

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSSH-134
DA Number	DA23/0196
LGA	Sutherland Shire
Proposed Development:	Demolition of existing structures and construction of a medical and child care centre
Street Address:	31 Koonya Circuit (Lot 23 DP 800924) 39 Willarong Road Caringbah (Lot 22 DP 800924) 41-49 Willarong Road (Lot 101 DP 417983) 29 Koonya Circuit (Lot 21 DP 800924)
Applicant/Owner:	Richard Seaward - Equity Trustees Limited as Custodian for HMC Funds Management Limited
Date of DA lodgement	20/04/2023
Number of Submissions:	6
Recommendation:	Refusal
Regional Development Criteria	Clause 5, Schedule 6 State Environmental Planning Policy (Planning Systems) 2021 - CIV > \$5M – Private infrastructure and community facilities
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015). • Sutherland Shire Development Control Plan 2015 (SSDCP 2015). • Child Care Planning Guideline (CCPG) • Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Pre-Application Discussion comments • Report from the Design Review Panel • Clause 4.6 statement – Landscaped Area • Compliance tables – Child Care Planning Guideline / Sutherland Shire Development Control Plan 2015.
Report prepared by:	Evan Phillips - Senior Development Planner Sutherland Shire Council
Report date	14 March 2023

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 Executive Summary of the assessment report?	Yes
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e.g. Section 4.6 of Chapter 4 of SEPP Resilience and Hazards 2021 -Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

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

Does the DA require Special Infrastructure Contributions conditions (S7.24)?	Not Applicable
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Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?	Not Applicable / Refusal Recommended
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REASON FOR REFERRAL TO SSPP

The application is identified as Regionally Significant Development in accordance with Clause 5, Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021, as the development is for private infrastructure and community facilities which exceeds a Capital Investment Value (CIV) of \$5 million. The applicant's submission / CIV is \$8,446,035 (excluding GST).

PROPOSAL

The proposal is for the demolition of existing structures and the construction a 2 storey building comprising a medical centre on the ground floor and a child care facility (accommodating 108 children) on the first floor. The building connects to the adjoining 'Caringbah HomeCo. Centre' car parking area being an existing two (2) storey bulky goods retail development.

THE SITE

The subject site is bound by Taren Point Road to the west, Koonya Circuit to the north, and Willarong Road to the east. The proposed development works are isolated to the north east site portion (i.e. the corner of Koonya Circuit and Willarong Road) over the lots 31 Koonya Circuit and 39 Willarong Road Caringbah.

ASSESSMENT OFFICER'S RECOMMENDATION

1.0 THAT:

- 1.1 That Development Application No. DA23/0196 for demolition of existing structures and construction of a medical and child care centre at Lot 101 DP 417983, Lot 21 DP 800924, Lot 22 DP 800924, Lot 23 DP 800924 41-49 Willarong Road, Caringbah, 29 Koonya Circuit, Caringbah, 39 Willarong Road, Caringbah is determined by the refusal of development consent for the reasons outlined below.
- a. The application is considered unacceptable pursuant to the provisions of Part 1.3 of the Environmental Planning and Assessment Act 1979 – Objects of Act. The development is not considered to satisfy objective (c) as it does not demonstrate orderly development of the land due to the conflict with an existing development consent.
 - b. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it is inconsistent with the E3 – Productivity Support zone as outlined in Sutherland Shire Local Environmental Plan 2015. This includes the development not achieving a high architectural and landscape standard which is not considered to appropriately enhance the visual appearance of the area.
 - c. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the application fails to comply with the minimum 10% landscaped area required under Clause 6.14 of Sutherland Shire Local

Environmental Plan 2015 and the applicable objectives of the clause as the proposal fails to adequately protect 2 existing native trees and achieve compliance with objectives 1(a), (c) and (d). The submitted justification is not well founded and the provisions of clause 4.6(3) have not been achieved and the exception to the development standard is therefore not supported.

- d. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the application fails to satisfy objectives 1(a) and (d) of Clause 6.16 Urban Design – General of Sutherland Shire Local Environmental Plan 2015 in that high quality design and development outcome for the urban environment of Sutherland Shire has not been attained or the natural environment adequately protected.
- e. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the application fails to satisfy the objective of Clause 5.21 Flood Planning of Sutherland Shire Local Environmental Plan 2015 in that the site is inundated by the 1%AEP flood event and the proposed finished floor / surface levels along with associated mitigation measures are inadequate to appropriately minimise the flood risk to life and property, noting the land uses are identified as sensitive uses.
- f. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the application fails to satisfy Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 in that insufficient information is provided in terms of a Detailed Site Investigation to demonstrate that the site is suitable or can be made suitable (i.e. following remediation) for the proposed land use.
- g. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to satisfy Design Quality Principle 1 outlined in the Childcare Planning Guideline with respects to responding to and reinforcing the context.
- h. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to comply with the Childcare Planning Guidelines Part 3 Clauses C2, C4, C5, C11, C17, C18 and Part 4 of the Regulations by fully depicting internal and external physical requirements or a detailed emergency evacuation procedure.
- i. The application is considered unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that it fails to comply with Chapter 40 – Flood Risk Management (Sections 3, 5.3 and 5.6), Chapter 38 – Stormwater Management and Chapter 25 – Business Development (Section 2.2 – Outdoor staff space / 11.2 – Waste) of Sutherland Shire Development Control Plan 2015 requirements.

- j. Pursuant to the provisions of Section 4.15(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case approval of the development would set an undesirable precedent for similar inappropriate development and it is therefore not in the public interest.

ASSESSMENT OFFICER'S COMMENTARY

2.0 DESCRIPTION OF PROPOSAL

The original proposal lodged with Council sought the demolition of existing structures and the construction a 2 storey building comprising a 1,300m² medical centre on the ground floor and a 1,770m² child care facility (accommodating 125 children) on the first floor. Vehicular access to the site was proposed via Koonya Circuit which led to 9 on-site car parking spaces. The proposal provided for a direct connection to both levels of the existing car parking structure on the adjoining 'Caringbah HomeCo. Centre' site.

The application has since been amended whereby the density / bulk and scale of the development is reduced resulting in a 1200m² medical centre on the ground floor and a 1,630m² child care facility. Vehicular access / parking layout has been revised with a new connection to Willarong Road which accesses 11-line marked spaces (including accessible spaces) along with motorcycle parking. The direct pedestrian connection to the adjoining Caringbah HomeCo. Centre car park is maintained at both levels with a portion of parking relied upon to support the demand of the proposed land uses.

Medical Centre

The Medical Centre is located on the ground floor level and is proposed to operate from 7:00 am to 6:30 pm, Monday to Friday (closed for Public Holidays). The Medical Centre will provide medical services {including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies} to out-patients only. There are 16 consulting rooms, 1 treatment room and associated staff / sanitary facilities. A pathology and pharmacy / dispensary being ancillary functions of the medical centre are also proposed. The external ground floor parking area accessed via Willarong Road is proposed to be exclusive to the use with additional parking being provided within the existing Caringbah HomeCo. Centre car park via a separate pedestrian connection.

Childcare Centre

The child care centre will be located on the first floor of the new building and is proposed to operate from 7:00 am to 6:30 pm, Monday to Friday, 52 weeks per year and closed for Public Holidays. The child care centre provides for 6 learning rooms with a centralised landscaped / interactive play space being externalised with an open void within the roof form. There are associated staff / children amenities provided and the child care centre will provide education and care for up to 108 children from birth to 6 years in the following groups:

- 2 rooms - 0-2 year (each 12 children = 24 children)
- 2 rooms - 2 - 3 years (each 15 children) = 30 children
- 2 rooms - 3 - 6 years (each 18 children) = 36 children

The main entry to the child care centre is proposed via the adjoining Caringbah HomeCo. Centre car park with separate pedestrian access provided at ground level from Willarong Road to an accessible lift. It is proposed that a portion of the car park will be line marked and dedicated to the child care centre during operating hours.

The application includes a basic signage strategy to support the future child care centre land use.

Peripheral landscape works, both adjoining the proposed building within the immediate frontage along with the broader 'whole of site' frontages which was required under a separate development consent (see Section 4 below) are proposed. 2 existing native trees (being species *Corymbia maculata* and *Eucalyptus robusta*) are proposed to be retained within the Willarong Road site frontage. The consolidation of the allotments with the Caringbah Super Centre site is also proposed as part of the scope of works.

A 'Whole of site', and a site plan limited to the 'development zone' upon 31 Koonya Circuit and 39 Willarong Road Caringbah is provided in **Figures 1 and 2** below.

