

2016SYE045 - 41-49 Willarong Road, Caringbah

DA16/0223

## ASSESSMENT REPORT APPENDICES

Appendix	A	Draft Conditions of Consent
	B	Clause 4.6 Objection to Building Height dated 12 July 2016

**DRAFT CONDITIONS OF DEVELOPMENT CONSENT**  
**Development Application No. DA No16/0223**

**GENERAL CONDITIONS**

These general conditions are imposed to ensure that the development is carried out in accordance with the development consent, having regard to the environmental circumstances of the site.

**1. Approved Plans and Documents**

The development must be undertaken substantially in accordance with the details and specifications set out on the Plan / Drawings:

Plan number	Reference	Prepared by	Date
SK416 P2	Partial Ground Floor	Leffler Simes Architects	7 July 2016
SK421 P2	Northern Elevation	Leffler Simes Architects	7 July 2016
SK422 P2	Eastern Elevation	Leffler Simes Architects	7 July 2016
SK423 P2	Southern Elevation	Leffler Simes Architects	7 July 2016
SK424 P2	Western Elevation	Leffler Simes Architects	7 July 2016
SK426 P1	Section J	Leffler Simes Architects	7 July 2016
100 E	Landscape masterplan	Arcadia	7 July 2016
101 E	Landscape detail plan	Arcadia	7 July 2016
102 E	Landscape detail plan	Arcadia	7 July 2016
103 E	Landscape detail plan	Arcadia	7 July 2016
104 E	Landscape detail plan	Arcadia	7 July 2016
105 E	Landscape detail plan	Arcadia	7 July 2016
106 E	Landscape detail plan	Arcadia	7 July 2016
107 E	Landscape detail plan	Arcadia	7 July 2016
108 E	Landscape detail plan	Arcadia	7 July 2016
501 E	Landscape details and specifications	Arcadia	7 July 2016
DA05 B	Ground floor	Leffler Simes Architects	4 May 2016

DA06 B	Mezzanine floor plan	Leffler Simes Architects	4 May 2016
DA07 B	First floor plan	Leffler Simes Architects	4 May 2016
DA08 B	Second floor plan	Leffler Simes Architects	4 May 2016
DA09 B	Roof plan	Leffler Simes Architects	4 May 2016
DA10 B	Ground floor plan	Leffler Simes Architects	4 May 2016
DA11 B	Mezzanine floor plan	Leffler Simes Architects	4 May 2016
DA12 B	First floor plan	Leffler Simes Architects	4 May 2016
DA13 B	Second floor plan	Leffler Simes Architects	4 May 2016
DA16 B	Amenities plan	Leffler Simes Architects	4 May 2016
DA41 B	Sections A, B and C	Leffler Simes Architects	4 May 2016
DA42 B	Sections D and E	Leffler Simes Architects	4 May 2016
DA43 B	Sections F, G and H	Leffler Simes Architects	4 May 2016
SC01 B	Cover Sheet and Legend	Neil Lowry & Associates	16 April 2015
SC02 B	Ground floor plan	Neil Lowry & Associates	16 April 2015
SC03 B	Mezzanine floor plan	Neil Lowry & Associates	16 April 2015
SC04 B	Level 1 plan	Neil Lowry & Associates	16 April 2015
SC05 B	Level 2 plan	Neil Lowry & Associates	16 April 2015
SC06 B	Roof plan	Neil Lowry & Associates	16 April 2015
SC07 B	Sediment control plan	Neil Lowry & Associates	16 April 2015
Flood Assessment report		Floodmit	July 2015

and any details on the application form and on any supporting information received with the application except as amended by the following conditions.

## 2. Signage

No consent is granted by this approval for the retention of the existing signage or the installation of new signage on the site. A separate development application is to be lodged with a site specific signage strategy prior to the issue of a construction certificate.

### **3. Flood control strategy**

#### **A. Occupation**

Prior to the issue of any occupation certificate a covenant is to be registered on title burdening the owner with the ongoing care and maintenance of the flood control devices which have been approved as part of this consent. The covenant must be registered on title.

### **4. Stormwater management**

Details of the existing and nearby Council drainage infrastructure in Koonya Circuit and Willarong Road.

A CDC unit is to be used as a water quality improvement device instead of the proposed ECOSOL.

### **5. Parapet Height**

The proposed parapet of the second floor addition is to have a reduced maximum RL of 23.5. Amended sections and elevations are to be submitted to and approved by the PCA prior to the issue of a construction certificate demonstrating compliance with the above maximum height.

### **6. Public Place Environmental, Damage & Performance Security Bond**

#### **A. Before Issuing of any Construction Certificate**

Prior to the issue of a Construction Certificate or the commencement of any works on site, whichever occurs first, the person acting on this consent must provide security to Sutherland Shire Council against damage that may be caused to any Council property and/or the environment as a consequence of the implementation of this consent. The security may be provided by way of a deposit with Council or a bank guarantee. A non refundable inspection/administration fee is included in the bond value.

It is the responsibility of the person acting on this consent to notify Sutherland Shire Council of any existing damage to public areas in the vicinity of the development site by the submission of a current dilapidation report supported by photographs. This information must be submitted to Council at least 2 days prior to the commencement of works.

In the event that the dilapidation report is not submitted 2 days prior to commencement and the public area sustains damage the person acting on this consent may be held liable.

Should any public property and/or the environment sustain damage as a result of the works associated with this consent, or if the works put Council's assets or the environment at risk, Council may carry out any works necessary to repair the damage and/or remove the risk. The costs incurred must be deducted from the bond.

The value of the bond is \$20,710.00.

Note: Bond amount includes a non refundable administration fee which must be

paid separately if security is provided by way of a deposit with Council or a bank guarantee.

Use of Bank Guarantee - As bond releases may occur under different timeframes only one bond amount/bond purpose is permitted on a Bank Guarantee. Multiple bonds will require multiple bank guarantees to be lodged.

#### **B. After Occupation**

A request for release of the bond may be made to Sutherland Shire Council after all works relating to this consent have been completed. Such a request must be submitted to Council on the 'Bond Release Request Form' signed by the owner or any person entitled to act on the consent and must be accompanied by a current dilapidation report including photographs.

### **7. S94A - Contribution for Employment Zoned land S94A Levy Plan**

#### **A. Before Construction**

Pursuant to s.80A(1) of the Environmental Planning and Assessment Act 1979, and Council's Section 94A Contribution Plan for Employment Zoned Land, a contribution of \$333,185.60 must be paid to Sutherland Shire Council towards the cost of works contained in the contribution plan. The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Section 94A Development Contributions Plan. The amount payable of monetary s.94 contributions will be indexed on 1 July each year in accordance with the Contribution Plan and the following formula:

$$\text{Current outstanding Contribution} \times \text{current IPD} \div \text{previous year's IPD}$$

Payment must be made prior to the issue of the Construction Certificate.

