation. To date, Council has not resolved to amend SSLEP 2015 or SSDCP 2015, nor has a new Place Strategy for Caringbah Centre been considered by Council. Furthermore, the strategic documents referred to by the Applicant are either in a preliminary stage and have not been subject to community consultation or are too high level to be relevant to the development application.

## **Building Surveyor**

Council's Building Surveyor notes that the applicant has provided the location of the hydrant booster and the hardstand areas for the NSW fire brigade within the Kingsway.

## **Public Domain Services**

Council's Public Domain Services team have raised concerns with the configuration of the proposed pedestrian link between the Kingsway and Council's car park, in particular the encroachment of planter boxes and outdoor dining into the footpath area. These matters were raised in Council's previous request for additional information to the applicant but have not been addressed. The applicant has also failed to provide property alignment levels to ensure internal levels of the building match the level of the pedestrian thoroughfare. An updated Construction Management Plan detailing pedestrian management, heavy vehicles movements and deliveries during the construction phase is also required as part of the development application.

## **9.0 ASSESSMENT**

Following an assessment of the application having regard to the Matters for consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and the provisions of relevant environmental planning instruments, development control plan, codes and policies, the assessment set out in the original SSPP report is still applicable and can be relied upon in this instance to assess the proposal.

## **10.0 DEVELOPER CONTRIBUTIONS**

The contributions set out in the original SSPP report remain current, with no requirement for change of the previously recommended contribution condition.

## **11.0 DECLARATION OF AFFILIATION**

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

## **12.0 CONCLUSION**

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

Whilst some of the technical issues in relation to acoustic impacts and the engineering aspects such as geotechnical conditions and stormwater management have been satisfactorily addressed, there still remains a number of outstanding development matters, particularly in relation to the status of legal access via the right-of-carriageway and access to the loading dock for servicing vehicles.

Furthermore, the applicant has failed to address the fundamental concerns raised in the SSPP report in relation to the excessive building height and scale of the development. The current proposal represents a significant departure from the Building Height and FSR development standards under SSLEP2015. The SSPP report contains an in-depth assessment of the proposal having regard to the applicant's written request seeking an exception to the development standards. The assessment set out in the SSPP report is still applicable and can be relied upon in this instance to assess the proposal in relation to the built form and urban design outcome for the site.

The application has been assessed having regard to the Matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. Following assessment of the additional information provided by the applicant, Development Application No. DA21/0610 is not supported for the reasons outlined in this report.