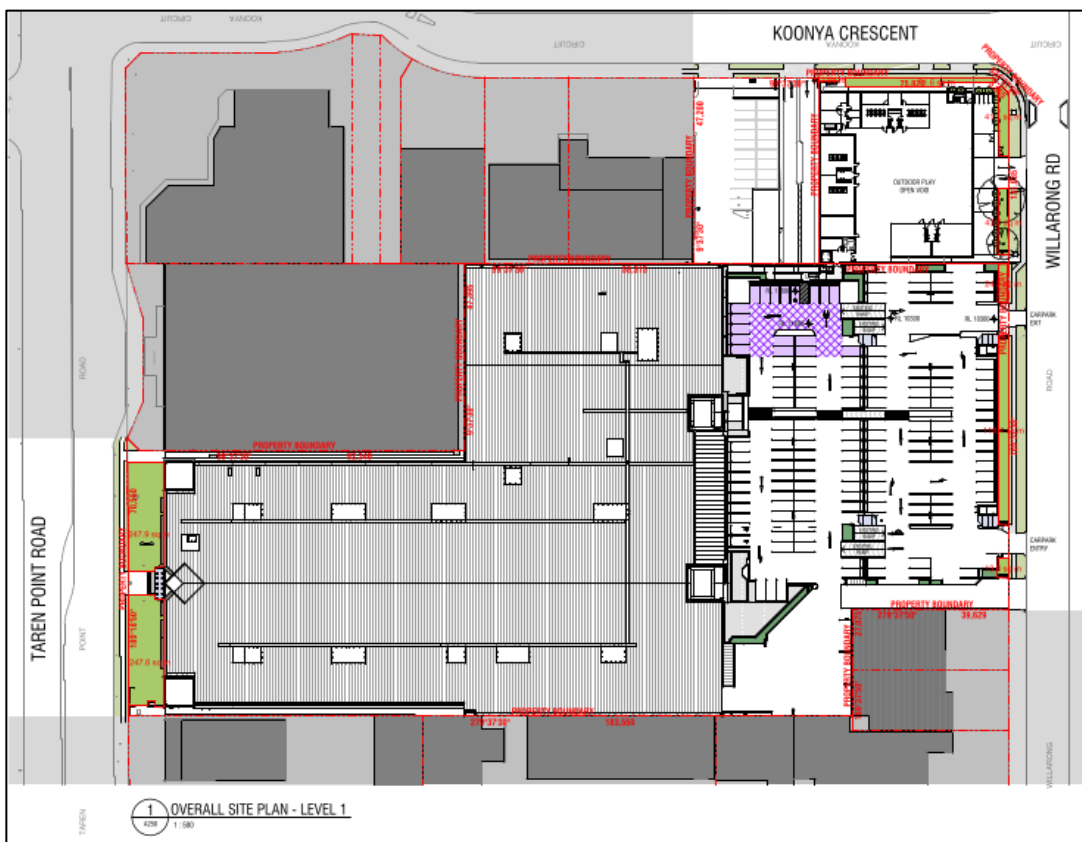


Figure 1: 'Whole of Site' Plan

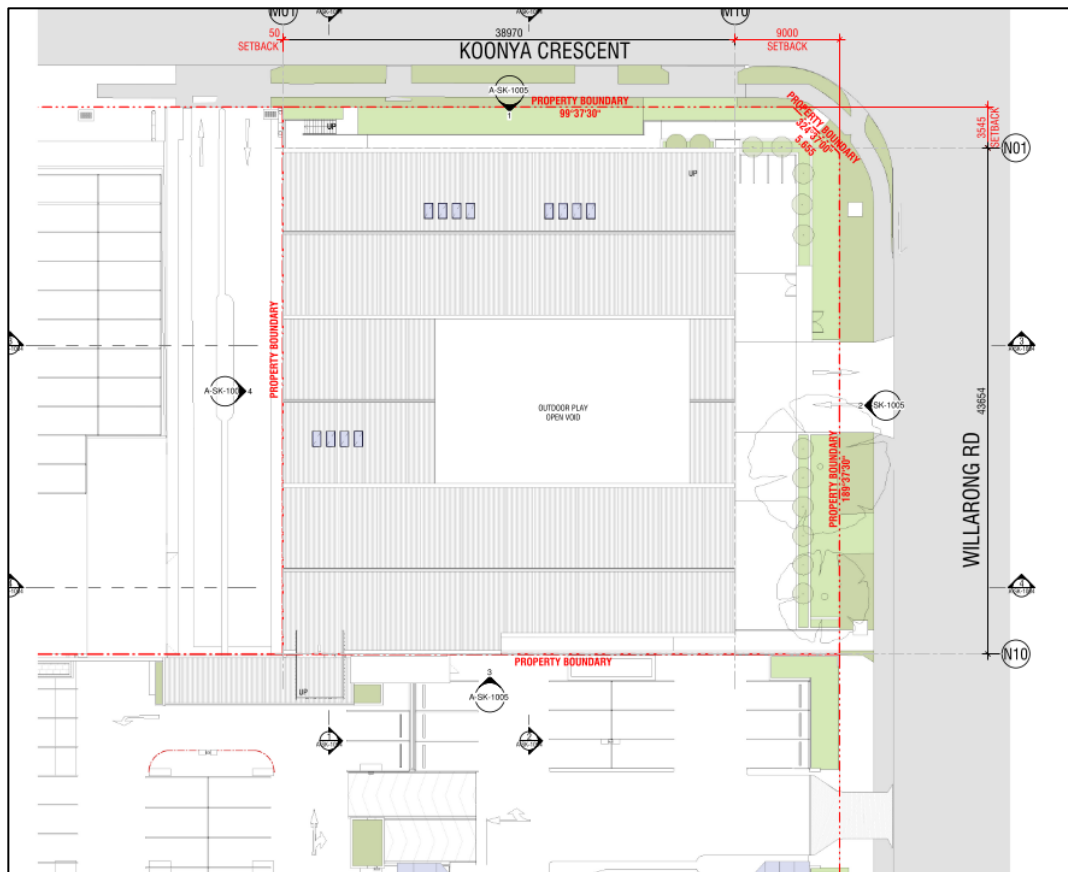


Figure 2: Site Plan 'Development Zone'

3.0 SITE DESCRIPTION AND LOCALITY

The site as identified in the original application submission is located on the corner of Koonya Circuit and Willarong Road at Caringbah and is known as 31 Koonya Circuit and 39 Willarong Road Caringbah (legally described as Lot 23 DP 800924 and Lot 22 DP 800924 respectively). It has a northern boundary to Koonya Circuit and an eastern boundary to Willarong Road of 43.88m and 43.29m respectively, resulting in a site area of 2258m². Existing on the site is a two-storey commercial building situated on the northern part of the site with at-grade car parking and vehicle access obtained via a driveway entry on Koonya Circuit. The southern site portion (39 Willarong Road) is currently vacant however appears to be utilised for storage.

Works are proposed on the adjoining land parcel which accommodates the 'Caringbah HomeCo. Centre' being a two (2) storey bulky goods retail development (at 41-49 Willarong Road and 29 Koonya Circuit). The application has been amended to include these parcels legally described as Lot 101 DP 417983 and Lot 21 DP 800924 respectively. The lots are proposed to be consolidated resulting in a total 'whole of site' area of 24,308m².

Development surrounding the site on three sides (to the north, south and west) is commercial and light industrial in nature. To the east across Willarong Road is low density residential development.

An aerial photo, locality plan and zoning map are provided in **Figures 3- 5** below.

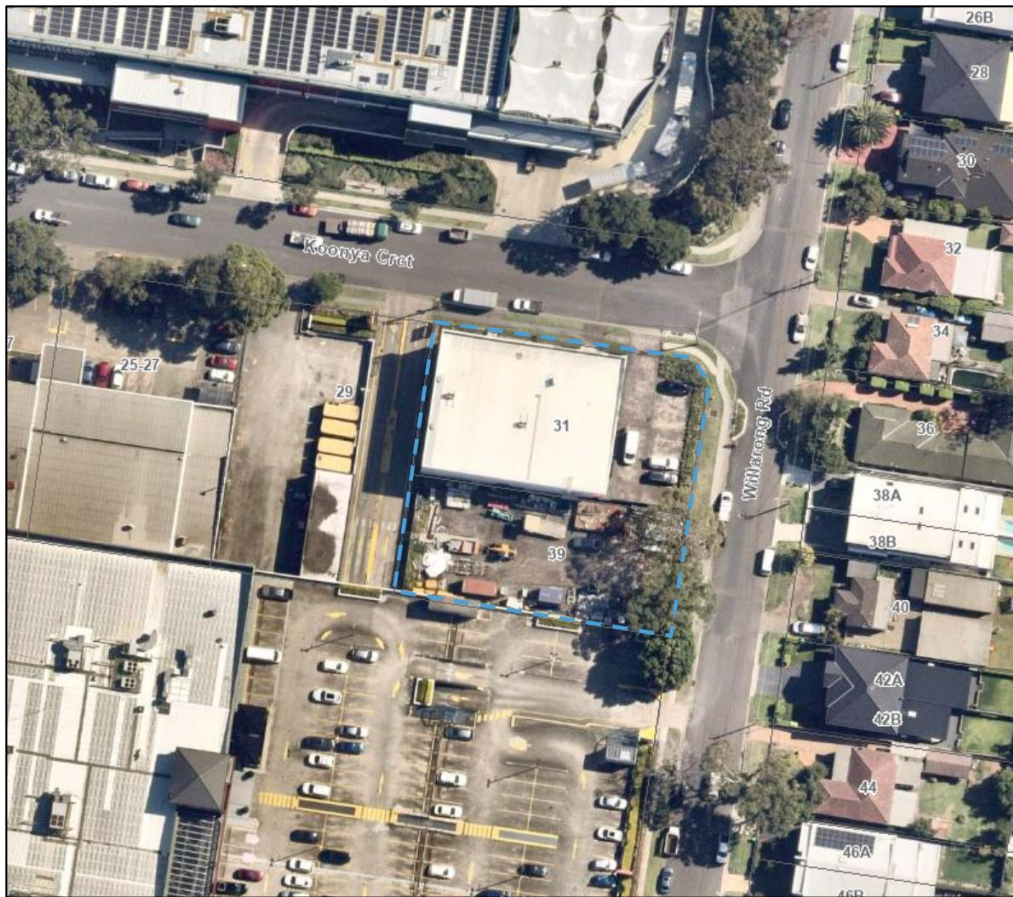


Figure 3: Aerial Photograph of site portion where proposed works occur.



Figure 4: Site Locality Photo and in context of whole of 'Caringbah HomeCo. Centre' site.

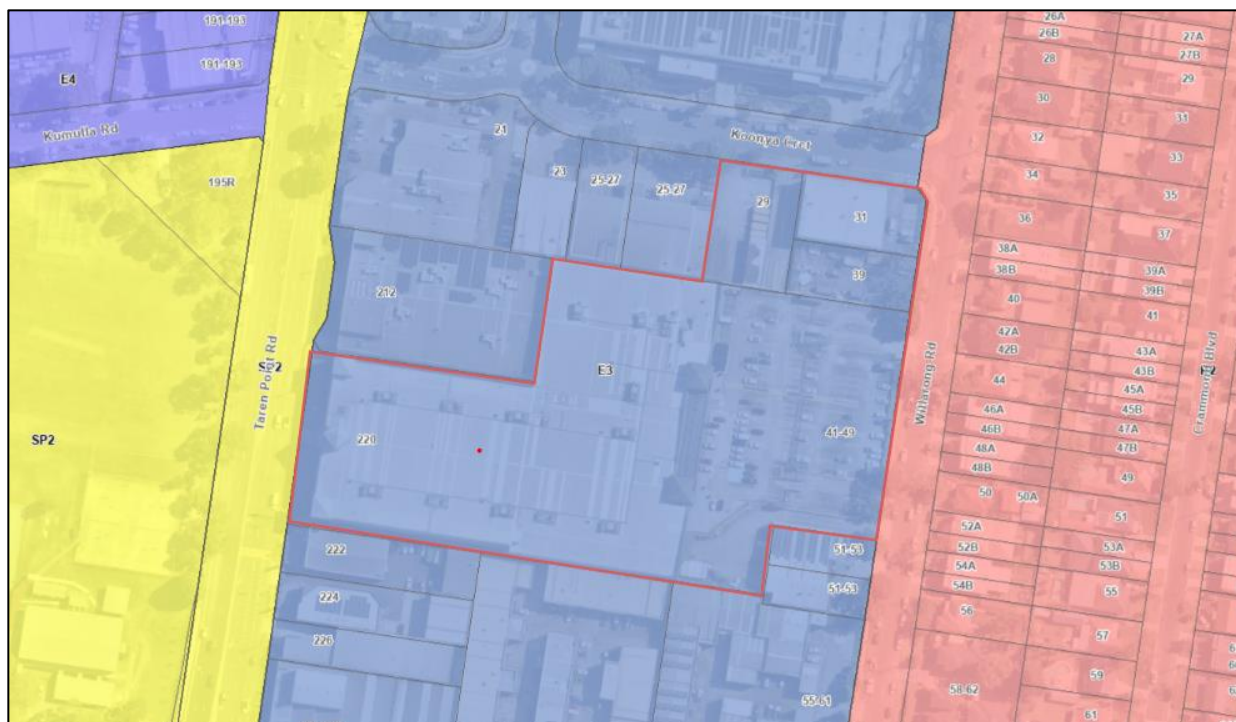


Figure 5: Zoning Map – the site is located within E3 – Productivity Support and adjoins R2 – Low Density Residential zoning opposite Willarong Road to the east.

