

Ref: WTJ21-105



WILLOWTREE PLANNING

CLAUSE 4.6 VARIATION REQUEST TO CLAUSE 6.14 LANDSCAPED AREA

31 KOONYA CIRCUIT, CARINGBAH

—

Prepared by Willowtree Planning Pty Ltd
on behalf of HMC Capital

January 2024

SYDNEY

—
Level 2
165 Walker Street
North Sydney NSW 2060

BRISBANE

—
Level 3, 240
Queen Street
Brisbane QLD 4000

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



WILLOWTREE
PLANNING

In the spirit of reconciliation and recognition, Willowtree Planning acknowledges the Traditional Owners of this Country throughout Australia and their continuing and ongoing connections to land, waters and community. We show our respect to Elders - past and present. We acknowledge that we stand on this Country which was and always will be recognised as Aboriginal Land. We acknowledge the Traditional Owners of the Lands in this Local Government Area, belonging to the local Aboriginal People, where this proposal is located upon.

Clause 4.6 Variation – Landscaped Area

Medical and Childcare Centre
31 Koonya Circuit, Caringbah



DOCUMENT CONTROL TABLE

Document Reference:	WTJ22-105		
Contact	Richard Seaward		
Version and Date	Prepared by	Checked by	Approved by
Version No. 1 – 16/1/2024	Richard Seaward Associate	Sally Prowd Senior Associate	Sally Prowd Senior Associate
Version No. 2	Richard Seaward Associate		
Version No. 3 updated to include Condition 18 of DA16/0223 and MA18/0399			
Version No. 4 update to cite inclusion of Condition 18 of DA16/0223 and MA18/0399			
Version No. 5 update to landscaped area			

© 2022 Willowtree Planning Pty Ltd

This document contains material protected under copyright and intellectual property laws and is to be used only by and for the intended client. Any unauthorised reprint or use of this material beyond the purpose for which it was created is prohibited. No part of this work may be copied, reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without express written permission from Willowtree Planning (NSW) Pty Ltd.



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



TABLE OF CONTENTS

PART 1	PRELIMINARY	3
1.1	INTRODUCTION	3
1.2	RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS	3
1.3	DEVELOPMENT STANDARD VARIATION	3
	TABLE 1 CLAUSE 6.15 OF SSLEP2015 VARIATION SUMMARY	4
PART 2	THRESHOLDS THAT MUST BE MET	5
2.1	INTERPRETING CLAUSE 4.6	5
PART 3	STANDARDS BEING OBJECTED TO	7
3.1	OVERVIEW	7
3.2	CLAUSE 6.14 LANDSCAPED AREA	7
3.3	PROPOSED VARIATION TO DEVELOPMENT STANDARDS	7
PART 4	PROPOSED VARIATION TO CLAUSE 6.14 OF SSLEP2014	8
	Pursuant to Clause 4.6 of SSLEP2015 exception is sought from the landscaped area standard applicable to the Subject Site pursuant to Clause 6.14 of SSLEP2015.....	8
4.1	OBJECTIVES OF THE STANDARD	8
4.2	OBJECTIVES OF THE ZONE	8
4.3	ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY	9
4.4	SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD	10
4.5	OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979	12
4.6	MATTERS OF STATE AND REGIONAL SIGNIFICANCE	14
4.7	SUMMARY	14
PART 5	CONCLUSION	15

TABLES

TABLE 1 CLAUSE 6.15 OF SSLEP2015 VARIATION SUMMARY	4
TABLE 2 CONSISTENCY WITH THE CLAUSE 6.14 OBJECTIVES	8
TABLE 3: CONSISTENCY WITH THE E3 ZONE OBJECTIVES	9





PART 1 PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 variation request (Variation Request) has been prepared in support of a Development Application (DA) for the proposed childcare and medical centre use at 31 Koonya Circuit, Caringbah (Subject Site).

