

**4.2**

**42 – 44 Myoora Road, Terrey Hills – Demolition works and Construction of a Bulky- goods Premises, Restaurant, Café and Open-air Cinema Complex**

**Purpose**

To gain Council determination of an application referred from the Acting Group Manager Development and Compliance Services and the Warringah Development Assessment Panel.

**Summary**

The above Development Application was detailed in the report of the Acting Group Manager Development and Compliance Services and was referred to the Warringah Development Assessment Panel (WDAP) Meeting on 14 December 2011 as the proposal is a Category 3 development in the A4 Myoora Road Locality under WLEP 2000 and is required to be the subject of an independent public hearing pursuant to Clause 15 of WLEP 2000. The WDAP Minutes and the report of the Acting Group Manager Development and Compliance Services to the WDAP Meeting are attached as Attachment's 'A' and 'B' respectively.

The Panel concurred with the recommendation of the Acting Group Manager Development and Compliance Services that this application be refused for the reasons outlined in the report.

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**RECOMMENDATION OF ACTING DEPUTY GENERAL MANAGER  
STRATEGIC AND DEVELOPMENT SERVICES**

THAT the General Manager **refuse** Development Consent to Development Application No DA2011/1025 for demolition works and construction of a bulky-goods premises, restaurant and open-air cinema complex at Lot 122 in DP 752017, No. 42 Myoora Road and Lot 37 in DP 752017, No. 44 Myoora Road, Terrey Hills for the reasons outlined in the recommendation of the report to the Warringah Development Assessment Panel, dated 14 December 2011, Nos. 1-9.

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**Adopted**



Rik Hart

**General Manager**

22/12/11

**Date**

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## WARRINGAH DEVELOPMENT ASSESSMENT PANEL MEETING

<b>4.2</b>	<b>42 – 44 Myoora Road, Terrey Hills – Demolition works and Construction of a Bulky- goods Premises, Restaurant, Café and Open-air Cinema Complex</b>
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### Panel Member

**Mary-Lynne Taylor**, Chair (Environmental Law)

**Patrick O’Carrigan**, Urban Design Expert

**Marcus Sainsbury**, Environmental Expert

**Nick Lawther**, Community Representative

**DA 2011/1025**

### Application Details

Demolition works and construction of a bulky-goods premises, restaurant and open-air cinema complex.

### Site Description

Lot 122 in DP 752017, No. 42 Myoora Road and Lot 37 in DP 752017, No. 44 Myoora Road, Terrey Hills.

### Independent Public Hearing

This report is of an independent public hearing that has been convened pursuant to clause 15 of WLEP 2000 because this application is for Category 3 development. The application was advertised as such and there were fifteen (15) submissions including 1 in support, 13 objections and 1 petition.

The Chairperson informed the hearing that applications for Category 3 development entail additional requirements. In particular, the Panel can only recommend that consent be granted if it is satisfied that the proposed development is consistent with the desired future character of the locality as described in the A4 Myoora Road Locality Statement [WLEP2000 cl 12(3)(b)]. Further, the Panel must consider the Statement of Environmental Effects, prepared by the applicant, that addresses the items listed in Schedule 15 [WLEP2000 cl 15(1)].

### Desired Future Character

For this application being, a Category 3 item, to be satisfactory, the application has to be consistent with the desired future character of the A4 Myoora Road Locality.

*The Myoora Road locality will provide an environment for low intensity business, community and leisure uses which do not rely on exposure to passing trade for their continued operation. Along Mona Vale Road a dense bushland buffer will be retained or established.*

*New development or further intensification of existing development will provide safe vehicular access to the satisfaction of the Council and the Roads and Traffic Authority.*

*Only small, non obtrusive and non illuminated signs that identify the use of a site are to be visible from Mona Vale Road. Signs that are designed of such size, height or visual appearance so as to attract passing trade will not be permitted. All signs are to be in keeping with the colour and textures of the natural landscape.*

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*Articulated building forms, generous landscaped spaces around buildings and building materials that blend with the colours and textures of the natural landscape will be used to minimise the visual impact of development on long distance views of the locality.*

### Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the Public Hearing. A copy of all the objection letters was provided to the Panel who considered the objections on the site visit.

### Proceedings in Brief

In this matter, the public hearing was held. The Panel was addressed by three objectors and by a representative of the applicant. The applicant's Town Planner requested that Council allow additional information to be received and plans to be amended. He said that this was normal in most Councils and the Land and Environment Court would also allow him to do so. He admitted that he has, on behalf of his client, already lodged a second development application with the Council to ensure it was lodged before the new LEP was gazetted. He advised the Panel that the second application was lodged because Council had not allowed the plans for the current application to be amended.

The Panel has taken a view of the site and has seen the type and character of material lodged with the application and as a result the Panel agrees with the Council Assessment Report that the documentation provided was inadequate and after hearing from the applicant's planner, believes that any amended plans for this application would have to be readvertised as it may not be the same development. The Panel does not believe that the proposed development is consistent with the Desired Future character of the A4 Myoora Road Locality and that the application is not worthy of approval as it is at present and would need far more information and amended plans before it could be acceptable.

The Panel also notes concerns of the neighbours which have not been addressed by the applicant and which are likely to involve an adverse impact on the amenity of those neighbours if not addressed fully. In those circumstances, were there to be amended plans they would have to be readvertised.

However, the Panel believes the application was wholly inadequate, and that as it was for an application worth \$6,000,000, it was so inadequate that it cannot be patched up by a series of amended plans now being lodged. The Panel supports the reasons for refusal in the Council Assessment report particularly the ones relating to the proposed piping of the present natural water course.

The Panel does not believe this application is worthy of approval, for the reasons given in the Council Assessment report. The Panel is unanimous in its refusal of the application.

NOTE: The Panel understands that this application has been costed by the Applicant to be \$6,000,000. The Panel further understands that the Council has not accepted this as a correct figure for the amount of work to be done on this site. In the event that there is consideration given to an approval for this application in the future, the Panel recommends that there be a quantity surveyor's report prepared by the applicant to certify a more accurate assessment of the value of the works.

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### RECOMMENDATION OF WARRINGAH DEVELOPMENT ASSESSMENT PANEL (CATEGORY 3 ITEM)

THAT the General Manager **refuse** Development Consent to Development Application No DA2011/1025 for demolition works and construction of a bulky-goods premises, restaurant and open-air cinema complex at Lot 122 in DP 752017, No. 42 Myoora Road and Lot 37 in DP 752017, No. 44 Myoora Road, Terrey Hills subject to the reasons outlined as follows:

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1. Pursuant to Section 91A(4) of the *Environmental Planning and Assessment Act, 1979*, the NSW Office of Water has not provided its approval that is required in order for the development to be granted consent.
2. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(3)(b) of *Warringah Local Environment Plan 2000* (as amended), the proposed development is inconsistent with the Desired Future Character of the A4 Myoora Road Locality in the following manner:
  - a) The development does not constitute a low impact business;
  - b) The development does not provide safe vehicular access to the satisfaction of the Roads and Traffic Authority and Council;
  - c) The development does not consist of building materials which blend with the textures of the natural landscape.
3. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(2)(b) of *Warringah Local Environment Plan 2000* (as amended), the development is does not comply with the Building Height, Front Setback, Side Setback, Building Site Coverage and Landscape Open Space Built Form Controls (Development Standard).
4. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000* (as amended), the development is considered to be inconsistent with the following General Principles of Development Control as follows:
  - Clause 38 – Glare and reflection;
  - Clause 43 – Noise;
  - Clause 48 – Potentially contaminated land;
  - Clause 49 – Remediation of contaminated land;
  - Clause 50 – Safety and Security;
  - Clause 56 – Retaining distinctive environmental features on sites;
  - Clause 57 – Development on sloping land;
  - Clause 58 – Protection of existing flora;
  - Clause 60 – Watercourses and aquatic habitat;
  - Clause 63 – Landscaped open space;
  - Clause 65 – Privacy;
  - Clause 66 – Building bulk;
  - Clause 68 – Conservation of energy and water;
  - Clause 72 – Traffic Access and safety;
  - Clause 73 – On-Site Loading and Unloading;
  - Clause 74 – Provision of Carparking;
  - Clause 75 – Design of Carparking Areas; and
  - Clause 76 – Management of Stormwater.
5. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 15(1) of *Warringah Local Environment Plan 2000* (as amended), the Statement of Environmental Effects does not adequately address the items listed in Schedule 15.
6. Pursuant to Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act, 1979* the development is a prohibited use in the RU4 Rural Small Holdings zone and is not consistent with the Objectives of that zone as defined under the Draft Warringah Local Environmental Plan 2009.

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7. Pursuant to Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act, 1979* the development does not comply with the Building Height Development Standard and was inconsistent with the Objectives of 'Clause 4.6 – Exceptions to Development Standards' under the Draft Warringah Local Environmental Plan 2009.
  8. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the development is not in the public interest.
  9. Pursuant to Section 79C(1)(b), the development application was not accompanied by adequate and appropriate information to enable a full and proper consideration and assessment of the application to determine the likely impacts of the development.
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**Voting 4/0**



Report to the Warringah Development Assessment Panel on 14 December 2011

## 4.2 42 – 44 Myoora Road, Terrey Hills – Demolition works and Construction of a Bulky-goods Premises, Restaurant, Café and Open-air Cinema Complex

### DEVELOPMENT ASSESSMENT REPORT

<b>Assessment Officer:</b>	Tony Collier
<b>Address / Property Description:</b>	Lot 122 in DP 752017, No. 42 Myoora Road and Lot 37 in DP 752017, No. 44 Myoora Road, Terrey Hills Demolition works and construction of a bulky-goods premises, restaurant and open-air cinema complex
<b>Development Application No:</b>	DA2011/1025
<b>Application Lodged:</b>	10/08/2011
<b>Plans Reference:</b>	Drawing No.s 101; A101; 201; 202; 203; 204; 205; 206; 207; 301; 302; 628.01; 628.02; 628.03; 628.04; 628.05; 29610-1/B; 29610-2; 29610-3; 29610-4; 29610-5 and 29610-6.
<b>Amended Plans:</b>	N/A.
<b>Applicant:</b>	Sam Mustaca
<b>Owner:</b>	Planet Warriewood Pty Ltd
<b>Locality:</b>	A4 Myoora Road
<b>Category:</b>	Restaurant – Category 1 Bulky Goods Shop – Category 3 Entertainment Facility – Category 3
<b>Draft WLEP 2009 Permissible or Prohibited Land use:</b>	Restaurant – Permitted (Area 1) Bulky Goods Premises – Prohibited Entertainment Facility - Prohibited
<b>Variations to Controls (Cl.20/Cl.18(3)):</b>	<ul style="list-style-type: none"><li>• Building Height Built Form Control (not supported)</li><li>• Front Setback Built Form Control (not supported)</li><li>• Side Setback Built Form Control (not supported)</li><li>• Building Site Coverage Built Form Control (not supported)</li><li>• Landscape Open Space Built Form Control (not supported)</li></ul>
<b>Referred to ADP:</b>	No
<b>Referred to WDAP:</b>	Yes (Category 3 development)
<b>Land and Environment Court Action:</b>	No Land and Environment Court action is current or pending

#### SUMMARY

<b>Submissions:</b>	15 submissions received: 1 in support, 13 in objection 1 petition which includes 64 signatures in objection
<b>Submission Issues:</b>	Inadequate documentation; Noise; Overdevelopment of the site; Non-compliance with Built Form Controls; Traffic safety and congestion on Myoora Road; Lack of stormwater management; Prohibited land use under the Draft Warringah Local Environmental Plan 2009; No signage details provided with the Development Application; Lack of sewerage on the site; Development is inconsistent with the Desired Future Character of the locality; Relocation of the watercourse; Removal of



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trees/vegetation; and Inadequate parking.

**Assessment Issues:**

Approval has not been granted by NSW Office of Water; Inconsistency with the Desired Future Character Statement of the A4 Myoora Road locality; Non-compliance with Built Form Controls; Inconsistency with the General Principles of Development Control; Non-compliance with Schedules; Prohibited land use under the Draft Warringah Local Environmental Plan 2009; and Non-compliance with the Building Height Development Standard under the Draft Warringah Local Environmental Plan 2009.

**Recommendation:**

Refusal

**Attachments:**

Site and Elevation Plans

**LOCALITY PLAN** (not to scale)



**Subject Site:**

Lot 122 in DP 752017, No. 42 Myoora Road and Lot 37 in DP 752017, No. 44 Myoora Road, Terrey Hills

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**Public Exhibition:** The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 101 adjoining land owners and occupiers for a minimum period of 21 calendar days commencing on 19 August 2011 and ending on 13 September 2011. Furthermore, the application has been advertised within the Manly Daily on 20 August 2011 and a notice was placed upon the site.

## SITE DESCRIPTION

The site consists of two allotments which are located on the western side of Mona Vale Road (between Mona Vale Road and Myoora Road) and are known respectively as Lot 122 in DP 752017, No. 42 Myoora Road and Lot 37 in DP 752017, No. 44 Myoora Road, Terrey Hills.

Both lots are rectangular in shape and have a combined frontage of 120.70m to Mona Vale Road and Myoora Road and side boundary lengths of 264.39m. The site has combined area of 31,911.87m<sup>2</sup>.

The site accommodates a single dwelling and associated outbuildings. The site is heavily vegetated with some clearing which accommodates the sporadic storage of containers. A natural watercourse intersects the site from the south-western corner of the site.

The site has a gradual slope of approximately 18m (6.8%) from Mona Vale Road down to Myoora Road.

Surrounding development consists of varying land uses with the German International School and the Terrey Hills Swim School being located directly opposite the site on Myoora Road. The St. Anthony in the Fields church, Miramare Gardens Function Centre and the Hills – The Flower Market is located to the north while a private semi-rural landholding, a transport terminal and Australian Native Landscapes are located to the south. The Forest Hills Pony Club in the J.J. Melbourne Hills Memorial Reserve is located on the opposite side of Mona Vale Road to the east.

## SITE HISTORY

### DA2005/1140

Lodged by Retirement By Design Pty Ltd on 30 November 2005 for the construction of a retirement village, including demolition of an existing dwelling house and structures, erection of 75 self-contained dwellings, community centre, 128 carparking spaces, internal roads, a bridge and associated landscaping on Nos. 42 and 44 Myoora Road, Terrey Hills.

The Development Application was recommended for refusal by the Independent Hearing and Assessment Panel (IHAP) on 10 May 2006 and formally refused by Council on 23 May 2006. A Class 1 appeal was subsequently lodged with the Land and Environment Court by Retirement By Design Pty Ltd against the reasons for refusal. The appeal was dismissed on 22 February 2007.

## PROPOSED DEVELOPMENT

The applicant seeks consent to demolish a dwelling house, various outbuildings, remove 143 trees, pipe and redirect a watercourse to construct a mix of uses which include a bulky goods shop, a restaurant and an outdoor cinema with associated above and below ground car parking, internal driveways and landscape works

The development consists of the following:



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**Bulky Goods Shop** (13,376m<sup>2</sup> excluding basement car park)

Basement (RL 175.373)

- Gross floor area of 6,160m<sup>2</sup>;
- Car parking for 159 spaces;
- Two (2) separate vehicle access/egress ramps at the rear; and
- Lift and stair access/egress from the upper levels of the bulky goods shop.

Ground Floor (RL 180.125)

- Gross floor area of 6,160m<sup>2</sup>;
- Open plan warehouse/storage;
- Showroom;
- Roller door entry for loading/unloading;
- Lift and stair access/egress.

First Floor (RL 184.250)

- Gross floor area of 6,160m<sup>2</sup>;
- Open plan warehouse;
- Showroom;
- Main pedestrian entry points and associated bridges;
- Lift and stair access/egress.

Mezzanine (RL 188.630)

- Gross floor area of 1,056m<sup>2</sup>;
- Office space; and
- Lift and stair access/egress.

**Restaurant** (Drive-in take-away food outlet with on-site seating and drive through facilities)

Ground Floor (RL 175.000)

- Gross floor area of 242.70m<sup>2</sup>;
- Indoor seating area to accommodate 24 patrons;
- Outdoor seating area to accommodate 12 patrons;
- Childrens play area and party room;
- Kitchen, servery, associated storerooms and rest rooms;
- Drive-through cashier and servery;
- Ticket office for the cinema; and
- Lift and stair access/egress.

First Floor (RL 178.700)

- Gross floor area of 159.30m<sup>2</sup>;
- Indoor seating area to accommodate 40 patrons;
- Outdoor seating area to accommodate 44 patrons;
- Kitchen, servery, associated storerooms and rest rooms;
- Drive-through cashier and servery;
- Ticket office for the cinema; and
- Lift and stair access/egress.

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### **Outdoor Cinema (various levels)**

- Five (5) LCD screens (three adjacent to the northern side boundary and two adjacent to the southern side boundary; and
- Seating capacity for 700 patrons.

### **Landscaped area**

- 18,827.4m<sup>2</sup> (59%).

## **APPLICATION HISTORY**

The subject Development Application was lodged with Council on 18 August 2011.

It is noted that a pre-lodgement meeting was not held between the proponent/applicant and Council to discuss the application and to provide Council with an opportunity to identify and advise the applicant of any concerns.

The Development Application was subsequently advertised/notified for a period of not less than 21 calendar days terminating on 13 September 2011.

Following the completion of the advertising/notification period and following a preliminary assessment of the application, a letter was sent to the applicant on 4 October 2011 which identified a number of issues with the application including the fundamental matter that the development is not consistent with the Desired Future Character of the locality under *Warringah Local Environmental Plan 2000* and constitutes prohibited development within the RU4 zone under the *Draft Warringah Local Environmental Plan 2009*. The letter also advised that Council would not accept amended plans in accordance with Council's '*Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications Policy*' which is consistent with the powers conferred under Clause 55(1) of the *Environmental Planning and Assessment Regulation 2000*. The applicant was offered an opportunity to withdraw the application within seven (7) days, receive a substantial refund of the Development Application fee and attend a pre-lodgement meeting to discuss all issues identified in the letter. The applicant was advised that failure to withdraw the Development Application within the timeframe would result in the matter being referred to the Warringah Development Assessment Panel with a recommendation for refusal.

The applicant advised, by email dated 14 October 2011, that they had recently returned from overseas and had not had the opportunity to address the matters raised by Council within the seven (7) day time period. Council wrote to the applicant on 14 October 2011 reiterating the advice in its previous letter dated 4 October 2011 and offered an additional seven (7) day period to withdraw the Development Application and maintained its offer of a substantial refund.

The applicant advised, by facsimile dated 18 October 2011, that they will not withdraw the Development Application and requested that Council delay determination to permit the preparation and submission of technical information to address the matters raised by Council. Council wrote to the applicant on 19 October 2011 reiterating the advice in its previous letter dated 4 October 2011 and advised that, following the advice that the Development Application will not be withdrawn, the matter will be referred to the Warringah Development Assessment Panel with a recommendation for refusal.

The applicant further requested, by letter dated 28 October 2011, that an opportunity be provided to submit technical design detail and clarification of the issues raised by Council. Additionally, the applicant requested that the referral of the Development Application to the Warringah Development Assessment Panel be delayed "*until such time as the additional information has been submitted and assessed on its merits by Council and the relevant authorities*". Council wrote to the applicant on 1 November 2011 reiterating the advice in its previous correspondence and that the

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Development Application will be referred to the Warringah Development Assessment Panel with a recommendation for refusal.

## STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979;
- b) Environmental Planning and Assessment Regulation 2000;
- c) Water Management Act 2000;
- d) Roads Act, 1993;
- e) State Environmental Planning Policy No. 55 – Remediation of Land;
- f) State Environmental Planning Policy (Infrastructure) 2007;
- g) Warringah Local Environment Plan 2000; and
- h) Draft Warringah LEP 2009.

## PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 101 adjoining land owners and occupiers for a minimum period of 21 calendar days commencing on 19 August 2011 and ending on 13 September 2011. Furthermore, the application has been advertised within the Manly Daily on 20 August 2011 and a notice was placed upon the site.