4.0 BACKGROUND

The development site is subject to a separate development approval (DA16/0223) issued on 28 September 2016 by the then Joint Regional Planning Panel (JRPP). DA16/0223 permitted the construction of additional bulky goods floor space and the introduction of new tenancies, internal upgrading and an overall revitalisation of the Caringbah HomeCo Centre, including additional carparking and landscaping enhancements. The application was then subject to a modification application (MA18/0399) which provided for internal and external changes to the approved design. Works have commenced under this development consent and there are approved development works located upon the land parcels No.31 Koonya Circuit and 39 Willarong Road where the current proposed building is to be sited. There is a conflict between the approved and current development proposal which is discussed in the assessment component of this report below.

A history of the current development proposal is as follows:

- Pre-application discussion (PAD22/0019) advice was sought from Council regarding this development. As a result of this a formal letter of response was issued by Council dated 21 October 2022. A full copy of the advice provided to the Applicant is contained / within **Appendix “A”** of this report.
- The current application was submitted on 20 April 2023.
- The application was placed on exhibition, with the last date for public submissions being 28 April 2023.
- The application was considered by Council's Design Review Panel (DRP) on 15 June 2023.
- A kick-off briefing with the Sydney South Planning Panel occurred on 1 August 2023.

- Council officers requested that the following additional information be addressed via the NSW Planning Portal on 4 August 2023.
 - Correct site identification and inclusion of adjoining lots
 - Compliance with development standards across 'whole of site' and submission of Clause 4.6 where required.
 - Response to report and recommendations of the DRP.
 - Building setbacks and response to streetscape.
 - Landscape design and tree retention.
 - Parking provision / allocation within the existing HomeCo. Centre carpark.
 - Deficiencies in the submission including:
 - Statement of Environmental Effects.
 - Architectural Plan Detail.
 - Compliance checklist against the Child Care Planning Guideline and associated Regulations Statement of Environmental Effect.
 - Absence of Arborist report.
 - Absence of Plan of Management(s) for the proposed land uses.
 - Absence of Air Quality Assessment Report and Air Quality Management Plan.
 - Absence of stormwater drainage design
 - Requirement for on-site waste collection and a revised Waste Management Plan
- On 13 October 2023 Council officers requested that the following additional information be addressed via the NSW Planning Portal.
 - Flood Planning concerns with deficiencies in submitted flood study.
 - Contaminated Land considerations including submission of a Preliminary Site Investigation (PSI).
- The following additional information was submitted by the applicant on 13 and 17 November 2023:
 - Written response to RFI including whole of site identification and compliance checklist against the Child Care Planning Guideline
 - Revised Architectural plans primarily addressing street setbacks and pedestrian routes
 - Submission of a Landscape design extending to the child care centre and an Arborist report
 - Submission of air quality, waste management reports and Plans of Management for each land use.
 - Submission of a concept stormwater design.
 - Updated Flood Impact Assessment and Traffic report which identifies the parking in the Caringbah HomeCo. Centre car park.
- A briefing was held with the Sydney South Planning Panel (SSPP) on 20 November 2023.
- On 22 November 2023 Council Officers requested via email the following information to enable further assessment and the formal re-notification of the revised proposal.
 - A revised Statement of Environmental Effects (site identification, description, scope of works, compliance etc)
 - The provision of 'whole of site' plans including relevant GFA / landscape calculation plans
 - Revised Neighbour Notification Plans and payment of the associated re-notification fee
 - A Clause 4.6 for the landscaped area deficiency

- Application for Roads Act Approval for the relocated driveway so as to ascertain levels.
- Response to the land contamination concerns
- Response to the DRP recommendations
- Architectural plan deficiencies including full dimensions and levels / total building height measured from NGL including ridge levels / internal fit out design / external parking space – aisle dimensions / details of the bin enclosure and retaining walls / internal fire stair detail / sections including the driveway profile and pedestrian access / parking allocation extending to the existing car park, materials / finishes and updated perspectives etc).
- Deficiencies in the Arborist Report.
- The applicant submitted a Preliminary Site Investigation (PSI) Report on 23 November 2023.
- The applicant submitted the following information on 19th, 29th and 31st January 2024.
 - Revised architectural plans
 - Revised Statement of Environmental Effects including Clause 4.6 variation request statement for landscaped area.
 - Additional Arborist information.
- On 13 February 2023 Council officers requested that the following additional information be addressed via the NSW Planning Portal:
 - Remaining conflict with the existing Development Consent.
 - Full revised architectural plan set addressing prior requests for detail / dimensions and the development standards contained within Sutherland Shire Local Environmental Plan 2015
 - Design changes in response to arborist advice to ensure tree protection
 - Detailed Site Investigation (DSI) as per advice of the consultant's PSI
- The application was placed on re-exhibition on 12 February 2024 with the last date for public submissions being 11 March 2024.
- The applicant submitted the following information on 26th and 28th February 2024.
 - Written response to the Council's RFI
 - Revised site and ground floor plans
 - Advice from environmental consultant regarding the PSI
 - Revised Clause 4.6 variation request statement for landscaped area and further arborist advice.

5.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application and after numerous requests from Council officers, the applicant has failed to provide adequate information to Council to enable an assessment of this application.

It is noted that the submitted and revised architectural plans, albeit still broadly lacking in the finer grain detail, has enabled the basic assessment of the application with respect to assessing compliance against the relevant standards / controls. Detail, as typically observed and prepared in architectural plans for built form / land uses of such a significant nature remain absent from the architectural plans and submission. These general deficiencies were outlined in correspondence to the applicant.

No Detailed Site Investigation (DSI) has been submitted and there are a number of deficiencies in the submitted documentation resulting from Council officer's assessment which would be required to be addressed in future so as to further progress a planning assessment (e.g. flood, stormwater, arborist reports and design). Clarification as to the nature of the pharmacy/dispensary provided in conjunction with the medical centre is also required to ascertain permissibility within the zone.

6.0 PUBLIC PARTICIPATION

The application was notified in accordance with the provisions of Chapter 42 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015) and administrative requirements of the SSPP. Council notified 185 adjoining or affected owners of the proposal and submissions were received from 3 properties.

The applicant lodged revised plans depicting the 'whole of site' and a revised Statement of Environmental Effects on 19 and 31st January 2024. These plans were publicly notified in the same way as the original application under Sutherland Shire Community Engagement Strategy (SSCES) and submissions relating to those plans are included in the summary below. 2 submissions (from a single resident) were received.

A table of the submissions and a summary of the main issues raised is provided below.

Date of submission	Summary of Main Issues Raised
03/05/2023	Adequacy of traffic report and need to undertake further studies Adequacy of the surrounding road network / infrastructure to accommodate the proposed development. Existing known issues at Koonya Circuit roundabout and Taren Point Road intersection. Consideration of perhaps making Koonya Circuit a one-way traffic flow loop
15/05/2023 (2 submissions)	Adequacy of traffic report, parking provision within site and surrounding road network to accommodate the proposed development as there is known parking / traffic strain. Reliance on the adjoining Centre parking area and compliance with SSDCP2015.
04/09/2023	Voice message and discussion in which concerns in relation to existing known traffic impacts and impacts of proposed development on the immediate locality.
Revised Plans – Renotification	
15/02/2024	Existing known traffic issues and congestion on Willarong Road and Koonya Circuit including from the existing Bunnings Warehouse development opposite the subject site (including trucks illegally double parking).
28/02/2024 (2 submissions)	Children's safety with drop off and pick up due to existing road issues and absence of on street parking. Adequacy of the surrounding road network / infrastructure to accommodate the proposed development. Cumulative impact of proposed land uses on existing issue

The key issues identified in the submissions relate to the adequacy of the submitted traffic report, parking compliance with SSDCP2015 and provision of parking within the site (including reliance on the adjoining

Centre parking area), adequacy of the surrounding road network / infrastructure to accommodate the proposed development (including cumulative impact of land uses within the locality) as there is known parking / traffic strain. These matters are discussed in the specialist referral and assessment discussions of this report below.

7.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone E3 - Productivity Support (formerly Zone B5 Business Development) pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. Centre based child care facilities are permitted as a named land use within the zone and medical centres are permitted as an innominate land use within the zone (noting also the medical centre is a form of health services facility which is permitted under State Environmental Planning Policy (Transport and Infrastructure) 2021 being within a prescribed zone).

The revised plans have introduced a pharmacy / dispensary and pathology spaces within the medical centre space each with separate external entries. Whilst possibly considered ancillary functions of the medical centre, a pharmacy is best defined as a 'shop'. Some forms of retail premises, by definition, are permitted within the zone, however, shops are strictly identified as a prohibited form of development. Insufficient information has been provided as to the nature / function of the pharmacy / dispensary space to demonstrate this element of the revised proposal is permissible within the zone. Should the application proceed, this component would need to be omitted from the application given the inadequate level of detail provided.

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

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015).
- Child Care Planning Guideline (CCPG)

Section 7.12 Development Contribution Plan 2016

- Section 7.12 Development Contribution Plan 2016 - Sutherland Shire.

8.0 COMPLIANCE

8.1. State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) identifies State and Regionally Significant development in NSW. Clause 5, Schedule 6 of the SEPP identifies this application as regionally significant development as it has a capital investment of more than \$5M – Private infrastructure and community facilities. As such, the application is referred to the SSPP for determination.

