

**SUPPLEMENTARY REPORT TO
SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT OF 14 MARH 2024**

Panel Reference	PPSSSH-134 (Decision Deferred 28 March 2024)
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
Original Recommendation:	Refusal
Recommendation:	Deferred commencement approval
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"> • Draft Conditions of Consent • Letter NSW Education • 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	6 June 2024

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? <i>e.g. Section 4.6 of Chapter 4 of SEPP Resilience and Hazards 2021 -Clause 4.6(4) of the relevant LEP</i>	Yes
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Clause 4.6 Exceptions to development standards

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

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

Conditions

Have draft conditions been provided to the applicant for comment?	To be available prior to determination
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EXECUTIVE SUMMARY

The determination of DA23/0196 was deferred by the Sydney South Planning Panel (the Panel) on 28 March 2024 following the determination meeting held on 25 March 2024.

Action 1 of the Record of Deferral required the Applicant and Council staff to meet by 9 April 2024 to discuss the following Council recommended reasons for refusal.

- 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.*

Council officers and the Applicant met on 8 April 2024. Following this a joint memo was prepared and provided to the Panel outlining agreed solutions to each of the reasons for refusal, any remaining unresolved issues and whether the DA would require renotification. The applicant provided Council officers with additional information on 22 April 2024 and 9 May 2024 and this Supplementary Report provides an assessment of the application where relevant to Council officer's previously recommended reasons for refusal.

REPORT SUMMARY

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 Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to the minimum 10% landscaped area development standard satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that the (landscaped area development standard development standard be varied to 3.5%, in respect to this application.

1.2 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, 31 Koonya Circuit, Caringbah, 39 Willarong Road, Caringbah is determined by the granting of a deferred commencement development consent subject to the conditions contained in **Appendix "A"**.

ASSESSMENT OFFICER'S COMMENTARY

2.0 DESCRIPTION OF PROPOSAL

A detailed description of the development proposal is provided within the Council officer's Assessment Report dated 14 March 2024.

A description of the main proposed amendments to the development following the Panel deferral and joint meeting between Council staff and the applicant include the following:

- The ground floor level increased from RL9.10 to RL9.75, first floor level from RL12.8 to RL13.25 and ridge level from RL17.862 to RL18.312 - (total height increase of 450mm).
- The external parking area level is increased (noting an increase from RL9.20 at the bottom of the vehicular entry ramp adjoining the existing tree to RL9.64).
- The vehicular access connection to Willarong Road is moved northward by approximately 2.6m.
- The 2 existing native trees (species *Corymbia maculata* and *Eucalyptus robusta*) sought to be retained is supported by a revised Arborist Report.
- Flood concerns are resolved by way of the above design changes and a revised Flood Report.
- The pharmacy / dispensary component of the ground floor tenancy is provided with an internal connection to the medical centre.
- The waste / bin storage room is relocated from being within the Willarong Road frontage and incorporated into the building.
- A revised materials and finishes schedule is provided and the egress stair on the northern elevation fronting Koonya Circuit has been moved eastward towards the main pedestrian path and reorientated.
- A whole of site landscape plan has been prepared with peripheral landscape works extending to the Taren Point Road frontage of the site.

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.