The Subject Site is zoned E3 Productivity Support, pursuant to the *Sutherland Shire Local Environmental Plan 2015* (SSLEP2015) and is located within the Sutherland Shire Local Government Area (LGA). The proposed development is permissible with consent within the E3 zone and is considered contextually appropriate. The proposal is generally consistent with the objectives and provisions of SSLEP2015, with the exception of Clause 6.15 – Landscaped Area, for which this Variation Request is sought.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed under SSLEP2015. It considers various planning controls, strategic planning objectives and existing characteristics of the Subject Site and concludes that the proposed non-compliance is the best means of achieving the objects of encouraging orderly and economic use and development under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed non-compliance with Clause 6.14 – Landscaped Area of SSLEP2015 and has been prepared in accordance with the requirements of Clause 4.6 of SSLEP2015 which includes the following objectives:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Under the provisions of Clause 6.14 of the SSLEP2015, the Subject Site is subject to a minimum landscape development standard of **10%**. The Sites area comprises 24,308m² and thus strict compliance with Clause 6.14 would require 2,430.80m² of landscaped area.

Taking into consideration the history of the Site; a total 920m² of landscaping (**3.78%**) was previously approved at under **DA16/0223**. This was amended and increased to 1,086m² (**4.4%**) under **MA18/0399**.

The landscaped area proposed for the whole Site would result in a landscaped area of 860.3m² which represents **3.5%**. Accordingly, the proposal is 60m² less than the landscaped area which has previously been approved equating to 0.28% less landscaped area.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed by SSLEP2015.

1.3 DEVELOPMENT STANDARD VARIATION

Under the provisions of Clause 6.15 of SSLEP2015, the Subject Site is subject to a minimum landscape development standard of **10%**. The proposal will result in a landscaped area of **3.5%**. **Table 1** below provides a summary of the variation.



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



TABLE 1 CLAUSE 6.15 OF SSLEP2015 VARIATION SUMMARY

SSLEP2015	SSLEP2015 Development Standard	Minimum Proposed	Proposed Development Non-Compliance
Clause 6.14 – Landscaped Area	10%	3.5%	The proposal seeks consent for a minimum development standard of 3.5%

Notwithstanding the above, curtailing the landscape area to the current prescribed development standard would result in a contrived development which sits at odds with the prevailing character of the existing centre. It is noted that the landscaping in its current approved form fails to provide a consistent landscaped edge to the Subject Site. In contrast the proposed landscaped area provides landscaping to both Koonya Circuit and Willarong Road which is consistent with the prevailing built form of both streets.

In summary, with regards to the landscape area control, it is noted that:

- There are limited opportunities for the proposal to provide a significant quantum of additional deep soil landscaping, given the large footprint of the existing centre;
- This application seeks works to only a section of the Subject Site of which full compliance with the landscaped area control would place an unnecessary burden on the design of the medical and childcare centre to accommodate the landscaped area;
- 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 Subject Site currently has little remnant biodiversity;
- On a sitewide basis, the landscape concept provides reduced impervious areas and will reduce peak stormwater flows for rainfall events and assist in retaining rainwater on site;
- The sitewide landscaping 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 proposed to be expanded, particularly along Willarong and Koonya Circuit. The revised proposal will result in more landscaping to the frontage of Koonya Circuit than the as approved; and
- Additional planters and appropriate plant species which respond to the natural environment are proposed;
- Landscaping is provided to the northern boundary which seeks to screen the visual dominance of the building to Koonya circuit;

In its current form, the proposal 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.





PART 2 THRESHOLDS THAT MUST BE MET

2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of SSLEP2015 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

*Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be **accompanied by a document setting out the grounds** on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b)*

Accordingly, a successful Clause 4.6 variation must satisfy the below:

First Limb – cl 4.6(3)

Clause 4.6(3) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the following:

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (Cl 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*"Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have "considered" the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is "unreasonable or unnecessary" and that "there are sufficient environmental planning grounds to justify" the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."*

Accordingly, a consent authority must be satisfied:



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



- a) that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
- b) of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in **Sections 4.3** and **4.4** of this Variation Request.

This written request has been prepared under Clause 4.6 to request a variation to the "landscaped area" development standard at Clause 6.14 of SSLEP2015.



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



PART 3 STANDARDS BEING OBJECTED TO

3 OVERVIEW

The Subject Site is zoned E3 Productivity Support and is subject to the E3 zoning objectives and the landscaped area controls.

3.1 CLAUSE 6.14 LANDSCAPED AREA

Clause 6.14 of SSLEP2015 has the following objectives:

- (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.*

Pursuant to Clause 4.6, the proposal seeks exception to the landscaped area development standard of Clause 6.14.