8.2. State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of Land (Previously SEPP 55)

Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) requires Council to consider whether the land subject to the development proposal is contaminated. If the site is contaminated, Council must be satisfied that it is suitable or can be made suitable (i.e. following remediation) for the proposed land use.

The application involves sensitive land uses. While it is not included on Council's contaminated land register, the site visit and aerial photography reveals that the current cleared land has activities taking place on bare ground including the storage of plant, equipment and materials etc. As it is possible that the site may be subject to surface contamination because of the current use, the applicant was requested to prepare a Preliminary Site Investigation (PSI). The applicant prepared a PSI which concludes that further investigation is required in the form of a Detailed Site Investigation (DSI). The PSI however recommends undertaking this DSI following development consent. Council does not typically condition the requirement for a DSI having regard to the SEPP provisions as the findings of the DSI are unpredictable, a Remedial Action Plan (RAP) may be required, and a NSW EPA Accredited Site Auditor may also need to be engaged to review the submitted contaminated land information. It is understood that the applicant is in the process of preparing the DSI however this has not been received by Council at the time of final reporting. In conclusion, the site is not demonstrated to be suitable for the proposed development in accordance with requirements of the Resilience and Hazards SEPP.

Notwithstanding the above, Council may consider conditioning the requirement should a NSW EPA accredited site auditor be engaged to review the PSI and whom determines that the site is suitable or can be made suitable with the issuing a Site Audit Statement.

8.3. State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy (Sustainable Buildings) 2022 (the Sustainable Buildings SEPP) encourages the design and construction of more sustainable buildings across NSW and commenced operation on 1 October 2023. The overarching purpose of the Sustainable Buildings SEPP is to assist NSW's target of achieving net zero greenhouse gas emissions by 2050. The Sustainable Buildings SEPP applies only to development applications (DAs) that are submitted on the NSW Planning Portal on or after 1 October 2023. Savings and transitional provisions apply under chapter 4.2 of the policy, including the exclusion of development applications that are submitted on the NSW Planning Portal prior to 1 October 2023.

8.4. State Environmental Planning Policy (Biodiversity and Conservation) 2021

From 21 November 2022, new Chapter 6 of the SEPP consolidates Chapters 7-11 related to water catchments (including Georges River catchment). The Georges River Catchment is defined as a "regulated catchment." Division 4 contains controls for development for specific purposes, including at Clause 6.21 (Stormwater Management).

Chapter 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and conservation SEPP) sets out the plan objectives and planning principles for the Georges River Catchment. Ch 6 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 have been reviewed and supported by Councils Engineering experts and there is likely to be minimal adverse impacts on water quality. Council is of the view that with the implementation of conditions of consent, the proposal would be consistent with the aims and objectives of the Biodiversity and Conservation SEPP 2021.

8.5. 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.

8.6. State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

Development with frontage to a classified road (clause 2.119)

Division 17, Subdivision 2 of the Transport and Infrastructure SEPP relates to land in or adjacent to road corridors or road reserves. The consolidated site has a frontage to Taren Point Road which is identified as a classified road. Before granting consent for development on land which has a frontage to a classified road the consent authority must be satisfied that certain factors have been considered. These factors include safety; efficiency of the road network; design, emission of smoke or dust from the development; nature, volume and frequency of vehicles; and the impact of traffic noise and emissions.

The proposal is not identified as Traffic Generating Development under Schedule 3 of the SEPP (noting size / GFA of proposal, access greater than 90m from Taren Point Road and generation rate 110 vehicle/hr trips during peak hours). The location of the proposed works including site access is provided to the rear of the site / via the Willarong Road frontage and is not anticipated to affect the safety, efficiency or ongoing operation of the classified road (Refer also below to Council's Traffic Engineer discussion). Due to the distance to the classified road noise attenuation measures are not warranted.

Chapter 3 – Child Care Centres and Educational Establishments

Part 3.3 Early education and care facilities—specific development controls

The Transport and Infrastructure SEPP aims to facilitate the effective delivery of educational establishments and early education and care facilities across the state, seeking to ensure consistency in assessment requirements and regulatory certainty and aligning the planning framework with the National Quality Framework (NQF). A compliance table against Part 3.3 Early education and care facilities—specific development controls of the Transport and Infrastructure SEPP is provided below.

CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
Clause 3.22 – Concurrence of Regulatory Authority unless provisions met	3.25m ² of unencumbered indoor space p/child 108 x 3.25 = 351m ² required	386m ² provided for 108 children	Yes
	7m ² of unencumbered outdoor space p/ child 108 x 7 = 756m ² required	826m ² provided for 108 children	Yes – refer also below to referral discussion
3.26 Centre-based child care facility— non-discretionary development standards	<p>[CANNOT REFUSE PROVISIONS]</p> <p>(2) The following are non-discretionary development standards for the purposes of section 4.15 (2) and (3) of the Act in relation to the carrying out of development for the purposes of a centre-based child care facility:</p> <p>(a) location—the development may be located at any distance from an existing or proposed early education and care facility,</p> <p>(b) indoor or outdoor space</p> <p>(i) for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those regulations, or</p> <p>(ii) for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause,</p> <p>(c) site area and site dimensions—the development may be located on a site of any size and have any length of street frontage or any allotment depth,</p> <p>(d) colour of building materials or shade structures—the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.</p>		<p>Noted</p> <p>Noted</p> <p>Noted.</p> <p>The development is not a heritage item or in a conservation area</p>

3.27 Centre-based child Care facility—DCP	Provision of DCP that specifies a requirement, standard or control in relation to the following does not apply: <ul style="list-style-type: none"> a) Operational or management plans or arrangements (including hours of operation); b) Demonstrated need or demand for child care services; c) Proximity of facility to other early education and care facilities; d) Any matter contained in: <ul style="list-style-type: none"> a. The design principles set out in Part 2 of the <i>Child Care Planning Guideline</i>; or b. Matters for consideration in Part 3 or regulatory requirements set out in Part 4 of that <i>Guideline</i> (other than those concerning building height, side and rear setbacks or car parking rates) 	Noted A PoM has been submitted Noted Noted Noted Noted
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The Child Care Planning Guideline (CCPG) has been developed to accompany the Transport and Infrastructure SEPP. This guideline aligns with the NQF for early education and care services and applicable Education and Care Services National Regulations. The guideline is to be used to inform the detailed centre design (e.g. setbacks, internal space and provisions, ventilation and light, and outdoor environment etc), so as to achieve a high quality environment and to maximise safety, health and overall care for young children while being attractive, sympathetic to the streetscape, appropriate for the setting and have minimal adverse impacts on surrounding areas. Notwithstanding the building is designed with a dual use function (and thus subject to other controls) an assessment against the accompanying Childcare Planning Guideline including design quality principles, matters for consideration and National Regulations is contained below and provided at **Appendix “B”**. This is noting the child care centre space, excluding detailed landscape plan submitted is generally provided with ‘cold shell’ provisions, and does not depict the detailed fit out of the spaces as typically would occur.

CLAUSE	REQUIRED	PROPOSAL	COMPLIANCE
PART 2 – Design Quality Principles			
Principle 1 – Context	Respond and contribute.	The design generally responds appropriately to the context, however fails to reinforce the existing landscape character of the streetscape and retain site vegetation	Unsatisfactory
Principle 2 – Built Form	Scale, bulk and height appropriate. Achieves appropriate building alignments, proportions, building type, articulation and manipulation of building elements. Defines public	The proposal is of a scale, bulk and height which is generally consistent with the character of the streetscape and adjoining development.	Satisfactory

	domain, contributes to streetscape, provides internal amenity and outlook.		
Principle 3 – Adaptive learning spaces	Fit for purpose, enjoyable and easy to use/ Achieve through site layout, building design and learning spaces fit out.	The layout and design of the indoor and outdoor learning spaces is capable of providing a high level of amenity for children and staff – subject to compliance conditions	Satisfactory
Principle 4 – Sustainability	Natural cross ventilation, sunlight and passive thermal design for ventilation, heating and cooling elements including recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.	With the exception of rooms A and B, each room appears to be able to receive adequate sunlight and access to air. Rooms A and B rely on the internal courtyard aspect. Windows could be provided to the western elevation with the imposition of conditions.	Satisfactory
Principle 5 – Landscape	Landscape design to make outdoor spaces assets for learning, enhance environmental performance and contribute to local context.	There are limited opportunities for deep soil landscaping due to the location of the centre on the upper level of the building. The proposal incorporates an outdoor environment that provides landscape features which is part open to the sky by a large void.	Satisfactory
Principle 6 - Amenity	Combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy storage, service areas and ease of access for all age groups and degrees of mobility.	The design generally provides good amenity through an efficient layout, access to natural light and ventilation, and adequate storage and service areas throughout the facility.	Satisfactory
Principle 7 – Safety	Balance safety and security with the need to create a welcoming and accessible environment.	The proposed design optimises safety and security, and incorporates clearly defined access for visitors and staff (including from the parking area)	Satisfactory

8.7. 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:

CLAUSE	REQUIRED	PROPOSAL	COMPLY	COMMENT
Cl.4.3 Height of Building	16m	11.125m	Yes	
Cl.4.4 Floor Space Ratio	39 Koonya & 31 Willarong - 1.5:1 = 3387m ² 'Whole of Site' – 1.5:1 = 36,462m ²	1.25:1 (2830m ²) 0.7:1 (25,730m ²)	Yes Yes	
Cl.6.14 Landscaped Area	Isolated to 39 Koonya & 31 Willarong 10% (225.8m ²) 'Whole of Site' 10% (2,430.8m ²)	8.8% (199.6m ²) 3.3% (813.5m ²)	No No	 68.7% variation

8.8. Sutherland Shire Development Control Plan 2015

Being a mix of land use typologies within the development, the Child Care Planning Guideline (CCPG) and provisions of SSDCP 2015 are both applicable with respect to providing the relevant site planning and built form controls. Whilst the Chapter 25 - B5 zoning provisions of SSDCP 2015 does not directly canvas the specific land use typologies proposed, the application of Chapter 35 "Other Uses" of SSDCP 2015 has the effect of requiring the development to comply with the general development controls that set building form which apply to the predominant uses in the zone. A compliance checklist is provided at **Appendix "C"**.

9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

NSW Department of Education

The outdoor 825m² children's play space is provided with an approximate 313m² roof void being open to the sky. The space is approximately 62.1% covered and is enclosed on each side by the building form, albeit glazing provided to the eastern elevation. Whilst Council is of the view that the space qualifies as outdoor space, for completeness, referral to the NSW Department of Education has been undertaken to confirm satisfactory compliance with the regulation in accordance with clause 3.22 of the Transport and Infrastructure SEPP. At the time of finalising the assessment report formal response from NSW DoE had not been received.