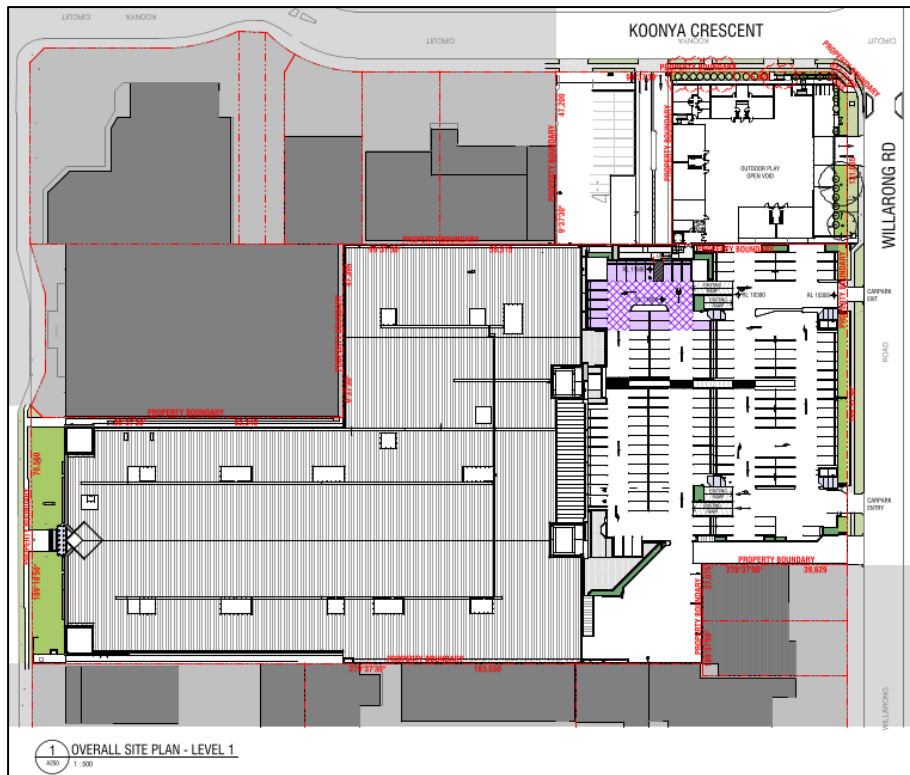


Figure 1: 'Whole of Site' Plan

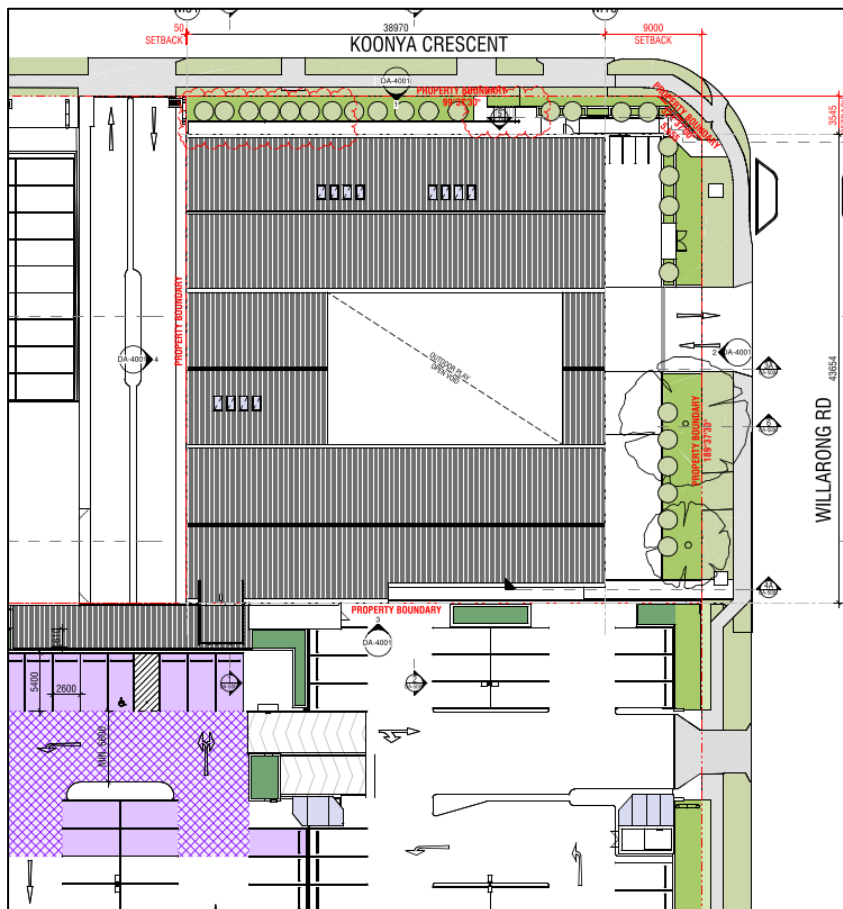


Figure 2: Site Plan ‘Development Zone’

3.0 SITE DESCRIPTION AND LOCALITY

A detailed description of the site and locality is provided within the Council officer's Assessment Report dated 14 March 2024. A locality plan and zoning map for general reference are provided in **Figures 3-4** below.