As a result of the public exhibition process 15 submissions were received of which one (1) was in support and 13 were in objection and one was a petition which included 64 signatures in objection. The submissions were received from:

Submission	Affected property address
G & Z Holman	1 Larool Road, Terrey Hills
J Hawker	13 Myoora Road, Terrey Hills
T & M Ryan	148/2 Dawes Road, Belrose
G Dowsett	15 Myoora Road, Terrey Hills
J Brown	28 Myoora Road, Terrey Hills
M Prestia	303 Mona Vale Road, Terrey Hills
K Aspinall	31 Myoora Road, Terrey Hills
A Schaaf	33 Myoora Road, Terrey Hills
Fr. M O'Toole (The Catholic Parish of Frenchs Forest)	46 Myoora Road, Terrey Hills
Congregation of St. Anthony in the Field (petition)	46 Myoora Road, Terrey Hills
Tomasy Pty Ltd on behalf of Miramare Gardens	48 Myoora Road, Terrey Hills
J MacGregor & J Tayles	Larool Road, Terrey Hills
P Storey	Myoora Road, Terrey Hills
"Terrey Hills Resident"	No address provided
P Acott (Terrey Hills Progress Association)	Terrey Hills

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The matters raised within the submissions are as follows:

### **Inadequate documentation**

The submission raises concern that the Traffic and Parking Study and the Statement of Environmental Effects do not adequately describe the proposal or provide a full assessment of the impacts of the development.

#### Comment:

This matter has been addressed in this report. In summary, the assessment has found that the information contained within the Traffic Study pertaining to traffic generation and car parking is questioned by Council's Traffic Engineer and that the Statement of Environmental Effects does not satisfy the provisions of 'Schedule 15 – Statement of Environmental Effects' under Warringah Local Environmental Plan 2000.

This matter forms a reason for refusal.

### **Noise**

The submission raises concern that the development will generate noise which have an adverse impact upon amenity.

#### Comment:

This matter has been addressed in this report. In summary, the assessment has found that the Development Application does not include an acoustic report to satisfy Council that the development will not have any unreasonable impact upon the amenity of surrounding land which, given the estimated patronage of the development and the nature of the proposed uses, is considered to be a critical component.

This matter forms a reason for refusal.

### **Overdevelopment of the site**

The submission raises concern that the combination of proposed uses constitutes an overdevelopment of the site.

#### Comment:

This matter has been addressed in this report. In summary, the assessment has found that the development constitutes an overdevelopment of the site.

This matter forms a reason for refusal.

### **Non-compliance with Built Form Controls**

The submissions raise concern that the development does not comply with the relevant Built Form Controls under Warringah Local Environmental Plan 2000.





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Comment:

This matter has been addressed in this report. In summary, the assessment has found that the development does not comply with, and unreasonably exceeds, the Building Height, Front Setback, Side Setback, Building Site Coverage and Landscape Open Space Built Form Controls.

This matter forms a reason for refusal.

**Traffic safety and congestion on Myoora Road**

The submissions raise concern that the development will have an adverse impact upon the safe operation of Myoora Road.

Comment:

This matter has been addressed in this report. In summary, the assessment has found that the information provided does not satisfactorily address the potential traffic safety and congestion impacts on Myoora Road.

This matter forms a reason for refusal.

**Lack of stormwater management**

The submission raises concern that the development does not provide for adequate stormwater management.

Comment:

This matter has been addressed in this report. In summary, the assessment has found that the Development Application does not provide sufficient information for Council's Development Engineers to be satisfied that the development provides sufficient stormwater management.

This matter forms a reason for refusal.

**Prohibited land use under the Draft Warringah Local Environmental Plan 2009.**

The submission raises concern that the development contains prohibited land uses under the Draft LEP.

Comment:

This matter has been addressed in this report. In summary, the assessment has found that the bulky goods shop and the cinema use constitute prohibited land uses under the Draft Warringah Local Environmental Plan 2009 and that the development is not consistent with the objectives of the RU4 Rural Small Holdings zone.

This matter forms a reason for refusal.

**No signage details provided with the Development Application**

The submission raises concern that the Development Application does not include any signage details.

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Comment:

A signage application may be provided at a later date pending the approval of this Development Application and will be the subject of a separate assessment.

This matter does not constitute a valid reason for refusal.

**Lack of sewerage on the site**

The submission raises concern that the site is not serviced by sewerage and points out that Sydney Water do not have the capacity to accommodate the development in the existing sewerage infrastructure.

Comment:

This matter has been addressed in this report. In summary, the assessment has found that the site is not sewered and it is considered critical that the site is connected to the Sydney Water sewer system given the anticipated volume of patronage to the site. A condition may be imposed which requires that the developer obtain approval from Sydney Water for connection to the sewer system prior to the issue of a Construction Certificate should this application be approved. It would also be prudent for a development of this magnitude to provide a Notice of Requirements" from Sydney Water. However, none has been submitted.

This matter does not constitute a valid reason for refusal.

**Development is inconsistent with the Desired Future Character of the locality**

The submission raises concern that the development is not consistent with the Desired Future Character of the A4 Myoora Road locality.

Comment:

This matter has been addressed in this report. In summary, the assessment has found that the development is not consistent with the Desired Future Character of the A4 Myoora Road locality.

This matter forms a reason for refusal.

**Relocation of the watercourse**

The submission raises concern that the development does not respect the riparian zone of the existing watercourse.

Comment:

This matter has been addressed in this report. In summary, the assessment has found that the development will have a significant impact upon the watercourse and that the piping and redirection of the watercourse is not in accordance with Council Policy No. PL 740 Waterways - *"Protection of Waterways and Riparian Land Policy"*.

This matter forms a reason for refusal.

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### **Removal of trees/vegetation**

The submission raises concern that the development will have an adverse impact upon the native flora and fauna through the removal of trees and vegetation.

#### Comment:

This matter has been addressed in this report. In summary, the assessment has found that the proposed removal of 143 trees (which represents 90.5% of the entire recorded tree population on the site) and the replacement of 36 trees is considered to be significantly, and unacceptably, lower than what is proposed to be removed.

This matter forms a reason for refusal.

### **Inadequate parking**

The submission raises concern that the development is deficient in the provision of on-site car parking.

#### Comment:

This matter has been addressed in this report. In summary, the assessment has found that Council's Traffic Engineer does not accept the comparative findings of TAR Technologies and that the car parking requirement does not comply with the results of the RMS's *"Trip Generation and Parking Generation Surveys"*. In this regard, Council cannot be satisfied that the development complies with the car parking requirements under Schedule 17.

This matter forms a reason for refusal.

### **MEDIATION**

Has mediation been requested by the objectors?	No
Has the applicant agreed to mediation?	N/A
Has mediation been conducted?	No

### **LAND AND ENVIRONMENT COURT ACTION**

No Land and Environment Court action is pending on this application.

### **REFERRALS**

#### **External Referrals**

##### **Ausgrid**

Ausgrid does not raise any objection to the proposal subject to standard conditions.

#### Assessing Officer's Comment:

The conditions may be imposed should this application be approved.

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## **New South Wales Office of Water (NoW)**

The Development Application was referred to the New South Wales Office of Water (NoW) as Integrated Development for approval under the provisions of Sections 89, 90 and 91 of the Water Management Act 2000 for water use approval, water management work approval or activity approval under Part 3 of Chapter 3. In a letter dated 23 August 2011, NoW advised

*"The NSW Office of Water has placed a 'stop-the-clock' on the above Integrated Development application received by this office on 19 August 2011. An initial review of the material provided indicates that additional information relating to General Terms of Approval is needed in order to complete the assessment. Under the Environment Planning and Assessment Regulation 2000, (as amended), (the Regulation), any request for further information made within 25 days of receipt is not considered in calculating the period prescribed by Clause 70 for notifying the General Terms of Approval.*

*The clock will stop as of the date of this letter and resume on the date when the requested information has been supplied.*

### *No fee or wrong fee enclosed:*

*A cheque for \$320.00 being the Integrated Development Assessment fee, as required by the Regulation, was not enclosed. As this is a statutory fee, processing of the development application cannot begin until a cheque made payable to the NSW Office of Water is received.*

*Attached to this letter, is the original cheque for return to the applicant.*

### *Additional documents requested:*

*Good quality photographs of the watercourse (on site) showing bank/s and views upstream and downstream. Please orient the photographs (location and direction) on a sketch plan and ensure the top of bank is clearly identified. The NSW Office of Water recommends that the photo points be surveyed or identified by GPS coordinates.*

*A plan or diagram showing the proposed riparian corridor in accordance with the Department's guidelines <http://www.water.nsw.gov.au/Water-Licensing/Approvals/Controlled-activities/default.aspx>*

*A scale bar should be included.*

### *If the proposed development involves the banks or bed of a watercourse:*

*A concept plan or diagram showing details of all proposed works within the bed and bank of the watercourse. All proposed works should be in accordance with the Department's guidelines <http://www.water.nsw.gov.au/Water-Licensing/Approvals/Controlled-activities/default.aspx>.*

*A scale bar should be included.*

*Note: The NSW Office of Water has provided pre-DA advice in relation to this proposal including the following:*

*"For the NSW Office of Water to consider supporting the proposal the following changes would need to be incorporated and additional information provided:*

- 1. Remove the pipe for low flows and include a meandering low flow channel within the larger channel. The new channel has a 1 in 100 year capacity and there is no valid reason for piping the low flows. Piping of watercourses is against policy and is unlikely to be approved.*
- 2. Incorporate a riparian zone either side of the new watercourse for long term stability (as wide as possible, generally at least 5 metres either side).*



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3. *Use rock rip rap within the channel for a more natural outcome. Rock rip rap protection is required for the outside of bends and for riffle/bed control. Otherwise the watercourse can generally be stabilised through jute mesh in the short term and aquatic vegetation in the longer term.*
4. *Discuss the proposal with Council and DPI (NSW Fisheries) for their agreement of the watercourse realignment in accordance with their policies.*
5. *Provide 'owner's consent from the upstream and downstream neighbours for the works as the proposal has the potential to impact on their land.'*

*Details of any consultation or advice from other government agencies NSW Fisheries (DPI) pertaining to works within the banks or bed of a watercourse or foreshore."*

Assessing Officer's Comment:

Apart from the Integrated Development Assessment fee the applicant has not provided sufficient information to NoW to enable an accurate assessment and determination. Most notably, the development involves the piping and redirection of the watercourse which is situated in the upper catchment of Kierans Creek.

Council's Natural Environment Unit have advised (see 'Internal referrals' in this report) that the development will have significant impacts upon the watercourse and that the piping and redirection of the watercourse is not in accordance with Council Policy No. PL 740 Waterways - "*Protection of Waterways and Riparian Land Policy*". This is not consistent with Point 4 of the 'pre-DA' advice provided to the applicant by NoW.

The time frame required to address the issues raised by NoW (and the Council's Natural Environment Unit) will not allow Council to determine the application within an appropriate timeframe and is inconsistent with Council's adopted Policy, namely "*Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications*" which is empowered under Clause 55(1) of the *Environmental Planning and Assessment Regulation 2000*.

In this regard, this issue has been included as a reason for refusal due to the lack of sufficient information.

**Roads and Maritime Services (RMS)** (formerly Roads and Traffic Authority (RTA))

The Development Application was referred to the Roads and Maritime Services (RMS) for approval under the provisions of Section 138 of the *Roads Act, 1993*. In a letter dated 7 September 2011, the Sydney Regional Development Advisory Committee (SRDAC) advised the following:

*"Reference is made to your correspondence dated 17 August 2011, concerning the abovementioned development application which was referred to the Roads and Traffic Authority (RTA) for comment. I wish to advise that the Sydney Regional Development Advisory Committee (SRDAC) considered the traffic impact of this application at its meeting on 7 September 2011.*

*Below are the Committee's recommendations and the RTA's comments on the subject application:*

1. *Current practice is to limit the number of vehicular conflict points along the arterial road network to maintain network efficiency and road safety. This current practice is reflected in Section 6.2.1 of the RTA's current publication of the Guide to Traffic Generating Developments, which states 'access across the boundary with a major road is to be avoided wherever possible'.*

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*Mona Vale Road (classified road) is a major arterial road which carries a high volume of traffic where transport efficiency of through traffic is of great importance.*

*Further to the above, Council as the consent authority should give attention to Clause 101(2a) of State Environmental Planning Policy (Infrastructure) 2007, which reads as follows:*

*“(a) where practicable, vehicular access to the land is provided by a road other than the classified road”.*

*As the subject site has alternate vehicular access via Myoora Road, the RTA will not grant its concurrence to the proposed access on Mona Vale Road under Section 138 of the Roads Act 1993.*

2. *The RTA requires an electronic copy of the aaSIDRA modelling for all intersections impacted on Mona Vale Road in the vicinity of the development. The modelling shall be submitted to the RTA for review and assessment prior to the determination of the application.*

*The RTA raises concern with the proposed increase to delay at intersections along Mona Vale Road. The applicant shall investigate any potential upgrades to these intersections.*

3. *The traffic surveys shall be done on Thursday and on the weekend to reflect the peak periods of the proposed development.*
4. *As the proposed bulky goods store tenant is not confirmed, the RTA's rate for bulky goods stores shall be used for assessment not individual traffic counts from specific sites.*
5. *All parking associated with the proposed development shall be accommodated on site.”*

Following the receipt of the above response, a further letter dated 17 October 2011 was received from the RMS which stated:

*“The RTA and the proponent for the abovementioned development application met on 22 September 2011 to discuss comments raised in the RTA's letter dated 7 September 2011. The following comments supersede previous RTA advice dated 7 September 2011:*

1. *The RTA provides “in-principle” support for a left-in only access on Mona Vale Road subject to an appropriate design being submitted to the RTA for approval. The design of the left-in only access via Mona Vale Road shall include the following:*
  - *The design shall include a left turn deceleration lane during, interim, prior to any widening of the roadway. The proposed deceleration lane along Mona Vale Road shall be designed to meet RTA's requirements, and endorsed by a suitably qualified practitioner. The submitted design shall be in accordance with Austroads Guide to Road Design in association with relevant RTA supplements (available on [www.rta.nsw.gov.au](http://www.rta.nsw.gov.au)).*
  - *A design shall be submitted to the RTA to show the deceleration lane ultimate configuration, can be accommodated on the proposed site should road widening occur in the future.*
  - *The applicant shall install ‘No Stopping’ signs along the site's Mona Vale Road frontage.*
2. *The submitted traffic surveys shall be updated to reflect the proposed vehicular access on Mona Vale Road for Thursday and the weekend to reflect the peak periods of the proposed development.*

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3. *The RTA requires an electronic copy of the aaSIDRA modelling for all intersections impacted on Mona Vale Road in the vicinity of the development. The modelling shall be submitted to the RTA for review and assessment prior to the determination of the application.*
4. *As the proposed bulky goods store tenant is not confirmed the RTA's rate for bulky goods stores shall be used for assessment not individual traffic counts from specific sites.*
5. *All parking associated with the proposed development shall be accommodated on site.*

*Upon receipt of the information detailed above the RTA will provide further comments to council to be included in Council's conditions of consent."*

Assessing Officer's Comment:

Following receipt of the referral response from the RMS dated 17 October 2011, Council's Traffic Engineer advised (see 'Internal Referrals' in this report) that Council will require additional information, including a copy of the revised SIDRA intersection analysis, to assess the implications of traffic generated by this proposal on the local road network.

The time frame required to address the issues raised by the RMS (and Council's Traffic Engineer) will not allow Council to determine the application within an appropriate timeframe and is inconsistent with Council's adopted Policy, namely "Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications which is empowered under Clause 55(1) of the *Environmental Planning and Assessment Regulation 2000*.

In this regard, this issue has been included as a reason for refusal due to the lack of sufficient information.

**NSW Rural Fire Service (NSWRFS)**

The NSW Rural Fire Service raises no objection to the development subject to a condition addressing asset protection zones.

Assessing Officer's Comment:

The conditions may be imposed should this application be approved.

**Internal Referrals**

**Development Engineer**

Council's Development Engineer has assessed the Development Application and advises the following:

*"Reference is made to the proposed stormwater drainage plan by Taylor Consulting, Drawing No. 29610 - 1 to 6, Revision B, dated 9 August 2011.*

*In regards to the proposed On-site Stormwater Detention (OSD) and associated drainage design, Development Engineers provide the following comments:*

1. *Calculations are to be submitted for assessment. This requires the submission of a computer disc with the relevant hydrologic model.*
2. *The parameters used to determine the times of concentration and corresponding Permissible Site Discharges (PSD) need to be checked, as the calculated PSD's appear to be higher than expected. In this regard, the hydraulics consultant is to check and verify these parameters. The stormwater drainage design may need to be amended based on the revised parameters.*

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3. *All office, storage and habitable floor levels are to be set at a minimum of 300mm above the surcharge flow path level of the OSD tank in the event of a blockage to the control discharge device.*

*Landscaped plan and stormwater drainage plans*

4. *The applicant is to coordinate the landscaped and stormwater drainage plans as there appears to be a conflict with the proposed size and number of pipes required to convey upstream flows through the site, as shown on the landscape and stormwater drainage plans.*

*Diversion of the watercourse*

5. *Please note that the Natural Environment Unit does not support the proposal to divert the existing watercourse traversing the site. Refer to comments issued by the Natural Environment Unit.*

*Any subsequent amendments (if any) to the comments made by the Natural Environment Unit are to be referred to Council's Development Engineers. Council's Development Engineers may need to revise comments accordingly with regards to the proposed watercourse diversion works.*

*The stormwater drainage proposal is not satisfactory until the above issues are addressed. Amended stormwater drainage plans are to be submitted to Council for re-assessment, prior to the issue of the Development Consent.*

*In summary, Council's Development Engineers are unable to adequately assess the proposal and cannot support the proposal due to lack of information submitted by the applicant."*

*Assessing Officer's Comment:*

The time frame required to address the issues raised by the Council's Development Engineer will not allow Council to determine the application within an appropriate timeframe and is inconsistent with Council's adopted Policy, namely *"Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications* which is empowered under Clause 55(1) of the *Environmental Planning and Assessment Regulation 2000*.

In this regard, this issue has been included as a reason for refusal due to the lack of sufficient information.

**Natural Environment Unit**

Council's Natural Environment Unit has assessed the Development Application and advises the following:

*"Biodiversity*

*The Biodiversity team has no objection to the proposed development subject to conditions.*

*Riparian*

*The proposed development has significant adverse impacts upon the natural/built environment and therefore the development application is not supported for the following reasons:*

- *Proposed piping and redirection of the watercourse is not in accordance with Council Policy "Protection of Waterways and Riparian Land Policy," Policy No. PL740 Waterways.*



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Principle 3.1 Protection of Waterway and Riparian Land

*Natural ecological processes of waterways and riparian land shall be maintained and enhanced to the greatest extent possible by:*

- *Causing no net loss to biodiversity;*
  - *Supporting natural flow regimes;*
  - *Minimising bank erosion and promoting naturalistic bank protection works when stabilisation is necessary (i.e. soft engineering outcomes);*
  - *preventing alteration of watercourses (includes piping, channelling, relocation or removal*
  - *Improving plant communities through natural area restoration;*
  - *Maintaining natural floodplains where appropriate.*
- *The proposed piping and relocation of the watercourse is also not in accordance with Warringah Local Environmental Plan 2000:*

Clause 56 'Retaining unique environmental features on sites:

- *Development is to be designed to retain and complement any distinctive environmental features of this site and on adjoining and nearby land.*
- *In particular development is to be designed to incorporate or be sympathetic to environmental features such as rock outcrops, remnant bushland and watercourses.'*

Clause 60 'Watercourses and Aquatic Habitat':

- *Development is to be sited and designed to maintain and enhance natural watercourses and aquatic habitat.'*
- *A Waterway Impact Statement was also not provided.*
  - *Even though the watercourse on site (the upper catchment of Kierans Creek) is degraded this does NOT indicate that the watercourse is of no significance and piping is the only solution. Degraded creeks still maintain an ecological function and should be rehabilitated in their natural form and maintained as a natural asset.*
  - *Kierans Creek was mapped in the Warringah Creek Management Study 2004, as a Group B watercourse that has: some degradation in the upper catchments, but high ecological value downstream; generally 10-15% existing connected impervious area. The upper section of Kierans Creek was not mapped in this Warringah Creek Management Study however it is noted as a watercourse/creek on the Sydney 2009 Directory. This does not mean that the upper section of Kierans Creek is not a watercourse, it indicates that it was overlooked when the study was undertaken in 2004."*

Assessing Officer's Comment:

With regards to the piping and redirection of the watercourse, the 'Riparian' section of Council's Natural Environment Unit have advised that the development cannot be supported as it will have significant impacts upon the watercourse and that the piping and redirection of the watercourse is not in accordance with Council Policy No. PL 740 Waterways - "Protection of Waterways and Riparian Land Policy" and contravenes Clauses 56 and 60 of the General Principles of Development Control under WLEP 2000.

