

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-9
DA Number	DA19/0756
LGA	Sutherland Shire Council
Proposed Development	Demolition Of Existing Structures, Construction Of A Residential Flat Building With Basement Levels, Rooftop Communal Space, Forty-nine (49) Units With An Affordable Housing Component And Strata Subdivision
Street Address	310, 312 and 314 Taren Point Road Caringbah
Applicant/Owner	MBD Developments
Date of DA lodgement	27 September 2019
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> Two (2) submissions in support None (0)
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Private infrastructure and community facilities over \$5 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> Environmental Planning Instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Affordable Rental Housing) 2009 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) State Environmental Planning Policy No. 55 – Remediation of Land State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Infrastructure) 2007 Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015) Draft Environmental Planning Instruments: <ul style="list-style-type: none"> Draft State Environmental Planning Policy (Environment) Draft State Environmental Planning Policy (Remediation of Land) Draft State Environmental Planning Policy (Housing Diversity) Development Control Plans <ul style="list-style-type: none"> Sutherland Shire Development Control Plan 2015 (SSDCP 2015) Planning Agreements: Nil Provisions of the Environmental Planning and Assessment Regulation 2000: Nil
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> Application Form Architectural, landscape and stormwater drainage plans Statement of Environmental Effects and various specialist reports Clause 4.6 request for Building Height Photographs taken of the site and surrounds
Clause 4.6 requests	<ul style="list-style-type: none"> Relevant EPI: SSLEP 2015 Development standard: Clause 4.3 – Height of Buildings Zone: R4 High Density Residential
Report prepared by	David Sheehan, Development Assessment Officer Sutherland Shire Council
Report date	November 2020

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
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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 assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
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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
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Special Infrastructure Contributions	
Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Not Applicable
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Conditions	
Have draft conditions been provided to the applicant for comment? <i>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</i>	Yes / No

REASON FOR THE REPORT

State Environmental Planning Policy (State and Regional Development) 2011, requires this application to be referred to the Sydney South Planning Panel (SSPP) as the development has a capital investment value of more than \$5 million for private infrastructure or community facilities (being for affordable housing purposes). The application submitted to council nominates the overall value of the project to be \$15,477,000, and the portion attributable to the affordable housing component as \$6,717,344.

PROPOSAL

The application is for demolition of existing structures, construction of a residential flat building with basement levels, rooftop communal space, forty-nine (49) units with an affordable housing component and strata subdivision.

THE SITE

The subject site is located off the eastern side of Taren Point Road, north of the intersection of Taren Point Road and Kingsway. The site comprises three parcels of land with a total site area of 2090.3m². Caringbah Centre and railway station is approximately 670m to the south east.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to the 16m height of buildings standard satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that the 16m height of buildings development standard be varied to 19.24m (20.25%) in respect to this application.
2. That Development Application No. 19/0756 for demolition of existing structures, construction of a residential flat building with basement levels, rooftop communal space, forty-nine (49) units with an affordable housing component and strata subdivision at Lots 14, 15 and 16 DP 19885, 310 to 314 Taren Point Road, Caringbah be approved, subject to the conditions contained in Appendix "A" of the report.

ASSESSMENT OFFICER'S COMMENTARY

1.0 DESCRIPTION OF PROPOSAL

The development proposal as submitted is for the demolition of all existing structures on the site and the construction of a residential flat building comprising 49 units, 28 of which will be affordable. The development will comprise the following:

- The removal of all buildings and vegetation from the site and 1 tree on the road reserve;
- Construction of a five storey development;
- 2 levels of basement parking with a total of 53 parking spaces, 2 carwash bays and vehicular access obtained direct from Taren Point Road;
- An apartment mix comprising 21 x 1 bedrooms, 23 x 2 bedrooms and 5 x 3 bedrooms (including the provision of 10 adaptable dwellings and 5 livable dwellings);
- 50% of the gross floor area is to be used as affordable housing;
- Provision of common open space is provided on the roof and a central atrium;
- Two lifts to link all levels of the development;
- Landscaping and services.

A site plan is provided below.

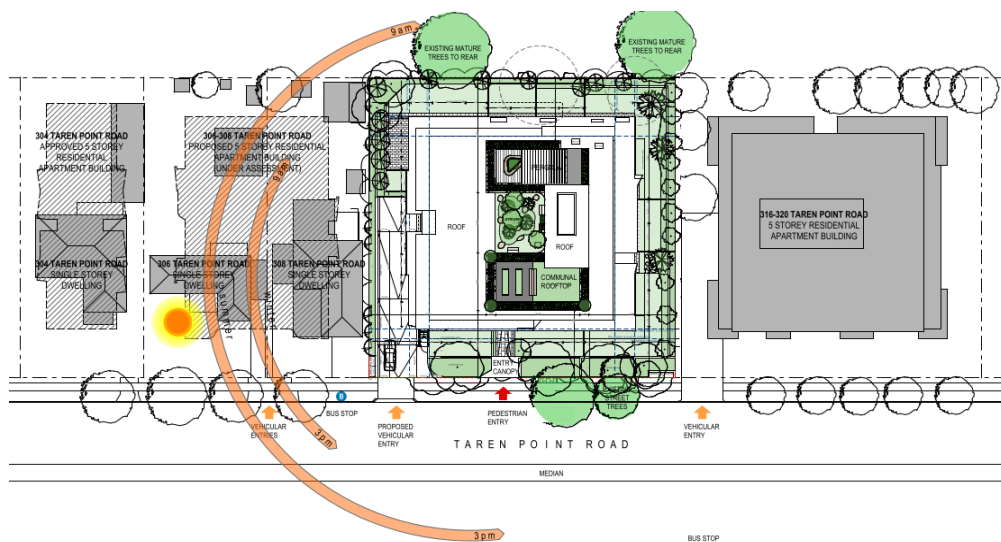


Figure 1: Site Plan (North point is to the left in the image)

