

3.3**2 Myoora Road Terrey Hills – Alterations and Additions to an Existing Shop and Office****SPECIAL REPORT**

Assessment Officer: Amy Sutherland
Address / Property Description: No. 2 Myoora Road, Terrey Hills

Proposal: Alterations and additions to an existing shop and office
Development Application No: DA2009/1433
Plans Reference: DA02 Revision C dated 19.10.09, DA03 Revision C dated 16.10.09, DA04 13.10.09 Revision D, DA05 Revision C dated 15.09.09 all prepared by Mark Curach Pty Ltd
Applicant: Tomasy Pty Ltd
Owner: Saradom Investments
Application Lodged: 29 October 2009
Amended Plans: NO

Locality: A4 Myoora Road
Category: Category 3 ('shop' and 'office')
Proposed Clause 20 Variations: YES (building height – measured to the ceiling on the uppermost floor)
Land and Environment Court Action: NO
Referred to WDAP: It is recommended that the application is referred to WDAP as a Category 3 development following a detailed assessment of the proposal.
Referred to ADP: YES. The application is referred to ADP for confirmation that the proposal does not meet the requirements of Clause 16(2) of WLEP 2000.
Attachments Site Plan and Elevations

LOCALITY PLAN (not to scale)



Subject Site: Lot 100, DP 630909, No.2 Myoora Road, Terrey Hills

Purpose of this Report

The proposed development seeks consent for alterations and additions to an existing shop. 'Shops' are classified as Category 3 development in the A4 Myoora Road. An ancillary office is also proposed. 'Offices' are also identified as Category 3 development in the locality.

Clause 16 'How is existing Category Three development dealt with?' provides that existing developments (described in clause 16(1)) that meet several requirements described in Clause 16(2) may be granted consent even if the development is not consistent with the desired future character of the locality. Clauses 14 and 15 of WLEP 2000 do not apply to such developments.

The purpose of this report is to describe the proposed development and seek confirmation from the Application Determination Panel that the proposal does not meet the requirements of Clause 16(2) of WLEP 2000. This finding will be used for the basis of the assessment of the application.

Site Description

The site is identified as Lot 100, DP 630909, No.2 Myoora Road, Terrey Hills. The site is a corner allotment with a 60.35m frontage adjoining a public reserve along Mona Vale Road and a 318.6m frontage to Myoora Road.

The site is occupied by 'Forestway Fresh' which is a shop which sells fresh fruit, vegetables and frozen and dried foods. The building accommodates a total floor area of 1,227m², comprised of 622m² of public floor space and 605m² of storage area.

A single storey dwelling and a large metal awning over a paved area is located between the existing building and the Mona Vale Road frontage.

Ninety-three (93) car parking spaces are provided on site to the south and west of the existing building.

Pre-lodgement Advice

A pre-lodgement meeting was held on 25 February 2009 (PLM2009/0006) for alterations and additions to the existing shop. The proposal submitted for consideration at the pre-lodgement meeting included the following;

- A total floor area of 2,403m² consisting of; 1,358m² public floor space, 885m² storage area and 160m² office area and staff facilities.
- Additions to east and south of the existing shop. The majority of the proposed addition was located to the south of the existing fruit shop.
- A loading dock in the south-east corner of the building. The driveway to a loading dock in the south-east corner of the building was setback 7.5m from the eastern boundary.
- Provision of approximately 124 car parking spaces. Additional car spaces were proposed within the front building setback.
- A basement car park for 20 vehicles.
- Removal of the existing dwelling within the front setback.
- The extension of the existing car park to the north was proposed but not clearly identified on the plans.

The pre-lodgement notes report that the applicant was advised to amend the design so that the setback of the existing fruit shop building to Mona Vale Road is maintained. The applicant was advised that no development should occur on the southern side of the existing building. The applicant was also advised that the additional car spaces and other buildings/structures (such as the existing dwelling and the brick dog kennel) within the front setback should be deleted to allow for landscaping to be provided along the southern boundary. Additional landscaping along the western boundary was also recommended.

As the majority of the additional floor area was located to the south of the proposed building, the deletion of this part of the building would have resulted in a considerable reduction in the total floor area of the development.

The pre-lodgement notes stated that subject to the recommended amendments being implemented, the proposal would fall under the provisions of clause 16.