With regards to the removal of trees, the 'Biodiversity' section of Council's Natural Environment Unit have advised that the development can be supported subject to conditions which require that landscaping must be grown from local provenance seed and cuttings as per the species list for

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Bloodwood Scribbly Gum Woodland or Silvertop Ash-Brown Stringybark Forest. Additionally, to offset for the loss of canopy species, the landscape plan will include replacement tree planting of a minimum of 36 trees (ratio of .25:1). Weed management is also prescribed.

It should be noted that the development proposes the removal of 143 trees which represents 90.5% of the entire recorded tree population on the site and the replacement of 36 trees is considered to be significantly, and unacceptably, lower than what is proposed to be removed.

Notwithstanding the support by 'Biodiversity', the proposed piping and redirection of the watercourse has been included as a reason for refusal due to the lack of concurrence and the provision of sufficient information.

### **Traffic Engineer**

Council's Traffic Engineer has assessed the Development Application and advises the following:

*"This development is not supported for the following reasons -*

- *Shortfall in parking associated with the bulky goods development (and across the site as a whole).*
- *Limited information on the effect traffic generated by this development will have on the existing road network."*

Following receipt of the referral response from the RMS dated 17 October 2011, Council's Traffic Engineer advises the following:

*"In light of the RTA allowing left in only access off Mona Vale Road in their comments dated 17 October Council will require a copy of the revised SIDRA intersection analysis, as requested by the RTA, to assess the implications of traffic generated by this proposal on the local road network.*

*The applicant has not provided sufficient information on the effects of this proposal.*

*The parking provision for this development is inadequate. The parking provision for this development has not been altered from the initial proposal."*

### Assessing Officer's Comment:

Following receipt of the referral response from the RMS dated 17 October 2011 (see 'External Referrals' in this report), Council's Traffic Engineer notes that the applicant has not provided sufficient information on the effects of this proposal and advises that additional information, including a copy of the revised SIDRA intersection analysis, will be required to be prepared and submitted to assess the implications of traffic generated by this proposal on the local road network.

The time frame required to address the issues raised by Council's Traffic Engineer (and the RMS) will not allow Council to determine the application within an appropriate timeframe and is inconsistent with Councils adopted Policy, namely *"Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications* which is empowered under Clause 55(1) of the *Environmental Planning and Assessment Regulation 2000*.

In this regard, this issue has been included as a reason for refusal due to the lack of sufficient information.

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## Urban Design

Council's Urban Designer has assessed the Development Application and advises the following:

### "Positive aspects:

1. The majority of the site adjoining Myoora Road comprises soft landscaping by virtue of the open air cinemas.

### Negative Aspects:

1. Landscape Area - The proposal will result in a landscape area of 18,808 m<sup>2</sup> which equates to 59% of the site area which is less than the 70% required by the LEP. It is considered that the landscaping proposed in this instance is inadequate as it can be easily complied with.
2. Proposed LCD screens are located near to side boundaries especially on the north-eastern side not allowing adequate green buffer. Landscaping buffer proposed should also camouflage screens from neighbouring properties especially light spill or glare at night.
3. Building Height - Pursuant to the requirements of Clause 20 of the LEP, a variation is sought in relation to building height in relation to the provision of an architectural feature to the centre of the western elevation of the bulky goods building and to the eastern elevation of the restaurant/café building. As both instances comprise of elements that do not contain useable floor area but are provided in order to create architectural relief to the building design, it can be supported.
4. Clause 20 of the LEP regarding noise from gathering of people till late will be an issue.
5. Only small, non obtrusive and non-illuminated signs that identify the use of a site are to be visible from Mona Vale Road. Signs that are designed of such size, height or visual appearance so as to attract passing trade will not be permitted. All signs are to be in keeping with the colour and textures of the natural landscape.
6. Draft Warringah Local Environmental Plan is currently being determined. Under that Plan the subject site is proposed to be zoned RU4 – Rural Small Holdings which prohibits the use of a site for the proposed purposes.

### Conclusion

*The initial analysis demonstrates that the proposed development has some negative issues which need to be addressed and resolved. Therefore the development cannot be supported in its current form."*

### Assessing Officer's Comment:

In terms of urban design, Council's Urban Designer has identified that the proposed LCD screens (see Point 2 above) will have an impact upon neighbouring properties due to an inadequate setback area to permit appropriate screen planting. This could be adequately addressed through an amendment to the side setback should this Development Application be considered for approval.

Points 1, 3, 4 and 6 relate directly to the statutory assessment of the Development Application under the relevant provisions of WLEP 2000 which are appropriately addressed later in this report (see 'Warringah Local Environment Plan 2000' in this report).

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It is noted that, in respect to Point 5, the applicant has nominated to submit a separate Development Application for signage at a later date pending the approval of this Development Application.

### **Environmental Health and Protection**

Council's Environmental Health Officer has assessed the Development Application and advises the following:

*"This proposal has been reviewed by Environmental Health & Protection. The applicant has not submitted satisfactory details with regard to land contamination or waste water disposal and accordingly the proposal is not able to be effectively assessed unless this information is provided."*

### **Land Contamination**

Preliminary Environmental Site Assessment for 42 & 44 Myoora Road, Terrey Hills NSW prepared by Aargus Australia dated July 2011 was reviewed.

The site is 3 hectares in total. The EPA NSW Sampling Design Guidelines recommends 40 samples to be taken. The Preliminary Environmental Site Assessment only took 5 samples and the assessment advised that the site is suitable for the intended use however recommends further assessment and reporting.

The site has evidence of site contamination and there is history of uncontrolled fill. There may be contamination and Phase 2 reporting is required. Accordingly, a Stage 2 site contamination report must be provided in accordance with NSW Sampling Design Guidelines.

### **Waste Water disposal**

The statement of Environmental Effects [refer to page 17 of the Statement] states:

#### **"Clause 54 – Provision and location of utility services**

*This clause requires that services must be provided to the site of the development, including provision for the supply of water, gas, telecommunications and electricity and the satisfactory management of sewage and drainage.*

*The proposed development will be provided with appropriate services as required by this clause".*

This site is not seweraged, however, special connection to a rising main may be achievable through discussion and approval with Sydney Water and this option is strongly recommended. There are no on site waste water management details submitted with this application.

Prior to obtaining consent without submission Council would need to see satisfactory on site onsite waste water management provided by a suitably qualified waste water consultant or approval from Sydney Water regarding sewer connection for the subject proposal.

### **Conditions recommended:**

Proposal refused until the above matters are addressed."

### **Assessing Officer's Comment:**

Council's Environmental Health Officer notes that the 'Contaminated Sites Sampling Design Guidelines' published by the NSW Environment Protection Authority in September 1995, recommends 40 soil sampling points for a 3.0 hectare site as opposed to the five (5) sampling



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points investigated by Aargus Australia and that, as the site has evidence of contamination and has a history of uncontrolled fill, a Phase 2 Site Contamination Assessment is required. In this regard, Council's Environmental Health Officer advises that the information provided with the Development Application is not adequate to enable an effective assessment of land contamination.

Therefore, the lack of information required by Council to be satisfied that SEPP 55 has been appropriately addressed is considered to be a matter which constitutes a reason for refusal.

### **Landscape Adviser**

Council's Landscape Adviser has assessed the Development Application and advises the following:

*"Concern is raised in regard to the Landscape component of the proposal.*

*The planting to the Myoora and Mona Vale Rd frontages indicate large proportions of grass which is not considered to be in keeping with the Locality Statement requirements.*

*The removal of the watercourse traversing the site is considered to be significant in itself.*

*The Myoora Rd landscape setback provides for the overland flow path of the relocated watercourse. The provision of grass in this area is not considered to be in keeping with the environmental or landscape values for the Locality or provide compensation for the loss of the environmental feature.*

*The SEE indicates that the required Landscape Open Space proportion of the site has not been met, and is significantly less than that required in the Locality.*

*As the site is proposed to be completely redeveloped, there appears little to support a variation in the requirement for this Locality."*

#### **Assessing Officer's Comment:**

Council's Landscape Adviser notes that the development, particularly within the front setback area of Mona Vale Road, is not adequate and is not consistent with the relevant part of the A4 Myoora Road locality statement which requires a dense bushland buffer to be retained or established along Mona Vale Road. Similarly, the proposed landscaping is not in keeping with the provisions of the Front Building Setback Built Form Control as stipulated under WLEP 2000 which requires that the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs

The provision of landscaped open space is significantly less than what is required under the Landscaped Open Space Built Form Control and is not supported (see 'Built Form Controls' in this report).

The matters raised by Council's Landscape Adviser are included as reasons for refusal.

### **Building Assessment and Compliance Officer**

Council's Building Assessment and Compliance Officer has assessed the Development Application and advises the following:

*"The proposed warehouse requires extra exits and separation of rising and descending stairs therefore amended plans or details would be required prior to the issue of a Construction Certificate in order to comply with the BCA."*

#### **Assessing Officer's Comment:**

Conditions pertaining to compliance with the Building Code of Australia and fire safety were also recommended and may be imposed should the Development Application be approved.

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## Waste Management

Council's Waste Management Officer has not provided any comment to date.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
<b>Section 79C (1)(a)(i)</b> – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
<b>Section 79C (1)(a)(ii)</b> – Provisions of any draft environmental planning instrument	The development contains prohibited land uses in the RU4 Rural Small Holdings zone and is not consistent with the Objectives of that zone as defined under the Draft Warringah Local Environmental Plan.  It is noted that the site is located within 'Area 1' under Schedule 1 of the Draft Warringah Local Environmental Plan. 'Area 1' designates educational establishments, hospitals, places of public worship, recreational facilities (indoor), registered clubs, restaurants and hotel or motel accommodation as permitted uses with consent. With exception to a restaurant use, the remainder of proposed uses are not permitted within 'Area 1'.
<b>Section 79C (1)(a)(iii)</b> – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
<b>Section 79C (1)(a)(iia)</b> – Provisions of any planning agreement	None applicable.
<b>Section 79C (1)(a)(iv)</b> – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent.  <u>Clause 92</u> of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i> . This matter may be addressed via a condition of consent.
<b>Section 79C(1)(b)</b> – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report. In summary, the development will result in an unreasonable impact upon the natural and built environment.  (ii) The proposed development will not have a detrimental social impact in the locality.  (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed land use.
<b>Section 79C(1)(c)</b> – the suitability of the site for the development	<i>The site has been used for semi-rural/residential and commercial purposes for a significant period of time. However, the development requires the piping and redirection of a watercourse which is not considered to be appropriate. In this respect, the site is not considered to be suitable for the development, as proposed.</i>
<b>Section 79C(1)(d)</b> – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.

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Section 79C 'Matters for Consideration'	Comments
<p><b>Section 79C(1)(e)</b> – the public interest</p>	<p>The development is not in the public interest in that:</p> <ul style="list-style-type: none"> <li>a) The proposal does not comply with the relevant local planning controls of the Warringah Local Environment Plan 2000.</li> <li>b) The proposal is not consistent with the Desired Future Character Statement for the A4 Myoora Road Locality under Warringah Local Environment Plan 2000.</li> <li>c) The proposal is a prohibited land use within the RU4 Rural Small Holdings zone and is not consistent with the Objectives of that zone under the Draft Warringah Local environmental Plan.</li> </ul> <p>As noted above in this table, the site is located within 'Area 1' under Schedule 1 of the Draft Warringah Local Environmental Plan. 'Area 1' designates educational establishments, hospitals, places of public worship, recreational facilities (indoor), registered clubs, restaurants and hotel or motel accommodation as permitted uses with consent. With exception to a restaurant use, the remainder of proposed uses are not permitted within 'Area 1'.</p> <ul style="list-style-type: none"> <li>d) The proposal will create an undesirable precedent which will have a negative impact on the character of the locality.</li> </ul>

The proposal has been considered against the relevant matters for consideration under Section 79C of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and, based upon the level of information provided, is considered to result in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

## RELEVANT PLANNING PRINCIPLES

- Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC 140.
- Mathers v North Sydney Council [2000] NSWLEC 84.
- Haywood and Bakker Pty Ltd v North Sydney Council [2000] NSWLEC 138.
- Blackmore Design Group Pty Ltd v North Sydney Council [2001] NSWLEC 279.
- Vigor Master P/L v Warringah Council [2008] NSWLEC 1128.

## DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

### Draft Warringah Local Environmental Plan (Draft WLEP)

**Definitions:** Bulky Goods Premises  
Restaurant  
Entertainment Facility

**Land Use Zone:** RU4 Rural Small Holdings

**Permissible or Prohibited:** Bulky Goods Premises (Prohibited)  
Restaurant (Permitted – 'Area 1')  
Entertainment Facility (Prohibited)

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### Additional Permitted used for particular land – Refer to Schedule 1:

It is noted that the site is located within 'Area 1' under Schedule 1 of the Draft Warringah Local Environmental Plan. 'Area 1' designates educational establishments, hospitals, places of public worship, recreational facilities (indoor), registered clubs, restaurants and hotel or motel accommodation as permitted uses with consent. With exception to a restaurant use, the remainder of proposed uses are not permitted within 'Area 1'.

### Principal Development Standards:

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Rural Subdivision:	2 Hectares	N/A	Existing lot 0.66 hectares	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A	N/A	N/A	N/A
Height of Buildings*:	8.5 m	13.2m	No	See commentary below

**Note:** The building height development standard in the Draft WLEP 2009 is taken from the *existing* ground level as opposed to the *natural* ground level stipulated in WLEP 2000.

The relevance of a draft Local Environmental Plan and the weight to be given to it relies on the facts of the particular case and circumstances which have been highlighted by numerous Land and Environment Court cases including *Mathers v North Sydney Council* [2000] NSWLEC 84, *Haywood and Bakker Pty Ltd v North Sydney Council* [2000] NSWLEC 138 *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279).

In summary, the primary principles arising from Land and Environment Court cases are that the weight to be placed upon a draft Local Environmental Plan, when determining a development application depends on:

1. The imminence of the draft LEP and the degree of certainty that it will come into force;
2. The extent of conflict between proposed development and planning objectives of the zone contained in the draft LEP; and
3. The existence and applicability of savings provisions in the draft LEP.

### Assessment of prohibition

#### 1. The imminence of the draft LEP and the degree of certainty that it will come into force.

##### Comment:

The draft WLEP 2009 has completed the public exhibition process, has been adopted by Council and subsequently forwarded to the Department of Planning for gazettal. In this regard, the Plan is considered both imminent and certain. On this basis, the draft WLEP 2009 is required to be given weight in the consideration under Section 79C of the Environmental Planning and Assessment Act, 1979.

#### 2. The extent of conflict between the proposed development and the planning objectives contained in the draft LEP.

The planning objectives of the RU4 Rural Small Holdings zone are as follows:

- To enable sustainable primary industry and other compatible land uses.

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Comment:

The development does not constitute a sustainable primary industry nor, because of the high intensity of the development (see discussion later in this section), does not constitute a compatible land use within the zone.

In this regard, the development is considered to be inconsistent with this objective.

- *To maintain the rural and scenic character of the land.*

Comment:

The development proposes to remove 143 trees which represents 90.5% of the entire recorded tree population on the site and the replacement of 36 trees is considered to be significantly, and unacceptably, lower than what is proposed to be removed. This, together with the proposed piping and redirection of the natural watercourse through the site, is considered to have the potential to visually and functionally alter the rural and scenic character of the land from a low-intensity semi-rural character to a high intensity urban character and could create an undesirable precedent for similar development to occur thereby further undermining this objective and the rural character of the zone.

In this regard, the development is considered to be inconsistent with this objective.

- *To ensure that development does not unreasonably increase the demand for public services or public facilities.*

Comment:

With regards to the availability of transport, the development is unlikely to increase the demand for public services and/or public facilities as customers are likely to drive to and from the site.

With regards to the provision of sewerage, it has been noted by Council's Environmental Health Officer (see 'Internal Referrals' in this report) that the site is not sewered and that a special connection to a rising main may be achievable through discussion and approval with Sydney Water. In this regard, Council's Environmental Health Officer has advised that "*prior to obtaining consent without submission Council would need to see satisfactory on site onsite waste water management provided by a suitably qualified waste water consultant or approval from Sydney Water regarding sewer connection for the subject proposal.*"

With regards to the supply of power, the development Application was referred to Ausgrid do not raise any objection to the proposal subject to standard conditions.

In this regard, the development is considered to be consistent with this objective provided that approval from Sydney Water is obtained.

- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*

Comment:

The development application proposes an intensification of the use of the site (see commentary below under the objective relating to 'high intensity') which will not minimise conflict between land uses within the zone.



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According to the 'Traffic and Parking Study' dated August 2011 and prepared by TAR Technologies, the patronage to the proposed uses will result in an estimated 38 vehicle trips per hour (not including the proposed cinema use which has been estimated to accommodate up to 700 patrons at any one time) during the core operating hours of 8.00am and 5.00pm for seven (7) days a week which equates to a minimum of 342 trips per day (plus the cinema use).

The response received from the RMS (see 'External Referrals' in this report) requires that the access/egress arrangements of the development be modified to allow for left-in access into the site from Mona Vale Road only. This revised arrangement would result in full traffic egress onto Myoora Road for the duration of the operation of the development between 7.00am to 11.30 pm seven (7) days per week.

Council's Traffic Engineer has advised (see 'Internal Referrals' in this report) that the Study provided by TAR Technologies does not provide enough information on the effects the traffic generated by the development will have on the existing road network and, in this regard, Council cannot be satisfied that the development will not minimise land use conflict between land uses.

- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*

Comment:

The site has a gradual slope of approximately 18m (6.8%) from Mona Vale Road down to Myoora Road. Therefore, as Mona Vale Road forms the high point of the site any long distance views would be available from that vantage point. Long distance views are currently limited from Mona Vale Road due to the dense vegetation which runs along the front boundary. However, it is noted that the land continues to slope upwards from Mona Vale Road on the eastern side by approximately 10.0m to the plateau which accommodates the Forest Hills Pony Club in the J.J. Melbourne Hills Memorial Reserve. This area is located directly opposite the development site and enjoys long distance views towards the east and Ku-ring-gai-Chase National Park.

The development proposes the construction of the bulky goods shop at the high side of the site adjacent to Mona Vale Road and achieves a height of 8.5m facing Mona Vale Road and a height of 14m facing the internal areas of the site. Given the difference in height between the development and the Forest Hills Pony Club, and the gradual slope of the site, it is considered that the development will not restrict the available across-site views to the east and Ku-ring-gai-Chase National Park.

In this regard, the development is considered to be consistent with this objective.

- *To maintain and enhance the natural landscape including landform and vegetation.*

Comment:

The development proposes to significantly alter the natural landscape of the site by removing 143 trees and piping and redirecting the watercourse which extends into the site from the south-western corner.