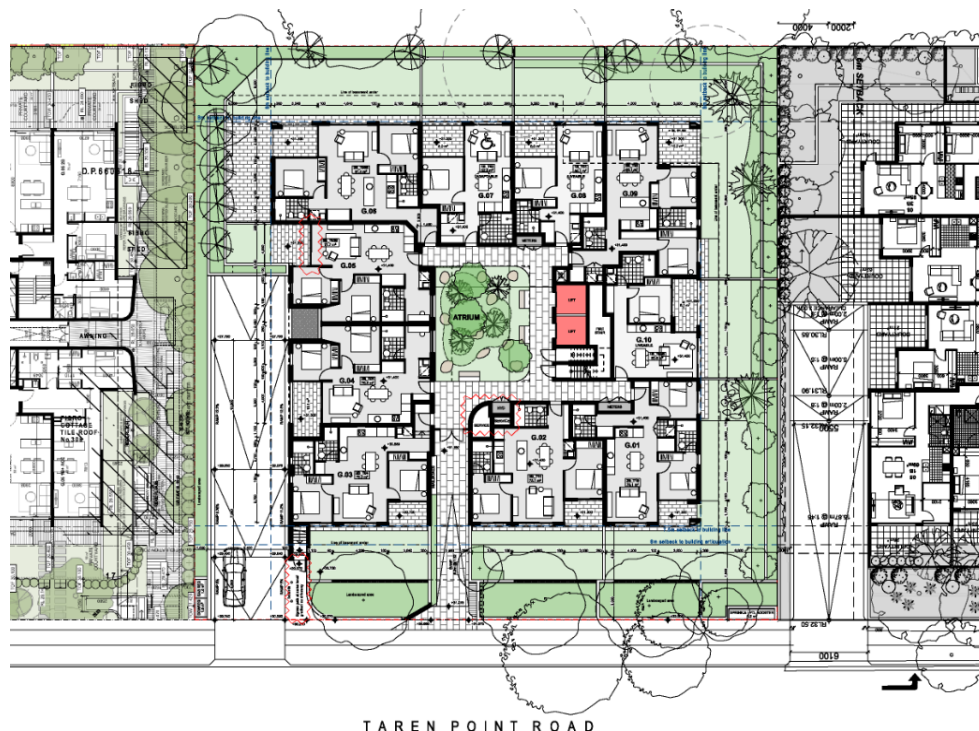


Figure 2: Ground Floor Plan (with the recently approved development at 306-308 superimposed)

2.0 SITE DESCRIPTION AND LOCALITY

The subject site is located off the eastern side of Taren Point Road, a 6 lane arterial road, approximately 130m to the north of the intersection with Kingsway and is known as Nos 310-314 Taren Point Road, Caringbah.

The land comprises three allotments and is located within an area known as the Caringbah North Precinct. The Caringbah North Precinct (shown at Figure 3 below) was rezoned under Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015) to allow high density residential development, whilst the western side (opposite) of Taren Point Road was retained its low-density zoning.



Figure 3: Extent of Caringbah North Precinct (boundary indicated in red)

Existing on the site are 3 dwelling houses and associated outbuildings and vegetation. The amalgamation of the lots results in a combined frontage of 45.72m, northern and southern side boundaries of 45.72m, and a rear eastern boundary of 45.72m. It has a total site area of 2090.3m². The site has a fall of 3.9m from the south-east corner to the front north-western corner (street).

Adjoining the rear boundary of the site is an unoccupied site that previously formed the Caringbah High School that has been rezoned under SSLEP 2015 for high density residential development and is also benefitted by bonus FSR provided that vehicular access to the sites fronting Taren Point Road is provided from Willarong Road. In this case, vehicular access has not been provided for the proposed development from the rear adjoining property.

The existing built environment in close proximity to the site is currently undergoing change to a denser environment as a result of SSLEP 2015 which rezoned the area to R4 High Density Residential. The R4 zone enables buildings up to 16m in height on the subject site.

The adjoining property to the south at 316-320 Taren Point Road contains a recently constructed residential flat building containing 46 dwellings, 24 of which are affordable.

A development application was submitted to council on 12 October 2018 for the redevelopment of the adjoining properties to the north known as 306-308 Taren Point Road for a residential flat building containing 32 dwellings, 18 of which are affordable. This application was determined by the Sydney South Planning Panel by way of deferred commencement approval on 16 September 2020.

A locality plan and an aerial photo are provided below.



Figure 4: Locality Plan (site boundaries are indicated in red)



Figure 5: Aerial Photo of the site (boundaries are indicated in yellow)

3.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD) was held on 7 September 2018 regarding this development. A letter was issued to the applicant after this meeting that raised issues with bulk/ scale, height, visual presentation, amenity, parking, waste and landscape architectural matters.
- The current application was submitted on 27 September 2019.
- The applicant was asked to provide further evidence that the affordable housing component of the development met the Capital Investment Value criteria to be considered under State Environmental Planning Policy (State and Regional Development) 2011 on 15 October 2019.
- This information was lodged on 29 October 2019 and finalisation of registration of the application with SSPP was confirmed on 30 October 2019.
- The application was placed on exhibition, with the last date for public submissions being 25 November 2019.
- An information session between council officers and interested residents was arranged during the exhibition period on 12 November 2019. No residents registered to attend, or arrived on the night of the meeting.
- On 5 December 2019 the application was considered by council's Design Review Forum Panel (DRF). The DRF report and recommendations were provided to the applicant on 23 December

2019.

- A further information letter was issued to the applicant on 19 February 2020 with 14 days permitted to provide a response. This timeframe was subsequently extended on two occasions due to the number of disciplines required to provide an informed response with amended plans and documentation lodged on 14 May 2020.
- The SPP briefing was held on 13 May 2020. Key issues discussed included floorspace, height, removal of trees, encroachment into side setbacks, encroachment into rear setback, relationship of ground floor to existing site levels, solar access to living spaces, inadequacy of cross ventilation, quality of communal open space, and consideration of a u-shaped floorplan.
- On 22 September 2020 council wrote to the applicant and advised of continuing issues in relation to cross ventilation, solar access, amenity within the atrium, floor space and internal layout. Further information was also requested in relation to potential for vehicle/ pedestrian conflict within the north-western corner of the site.
- The requested information was lodged on 7 October 2020.

4.0 ADEQUACY OF APPLICANT'S SUBMISSION

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

5.0 PUBLIC PARTICIPATION

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

Council notified 119 adjoining or affected owners of the proposal and submissions were received from the following properties:

Address	Date of Letter/s	Issues
304 Taren Point Road, Caringbah	23 November 2019	No issues raised. Support the proposed design and fits with the emerging character.
4 Barcoo Street, Peakhurst Heights	24 November 2019	No issues raised. Support the proposed design as it will boost the supply of affordable housing. Support the central atrium and external design of the building.

Information Session

An information session between council officers and interested residents was arranged during the exhibition period on 12 November 2019. No residents registered to attend, nor did anyone arrive on the night of the meeting.

Revised Plans

The applicant lodged revised plans on 14 May 2020, and a final revised set on 7 October 2020. In accordance with the requirements of SSDCP2015 these plans were not publicly exhibited as, in the opinion of council, the changes being sought did not intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment.

6.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone R4 High Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a 'residential flat building', 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 No. 55 – Remediation of Land (SEPP 55).
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).
- State Environmental Planning Policy (Affordable Rental Housing) 2009. (ARH SEPP)
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).
- State Environmental Planning Policy (State and Regional Development) 2011.
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).
- Section 7.11 Development Contribution Plan 2016 – Caringbah Centre Precinct.
- Sutherland Shire Council Environmental Specification – Waste Collection for New Multi-Unit Dwellings and Residential Flat Buildings (SSCES – Waste Collection).
- Draft State Environmental Planning Policy (Environment).
- Draft State Environmental Planning Policy (Remediation of Land).
- Draft State Environmental Planning Policy (Housing Diversity).