A second pre-lodgement meeting was held on 9 August 2009. The amended proposal included the following;

- A total floor area of 2,339m² consisting of; 1,119m² public floor space, 1,077m² loading and storage floor space and 143m² office area and staff facilities.
- Retention of the existing dwelling.
- Minimum setback to the eastern boundary of 7.5m.
- A total of 104 car parking spaces including a basement car park for 15 vehicles.
- 15m wide landscape buffer along the southern boundary which requires the removal of existing car parking within the front setback.
- The extension of the existing car park to the north was proposed but not clearly identified on the plans.

The proposal submitted for consideration at the second pre-lodgement proposed additional floor area on the eastern side of the building by deleting the driveway to the loading bay, which was previously proposed in the south-east corner of the building, and extending the building east to provide a minimum setback of 7.5m.

The pre-lodgement notes state that the plans submitted addressed the fundamental concerns raised by Council at the previous meeting and the design of the proposed development is considered to be consistent with the requirements of the Desired Future Character Statement. The notes also state that the proposal will fall under the provisions of Clause 16 of WLEP 2000, provided the applicant demonstrate the existing shop and use of the shop is lawful.

Proposal

The application seeks consent for alterations and additions to the existing building. The modified building will accommodate a total of 2,283 m² consisting of;

- Public floor area: 1,119 m²
- Storage: 1,072 m²
- Office and staff facilities: 92 m²

The existing dwelling which has an area of 108 m² is proposed to be retained. The Statement of Environmental Effects states that the existing dwelling will be retained and will be renovated to be used in conjunction with the existing shop. The plans do not provide any details of the renovation of the existing dwelling nor has the floor area of the dwelling being included in the calculation of the floor area of the retail/storage areas for the building. In a phone conversation with Mr Denis Smith on 25 November 2009, it was confirmed that the dwelling would not be used as part of the retail, office or storage areas of the shop.

The proposal includes the provision of fibre cement walls around the perimeter of the existing development. The parapet height of the new walls will be consistent with the maximum height of the existing development.

Off-street car parking is proposed for a total of 104 vehicles. 89 car parking spaces are to be located in a reconfigured existing outdoor car parking area with the remaining 15 cars to be located within a new "staff only" basement car parking area.

Loading and servicing for the proposed expanded shop will be undertaken by vehicles up to and including 8.8m long medium rigid trucks. A new loading area is proposed to the rear of the existing building. The loading dock will be capable of accommodating two trucks. An additional two truck bays will also be provided.

Warringah Local Environmental Plan 2000

Category of development

The subject site is located within the A4 Myoora Road locality. 'Shops' and 'offices' are identified as Category 3 uses within the A4 Myoora Road locality.

Whilst the office space is clearly intended to be ancillary to the shop, the use should be separately categorised.

The LEP identifies ancillary uses as a separate form of development in some localities. For example; in the F3 Brookvale Industrial Locality 'offices (when ancillary to industries or warehouses)' are identified as a Category 2 use and 'offices, unless this Locality Statement provides otherwise' are identified as a Category 3 use. Ancillary office space is not identified as a separate use in the locality.

Built Form Controls for Locality A4 Myoora Road

The following table outlines the proposed development's compliance with the built form controls for the A4 Myoora Road locality:

Built Form Standard	Required	Proposed	Compliance
Housing Density	1 dwelling per 2 hectares of site area.	Not applicable.	N/A
Building Height	8.5m measured between the topmost point of the building and the natural ground level below.	7.8m	YES
	7.2m from natural ground level to the underside of the ceiling on the uppermost floor of the building.	7.6m	NO
Front Setback	30m to Mona Vale Road.	39m to additions	YES
	Carparking may encroach up to a maximum of 15 metres into the 30 metre setback if it covers no more than 50% of this area and dense screen landscaping is proposed. 20 metres to roads other than Mona Vale Road.	15m to car park Car park: 2.5m -5m setback to Myoora Road Setback of the car park to Myoora Road increased to 5m on the northern side of the vehicular crossing.	YES No change to minimum setback. Minor increase to the setback on the northern side of the vehicular crossing.
Rear and Side Building Setback	7.5m minimum The rear and side setback areas are to be landscaped and free of any structures, carparking or site facilities other than driveways and fences.	7.5m to eastern boundary	YES
Building Site Coverage	Max 20% (4,108 m ²) of the site area	12% (2,471.94 m ²)	YES
Landscaped open space	Min 70% (14,378 m ²) of the site area.	71% (14,527 m ²)	YES

Clause 16 'How is existing Category Three development dealt with?'