### **8. Approvals Required Under Roads Act or LG Act**

#### **A. Before Construction**

No occupation or works are to be carried out on public land (including a road or footpath) or access provided over a public reserve adjacent to the development site without approval being obtained from Sutherland Shire Council and the necessary fee paid under the Roads Act 1993 and/or the Local Government Act 1993.

Note: Approval under the Roads Act or Local Government Act cannot be granted by a Principal Certifying Authority or by a Private Certifier. Failure to obtain approval may result in fines or prosecution.

### **9. Design and Construction of Works in Road Reserve (COUNCIL DESIGN)**

#### **A. Design**

Council has determined that the proposed development generates a need for the following works to be undertaken by the applicant in the road reserve. To this end a Detailed Frontage Works application under the Roads Act must be submitted to Sutherland Shire Council, prior to the release of the Construction Certificate. The form is available on Council's website. A fee applies for the relevant inspections, assessment, coordination, creation of design brief and the issue of permits providing consent to undertake frontage works. The design will be quoted separately by Council's Design

Services unit.

This design will generally comply with the approved architectural design drawings, except where amended and/or addressing the following;

- i) Establish the property alignment levels and crossing profiles,
- ii) Construct (a or two or more) vehicle crossing/s,
- iii) Construct retaining / slope stability walls where required,
- iv) Road pavement construction,
- v) Kerb & gutter/edge strip where required,
- vi) Alter / install street signage where required,
- vii) Regrade, topsoil, turf and landscape the footpath verge to final design levels,
- viii) Adjust public services infrastructure where required,
- ix) Remove (number of or specific) street trees,
- x) Install (number of) by (species) street trees, and
- xi) Ensure there are adequate transitions between newly constructed and existing infrastructure.

Evidence of the lodgement of this application must be provided to the PCA prior to the release of the Construction Certificate.

#### **B. Before Construction**

Prior to the release of the Construction Certificate property alignment levels and crossing profiles must be obtained from Sutherland Shire Council.

#### **C. Before Occupation**

Prior to the occupation of the building or the issue of an Occupation/Subdivision Certificate the following certification must be provided to Sutherland Shire Council:

- i) The supervising engineer must certify the road frontage works were constructed to their satisfaction and in accordance with the development consent and associated Roads Act consent.
- ii) The supervising arborist, landscape designer or landscape architect must certify the street trees are the correct species and were installed in accordance with the development consent and associated Roads Act consent.

### **10. Site Management Plan**

#### **A. Before Commencement of Works including Demolition**

An Environmental Site Management Plan must accompany the application for a Construction Certificate. If demolition is to commence prior to the issue of a Construction Certificate the applicant must submit to Sutherland Shire Council a separate Demolition Site Management Plan. These plans must satisfy the Objectives and Controls of Sutherland Shire Development Control Plan 2015 relating to environmental site management and must incorporate the following throughout demolition and construction:

- i) safe access to and from the site during construction and demolition
- ii) safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting
- iii) method of loading and unloading excavation machines, building materials
- iv) how and where, construction materials, excavated and waste materials will be stored.

- v) methods to prevent material being tracked off the site onto surrounding roadways
- vi) erosion and sediment control measures

### **B. During Works**

The site management measures set out in the above plan must remain in place and be maintained throughout the period of works and until the site has been stabilised and landscaped.

## **11. Supervising Engineer**

### **A. Before Construction**

The applicant must engage an Accredited Certifier in civil engineering works or a Charter Civil Engineer to supervise construction of any:

- i) Road frontage works.
- ii) Construction / installation of stormwater drainage.
- iii) Rainwater harvesting & reuse.
- iv) All other works that form part of a subdivision.

### **B. During Construction**

The engineer must supervise the works as listed above to ensure compliance with:

- i) All relevant conditions of development consent
- ii) Any Consent issued under the Roads Act for this development

### **C. Before Occupation**

The supervising engineer must certify the works required in “A” above were undertaken and completed in accordance with the requirements of this Development Consent and to their satisfaction.

## **12. Public Utilities**

This condition is imposed to facilitate the provision of services to the development and reduce conflicts between services and lot boundaries, buildings or associated facilities.

### **A. Before Construction**

Suitable arrangements must be made with all relevant utility service providers to ensure the development is appropriately serviced by electricity, gas, telecommunications and the like, and any necessary underground conduits are provided.

**Note:** Should these requirements result in any significant change to the approved design an application must be made to modify the consent under s.96 of the Environmental Planning and Assessment Act.

## **13. Drainage Easements - Subdivision**

### **A. Before Subdivision**

Prior to the release of the Subdivision Certificate easements must be created over:

- i) interlot drainage lines;
- ii) the area required for on-site detention; and
- iii) the rights of carriageway within relevant allotment(s).

The easements and terms thereof must be created under the provisions of s.88B of the Conveyancing Act, 1919.

## **14. Carpark Layout and Vehicle Access-way**

### **A. Design**

The vehicular access-way and car park layout shall comply with the approved architectural design drawings, AS2890.6:2009 and AS2890.1:2004, except where modified by the following;

- i) Align with Council's issued vehicular crossing levels,
- ii) A minimum headroom of 2.2m measured from the parking floor to the underside of any beam, ventilation duct or service conduit, or to the underside of any door including a security door and fittings when those doors are in an open position, and
- iii) Design to comply with User Class 3A in Table 1.1A of AS2890.1:2004 for a B85 vehicle.

### **B. Before Construction**

Certification from an Accredited Certifier or a Chartered Civil Engineer or a Registered Surveyor, to the effect that the vehicle access-way design was prepared having regard to the conditions of development consent, shall accompany the application for the Construction Certificate.

**Note 1:** The recommended condition will not necessarily protect exotic or altered cars from "scraping" the vehicular access-way.

**Note 2:** Please be aware that the longitudinal grade of the driveway ramp is steep and that slip/traction may be an issue, it is recommended that you seek specialist advice in this regard.

## **15. Stormwater Drainage**

### **A. Design**

The stormwater drainage system must be designed in accordance with the approved stormwater drainage design drawing, Australian Standard AS3500.3:2003 and the BASIX Certificate issued for this development. Except where modified by the following:

- i) The pipeline within the footpath verge must be a hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres. A longitudinal section of the pipeline within the road reserve including existing natural surface levels, design surface levels, design invert levels of the proposed pipeline and the location, size and reduced level of all services where those services cross the proposed drainage line, and
- ii) Harvested rainwater must be used for irrigation and toilet flushing.
- iii) Details of the existing and nearby Council drainage infrastructure in Koonya Circuit and Willarong Road.
- iv) A CDC unit is to be used as a water quality improvement device instead of the proposed ECOSOL.

### **B. Before Construction**

- i) Certification from an Accredited Certifier in Civil Engineering or a Chartered Civil Engineer, to the effect that the drainage design is to their satisfaction and satisfies the design requirements in "A" above must accompany the application for a Construction Certificate.