Figure 3: Site Locality Photo and in context of whole of 'Caringbah HomeCo. Centre' site.

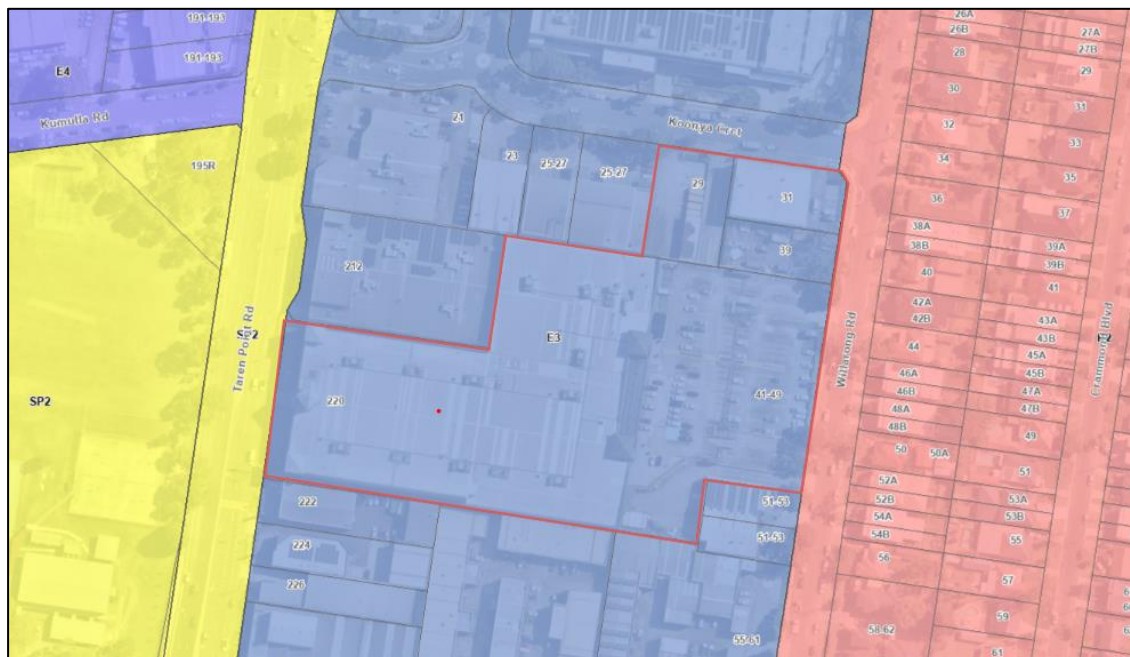


Figure 4: Zoning Map – Site is located within E3 – Productivity Support and adjoins R2 – Low Density Residential zoning opposite Willarong Road to the east.

4.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the revised application, the applicant has now provided adequate information to Council to enable an assessment of this application, including a written request to vary the landscaped area development standard under Clause 4.6 of Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).

5.0 PUBLIC PARTICIPATION

The original application was notified in accordance with the provisions of Chapter 42 of Sutherland Shire Development Control Plan 2015 (SSDCP 2015). The plan revisions were then notified under Sutherland Shire Community Engagement Strategy (SSCES) (reflecting the change in Council's notification policy). Council notified 185 adjoining or affected owners of the proposal and submissions were received from 3 properties.

The matters raised in these submissions were addressed in the Council officer's Assessment Report dated 14 March 2024. The issues relate primarily to car parking provision and anticipated external traffic impacts which, based on the technical advice from Council's internal specialists, are not considered to be substantive concerns that warrant refusal of the application on this basis.