7.0 COMPLIANCE

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

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

A site inspection identified that the site is currently occupied by dwelling houses and ancillary structures.

A review of council's GIS and historical aerial photos has shown that the residential use has been in place since 1955, prior to which time the land was undeveloped/ pastoral. A search of council's contaminated land register specifies that the site is not potentially contaminated. However, 113 Willarong Road, which is the adjoining land to the east, is mapped as potentially contaminated due to mining/ excavation, landfill for school site and potential PFAS contamination. A precautionary condition of consent is recommended to manage any unexpected contamination uncovered during construction works. In conclusion, the site is suitable for the proposed residential development in accordance with requirements of SEPP 55.

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

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

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

State Environmental Planning Policy (State and Regional Development) 2011 identifies state and regionally significant development in NSW. Schedule 7 of the SEPP identifies this application as regionally significant development as it is for private infrastructure or community facilities (affordable housing) with a value of over \$5 million. As such, the application is referred to the South Sydney Planning Panel for determination.

7.4 State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)

The proposal has been submitted pursuant to Part 2, Division 1 of the ARH SEPP. In-fill affordable rental housing in the form of a residential flat building can be considered under the terms of that Division if the development is permitted with consent under another EPI, is not located on land that contains an identified heritage item or is the subject of an interim heritage order, and is located in an 'accessible area'. The site satisfies these criteria. A 'residential flat building' is permissible with consent in the R4 zone under the SSLEP 2015, the site does not contain any identified heritage items, and is located within an 800m walking distance of the public entrance to Caringbah railway station.

An assessment of the proposal having regard to the relevant clauses of the ARH SEPP is set out in **Appendix "B"** to this report.

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

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

refinement of development to ensure design quality is achieved in accordance with SEPP 65. DRF comments are included in **Appendix “F”** to this report.

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

7.6 Apartment Design Guide (ADG)

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

7.7 State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)

Development with frontage to a classified road (clause 101) and impact of road noise or vibration (Clause 102)

Division 17, Subdivision 2 of the Infrastructure SEPP relates to land in or adjacent to road corridors or road reserves and also to development that may be impacted by road noise or vibration. The site has a frontage to Taren Point Road which is identified as a classified road on council's road hierarchy maps.

Before granting consent for development on land which has a frontage to a classified road the consent authority must be satisfied that certain factors have been considered. These factors include safety; efficiency of the road network; design, emission of smoke or dust from the development; nature, volume and frequency of vehicles; and the impact of traffic noise and emissions. Transport for NSW have reviewed the proposal and have issued their concurrence. The relevant matters have been considered and the application is acceptable subject to conditions of consent regarding construction, and ongoing use of the development.

The annual average daily traffic volume along Taren Point Road exceeds 40,000 vehicles. The impact of road noise and vibration on the residential accommodation has been considered under clause 102. The application has been accompanied by a noise assessment prepared by Renzo Tonin addressing the relevant acoustic criteria and NSW Department of Planning's Development near Rail Corridors and Busy Roads - Interim Guideline. The report provides suitable noise attenuation measures (glazing thickness specification, assembly seals and facade and roof sound insulation) within the design of the building to ensure an acceptable acoustic environment and reasonable amenity will be achieved for future occupants. These recommendations are adopted within the recommended conditions of consent. Subject to the adoption of those conditions, the proposal is assessed as satisfactory with regard for the considerations at Clause 102 of the infrastructure SEPP.

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

Greater Metropolitan Regional Environmental Plan No. 2 (GMREP2) includes a number of aims and objectives for the environment and water quality within the catchment. Appropriate stormwater management and water quality measures are proposed and there is likely to be minimal adverse impacts on water quality. Council is of the view that with the implementation of the recommended conditions of consent the proposal would be consistent with the aims and objectives of GMREP2.

7.9 Biodiversity Conservation Act 2016

The Biodiversity Conservation Act 2016 and the Biodiversity Conservation Regulation 2017 outlines the framework for assessment and approval of biodiversity impacts for development that requires consent under the Environmental Planning and Assessment Act 1979. The assessment of the development has revealed that the Biodiversity Offset Scheme (BOS) threshold is not triggered and biodiversity matters have been appropriately assessed via council's LEP and DCP objectives and controls.

7.10 Sutherland Shire Local Environmental Plan 2015

The proposal has been assessed for compliance against Sutherland Shire Local Environmental Plan 2015. A compliance table with a summary of the applicable development standards is contained below:

Sutherland Shire Local Environmental Plan 2015			
CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
Cl.4.3 Height of Building	16m	Max. 19.24m (Lift Overrun) Max. 18.35m (Fire Stair/ pergola) Max. 17m (Communal balustrade) Max. 16.8m (Main roof)	No +3.24m (+20.25% variation) *
Cl.4.4 Floor Space Ratio	1.2:1 (2508.36m ²) With ARH SEPP bonus if 50% affordable 1.7:1 (3553.51m ²)	1.7:1 (3,553.42m ²) Affordable GFA: 1782.04m ² (50%)	N/A as reliant on ARH SEPP Yes
Cl.6.14 Landscaped Area	30% (626.04m ²)	28.5% (595.5m ²)	N/A as reliant on ARH SEPP

* A clause 4.6 variation has been submitted in this respect and is contained at **Appendix "G"** the validity of which is reviewed within section 9.0 of this report.

7.11 Sutherland Shire Development Control Plan 2015

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

7.12 Draft Environmental Planning Instruments

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

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

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

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

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

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

Draft State Environmental Planning Policy (Housing Diversity) (draft Housing Diversity SEPP)

The draft Housing Diversity SEPP seeks to ensure an adequate supply of new dwellings that are affordable, well designed and located in places that people want to live. The draft SEPP was exhibited between 29 July and 9 September 2020. The SEPP effectively consolidates three housing related SEPPs including ARH SEPP, SEPP (Housing for Seniors and People with a Disability) 2004, and SEPP 70 – Affordable Housing (Revised Schemes). The SEPP introduces new definitions for build-to-rent housing, student housing and co-living, amends some state level planning provisions, particularly for boarding house and seniors housing development, and expands the types of development to which infill affordable housing may also apply. The relevant provisions within the draft SEPP largely replicate existing considerations that have been taken into account against the in-force EPIs in this report.

8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

Transport for NSW (TfNSW)

The revised application was referred to the Transport for NSW (TfNSW) for concurrence in accordance with Section 138 of the Roads Act, 1993 and because the site has frontage to a classified road (Clause 101, Infrastructure SEPP).

On 24 June 2020 TfNSW provided concurrence under Section 138 of the Roads Act 1993, for the removal of the existing vehicular crossing and construction of a new vehicular crossing on Taren Point Road, subject to the imposition of conditions of consent.

WaterNSW

The revised application was referred to WaterNSW pursuant to s.4.47 of the Environmental Planning & Assessment Act, 1979 as works constituting integrated development. This is because the geotechnical report records interception of perched groundwater and the applicant has stated temporary dewatering during basement excavation will be undertaken. The dewatering work requires a controlled activity approval under s91 of the Water Management Act 2000.