Currently, the site is largely vacant, densely vegetated and accommodates a natural watercourse which extends into the property from the south-west corner. Of the 143 trees to be removed, the 'Flora and Fauna Assessment' dated 2 August 2011 and prepared by Footprint Green Pty Ltd records that 39 (27%) have a 'high' to 'significant' landscape

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significance and includes (amongst other species) 20 mature *Eucalyptus saligna* (Sydney Blue Gum) all of which are in good to excellent health and achieve heights of between 9.0m to 25.0m. Visually, these trees generally follow the line of the existing watercourse and contribute towards the rural character of the area and provide a remnant pocket of native vegetation which has a clear relationship to the vegetation within the nearby Garigal National Park.

However, the 'Biodiversity' section of Council's Natural Environment Unit have advised that the proposed removal of trees can be supported subject to conditions which require that landscaping must be grown from local provenance seed and cuttings as per the species list for Bloodwood Scribbly Gum Woodland or Silvertop Ash-Brown Stringybark Forest. Additionally, to offset for the loss of canopy species, the landscape plan will include replacement tree planting of a minimum of 36 trees (ratio of .25:1). Weed management is also prescribed.

It should be noted that the development proposes the removal of 143 trees which represents 90.5% of the entire recorded tree population on the site and the replacement of 36 trees is considered to be significantly, and unacceptably, lower than what is proposed to be removed.

With regards to the impact upon the natural landscape, Council's Landscape Adviser notes that the proposed level of landscaping, particularly within the front setback area of Mona Vale Road, is not adequate and is not consistent with the relevant part of the A4 Myoora Road locality statement which requires a dense bushland buffer to be retained or established along Mona Vale Road. Similarly, the proposed landscaping is not in keeping with the provisions of the Front Building Setback Built Form Control as stipulated under WLEP 2000 which requires that the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs.

It should also be noted that the provision of landscaped open space is significantly less than what is required under the Landscaped Open Space Built Form Control and is not supported (see 'Built Form Controls' in this report).

With regards to the impact upon the watercourse, Council's Natural Environment Unit have advised that the development cannot be supported as it will have significant impacts upon the watercourse and that the piping and redirection of the watercourse is not in accordance with Council Policy No. PL 740 Waterways - "*Protection of Waterways and Riparian Land Policy*" and contravenes Clauses 56 and 60 of the General Principles of Development Control under WLEP 2000.

In this regard, and in particular with respect to the piping and redirection of the watercourse, the development is considered to be inconsistent with this objective.

- *To ensure low intensity of land use.*

Comment:

The term "low intensity" is stated in the Desired Future Character Statement of the A4 Myoora Road locality but is not specifically defined in WLEP 2000. In this regard, the matter of intensity is considered under *Vigor Master P/L v Warringah Council [NSWLEC 1128]*, Commissioner Hussey gave weight to the evidence of the Council Planner who sought to give meaning and understanding to the terms "intensity" and "impact". In this regard, the following characterisation was given:

*"Intensity: is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore, "low intensity" would constitute a development which has a low level of activities associated with it."*

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Size and scale

The application proposes the construction of seven (7) structures (bulky goods shop, restaurant and five (5) outdoor cinema screens), driveways and car parking on a site of 31,911.87m<sup>2</sup>.

In terms of scale, this assessment has found that the development does not comply with the majority of Built Form Controls for the locality. However, of the non-compliances the Landscaped Open Space Built Form Control is the most significant with a shortfall of 11% (3,510.3m<sup>2</sup>) which indicates that the scale of the proposal is greater than envisioned within the locality and amounts to an overdevelopment of the site.

When compared to other large developments in the area, the proposal has been found to constitute an overdevelopment in terms of size and scale. The table below provides a comparison of the degrees of compliance between the proposal and the developments at No. 33 Myoora Road (DA2004/1059 - The German International School) and No. 48 Myoora Road (DA2003/0670 – Miramare Gardens Function Centre).

Control	Required	DA2004/1059	DA2003/0670	Proposal*
Site Area		<b>8,100m<sup>2</sup></b>	<b>16,087m<sup>2</sup></b>	<b>31,911.87m<sup>2</sup></b>
Housing Density	<b>1 dwelling/2ha</b>	N/A	N/A	N/A
Building Height (Overall)	<b>8.5m</b>	<b>8.5m</b>	<b>8.455m</b>	<b>7.4m - 13.2m</b>
Building height (Natural ground to topmost ceiling)	<b>7.2m</b>	N/A	N/A	8.5m
Front Setback <b>Mona Vale Road</b> <b>Other Roads</b>	<b>30.0m</b> <b>20.0m</b>	<b>22.5m</b> <b>20.0m</b>	<b>55.0m –</b> <b>88.3m</b> <b>20.0m</b>	<b>30.0m</b> 15.0m
Rear Building Setback	<b>7.5m</b>	<b>7.5m</b>	N/A	N/A
Side Building Setback <b>North</b> <b>South</b>	<b>7.5m</b> <b>7.5m</b>	<b>18.0m – 21.8m</b> <b>7.5m</b>	<b>7.5m</b> <b>7.5m</b>	1.0m 3.5m
Building Site Coverage	<b>20%</b>	<b>19%</b>	<b>Unavailable</b>	20.1% (6,424m <sup>2</sup> )
Landscaped Open Space	<b>70%</b>	<b>62% (5,022m<sup>2</sup>)</b>	<b>70% (11,260m<sup>2</sup>)</b>	59% (18,827.4m <sup>2</sup> )

**\*Note:** The bold figures indicate non-compliance with the respective built Form Control.

Extent of the activities associated with the proposal

The extent of activity may be gauged by the patronage and traffic generated by the development.

The Development Application proposes three distinct land uses which result in the development being in continual operation between 7.00am to 11.30pm seven (7) days a week.

In terms of patronage, the 'Traffic and Parking Study' dated August 2011 and prepared by TAR Technologies states that the restaurant will attract 20 vehicle trips per hour and the bulky goods store will attract 18 vehicle trips per hour (see page 3.3 of that report). The Statement of Environmental Effects notes that the cinema will operate between 10.00am and 11.30pm and has the capacity to accommodate up to 700 people at any one time.

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Whilst difficult to estimate the number of patrons to the cinema (the RMS' "Guide to Traffic Generating Developments" does not include a cinema use in its 'Summary table of land use traffic generation rates'), using the figures provided in the 'Traffic and Parking Study' the restaurant and bulky good shop alone will generate a minimum of 38 vehicle trips per hour (or a minimum of 342 vehicle trips per day) between the core operating hours of 8.00am and 5.00pm for seven (7) days a week. Patronage to the cinema use will obviously add to this figure.

When compared to other large developments in the area, the proposal has been found to generate a significantly greater degree of patronage and traffic movement over an extended period of time on any given day. The table below provides a comparison of the traffic generation between the proposal and the developments at No. 33 Myoora Road (DA2004/1059 - The German International School) and No. 48 Myoora Road (DA2003/0670 – Miramare Gardens Function Centre).

Traffic Generation	DA2004/1059	DA2003/0670	Proposal
Vehicle Trips	195am & 195pm*	50 – 150 p/h	38 + cinema p/h

\***Note:** School drop-off and pick-up times.

In this regard, the development is considered to constitute a high intensity land use and is inconsistent with this objective.

### 3. The existence and applicability of savings provisions in the draft LEP.

#### Comment:

In relation to the third principle, the draft WLEP 2009 contains a savings provision under Clause 1.8A which states:

*"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced".*

Reference is made to the Land and Environment court case, *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279, where the judgement summarises the weight to be given to a draft LEP, particularly in the circumstance when the document was a draft when the application was lodged and has since been gazetted with a transitional provision.

*"30. Whether one applies the test of "significant weight", or "some weight", or "considerable weight" or "due force" or "determining weight" to the later instrument is not, however, the end of the matter. The savings clause still has some work to do. The proposed development is a permissible development by dint of the savings clause. In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith. Various expressions have been used to define this concept, but the approach which has been favoured in the Court of Appeal is to ask whether the proposal is "antipathetic" thereto (Coffs Harbour Environment Centre Inc v Coffs Harbour City Council [1991] 74 LGRA 185 at 193)."*

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Comment:

The draft WLEP 2009 is currently a draft document (at the time of writing this report) and has not commenced. Therefore, in accordance with the above judgement the proposed development cannot be supported as it is not consistent with the aims and objectives of the RU4 Rural Small Holdings zone.

**Assessment of the variation to the Building Height Development Standard**

The site is located within the RU4 Rural Small Holdings zone and is subject to a Building Height Development Standard of 8.5m (as measured from the existing ground level).

The proposal must satisfy the objectives of *Clause 4.3 – Height of Buildings*, the underlying objectives of the particular zone, and the objectives of *Clause 4.6 - Exceptions to Development Standards* under the Draft WLEP 2009. The following provides an assessment of the variation against relevant objectives.

**1. Is the planning control in question a development standard?**

The prescribed height limitation pursuant to Clause 4.3 of Draft WLEP 2009 is a development standard.

**2. What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3(1) – ‘Height of Buildings’ of the Draft WLEP 2009 are as follows:

(1) *The objectives of this clause are as follows:*

- (a) *to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality that may be identified in any development control plan made by the Council.*

Comment:

The proposed building height, building bulk and scale has been found to be not compatible with the building height, bulk and scale of existing surrounding development and is not consistent with the Desired Future Character statement of the locality as identified under WLEP 2000.

The development does not satisfy this objective.

- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access;*

Comment:

The following provides an assessment against the elements of the objective:

*Visual impact*

The site currently accommodates land uses consisting of a dwelling house, informal sea container storage and cleared land. The remainder of the site accommodates dense bushland and a natural watercourse. Therefore, the site currently presents as an open, densely vegetated and expansive bushland property commensurate with its semi-rural surrounds.



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The development proposes seven (7) distinct structural components consisting of a bulky goods shop, a restaurant and five (5) large LCD cinema screens (the heights of the screens have not been provided but the widths are measured at between 20.0m and 25.0m).

It is noted from the landscape plan (see Plan Nos. 628.02 and 628.03 dated 29 July 2011 and prepared by Tramonte Jensen) that the landscaping separating the screens consists of shrubs with a height of between 3.0m to 6.0m while the proposed vegetation aligning the street frontage of Myoora Road and Mona Vale Road consists of trees with a height of between 12.0m to 20m. The plans also indicate that the vegetation proposed between the northern screens and the side property boundary consist of shrub and ground cover planting while the vegetation proposed between the southern screens and the side property boundary consists of low canopy trees, shrubs and groundcover.

The proposed landscaping along the Mona Vale Road and Myoora Road frontages will adequately conceal the development from both streets such that the visual impact of the development will be successfully minimised. However, the proposed landscaping along the side boundaries will not adequately conceal the proposed surface areas of the cinema screens from neighbouring properties. As noted above, the application does not include details on the height of the screens but, given the proposed widths of between 20.0m and 25.0m, the heights would be considerable and would collectively form an unrelieved structural mass along both side boundaries. Further, the application does not include lux diagrams which details the luminous intensity of the screens and Council is therefore unable to assess the visual impact of the development in terms of glare.

In this regard, the visual impact produced by the development is not considered to be consistent with this objective.

#### *Disruption of views*

This matter has been assessed above (see the objective listed under 'Assessment of prohibition') where it was found that the development will not have any significant impact upon view sharing.

#### *Loss of privacy*

Despite the dwelling located on the neighbouring property to the south (No. 40 Myoora Road), the site is not located within a residential area. The afore-mentioned dwelling is located towards the Mona Vale Road frontage and opposite the southern elevation of the proposed bulky goods shop (which is setback approximately 15.5m from the side property boundary).

While the development will not have any significant impact upon visual privacy, there is likely to be a significant impact upon acoustic privacy from vehicle and pedestrian patronage as the sole Mona Vale Road entrance to the site (see the referral response from the RMS in 'External Referrals' in this report) will be via the southern crossover and driveway which is located 4.0m from the side property boundary.

The Statement of Environmental Effects notes that the cinema will not use amplified sound as individual transmitters with headphones will be provided. However, it is noted that an acoustic report has not been provided to satisfy Council that the development will not have any adverse impact upon the amenity of surrounding land.

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### *Loss of solar access*

It is noted that certified shadow diagrams have not been submitted with the Development Application.

The site is located directly to the north of a semi-rural landholding. The proposed bulky goods shop is to be located at the Mona Vale Road side of the property and setback approximately 15.5m from the side property boundary. Given the 15.5m setback and the 8.5m building height at the southern side of the development (facing the neighbouring property) it has been assessed that the extent of shadows cast will not extend beyond the property boundary.

The development does not satisfy this objective in terms of visual impact.

- (c) *to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments.*

### Comment:

As discussed above (see 'Visual Impact' in this section of the report), the overall appearance of the development will be diluted from the public domain by the incorporation of dense vegetation along the front boundaries facing Mona Vale Road and Myoora Road. In this regard, the proposal minimises adverse visual impact on the scenic quality of Warringah's bush environment, most notably represented by the Ku-ring-gai Chase National Park located 320m to the west.

However, the arrangement of seven (7) large LCD cinema screens along both side boundaries, without effective landscape relief, will have an adverse impact upon the scenic quality of Warringah's bush environment, especially when viewed from the affected neighbouring properties. Additionally, the application does not include lux diagrams which details the luminous intensity of the screens and Council is therefore unable to assess the visual impact of the development upon the scenic quality of Warringah's bush environment, in terms of glare.

The development does not satisfy this objective.

## **3. What are the underlying objectives of the zone?**

In assessing the developments non-compliance with the building height, consideration must be given to its consistency with the underlying objectives of the zone.

The development has previously been assessed against the objectives of the zone (refer to Point 2 of 'Assessment of prohibition' in this report) where it was found that the development is inconsistent with the underlying objectives of the RU4 Rural Small Holdings zone.

The development does not satisfy this objective.

## **4. Is the variation to the development standard consistent with the objectives of Clause 4.6 of the Draft WLEP 2009?**

The objectives of Clause 4.6 – 'Development Standards' of the Draft WLEP 2009 seek:

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

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In this regard, sub-clause 4.6(4) requires that:

(4) *Consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Comment:

With regards to Subclause 4.6(4)(a)(i), Subclause 3 in the Draft WLEP 2000 states:

“(3) *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

The Statement of Environmental Effects includes a written request to vary the Building Height Built Form Control. A review of the request reveals that the applicant only addresses the non-compliance at the proposed architectural features which are located at the centre of the eastern and western elevations of the bulky goods shop. The request does not include other areas of non-compliance with the Building Height Built Form Control which are located along the northern side elevation and along the western elevation (rear) and are attributed to the structure of the building (as opposed to architectural features). In this regard, the request to vary the Building Height Built Form Control does not adequately address the matters required to be demonstrated by subclause (3).

With regards to Subclause 4.6(4)(a)(ii), it has been found that the development is in not the public interest as it does not achieve consistency with the Objectives of the Building Height Development Standard and with the Objectives of the RU4 Rural Small Holdings zone.

- (b) *the concurrence of the Director-General has been obtained.*

Comment:

Concurrence is not required from the Director-General due to the Draft Warringah Local Environmental Plan awaiting gazettal.

## 5. Is the variation well founded?

The variation to the building height development standard is not considered to be well founded in that the proposed non-compliance is inconsistent with objectives of *Clause 4.3 – Height of Buildings*, the underlying objectives of the particular zone, and the objectives of *Clause 4.6 - Exceptions to Development Standards* under the Draft WLEP 2009, as set out above.

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**6. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?**

On the basis of the above comments, it is considered that the variation to the building height development standard is not well founded and that compliance is reasonable and necessary in the particular circumstances of the case.

**ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)**

**State Environmental Planning Policies (SEPPs)**

**State Environmental Planning Policy No. 55 – Remediation of Land**

Clause 7(1)(a) of *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55) and Clause 48 of WLEP 2000 states that a consent authority must not consent to the carrying out of any development on land unless;

- It has considered whether the land is contaminated, and
- If the land is contaminated, it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out, and
- If the land requires remediation to be made suitable for the development proposed to be carried out, it is satisfied that the land will be remediated before the development is carried out.

In response to the above requirements of the SEPP, the applicant has submitted a *Preliminary Environmental Site Assessment* (Phase 1) dated July 2011 and prepared by Aargus Australia.

The methodology of the investigation included limited soil sampling from five (5) bore locations within the site at depths of 0.3m below ground level (BGL). The Assessment concludes that the areas identified which may contain contamination were considered to be of low environmental concern and that the laboratory results for the soil samples were generally lower than the relevant regulatory guideline criteria adopted for this development.

The Development Application was referred to Council's Environmental Health Officer who notes that the 'Contaminated Sites Sampling Design Guidelines' published by the NSW Environment Protection Authority in September 1995, recommends 40 soil sampling points for a 3.0 hectare site as opposed to the five (5) sampling points investigated by Aargus Australia and that, as the site has evidence of contamination and has a history of uncontrolled fill, a Phase 2 Site Contamination Assessment is required. In this regard, Council's Environmental Health Officer advises that the information provided with the Development Application is not adequate to enable an effective assessment of land contamination.

Therefore, the lack of information required by Council to be satisfied that SEPP 55 has been appropriately addressed is considered to be a matter which constitutes a reason for refusal.

**State Environmental Planning Policy (Infrastructure) 2007**

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
- immediately adjacent to an electricity substation,

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- within 5m of an overhead power line
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line

The entrance to the site is located within 14m of a power line support pole. Consequently, the application was referred to Ausgrid who raised no objection to the proposal.

### Roads and Maritime Services (RMS)

The Development Application was referred to the RMS for approval under the provisions Section 138 of the *Roads Act, 1993* and Schedule 3 of *State Environmental Planning Policy (Infrastructure) 2007* as traffic generating development.

In their letter dated 17 October 2011, the RMS advised that 'in-principle' support is granted for the development subject to the application being amended to provide for left-in only access on Mona Vale Road.

Following receipt of the referral response from the RMS, Council's Traffic Engineer advised (see 'Internal Referrals' in this report) that Council will require additional information, including a copy of the revised SIDRA intersection analysis, to assess the implications of traffic generated by this proposal on the local road network.

The time frame required to address the issues raised by the RMS (and Council's Traffic Engineer) will not allow Council to determine the application within an appropriate timeframe and is inconsistent with Council's adopted Policy, namely "*Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications*" which is empowered under Clause 55(1) of the *Environmental Planning and Assessment Regulation 2000*.

In this regard, this issue has been included as a reason for refusal due to the lack of sufficient information.

### **Regional Environment Plans (REPs)**

There are no Regional Environmental Plans relevant to this property.

### **Local Environment Plans (LEPs)**

#### **Warringah Local Environment Plan 2000 (WLEP 2000)**

##### Desired Future Character

The subject site is located in the A4 Myoora Road Locality under Warringah Local Environmental Plan 2000.

The Desired Future Character Statement for this locality states:

*The Myoora Road locality will provide an environment for low intensity business, community and leisure uses which do not rely on exposure to passing trade for their continued operation. Along Mona Vale Road a dense bushland buffer will be retained or established.*

*New development or further intensification of existing development will provide safe vehicular access to the satisfaction of the Council and the Roads and Traffic Authority.*



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*Only small, non obtrusive and non illuminated signs that identify the use of a site are to be visible from Mona Vale Road. Signs that are designed of such size, height or visual appearance so as to attract passing trade will not be permitted. All signs are to be in keeping with the colour and textures of the natural landscape.*

*Articulated building forms, generous landscaped spaces around buildings and building materials that blend with the colours and textures of the natural landscape will be used to minimise the visual impact of development on long distance views of the locality.*

The bulky goods shop and cinema use are defined as respectively Bulky Goods Shop and Entertainment Facility under the WLEP 2000 Dictionary and are each classified as Category 3 development within the locality. The restaurant use is defined as a Restaurant under the WLEP 2000 Dictionary and is respectively classified as a Category 1 development within the locality

Clause 12(3)(b) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality's Desired Future Character statement.