The amendments made to the proposal post the Panel determination and in response to Council officer's assessment / Panel's Record of Deferral include an increase in finished levels (ground floor level by 650mm and total building height by 450mm). An increase in built form / footprint for an elevated staff outdoor space extending to the northern boundary of Koonya Cct (nil setback) originally sought in the revised scheme was subsequently deleted from the proposal.

The change in levels / overall height proposed presents a negligible impact to the overall built form, properties opposite the site and the streetscape noting the development remains well below the maximum permitted and envisaged height for the development within the site / zone under SSLEP 2015. In accordance with the requirements of SSCES the revised plans were not publicly notified as, in the opinion of Council, the changes being sought did not intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment.

6.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone E3 - Productivity Support (formerly Zone B5 Business Development) pursuant to the provisions of SSLEP 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).

Concerns were raised in Council' officer's original assessment with regard to a pharmacy / dispensary space with a separate external entry to the building and that if not an ancillary function to the medical centre, would be defined as a 'shop' under SSLEP 2015. Some forms of retail premises, by definition, are permitted within the zone, however, shops are strictly identified as a prohibited form of development.

In the applicant's response letter dated 30 April 2024, the applicant notes *'The dispensary is an ancillary use which is defined as a use that is subordinate or subservient to the dominant purpose. In summary:*

- If a component serves the dominant purpose, it is ancillary to that dominant purpose; and*
- If a component serves its own purpose, it is not a component of the dominant purpose but an independent use on the same land.*

In this respect the dispensary is not capable of serving its own purpose; to put the matter beyond doubt, the dispensary can only be accessed through the medical centre. The Medical Centre Plan of Management has been updated accordingly.

The dispensary space comprises approximately 15.6% of the floor space of the ground floor and the design changes to provide internal connectivity to the primary land use is considered satisfactory to ensure that the space is ancillary and thus subordinate / subservient to the dominant purpose. A suitable condition of development consent is further recommended reaffirming the on-going operation of the space.

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.

7.0 COMPLIANCE

7.1 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 Panel for determination.

7.2 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.

A Detailed Site Investigation (DSI) has been prepared by the applicant in response to Council officer's concerns and has been reviewed by Council's Environmental Scientist. The DSI has addressed the data gaps identified in the preliminary site investigation and an appropriate sampling strategy, analytical suite and assessment criteria was used. The conceptual site model has identified all potential exposure pathways and addressed them. The section of the site covered by the existing building has not been addressed due to inaccessibility. To address this, a data gap investigation is recommended by the report following demolition of the building. The report also recommends implementation of an unexpected finds protocol during demolition and construction works.

Despite the identified data gap, this site is considered to be suitable for the proposed development with regards to contaminated land and the following conditions are recommended:

- Preparation and implementation of an unexpected finds protocol (standard condition).
- Data gap investigation following demolition of the existing building but prior to construction works.
- If any contamination is identified within the data gap investigation, a remediation action plan must be prepared and implemented prior to construction works.
- Management of soil imported to and exported from site (standard condition).

In conclusion, the site is considered to be suitable for the proposed development in accordance with requirements of the Resilience and Hazards SEPP.

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.

7.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

From 21 November 2022, new Chapter 6 of the SEPP consolidated 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.

7.4 Biodiversity Conservation Act 2016

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

7.5 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>Noted</p> <p>Noted</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>The development is not a heritage item or in a conservation area</p>
3.27 Centre-based child Care facility—DCP	<p>Provision of DCP that specifies a requirement, standard or control in relation to the following does not apply:</p> <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) 	<p>Noted</p> <p>A PoM has been submitted</p> <p>Noted</p> <p>Noted</p> <p>Noted</p> <p>Noted</p>

The Child Care Planning Guideline (CCPG) accompanies the Transport and Infrastructure SEPP which aligns with the NQF for early education and care services and applicable Education and Care Services National Regulations. The proposal largely achieved satisfactory compliance with the majority of the design quality principles and matters of consideration in the previous scheme however with a number of shortcomings in particular relation to context and landscape.