On 1 September 2020, Water NSW provided general terms of approval to be included in the development consent.

NSW police force

In accordance with the *Crime Risk Assessment – Police & SSC Protocol 2010* the initial application was referred to the NSW police force. NSW police raised no objection to the proposal, however provided a number of treatment options to reduce opportunities for crime under the principles of Crime Prevention through Environmental Design (CPTED). Such measures include security roller doors for car spaces, installation of CCTV in public areas, consideration of graffiti resistance, keeping vegetation trimmed low for natural surveillance, maintaining clear sightlines, installation of security lighting, wayfinding and warning signage. The NSW police recommendations were forwarded to the applicant for consideration and further design refinements have been made to improve sightlines. The provision of roller security doors for individual car spaces cannot be achieved in this instance due to spatial limitations within the car park, however it is noted that access to the car park area will be controlled via a roller shutter door, and will act as a suitable deterrent. Lighting, CCTV and signage recommendations are adopted as conditions.

Design review forum (DRF)

The initial application was referred to the DRF panel who were broadly supportive of the proposal, however recommended that further design development is carried out to respond to the following issues:

- *“The Panel query the removal of all trees from the site, especially as the Pre DA recommended keeping trees 21 and 10 at the rear of the site. While 21 is apparently damaged, tree no.10 is healthy and should be kept.*
- *The basement eastern setback must be modified to allow for the retention of Tree 10. In addition, apart from allowing a 1m setback for the driveway, the basement northern setback must be a minimum of 3m under the access ramp.*
- *The Panels advises that as the Atrium adds additional bulk to the scheme (pushing the building mass closer to all boundaries and increasing impacts on adjoining properties), If Council was to consider all floor space within the atrium as GFA (including “external” circulation), the proposal would not comply with the maximum permissible FSR. The Panel believe that the Atrium may have insufficient breeze to cool the space during summer and facilitate natural ventilation to north facing units. It is therefore recommended that the proposal is amended to allow natural airflow*

into the atrium on each level. This may be a way of solving density issue (see above), improve natural ventilation to units and enhance amenity of circulation spaces (see below).

- The Panel questions the functionality of the two discrete lift arrangement, which is highly unusual. Generally, if two lifts are proposed, it is preferable to place them side by side facing a common space so as to optimise functionality and flexibility, while allowing for maintenance, relocation, etc. It is therefore recommended that the lifts are shifted to the south so as to allow for a lobby facing the atrium. This amendment may allow for ventilation right through the building to the south, as recommended above.*
- The Atrium is not a pleasant space as proposed. There will be acoustic issues, walkways are very bare, narrow, exposed to the sun and rain; do not circulate continuously through lobby and are liable to be over heated at times due to lack of breeze. Therefore, the Panel recommends that as part of an amended layout (to address concerns 3 – 7), more attention should be given to the physical and visual amenity of the walkways and atrium itself. The fine grain resolution and degree of design sophistication applied to this central element can make or break the success of the development as a whole.*
- To increase privacy and safety and to soften the atrium with landscape, the roof terrace should be modified so as to line the perimeter of the atrium void with landscaped planters.*
- The egress from fire stairs at ground floor does not comply with the ‘deemed to satisfy’ provisions of the BCA. If a fire engineered solution is proposed, it must be fully documented and supported by a qualified BCA consultant.*
- North facing terraces above level 3 do not comply with the ADG’s separation requirements. Unscreened habitable spaces above 4 levels (including open space) must be 9m from the boundary.*
- Short elbow corridors to the internal apartments are to be discouraged as they limit and make furniture movement difficult and as currently configured virtually impossible.*
- The building expression generally is supported.*
- Although floor to floor heights are less than 3.1m recommended by the ADG and ground level east facing units are substantially below natural ground level, the building is substantially higher than the LEP’s height requirements. This indicates that the building may be too high for the site. Stepping the floor plates may help address this non-compliance.*
- Given the added bulk created by the central atrium and the many amenity issues identified throughout, it would appear that the proposal is too large for the site. The reduction of one unit/floor may allow for additional ventilation into the atrium, as well as a substantial improvement to the project’s amenity and compliance.”*

Revised plans were provided that have attempted to address some of the issues raised by the DRF. Amendments include increased openings within the southern façade to facilitate additional airflow into the atrium, reduced the overall height of the building by 250mm, amendment of the lifts to face the atrium and function together to offer occupants a choice, the addition of landscaped planters and vertical landscaping within the atrium corridors, planters to the edge of the central atrium void at roof level, a

fully documented fire engineering solution to egress, increased width of short elbow corridors.

The amended proposal was referred to council's architect who acknowledged that some improvements have been made, however concerns were maintained in relation to bulk created at the edges of the development because of the decision to retain the atrium feature. The architect was also unconvinced of the environmental quality of the central atrium, particularly in inclement weather. The architect flagged the likelihood of pressure in the future for a roof to be placed over this space and suggested that this be considered a part of this development rather than a retrofit later.

Comment: Whilst a roof would no doubt improve the quality of the space in poor weather, this would effectively render the entire space calculable FSR and push the development well over the SSLEP 2015 and ARH SEPP threshold. Further, a roof would likely contain and amplify noise reverberation within the space, would have thermal implications and internal openings facing the atrium could no longer be relied upon for cross ventilation purposes. For these reasons, provision of a lid over this space is not supported.

Landscape officer

Council's landscape technician has undertaken an assessment of the plans and is generally supportive of the amended proposal subject to conditions of consent, which include the provision of additional Blueberry Ash trees within the private open space area of the units facing Taren Point Road, replacement planting within the road reserve and drainage and irrigation to planters.

Engineering (assessment team)

The amended application was referred to council's assessment engineers who were satisfied of relevant engineering matters subject to standard conditions of consent, which detail required works within the road reserve, and technical specifications associated with stormwater drainage, internal driveway, parking and manoeuvring and basement design.

Building surveyor

The application was referred to council's building surveyor who provided comments that the development application reveals that the project can be constructed in its present format without significant changes to the building envelope. The building surveyor noted that the atrium that was proposed in the centre of the building was relied upon to allow for cross ventilation to the units, however these openings would be required to be fire protected by appropriate means that could compromise this outcome.

In response, the applicant provided an amended fire engineering report detailing the egress performance solution, which also detailed that there was no conflict between fire engineering requirements relating to the performance solution and cross ventilation. The report notes that if other openings required fire protection to achieve DTS provisions, and are in cross ventilation paths, fire

protection would be restricted to the use of fire shutters/ curtains as this allows for windows to remain operable during normal hours. It is recommended that this form a condition of consent.

Environmental health

Council's environmental health officer has undertaken an assessment of the application and support for the application was given subject to conditions of consent detailing building ventilation requirements, acoustic mitigation measures, and measures to avoid contamination of the stormwater drainage system associated with the proposed car wash bays.