Accordingly, an assessment of consistency of the proposed development against the locality's Desired Future Character statement is provided hereunder:

*The Myoora Road locality will provide an environment for low intensity business, community and leisure uses which do not rely on exposure to passing trade for their continued operation. Along Mona Vale Road a dense bushland buffer will be retained or established.*

Comment:

The matter of 'high intensity' has been discussed previously in this report (see 'Assessment of prohibition') where it was found that the proposed uses collectively constituted high intensity development.

The Development Application is not accompanied by an economic viability or impact statement and the reliance on passing trade by the uses proposed cannot be accurately ascertained. In the absence of supporting information it is assumed that the bulky goods shop and the restaurant will rely on passing trade for their continued operation.

The Development Application includes landscape plans (see Plan Nos. 628.02 to 628-05 dated 29 July 2011 and prepared by Tramonte Jensen which indicate that the proposed landscaping along the Mona Vale Road frontage will adequately conceal the development from both streets such that the visual impact of the development will be successfully minimised. However, Council's Landscape Adviser notes (see 'Internal Referrals' in this report) that the development, particularly within the front setback area of Mona Vale Road, is not adequate and is not consistent with this part of the locality statement.

The development is inconsistent with this part of the Desired Future Character statement.

*New development or further intensification of existing development will provide safe vehicular access to the satisfaction of the Council and the Roads and Traffic Authority.*

Comment:

The Development Application was referred to the RMS for approval under the provisions Section 138 of the *Roads Act, 1993*. In their response, the RMS provided "in-principle" support for left-in only access on Mona Vale Road pending the preparation, submission and approval of revised plans and information.

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Following receipt of the referral response from the RMS dated 17 October 2011, Council's Traffic Engineer advised (see 'Internal Referrals' in this report) that Council will require additional information, including a copy of the revised SIDRA intersection analysis, to assess the implications of traffic generated by this proposal on the local road network.

The time frame required to address the issues raised by the RMS (and Council's Traffic Engineer) will not allow Council to determine the application within an appropriate timeframe and is inconsistent with Council's adopted Policy, namely "*Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications*" which is empowered under Clause 55(1) of the *Environmental Planning and Assessment Regulation 2000*.

In this regard, the development as proposed is inconsistent with this part of the Desired Future Character statement and this issue has been included as a reason for refusal due to the lack of sufficient information.

*Only small, non obtrusive and non illuminated signs that identify the use of a site are to be visible from Mona Vale Road. Signs that are designed of such size, height or visual appearance so as to attract passing trade will not be permitted. All signs are to be in keeping with the colour and textures of the natural landscape.*

Comment:

The Development Application does not propose any signage. All signage for the development, if approved, will be the subject of a future Development Application.

*Articulated building forms, generous landscaped spaces around buildings and building materials that blend with the colours and textures of the natural landscape will be used to minimise the visual impact of development on long distance views of the locality.*

Comment:

The proposed bulky goods shop consists of a rectangular shaped building in a regular box design. However, the building includes vertical architectural elements coupled with elevated roof forms along the eastern and western façades to provide sufficient visual relief and interest.

The development includes a well considered landscape theme which provides visual interest and functionality. However, the provision of landscaped open space is deficient by 11% (3,510.3m<sup>2</sup>) which is considered to be a significant and unacceptable departure from the minimum requirement of 70% (22,337.7m<sup>2</sup>).

The Development Application includes a Schedule of Colours and Finishes which lacks key information about where the colours and materials will be applied. Therefore, Council cannot satisfactorily ascertain whether the proposed building materials will blend with the colours and textures of the natural landscape.

The development is inconsistent with this part of the Desired Future Character statement.

Given the above assessment, the development is considered to be inconsistent with the Desired Future Character statement of the A4 Myoora Road Locality.

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**Built Form Controls (Development Standards)**

The development does not propose any construction works. As such, the Built Form Controls are not relevant for this application with exception to the following:

Control	Requirement	Provided	Compliant
Housing Density	<b>1 dwelling/2ha of site area</b>	<b>N/A</b>	<b>N/A</b>
Building Height ( <b>Overall</b> )	<b>8.5m</b>	<b>6.5m - 13.2m</b>	No <b>(+4.7m)</b>
Building height ( <b>Natural ground to topmost ceiling</b> )	<b>7.2m</b>	<b>8.5m</b>	No <b>(+1.3m)</b>
Front Setback <b>Mona Vale Road</b> <b>Other Roads</b>	<b>30m</b> <b>20m</b>	<b>15m</b>	<b>Yes</b> No <b>(-5.0m)</b>
Rear Building Setback	<b>7.5m</b>	<b>N/A</b>	<b>N/A</b>
Side Building Setback <b>North</b> <b>South</b>	<b>7.5m</b> <b>7.5m</b>	<b>1.0m</b> <b>3.5m</b>	No <b>(-6.5m)</b> No <b>(-4.0m)</b>
Building Site Coverage	<b>20% (6,382.2m<sup>2</sup>)</b>	<b>20.1% (6,438m<sup>2</sup>)</b>	No <b>(+55.8m<sup>2</sup>)</b>
Landscaped Open Space	<b>70% (22,337.7m<sup>2</sup>)</b>	<b>59% (18,827.4m<sup>2</sup>)</b>	No <b>(-3,510.3m<sup>2</sup>)</b>

The development fails to satisfy the Locality's Building Height, Front Setback, Side Setback, Building Site Coverage and Landscape Open Space Built Form Controls. Accordingly, further assessment is considered against the applicability of Clause 20(1).

**Clause 20(1) stipulates:**

*"Notwithstanding clause 12(2)(b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the General Principles of Development Control, the Desired Future Character of the locality and any relevant State Environmental Planning Policy."*

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

**a) General Principles of Development Control**

The proposal fails consistency with Clauses 38, 43, 48, 49, 50, 56, 57, 58, 60, 63, 65, 66, 68, 72, 73, 74, 75 and 76 of the General Principles of Development Control and accordingly, fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on "General Principles of Development Control" in this report for a detailed assessment of consistency).

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## b) Desired Future Character of the Locality

The proposal is inconsistent with the Desired Future Character statement of the A4 Myoora Road Locality and accordingly, fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

## c) Relevant State Environmental Planning Policies

The proposal has been considered to be inconsistent with applicable State Environmental Planning Policies. (refer to earlier discussion under ‘State Environmental Planning Policies’, in particular, *State Environmental Planning Policy No. 55 – Remediation of Land*. Accordingly the proposal fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Notwithstanding, in order to fully consider the application the following provides an assessment of the non-compliance to the Building Height, Front Setback, Side Setback, Building Site Coverage and Landscape Open Space Built Form Controls (note: in accordance with Clause 20(1) of WLEP 2000, the following assessment does not constitute any consideration for variations to the respective Built Form Control).

In assessing these elements of the proposal, it is necessary to consider the objectives of the respective Controls. Accordingly, consistency with the merit considerations drawn from the relevant objectives and are addressed below:

### Building Height Built Form Control

#### Area of inconsistency with Control:

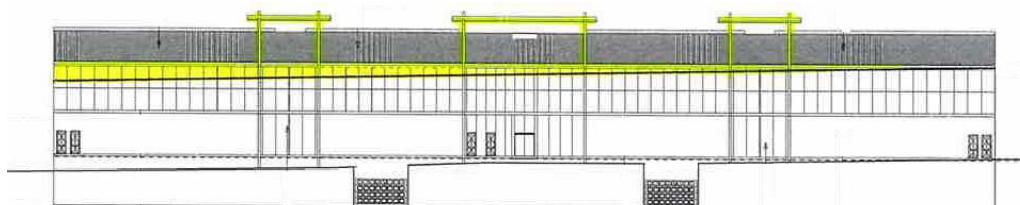
Control	Requirement	Provided	Compliant
Building Height (Overall)	8.5m	6.5m - 13.2m	No (+4.7m)
Building height (Natural ground to topmost ceiling)	7.2m	8.5m	No (+1.3m)

The Building height Built Form Control stipulates that “*buildings are not to exceed 8.5 metres in height, where height is the distance measured vertically between the topmost point of the building (not being a vent or chimney or the like) and the natural ground level below.*”

*Buildings are not to exceed 7.2 metres from natural ground level to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas located wholly within a roof space), but this standard may be relaxed on sites with slopes greater than 20 per cent within the building platform (measured at the base of the walls of the building), provided the building does not exceed the 8.5 metre height standard, is designed and located to minimise the bulk of the building and has minimal visual impact when viewed from the downslope sides of the land.”*

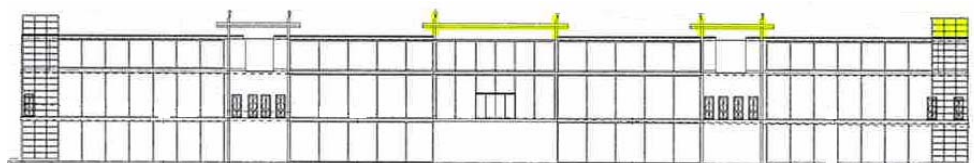
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Figures 1 to 3 below show the areas of non-compliance (highlighted in yellow).



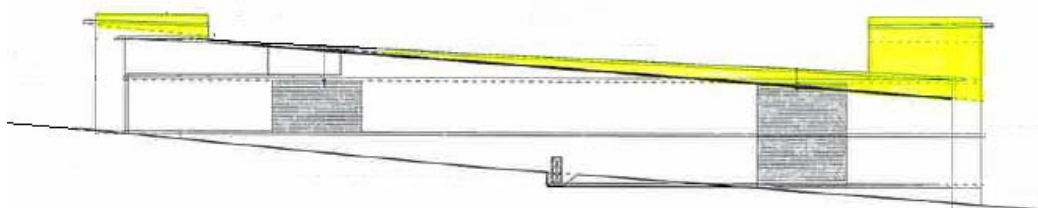
**Figure 1** Western (rear) elevation

Source: Adapted by the author from Plan No. 205A dated 7 September 2008 prepared by Rodney Albert Yannakis & Associates



**Figure 2** Eastern (front) elevation

Source: Adapted by the author from Plan No. 205A dated 7 September 2008 prepared by Rodney Albert Yannakis & Associates



**Figure 3** Northern (side) elevation

Source: Adapted by the author from Plan No. 206A dated 7 September 2008 prepared by Rodney Albert Yannakis & Associates

#### Merit consideration of non-compliance:

In assessing this element of the proposal, it is necessary to consider the merit considerations of the Building Height Built Form Control. Accordingly, consistency with the merit considerations are addressed below:

- *Ensure that development does not become visually dominant by virtue of its height and bulk.*

As seen in Figures 1 to 3 above, the proposed bulky goods shop includes three principle areas which breach the Building Height Built Form Control, the most obvious being the architectural feature which supports the elevated roofs to the rear and the triangular sections along the side and rear elevations.

When viewed directly from the front and rear, the architectural features do not overemphasise the building height nor add to the bulk of the building. However, when viewed from an angle (ie: from neighbouring side properties), the supporting side walls of the architectural feature to the rear do add to the height and bulk of the building such that the building becomes visually dominant. Given the box-like form of the building it is desirable to include articulation to provide visual relief and interest and the architectural feature at the rear would be considered favourable if reduced in height to a similar scale and form as those proposed along the front elevation.



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The triangular sections along the northern side and rear elevations are relatively minor and are accentuated by the cross-slope of the site. The building height at the highest point of the non-compliance is 10.2m which, considering its relatively small area at the rear corner of building, does not significantly add to the bulk of the building.

The development also includes five (5) large LCD screens arrayed along the two side boundaries which have widths of between 20m to 25m. The heights of the screens were not provided and the surface areas (at the front and rear) cannot be ascertained and it is considered that the bulk of the screens will have a visually dominant impact upon the neighbouring side properties. As noted earlier in this report (see the objectives listed under 'Assessment of prohibition'), the proposed landscaping along the side boundaries will not adequately conceal the proposed surface areas, and therefore the visual bulk, of the cinema screens from neighbouring properties.

The development is considered to be inconsistent with this objective.

- *Preserve the amenity of surrounding land.*

Amenity can be ascribed to three (3) key areas: view sharing, privacy and solar access.

#### View sharing

This matter has been assessed earlier in this report (see the objectives listed under 'Assessment of prohibition') where it was found that the development will not have any significant impact upon view sharing.

#### Privacy

The only neighbouring dwelling is situated at No. 40 Myoora Road and is located towards the Mona Vale Road frontage and opposite the southern elevation of the proposed bulky goods shop (which is setback approximately 15.5m from the side property boundary).

While the development will not have any significant impact upon visual privacy, there is likely to be a significant impact upon acoustic privacy from vehicle and pedestrian patronage as the sole Mona Vale Road entrance to the site (see the referral response from the RMS in 'External Referrals' in this report) will be via the southern crossover and driveway which is located 4.0m from the side property boundary.

The Statement of Environmental Effects notes that the cinema will not use amplified sound as individual transmitters with headphones will be provided.

#### Solar access

It is noted that certified shadow diagrams have not been submitted with the Development Application.

The site is located directly to the north of a semi-rural landholding at No. 40 Myoora Road which includes a dwelling house. The proposed bulky goods shop is to be located at the Mona Vale Road side of the property and setback approximately 15.5m from the side property boundary. Given the 15.5m setback and the 8.5m building height at the southern side of the development (facing the neighbouring property) it has been assessed that the extent of shadows cast will not extend beyond the property boundary.

The development is considered to be inconsistent with this objective.

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- *Ensure that development responds to site topography and minimises excavation of the natural landform.*

With exception to the afore-mentioned architectural feature which supports the elevated roofs to the rear of the bulky goods shop, the above-ground elements of the building have been designed to appropriately respond to the gradual slope of the site (see Figure 3 above).

However, it is noted that the development proposes significant excavation works beneath the bulky goods shop of between 4.5m (at the rear) and 9.0m (at the front) to accommodate the basement car park.

The location and size of the basement car park is a result of the demand required by the combination of proposed uses on the site and the spatial layout of the development, most notably the cinema use which occupies 8,197m<sup>2</sup> (26%) of the site area. In the regard, it is considered that the excavation to provide for a basement car park is symptomatic of the overdevelopment of the site.

The development is considered to be inconsistent with this objective.

- *Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.*

The development includes a skillion roof form to the bulky goods shop which responds to the slope of the site. The design includes a number of architectural roof features which are considered to successfully break up the roof form (subject to the reduction in height of the architectural roof features along the rear of the building).

The restaurant includes a flat roof design but is located within the centre of the site and occupies a relatively small area such that it does not become an obvious or influencing architectural feature to the development specifically nor to the immediate area in general.

The development is considered to be consistent with this objective.

Given the visual dominance of the cinema screens, the impact upon the acoustic privacy of neighbouring land and the extent of excavation proposed, the Clause 20 variation to the Building Height Built Form Control is not supported.

### Front Setback Built Form Control

#### Area of inconsistency with Control:

Control	Requirement	Provided	Compliant
Front Setback <b>Myoora Road</b>	<b>20m</b>	<b>15m</b>	<b>No (-5.0m)</b>

The non-compliance occurs within the 20m wide front setback area facing Myoora Road where car parking is proposed to be located within 15m of the street alignment.

The Front Setback Built Form Control stipulates that “*development is to maintain a minimum front building setback. The minimum front building setback to Mona Vale Road is 30 metres.*

*The minimum front building setback to other roads is 20 metres.*

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*The minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs. The minimum front building setback area is to be free of any structures, carparking or site facilities other than driveways and letterboxes. 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 maintained."*

#### Merit consideration of non-compliance

In assessing this element of the proposal, it is necessary to consider the merit considerations of the Front Setback Built Form Control. Accordingly, consistency with the merit considerations are addressed below:

- *Create a sense of openness.*

The development creates a sense of openness as the proposed car parking area located within the front setback area consists of open hardstand only.

The development is considered to be consistent with this objective.

- *Provide opportunities for landscaping.*

The development is significantly deficient in the provision of landscaped open space (see 'Landscaped Open Space Built Form Control' below) which is a result of the combination of building footprints, driveways and hardstand car parking areas. In this regard, this element of the development contributes towards this deficiency and does not provide an opportunity for landscaping.

The development is considered to be inconsistent with this objective.

- *Minimise the impact of development on the streetscape.*

The proposed car parking area is situated at ground level and does not include any structures which would otherwise create any building bulk. Additionally, the car parking area is concealed from view from Myoora Road by a landscaped screen which extends across the width of the site with the exception of the entry/exit driveways). In this regard, this element of the development will not have any significant impact upon the streetscape.

The development is considered to be consistent with this objective.

- *Maintain the visual continuity and pattern of buildings, front gardens and landscape elements.*

Given the semi-rural character of the A4 Myoora Road Locality and the large lot sizes, the visual continuity and pattern of buildings, front gardens and landscaped elements, the proposed car parking area is considered to be relatively inconspicuous and will not alter the visual continuity and pattern of buildings and front gardens of the locality.

However, with regards to landscape elements, Council's Landscape Adviser notes that the proposed landscaping is not in keeping with the provisions of the Front Building Setback Built Form Control as stipulated under WLEP 2000 which requires that the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs.

The development is considered to be consistent with this objective.

- *The provision for corner allotments relates to street corners.*

The site is not a corner allotment. This objective does not apply.

Given the limitation on providing opportunities for landscaping, the Clause 20 variation to the Front Setback Built Form Control is not supported.

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## Side Boundary Setback Built Form Control

### Area of inconsistency with Control:

Control	Requirement	Provided	Compliant
Side Building Setback			
<b>North</b>	<b>7.5m</b>	<b>1.0m</b>	No (-6.5m)
<b>South</b>	<b>7.5m</b>	<b>3.5m</b>	No (-4.0m)

The non-compliance occurs between the proposed cinema screens and the respective north and south side boundaries.

The Side Boundary Setback Built Form Control stipulates that “*development is to maintain minimum rear and side building setbacks.*”

*The minimum rear and side building setback is 7.5 metres.*

*The rear and side setback areas are to be landscaped and free of any structures, carparking or site facilities other than driveways and fences.”*

### Merit consideration of non-compliance:

In assessing this element of the proposal, it is necessary to consider the merit considerations of the Side Boundary Setback Built Form Control. Accordingly, consistency with the merit considerations are addressed below:

- *Ensure that development does not become visually dominant by virtue of its height and bulk.*

The development proposes seven (7) distinct structural components which includes five (5) large LCD cinema screens (the heights of the screens have not been provided but the widths are measured at between 20m and 25m).

The array of screens along the side boundaries (three (3) along the northern side boundary and two (2) along the southern side boundary) which are setback 1.0m and 3.5m respectively, will introduce considerable bulk when viewed from the neighbouring properties at Nos. 42 and 46 Myoora Road such that these elements of the development will become visually dominant.

The proposed landscaping will not adequately conceal the proposed surface areas of the cinema screens from neighbouring properties. As noted above, the application does not include details on the height of the screens but, given the proposed widths of between 20m and 25m, the heights would be considerable and would collectively form an unrelieved structural mass along both side boundaries.

The development is considered to be inconsistent with this objective.

- *Preserve the amenity of the surrounding land.*

Amenity can be ascribed to three (3) key areas: view sharing, privacy and solar access.

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### View sharing

This matter has been assessed earlier in this report (see the objectives listed under 'Assessment of prohibition') where it was found that the development will not have any significant impact upon view sharing.

### Privacy

The cinema use is unlikely to create any adverse impact in terms of visual privacy given the incorporation of landscaping along the side boundary which would prevent people from looking over or climbing the boundary fence.

However, the cinema use may create an adverse impact in terms of acoustic privacy given the potential noise of up to 700 people gathering at any one time within such a concentrated area. Notwithstanding, it is noted that the Statement of Environmental Effects notes that the cinema will not use amplified sound as individual transmitters with headphones will be provided. It is noted that an acoustic report has not been provided to satisfy Council that the development will not have any adverse impact upon the amenity of surrounding land.