- ii) Certification from an Accredited Certifier in Civil Engineering or a Chartered Civil Engineer, to the effect that the finished floor levels, vehicle access-ways, pedestrian access-ways and flood mitigation structures detailed in the Construction Certificate drawings have been designed to their satisfaction and in accordance with stated Conclusions of “Flood Assessment Report Final Report July 2015” prepared by FloodMit, must accompany the application for a Construction Certificate.

### **C. Before Occupation**

Prior to the issue of an Occupation Certificate:

- i) A Works-As-Executed drawing (WAED) of the stormwater drainage system must be prepared by a Registered Surveyor. This drawing must detail the alignment of pipelines, pits, the rainwater tank, finished floor levels, vehicle access-ways and pedestrian access-ways. An original or a colour copy must be submitted to Sutherland Shire Council.
- ii) The Supervising Engineer must certify the WAED of the stormwater drainage system that the stormwater drainage works, rainwater harvesting facility, rainwater reuse systems and the flood mitigation structures / floor levels / driveway crests were constructed to their satisfaction and in accordance with the Development Consent and Construction Certificate. Prior to the occupation or use of the building the Applicant / Owner must submit to Council a copy of the aforementioned letter of certification.

### **D. Ongoing**

The operation of all devices or appliances installed within the development approved by this consent as required by conditions pertinent to rainwater harvesting and rainwater reuse must be maintained in good operating order at all times.

## **16. Road Frontage Works**

### **A. Design**

Council has determined that the proposed development generates a need for the following works to be undertaken by the applicant in the road reserve. To this end a Detailed Frontage Works application under the Roads Act must be submitted to Sutherland Shire Council, prior to the release of the Construction Certificate. This design will generally comply with the approved architectural design drawings, SSC Specification for Civil Works Carried Out in Conjunction with Subdivisions and Developments and SSC Public Domain Design Manual, except where amended and or addressing the following;

- i) Establish the property alignment levels and crossing profiles,
- ii) Construct vehicle crossings,
- iii) Remove redundant crossings,
- iv) Road pavement construction,
- v) Regrade, topsoil, turf and landscape the footpath verge to final design levels,
- vi) Alter / install street signage where required,
- vii) Install eight street trees,
- viii) Adjust public services infrastructure where required,
- ix) Construct a pedestrian refuge within the carriageway of Koonya Circuit,
- x) Ensure there are adequate transitions between newly constructed and existing infrastructure,

- xi) Construct an EKI pit in accordance with the approved stormwater drainage design drawing,
- xii) Install a 1050mm diameter pipeline on the northern side of Koonya Circuit between Council's street pits No.11887 and 11878. Reconstruct these pits as required, and
- xiii) Reconstruct the 1.2m wide footpath pavement along the Willarong Street frontage, in front of adjacent to No.39 Willarong Road and No.31 Koonya Circuit.

Evidence of the lodgement of this application must be provided to the PCA prior to the release of the Construction Certificate.

#### **B. Before Construction**

Prior to the release of the Construction Certificate property alignment levels and crossing profiles must be obtained from Sutherland Shire Council.

#### **C. Before Occupation**

Prior to the occupation of the building or the issue of an Occupation Certificate the following certification must be provided to Sutherland Shire Council:

- i) The supervising engineer must certify the road frontage works were constructed to their satisfaction and in accordance with the development consent and associated Roads Act consent.
- ii) The supervising arborist, landscape designer or landscape architect must certify the street trees are the correct species and were installed in accordance with the development consent and associated Roads Act consent.

**Note:** The form is available on Council's website for the Road Frontage Design. A fee applies for the relevant inspections, assessment, coordination, creation of the design and the issue of permits providing consent to undertake frontage works. The design will be quoted separately by Council's Design Services unit.

### **17. Endorsement of Plan of Consolidation**

#### **A. Construction**

Prior to the issue of any Construction Certificate a Plan of Subdivision for the Consolidation of Lots 21 to 23 in Deposited Plan No.800924 and Lot 101 in Deposited Plan No.417983 into one lot must be registered with the Land Titles Office.

### **18. Approved Landscape Plan**

- i) At either end of the Taren Point Road frontage replace the two (2) *Tristaniopsis laurina* with two (2) *Angophora costata* to achieve a total of 3 *Angophora costata* per cluster of trees. Plant these four (4) trees at a minimum distance of 3m from the footpath to increase the level of shade for pedestrians walking along Taren Point Road. Note: adjust banner poles to suit.
- ii) Substitute the following tree species:
- iii) *Eucalyptus capitellata* (Brown Stringybark) or *Eucalyptus oblonga* (Sandstone Stringybark) for *Eucalyptus amplifolia* (Cabbage Gum).
- iv) Show all existing trees to be retained or removed, including numbering, trunk location, canopy spread and species, on a separate plan, based on the site survey and site observations.
- v) Show Tree Protection Zones (TPZ) on plan for all existing trees to be retained and protected.

- vi) All landscaped areas including all planter boxes on slab must be provided with a water-efficient irrigation system, connected to a pump and the rainwater tank, to enable effective landscape maintenance.
- vii) A tap with a removable water key, connected to a pump and the rainwater tank must be provided at a minimum of 25m centres along the three street frontages and the carpark perimeter planter boxes to enable hand watering if required.

The applicant must engage a suitably qualified Landscape Designer or Landscape Architect to oversee any design changes to the approved Landscape Plan and amendments required above. Details of these design changes must be included in the documentation submitted with the application for a Construction Certificate.

**Note 1:** A Landscape Designer is a person eligible for membership of the Australian Landscape Designers and Managers and a Landscape Architect is a person eligible for membership of the Australian Institute of Landscape Architects as a Registered Landscape Architect.

**Note 2:** If demolition works to occur prior to the Construction Certificate being issued, tree protection measures must be installed prior to commencement of demolition.

#### **B. Prior to Occupation/Occupation Certificate**

The landscape works must be completed in accordance with the approved Landscape Plan and amendments required by 'A' above. A Final Landscape Inspection must be carried out and a certificate issued by Council's landscape officer prior to occupation or the issue of an occupation certificate (interim or final). This certificate is required to ensure that all landscaping works and the deep soil percentage requirements have been carried out in accordance with 'A' above, and that all new indigenous plants on the site and within the road reserve are the correct species.

To arrange a Final Landscape Inspection please phone 9710-0333 48 hours prior to the required inspection date. An inspection fee of \$225 is required to be paid, prior to the inspection. Additional inspections will be charged at a rate of \$150 each.

#### **C. Ongoing**

All landscaping works required by 'A' above must be maintained for 12 months following the final landscape inspection date.

Any plants found faulty, damaged, diseased or dead shall be replaced with the same species in the same sized container within one month with all costs borne by the owner.

**Note:** If difficulty is experienced sourcing suitable indigenous plants from other suppliers, plants grown from locally provenance seed may be available from:

Sutherland Shire Council Nursery  
345 The Boulevard, Gympie  
Ph: 02 9524 5672

### **19. Trees on Private Land**

#### **A. Tree Removal**

The removal of existing trees within the site will be determined as part of the approved Landscape Plan and as follows.