Waste strategy and policy

The application was referred to council's waste strategy and policy officer and support for the application was given subject to conditions of consent.

9.0 ASSESSMENT

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

9.1 Height of Buildings

The proposed development fails to comply with the development standard for height. Clause 4.3(2) of SSLEP 2015 stipulates a maximum height of 16m for this site. The development has a maximum height of 19.24m (20.25% variation) to the top of the building housing the lift overrun. Other aspects of the proposal also breach the height limit and include the fire stair and pergola (by 2.35m), the communal balustrade (by 1m) and the main roof (by a maximum of 0.8m in the north-western corner). Figures are

A 3D architectural rendering of a building, likely a school or institutional structure, featuring a prominent red translucent shell that outlines its form. The building has multiple stories with visible windows and balconies. Three red double-headed arrows indicate a height of 16m at different locations: on the left side, on the right side, and at the front corner. The building is situated on a green lawn, with other buildings visible in the background.

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

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

The development remains consistent with the objectives of the Building Height development standard for the reasons discussed below. The objectives of the R4 High Density Residential zone are as follows:

Zone R4 High Density Residential

- To provide for the housing needs of the community within a high density residential environment.*
- To provide a variety of housing types within a high density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To encourage the supply of housing that meets the needs of the Sutherland Shire's population, particularly housing for older people and people with a disability.*
- To promote a high standard of urban design and residential amenity in a high quality landscape setting that is compatible with natural features.*
- To minimise the fragmentation of land that would prevent the achievement of high density residential development.*

The development remains consistent with the objectives of the R4 High Density Residential zone for the reasons discussed below.

The applicant has lodged a written request in accordance with the requirements of Clause 4.6 of SSLEP 2015. A full copy of this request is contained in **Appendix "G"** and the most relevant section is reproduced below:

"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. The non-compliance will not be readily visible from the public domain or surrounding sites, does not contribute significantly to overshadowing and does not impact any significant views. To require strict compliance would mean removing parts of the building without resulting in a real planning benefit to neighbourhood

character or amenity. In fact, removal of units would be counterproductive as it would result in the loss of affordable rental accommodation within the locality...

...The variation to building height does not adversely impact on solar access, views or outlook and the streetscape appearance is not impacted by the variation. As indicated, the proposal provides for a floor space ratio which complies with the maximum permitted and accordingly, the height breach is not associated with additional density beyond what is expected by the controls or planned for the locality."

"... The siting and scale of the proposed development has been designed to distribute building mass in a manner that best minimises impact on adjoining development and achieves appropriate separation from neighbouring dwellings. To the casual observer, the building will visually appear to have compliant height and will therefore be compatible with future nearby development. The proposed height non-compliance will not impact on any natural features of the site.

...the proposal directly responds to the housing needs of the community by providing a high quality residential flat development, which includes 50% dedication as affordable rental housing for a 10 year period... does not contravene any objectives for the zone."

"...compliance with the maximum height 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."

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

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

The applicant has demonstrated that the development will remain consistent with the objectives of the standard and zone notwithstanding the numerical variation, and as such, it would be unreasonable and unnecessary in the circumstances to insist on compliance.

The main building form is five stories and is consistent with the desired and anticipated within the 16m height limit. The rooftop aspects that breach the control to the greatest extent relate to rooftop communal structures that are generally recessed beyond the building façade and as such will not be highly visible when viewed from the public domain or from adjoining properties. The proposal has centralised the position of the built elements that breach the control to limit the impacts of overshadowing and overlooking. Whilst these elements will contribute to the overshadowing of the dwellings to the south, the applicant has supplied diagrams (attached at **Appendix “H”**) that indicate that these areas generally sit within the overshadowing that would be otherwise cast by a compliant massing envelope.

It is acknowledged that a section of roof will also exceed the height control in the north-west corner, however this is considered minor in the context of its position (no overshadowing, view or privacy impacts) and relationship with the overall built form and adjoining development with similar breaches. The roof will appropriately continue the horizontal plane, relates to an articulated and recessed soffit element and will have an acceptable visual presence within the street.

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

Section 5 of the applicant’s variation statement demonstrates that there are sufficient environmental planning grounds to justify the height variation. In particular, the roof top structures that breach the height limit are necessary to provide equitable access to a functional roof top terrace that encourages social interaction between the residents without compromising the amenity of adjoining properties or the public domain as discussed above.

If Council were to insist on compliance it would preclude the rooftop from being utilised to provide communal open space. To provide the required communal open space, the development would either need to lose a level, or provide it at ground level, which would adversely impact the current high degree of amenity afforded to ground floor apartments which currently have ground level private open space. This would reduce the overall gross floor area of the development (including the quantum of affordable housing gross floor area) or require greater encroachments into the minimum setback requirements.

This was not required as the development remains consistent with the objectives of the building height development standard and the land zone as outlined above. The increased amenity provided to the residents within the complex with the provision of rooftop open space area and access to that open space area is a commendable environmental outcome within limited, if any, adverse impact on solar access, views, outlook or the streetscape.

It is also noted that the building height cannot be reduced by lowering the ground floor plate further into the ground as this would prevent waste collection in the basement. Lowering the floor plate would also impact the amenity of the southern apartments as they would cut in further below the natural ground level.

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

The proposed development is in the public interest as the proposal complies with the objectives for both height and the R4 High Density Residential zone and the proposed variation does not raise any matters of State or regional environmental planning significance.

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

9.2 Streetscape, Site Response and Levels

The objectives for streetscape contained within the R4 Caringbah North Precinct Draft DCP aim to ensure that development is proposed on sites that are of a sufficient size to accommodate a well-designed development and ensure building elements visible from the street make a positive contribution to the streetscape and locality.

The site has a cross fall of 3.5m falling from the rear south east corner to the front north western corner. To reduce the height difference/visual impact of the wall at the front of the site, the development has been lowered by 320mm and has split the floorplate such that the dwelling at the lowest point of the site (G.03), and associated courtyard are set down to reduce the subfloor extent. With these amendment, the floor plate results in the north west corner of the building being 0.44m out of ground whilst the south east units adjoining the Caringbah School site are up to 2m below ground level and the south west corner unit to Taren Point Road being up to 0.9m below existing ground level at the worst point. It is noted that the levels are similar or less than existing and approved development upon adjoining sites.

To soften the appearance when viewed from the street, retaining walls with a mixture of materials and landscaping are proposed stepping back from the front boundary to the front courtyards. The landscaping will contain a mixture of vegetation that will aid in screening the development when viewed

from the street and improve the amenity of the ground floor units from pedestrians and traffic noise.

9.3 Urban Design (Residential Buildings)

Clauses 6.16 and 6.17 of SSLEP 2015 contain certain matters of consideration relating to urban design. The proposed development is considered to be appropriate in design and compatible with the desired future character of the Caringbah North precinct area in terms of height, bulk and scale. The proposed development incorporates a variety of building materials and successfully employs modulation and fenestration to minimise blank wall expanse and introduce visual interest.