### Solar access

It is noted that certified shadow diagrams have not been submitted with the Development Application.

The site is located directly to the north of a semi-rural landholding at No. 40 Myoora Road which includes a dwelling house which is situated towards the front of the property facing Mona Vale Road. The development includes two (2) screens which are proposed to be located within the rear half of the site and setback approximately 3.5m from the side property boundary. Notwithstanding the lack of information pertaining to the heights of the screens, it is considered that this element of the development would not have a significant impact upon solar access to No. 40 Myoora Road due to the comparative area of the neighbouring property.

The development is considered to be inconsistent with this objective.

- *Ensure that development responds to site topography.*

The plans accompanying the Development Application do not include details on how this element of the proposal addresses the natural topography of the site. The levels on the survey diagram and site plans are illegible and the plans do not include any elevations pertaining to the proposed cinema use. In this regard, there is insufficient information to assess the development against this objective and to be satisfied that the proposal responds appropriately to the topography of the site.

The development is considered to be inconsistent with this objective.

- *Provide separation between buildings.*

The three (3) proposed cinema screens arrayed along the northern side boundary each have a width of 20m and are separated from each other by a distance of 8.0m. The two (2) proposed cinema screens arrayed along the southern side boundary each have a width of 25m and are separated from each other by a distance of 13.5m.

The separations between the screens along the northern side boundary, together with the 1.0m side setback, are not considered to be sufficient in providing relief from the overall mass and visual dominance that the screens will collectively have upon the neighbouring property at No. 46 Myoora Road.

The development is considered to be inconsistent with this objective.



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- *Provide opportunities for landscaping.*

The proposed setbacks between the cinema screens and the side boundaries are not sufficient to plant any vegetation of a substantial nature. In this regard, while this element of the development provides an opportunity for landscaping it is limited and does not provide any beneficial outcome in terms of concealing the cinema screens from view from neighbouring properties, relieving their visual dominance and maintaining the landscaped setting of the site.

The development is considered to be inconsistent with this objective.

- *Create a sense of openness.*

The proposed screens will introduce new elements of structural mass into an area which has historically been open and heavily vegetated. The solid surface areas of the screens will not be relieved by vegetation screening which would, at least, maintain the landscaped status quo and will reduce the sense of openness which is currently available to both neighbouring properties.

The development is considered to be inconsistent with this objective.

Given the visual dominance of the cinema screens, impact upon acoustic privacy, insufficient separation, minimal opportunities for landscaping and the reduction to the sense of openness, the Clause 20 variation to the Side Boundary Setback Built Form Control is not supported.

### **Building Site Coverage Built Form Control**

Area of inconsistency with Control:

Control	Requirement	Provided	Compliant
Building Site Coverage	<b>20% (6,382.2m<sup>2</sup>)</b>	<b>20.1% (6,438m<sup>2</sup>)</b>	No (+55.8m <sup>2</sup> )

The Building Site Coverage Built Form Control stipulates that “*the maximum building site coverage is 20 per cent of the site area except on allotments of an area of less than 3,500m<sup>2</sup> where the maximum building site coverage is 30 per cent.*”

*To measure building site coverage:*

- *the total building footprint/s is expressed as a percentage of the site area.”*

### Merit consideration of non-compliance

The Building Site Coverage Built Form Control does not have any objectives which permit an itemised assessment. However, the intent of the Control aims to maximise building separation and by minimising building bulk and scale.

In this regard, the non-compliance, which occurs through the combination of the proposed bulky goods shop and the restaurant, is considered to be minor in that it does not visually contribute towards the overall bulk and scale of any one element of the development as illustrated in the table below:

Use	Site Coverage
<b>Bulky Goods Shop</b>	<b>19.3% (6,160m<sup>2</sup>)</b>
<b>Restaurant</b>	<b>0.8% (278m<sup>2</sup>)</b>
<b>Total</b>	<b>20.1% (6,438m<sup>2</sup>)</b>

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In this regard, the development is considered to be consistent with the intent of the Site Coverage Built Form Control and the variation to the Site Coverage Built Form Control is supported.

### **Landscaped Open Space**

#### Area of inconsistency with Control:

Control	Requirement	Provided	Compliant
Landscaped Open Space	<b>70% (22,337.7m<sup>2</sup>)</b>	<b>59% (18,827.4m<sup>2</sup>)</b>	<b>No (-3,510.3m<sup>2</sup>)</b>

The Landscaped Open Space Built Form Control stipulates that *"the minimum area of landscaped open space is 70 per cent of the site area except on allotments of an area of less than 3,500m<sup>2</sup> where the minimum landscaped open space is 50 per cent.*

*To measure an area of landscaped open space:*

- impervious surfaces such as driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks and the like and any areas with a width or length of less than 2 metres are excluded from the landscaped open space area, and*
- the water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the landscaped open space area, and*
- landscaped open space must be at ground level, and*
- the minimum soil depth of land that can be included as landscaped open space is 1 metre."*

#### Merit consideration of non-compliance

In assessing this element of the proposal, it is necessary to consider the merit considerations of the Landscaped Open Space Built Form Control. Accordingly, consistency with the merit considerations are addressed below:

- Enable the establishment of appropriate planting to maintain and enhance the streetscape and the desired future character of the locality.*

This assessment has found that the development is deficient in the provision of landscaped open space by 11% (3,510.3m<sup>2</sup>) which has a significant impact upon the ability to establish appropriate planting to maintain and enhance the streetscape and the desired future character of the locality.

Council's Landscape Adviser has assessed the Development Application and notes (see 'Internal Referrals' in this report) that the development, particularly within the front setback area of Mona Vale Road, is not adequate and is not consistent with the relevant part of the A4 Myoora Road locality statement which requires a dense bushland buffer to be retained or established along Mona Vale Road.

Similarly, the proposed landscaping is not in keeping with the provisions of the Front Building Setback Built Form Control as stipulated under WLEP 2000 which requires that the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs.

The development is considered to be inconsistent with this objective.

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- *Enable the establishment of appropriate planting that is of a scale and density commensurate with the building height, bulk and scale.*

The planting located along the street frontages of Mona Vale Road and Myoora Road includes tall canopy trees with a height of between 12m to 20m. The planting along the side boundaries adjacent to the side elevations of the bulky goods shop includes medium canopy trees with a height of between 6.0m to 8.0m. The combination of these plantings are considered to be of an appropriate scale and density commensurate with the proposed height, bulk and scale of the bulky goods shop.

However, the planting located along the side boundaries adjacent to the cinema screens includes groundcover and shrubs with a height of between 0.4m to 3.0m and low canopy trees with a height of between 3.0m to 6.0m. The combination of these plantings are not considered to be of an appropriate scale and density commensurate with the proposed height, bulk and scale of the cinema screens.

The development is considered to be inconsistent with this objective.

- *Enhance privacy between dwellings.*

The site is located directly to the north of a semi-rural landholding at No. 40 Myoora Road which includes a dwelling house which is situated towards the front of the property facing Mona Vale Road.

In terms of visual privacy, the cinema use is unlikely to create any adverse impact given the incorporation of landscaping along the side boundary which would prevent people from looking over or climbing the boundary fence.

However, in terms of acoustic privacy, the landscaping proposed along the length of the side boundary adjacent to the cinema screens consists of groundcover, shrubs and low canopy trees. The lack of significant screening vegetation along the side boundary may have an adverse impact in terms of acoustic privacy given the potential background noise of up to 700 people gathering at any one time within such a concentrated area. It is noted that an acoustic report has not been provided to satisfy Council that the development will not have any adverse impact upon the amenity of surrounding land.

The development is considered to be inconsistent with this objective.

- *Accommodate appropriate outdoor recreational needs and suit the anticipated requirements of dwelling occupants.*

This objective does not apply as the development does not include any residential component such that appropriate outdoor recreational needs and suit the anticipated requirements of dwelling occupants would be required.

- *Provide space for service functions including clothes drying.*

This objective does not apply as the development does not include any residential component such that appropriate service functions would be required.



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- *Facilitate water management including on-site detention and the infiltration of stormwater.*

The Development Application was referred to Council's Development Engineer with regards to the provision of on-site detention and the infiltration of stormwater (see 'Internal Referrals' in this report). The information provided with the application was found to be deficient such that a clear decision could not be made.

It was also noted that there appeared to be a conflict with the proposed size and number of pipes required to convey upstream flows through the site, as shown on the landscape and stormwater drainage plans and that the landscape plans and stormwater drainage plans were to be coordinated.

The development is considered to be inconsistent with this objective.

- *Incorporate the establishment of any plant species nominated in the relevant locality statement.*

This objective does not apply as the locality statement does not nominate any plant species.

- *Conserve significant features of the site.*

The development proposes the piping and redirection of a natural watercourse which currently dissects the site from the south-western corner. The development also proposes the removal of 143 trees, the majority of which are located along, or adjacent to, the afore-mentioned watercourse. Both features are considered to be significant in that they contribute towards the bushland appearance of the site which compliments the open, semi-rural landscape.

The development is considered to be inconsistent with this objective.

Given the inability to establish appropriate plantings to maintain and enhance the desired future character of the locality, inability to establish appropriate plantings that are of a scale and density commensurate with the building height, bulk and scale, the impact upon acoustic privacy, insufficient information to ascertain on-site detention and the infiltration of stormwater and the non-conservation of significant features, the Clause 20 variation to the Landscaped Open Space Built Form Control is not supported.

#### General Principles of Development Control

The following General Principles of Development Control, as contained in Part 4 of Warringah Local Environmental Plan 2000, are applicable to the proposed development:

General Principle	Applies	Comments	Compliant
<b>CL38 Glare &amp; reflectivity</b>	Yes	<p>Clause 38 requires that <i>development is not to result in overspill or glare from artificial illumination, or sun reflection, which would unreasonably diminish the amenity of the locality.</i></p> <p>The Development Application is accompanied by a Schedule of Colours and Finishes. However, the Schedule is general and lacks information on where the respective colours and finishes will be applied.</p> <p>In this regard, the provided Schedule should be updated to clearly indicate where the proposed colours and finishes are to be applied and this could be addressed via an appropriate condition should this application be approved.</p>	<p><b>No</b></p> <p>Insufficient information provided to accurately determine compliance</p>

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General Principle	Applies	Comments	Compliant
		With regards to lighting, the Development Application does not include any details on the provision of lighting within the site which will be required given that the cinema and restaurant uses operate at night. Similarly, the application does not include any lux diagrams which details the luminous intensity of the screens and Council is therefore unable to assess the visual impact of the development upon the scenic quality of Warringah's bush environment, in terms of glare.	
<b>CL39 Local retail centres</b>	No	No further assessment required.	N/A
<b>CL40 Housing for Older People and People with Disabilities</b>	No	No further assessment required.	N/A
<b>CL41 Brothels</b>	No	No further assessment required.	N/A
<b>CL42 Construction Sites</b>	Yes	<p>Clause 42 requires that <i>construction sites are not to unreasonably impact on the surrounding amenity, pedestrian or road safety, or the natural environment.</i></p> <p><i>In particular:</i></p> <ul style="list-style-type: none"> <li>adequate areas are to be allocated for the handling and storage of materials which are safe and do not interfere with pedestrian and traffic movement,</li> <li>the timing, frequency, and routes of construction vehicle movements are to be safe and minimise impact on roads, pedestrian and traffic movement and surrounding residents,</li> <li>construction waste is to be minimised, legally handled, transported and disposed of,</li> <li>dedicated safe pedestrian access is, at all times, to be provided around the site, and</li> <li>construction sites will be managed to ensure air and water borne pollutants such as noise, dust, odour and liquids and the like are minimised.</li> </ul> <p>The development will involves demolition works, excavation and construction works which will require on-going management of trucks, noise and dust throughout the development process to minimise impacts upon the surrounding environment. These matters can be adequately addressed through the provision of a Construction Management Plan which can be subject to the imposition of an appropriate condition should this application be approved.</p>	Yes Subject to condition should this application be approved.
<b>CL43 Noise</b>	Yes	<p>Clause 43 requires that <i>development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants.</i></p> <p><i>In particular:</i></p> <ul style="list-style-type: none"> <li>noise from the combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise level by more than 5 dB (A) when measured in accordance with the Environment Protection Authority's Industrial Noise Policy at the receiving boundary of residential and other noise-sensitive land uses, and</li> <li>development near existing noise generating activities, such as industry and roads, is to be designed to mitigate the effect of that noise, and</li> </ul>	<b>No</b> Insufficient information provided to accurately determine compliance



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General Principle	Applies	Comments	Compliant
		<ul style="list-style-type: none"> <li>waste collection and delivery vehicles are not to operate in the vicinity of residential uses between 10 pm and 6 am.</li> </ul> <p>The development proposes to include an outdoor entertainment facility which can accommodate up to 700 people at any one time. This is a considerable number of people to patron one site and the background noise (up to 11.30pm seven days per week) will have impacts upon the acoustic privacy of neighbouring land. Additionally, the bulky goods shop component of the development will generate up to 345 vehicle trips per day which is a considerable increase on the current situation and will also have an impact upon the acoustic privacy the neighbouring land – particularly given the access/egress restrictions imposed by the RMS (see 'External referrals' in this report).</p> <p>It is noted that an acoustic report has not been provided to satisfy Council that the development will not have any adverse impact upon the amenity of surrounding land which, given the estimated patronage of the development and the nature of the proposed uses, is considered to be a critical component.</p> <p>This lack of sufficient information has been included as a reason for refusal.</p>	
<b>CL44 Pollutants</b>	No	No further assessment required	N/A
<b>CL45 Hazardous Uses</b>	No	No further assessment required.	N/A
<b>CL46 Radiation Emission Levels</b>	No	No further assessment required.	N/A
<b>CL47 Flood Affected Land</b>	No	No further assessment required.	N/A
<b>CL48 Potentially Contaminated Land</b>	Yes	<p>Clause 48 requires that:</p> <p>1) The consent authority must not consent to the carrying out of development on land unless:</p> <ul style="list-style-type: none"> <li>it has considered whether the land is contaminated, and</li> <li>if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and</li> <li>if the land requires remediation to be made suitable for the development proposed to be carried out, it is satisfied that the land will be remediated before the development is carried out.</li> </ul> <p>2) Consent for development on any of the following land must not be granted unless the consent authority has considered a preliminary investigation of the land concerned prepared in accordance with the contaminated land planning guidelines under section 145C of the Act:</p> <ul style="list-style-type: none"> <li>land that is specified in a preliminary investigation order under the Contaminated Land Management Act 1997</li> <li>land on which development referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out</li> </ul>	<b>No</b> Insufficient information provided to accurately determine compliance

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General Principle	Applies	Comments	Compliant
		<ul style="list-style-type: none"> <li>any land, to the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purpose of a hospital</li> <li>any land in relation to which there is no knowledge (or incomplete knowledge) as to whether development referred to in Table 1 to the contaminated land planning guidelines has been carried out</li> <li>any land on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).</li> </ul> <p>Council's Environmental Health Officer notes that the 'Contaminated Sites Sampling Design Guidelines' published by the NSW Environment Protection Authority in September 1995, recommends 40 soil sampling points for a 3.0 hectare site as opposed to the five (5) sampling points investigated by Aargus Australia and that, as the site has evidence of contamination and has a history of uncontrolled fill, a Phase 2 Site Contamination Assessment is required. In this regard, Council's Environmental Health Officer advises that the information provided with the Development Application is not adequate to enable an effective assessment of land contamination.</p> <p>Therefore, the lack of information required by Council to be satisfied that SEPP 55 has been appropriately addressed is considered to be a matter which constitutes a reason for refusal.</p>	
<b>CL49 Remediation of Contaminated Land</b>	Yes	<p>Further to the commentary under Clause 48 above, the lack of a Phase 2 Site Contamination Assessment Council cannot be certain of the level of contamination on the site and therefore, cannot be satisfied that the requirements of this clause can be achieved.</p> <p>Therefore, the lack of information required by Council to be satisfied that SEPP 55 has been appropriately addressed is considered to be a matter which constitutes a reason for refusal.</p>	<b>No</b> Insufficient information provided to accurately determine compliance
<b>CL49a Acid Sulfate Soils</b>	No	The site is not located within an acid sulphate classified zone.	N/A
<b>CL50 Safety &amp; Security</b>	Yes	<p>The development proposes an entertainment facility and a fast food restaurant which will operate until 11.30pm (although the Statement of Environmental Effects only notes that the fast food restaurant will open until "late") for seven (7) days per week. This will introduce a considerable increase in patronage to the site specifically and to the area generally. Whilst it is accepted that safety and security in the public domain are civil matters to be dealt with by NSW Police and Council Rangers, the Development Application does not include any details which show that consideration has been given to the on-site safety of patrons, to the site generally and to neighbouring properties.</p> <p>In this regard, in the absence of a formal crime risk assessment which addresses the requirements of Crime Prevention Through Environmental Design (CPTED) Council cannot be satisfied that the requirements of the clause have been addressed and that the development will not have an undesirable safety and security impact upon the area.</p>	<b>No</b> Insufficient information provided to accurately determine compliance

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General Principle	Applies	Comments	Compliant
<b>CL51 Front Fences and Walls</b>	No	No front fences or walls have been proposed.	N/A
<b>CL52 Development Near Parks, Bushland Reserves &amp; other public Open Spaces</b>	Yes	<p>Clause 52 requires that <i>development adjacent to parks, bushland reserves and other public open spaces, including land reserved for public open space, is to complement the landscape character and public use and enjoyment of that land.</i></p> <p><i>In particular:</i></p> <ul style="list-style-type: none"> <li><i>where appropriate, housing is to front public open spaces.</i></li> </ul> <p>This objective does not apply as the development does not propose housing.</p> <ul style="list-style-type: none"> <li><i>public access to public open spaces is to be maximised.</i></li> </ul> <p>The development is situated on the opposite side of Mona Vale Road and is separated by a wide, vegetated median strip. The development will not impede public access to the Reserve.</p> <ul style="list-style-type: none"> <li><i>buildings are to be located to provide an outlook to public open spaces, without appearing to privatise that space.</i></li> </ul> <p>The development is sufficiently separated from the Reserve by Mona Vale Road to avoid any perception of privatisation.</p> <ul style="list-style-type: none"> <li><i>development is to provide a visual transition between open space and buildings including avoiding abutting public open spaces with back fences.</i></li> </ul> <p>The physical separation of the site from the Reserve (45m) and the landscaped buffers between the sites will provide an appropriate transition.</p> <ul style="list-style-type: none"> <li><i>views to and from public open spaces are to be protected.</i></li> </ul> <p>The views from the Forest Hills Pony Club in the J.J. Melbourne Hills Memorial Reserve have been assessed elsewhere in this report where it was considered that the development will not restrict the available across-site views to the east and Ku-ring-gai-Chase National Park.</p> <ul style="list-style-type: none"> <li><i>buffers for bushfire protection are to be provided on private land and not on public land.</i></li> </ul> <p>The Mona Vale Road frontage and the north-western corner of the site adjacent to Myoora Road are located within the 100m wide bushfire prone land buffer (the proposed bulky goods shop will be situated within the Mona Vale Road buffer and two cinema screen/seating areas will be situated within the Myoora Road buffer ).</p> <p>The Development Application includes a 'Bushfire Hazard Assessment Report' dated 5 August 2011 and prepared by Building Code &amp; Bushfire Hazard Solutions Pty Ltd which includes recommendations which may be included as conditions should this application be approved.</p> <p>In this regard, the Development Application was also referred to the NSW Rural Fire Service who raised no objection to the development subject to a condition addressing asset protection zones.</p>	Yes Subject to conditions