3.2 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

The DA seeks approval for the medical centre and childcare centre at 31 Koonya Circuit. The Subject Site is subject to a minimum landscape area development standard of **10%**. The development proposes a minimum landscaped area of **3.5%**.

This Variation Request has been prepared in accordance with the objectives of Clause 6.14 Landscaped Area and the E3 zone objectives of SSLEP2015.



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



PART 4 PROPOSED VARIATION TO CLAUSE 6.14 OF SSLEP2014

Pursuant to Clause 4.6 of SSLEP2015 exception is sought from the landscaped area standard applicable to the Subject Site pursuant to Clause 6.14 of SSLEP2015.

4 OBJECTIVES OF THE STANDARD

A key determinant of the appropriateness of a Clause 4.6 Variation to a development standard is the proposal's compliance with the underlying objectives and purpose of that development standard.

Clause 4.6(4)(a)(ii) requires that a request to vary a development standard must establish that the proposed contravention will be in the public interest because it is consistent with the objectives of the development standard and the zone. Pursuant to Clause 4.6 of SSLEP2015, the proposal seeks exception to the landscaped area development standard pursuant to Clause 6.14 of SSLEP2015.

Clause 6.14 of SSLEP2015 sets out specific objectives. Those objectives under SSLEP2015 are responded to in **Table 2** below:

TABLE 2 CONSISTENCY WITH THE CLAUSE 6.14 OBJECTIVES	
Objective	Response
<i>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,</i>	The existing trees fronting onto Willarong Road will be retained. Notwithstanding, the Subject Site comprises limited remnant biodiversity. Additional mature vegetation will be provided in the proposed landscaped areas which ensures that the proposal contributes positively to the biodiversity of the Subject Site.
<i>to minimise urban run-off by maximising permeable areas on the sites of development,</i>	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.
<i>to ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained,</i>	Landscaping is provided to the frontage of Koonya Circuit as opposed to the approved landscaping to this frontage. Appendix A indicates the extent of the landscaping proposed to this frontage which is proposed to be increased from the existing approved development. Accordingly, the visual prominence of the built form on this corner is enhanced.
<i>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.</i>	The proposed landscaping accords with the prevailing landscaping at the Subject Site and addresses both Willarong Road and Koonya Circuit. As such, the landscaping is sufficient for the proposed development and provides sufficient

4.1 OBJECTIVES OF THE ZONE

The Subject Site is zoned E3 pursuant to SSLEP2015. Therefore, consideration has been given to the E3 zone objectives in **Table 3** below:



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



TABLE 3: CONSISTENCY WITH THE E3 ZONE OBJECTIVES

Objective	Response
<i>To provide a range of facilities and services, light industries, warehouses and offices.</i>	The variation to the landscape development standard does not impact on the provision of these uses in the surrounding area.
<i>To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.</i>	The variation to the landscape development standard does not result in uses which would compete with the surrounding centres.
<i>To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.</i>	The proposed land uses are permissible with the E3 zone.
<i>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.</i>	The proposed land uses are permissible with the E3 zone. The land uses provide important community uses and utilise parking and connections with the existing large format retail centre.
<i>To provide opportunities for new and emerging light industries.</i>	The variation to the landscape development standard does not prejudice this objective.
<i>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.</i>	The proposed land uses are permissible with the E3 zone. The land uses provide important community uses and utilise parking and connections with the existing large format retail centre. The variation to the landscape development standard does not prejudice this objective.
<i>To enhance the visual appearance of the area by ensuring new development achieves high architectural and landscape standards.</i>	Landscaping is provided to the frontage of Koonya Circuit as opposed to the approved landscaping to this frontage. Appendix A indicates the extent of the landscaping proposed to this frontage against the approved. Accordingly, the visual prominence of the built form on this corner is enhanced.
<i>To ensure that development does not have an adverse impact on the effective operation and safety of main roads.</i>	The variation to the landscaping control will not impact on the effective operation and safety of the main road.
<i>To prevent the fragmentation of large sites and to realise their economic strategic advantage.</i>	Subdivision of this Site is not proposed.
<i>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.</i>	The floorplate of the proposal are not akin to ancillary uses.
<i>To minimise the impact of development within the zone on areas of environmental or heritage significance.</i>	The proposal will not impact on any environmental heritage.

4.2 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.1**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

In view of the particular circumstances of this case, strict compliance with Clause 6.14 of SSLEP2015 is considered to be both unnecessary and unreasonable. Should strict compliance with the development



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



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 1 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.

