

# WILLOWTREE PLANNING



## MEMO

Project	Proposed Childcare and Medical Centre Use at junction of Willarong Road and Koonya Circuit, Caringbah
Subject	Response to Reasons for Refusal
Date	21 March 2024
Prepared by	Willowtree Planning
To	South Sydney Planning Panel

In response to the report prepared by Sutherland Shire Council, we seek to clarify each matter identified in Part 1.1 of the Report. In support of this Memo we attach the finalised Detailed Site Investigation Report and Addendum Arborist Report provided to Council.

Taking each item for refusal in turn please see our response to the items as 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.*

DA reference **DA/16/0223** for the following development:

*Construction of additional bulky goods floor space, introduction of new tenancies, internal upgrading and revitalisation of the existing Caringbah Homemaker Centre, including additional carparking and landscaping enhancement*

And as modified first by **MA/17/0598** and subsequently amended by **MA/18/0399** has been partially constructed. It is now the intent to not undertake the Stage component of the approval and instead progress with the development as described under **DA23/0196**.

Given the approval of **DA23/0196** would in effect result in two conflicting development approvals on Lot 22 and 23 of DP800924 it is considered that the partial surrender of development consent **DA/16/0223** and as modified by **MA/18/0399** is undertaken.

ACN: 146 035 707 ABN: 54 146 035 707  
Suite 204, Level 2, 165 Walker Street  
North Sydney NSW 2060

enquiries@willowtp.com.au  
willowtreeplanning.com.au  
02 9929 6974



# WILLOWTREE PLANNING



We therefore propose to partially surrender the development consent **DA/16/0223** and as modified by **MA/18/0399** pertinent to Lot 22 and 23 of DP800924 as a deferred commencement condition pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*.

We therefore propose the following condition:

*This Development Consent is not to operate until such a time as:*

- a) *The development consent **DA/16/0223** and as modified by **MA/18/0399** for all works under this consent on Lots 21, 22 and 23 of DP800924 has been surrendered to the satisfaction of Council;*

*All of the requirements listed in the above condition must be completed within 12 months of the date of this "Deferred Commencement" consent. Should these matters not be completed to Council's satisfaction within this time period, this "Deferred Commencement" consent will lapse.*

For ease of reference the works as approved by **DA/16/0223** and as modified by **MA/18/0399** and contained within Lots 21, 22 and Lot 23 of DP800924 comprises:

- Loading Dock;
- GT12;
- GT10;
- GT11;
- L1-T8;
- L2- T1;
- Parents room; and
- L1-T10

Details can be provided in plan form if required by a deferred commencement condition. This pathway was discussed with officers in dealing with the identified conflict and the above condition offered in RFI response dated 16 February 2024.

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.*

The application was considered by Council's Design Review Panel (DRP) on 15 June 2023. The assessment report identifies that the design of the building adequately responds to the items highlighted by the DRP most notably:

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

ACN: 146 035 707 ABN: 54 146 035 707  
Suite 204, Level 2, 165 Walker Street  
North Sydney NSW 2060

enquiries@willowtp.com.au  
willowtreeplanning.com.au  
02 9929 6974



# WILLOWTREE PLANNING



- 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.
- a landscape design plan extending to the child care centre outdoor play area to demonstrate a suitable environment for children's use

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.*

The report notes that the clause 4.6 justification is contingent on the successful retention of two trees within the site frontage. the Arboricultural Impact Assessment v2 dated 23 February 2024 confirms that the mitigation methods as described by the report and comprise inter alia permeable pavers demonstrate that the trees can be retained. Given it is demonstrated that the trees can be retained and the retention of the trees is contingent on achieving objectives of 1(a), (c) and (d) of Clause 6.14 it is thus proven that the proposed landscaping will:

- Retain the existing trees;
- Retention of the trees will seek to minimise the visual impact of the development; and
- Retention of the trees will ensure the development is sufficient in scale

The objectives of 1(a), (c) and (d) are thus met.

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.*

In respect of Clause 6.16(1)(a) the feedback from the DRP has been incorporated into the final design of the building. Taking into account the comments from the DRP, in combination with the retention of the tree, it is noted that the objectives of this clause have been met.

In respect of Clause 6.16(1)(d) the retention of the trees as described in the Arboricultural Impact Assessment v2 dated 23 February 2024 which form the remnant 'natural environment' will be retained and thus the objective of this clause will be met.

ACN: 146 035 707 ABN: 54 146 035 707  
Suite 204, Level 2, 165 Walker Street  
North Sydney NSW 2060

enquiries@willowtp.com.au  
willowtreeplanning.com.au  
02 9929 6974



# WILLOWTREE PLANNING



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.*

The TUFLOW model shows that the maximum flood level at the proposed building for the 1% AEP event is 8.57m AHD. The FFL is 9.100 which provides 530mm freeboard as per the Sutherland Shire Development Control Plan requirement.