Design Review Panel (DRP)

The application was considered by Council's DRP on 15 June 2023. While the DRP support the mix of functions proposed, they resolved that there are some fundamental issues in its design resolution and integration. It is suggested that further design development should be undertaken to respond to the issues raised. A detailed copy of the DRP report is provided at **Appendix "D"** and a summary of the comments is provided below along with commentary as to the applicant's design response to these comments, noting no formal written response was prepared by the applicant / architect.

1. Pedestrian Access

Comment: The revised plans are re-planned and provide for a clear and safe pedestrian link from both Koonya Circuit and the Willarong Street frontages.

2. Extent of works, including the reliance on Caringbah Super Centre carpark

Comment: The application has been amended to include the adjoining land parcels and depicts car parking allocation to the child care centre along with the inclusion of accessible parking spaces adjoining the entries of both land uses.

3. Pedestrian access to the Medical Centre

Comment: A pedestrian pathway extends along the front façade which is separated from the car parking spaces and generally wayfinding is acceptable.

4. Wayfinding - architecture and signage clearly denoting entry on both levels.

Comment: The architecture and location of access points at the boundary provide clear identification of the building entries, noting no detailed signage strategy has been provided to assist in wayfinding at the boundary access points or within the existing Caringbah HomeCo. Centre car park.

5. Street Setbacks

Comment: The revised plans adopt the DRP recommendations by providing a minimum 9m setback to Willarong Road. The setback from Koonya Circuit is in excess of 3m to the building noting the path / egress route is located within the setback. Landscaping is provided to the frontages.

6. L shape Child care layout.

Comment: The development has not adopted this design recommendation and maintains the floor plan layout with a centralised play space and void in the roof form.

7. Landscape plan and tree retention

Comment: An increased setback from the tree canopy is provided and additional information has been submitted by the applicant in response to this concern. As further discussed, the trees will not survive the more than 1m excavation proposed for the Medical Centre carpark and an alternate design such as providing raised planters has not been explored by the applicant.

8. Daylight and outlook

Comment: The floor plan layout of the medical centre has been adjusted with the reception and waiting area provided to the eastern elevation which improves both the daylight access and visual outlook.

9. Outdoor seating area for Medical Centre

Comment: No outdoor seating area has been provided in the revised development scheme.

10. The exclusion of landscaping design

Comment: The applicant has submitted a landscape design extending to the child care centre outdoor play area to demonstrate a suitable environment for children's use

11. NNE windows sun shading

Comment: The provision of sun shading to these windows has not been addressed in the revised development scheme however is considered to be acceptable.

12. Rainwater harvesting / electric vehicle charging

Comment: The above provisions have not been provided in the revised development scheme

13. Missing aspects of submission

Comment: Whilst further supporting information has been submitted to enable assessment generally, there remains deficiencies in the submission as discussed in this report.

Traffic Engineer

Council's Traffic Engineer has undertaken an assessment of the proposal including the submitted traffic report with respect to car parking provision and associated traffic related impacts. A summary of the comments made are as follows (noting the comments were made based on the original submission and that a subsequent reduction in gross floor area / child care centre capacity and associated parking demand / traffic generation has occurred during the course of assessment).

- The peak parking demand for the existing Caringbah HomeCo. Centre is occurred around 1pm on Thursday with parking occupancy of 270 spaces and vacancy of more than 260 spaces.
- However, the peak parking demand for the proposed child care centre and medical centre will occur during afternoon peak say 4pm to 5pm, when the existing Centre car park will have vacancy of more than 330 spaces on-site.
- The proposed child care centre will require 31 parking spaces for 125 children (1 space per 4 child) and medical centre of 1300m² will require 43 spaces.
- Both the child care centre and medical centre will require 74 spaces on-site to meet peak parking demand.
- The proposed development has a provision of 9 parking spaces on-site including one disable parking spaces result in a shortfall of 65 spaces.

- In order to address the parking shortfall, the applicant has proposed that 65 spaces required for child care centre and medical centre will be provided within the existing Caringbah HomeCo. Centre carpark.
- Hence the Caringbah HomeCo. Centre total available parking will be reduced to 465 spaces. This will reduce parking vacancy of the Centre during peak hour at 1 PM to 195 spaces and at 4PM (child care centre Peak) to 265 spaces.
- Allocating 65 spaces from the Centre to the proposed child care centre and medical centre will still leave the HomeCo. Centre parking occupancy less than 80%.

The impact from the proposed child care centre and medical centre parking within the HomeCo. Centre is considered acceptable.

It is recommended that 15 to 18 visitor/parent spaces (up to 60%) close to the entry to the Child Care Centre and marked those spaces dedicated for Child Care Centre with appropriate signage (Monday to Friday Only, during weekend shoppers can utilised these spaces) and line marking. It is also recommended to convert existing parking spaces on Level 01 and Ground Floor Close to the Child Care Centre and Medical Centre entries to accommodate one accessible parking space each level. The proposed child care and medical centre will generate additional 110 vehicle/hr trips during peak hours. The traffic modelling undertaken by the applicant indicates that there will be minor impact to the surrounding intersections from the proposed development. Therefore, the traffic impact from the above development is considered acceptable and the proposed development can be supported from traffic and parking perspectives:

Engineering (Assessment Team)

Council's Engineer has undertaken an assessment of the application and a summary of the comments provided are below.

Construction & Site Management Plan – Application acceptable subject to suitable conditions of development consent.

Vehicular Access-way and Parking Area design- The vehicular access-way and associated park layout has been assessed against AS2890.1:2004, AS2890.2:2018, AS2890.6:2009 and Chapter 36 of SSDCP2015 and is considered to be acceptable subject to conditions.

Fire Protection - Fire protection strategy assessed against Division 4.3 Sections 4.15(1)(c), Section 4.15(1)(e) and Section 4.17 of the Environmental Planning & Assessment Act, AS2419.1:2005, NSW F&R document "Access for Fire Brigade Vehicles and Firefighters", and NSW F&R document "Fire hydrants for minor residential development". The drawings indicate a NSW F&R Appliance hardstand area upon the Road carriageway which is inconsistent with the NSW F&R document "Access for Fire Brigade Vehicles and Firefighters" and the fire statement does not address street potable water pressure and flow rate.

Property and Easements Proposed building abuts the western boundary, requiring expungement of an existing drainage easement. The consolidation of the land parcels will also be required via conditions of consent.

Stormwater Management - The Stormwater management was assessed against AS3500.3:2003, Chapter 38 of SSDCP 2015 and Council's Stormwater Management Environmental Specification 2009 and fails to consider the southern half of the development site as undeveloped (i.e. assumes that the surface is concrete or asphalt). The stormwater drainage design is to include on site detention (OSD) and a revised stormwater design is required.

Flood Assessment

The applicants flood study (including supplementary reports have been reviewed). The development is assessed against Chapter 40 of SSDCP 2015, Clause 5.21 of SSLEP 2015, the NSW Government Flood Prone Lands Policy, and the NSW Floodplain Development Manual 2005 (FDM). The FDM provides guidelines for the implementation of the NSW Government's Flood Prone Land Policy. The site is inundated by the 1%AEP flood event. Being for sensitive uses the finished floor / surface levels that comply with *floor levels shall be no lower than the PMF level or the 1% AEP flood levels plus 500mm freeboard, whichever is higher*, and the associated carpark has a *minimum surface level ... shall be no lower than the 1% AEP flood*. The proposal fails to achieve the required finished level and there are unknown mitigation measures indicated within the submission. Further information is required to be submitted to address this matter. The finished level is required to be increased and it is likely that mitigation works at the boundary (e.g. raising of crest of driveway and boundary retaining walls) will be required to remove the environmental risk.

Landscape Architect

Council's Landscape Architect has undertaken an assessment of the application with respect to landscaping, tree removal and retention, and general site planning. The broader landscape design is considered to be acceptable. Concerns have been raised in relation to the landscape treatment including impact on the two native trees (*Corymbia maculata* & *Eucalyptus robusta*) worthy of retention which is further discussed in the assessment component of this report. The applicant has sought advice from a consulting arborist however fails to adequately address the concerns to ensure tree protection.

Waste Management Officer

The application was referred to Council's Waste Management Officer for assessment. No concerns have been raised in the revised development scheme which proposes on-site collection subject to suitable conditions of development consent.

Environmental Health

The application was referred to Council's Environmental Health Unit who provided comments in relation to building design and neighbourhood amenity (including acoustic report / operational noise). No objections to the development proposal (as lodged) have been raised subject to suitable conditions of development.

Environmental Scientist – Land

The application was referred to Council's Environmental Scientist with respect to Acid Sulfate Soils (ASS) and contaminated land related matters. No objections to the proposed site work with respect to ASS has been raised subject to suitable precautionary conditions of development consent. There are outstanding

concerns regarding the adequacy of the applicant's submission addressing the Resilience and Hazards SEPP which has been discussed above in the assessment component of this report.

Environmental Scientist – Air Quality

The application was referred to Council's Environmental Scientist with respect to air quality and children's health. No objections are raised to the development proposal subject to suitable conditions of development.

Building Surveyor

Council's Building Surveyor has reviewed the proposed development with respect to compliance with relevant construction codes and access standards. No objections to the development proposal have been raised subject to prescribed conditions of development consent including relevant compliance with Section J of the NCC with respects to energy efficiency.

10.0 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.

10.1. Existing Development Consent

As referenced above, there is an existing development consent DA16/0223 (MA18/0399) for the construction of additional bulky goods floor space, introduction of new tenancies, internal upgrading and revitalisation of the existing Caringbah HomeCo. Centre which conflicts with the proposed development. In particular, the development approval provided for a building addition to the Centre over No 31 Koonya Circuit and 39 Willarong Road. A review of Council's files reveals that the following 2 stage Construction Certificate (CC) has been issued for the approved development works by a Private Certifier for which an Interim Occupation Certificate has been currently issued for the Stage 1 works.

Stage 1: Taren Point Road Façade, Ground Floor (Amenities, C.M. Office and changes to tenancies G-T18-19 G-T19-20, G-T-21), Mezzanine Floor (Carwash zone, amenities and centre management office), Level 1 (Willarong Rd Façade, Children's play area, relocation of car spaces).