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General Principle	Applies	Comments	Compliant
		<p><i>If public open space or land reserved for public open space contains bushland, development on that land is not to threaten the protection or preservation of the bushland.</i></p> <p>The site is not classified as public open space or land reserved for public open space.</p>	
<b>CL53 Signs</b>	No	No signs are proposed as part of this application.	N/A
<b>CL54 Provision and Location of Utility Services</b>	Yes	<p>Council's Environmental Health Officer notes that this site is not sewered. However, a special connection to a rising main may be achievable through discussion and approval with Sydney Water and this option is strongly recommended.</p> <p>Other utilities to the site (ie: power, water and telecommunications) may be supplied to the site.</p> <p>The site may be connected to power, water and telecommunication services but it is noted that the site is not sewered and it is considered critical that the site is connected to the Sydney Water sewer system given the anticipated volume of patronage to the site. A condition may be imposed which requires that the developer obtain approval from Sydney Water for connection to the sewer system prior to the issue of a Construction Certificate should this application be approved.</p>	<p>Yes</p> <p>Subject to condition should this application be approved.</p>
<b>CL55 Site Consolidation in 'Medium Density Areas'</b>	No	No further assessment required.	N/A
<b>CL56 Retaining Distinctive Environmental Features on Site</b>	Yes	<p>Clause 56 requires that <i>development is to be designed to retain and complement any distinctive environmental features of its site and on adjoining and nearby land.</i></p> <p><i>In particular, development is to be designed to incorporate or be sympathetic to environmental features such as rock outcrops, remnant bushland and watercourses.</i></p> <p>With regards to the piping and redirection of the watercourse, the 'Riparian' section of Council's Natural Environment Unit have advised that the development cannot be supported as it will have significant impacts upon the watercourse and that the piping and redirection of the watercourse is not in accordance with Council Policy No. PL 740 Waterways - "<i>Protection of Waterways and Riparian Land Policy</i>" and contravenes Clauses 56 and 60 of the General Principles of Development Control under WLEP 2000.</p> <p>With regards to the removal of trees, the 'Biodiversity' section of Council's Natural Environment Unit have advised that the development can be supported subject to conditions which require that landscaping must be grown from local provenance seed and cuttings as per the species list for Bloodwood Scribbly Gum Woodland or Silvertop Ash-Brown Stringybark Forest. Additionally, to offset for the loss of canopy species, the landscape plan will include replacement tree planting of a minimum of 36 trees (ratio of .25:1). Weed management is also prescribed.</p> <p>It is noted that the development proposes the removal of 143 trees which represents 90.5% of the entire recorded tree population on the site and the replacement of 36 trees is considered to be significantly, and unacceptably, lower than what is proposed to be removed.</p>	<p><b>No</b></p> <p>Insufficient information provided to accurately determine compliance</p>

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General Principle	Applies	Comments	Compliant
		Notwithstanding the support by 'Biodiversity', the proposed piping and redirection of the watercourse has been included as a reason for refusal due to the lack of concurrence and the provision of sufficient information.	
<b>CL57 Development on Sloping Land</b>	Yes	<p><i>Clause 57 requires that, on sloping land, the height and bulk of development, particularly on the downhill side, is to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope.</i></p> <p><i>In particular:</i></p> <ul style="list-style-type: none"> <li><i>the amount of fill is not to exceed more than 1 metre in depth, and</i></li> <li><i>fill is not to spread beyond the footprint of the building, and</i></li> <li><i>excavation of the landform is to be minimised.</i></li> </ul> <p><i>The geotechnical stability of sloping land to support development is to be demonstrated.</i></p> <p><i>Consent must not be granted for development involving the erection of a structure, including additions to an existing structure, on land identified as being potentially subject to landslip on the Landslip Hazard Map unless the consent authority has considered a report from a suitably qualified engineer as to the geotechnical stability of the land to support such development and an assessment of stormwater prepared by a suitably qualified hydraulic engineer.</i></p> <p>The site has a gradual slope of approximately 18m (6.8%) from Mona Vale Road down to Myoora Road. The site is not identified on Council's Landslip Hazard Map as being subject to potential land slip and, therefore, a geotechnical report is not required.</p> <p>However, it is noted that the development proposes significant excavation works beneath the bulky goods shop which considered to be symptomatic of the overdevelopment of the site. In this regard, the development does not satisfy the provision of this clause which requires that excavation of the landform be minimised.</p>	No
<b>CL58 Protection of Existing Flora</b>	Yes	<p><i>Clause 58 requires that development is to be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.</i></p> <p>It is noted that the development proposes the removal of 143 trees which represents 90.5% of the entire recorded tree population on the site and the replacement of 36 trees is considered to be significantly, and unacceptably, lower than what is proposed to be removed.</p>	No
<b>CL59 Koala Habitat Protection</b>	Yes	<p><i>Clause 59 applies to parcels of land, being all adjacent or adjoining land held in the same ownership, that are:</i></p> <ul style="list-style-type: none"> <li><i>greater than 1 hectare in area, and</i></li> <li><i>potential koala habitat.</i></li> </ul> <p><i>Before granting consent to development on land to which this clause applies, the consent authority, on information obtained from a person with appropriate qualifications and experience in biological science and fauna survey and management, must be satisfied as to whether or not the land is core koala habitat.</i></p>	Yes



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General Principle	Applies	Comments	Compliant
		<p>The site has a total area of 31,911.87m<sup>2</sup>.and therefore is subject to the provisions of this clause and Schedule 11 under WLEP 2000.</p> <p>The Development Application includes a Flora and Fauna Assessment (see pages 28 &amp; 29 of the Flora and Fauna Assessment dated 2 August 2011 as prepared by Footprint Green Pty Ltd) which includes an investigation into potential koala habitat in accordance with <i>State Environmental Planning Policy No. 44 – Protection of koala habitat</i> (note: as per Clause 5 of WLEP 2000, SEPP 44 does not apply due to the inclusion of Clause 59 as a General Principle of Development Control) and Schedule 11.</p> <p>The Assessment has found that, whilst no koala population exists on the site, the site does contain three (3) koala food trees (<i>Eucalyptus microcorys</i> or 'Tallowood')which are located within the centre of the site and generally follow the path of the existing watercourse. It is also noted from an examination of the species list (which contains 158 recorded trees on the site) that the site contains three (3) other koala food trees (<i>Eucalyptus haemastoma</i> or Broad leaved scribbly gum) resulting in a total of six (6) koala food trees.</p> <p>Clause 59 defines potential koala habitat as consisting of areas of native vegetation where the trees of the types listed in Schedule 11 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. The site has been found to constitute 3.8% of the total number of trees and therefore, does not qualify as a potential koala habitat.</p>	
<b>CL60 Watercourses &amp; Aquatic Habitats</b>	Yes	<p>Clause 60 requires that <i>development is to be sited and designed to maintain and enhance natural watercourses and aquatic habitat.</i></p> <p><i>(Note. Development within 40 metres of a watercourse requires a permit pursuant to the Rivers and Foreshores Improvement Act 1948, from the Department of Land and Water Conservation.)</i></p> <p>The development proposes the piping and redirection of the watercourse which traverses the site from the south-western corner.</p> <p>The application was accordingly referred to NoW as Integrated Development and to Council's Natural Environment Unit.. The applicant has not provided sufficient information to NoW to enable an accurate assessment and determination. Most notably, the development involves the piping and redirection of the watercourse which is situated in the upper catchment of Kierans Creek.</p> <p>Council's Natural Environment Unit have advised (see 'Internal referrals' in this report) that the development will have significant impacts upon the watercourse and that the piping and redirection of the watercourse is not in accordance with Council Policy No. PL 740 Waterways - "<i>Protection of Waterways and Riparian Land Policy</i>". The Unit also notes that a Waterway Impact Statement was not provided with the Development Application.</p>	<b>No</b>

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General Principle	Applies	Comments	Compliant
		The proposed piping and redirection of the watercourse has been included as a reason for refusal due to the lack of concurrence and the provision of sufficient information.	
<b>CL61 Views</b>	Yes	<p>Clause 61 requires that <i>development is to allow for the reasonable sharing of views.</i></p> <p>The site has a gradual slope of approximately 18m (6.8%) from Mona Vale Road down to Myoora Road. Therefore, as Mona Vale Road forms the high point of the site any long distance views would be available from that vantage point.</p> <p>Long distance views are currently limited from Mona Vale Road due to the dense vegetation which runs along the front boundary. However, it is noted that the land continues to slope upwards from Mona Vale Road on the eastern side by approximately 10.0m to the plateau which accommodates the Forest Hills Pony Club in the J.J. Melbourne Hills Memorial Reserve. This area is located directly opposite the development site and enjoys long distance views towards the east and Ku-ring-gai-Chase National Park.</p> <p>The development proposes the construction of the bulky goods shop at the high side of the site adjacent to Mona Vale Road and achieves a height of 8.5m facing Mona Vale Road and a height of 14m facing the internal areas of the site. Given the difference in height between the development and the Forest Hills Pony Club, and the gradual slope of the site, it is considered that the development will not restrict the available across-site views to the east and Ku-ring-gai-Chase National Park.</p> <p>In this regard, the development satisfies the four part test established under <i>Tenacity Consulting Pty Ltd Vs Warringah Council [2004] NSWLEC 140.</i></p>	Yes
<b>CL62 Access to sunlight</b>	Yes	<p>Clause 62 requires that <i>development is not to unreasonably reduce sunlight to surrounding properties.</i></p> <p><i>In the case of housing:</i></p> <ul style="list-style-type: none"> <li><i>sunlight, to at least 50% of the principal private open spaces, is not to be reduced to less than 2 hours between 9 am and 3 pm on June 21, and</i></li> <li><i>where overshadowing by existing structures and fences is greater than this, sunlight is not to be further reduced by development by more than 20%</i></li> </ul> <p>It is noted that certified shadow diagrams have not been submitted with the Development Application.</p> <p>The site is located directly to the north of a semi-rural landholding. The proposed bulky goods shop is to be located at the Mona Vale Road side of the property and setback approximately 15.5m from the side property boundary. Given the 15.5m setback and the 8.5m building height at the southern side of the development (facing the neighbouring property) it has been assessed that the extent of shadows cast will not extend beyond the property boundary.</p>	Yes
<b>CL63 Landscaped Open Space</b>	Yes	<p>Clause 63 requires that <i>landscaped open space is to be of such dimensions and slope and of such characteristics that it will:</i></p> <ul style="list-style-type: none"> <li><i>Enable the establishment of appropriate plantings to maintain and enhance the streetscape and the desired</i></li> </ul>	No

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General Principle	Applies	Comments	Compliant
		<p><i>future character of the locality.</i></p> <p>This assessment has found that the development is deficient in the provision of landscaped open space by 11% (3,510.3m<sup>2</sup>) which has a significant impact upon the ability to establish appropriate planting to maintain and enhance the streetscape and the desired future character of the locality.</p> <p>Council's Landscape Adviser has assessed the Development Application and notes (see 'Internal Referrals' in this report) that the development, particularly within the front setback area of Mona Vale Road, is not adequate and is not consistent with the relevant part of the A4 Myoora Road locality statement which requires a dense bushland buffer to be retained or established along Mona Vale Road.</p> <p>Similarly, the proposed landscaping is not in keeping with the provisions of the Front Building Setback Built Form Control as stipulated under WLEP 2000 which requires that the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs.</p> <ul style="list-style-type: none"> <li>• <i>Enable the establishment of appropriate plantings that are of a scale and density commensurate with the building height, bulk and scale.</i></li> </ul> <p>The planting located along the street frontages of Mona Vale Road and Myoora Road includes tall canopy trees with a height of between 12m to 20m. The planting along the side boundaries adjacent to the side elevations of the bulky goods shop includes medium canopy trees with a height of between 6.0m to 8.0m. The combination of these plantings are considered to be of an appropriate scale and density commensurate with the proposed height, bulk and scale of the bulky goods shop.</p> <p>However, the planting located along the side boundaries adjacent to the cinema screens includes groundcover and shrubs with a height of between 0.4m to 3.0m and low canopy trees with a height of between 3.0m to 6.0m. The combination of these plantings are not considered to be of an appropriate scale and density commensurate with the proposed height, bulk and scale of the cinema screens.</p> <ul style="list-style-type: none"> <li>• <i>Enhance privacy between dwellings.</i></li> </ul> <p>The site is located directly to the north of a semi-rural landholding at No. 40 Myoora Road which includes a dwelling house which is situated towards the front of the property facing Mona Vale Road.</p> <p>In terms of visual privacy, the cinema use is unlikely to create any adverse impact given the incorporation of landscaping along the side boundary which would prevent people from looking over or climbing the boundary fence.</p> <p>However, in terms of acoustic privacy, the landscaping proposed along the length of the side boundary adjacent to the cinema screens consists of groundcover, shrubs and low canopy trees. The lack of significant screening vegetation along the side boundary may have an adverse impact in terms of acoustic privacy given the potential background noise of up to 700 people gathering at any one time within such a concentrated area. It is noted that an acoustic report has not been provided to satisfy Council</p>	

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General Principle	Applies	Comments	Compliant
		<p>that the development will not have any adverse impact upon the amenity of surrounding land.</p> <ul style="list-style-type: none"> <li>• <i>Accommodate appropriate outdoor recreational needs and suit the anticipated requirements of dwelling occupants.</i></li> </ul> <p>This objective does not apply as the development does not include any residential component such that appropriate outdoor recreational needs and suit the anticipated requirements of dwelling occupants would be required.</p> <ul style="list-style-type: none"> <li>• <i>Provide space for service functions, including clothes drying.</i></li> </ul> <p>This objective does not apply as the development does not include any residential component such that appropriate service functions would be required.</p> <ul style="list-style-type: none"> <li>• <i>Facilitate water management including on-site detention and the infiltration of stormwater.</i></li> </ul> <p>The Development Application was also referred to Council's Development Engineer with regards to the provision of on-site detention and the infiltration of stormwater (see 'Internal Referrals' in this report). The information provided with the application was found to be deficient such that a clear decision could not be made.</p> <p>It was also noted that there appeared to be a conflict with the proposed size and number of pipes required to convey upstream flows through the site, as shown on the landscape and stormwater drainage plans and that the landscape plans and stormwater drainage plans were to be coordinated.</p> <ul style="list-style-type: none"> <li>• <i>Incorporate the establishment of any plant species nominated in the relevant Locality Statement.</i></li> </ul> <p>This objective does not apply as the locality statement does not nominate any plant species.</p> <ul style="list-style-type: none"> <li>• <i>Enable the establishment of indigenous vegetation and habitat for native fauna.</i></li> </ul> <p>The development proposes the removal of 143 trees which represents 90.5% of the entire recorded tree population on the site and the replacement of 36 trees is considered to be significantly, and unacceptably, lower than what is proposed to be removed. Additionally, the development proposes a landscaped area which is significantly deficient by 11% (3,510.3m<sup>2</sup>).</p> <p>The proposed uses, in particular the cinema use, and the layout of the development will render the site unable to establish and notable area of native vegetation and support for habitat for native fauna</p> <ul style="list-style-type: none"> <li>• <i>Conserve significant features of the site.</i></li> </ul> <p>The development proposes the piping and redirection of a natural watercourse which currently dissects the site from the south-western corner. The development also proposes the removal of 143 trees, the majority of which are located along, or adjacent to, the afore-mentioned</p>	

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General Principle	Applies	Comments	Compliant
		<p>watercourse. Both features are considered to be significant in that they contribute towards the bushland appearance of the site which compliments the open, semi-rural landscape.</p> <p>Given the above consideration, the development does not comply with the requirements of this clause.</p>	
<b>CL63A Rear Building Setback</b>	No	No further assessment required.	N/A
<b>CL64 Private open space</b>	N/A	No further assessment required.	N/A
<b>CL65 Privacy</b>	Yes	<p>Clause 65 requires that <i>development is not to cause unreasonable direct overlooking of habitable rooms and principal private open spaces of other dwellings.</i></p> <p>The site is located directly to the north of a semi-rural landholding at No. 40 Myoora Road which includes a dwelling house which is situated towards the front of the property facing Mona Vale Road.</p> <p>In terms of visual privacy, the cinema use is unlikely to create any adverse impact given the incorporation of landscaping along the side boundary which would prevent people from looking over or climbing the boundary fence.</p> <p>However, in terms of acoustic privacy, the landscaping proposed along the length of the side boundary adjacent to the cinema screens consists of groundcover, shrubs and low canopy trees. The lack of significant screening vegetation along the side boundary may have an adverse impact in terms of acoustic privacy given the potential background noise of up to 700 people gathering at any one time within such a concentrated area. It is noted that an acoustic report has not been provided to satisfy Council that the development will not have any adverse impact upon the amenity of surrounding land.</p>	<b>No</b>
<b>CL66 Building bulk</b>	Yes	<p>Clause 66 requires that <i>buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise.</i></p> <p><i>In particular:</i></p> <ul style="list-style-type: none"> <li><i>side and rear setbacks are to be progressively increased as wall height increases.</i></li> </ul> <p>The development does not includes side and rear setbacks which are progressively increased.</p> <ul style="list-style-type: none"> <li><i>large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.</i></li> </ul> <p>The bulky goods shop consists of a regular box-shaped building with light architectural features located along the front and rear elevations. The side walls consists of continuous wall places which are angled to address the slope of the site.</p> <ul style="list-style-type: none"> <li><i>appropriate landscape plantings are to be provided to reduce the visual bulk of new buildings and works.</i></li> </ul> <p>The planting located along the street frontages of Mona Vale Road and Myoora Road includes tall canopy trees with a height of between 12m to 20m. The planting along</p>	<b>No</b>



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General Principle	Applies	Comments	Compliant
		<p>the side boundaries adjacent to the side elevations of the bulky goods shop includes medium canopy trees with a height of between 6.0m to 8.0m. The combination of these plantings are considered to be of an appropriate scale and density commensurate with the proposed height, bulk and scale of the bulky goods shop.</p> <p>However, the planting located along the side boundaries adjacent to the cinema screens includes groundcover and shrubs with a height of between 0.4m to 3.0m and low canopy trees with a height of between 3.0m to 6.0m. The combination of these plantings are not considered to be of an appropriate scale and density commensurate with the proposed height, bulk and scale of the cinema screens.</p>	
<b>CL67 Roofs</b>	Yes	<p>Clause 67 requires that <i>roofs are to complement the local skyline. Lift overruns and other mechanical equipment is not to detract from the appearance of roofs.</i></p> <p>The development includes a skillion roof form to the bulky goods shop which responds to the slope of the site. The design includes a number of architectural roof features which are considered to successfully break up the roof form (subject to the reduction in height of the architectural roof features along the rear of the building).</p> <p>The restaurant includes a flat roof design but is located within the centre of the site and occupies a relatively small area such that it does not become an obvious or influencing architectural feature to the development specifically nor to the immediate area in general.</p>	Yes
<b>CL68 Conservation of Energy and Water</b>	Yes	<p>Clause 68 requires that <i>development is to make the most efficient use of energy and water. In particular:</i></p> <ul style="list-style-type: none"> <li><i>the orientation, layout and landscaping of buildings and works and their sites are to make the best use of natural ventilation, daylight and solar energy,</i></li> <li><i>site layout and structures are to allow reasonable solar access for the purposes of water heating and electricity generation and maintain reasonable solar access to adjoining properties,</i></li> <li><i>buildings are to minimise winter heat loss and summer heat gain,</i></li> <li><i>landscape design is to assist in the conservation of energy and water,</i></li> <li><i>reuse of stormwater for on-site irrigation and domestic use is to be encouraged, subject to consideration of public health risks,</i></li> <li><i>subdivision of land must be generally in accordance with the guidelines set out in the document published by the former Sustainable Energy Development Authority under the title Solar Access for Lots: Guidelines for Residential Subdivision, copies of which are available at the offices of the Council.</i></li> </ul> <p>The Development Application does not include any information which addresses how the development will make the most effective use of energy and water. In this regard, Council does not have sufficient information to ascertain compliance with this clause.</p>	<b>No</b> Insufficient information provided to accurately determine compliance
<b>CL69 Accessibility – Public and Semi-Public Buildings</b>	Yes	<p>The Development Application includes an Access Report dated 1 August 2011 as prepared by Accessibility Solutions (NSW) Pty Ltd which concludes that the Development satisfies the accessibility provisions of the</p>	Yes