Accordingly, an appropriate and Development Control Plan compliant freeboard has been provided and thus the objectives of Clause 5.21 relating to Flood Planning of the Sutherland Shire Local Environmental Plan 2015 have been met.

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.*

In RFI letter dated 13 February 2024 it was noted that 'Without a DSI it cannot be demonstrated that the site is suitable or can be made suitable for the land use. 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.'

A letter from a NSW EPA accredited site auditor was provided to Council on 21 February 2024 which confirms that the site can be made suitable for the proposed mixed-use use subject to the completion of investigations and management in accordance with the NSW Land Contamination Guidelines.

Notwithstanding, the DSI has now been prepared and confirms that the development will result in the majority of the site area excavated for the proposed ground level, thus based on the results of this investigation, the site is considered suitable for the proposed development in accordance with SEPP (Resilience and Hazards) 2021.

ACN: 146 035 707 ABN: 54 146 035 707  
Suite 204, Level 2, 165 Walker Street  
North Sydney NSW 2060

enquiries@willowtp.com.au  
willowtreeplanning.com.au  
02 9929 6974



# WILLOWTREE PLANNING



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.*

This principles notes that Good design responds and contributes to its context, including the key natural and built features of an area. With regards to the context of the Site it is noted that the DRP comments have been responded to and the Council report notes that

*'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.'*

As such the design of the building is considered to respond to the context of the area.

The Council Report notes that the proposal fails to reinforce the existing landscape character of the streetscape and retain site vegetation. the Arboricultural Impact Assessment v2 dated 23 February 2024 confirms that the mitigation methods as described by the report and comprise inter alia permeable pavers demonstrate that the trees can be retained. Accordingly, it is considered given the trees have been demonstrated to be retained compliance with Principle 1 is achieved.

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.*

The Plan of Management for the Childcare centre includes provision for emergency evacuation. For ease of reference this is set out below:

- *Emergency evacuation procedures based on the Centre's floor plans will be prominently displayed in the following locations near each exit. The Centre will maintain an up-to-date register of emergency telephone numbers that staff can access in an emergency or evacuation.*
- *Emergency telephone numbers will be displayed prominently throughout the Centre in the following locations near telephones or available mobile phones.*
- *The Centre will ensure educators are provided with training on how to use fire extinguishers, fire blankets and other emergency equipment that must be kept in the following locations.*
- *Fire extinguishers, fire blankets, and other emergency equipment will be tested by recognised authorities (Fire Safe Australia/NZ), as recommended by the manufacturer. All tests will be documented.*
- *Emergency procedures will be discussed with families and regular information will be provided to families. Families will also be advised in writing whenever a rehearsal drill has taken place.*

ACN: 146 035 707 ABN: 54 146 035 707  
Suite 204, Level 2, 165 Walker Street  
North Sydney NSW 2060

enquiries@willowtp.com.au  
willowtreeplanning.com.au  
02 9929 6974



# WILLOWTREE PLANNING



- *The Nominated Supervisor is responsible for ensuring that all educators, including relief educators and staff members, know the Centre's policies and procedures relating to Emergency Management and Evacuation, and what is expected of them in a rehearsal and/or real situation.*
- *Informal games and discussions will be used to familiarise children with the Centre's evacuation and emergency procedures.*

It is noted that NSW Department of Education have not responded to the notification. Furthermore, NSW Department of Education were only notified of this DA on 6 March 2024. It is thus considered premature to identify this as a reason for refusal given the lack of comment from NSW Department of Education.

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.*

Stormwater plans have been prepared by Henry Hymas. No RFI request was received from Council with regards to stormwater. HMC Capital seek to work positively and proactively with Council and the stormwater management is considered acceptable.

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.*

Each development application is assessed on its merits, not precedent. Notwithstanding, it has been demonstrated that the development as proposed is not inappropriate development and as such would not set an undesirable precedent.

## Summary

HMC Capital are understandably at a loss with the number of items for refusal as advised by Council. Council were engaged at the pre-DA stage, alterations to the building as a result of the DRP were positively received and actioned and matters raised by RFI were appropriately responded to. In particular Arboricultural Impact Assessment v2 dated 23 February 2024 and confirmation by a NSW EPA accredited site auditor to review the PSI in relation to the DPI; nevertheless, a DSI has been prepared and is attached to this memo.

ACN: 146 035 707 ABN: 54 146 035 707  
Suite 204, Level 2, 165 Walker Street  
North Sydney NSW 2060

enquiries@willowtp.com.au  
willowtreeplanning.com.au  
02 9929 6974