An assessment against the accompanying Childcare Planning Guideline including design quality principles, matters for consideration and National Regulations of the revised development scheme is contained below and provided at **Appendix B**.

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

		which is part open to the sky by a large void.	
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

7.6 Sutherland Shire Local Environmental Plan 2015

The revised development proposal has been assessed for compliance against SSLEP 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	11.575m	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 (2825m ²) 0.7:1 (25,725m 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)	9.2% (207m ²) 3.5% (860m ²)	No No	 64.6% variation

7.8 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**.

8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

NSW Department of Education

The application was referred to the NSW Department of Education (DoE) with respect to the provision of the outdoor play space given its largely enclosed design. The proposal includes 825m² of outdoor play space (with an approximate 313m² roof void being open to the sky / approximately 62.1% covered and enclosed on each side). DoE advised that there is no concurrence requirement in accordance with the regulation / clause 3.22 of the Transport and Infrastructure SEPP. A copy of this response is provided at **Appendix D**.

Design Review Panel (DRP)

The application was considered by Council's DRP on 15 June 2023. The development remains largely consistent with the original assessment discussion as contained within Council officer's Assessment Report of 14 March 2024. Further discussion as to the resolution of the urban design issues relevant to this supplementary assessment, previous concerns / contentions and design changes made to the proposal are contained below in the assessment component of this report below.

Traffic Engineer

The development remains consistent with the original assessment discussion as contained within Council officer's Assessment Report of 14 March 2024. The proposal is supported in this regard.

Engineering (Assessment Team)

The assessment remains consistent with the original assessment discussion as contained within Council officer's Assessment Report dated 14 March 2024 and is supported with conditions of consent. Where relevant to this supplementary assessment including previous concerns / contentions, comments are provided below.

Vehicular Access-way and Parking Area design - The revised vehicular access-way and associated park layout has been assessed against AS2890.1:2004, AS2890.2:2018, AS2890.6:2009 and Chapter 36 of SSDCP 2015 and is considered to be acceptable subject to conditions.

Stormwater Management - The revised stormwater design was assessed against AS3500.3:2003, Chapter 38 of SSDCP 2015 and Council's Stormwater Management Environmental Specification 2009 and is considered to be acceptable subject to suitable conditions of development consent.

Flood Assessment

The revised flood study and amended plans were 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 proposal now achieves the required finished levels, is appropriate in design and is generally supported subject to suitable conditions of development consent.

Landscape Officer

Council's Landscape Architect had undertaken an assessment of the original application with respect to landscaping, tree removal and retention, and general site planning. The broader landscape design was considered to be acceptable however concerns were raised in relation to impact on the two native trees (*Corymbia maculata* & *Eucalyptus robusta*) located within the Willarong Road frontage of the site which had been identified as worthy of retention.

Design amendments made to the proposal include the raising of the finished car parking area levels above the known structural roots and a permeable surface treatment within the Tree Protection Zone (TPZ) along with relocation of the driveway northward. The applicant has sought advice from a consulting arborist, who is supportive of the revised development scheme.

The Arborist notes that a large portion of the TPZ encroachment from the development of the carpark is covered in permeable pavers. The permeable pavers will need to be constructed in a manner that retains the roots of Trees 1 and 2 and does not cause any damage to them. In practice the pavers will sit on top of the tree roots to ensure no damage to the roots and to also allow for the oxygen and water to flow to the roots. This will minimise the impact to the trees. The installation of the permeable pavers will need to be monitored by an AQF Level 5 Arborist. The TPZ encroachment is less than 10% for non-permeable paver sections and the vehicle crossover. This calculation does not include the permeable paver area as the roots should not be impacted by the development with the use of permeable pavers. A tree protection plan (including ground protection and fencing) with construction hold points for the Project Arborist have also been recommended.