Clause 16 of WLEP 2000 states the following;

- (1) In this clause, existing Category Three development means development classified as Category Three that could have been lawfully carried out immediately before it became so classified, including development that could have been lawfully carried out at that time because it was an existing use, as defined in section 106 of the Act.
- (2) Development applications for existing Category Three development consisting of:
 - (a) alterations or additions to, or the rebuilding of, a building, or
 - (b) the expansion or intensification of existing Category Three development.

Which, in the opinion of the consent authority, is of a minor nature and does not, to any significant extent, change the scale, size or degree of any building or land use, may be granted consent even if the development is not consistent with the desired future character of the locality.

(3) The provisions of clauses 14 and 15 do not apply to such applications.

Note: In deciding whether an application for consent to additions etc is of a minor nature, the Council will have regard to any relevant matter, including the built form controls (development standards) for the locality.

The 'Statement of Environmental Effects' (SEE) dated October 2009 prepared by Denis Smith asserts that the proposal falls within the provisions of Clause 16 of WLEP 2000 in that the existing development was a lawful use in existence at the time that WLEP 2000 was introduced. In a letter to Council dated 16 November 2009, the applicant's town planner Mr Denis Smith states that the nature of the use remains unchanged as the premises will continue to offer the same range of fruit and vegetables and associated small goods. Mr Smith claims that the proposed does not intensify the existing land use.

Clause 16(1)

Section 2 of the SEE details the history of the use of the site from the 1950s. The dates relevant to a consideration whether the shop was lawfully carried out before 'shops' were classified as a Category 3 development under WLEP 2000 are provided below.

Date	Approval
1980	Development Consent No. 80/190 for the erection of a shop, dwelling and car parking was granted.
1982	Development Consent No. 82/265 was issued in 1982 for the erection of a shop and dwelling house on the site.
5 November 1990	Development Consent No. 90/361 was issued for earthworks for the construction of a car park and alterations and additions to the existing fruit market building for the development of a retail fruit market, retail plant nursery and additional storage and cool rooms.

WLEP 2000 was gazetted on 5 December 2000 and introduced the three tiered classification of land uses. The table above demonstrates that the use was approved prior to the gazettal of LEP 2000 and 'shops' being classified as a Category 3 development.

Clause 16(2)

The note to Clause 16 states that in deciding whether an application for consent to additions is of a minor nature, the Council will have regard to any relevant matter, including the built form controls (development standards) for the locality. The LEP does not provide any additional guidance as to the size and scale of development that may be considered to be consistent with the requirements of clause 16(2).

In order to give meaning to the requirement for development to be 'of a minor nature' the ordinary meaning of the terms must be examined;

- 'Minor' is defined in the Oxford Dictionary as *'lesser or comparatively small in size or importance.'*
- 'Nature' is defined in the Oxford Dictionary as *'a thing's or person's innate or essential qualities or character.'*

Based on these definitions, if development is to be 'of a minor nature' the essential qualities or character of both the building and the use should be comparatively small in size or importance.

The proposed application does not change fundamental attributes of the built form of the development. The proposal will achieve greater consistency with the front building setback control and will comply with the building height (measured to the topmost point of the building), landscaped open space, site coverage and side setback controls.

An essential quality or attribute of the development is the area of floor space (particularly the publicly accessible floor area) contained within the development. The proposal seeks to almost double the existing retail floor space and storage area. The doubling in size of the development cannot be considered to be comparatively small in size. Compared to floor area of the existing development, the addition is almost of an equivalent size.

Whilst the built form changes proposed can generally be considered to be minor, the extent of additional floor space proposed cannot be considered to be 'of a minor nature'. As such, the proposal does not meet the first requirement of clause 16(2).

In addition to the requirement for development to be of a minor nature, clause 16(2) also requires that the addition or use does not to any significant extent change the scale, size or degree of any building or land use.

'Significant' is defined in the Oxford Dictionary as '*noteworthy; important; consequential*'.

The height of the proposed addition is consistent with the height of the existing development. The scale of the built form is therefore similar to the existing building.