Stage 2: Taren Point Road Landscaping, Ground Floor (Western mall entry, changes to tenancies G-T1 and G-T27, Northern extension (including over 29 Koonya / 31 / 39 Willarong), Level 1 (Northern extension including over 29 Koonya / 31 / 39 Willarong), Car park changes and loading Dock 2, Level 2 and Roof Level (Northern extension including over 29 Koonya / 31 / 39 Willarong).

The Stage 2 CC works extend into where the proposed development occurs which appears to conflict with the subject development application. This will need to be resolved. Analysis needs to be undertaken by the applicant to understand the most appropriate planning pathway. This would likely be the lodgement of an 'amending DA' that shows the change in conjunction with currently approved plans. A modification application may also be possible, however removal of this section of the development may result in an outcome that is not substantially the same as the original consent. In either scenario, the extent of

completed works and those subject to deletion must be clearly identified (i.e. in a statement / architectural plans) and a pathway forward indicated. Whilst requested from the applicant, the applicant has not provided any clear identification of the completed works or works requiring modification. They simply seek that a condition be imposed on any future development consent to address this matter. This is not considered to be an orderly outcome for approvals on the site and an approval cannot be subject to another development approval.

It is noted that the prior approved landscape works appear under the Stage 2 CC. The site wide landscape outcome was critical to the overall success of the prior application. The applicant has now sought that these landscape works be fulfilled under the subject development application (refer to submitted Clause 4.6 statement) by incorporating the prior consent condition (Condition 18, DA16/0223 / MA18/0399) requirements. This is to ensure the landscape outcome is not just limited to the frontages of No 31 Koonya Circuit and 39 Willarong Road forward of the new building.

10.2. Landscaped Area

The proposed development fails to comply with the SSLEP 2015 numerical development standard for landscaped area specified under clause 6.14(3). The non-compliance is described along with an analysis of the breach of the development standard relative to Clause 4.6 below.

Note: On 1 November 2023 the provisions of clause 4.6 of SSLEP 2015 were amended by an amendment to the Standard Instrument LEP, an amendment to the EP&A Regulation 2021 and amendments to environmental planning instruments through SEPP (Exceptions to Development Standards) 2023. Development applications lodged prior to 1 November 2023 but not determined continue to be assessed under the clause 4.6 provisions as applied at the date of lodgement - see clause 8(1) of the Standard Instrument (Local Environmental Plans) Order 2006.

Clause 4.6 Exception to Development Standards

Minimum Landscaped Area: 10% / 2,430.8m²

Proposed Landscaped Area: 813.5m² / 3.3%

Proposed variation: 1670.3m² / 68.7%

The plan indicating landscaped area across the whole of site is shown in **Figure 6** below.

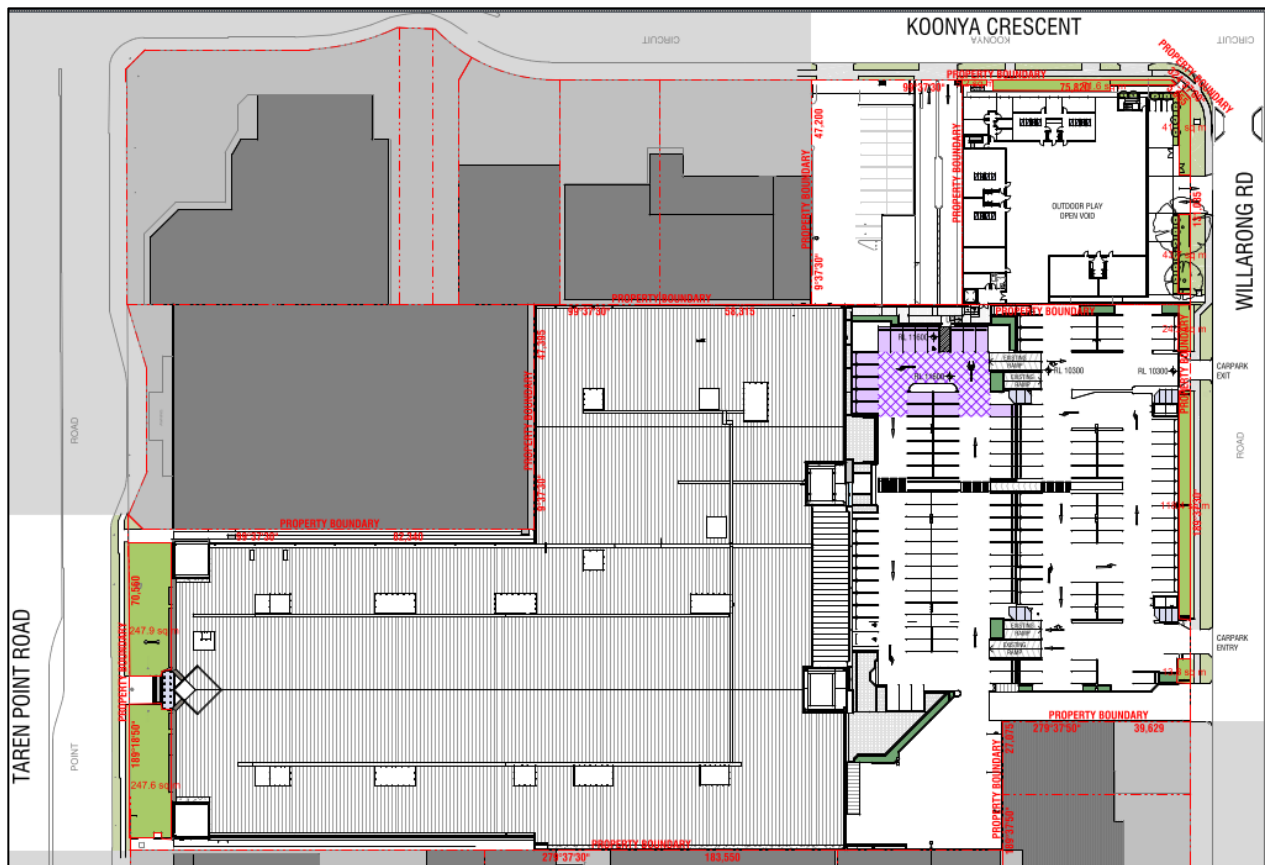


Figure 6: Landscaped Area Plan

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

Clause(3)(a) – that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

Clause (3)(b) – that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied that:

- (i) *Clause 4(a)(i) – the applicant's written request is satisfactory in regard to addressing subclause (3) above, and*
- (ii) *Clause 4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.*
- (iii) *Clause 5(a) – the consent authority must also consider whether the contravention of the development standard raises any matter of significance for State or Regional Environmental Planning, and*
Clause 5(b) – the public benefit of maintaining the development standard.

In **Wehbe v Pitwater Council [2007] NSW LEC 827** the Court set out 5 different ways of which to establish that compliance with a development standard is unreasonable or unnecessary, as follows:

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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

In the assessment of this application consideration has been given to the above and further to LEC judgment **Four2Five v Ashfield [2015] NSWLEC 90** where it was established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than where the development achieved the objectives of the development standard. Consideration is to be given based on specific site circumstances.

Finally, consideration has been given to the principles established in by the Chief Judge in **Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118** where it was observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

A CI 4.6 variation to justify the non-compliance has been prepared by Willowtree Planning (January 2024). A full copy of this request has been included in **Appendix "E"** of this report. The applicant's Clause 4.6 variation identifies one of the five tests in order to demonstrate that strict compliance with the standard would be unnecessary and unreasonable and provides environmental planning grounds to argue their case. Key excerpts from the applicant's Clause 4.6 is set out below.

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

Applicant comments

In view of the particular circumstances of this case, strict compliance with Clause 6.14 of SSLEP 2015 is considered to be both unnecessary and unreasonable. Should strict compliance with the development standard be enforced, the proposed development would result in a contrived development which does not take into account the existing approval at the Site or the prevailing context.

Additional soft landscaping planters will be included within the Subject Site and landscaping within the retainer beds and internalised landscaping will be provided within the building (this is not counted towards deep-soil landscaping) and has not included in the landscape calculations.

Strict compliance with the standard is unnecessary as the Subject Site already provides a significantly reduced amount of landscaping than the minimum standard and the proposal represents a much better landscape outcome than the existing comprising a deep soil landscape perimeter to the corner section of the Subject Site as indicated in Appendix A. Landscaping will be provided to the perimeter of the Subject Site along Koonya Circuit, as opposed to the existing approved landscaped area, which includes significant swathes of hard-landscaping which is not included within the landscaped area. This hard-landscaping is considered to contrast with the prevailing landscaping in the immediate area and on the opposite side of Koonya Circuit at the Bunnings Site.

*In accordance with the Court's findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827 the most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. Taking this into consideration it is noted that the proposal would increase landscaping to the perimeter of the Subject Site and in particular along Koonya Circuit, which provides for a positive streetscape landscape.*

*TABLE 2 provides a detailed assessment against the objectives of the development standard and also accordingly, adopted test' in *Wehbe* to establish that compliance is unreasonable or unnecessary because the objectives of the height controls are satisfied notwithstanding the variation.*

The proposal does not conflict with the intent of the development standard and zone as demonstrated above, notwithstanding the proposed numeric variation. The proposed variation will result in a much better landscape outcome than the existing comprising a deep soil landscape perimeter to the Koonya Circuit section of the Site.

The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Subject Site. The objectives of the relevant clause and E3 zone would be upheld as a result of the proposed development. In light of the above, the application of the height of building development standard is therefore unreasonable and unnecessary in response to the proposed development.

Council Officer comment

The applicant addresses the 1st Whebe test (that the objectives of the landscaped area development standard are achieved notwithstanding the non-compliance) and the variation request undertakes an assessment of the landscape and natural context of the site, which inadequately demonstrates the capability of the proposal in achieving the relevant landscaped area objectives and the CI 4.6 does not meet the necessary test with respect to Clause 4.6(3)(a). The quantum of landscaped area within the whole of site, and general landscape design is considered generally acceptable (subject to conditions). The CI 4.6 justification however is contingent however on the successful retention of 2 trees within the site's frontage. As discussed in this report, adequate tree protection cannot be achieved with the current design.

Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard.

Applicant comment

There are a number of environmental planning grounds that justify the landscaped area variation in this particular circumstance.

In addition to compliance with the objectives of the zone and development standard; environmental planning grounds include the provision of equitable access and services within sensitively located areas of the built form, the provision of a high quality and consistent streetscape which responds to the public domain and makes a positive contribution to the streetscape of the locality, the orderly and economic development of the land being facilitated through a high quality design which responds to the site-specific controls and the provision of a design which promotes the high quality outcomes sought by the suite of site-specific planning controls.