- i) Trees identified as listed below:

Tree	Tree Species (botanical and	Location
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No.	common name)	
Not numbered	4 x <i>Melaleuca quinquenervia</i> (Broad Leaf Paperbark)	Taren Point Road frontage

- ii) Any declared noxious plant. The applicant is to ensure that all noxious plants are properly identified and controlled/removed.
- iii) Any tree species exempted by the Sutherland Shire Local Environmental Plan 2015.

## **20. Tree Retention and Protection**

### **A. Before Works**

The retention and protection of existing trees will be determined as part of the approved Landscape Plan

Prior to the commencement of any demolition, excavation or construction works on site the applicant shall engage a suitably qualified and experienced Arborist to oversee the measures for the protection of existing trees as listed below.

**Note:** An Arborist is a person with a current membership of the National Arborist's Association of Australia at a grade of General Member, Affiliate Member or Life Member, or alternatively a person who has obtained an Australian Qualifications Framework AQF Level 5 in Arboriculture.

Prior to the commencement of any works, including demolition, the supervising Arborist must oversee the protection of the following trees as detailed in the approved landscape plan. The trees identified for retention must be protected by the following measures:

- i) Protective fencing constructed of 1.8m high chain wire mesh supported by robust posts must be installed in accordance with the approved Landscape Plan. Signage must be erected on the fence with the following words clearly displayed "TREE PROTECTION ZONE, DO NOT ENTER".
- ii) The tree protection zone within the protective fencing must be mulched with a maximum depth 75mm of suitable organic mulch (woodchips or composted leaf chip mulch) and kept regularly watered for the duration of the works subject to this consent.
- iii) No development or associated activity is permitted within the fenced tree protection zone for the duration of works subject to this consent. This includes vehicular or pedestrian access, sheds, washout areas, excavations, backfilling, installation of services (including stormwater), removal of top soil, stockpiling of soil or building materials.
- iv) Where site access/egress is required over the roots of trees identified for retention and protection, provide hardwood rumble boards over a 200mm thick layer of wood chip.

### **B. During Construction**

- i) The tree protection measures detailed in 'A' above must be maintained during construction.
- ii) The supervising Arborist must be present during any approved hand excavation or under boring works within the Tree Protection Zone (TPZ) of any tree identified for retention and protection and have the authority to direct works to ensure the trees long term preservation;
- iii) The supervising Arborist must strictly supervise that there is no disturbance or severing of roots greater than 30mm diameter and to cleanly cut those roots

between 10-30mm in diameter.

- iv) If the trees identified for retention in 'A' above are damaged or destabilised during construction then works must cease and Council's Tree Assessment Officer (ph. 9710 0333) must be contacted to assess the trees and recommend action to be taken.

## **21. Road Frontage Works**

### **A. Design**

Council has determined that the proposed development generates a need for the following works to be undertaken by the applicant in the road reserve. To this end a Detailed Frontage Works application under the Roads Act must be submitted to Sutherland Shire Council, prior to the release of the Construction Certificate. This design will generally comply with the approved architectural design drawings, SSC Specification for Civil Works Carried Out in Conjunction with Subdivisions and Developments and SSC Public Domain Design Manual, except where amended and or addressing the following;

- i) Establish the property alignment levels and crossing profiles,
- ii) Construct vehicle crossings,
- iii) Remove redundant crossings,
- iv) Road pavement construction,
- v) Regrade, topsoil, turf and landscape the footpath verge to final design levels,
- vi) Alter / install street signage where required,
- vii) Install eleven (11) street trees, consisting of 3x *Tristaniopsis laurina* (Water Gum), 2x *Corymbia gummifera* (Red Bloodwood), 2x *Eucalyptus punctata* (Grey Gum), 2x *Eucalyptus racemosa* (Narrow Leaf Scribbly Gum) and 2x *Eucalyptus capitellata* (Brown Stringybark).
- viii) Adjust public services infrastructure where required,
- ix) Construct a pedestrian refuge within the carriageway of Koonya Circuit,
- x) Ensure there are adequate transitions between newly constructed and existing infrastructure,
- xi) Construct an EKI pit in accordance with the approved stormwater drainage design drawing,
- xii) Install a 1050mm diameter pipeline on the northern side of Koonya Circuit between Council's street pits No.11887 and 11878. Reconstruct these pits as required, and
- xiii) Reconstruct the 1.2m wide footpath pavement along the Willarong Street frontage, in front of adjacent to No.39 Willarong Road and No.31 Koonya Circuit.

Evidence of the lodgement of this application must be provided to the PCA prior to the release of the Construction Certificate.

### **B. Before Construction**

Prior to the release of the Construction Certificate property alignment levels and crossing profiles must be obtained from Sutherland Shire Council.

### **C. Before Occupation**

Prior to the occupation of the building or the issue of an Occupation Certificate the following certification must be provided to Sutherland Shire Council:

- i) The supervising engineer must certify the road frontage works were constructed to their satisfaction and in accordance with the development consent and associated Roads Act consent.
- ii) The supervising arborist, landscape designer or landscape architect must certify the street trees are the correct species and were installed in accordance with the development consent and associated Roads Act consent.

**Note:** The form is available on Council's website for the Road Frontage Design. A fee applies for the relevant inspections, assessment, coordination, creation of the design and the issue of permits providing consent to undertake frontage works. The design will be quoted separately by Council's Design Services unit.

## **22. Cleanliness and Maintenance of Food Preparation and Storage Areas**

To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation and storage areas:

### **A. Design**

The food preparation and storage area/s must be designed in accordance with;

- i) Food Act 2003.
- ii) Food Regulation 2010.
- iii) Food Safety Standards 3.1.1, 3.2.2 and 3.2.3.
- iv) AS 4674 - 2004 (Design, construction and fit-out of food premises).
- v) Sydney Water Corporation - Trade Waste Section.
- vi) Protection of the Environment Operations (Clean Air) Regulation, 2002.
- vii) AS 1668 Part 1- 1998.
- viii) AS 1668 Part 2 - 1991.

### **B. Before Construction**

Details of compliance with the above must form part of the documentation accompanying the application for a Construction Certificate.

### **C. Before Occupation**

- i) Prior to issue of an Occupation Certificate, certification must be provided from a suitably qualified person that all work in connection with the occupation or use of the premises for the preparation, display and storage of food has been carried out in accordance with the terms of the development consent.
- ii) Occupation of the premises must not occur until a registration application has been submitted to Council's Environment and Health Regulation Department for the food business.

## **23. Garbage, Recycling and Green-waste Storage Area**

To ensure the proper storage of waste from the premises:

### **A. Design**

The garbage and recycling storage area must have a smooth impervious floor that is graded to a floor waste. A tap and hose must be provided to facilitate regular cleaning of the bins and all waste water must be discharged to the sewer in accordance with the requirements of Sydney Water. Garbage bins must be designed to prevent the escape of any liquid leachate and must be fitted with a lid to prevent the entry of vermin.