The doubling of the floor space within the development is considered to be a significant increase in the size of the building. The doubling of the floor space also results in a significant increase in the intensity of the use of the site. This is best demonstrated through the number of car parking spaces required for the additional floor area.

The following table outlines the *required* number of car parking spaces for the existing and proposed development.

	Schedule 17 car parking rate	Existing	Proposed
Shop	1 per 16.4m ² (GLFA)	75 (622 m ² + 605 m ²)	134 (1072 m ² + 1119 m ²)
Office	1 per 40m ²	N/A	2.3 (rounded up to 3) (92m ²)
TOTAL		75	137

It should be noted that that the applicant has not provided Gross Leasable Floor Area (GLFA) calculations consistent with the definition of GLFA set out in clause 74. The required number of car parking spaces may therefore be less than shown in the table above. Whilst the required number of car parking spaces for both the existing and proposed developments may not be exact, the table clearly illustrates that the proposed development generates a demand for car parking which is almost double that of the existing development.

Whilst only 11 additional spaces are proposed, the proposed additions generate a demand for up to 62 additional car parking spaces. This provides an indication of the increased intensity of development on the site which is generated by the proposed additional floor space.

Whilst the proposal generally complies with all relevant planning controls and improves the landscaped setting of the development by providing a 15m wide landscaped buffer and the additional floor area will not result in any significant visual impacts, the proposed expansion of the use cannot be considered to be of a 'minor' nature and changes to scale, size and degree of the

building and land use are considered to be of a significant extent. As such, the proposed development does not meet the requirements of clause 16(2) and the development should be assessed as a Category 3 development.

Office use

The office component of the land use is classified as a Category 3 development. The documentation submitted with the application does not state that the existing building contains any office space. If this is accurate, the office use would be a new Category 3 use that could not be considered under clause 16.

If the existing building does contain an ancillary office, the provisions of clause 16 may apply. However, the increase in the size of the office space to 92sqm would represent a substantial increase in office floor area which would not meet the requirements of clause 16(2). As such, the office component of the development must be assessed as a Category 3 use.

Conclusion

The application seeks consent for the expansion of the 'shop' which is a Category 3 use in the A4 Myoora Road locality. The proposal also includes ancillary office space which is also a Category 3 use.