4.3 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

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 a high quality and consistent streetscape which responds to the public domain which 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 site-specific planning controls.

Updated as per Version 3

Of note planning condition 18 of **DA16/0223** relates to the approved landscaping plan which is set out below for ease of reference:



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonyu Circuit



- i) At either end of the Taren Point Road frontage replace the two (2) *Tristaniopsis laurina* with two (2) *Angophora costata* to achieve a total of 3 *Angophora costata* per cluster of trees. Plant these four (4) trees at a minimum distance of 3m from the footpath to increase the level of shade for pedestrians walking along Taren Point Road. Note: adjust banner poles to suit.
- ii) Substitute the following tree species: *Eucalyptus capitellata* (Brown Stringybark) or *Eucalyptus oblonga* (Sandstone Stringybark) for *Eucalyptus amplifolia* (Cabbage Gum).
- iii) Show all existing trees to be retained or removed, including numbering, trunk location, canopy spread and species, on a separate plan, based on the site survey and site observations.
- iv) Show Tree Protection Zones (TPZ) on plan for all existing trees to be retained and protected.
- v) All landscaped areas including all planter boxes on slab must be provided with a water-efficient irrigation system, connected to a pump and the rainwater tank, to enable effective landscape maintenance.
- vi) A tap with a removable water key, connected to a pump and the rainwater tank must be provided at a minimum of 25m centres along the three street frontages and the carpark perimeter planter boxes to enable hand watering if required.

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

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

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

The condition relates to wider landscaping provisions for the Site which seek to ensure that the Site is in-keeping with the prevailing landscaping for the area. The condition requires inter alia amendments to the landscaping to the front of Taren Point Road – this condition has been incorporated into the sitewide planning requirements for the Site to include:

Plants: The selection and arrangement of plants seeks to play a crucial role in the landscaping. This includes trees, shrubs, flowers, and grasses. Consideration has been given to the plant selection to include their size, colour, texture, growth habits, and maintenance requirements. Native species have been selected where applicable because they are adapted to the local environment and require less water and maintenance.

Hardscaping: provide structure and define the use of outdoor spaces. Robust materials have been used creatively to enhance the overall design of the space.

Functionality: the well-designed landscape is functional and cater to the needs and activities of its users. This might include areas for outdoor dining, entertaining, gardening, or relaxation. Accessibility and safety should also be considered, especially for families with children or elderly individuals.

Sustainability: Native species have been selected where applicable because they are adapted to the local environment and require less water and maintenance.

Maintenance: species have been selected which are adapted to the local environment and require less water and maintenance.

The overall landscaping is considered acceptable and will be in-keeping with the prevailing landscaping at the Site. It seeks to balance aesthetics with functionality, sustainability, and maintenance to create landscaping that enhances the environment.



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



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 the as 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 SSLEP2015.

- 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 SSLEP2015.

4.4 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **Table 4** below assesses the proposed development against the objects of the EP&A Act.

TABLE 4: EP&A ACT OBJECTIVES

Objective	Response
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and</i>	The proposed development will positively contribute to the land zoning on the Subject Site within the Sutherland Shire LGA. The proposal can



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



TABLE 4: EP&A ACT OBJECTIVES

Objective	Response
<i>conservation of the State's natural and other resources,</i>	furthermore be progressed without any significant environmental impacts
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The proposed landscaping has been designed to include appropriate ecologically sustainable measures and has adequately considered environmental impacts on the surrounding locality.
<i>(c) to promote the orderly and economic use and development of land,</i>	The proposed development will make use of the floor space ratio permissible on the Subject Site, resulting in an economically beneficial development without an unacceptable economic, environmental or social impact.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The proposed varied landscape development standard does not prejudice the delivery of affordable housing.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	There is no remnant ecology at the Site.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The Subject Site is not identified as a Heritage Item, within a heritage conservation area or as containing Aboriginal or cultural heritage significance.
<i>(g) to promote good design and amenity of the built environment,</i>	Landscaping is provided to the frontage of Koonya Circuit as opposed to the approved landscaping to this frontage. Appendix A indicates the extent of the landscaping proposed to this frontage against the approved. Accordingly, the visual prominence of the built form on this corner is enhanced.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed varied landscape development standard does not prejudice the health and safety of the users of the Site.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The application will be required to be submitted to Sutherland Shire Council.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA would be subject to the relevant public notification requirements



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



4.5 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance with Clause 6.14 of SSLEP2015 will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation.