The Variation Request is considered well founded because, notwithstanding the proposed non-compliance with the landscape area development standard:

- *There are limited opportunities for the proposal to provide a significant quantum of additional deep soil landscaping on the Subject Site, given the large footprint of the existing centre;*
- *The proposal provides for deep soil planting and landscaping where possible, utilising Water sensitive Urban Design initiatives including, low water use plans, irrigation efficiency, surface mulch, and effective landscape maintenance.*
- *The landscape strategy as per planning condition 18 of DA16/0223 is maintained;*
- *The Subject Site currently has little remnant biodiversity, notwithstanding the proposal seeks to retain the existing trees fronting onto Willarong Road;*
- *The landscaping provided contributes to the amenity of the development and minimises any potential visual impact on surrounding residences through appropriate screen planting to soften the built form;*
- *Landscape areas along the development boundaries are expanded, particularly along Koonya Circuit as demonstrated in Appendix A;*

- *Additional planters and appropriate plant species which respond to the natural environment are proposed;*
- *The revised proposal will result in more landscaping to the frontage of Koonya Circuit than that approved;*

In its current form, the proposal therefore represents the most efficient use of the Subject Site which responds to the existing environmental constraints, compared to a development which is entirely compliant with the landscape development standard.

This Variation Request has been prepared in accordance with the objectives of Clause 6.14 Landscaped Area and the E3 zone objectives of SSLEP 2015.

- *The proposal does not prejudice the E3 zone objectives;*
- *The land will be utilised for land uses which are permissible within the E3 and seek to benefit the community being a medical centre and childcare centre.*

For the reasons outlined above, it is considered that the proposed variation to the landscaped area development standard under Clause 6.14 is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under SSLEP 2015.

Council Officer comment

The unique circumstances of the site, its context and the proposal have been identified by the applicant to justify the numeric departure from the development standard. The existing site (encompassing the wider HomeCo. Centre site) is largely built upon. There are limited opportunities to establish a compliant landscaped area provision. For that portion of the site proposed to be built upon with the subject new buildings, the extent of landscaped area is closer to the development standard in terms of numerical compliance (8.8%) as opposed to the 3% provision across the greater site. The landscaped outcome is one which wraps around both the Willarong Road and Koonya Circuit frontages of the site. This is however no less than the SSDCP 2015 controls require and cannot therefore be seen to be an environmental planning ground sufficient to warrant breaching the standard.

Whilst the applicant seeks to rely on retention of the landscape scheme approved under DA16/0223 as subsequently amended under MA18/0399, the landscape details for this are yet to be provided. This was a requirement of the Stage 2 works under the modified consent – works which have yet to be undertaken. Little weight is therefore given to reliance on this as an environmental planning ground. As discussed above and notwithstanding the quantum of landscaped area within the whole of site, and general landscape design being considered acceptable, the CI 4.6 justification is contingent on the successful retention of the 2 mature trees within the Willarong Road frontage of the site. The applicant's own Arborist Report states that the tree incursion is too great to enable their protection. Design of the proposed development therefore does not facilitate the retention of the trees. The proposal is therefore directly contrary to the statement made in the Clause 4.6, which states that the trees are to be retained.

Clause 4.6(4)(a)(i) – Consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

Council Officer comment

Council must be satisfied the matters listed in 4.6(3)(a) and (b) are adequately addressed in the written submission in order for the development to qualify for approval (Cl.4.6(4)(a)(i)). The written request does not adequately address clause 4.6(3) (a) and (b) as discussed above. Clause 4.6(4)(a)(i) is therefore not satisfied.

Clause 4.6(4)(a)(ii) – Consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives.

Council Officer comment

The objectives of Zone E3 – Productivity Support are provided below with a brief analysis against the proposal:

- *To provide a range of facilities and services, light industries, warehouses and offices.*
- *To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.*
- *To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.*
- *To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.*
- *To provide opportunities for new and emerging light industries.*
- *To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.*
- *To enhance the visual appearance of the area by ensuring new development achieves high architectural and landscape standards.*
- *To ensure that development does not have an adverse impact on the effective operation and safety of main roads.*
- *To prevent the fragmentation of large sites and to realise their economic strategic advantage.*
- *To provide opportunities for the erection of buildings requiring large floor areas and to discourage small-scale uses unless they are of an ancillary or service nature.*
- *To minimise the impact of development within the zone on areas of environmental or heritage significance.*

The proposed medical centre and child care centre land uses are permissible and anticipated forms of development within the zone. The provision of medical and child care services within the Local Government Area is generally encouraged in light of the social demand and benefits they provide. The building typology / form development is generally of a scale, form and density that is compatible with surrounding commercial / industrial development and the low-density residential development opposite Willarong Road along and the established streetscape / neighborhood character. The proposal will provide complimentary services

and employment opportunities to the local community and provide care for children aged between 0 – 2 in which there is a particular demand.

The development is not anticipated to present an adverse impact on the effective operation and safety of main roads and the development fulfils the consolidation of land parcels (as was also required under a prior development consent). There is no known areas of environmental or heritage significance within vicinity of the site and the development is generally consistent with the objectives of the zone. The submitted clause 4.6 statement is contingent on the retention of 2 trees within the sites frontage and as discussed in the assessment report, cannot be achieved in the current design. The visual appearance of the development is not enhanced as the application fails to achieve a high landscape standard, thus failing to accord to the above noted objective of the zone (Dot point 7).

The objectives for the landscaped area development standard (clause 6.14 of SSLEP 2015) are provided below with a brief analysis against the proposal:

- (a) *to ensure adequate opportunities exist for the retention or provision of vegetation that contributes to biodiversity and, in the case of trees, enhances the tree canopy of Sutherland Shire,*
- (b) *to minimise urban run-off by maximising permeable areas on the sites of development,*
- (c) *to ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained,*
- (d) *to ensure that landscaping carried out in connection with development is sufficient to complement the scale of buildings, provide shade, screen parking areas and enhance workforce amenities.*

There is an existing numeric deficiency across the whole of site and a separate development consent included a variation to the development standard. The proposed development seeks to erode this provision further than the existing development consent however the general approach to site planning with building / landscaped setbacks to the frontages of Koonya Circuit and Willarong Road is considered to be acceptable (excluding the tree concerns identified below). The quantum of landscaped area when isolated to the developable site area (i.e. the 2 lots) is generally commensurable to the size of the site. The selection of species is generally appropriate and the broader whole of site landscape strategy can be achieved and reinforced with suitable conditions of development consent in the event of an approval.

The retention of the two native trees (Spotted Gum - *Corymbia maculata* and a Southern Mahogany *Eucalyptus robusta*) is proposed by the applicant and the CI 4.6 justification is contingent on their successful retention. These trees currently make a positive contribution to the streetscape, to biodiversity and the tree canopy of the Sutherland Shire and their retention is vital to the success of the proposed development. The submitted arborist report notes major encroachment into the Tree Protection Zones (TPZ's) of these trees (47.7% and 31.4% respectively) which exceeds the maximum 10% of the Australian Standard. Root mapping has been undertaken and the consulting Arborist recommends that the trees be retained and protected with no cutting of the roots, and for the driveway to be designed with piers to retain the roots or redesigned to reduce the TPZ encroachment to be less than 10%.

The trees cannot be adequately protected in the submitted development scheme. The driveway requires a re-design with an increased setback to reduce the encroachment and whilst the Arborist has suggested an alternative to build the driveway on piers, this is not achievable with the current design levels (i.e. driveway level would need to be raised up to existing natural ground levels). It is possible that design changes be provided with an increased setback to the building / driveway or for the existing site levels be retained within the TPZ with the removal of the driveway and parking spaces (approximately 4 spaces including 1 accessible) along with the realignment of the entry driveway northward on Willarong Road. The loss of parking could possibly be offset / accommodated for within the Caringbah HomeCo. Centre car park and a landscaped forecourt established with the setback and an open space provided for visitor / staff use. Such design options have not been canvassed by the applicant or presented to Council for consideration.

A successful landscape design / strategy is important in order to complement the scale of the building, to ameliorate impacts associated with the built form to the streetscape, to soften the abrupt zone transition opposite the site and to enhance neighbouring amenity. The required removal of the trees to facilitate the current design as proposed is not supported. On this basis, the proposal is inconsistent with the objectives of the landscape area development standard stipulated in Clause 6.14 of SSLEP 2015.

The proposed development is not in the public interest and whilst the proposal complies largely with the objectives of Zone E3 - Productivity Support, fails to satisfy the objectives for landscaping and landscaped area.

Under Clause 4.6(5)(a) – the consent authority must also consider whether the contravention of the development standard raises any matter of significance for State or Regional Environmental Planning, and Section 5(b) – the public benefit of maintaining the development standard.

Council Officer comment

There is no public benefit in arbitrarily increasing the quantum of landscaped area above what is proposed to achieve closer to, or full compliance with the development standard in the circumstances of this case. There is a public benefit however in retaining the existing site vegetation, which the application fails to do. The proposed development and variation to the development standard identified does not raise any matter of State or Regional Planning significance.

Conclusion - Clause 4.6 Assessment

Given the above, Council officers are not satisfied that the provisions of clause 4.6(3) have been achieved and the variation is therefore not supported.

10.3. General Urban design

Being a mix of land use typologies within the development SSLEP 2015, SSDCP 2015 and the Child Care Planning Guideline (CCPG) are applicable with respect to providing the relevant considerations in terms of site planning, building form, scale and character. Whilst the Chapter 25 - B5 zoning provisions of SSDCP 2015 do not directly canvas the specific land use typologies proposed, the application of Chapter 35 "Other

Uses" of SSDCP 2015 has the effect of requiring the development to comply with the general development controls that set building form which apply to the predominant uses in the zone.

The building is on a prominent corner location surrounded by commercial and light industrial land uses and has a direct zone interface opposite Willarong Road to the east which comprises low density residential development. The proposed development sits well below the maximum permissible height limit and satisfies the relevant objectives contained in clause 4.3 of SSLEP 2015. The development is provided with residential character / design aesthetic with pitched roof forms in the Willarong Road streetscape which is complementary of the prevailing built form character to the east. No detrimental impact is anticipated to be presented to adjoining properties in terms of visual intrusion of built form, overshadowing, overlooking etc.