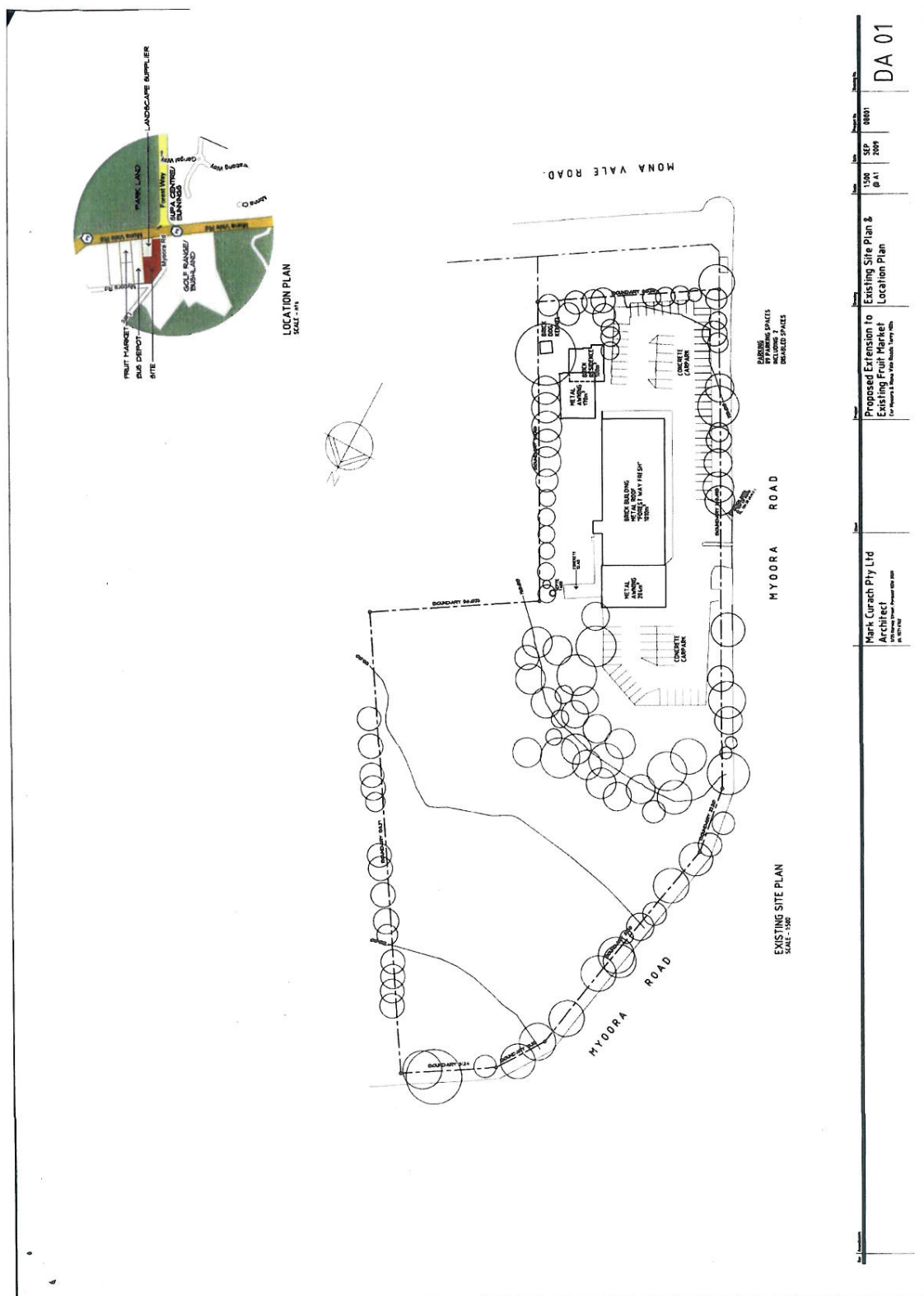
The assessment of the proposal has found that the proposed increase in the floor area of the shop (including both the public and storage areas) by almost 100% is not 'of a minor nature' and it significantly changes the size of the building and land use. As such, the development does not meet the requirements of clause 16(2) and the development must be assessed as a Category 3 development.

Recommendation

That the Application Determination Panel confirms the proposed development does not meet the requirements of clause 16(2) of WLEP 2000 and that the provisions of Clause 15 of WLEP 2000 apply to the alterations and additions to an existing shop and office.



Site and Elevation Plans

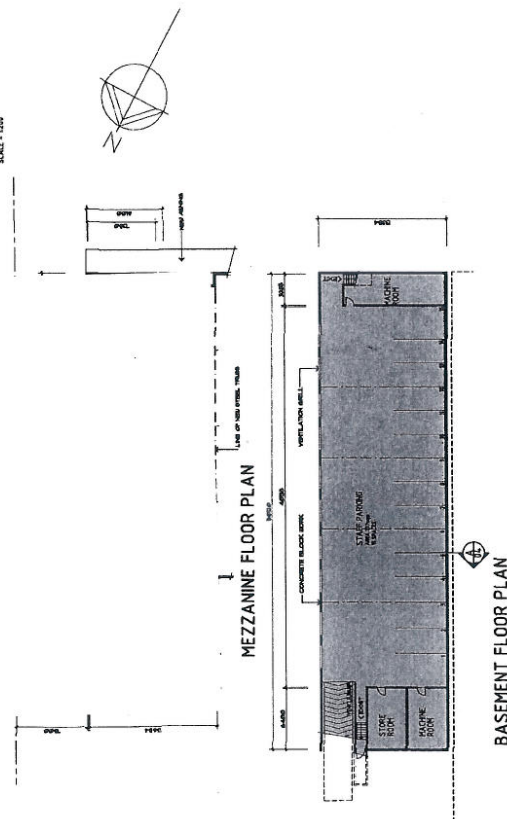


DA 01	SEP 2009	1:500 @ A1	08001
Proposed Extension to Existing Site Plan & Existing Fruit Market	Location Plan	Mark Curach Pty Ltd Architect 1/15 The Arcade, Pymble NSW 1570 (02) 9371 1122	For Myoora & Mona Vale Roads, Turvey Hills

[illegible]

WEST ELEVATION
SCALE = 1/4" = 1'-0"

SECTION A-A

[illegible]

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