Council is of the view that subject to the imposition of suitable conditions of development consent and the adoption of the Consulting Arborists recommendations no detrimental impact will be presented to the long-term viability of the trees proposed to be retained.

Waste Management Officer

The development remains consistent with the original assessment discussion as contained within Council officer's Assessment Report of 14 March 2024. The application is supported with conditions of consent.

Environmental Health

The development remains consistent with the original assessment discussion as contained within Council officer's Assessment Report dated 14 March 2024. The application is supported with conditions of consent.

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 and contaminated lands has been raised subject to conditions of development consent. The Resilience and Hazards SEPP has been discussed above in the assessment component of this report.

Environmental Scientist – Air Quality

The development remains consistent with the original assessment discussion as contained within Council officer's Assessment Report of 14 March 2024. The application is supported with conditions of consent.

Building Surveyor

The development remains consistent with the original assessment discussion as contained within Council officer's Assessment Report of 14 March 2024. The application is supported with conditions of consent.

9.0 ASSESSMENT / REASONS FOR ORIGINAL REFUSAL

A detailed assessment of the application has been carried out having regard to the previously recommended reasons for refusal and the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979. This is set out as follows:

9.1 Relationship with Existing Consent

- 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.*

There is an existing development consent (DA16/0223 as modified) which applies to the subject site. It approved the construction of additional bulky goods floor space, introduction of new tenancies, internal upgrading and revitalisation of the existing Caringbah HomeCo. Centre, with works occurring in 2 stages. The subject DA conflicts with what has been approved under DA16/0223. The primary area of conflict is the Stage 2 works which entail an approved building addition to the Centre which extends over No 31 Koonya Circuit and 39 Willarong Road in the location of the subject building and landscape works.

The applicant had previously failed to provide Council officers with sufficient information as to how the conflict with the subject DA and the approved DA16/0223 could be managed. The applicant has since provided a detailed review of the approved DA16/0223, the extent of works completed (Stage 1) and a list of conditions under DA16/0223 as modified with recommended changes to these. It is sought for this previous DA16/0223 to be modified in conjunction with the issue of the new consent under the subject DA.

Specifically, the applicant seeks to resolve the inconsistency with the consent authority imposing a condition of consent on the subject application which requires the existing consent to be modified. The mechanism in doing so being provided under Section 4.17 (b) of the Environmental Planning and Assessment Act 1979 (Imposition of Conditions) which states:

'A condition of development consent may be imposed if... it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 4.11 in relation to the land to which the development application relates...'

Following review of the applicant's request Council staff are of the view that approval of the application (subject to a suitable condition of development consent) will enable the orderly development of the land and any conflict between the subject application and existing development consent can be adequately resolved. This is most appropriately resolved as a deferred commencement condition.

The key elements of the subject DA to be rectified in the existing consent relate to the proposed childcare centre vehicle parking and pedestrian access arrangements and connections being shown on the DA16/0223 plans. The subject DA consent will also override Stage 2 of DA16/0223 but enable the operational provisions under the consent to remain valid.

9.2 Landscaped Area

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 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 applicant's previous clause 4.6 justification was contingent on the successful retention of the two trees within the site frontage on Willarong Road. As Council officers were not convinced at that time that the trees could be retained (largely because of the driveway location and levels within the carpark)

the Clause 4.6 was not supported. Further arboricultural advice and design co-ordination submitted by the applicant confirms that the trees can be retained and as further discussed in the Clause 4.6 assessment, the proposal achieves the objectives of 1(a), (c) and (d) of Clause 6.14 in 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.

Analysis - Clause 4.6 Exception to Development Standards

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. As the subject application was lodged prior to 1 November 2023, the previous provisions of Clause 4.6 continue to apply.

Clause 4.6 Exception to Development Standards

Minimum Landscaped Area: 10% / 2,430.8m²

Proposed Landscaped Area: 860m² / 3.5%

Proposed variation: 1570.8m² / 64.6%

The plan indicating landscaped area across the whole of site is shown in **Figure 5** below.