The proposed development appropriately responds to the established street edge pattern and spatial proportion within the streetscape. Car parking entry and basement areas are not dominant and are integrated well into the overall landscape scheme. The proposed development is considered acceptable in terms of its streetscape appearance, architectural design and landscape treatment. The site area and built form have been adequately distributed in accordance with the assessment criteria specified within SSDCP 2015 and the ADG to enable reasonable internal and external amenity for future occupants.

Quality and amenity of atrium

There is potential for adverse occupant amenity, (wind, noise, solar access and adverse weather) associated with the design of the development about a central atrium. These issues have been brought to the applicants attention on several occasions, however the applicant is steadfast and unwavering in their respect of the qualities of this space and consider this an important feature and the 'landscaped heart' of the development. The applicant has provided documentation from an acoustic engineer with further recommendations to mitigate and reduce the impacts of noise reverberation within the atrium space, and has made several minor amendments to increase vertical landscaping within the space. With respect of inclement weather, it is noted that cover is provided to internal walkways within the development.

Although reservations are maintained in relation to the quality and design approach in respect of the central atrium, there is no conclusive proof that the space will be unpleasant, and as such it is considered equally likely that that this space will indeed be the pleasant and functional space envisaged by the applicant. To assist this outcome, conditions are recommended in respect of the depth of planter beds that support the vertical gardens that are to line the interior, and adoption of the applicant's acoustic recommendations to mitigate sound reverberation within.

The relevant matters have been considered as a part of the assessment of the application and the proposal is considered acceptable.

9.4 Parking and basement design

The proposal has provided residential car parking complying with the ARH SEPP as detailed within the compliance table. Visitor parking is also supplied even though it is not strictly required by the Affordable Rental Housing SEPP, which is of great benefit to the site as there is no parking on Taren Point Road directly in front of the site. In accordance with SSDCP 2015, two dedicated car wash bays have been

provided. In accordance with adaptable requirements, larger spaces are provided to accommodate parking consistent with the specifications within AS4299.

Swept path diagrams indicated that the proposed basement arrangements provide satisfactory circulation and aisle dimensions to facilitate a MRV waste collection vehicle, and to accommodate the B99 car size. It is noted that there is an error in the depiction of the set-in garden provided within the atrium in section, as is partly situated above the area specified for the MRV and if constructed in this manner will likely reduce the clearance such that it will not function as intended or at all. See **Figure 8** below.

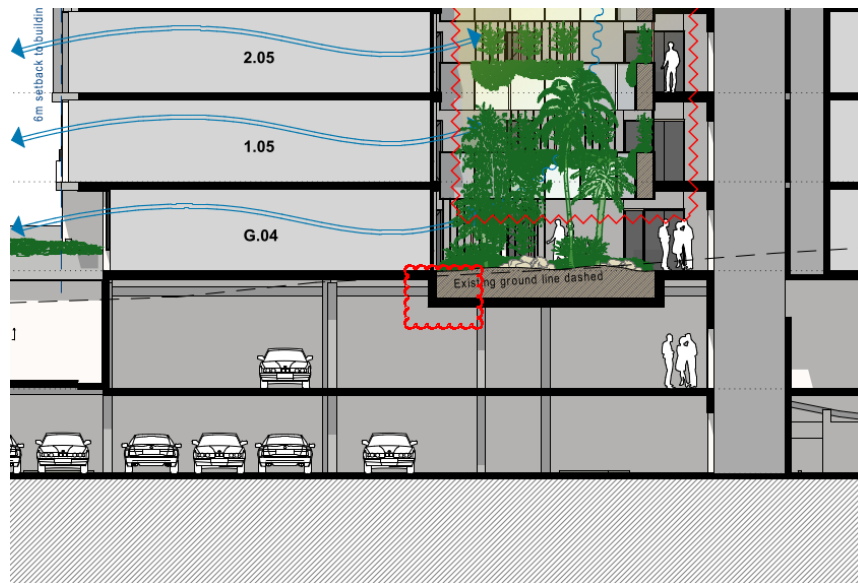


Figure 8: Set in planter within atrium (red clouded area indicates the portion above the MRV loading area)

The area is correctly depicted in plan, and can be easily rectified with a condition to ensure that the set in to the slab does not occur above this space, and instead the garden is to be built up over in this area with sufficient depth to sustain ground cover vegetation. Subject to a condition in this respect the proposal is assessed as satisfactory with regard for parking and basement design considerations.

9.5 Setbacks and Visual Privacy

The ADG specifies minimum building setbacks to achieve building separation, solar access and visual privacy. As identified within the compliance table, the building generally complies with the ADG setbacks up to the 4th level at which point the required setback increases from 6m to 9m, and balconies at this level fail to comply on the northern and eastern (rear) elevations.

Due to the relative distance in elevation (the land slopes to the north), views obtained from the balconies is toward the rooftop communal open space of the approved development to the north, some 18 metres away and will comply with the separation distance to the corresponding level. To mitigate overlooking of lower levels, wide planter boxes are to be installed along the edges of balconies and will restrict an occupant from standing at the edge and looking directly down. Land to the rear is currently vacant however, due to the recent approval granted by the Land and Environment Court, it is likely that this will be developed in the future for high density residential dwellings and the potential for overlooking to the

rear must also be considered. In the likely event that or the redevelopment of the land to the rear, the setbacks will accommodate the required building separation to future development in any event. For the aforementioned reasons the balconies are not considered to create unreasonable privacy impacts for neighbouring properties or to occupants.

Further, the provision of balconies at this level is considered to present negligible perceived bulk to the overall building, largely by virtue of maintaining a compliant 9m setback to the glass line. Adequate building separation will be maintained, and will effectively replicate the form and setbacks achieved on neighbouring properties.

With respect to the encroachments to the south, north and east at lower levels, these are considered minor, and are considered positive visual articulation elements. Although the required 6m is generally maintained to the north, there is a potential privacy issue due to the use of clear glazing to form the uppermost portion of the balustrade - these balconies will face directly toward windows of the approved development on the neighbouring property. To reduce visual intrusion for both occupants of the subject dwellings and those adjoining it is recommended that obscure glazing be fitted. A condition is recommended in this respect.

Ground Level Terrace Areas

The basement entry produces an unavoidable elevated area above that will have a finished floor level approximately 600mm to 1m above existing ground level. This level cannot be reduced further as it is a by-product of the necessary 3.5m clearance for an MRV service vehicle. It is proposed to utilise the area above for private terraces, similar to the outcome achieved on the neighbouring site to the south, which is considered an efficient use of this space subject to appropriate controls to avoid overlooking and visual intrusion upon the lower property to the north. The applicant proposes the use of 1.1m high planter beds along the full length of the northern extent of the elevated terrace for this purpose. A section through this area is shown at **Figure 9** below.