4.6 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 6.14 of SSLEP2015 is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of SSLEP2015, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- Retention of planning condition 18 of **DA16/0223**;
- The development is in the public interest (refer to **Section 4.6** as part of the Second Limb satisfied);
- The development is consistent with the objectives of the particular standard (refer to **Section 4.1** as part of the Second Limb satisfied);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2** as part of the Second Limb satisfied);
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.7** as part of the Third Limb satisfied);
- The public benefit in maintaining strict compliance with the development standard would be negligible (refer to **Section 4.8** as part of the Third Limb satisfied); and
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard.

Overall, it is considered that the proposed variation to the maximum building height control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of SSLEP2015



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



PART 5 CONCLUSION

For the reasons outlined above, it is requested that Council support the Variation Request, which seeks approval for non-compliance with Clause 6.14 of SSLEP2015 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- The development standard has already been contravened at the Subject Site and this proposal seeks to provide landscaping to the Koonya Circuit frontage as well as the Willarong Road frontage providing an increase in visual landscaping;
- There are sufficient environmental planning grounds to justify contravening the development standards;
- The proposal will capitalise on the Subject Site's full planning potential;
- The proposal satisfies the objectives of the B3 zone and Clause 6.14 of SSLEP2015;
- No unreasonable environmental impacts are introduced as a result of the Proposal; and
- There is no public benefit in maintaining strict compliance with the standards.

Given the justification provided above, the Variation Request is well founded and should be favourably considered by Council.