The proposed development also complies with the maximum permissible floor space ratio and satisfies the relevant objectives contained in clause 4.4 of SSLPP 2015 noting the proposed building density is commensurable to the developable site portion. The visual impact associated with the extensive hard stand surfacing within the frontage required to facilitate the car parking area / provision is adequately offset in the amended design with landscape relief and edge plantings.

Clause 3.3.C.13 of the CCPG specifies: "Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use". SSDCP 2015 requires a minimum setback from the nominated primary street frontage of 9m to be provided along with a landscaped strip with minimum width of 3m provided adjacent to this front boundary.

The existing building forms at 51-53 Willarong Road (south) and 31-35 Willarong Road (Bunnings opposite Koonya Circuit to north) provide an established streetscape and prevailing setback pattern. In response to concerns raised, including the comments of the DRP, the applicant has submitted revised plans whereby a minimum 9m setback is provided to the proposed building from Willarong Road along with a 3.8m landscape zone which is generally considered to be an appropriate response to the above provisions. The required hydrant booster assembly within the setback is considered acceptable however the waste bin enclosure should be integrated with the front of the building to reduce the visual impact of structures within the streetscape. This could be achieved via a design change condition of development consent in the event that approval of the application is considered. The building provides for a secondary setback to Koonya Circuit of 3.545m (1.2m – 2.5m to external path / egress) which also enables suitable landscaping to be provided. Notwithstanding the inadequate retention of site vegetation of significance / retention value (discussed elsewhere in the report) a successful landscape design / strategy is provided within the setbacks to ameliorate impacts associated with the built form to the streetscape, to soften the abrupt zone transition opposite the site and to enhance neighbouring amenity.

The revised development scheme is considered to generally accord with the comments of the DRP (noting separate discussion in the referral section of this report). The provision of an outdoor seating area as also raised by the DRP and for which is required by SSDCP2015 has not been provided. Given the number of

anticipated workers / staff within the development and the absence of any public facilities within vicinity of the site an outdoor space should be provided. Notwithstanding this, the proposal in terms of the broader design would be an acceptable urban design outcome having regard to the character and contextual fit of the development within the existing setting including the zone interface with low density residential lands opposite Willarong Road.

The relevant matters within Clause 6.16 and 6.18 of SSLEP 2015 have been considered and the amended proposal is considered to be acceptable subject to suitable conditions of development consent.

10.4. Capacity & Design

The child care centre has generally been designed having regard to the relevant Policies and Standards. The facilities within the building and provision of outdoor play space are generally appropriate to accommodate the child capacity proposed. Council is of the view that the outdoor play area qualifies as external play space (notwithstanding the enclosure of the sides) due to the large void in the roof form. For clarity, separate referral to the NSW Department of Education has been undertaken noting a response had not been received at the time of finalising the assessment report. It is further noted that post development consent a separate approval / licence is required to be issued by the NSW Department of Education which ultimately may permit the child care centre to operate and accommodate a lesser capacity of children.

The building is required to be designed to conform to the relevant accessibility standards including pedestrian ways, and parking areas. Suitable conditions would need to be imposed to ensure the development complies with the relevant design provisions including BCA upgrades required by the regulations. This also includes access, internal dimensions, fixtures and fit out of the development.

Consideration to the principle aims of Crime Prevention through Environmental Design (CPTED) contained within SSDCP 2015 has been given. The development is capable of adequately satisfying the relevant safety and security provisions with suitable conditions of development consent.

C4 of the Child Care Centre Planning Guideline requires risks from environmental, health or safety hazards to be considered for a development site. Further C27 requires consideration of potential impacts of external sources of air pollution such as major roads on the child care centre. The applicant has prepared an Air Quality Report which predicts that low to modest cumulative impacts from the air contaminants may occur. Following review an Air Quality Management Plan would need to be adopted over the life of the child care centre via the imposition of suitable conditions of development consent.

There is no comprehensive signage strategy proposed as part of the application. The southern elevation plan does however depict an area for future signage for the child care centre above the entry awning to assist in wayfinding. This sign will be visible over the existing Caringbah HomeCo. Centre car park being largely internalised within the property with minimal impact to the streetscape. Having regard to Schedule 5 Assessment Criteria within State Environmental Planning Policy (Industry and Employment) 2021 and the provisions of SSDCP 2015, the indicated signage area is considered to be appropriate. A condition would need to be imposed in the event of approval requiring separate approval pathways for future signage.

Clause 6.15 of SSLEP 2015 contains matters for consideration relating to ecologically sustainable

development and energy efficiency and sustainable building techniques. The submitted BCA report notes that compliance with Section J will be demonstrated at the issue of the Construction Certificate which is considered to be acceptable.

10.1. Operation & Neighbourhood Amenity

The co-existence of child care and medical centres land uses with adjoining low density residences can be problematic, as these uses normally clash when co-located. The applicant has submitted an acoustic assessment and plan of managements which identify design measures and operational management practices to maintain impacts to neighbouring properties to within acceptable levels. This has been reviewed by Council's Environmental Health Unit and generally no objections are raised subject to suitable conditions of development consent. Subject to on-going management, the operation of the land uses (including scope of proposed operating hours) is capable of integrating within the residential setting presenting no detrimental impact upon neighbourhood amenity, consistent with relevant Policies and Standards.

10.2. Flood Planning

The proposal is located on land which is potentially affected by flooding and as such Clause 5.21 of SSLEP 2015 is applicable. Clause 5.21 requires Council to be satisfied of certain matters prior to development consent being granted. These matters include compatibility with the flood risk; impact on flooding behaviour; measures to manage risk to life; impact on the environment; and social and economic costs. These matters have not been addressed to Council's satisfaction and as discussed in the specialist referral section of this report, the risk associated with flooding to sensitive users of the development is unacceptable. Further investigation and design refinement (e.g. levels / mitigation works at Willarong boundary) is required. An extract of the 1% AEP from the applicants Flood Study including the frontage of the site and Willarong Road is provided below.



Figure 7: Applicants flood diagram – 1%AEP

10.3. Stormwater Management

Clause 6.4 of SSLEP 2015 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. No stormwater drainage design was submitted with the initial application and in response to Council officer's request the submitted design has been reviewed by Council's Engineer and there are a number of deficiencies (refer to referral discussion above). As submitted the proposal fails the above planning and design considerations and further information would be required to be submitted by the applicant to address these concerns.

10.4. Car Parking and Traffic Impact

SSLEP 2015 and SSDCP 2015 contain certain matters for consideration relating to transport accessibility, traffic impacts and car parking. There are no prescribed parking rates for medical centres within the zone. The adoption of 1 space per 30m² of gross floor area (based on the generation rates for the same land use across other parts of the Sutherland Shire) is appropriate (i.e. 1200m² = 40 spaces). Further, C31 of the Child Care Planning Guideline requires off street car parking to be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land. SSDCP 2015 requires on-site parking is to be provided at the rate of 1 space/4 children for drop off and pick up (108 children = 27 spaces).

The application has been supported by a detailed traffic report which has been reviewed by Council's Traffic Engineer which is considered to be generally acceptable (refer to referral section in the assessment report above noting the comments were based on the original development scheme where generation rates were greater). The applicant has adopted Council's recommendations which include the allocation of parking (18 spaces) to the child care centre within the upper level of the existing Caringbah Centre carpark which adjoin the child care entry. Accessible parking spaces are also provided within each of the car parking levels / areas within close proximity to the land use entries. Parking forward of the building has been increased and the relocation of the vehicular entry to Willarong Road is considered to be appropriate noting the prior non compliance with the Australian Standard due to the proximity of the existing driveway to the intersection of Koonya Circuit.

The suitability of this particular site and surrounding road and pedestrian routes (including when considering the cumulative impact of the adjoining land uses) has been considered as a part of the assessment of the application and the proposal is considered to be acceptable. Reliance on the existing Caringbah Centre parking provision is accepted and the surrounding road network is generally considered adequate to accommodate the proposed land use without causing detrimental traffic generation, parking stress or increasing the general risk to the public and patrons of the child care or medical centre to any unacceptable level.

10.1. Acid Sulfate Soils

The subject site is identified as within 'Class 5' on the Acid Sulfate Soils Maps and the provisions of Clause 6.1 are therefore applicable. The objectives of this Clause are to ensure that development does not disturb, expose or drain acid sulphate soils and cause environmental damage. Within Class 5, the trigger under

SSLEP 2015 is works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the watertable is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 land. The site does not meet these criteria as the development is unlikely to lower the local water table and as such no acid sulfate soil assessment is required.

10.2. Earthworks

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

10.1. Archaeological Sensitivity

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

11.0 DEVELOPMENT CONTRIBUTIONS

The proposed development has a value of greater than \$100,000. In order to provide high quality and diverse public facilities, the proposed development will attract Section 7.12 Contributions in accordance with Council's adopted Section 7.12 Development Contribution Plan 2016. This contribution is based upon the proposed cost of the development and has been calculated at 1% of \$9,312,639.00 (the estimated cost of development identified on the development application form). Therefore, the Section 7.12 levy for the proposed development is \$93,126.39.

12.0 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, the development application form requires a general declaration of affiliation. In relation to this development application no declaration has been made.

13.0 CONCLUSION

The subject land is located within Zone E3 - Productivity Support (formerly Zone B5 Business Development) pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. Centre based child care facilities are permitted as a named land use within the zone and medical centres are permitted as an innominate land use within the zone.

The site and locality is in principle capable of accommodating the proposed child care centre and medical centre with no significant traffic, safety or adverse amenity impacts on the locality and adjoining properties anticipated (subject to appropriate ongoing operational management). The contextual fit of the building with the established streetscape and character of the immediate area is generally appropriate and opportunities for employment and child care will provide a social and economic benefit to the community.

The suitability of the site for these sensitive land uses from a flood planning and contaminated land perspective has not however been fully resolved during the assessment process and the proposal fails to ensure the retention of established native vegetation which currently contributes positively to the streetscape and the tree canopy / biodiversity of the Sutherland Shire. The proposal fails to satisfy the relevant planning considerations, including that of the landscaped area development standard, and approval of the development (including Clause 4.6) would set an undesirable precedent for similar inappropriate development, and it is therefore not in the public interest.

Public submissions have been received in response to the original and revised development proposals. The matters raised in these submissions relate primarily to car parking provision and anticipated external traffic impacts. Based on the technical advice from Council's internal specialists, these concerns are not considered to be substantive to warrant refusal of the application on this basis.

The application has been assessed having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The application will result in any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. DA23/0196 cannot be supported for the reasons outlined in the Recommendation of this report.

The officer responsible for the preparation of this Report is the Senior Manager, Development Services who can be contacted on 97100333.