### **B. Before Construction**

Details of compliance with 'A' above must form part of the documentation accompanying the applications for a Construction Certificate.

### **C. Before Occupation**

The works must be completed prior to the issue of any Occupation Certificate.

### **D. Ongoing**

All waste and recycling bins must be stored wholly within the approved waste storage

area. The bins must only be put out for collection in the evening prior to pick-up and returned to the storage area as soon as possible after pick-up.

**24. External Lighting - (Amenity)**

To ensure that any lighting on the site does not cause a nuisance to neighbours or motorists on nearby roads:

**A. Design**

All lighting must be designed in accordance with Australian Standard AS4282 - Control of the Obtrusive Effects of Outdoor Lighting.

**B. Ongoing**

All lighting must be operated and maintained in accordance with the Standard above.

**25. Noise Control - Design of Plant and Equipment (Continual Operation)**

To minimise the impact of noise from the development, all sound producing plant, equipment, machinery, mechanical ventilation systems and / or refrigeration systems:

**A. Design**

All plant and equipment must be designed and / or located so that the noise emitted does not exceed the Project Specific Noise level when measured at the most affected point on or within any residential property boundary.

The Project Specific Noise level must be the most stringent noise level of the Intrusive and Amenity criteria and be calculated in accordance with the provisions of the Department of Environment and Conservation's Industrial Noise Policy.

**Note:** The method of measurement of sound must be carried out in accordance with Australian Standard 1055.1.

**B. Before Construction**

Details of the acoustic attenuation treatment required to comply with 'A' above, must be prepared by a qualified acoustic engineer. These details must accompany the application for a Construction Certificate.

**C. Before Occupation**

Certification must be provided by a qualified acoustic engineer that all work associated with the installation of the acoustic measures has been carried out in accordance with 'A' above.

**D. Ongoing**

All plant and equipment must be operated and maintained in accordance with the 'A' above.

**26. Building Ventilation**

To ensure adequate ventilation for the building:

**A. Design**

The building mechanical and / or natural ventilation systems must be designed, in accordance with the provisions of:

- i) The Building Code of Australia;
- ii) AS 1668 Part 1 - 1998;

iii) AS 1668 Part 2 - 1991;

**B. Before Construction**

Details of compliance with the above must form part of the documentation accompanying the application for a Construction Certificate.

**C. Before Occupation**

Certification must be provided by a qualified mechanical ventilation engineer that the installation of the ventilation system has been carried out in accordance with 'A' above.

**D. Ongoing**

The ventilation system must be operated and maintained in accordance with 'A' above.

**27. Car-Park Ventilation - Alternate System**

To ensure adequate ventilation for the car park:

**A. Design**

As the basement car-park does not appear to comply with the natural ventilation requirements of Section 4 of Australian Standards AS1668.2 -1991, the car-park must be either mechanically ventilated by a system complying with AS1668.2 -1991 or alternatively, the natural ventilation system must be certified by a qualified mechanical ventilation engineer to the effect that the system is adequate. The certification shall confirm that the system will protect the health of occupants of the car park at anytime it is used and satisfies the atmospheric contaminate exposure rates specified in the Worksafe Australia document: Workplace Exposure Standards for Airborne Contaminants.

**B. Before Construction**

Details of compliance with 'A' above must form part of the application for a Construction Certificate.

**C. Before Occupation**

Certification must be provided by a qualified mechanical ventilation engineer that the installation of the ventilation system has been carried out in accordance with 'A' above.

**D. Ongoing**

The ventilation system must be operated and maintained in accordance with 'A' above.

**28. Demolition Work**

To ensure that demolition of structures is carried out in an environmentally acceptable and safe manner:

**A. Before Commencement**

If works involve the removal of more than 10 square metres of asbestos material, a bonded asbestos licence is required. A friable asbestos licence is required to remove, repair or disturb any amount of friable asbestos. For further information contact the NSW Workcover Authority.

**B. During Works**

- i) The demolition of the existing building must be carried out strictly in accordance with Australian Standard 2601 - The Demolition of Structures.
- ii) The applicant must ensure that the demolition contractor has a current public risk insurance coverage for a minimum of \$5 million. A copy of the Policy must be submitted to the Council prior to demolition.



To ensure that the removal and transportation of any asbestos material, regardless of the quantity, is carried out in an environmentally acceptable and safe manner, all work must comply with the following:

- i) Work Health and Safety Act 2011;
- ii) Work Health and Safety Regulation 2011;
- iii) Safe Work Australia Code of Practice - How to Manage and Control Asbestos in the Workplace;
- iv) Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC:2002(2005)];
- v) Workcover NSW 'Working with Asbestos - Guide 2008';
- vi) Protection of the Environment Operations Act 1997; and
- vii) Protection of the Environment Operations (Waste) Regulation 2005.

Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW EPA to accept asbestos waste. Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m<sup>2</sup> or more of asbestos sheeting must be registered with the EPA on-line reporting tool WasteLocate. More information can be found at <https://wastelocate.epa.nsw.gov.au>.

## **29. Mechanical Plant & Equipment**

### **A. Design**

To minimise the noise impact on the surrounding environment, the mechanical plant enclosure shall be screened with louvers on all sides, with an open roof, as recommended in the submitted acoustic report prepared by Renzo Tonin & Associates, with reference number TF435-04F02 and dated 3 July 2015. The design of the mechanical plant enclosure must ensure that noise from all mechanical plant must not exceed 45dBA when measured at the nearest affected residential property. Mechanical plant noise within adjacent commercial tenancies must comply with the amenity criteria outlined in the NSW Industrial Noise Policy (Table 2.1)

### **B. Before Construction**

Details of the acoustic attenuation treatment must accompany the documentation forming part of the Construction Certificate.

### **C. Before Occupation**

Certification must be provided by a qualified acoustic engineer that all work associated with the installation of the above acoustic measures has been carried out in accordance with 'A' above.

### **D. Ongoing**

To minimise the noise impact on the surrounding environment, noise from all mechanical plant must not exceed 45dBA when measured at the nearest affected residential property. Mechanical plant noise within adjacent commercial tenancies must comply with the amenity criteria outlined in the NSW Industrial Noise Policy (Table 2.1).

## **30. Transformer Substation**

### **A. Design**

To minimise the noise impact on the surrounding environment, transformers selected for use in the substation must have sound power levels of no more than 65dB(A), as recommended in the submitted acoustic report prepared by Renzo Tonin & Associates,

with reference number TF435-04F02 and dated 3 July 2015.

The substation structure must have acoustically absorbing internal walls to ensure the noise emissions from this substation do not exceed 39dB(A) at any surrounding residential development when measured during the night period. This level must account for the 5dB tonal component for annoyance, associated with transformer noise emissions.

**B. Before Construction**

Details of the acoustic attenuation treatment must accompany the documentation forming part of the Construction Certificate.

**C. Before Occupation**

Certification must be provided by a qualified acoustic engineer that all work associated with the installation of the above acoustic measures has been carried out in accordance with 'A' above.