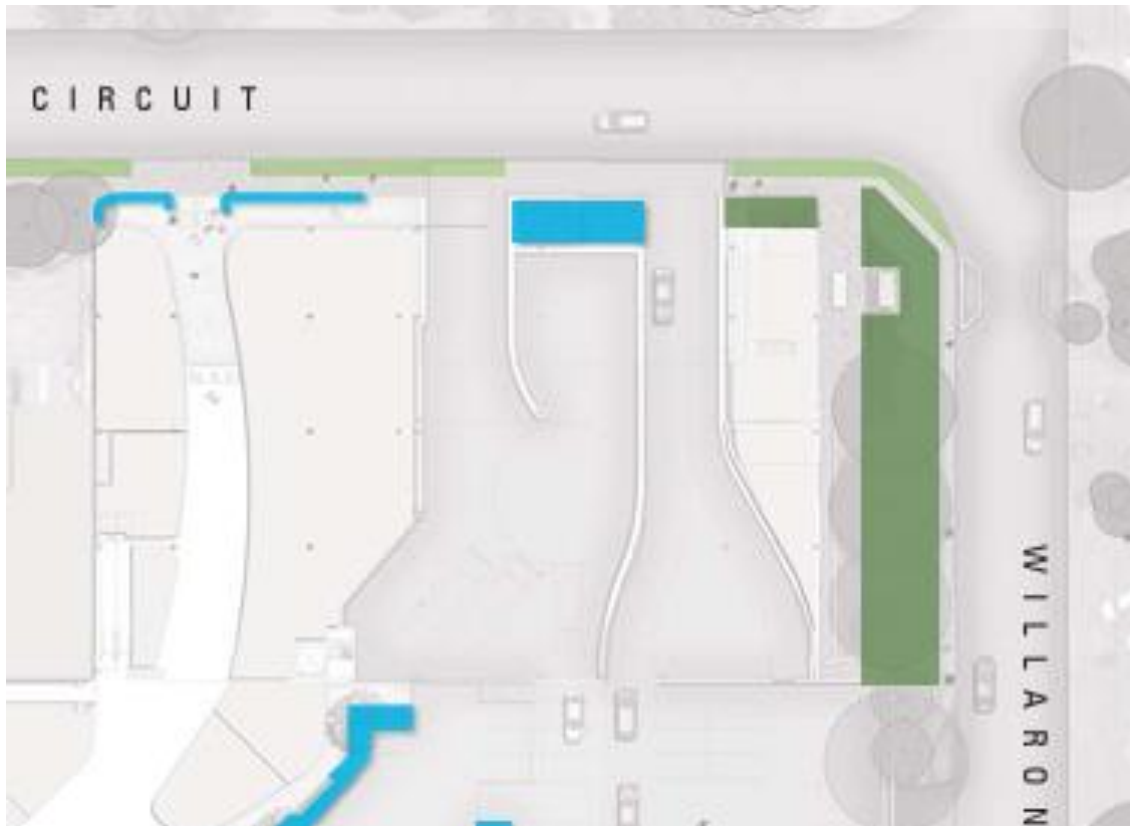


Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



APPENDIX A

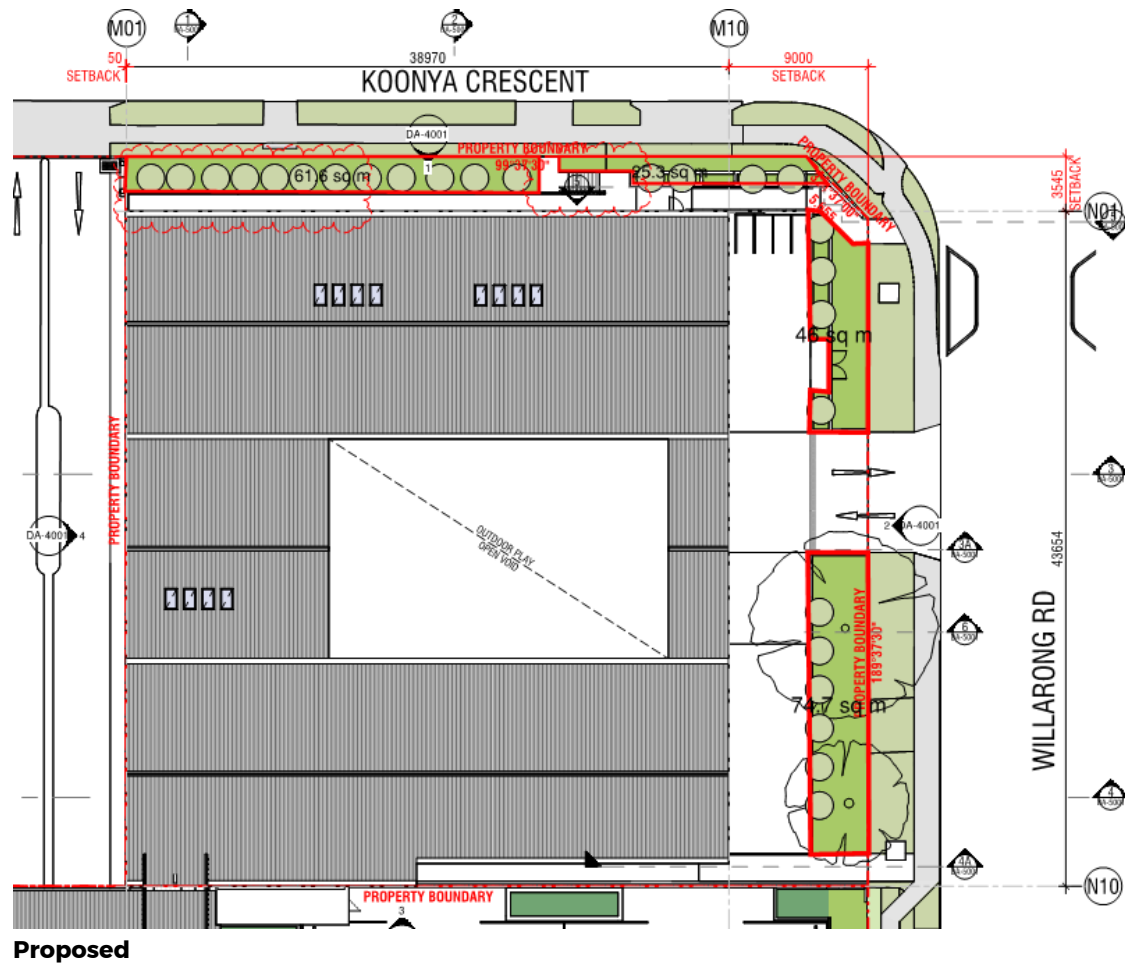


Approved MA180399



Clause 6.15 Landscaping

Proposed Childcare and Medical Centre
31 Koonya Circuit



Clause 4.6 Variation – Landscaped Area

Medical and Childcare Centre

31 Koonya Circuit, Caringbah