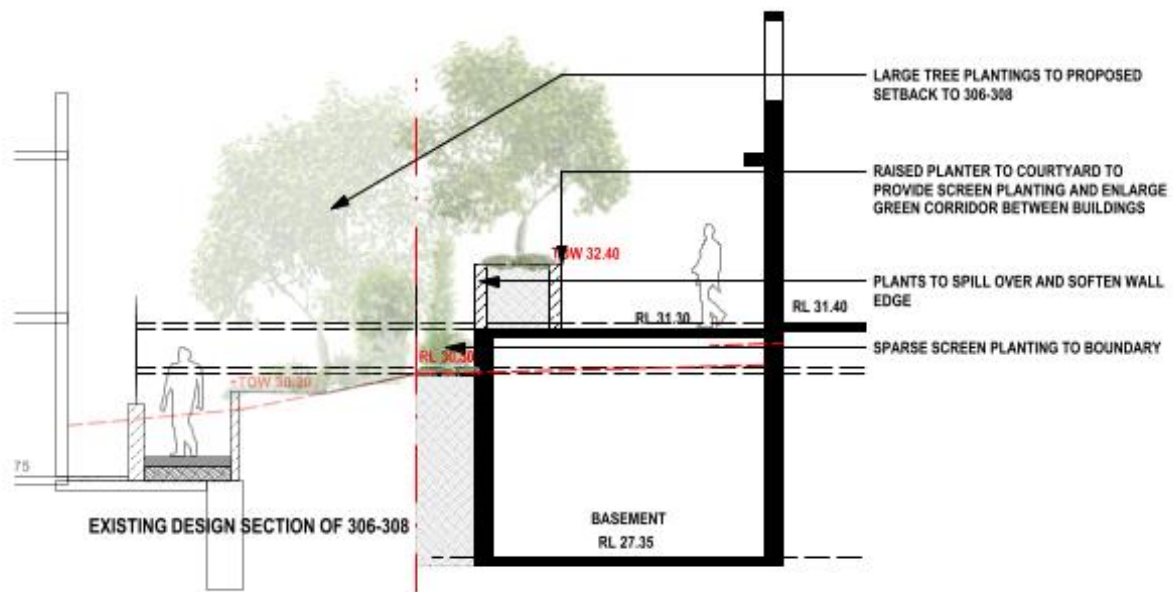


Figure 9: north-south section through the G.06 terrace and depicts the pathway and floor levels of the adjoining approved development at 306-308 Taren Point Road.

Upon review of the section diagram, an occupant standing on that terrace will have a clear line of sight over a standard fence on the boundary, with vegetation solely relied upon to maintain visual amenity. This is not a reliable solution or an acceptable outcome for either party as there is no guarantee that the landscaping will be successful in this purpose and in any event will take time to establish. It is therefore recommended that in addition to the planting proposed, a 400mm high louvered privacy screen is erected above the northernmost wall of the planter box. Subject to such a condition, the use of the elevated structure is unlikely to generate any significant impacts for neighbours and will afford additional privacy to occupants.

9.6 Internal Apartment Layout

Both the ADG and SSDCP 2015 seek to ensure a high degree of amenity is provided for future occupants. Whilst the apartments are consistent with the numerical requirements of the relevant controls relating to apartment size, depths, widths and so forth, the design relies on short elbow entrances to many of the corner apartments that is a less than ideal use of the limited floor area, and logistical task of manoeuvring furniture and heavy items is much more difficult. This has been brought to the applicant's attention on several occasions, and in response these entry corridors have been enlarged. This is a significant improvement as the widths are now wide enough to bring larger items into the apartments. Whilst their removal would be preferable, this would create compromises elsewhere without removal of apartments. It is noted that many of these affected apartments are in excess of the minimum apartment sizes, and the enlarged entries will provide sufficient space for incidental furniture to create a usable and welcoming entrance to the apartment and are acceptable.

9.7 Landscape and Tree Removal

Council in its pre application advice, and a further information letter issued to the applicant in February 2020 requested the retention of tree 10 (*Casuarina Cunninghamiana*) and 21 (*Eucalyptus Tereticornus*) positioned along the rear boundary of the property. This request is consistent with development control 8.2.7, Chapter 7 of SSDCP 2015, which requires retention of existing canopy trees in good health in the front and rear setback. The purpose of retaining these trees was to provide established landscape screening and shade to the development, the importance of which was also recognised by the DRF. The applicant was also requested to consider repositioning the driveway to enable the retention of planted trees 2, 4 and 6 (*Ceratopetalum Gummiferum* – NSW Christmas Bushes) along the northern boundary.

In response, the applicant advised council that:

“The retention of those trees causes issue within the private open space (POS), while we acknowledge they are good specimens they do not fit into the new context of the area. They will also potentially need to be removed if the future road is constructed on the adjacent site to the west. Further issues caused by retaining those trees is creating a subterranean nature to the POS and limiting solar access and available space for the units. Such an outcome would be contrary to the ADG. The stepped walls further back from the building line allows the usable POS to have less pressure and visual blockages close to the building.

The location and size of these trees is not commensurate with the high density residential zoning of the land and more appropriate species are proposed which will quickly establish given the significant area of deep soil proposed along the western site boundary. On balance, there is greater social benefit to be served by the creation of affordable housing within close proximity to Caringbah Town Centre compared to retention of 1 tree (10) with high retention value and another tree (21) with only medium retention value, particularly where the species are not endangered and will be offset by new canopy trees plantings.”

And in relation to the three trees along the northern boundary:

“These trees are categorised by the project Arborist as having low significance. In addition, they are positioned adjacent to the only viable location on the site for the driveway (given the natural topography) with the shortest possible driveway length to accommodate a waste vehicle that needs to be able to forward enter and exit from the basement. The driveway cannot be positioned elsewhere on site whilst providing a superior design outcome for the operation of the site and amenity for the future occupants.

The particular trees do not connect canopies with other similar species to create an important cluster of trees, instead they are isolated and surrounding by existing buildings. However, to offset their loss, suitable replacement plantings are proposed.”

Council's landscape officer has reviewed the amended plans and advises that tree 10, which is the obvious candidate for retention due to its central position and minimal level change, has an encroachment of 35% into its root zone caused by the position of the basement. Even with the relocation of the basement to lie directly beneath the building, the encroachment would still be 21% and is double the maximum permissible incursion allowed within the Australian Standard AS – 4970 – *Protection of Trees on Development Sites*. Retaining walls proposed within the area would further impact the tree in the event it could be retained, and in the circumstances, the landscape officer advised that the tree could not be successfully retained.

Whilst the removal of healthy trees near boundaries is not consistent with policy, in this instance their removal is necessary to enable the efficient use, servicing and development of the site. The proposed planting scheme is comprehensive and will be sufficient to offset their loss. The proposed landscaping scheme incorporates large trees that will provide a landscaped screen along boundaries that will assist with privacy and softening of the built form along with shading in private open space areas. Additional planting is considered necessary within the private open space of units that front onto Taren Point Road to help with glare and noise attenuation in this location. Condition require the planting of two additional Blueberry ash trees for each of these private open space area areas is recommended.