**D. Ongoing**

The transformers in substation structure must not exceed 39dB(A) at any surrounding residential development when measured during the night period. This level must account for the 5dB tonal component for annoyance, associated with transformer noise emissions.

**31. BCA Assessment Report**

**A. Before Construction**

The recommendations of the Building Code of Australia Assessment Report prepared by mckenzie group ref 0628-06BCA and the Fire Safety Strategy prepared RAWFIRE report # s110850-FSS-09, and the Access report Morris- Godding Accessibility Consulting 16 April 2015 must be complied with and must accompany the application for a Construction Certificate.

**32. Change of Building Use - Change of BCA Classification**

**A. Before Construction**

As the development provides for a change of building classification under the Building Code of Australia, the building must be made to comply with the Category 1 fire safety measures applicable, if any, to the new building classification.

**B. Before Commencement of Use**

- i) Where measures identified in 'A' above are applicable, they must be provided and be operational prior to commencement of the new use.
- ii) A Fire Safety Schedule identifying each fire safety measure that is a Critical Fire Safety Measure, and the intervals at which supplementary fire safety statements are required, must be provided to Sutherland Shire Council prior to commencement of the new use.

**33. Certification Requirement of Levels**

**A. During Construction**

At the following stages of construction:

- i) Prior to the pouring of each floor or roof slab,
- ii) Upon completion of the roof frame.

A registered surveyor must provide the Principal Certifying Authority with Certification that the stage of structure complies with the development consent in respect of levels.

**B. Before Occupation**

The certification referred to above must form part of the application for an Occupation Certificate.

**34. Sydney Water Tap in™ & Compliance Certificate**

**A. Before Construction**

The plans approved as part of the Construction Certificate must be submitted to a Sydney Water Tap in™ to determine as to whether the development will affect Sydney Water's sewer and water mains, stormwater drains and / or easements, and if further requirements need to be met. Customers will receive an approval receipt. Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au).

**B. Before Occupation / Prior to issue of Subdivision Certificate**

A Compliance Certificate under s73 of the Sydney Water Act, 1994, must be submitted to Council by the Principal Certifying Authority. Sydney Water may require the construction of works and/or the payment of developer charges.

**Sydney Water Advice on Compliance Certificates:**

An application must be made through an authorised Water Servicing Coordinator. For details see the Sydney Water web site at [www.sydneywater.com.au/customer/urban/index](http://www.sydneywater.com.au/customer/urban/index) or by telephone 13 20 92.

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water / sewer extensions can be time consuming and may impact on other services as well as building, driveway or landscaping design.

**35. Dial Before You Dig**

**A. Before Construction**

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (this is the law in NSW).

It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

**36. Noise Control and Permitted Hours for Building and Demolition Work**

**A. During Works**

To minimise the noise impact on the surrounding environment:

- i) The LAeq sound pressure level measured over a period of 15 minutes when the construction or demolition site is in operation, must not exceed the ambient background level (LA90 15min) by more than 10dB(A) when measured at the

- nearest affected premises.
- ii) All building and demolition work must be carried out only between the hours of 7.00am and 6.00pm Monday to Friday inclusive, 8.00am and 3.00pm Saturdays. No work must be carried out on Sundays and Public Holidays.

### **37. Toilet Facilities**

#### **A. During Works**

Toilet facilities must be available or provided at the work site at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site before works begin and must be maintained until the works are completed.

Each toilet must:

- i) be a standard flushing toilet connected to a public sewer, or
- ii) have an on-site effluent disposal system approved under the Local Government Act 1993, or
- iii) be a temporary chemical closet approved under the Local Government Act 1993

### **38. Street Numbering and Provision of Letter Box Facilities (ORD6005)**

#### **A. Before Occupation**

- i) Street / unit / shop numbers must be clearly displayed.
- ii) Suitable letterbox facilities must be provided in accordance with Australia Post specifications.

### **39. Car parking Areas**

#### **A. Ongoing**

To ensure that the car parking area satisfies the demands of the development:

- i) it must be made available on an unrestricted basis and free of charge at all times for employees' and visitors' vehicles
- ii) any parking nominated as visitor parking or common property must be continually available as common property.

### **40. Loading and Unloading**

To preserve the amenity and ensure the safety of the public:

#### **B. Ongoing**

All loading and unloading of vehicles must be carried out within the site and not from the public roadway. All service/delivery vehicles must enter and leave the site in a forward direction.

Attached are the prescribed conditions that must be complied with under the Environmental Planning and Assessment Regulations 2000.

## PREScribed CONDITIONS

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Division 8A of the Environmental Planning and Assessment Regulation Prescribes the following conditions of development consent

### **S98 Compliance with Building Code of Australia and insurance requirements under the [Home Building Act 1989](#)**

(cf clauses 78 and 78A of EP&A Regulation 1994)

- (1). For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:
  - a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
  - b) in the case of residential building work for which the [Home Building Act 1989](#) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 1A) For the purposes of section 80A (11) of the Act, it is prescribed as a condition of a development consent for a temporary structure that is used as an entertainment venue, that the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the Building Code of Australia.
- (2). This clause does not apply:
  - a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
  - b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) applies.
- (3). In this clause, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application is made for the relevant:
  - a) development consent, in the case of a temporary structure that is an entertainment venue, or
  - b) construction certificate, in every other case.

**Note.** There are no relevant provisions in the *Building Code of Australia* in respect of temporary structures that are not entertainment venues.

### **S98A Erection of signs**

- (1). For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (2). A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c) stating that unauthorised entry to the work site is prohibited.

- (3). Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (4). This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (5). This clause does not apply in relation to Crown building work that is certified, in accordance with section 109R of the Act, to comply with the technical provisions of the State's building laws.
- (6). This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

**Note.** Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

#### **S98B Notification of [Home Building Act 1989](#) requirements**

- (1). For the purposes of section 80A (11) of the Act, the requirements of this clause are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the [Home Building Act 1989](#).
- (2). Residential building work within the meaning of the [Home Building Act 1989](#) must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - a) the case of work for which a principal contractor is required to be appointed:
    - (i) the name and licence number of the principal contractor, and
    - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
  - b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- (3). If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- (4). This clause does not apply in relation to Crown building work that is certified, in accordance with section 109R of the Act, to comply with the technical provisions of the State's building laws.

#### **S98E Condition relating to shoring and adequacy of adjoining property**

- (1). For the purposes of section 80A (11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends

below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- a) protect and support the adjoining premises from possible damage from the excavation, and
- b) where necessary, underpin the adjoining premises to prevent any such damage.