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 Cl 4.6 variation to justify the non-compliance has been prepared by Willottree Planning. 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.

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 adequately demonstrates the capability of the proposal in achieving the relevant landscaped area objectives. The quantum of landscaped area within the whole of site, and general landscape design is considered generally acceptable (subject to conditions). The application now demonstrates the successful retention of 2 trees within the site's frontage and the CI 4.6 is considered to meet the necessary test with respect to Clause 4.6(3)(a).

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 (9.2%) as opposed to the 3.5% 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.

The applicant seeks to broaden the landscape strategy to the 'whole of the site' in the revised landscape plans in order to fulfill the requirement of the separate development consent DA16/0223. These works have not been completed and would be subject to removal, being within Stage 2 of the scope of approved works. As discussed above and notwithstanding the quantum of landscaped area within the whole of site, an appropriate landscape design is proposed and is considered acceptable subject to conditions. The application also now provides for the successful retention of the Spotted Gum - *Corymbia maculata* and a Southern Mahogany - *Eucalyptus robusta*, mature trees within the Willarong Road frontage of the site. This is supported by the applicants consulting Arborist Report. On this basis, sufficient environmental planning grounds have been provided for the variation.

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 adequately addresses clause 4.6(3) (a) and (b) as discussed above. Clause 4.6(4)(a)(i) is therefore 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 of 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. Further urban design discussion is provided in the assessment report below. 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 revised development scheme satisfies Council's previous concerns regarding the retention of the 2 mature trees within the site's frontage. The visual appearance of the development is therefore considered enhanced as and a high landscape standard will be achieved.

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. 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*) can now be achieved. These trees currently make a positive contribution to the streetscape, to biodiversity and the tree canopy of the Sutherland Shire and their retention is important to the success of the proposed development. The submitted arborist report notes the TPZ encroachment to be less than 10% based upon the design changes and proposed construction methodology and provides for suitable hold points during construction to ensure their ongoing viability.

The proposal will provide for a successful landscape design / strategy which 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 neighbourhood amenity. The proposed development is in the public interest and complies with the objectives of Zone E3 - Productivity Support and with the objectives of the landscape area development standard stipulated in Clause 6.14 of SSLEP 2015.

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. 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 satisfied that the provisions of clause 4.6(3) have been achieved and the variation is therefore supported.

9.3 Urban Design

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 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.

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 it fails to satisfy Design Quality Principle 1 outlined in the Childcare Planning Guideline with respects to responding to and reinforcing the context.*

The above previously recommended reasons for refusal are inter-related with respect to urban design and architectural merits and the associated landscape treatment. As discussed in the landscaped area discussion above, the application achieves a high landscape standard consistent with the objective of the zone, particularly as the 2 native site trees are retained and a whole of site landscape approach is proposed.

The building is on a prominent corner location and whilst below the maximum permissible height limit and satisfying the relevant objectives contained in clause 4.3 of SSLEP 2015, concern is raised with respect to the visual impact of the resulting height of the floor level above natural ground on the northern side facing Koonya Circuit. This floor level is necessary to achieve the required flood levels. This concern was conveyed to the applicant and a revised design proposed. To address the concerns and to ameliorate the visual impact of the projecting subfloor, refinement of the design and a higher quality finish is proposed to the exposed wall and upper elevation. The applicant has also moved east and reorientated the egress stair away from the higher western side of the northern elevation to reduce the visual impact of the stairs and to enable suitable landscaped treatment to the streetscape forward of the building. These mitigation measures are considered satisfactory.

In terms of the broader design the proposal presents 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 development is provided with residential character / design aesthetic with pitched roof forms in the Willarong Road streetscape which is complementary to 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 architectural merits of the development are satisfied, and the proposal is consistent with the objectives of the zone and Design Quality Principle 1 outlined in the Childcare Planning Guideline. The relevant matters within Clause 6.16 of SSLEP 2015 have been considered and the amended proposal is considered to be acceptable.