No objection is raised to the removal of the Dwarf Water Gum within the road reserve, as this will facilitate the required vehicular access, subject to replacement planting of the same species within the road reserve. A condition is applied in this respect.

The proposed tree removal is considered acceptable given the competing priorities on this site and the quality of offset planting proposed. The overall landscape scheme will provide a positive contribution to the street and the amenity of future occupants and is supported.

9.8 Cross Ventilation and Solar Access

The ADG provides minimum requirements in relation to the number of apartments (60%) which must be cross ventilated and the number of apartments (70%) which achieve 2 hours direct solar access in midwinter. As detailed within the compliance table, the amended application achieves compliance both of these measures, and additional diagrams have been provided to demonstrate that a minimum of 15 minutes of direct sunlight will be achieved to each of those units for 1m² at 1m above the finished floor level. Whilst the central atrium is not relied upon for solar access, diagrams indicate that it is relied upon for cross ventilation. In deciding whether this is acceptable, consideration has been given to the generous dimensions of the area, and natural airflow likely to penetrate this area being open to the sky, and with protrusions along the western elevation at ground level and along the southern elevation at levels 1-3. The size of the area is considered to lend itself to being more than simply a light well, and openings are considered sufficient to permit reasonable airflow. The lack of a roof ensure that this space is open to the elements and functions as a genuine external space. The applicant has supplied documentation from a fire engineer demonstrating that the openings relied upon within this space for cross ventilation will not require fire protection in association with the performance solution for egress, and notes that if required for other reasons this will not compromise cross ventilation as it can be achieved via automatic fire shutters/ curtains. The applicant has demonstrated that the solar access and cross ventilation requirements are achieved and as such the application is found to be reasonable in this respect. Conditions are considered necessary to ensure that cross ventilation paths are not compromised by any fire protection requirements and are included at **Appendix "A"**.

9.9 Overshadowing

Control 10.2 (5) Chapter 7 of the SSDCP 2015 requires a minimum of 2 hours direct solar access is to be maintained to north facing windows of habitable rooms and 10m² of private open space on adjoining properties in midwinter. All but two living room windows at ground floor level of the adjoining residential flat building to the south will fail to achieve this requirement. Solar access to the easternmost window will be reduced to just over 1 hour, whilst the centrally positioned window will be less than 1 hour.

The controls provide a degree of flexibility where the proposal is otherwise generally compliant with planning controls and the impact is a result of orientation, site constraints or existing built forms. The uppermost portions of the building that cast shadow are consistent with the 9m setback to the southern boundary at which point the height is substantially less than the 16m permissible (See **Figure 9** below). The additional built form elements provided upon the roof, which breach the height limit, are appropriately well setback from the southern boundary to minimise their impact. The applicant has prepared detailed shadow assessment diagrams (attached at **Appendix H**) which demonstrate the impact of the proposal upon the neighbouring development and that of a complaint massing envelope without the rooftop structures would be negligible.



Figure 10: Image of the eastern (rear) elevation depicting the stepped nature of the building to the southern boundary relative to the maximum height of building standard

The east-west orientation of the property provides that achieving 2 hours to all dwellings upon the property to the south, particularly to the lower levels is difficult to achieve without severe impost to the design response on the subject site. The stepped nature of the proposed development will allow a reasonable level of direct solar access to the apartments and their open spaces at 316-320, and is considered acceptable with regard for the site constraints.

9.10 Social Impact

The provision of affordable housing within a development that also contains market rental housing is consistent with the well-established benefits of creating a tenure diverse community. The provision of affordable housing is encouraged at the state level by the ARH SEPP and enhanced with the forthcoming Housing Diversity SEPP. The location of the development is also appropriate as it is within walking distance of heavy rail infrastructure, Caringbah town centre, open spaces and local schools. Conditions are proposed to ensure a high quality and safe environment, and to mitigate undesirable social impacts. In this respect, conditions will ensure restricted access to communal and basement areas, adequate lighting and CCTV is provided to communal areas and ensure that sightlines are maintained to the principal entry point to the development.

9.11 Earthworks

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

9.12 Stormwater and Groundwater Management

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

In relation to groundwater management, the geotechnical report indicates that perched water was discovered during borehole drilling. This is likely to require temporary pump out during basement construction and general terms of approval have been provided from WaterNSW. It has also come to Council's attention recently that there is an unresolved issue in this stretch of Taren Point Road, with respect to water inundation into basements. Over the long-term, water inundation into basements has potential for significant structural damage. To address this issue, council's development engineer has recommended a precautionary condition be applied requiring the basement to be designed with a waterproof retention system ('tanking'). This effectively involves applying a waterproof treatment to the basement walls typically utilising a spray or rubber seal or membrane with drainage. Subject to conditions, the proposal is assessed as satisfactory with regard for stormwater and groundwater management.

9.13 Greenweb

The subject site is identified within council's greenweb strategy. The greenweb is a strategy to conserve and enhance Sutherland Shire's bushland and biodiversity by identifying and appropriately managing key areas of bushland habitat and establishing and maintaining interconnecting linkages and corridors.

The subject site is identified as a greenweb restoration area. Having regard for the nature of the proposed development conditions have been included in relation to greenweb plantings.

9.14 Threatened Species

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

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

9.15 Archaeological Sensitivity

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

10.0 DEVELOPMENT CONTRIBUTIONS

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

Regional Contribution:	\$88,122.30
Local Contribution:	\$271,877.70

These contributions are based upon the likelihood that this development will require or increase the demand for regional and local recreational space and infrastructure facilities within the area. It has been calculated based on twenty-one (21) new residential units with a concession of three (3) existing allotments. The twenty-eight (28) affordable housing units have been excluded in accordance with the Development Contribution Plan, which exempts affordable housing undertaken by a social housing provider. Whilst the applicant is not a social housing provider, the application is submitted with reliance upon the ARH SEPP and clause 17(1)(a)(ii) requires the affordable units to be managed by a registered community housing provider (which falls within the definition of a social housing provider) and is conditioned.

11.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

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

12.0 CONCLUSION

The subject land is located within Zone R4 High Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a 'residential flat building', is a permissible land use within the zone with development consent from council.

The residential flat building contains affordable housing apartments and utilises the bonus gross floor area and reduced landscaped area as specified in the ARH SEPP. The proposal requires a variation to the building height development standard which is supported as the requirements of clause 4.6 of the SSLEP 2015 have been satisfied. A variation is proposed to setbacks controls, however the development will retain sufficient separation to accommodate landscaping, visual and acoustic privacy and spatial considerations and is supported. Subject to conditions of consent, the development is considered suitable for the site being consistent with the desired character of the area whilst limiting impacts on the built and natural environment.

In response to public exhibition, two submissions in support of the proposal were received.

The application has been assessed having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The application will not result in any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. DA19/0756 may be supported for the reasons outlined in this report.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Major Development Assessment (DS).