- (2). The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**Please be advised if this consent is for an entertainment venue, then there are further prescribed conditions that apply under clauses 98C and 98D of the Environmental Planning and Assessment Regulation.**

1. The cutting down, lopping, injury and destruction of trees is regulated by Sutherland Shire Local Environmental Plan 2015 and Sutherland Shire Development Control Plan 2015. A person who contravenes, causes or permits the controls in relation to trees to be contravened is guilty of an offence. Trees designated to be removed on the approved plans under this consent may be removed unless specified otherwise in the conditions in this consent. All other trees on the site covered by Council's controls referred to above must be retained.
2. Section 82A of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 6 months from this determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

**Note:** Review provisions do not apply to Complying Development, Designated Development, State Significant Development Integrated Development or any applications determined by the Joint Regional Planning Panel or the Land and Environment Court.

3. Division 8 (Appeals and Related Matters) Part 4 of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.
4. This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 95 of the Environmental Planning and Assessment Act 1979 as amended.



## DECISION

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Pursuant to the provisions of Section 80(1)(a) of the Environmental Planning and Assessment Act 1979, Development Application No DA16/0223 is determined by the granting of approval subject to the conditions outlined in the Development Assessment Report attached to Council's file.

END OF CONDITIONS

## Clause 4.6 Variation (Updated)

### 1.1.1 CLAUSE 4.6 VARIATION

This application seeks to vary both the maximum building height and landscape area standards of SSLEP 2013.

In response to recent feedback from Council Officers, the building height of the original proposal has been reduced, with the degree of non-compliance also reduced from the DA that was originally submitted. Therefore, this variation has been updated to reflect this amendment.

The previous proposal provided a ‘minimum’ height of 6.5m below the lowest point of any structural element. This was provided to satisfy requirements of a specific prospective tenant to lease the upper floor of the proposal. The proposed reduction in height to 4.5m will result in this tenant compromising their preferred minimum requirements, should they wish to pursue their interest with this lease any further. However, we trust that this amendment will address Council’s concerns with the application.

Clause 4.6 of SSLEP 2013 allows Council to grant consent to a development application notwithstanding a breach of development standards relating to a site. The variation can be exercised where a written request is made by the applicant justifying the contravention of the standards. The express objective of Clause 4.6 (1) is to (our emphasis):

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

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

Clause 4.6(3) of the LEP outlines the requirements of a variation, which must demonstrate:

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

Under Clause 4.6(4)(a) of the SSLEP 2013, consent for a development that contravenes a development standard must not be granted unless, in addition to the issues in Subclause 4.6(3), the consent authority is satisfied that:

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

We deal with both the height and landscape area standard separately below, in accordance with these considerations.

#### 1.1.1.1 BUILDING HEIGHT

##### Development Standard and Extent of Variation

Clauses 4.3(2) set out the building height standards which apply to the subject site. Under Clause 4.3(2):

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

The 'Height of Buildings Map' indicates that a maximum building height of 16 metres applies to the site. With the exception of existing building elements (such as the turrets in select locations) the original proposal proposed a height ranging from 12.5m up to approximately 20.4m (i.e. up to 4.4m above the development standard). This height was determined by providing a clear min. internal (springing) height of 6.5m to the underside of steel structure. This was to satisfy the requirements of a prospective Large Format Retail (LFR) tenant seeking to locate at the Caringbah Homemaker Centre, who required a larger floor to ceiling height.

Notwithstanding, the applicant has agreed to reduce the height of the proposed second floor roof tenancy in response to Council's concerns. The absolute 'minimum' height below the lowest point of any structural element for a LFR tenant is 4.5m (which allows for a nominal 4.0m ceiling height plus 500mm above ceiling for building services). Therefore, the extent of non-compliance measured along the north elevation would reduce to approx. 1,250mm and 2,435mm respectively (i.e. maximum height of 17.25m – 18.43m).

This is consistent with the top height of the adjacent Bunnings approval which was approximately 17.9m (or 11%). The extent of variation for the proposal is numerically between 7.3%-11.5% above the height standard applicable to the site.

**Will the proposed variation achieve a better outcome for and from development by allowing flexibility in particular circumstances?**

The element of the proposed development which exceeds the 16m height standard principally relates to the proposed upper retail level.

The recently gazetted SSLEP 2013 provides for additional floor space uplift of 0.5:1 from the now superseded LEP 2006, which reflects that site and surrounding precinct will provide opportunities for additional bulky goods floorspace to respond to the pent up demand in the area. While the building height has also increased from 12m to 16m, the design approach taken on the site has been to limit building height and scale around the street frontages, and provide additional height and massing to the centralised part of the site where the built form can be further setback and be more visually subservient from the street.

Under this height and massing scenario, while a taller element is proposed, this has still meant that the proposal has been unable to achieve a maximum FSR of 1.5:1. Therefore, in seeking a variation for building height, this is not at all linked or seeking to vary the maximum FSR permitted on the site, but actually results in an overall reduction in density across the site.

Therefore, the proposed height and massing, which has been supported by the ARAP, results in a reduced density across the site than an otherwise complying scheme. Notwithstanding the support of the ARAP, the applicant has sought to further reduce the building height to reduce the scale of the proposal further.

In summary, the proposal seeks to logically redistribute the massing and building height in a manner which reduces the pedestrian scale and enhances the streetscape presentation along Taren Point Road, Willarong Road and Koonya Circuit. This will have a positive impact on the locality, and the additional flexibility with the building height will enable the applicant to provide a high quality, new LFR tenant on the upper floor. The proposed height variation will not create any unreasonable impacts on surrounding properties.

On this basis, the proposal represents a better outcome both for the development and the surrounding properties.

**(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case & b) there are sufficient environmental grounds to justify contravening the development standard**

This section assesses the proposed variation to consider whether compliance with the building height standard can be considered unreasonable or unnecessary in this specific circumstance, and whether there are sufficient environmental planning grounds to justify contravening the development standard.

In the *Wehbe* Land and Environment Court decision, Preston CJ set out five ways in which an objection to a development standard can be supported:

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

The first consideration, demonstrating that the objectives of the height standard can be achieved notwithstanding noncompliance, is most important to the assessment of this variation. The compliance of the proposed development and variation with the objectives of the height standard in Clause 4.3 of the LEP is demonstrated below.

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

The proposed scale of buildings has been designed to ensure that a lower scale is provided around the street frontages ranging between 12-14 metres, with a taller setback second floor. This approach was broadly consistent with the 2012 approval, albeit that the new proposal has been able to utilise additional available gross floor area from the recent uplift under SSLEP 2013 and accommodates an additional retail level. The upper level tenancy is setback a considerable distance from the street.

The ARAP minutes confirm that they are supportive of the proposed height and density.

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

As demonstrated in the shadow diagrams included at **Appendix C**, the proposed massing has been arranged in a manner where it has negligible impacts on surrounding residential buildings and the public domain. The design of the centre itself has proposed skylights which reduce energy dependency throughout the mall.

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

As discussed above and within Section 6 of this report, the proposal will not give rise to any unreasonable impacts on views, 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,***

As discussed above, the applicant has sought to retain a lower scale at all three street frontages surrounding the centre, and specifically setback the taller elements from the street so as not to overbear the scale at the street.