9.4 Childcare Planning Guideline

- 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 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 applicant has submitted adequate information to address the flood and contamination concerns. The proposal is revised to reinforce the landscape characteristics of the locality / streetscape. The proposed finished levels and treatment of the access location and parking area maintain the existing site vegetation. Refinement of the northern / elevated northern elevation adjoining Koonya Circuit is provided and a whole of site landscape design provided. A suitable Emergency evacuation plan has been provided and the above deficiencies in achieving the Childcare Planning Guidelines and reasons for refusal are considered to be resolved.

9.5 Flood 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 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 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 been addressed to Council's satisfaction in the submission of additional information which has been reviewed by Council's Engineer. Subject to suitable conditions of development consent the risk associated with flooding to sensitive users of the development is deemed acceptable.

9.6 Land Contamination

- 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 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.*

As discussed in the above in the Compliance and referral sections of this report, suitable information has been provided by the applicant to address State Environmental Planning Policy (Resilience and Hazards) 2021 and the site is considered to be suitable for the proposed development subject to suitable conditions of development consent.

9.7 Sutherland Shire Development Control Plan 2015

- 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.*

As discussed above, additional information has been submitted and design changes made with respects to flood planning which has been reviewed and is considered satisfactory by Council's Engineer. The provisions of Chapter 40 – Flood Risk Management are thus considered to be satisfied.

A revised stormwater drainage design has been submitted which has been reviewed by Council's Engineer and is considered to be satisfactory. Clause 6.4 of SSLEP 2015 and Chapter 38 of SSDCP 2015 in relation to stormwater management are satisfied.

The provision of an outdoor seating area for medical centre staff was a contention previously raised as this is a requirement for the predominant land use in the zone as per SSDCP 2015. This use relates largely to standard industrial development typologies. Whilst the applicant has explored an option to incorporate an outdoor area towards the northern side of the site, there was insufficient room in front of the building without compromising landscape area provision and the streetscape interface. On balance, provision of a specific outdoor space is not considered to be warranted given the nature of the land use and internal areas provided and dedicated to staff use. The HomeCo site also contains a number of

cafes and seating areas available for staff, along with a number of other nearby food and drink premises. A variation to this provision of the SSDCP2015 is supported in this instance.

The waste / bin storage room has been relocated from being adjacent to the Willarong Road front boundary to be incorporated into the building envelope / at the building alignment. This is an acceptable design outcome and is suitably sited and design so as to minimise the visual impact to the streetscape.

9.8 Public Interest

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.

As resolution of the above reasons for refusal have been adequately demonstrated, it is Council's view that the development would be in the public interest and the reason for refusal would be resolved.

10.0 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.

11.0 DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

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

12.0 CONCLUSION

The subject land is located within Zone E3 - Productivity Support (formerly Zone B5 Business Development) pursuant to the provisions of SSLEP 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.

Through the submission of additional information and amendments, the application demonstrates that the site and locality is 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

(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 risk perspective (i.e. flood and contamination) has been resolved and subject to condition, the proposal ensure the retention of established native vegetation which currently contributes positively to the streetscape and the tree canopy / biodiversity of the Sutherland Shire. A suitable 'whole of site' landscape outcome is proposed, and notwithstanding the deficiency in the total quantum of landscaped area across the site, the contravention to the development standard is supported.

Deferred commencement is recommended as the most appropriate way to manage the planning conflict which exists with the existing development consent on the site (DA16/0223 as modified). This will enable the conditions under this consent to be modified by way of Section 4.17(b) of the EP and A Act 1979 to ensure that consent aligns with the subject consent issued under DA23/0196. Council officers are satisfied that the previous consent can be modified sufficiently to enable the existing work in Stage 1 to continue in its operation, whilst Stage 2 is effectively overridden by the subject new consent.

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 is not anticipated to result in any significant impact on the environment or the amenity of nearby residents. Following assessment, Development Application No. DA23/0196 can be supported for the reasons outlined in this report.

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