The visual appearance of the proposal has also been improved by the use of high quality materials and articulation of each of the building elevations. This is also further complimented by a significantly enhanced landscape design for the site which also seeks to break down the scale of the built form.

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

The proposal is not located in a residential zone, however careful attention has been given to the design of the Willarong Road interface to ensure that the scale, materials and landscaping are consistent with the residential quality of this street. The design removes unsightly areas of car parking and replaces these with a stronger, more defined street wall along Willarong Road and has also consolidated the vehicular access points along this street which will assist with reducing light-spill and noise.

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

As discussed above, the proposal has sought to transition building height across this very large site in a manner which reduces the building height and scale adjacent to the surrounding residential properties on Willarong Road.

**The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.**

As discussed above, the proposal will be in the public interest as it is consistent with the above objectives, and the objectives of the B5 Zone as discussed in Section 5 of this report.

#### 1.1.1.2 LANDSCAPE AREA

Clauses 6.11(2) set out the building height standards which apply to the subject site. Under Clause 4.3(2):

*The minimum landscaped area on any land shall not be less than the required percentage shown on the Landscape Area Map.*

The 'Landscape Area Map' indicates that a minimum of 10% landscape area applies to the subject site.

Landscape Area is defined as:

*Landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.*

The proposed landscape area, or areas for 'deep soil' planting are limited by virtue of the existing centre and comprise of 3.78% of the site area. This represents a small increase from the existing development (3.76%) however, the applicant has provided a significant increase in planting which otherwise sits above structures which comprises 6.75% of the site area. This represents an increase of 674sqm of additional landscaping to that of the existing centre which is a very positive initiative.

**Will the proposed variation achieve a better outcome for and from development by allowing flexibility in particular circumstances?**

As established during the assessment of the 2012 approval, there are limited opportunities for the proposal to provide a significant quantum of additional deep soil landscaping on the site, given the large footprint of the existing centre. However, the proposal does provide a small increase in deep soil cumulatively, as well as a much more significant increase in non-deep soil landscaping which is otherwise a better outcome under the circumstances. As agreed by Council in the JRPP report for the 2012, this approach is a logical one and the previous SEPP 1 objection was supported on this basis.

**Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case & b) there are sufficient environmental grounds to justify contravening the development standard**

This section assesses the proposed variation to consider whether compliance with the landscape area standard can be considered unreasonable or unnecessary in this specific circumstance, and whether there are sufficient environmental planning grounds to justify contravening the development standard.

As discussed above, in the *Wehbe* Land and Environment Court decision, Preston CJ set out five ways in which an objection to a development standard can be supported, with the first being consideration, demonstrating that the objectives of the height standard can be achieved notwithstanding noncompliance, is most important to the assessment of this variation. The compliance of the proposed development and variation with the objectives of the landscape area standard in Clause 6.11 of the LEP is demonstrated below.

***(a) to ensure adequate opportunities for the retention or provision of vegetation that contributes to biodiversity,***

The proposal retains existing deep soil planting and landscaping, and adds an additional 674sqm of landscaping above structures.

Additional landscaping facilitates the proposed implementation of Water Sensitive Urban Design (WSUD) initiatives. Four key principles have been adopted with regard to the provision of vegetation to ensure the long term sustainability of the project:

- Low water use plants - Low water use and robust plants have been adopted in accordance with “*Sutherland Shire Plants: A Guide to Indigenous Plant Species Suitable for Landscape and Re-vegetation Projects*.” The proposed selection has given preference to locally indigenous species that are adapted to the local soils and climate. However, non-indigenous species have also been included to provide colour and foliage accents. The species selected after establishment will have a low water requirement and will create a long term sustainable landscape.
- Irrigation efficiency - If irrigation is required, drip irrigation will be specified as it is more effective in supplying a slow and steady amount of water to beneath the soil surface preventing excess surface water build up reducing the rate of evaporation.
- Surface mulch - It is proposed that all planting areas will be installed with minimum 75mm layer of forest fines mulch. The mulch layer not only protects the soil from erosion and weed invasion it also insulates the soil and limits evaporation of the soil's moisture reserves.
- Effective landscape maintenance - The landscape has been designed to ensure that effective long term maintenance can be achieved.

While the site is a heavily modified B5 zoned site with little remnant biodiversity, the proposed increase in landscape area will increase biodiversity. For these reasons, the proposal is consistent with this objective.

***(b) to ensure adequate opportunities for tree retention and tree planting so as to preserve and enhance the tree canopy of Sutherland Shire,***

The report submitted with the landscape plan provides commentary on the retention and embellishment of trees to preserve and enhance the tree canopy of Sutherland Shire. A number of existing trees have been retained and assist with the proposed landscape scheme which promotes local native vegetation.

On Taren Point Road, the existing street trees have been planted too close to the building and as a result lack a natural canopy due to severe pruning. These trees are proposed to be replaced with more suitable species planted in position that will enable the full growth of the trees crown and canopy in accordance with Sutherland Shire Council's Tree Planting Program for Taren Point Road (DCP 2006).

The proposed development will thereby enhance the tree canopy of the locality.

***(c) to minimise urban run-off by maximising pervious areas on the sites of development,***

The proposed landscape concept for the site will assist in reducing impervious areas and reduce peak stormwater flows for rainfall events. Additional rainwater storage capacity will be installed to harvest roof water and overflow of the rainwater tank will discharge into the existing stormwater system to ensure no additional discharge.

The proposed additional landscape areas will further assist in retaining rainwater on the site.

***(d) to ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained,***

To increase the amenity of the proposed redevelopment and minimise any potential visual impact on surrounding residences, the landscape concept proposes to provide screen planting to soften the built form.

It is proposed that screen planting be installed along the Willarong boundary to provide a green edge to the site. To soften the overall built form mass planting is proposed to be installed where suitable in the raised planter beds in the car parking area. Planter boxes are also proposed to the upper deck car park to provide an attractive treatment of this area.

The turf adjoining the mass planting along Taren Point Road is proposed to be regraded and re-laid to provide a smoother finish. The planting bed is also proposed to be extended to accentuate the building entrance and to also minimise pedestrian traffic degrading the turf.

***(e) to ensure that landscaping carried out in connection with development on land in Zone IN1 General Industrial; Zone IN2 Light Industrial; Zone IN3 Heavy Industrial; Zone B5 Business Development; Zone B6 Enterprise Corridor and Zone B7 Business Park, is sufficient to complement the scale of buildings, provide shade, screen parking areas and enhance workforce amenities.***

The existing development incorporates landscaping (maximum 2m in height) along the development boundaries, in particular Willarong and Taren Point Roads. These areas will be expanded to complement the scale of the proposed built form and enhance the attractiveness of the locality.

The additional provision of landscaping in the car park area will provide more effective screening of the car park and built form. Landscaping will also be introduced on the new level (eastern elevation) consistent with the objective to 'enhance workforce amenities'.

**The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.**

As discussed above, the proposal will be in the public interest as it is consistent with the above objectives, and the objectives of the B5 Zone as discussed in Section 5 of this report.