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General Principle	Applies	Comments	Compliant
		Building Codes of Australia and the DDA Premises Standards.	
<b>CL70 Site facilities</b>	Yes	<p>Clause 70 requires that <i>site facilities including garbage and recycling bin enclosures, mailboxes and clothes drying facilities are to be adequate and convenient for the needs of users and are to have minimal visual impact from public places.</i></p> <p>The Development Application does not include any details with regards to waste management. Given the commercial nature of the development, this is arranged through private contract and could be appropriately addressed through the imposition of an appropriate condition should this application be approved.</p>	Yes Capable of complying subject to conditions.
<b>CL71 Parking facilities (visual impact)</b>	Yes	<p>The development includes car parking located within the proposed basement area below the bulky goods shop and within two (2) hardstand areas located within the Mona Vale Road and Myoora Road front setback areas.</p> <p>The proposed car parking areas within the front setback areas do not detract from the streetscape given their respective concealment by the proposed landscaped works along the front boundaries.</p>	Yes
<b>CL72 Traffic access &amp; safety</b>	Yes	<p>Clause 72 requires that <i>vehicle access points for parking, servicing or deliveries, and pedestrian access, are to be located in such a way as to minimise:</i></p> <ul style="list-style-type: none"> <li>• <i>traffic hazards, and</i></li> <li>• <i>vehicles queuing on public roads, and</i></li> <li>• <i>the number of crossing places to a street, and</i></li> <li>• <i>traffic and pedestrian conflict, and</i></li> <li>• <i>interference with public transport facilities.</i></li> </ul> <p><i>Where practical, vehicle access is to be obtained from minor streets and lanes.</i></p> <p>The Development Application was referred to the RMS for approval under the provisions Section 138 of the <i>Roads Act, 1993</i> and Schedule 3 of <i>State Environmental Planning Policy (Infrastructure) 2007</i> as traffic generating development.</p> <p>In their letter dated 17 October 2011, the RMS advised that 'in-principle' support is granted for the development subject to the application being amended to provide for left-in only access on Mona Vale Road.</p> <p>Following receipt of the referral response from the RMS, Council's Traffic Engineer advised (see 'Internal Referrals' in this report) that Council will require additional information, including a copy of the revised SIDRA intersection analysis, to assess the implications of traffic generated by this proposal on the local road network.</p> <p>In this regard, Council does not have sufficient information to ascertain compliance with this clause.</p>	<b>No</b> Insufficient information provided to accurately determine compliance.
<b>CL73 On-site Loading and Unloading</b>	Yes	<p>Clause 73 requires that <i>facilities for the loading and unloading of service, delivery and emergency vehicles are to be appropriate to the size and nature of the development. On-site facilities are to be screened from public view and designed so that vehicles may enter and leave in a forward direction.</i></p>	<b>No</b> Insufficient information provided to accurately determine

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General Principle	Applies	Comments	Compliant
		<p>The Development Application involves three (3) commercial use of which the bulky goods shop will require facilities for the loading and unloading of delivery vehicles.</p> <p>The plans accompanying the Development Application (see Plan Nos. 202, 203 and 206 dated 17 September 2009 as prepared by Rodney Albert Yannakis &amp; Associates) show roller doors located on the side elevations of the bulky goods shop for loading and unloading. However, the floor plans do not correspond in that they do not show the two roller doors closest to the front of the building. Additionally, the two roller doors in question appear to be elevated above ground level and do not include any detail as to how the docks will operate. Further, the traffic report accompanying the Development Application does not provide any details as to the ability of the development to allow the manoeuvring of rigid, semi-rigid and articulated trucks to load and unload without interfering with traffic flow.</p> <p>Additionally, Schedule 17 of WLEP requires that a provision is to be made for car/trailer combinations. The basement car park does not indicate any areas/car spaces allocated for car/trailer combinations.</p> <p>In this regard, Council does not have sufficient information to ascertain compliance with this clause.</p>	compliance
<b>CL74 Provision of Carparking</b>	Yes	<p>Clause 17 calls up the car parking requirements under Schedule 17 of WLEP 2000. An assessment of the car parking requirements for the development have been undertaken (see 'Schedules' in this report) where it was found that, according to the information provided by TAR Technologies in their 'Traffic and Parking Study' dated August 2011, the development complies with the on-site car parking requirement.</p> <p>However, Council's Traffic Engineer disagrees with the methodology used by TAR Technologies in arriving at the car parking requirement for the bulky goods shop as the surveyed locations were not in a similar location (semi rural) and one location had a parking provision rate on the extreme low end of the surveyed results.</p> <p>A further assessment was provided based upon the suggested comparative rate suggested by Council's Traffic Engineer where it was found that the development did not comply with the on-site car parking requirement.</p> <p>Additionally, an assessment was also undertaken based upon the finding derived from the RMS's "<i>Trip Generation and Parking Generation Surveys</i>" for the bulky goods shop where it was confirmed that the development did not comply with the on-site car parking requirement.</p> <p>Therefore, given that Council's Traffic Engineer does not accept the comparative findings of TAR Technologies and that the car parking requirement does not comply with the results of the RMS's "<i>Trip Generation and Parking Generation Surveys</i>", Council cannot be satisfied that the development complies with the car parking requirements under Schedule 17 and is included as a reason for refusal.</p>	<b>No</b> Insufficient information provided to accurately determine compliance
<b>CL75 Design of Carparking Areas</b>	Yes	The Development Application was referred to Council's Traffic Engineer who advises that the two-way circulation aisles of the basement car park do not meet the standard	<b>No</b>

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General Principle	Applies	Comments	Compliant
		<p>required by AS2890.1:2004. The circulation aisle widths are shown as 5.0m whereas two way systems require a 5.5m minimum width.</p> <p>It is also noted that no provision has been made for car/trailer combinations in accordance with the requirements of Schedule 17.</p> <p>Alterations to the Aisle width are likely to result in the loss of parking spaces.</p>	
<b>CL76 Management of Stormwater</b>	Yes	<p>The Development Application was referred to Council's Development Engineer with regards to the provision of on-site detention and the infiltration of stormwater (see 'Internal Referrals' in this report). The information provided with the application was found to deficient such that a clear decision could not be made.</p> <p>It was also noted that there appeared to be a conflict with the proposed size and number of pipes required to convey upstream flows through the site, as shown on the landscape and stormwater drainage plans and that the landscape plans and stormwater drainage plans were to be coordinated.</p>	<b>No</b> Insufficient information provided to accurately determine compliance
<b>CL77 Landfill</b>	No	No further assessment required.	N/A
<b>CL78 Erosion &amp; Sedimentation</b>	Yes	<p>Clause 78 requires that <i>development is to be sited and designed, and related construction work carried out, so as to minimise the potential for soil erosion.</i></p> <p><i>Where some degree of soil erosion and sedimentation is likely to occur, it is to be managed at the source to prevent any reduction in water quality downstream of the development site.</i></p> <p><i>In this case, a Soil and Water Management Plan which ensures minimum soil erosion and maintenance of downstream water quality that has been prepared in accordance with the Council's "Specification for Erosion and Sediment Control" and "Design and Specification Manuals for Engineering Works" is to be considered by the Council before consent for the relevant development is granted. The plan is to outline practices proposed to control runoff, mitigate soil erosion and trap pollutants before these can reach downslope lands and receiving waters.</i></p> <p>The Development Application includes an Erosion and Sedimentation Control Plan (see Plan No. 29610-4 dated 10 August 2011 as prepared by Taylor Consulting). Any plan addressing erosion and sedimentation is to comply with the the 'Blue Book - Managing Urban Stormwater (MUS): Soils and Construction' produced by Landcom and relevant Council Policies, specifically Council's "Specification for Erosion and Sediment Control" and "Design and Specification Manuals for Engineering Works".</p> <p>An appropriate condition may be imposed to this effect should this application be approved.</p>	Yes Capable of complying subject to condition.
<b>CL79 Heritage Control</b>	No	No further assessment required.	N/A
<b>CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service</b>	No	No further assessment required	N/A

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General Principle	Applies	Comments	Compliant
CL81 Notice to Heritage Council	N/A	No further assessment required.	N/A
CL82 Development in the Vicinity of Heritage Items	N/A	No further assessment required.	N/A
CL83 Development of Known or Potential Archaeological Sites	N/A	No further assessment required.	N/A

### Other Relevant WLEP 2000 Clauses

There are no other WLEP 2000 clauses relevant to this application.

## SCHEDULES

### Schedule 8 – Site Analysis

Clause 22(2)(a) of WLEP 2000 requires that the consent authority must consider a Site Analysis prepared in accordance with the criteria listed in Schedule 8.

A Site Analysis was not submitted with the Development Application which is considered to be a critical component to show that the design of the development was thoroughly and sensitively considered with reference to its semi-rural surrounds.

This has been included as a reason for refusal.

### Schedule 10 – Traffic Generating Development

Clause 30(1) of WLEP 2000 requires that the consent authority must refer certain developments as listed under Schedule 10 to the RMS. The development falls under (2)(c) which consists of “*the construction of a building for the purposes of shops and commercial premises, where the gross floor area of the building is or exceeds 1,000 square metres or the enlargement or extension of a building used for the purposes of shops and commercial premises, where the gross floor area of that enlargement or extension is or exceeds 1,000 square metres*”.

The Development Application was subsequently referred to the RMS and their response is addressed under ‘External Referrals’ and *State Environmental Planning Policy (Infrastructure) 2007* in this report.

### Schedule 15 – Statement of Environmental Effects

Clause 15(1) of WLEP 2000 requires that the consent authority must consider a Statement of Environmental Effects prepared in accordance with the criteria listed in Schedule 15. In addition, Clause 15(2) requires the consent authority to consider the findings of an independent public hearing prior to the determination of the application.

The Development Application includes a Statement of Environmental Effects, prepared by Glendinning Minto & Associates Pty Ltd and dated August 2011, which addresses Schedule 15 of WLEP 2000.



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The following is provided having regard to these provisions:

Consideration	Response
(1) A summary of the statement of environmental effects.	The Statement of Environmental Effects (SEE) provides a summary.
(2) A statement indicating how the proposed development is consistent with the relevant Desired Future Character statement and General Principles of Development Control established by in WLEP 2000.	<p>With regards to addressing the consistency of the proposal against the Desired Future Character of the locality, the SEE states:</p> <p><i>"It is considered that the proposal is consistent with the relevant desired future character statement of the A4 Locality for the following reasons:</i></p> <ul style="list-style-type: none"> <li><i>• The proposal provides for a business use and an entertainment facility.</i></li> <li><i>• The proposal incorporates extensive landscaping of the site particularly adjacent to the street frontages.</i></li> <li><i>• The proposal provides for safe and convenient vehicular access which is supported by Tar Technologies.</i></li> <li><i>• The proposal is articulated through the use of varied setbacks and change in external finishes.</i></li> <li><i>• The external colours will blend with the natural environment."</i></li> </ul> <p>With regards to addressing the consistency of the proposal against the General Principles of Development Control, the SEE states:</p> <p><i>"An assessment of the general principles of development control has been provided previously in this report. In this regard it is considered that the proposal is consistent with these general principles."</i></p> <p><u>Comment:</u> The Statement of Environmental Effects does not satisfactorily address the Desired Future Character statement for the A4 Myoora Road locality for the following reasons:</p> <ul style="list-style-type: none"> <li>• The Statement does not explain how the development constitutes a low intensity business, community and leisure uses which do not rely on exposure to passing trade for their continued operation.</li> <li>• The Statement does not establish how the development will provide safe vehicular access to the satisfaction of the Council and the Roads and Traffic Authority, as evidenced by the responses received from the RMS.</li> <li>• The Statement does not qualify how the building materials used in the development will blend with the colours and textures of the natural landscape will be used to minimise the visual impact of development on long distance views of the locality as evidenced by the submitted Schedule of Colours and Finishes which fail to reference where various colours and materials will be applied.</li> </ul> <p>The Statement of Environmental Effects does not satisfactorily address the consistency of the development against the General Principles of Development Control. In particular:</p> <ul style="list-style-type: none"> <li>• Clause 43 – Noise. The Statement does not qualify claims of acoustic privacy through the provision of an Acoustic Report.</li> <li>• Clause 54 – Provision and location of utility services. The Statement does not address the lack of sewerage in the area and does not provide any commentary on how this may be addressed or any discussions with Sydney Water as to the viability of a sewerage service being provided to support the capacity of the development.</li> <li>• Clause 56 – Retaining unique environmental features on site. The Statement notes that the natural watercourse is to be piped and</li> </ul>

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Consideration	Response
	<p>redirected but does not include any justification on why the watercourse is to be moved or any commentary on discussions held with NoW as to the appropriateness of its piping and redirection nor for any Controlled Activity approvals required under the Water Management Act 2000. Additionally, the Statement references the Flora and Fauna report with regards to the removal of 143 trees on the site but does not provide any planning justification as to why the trees are required to be removed.</p> <ul style="list-style-type: none"> <li>• Clause 60 – Watercourses and aquatic habitat. The Statement does not address this clause in its entirety.</li> <li>• Clause 62 – Access to sunlight. The Statement does not qualify the claim of minimal overshadowing through the provision of a certified shadow diagram.</li> <li>• Clause 66 – Building bulk. The Statement does not provide any details on the height of the proposed cinema screens nor provide any discussion on the impacts of the bulk of the screens.</li> <li>• Clause 68 – Conservation of energy and water. The Statement does not address this clause in its entirety.</li> </ul>
(3) A statement of the objectives of the proposed development.	<p>With regards to addressing the objectives of the development, the SEE states:</p> <p><i>“The objective of the development is to provide for the redevelopment of the subject site so as to provide for land uses which are in keeping with the character of the surrounding locality and which will complement surrounding land uses. The proposal also seeks to provide a facility in the form of an open air cinema which will provide a form of entertainment for the local and broader area. The proposal also provides an opportunity for the enhancement of the existing property and which in its current condition detracts from the character of the locality.”</i></p> <p><u>Comment:</u> The statement is considered to be adequate in describing the objectives of the development.</p>
<p>(4) An analysis of any feasible alternatives to the carrying out of the development, having regard to its objectives, including:</p> <p>(a) the consequences of not carrying out the development, and</p> <p>(b) the reasons justifying the carrying out of the development.</p>	<p>With regards to addressing the feasible alternatives to carrying out the development, the SEE states:</p> <p><i>“(a) The consequence of not carrying out the development is that the site will remain in its current condition whereby it is overgrown by weeds, contains a degraded drainage line and generally detracts from the character of the locality. It is also likely that a desirable entertainment facility and which would serve the broader community would not be achieved.</i></p> <p><i>(b) The primary justification for carrying out the development is to allow for the provision of an entertainment facility upon the site. Such an outcome is considered to be highly desirable as it will provide a unique opportunity for individuals and family to be provided with a form of entertainment not available elsewhere.</i></p> <p><i>The bulky good retail which is essentially a secondary use upon the site is primarily required in order to offset the cost of providing the outdoor cinema noting that the cinema use on its own would not be economically viable given that it would only draw peak crowds for a maximum of two to three nights per week and in warmer months.”</i></p> <p><u>Comment:</u> The statement concerning the consequences of not carrying out the development does not provide any indication that consideration has been given, during the planning stages of the development, of alternative options which would be normally more compliant and consistent with the provisions of WLEP 2000 and other relevant planning legislation.</p>

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Consideration	Response
	<p>The statement concerning the reasons justifying the carrying out of the development is assumptive in that the proposed entertainment facility is highly desirable. The statement does not qualify this by providing a comprehensive public survey or economic feasibility study which would otherwise support the claim. This claim also dismisses the Category 3 classification of the entertainment facility as a use which is not desirable in the locality.</p> <p>The statement relating to the provision of the bulky goods shop is primarily economically based but is not qualified by the provision of an economic feasibility study. The development of a bulky goods shop (which is also a Category 3 development in the locality) for the purposes of supporting another Category 3 use is not considered to be well founded and exhibits a lack of consideration to the Desired Future Character of the locality.</p>
<p>(5) An analysis of the development, including:</p> <ul style="list-style-type: none"> <li>(a) a full description of the development, and</li> <li>(b) a general description of the environment likely to be affected by the development, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and</li> <li>(c) a description of the likely impact on the environment of the development, having regard to: <ul style="list-style-type: none"> <li>(i) the nature and extent of the development, and</li> <li>(ii) the nature and extent of any building or work associated with the development, and</li> <li>(iii) the way in which any such building will be erected in connection with the development, and</li> <li>(iv) any rehabilitation measures to be undertaken in connection with the development, and</li> </ul> </li> <li>(d) a full description of the measures proposed to mitigate any adverse effects of the development on the environment.</li> </ul>	<p>With regards to providing an analysis of the development, the SEE states:</p> <p><i>"(a) A full description of the development is included in Section 5 of this report.</i></p> <p><i>(b) A description of the subject site and the surrounding development is included in Section 3 and 4 of this report. These sections should be read in conjunction with the consultants reports which accompany this application and which detail all potential environmental impacts.</i></p> <p><i>In summary it is not considered that the proposal will have any unreasonable detrimental impact on the existing environment.</i></p> <p><i>(c) It is my opinion that the proposal will not result in any detrimental impacts and that the proposal will actually result in significant improvements upon both the environment of the site and the surrounding locality.</i></p> <p><i>These improvements include:</i></p> <ul style="list-style-type: none"> <li>• <i>Removal of all unsightly buildings and their replacement with modern buildings of a high quality design and construction.</i></li> <li>• <i>Removal of the unsightly storage of shipping containers and materials upon the site.</i></li> <li>• <i>Improved landscaping upon the site.</i></li> <li>• <i>Improved stormwater management.</i></li> <li>• <i>Improved stormwater quality.</i></li> </ul> <p><i>(d) Measures detailing the improvements proposed for the site are described in detail on the accompanying plans and reports."</i></p> <p><u>Comment:</u></p> <p>The statement is considered to be adequate in providing an analysis of the development with exception to point (d) where the Statement does not satisfactorily provide a full description of the measures proposed to mitigate any adverse effects of the development on the environment.</p>
<p>(6) The reasons justifying the carrying out of the development in the manner proposed, having regard to biophysical, economic and social considerations and the principles of ecologically sustainable development.</p>	<p>With regards to justifying the carrying out of the development, the SEE states:</p> <p><i>"It is considered that through the erection of new buildings upon the site that opportunities exist for the incorporation of a range of active and passive ecologically sustainable measures.</i></p> <p><i>The proposal also provides a significant opportunity to improve upon the environmental practices currently being undertaken upon the site particularly in relation to weed removal and the degraded drainage channel. The proposal also provides opportunities for the provision of</i></p>

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Consideration	Response
	<p><i>significant replenishment vegetation."</i></p> <p><u>Comment:</u> The statement is not clear on how the "opportunities exist for the incorporation of a range of active and passive ecologically sustainable measures" are provided or will be achieved.</p> <p>The statement does not provide any discussion on the economic and social considerations nor any detailed discussion on how the development addresses the principles of ecologically sustainable development.</p>
(7) The statement is to include a compilation (in a single section of the statement) of the measures proposed to mitigate any adverse effects of the development on the environment.	<p>With regards to measures proposed to mitigate any adverse effects of the development on the environment., the SEE states:</p> <p><i>"An explanation of the measures proposed to mitigate any adverse effects of the development on the environment are contained at Section 5 of this report with a detailed explanation of each measure including stormwater management and landscaping contained within the expert reports and plans which accompany this application."</i></p> <p><u>Comment:</u> Section 5 of the SEE largely consists of brief statements which address the various General Principles of Development Control. As found earlier under Point 1 in this table, the Statement does not adequately address important environmental matters and ignores Clause 60 – Watercourses and aquatic habitat.</p>
(8) A list of any approvals that must be obtained under any other Act or law before the development may lawfully be carried out.	<p>With regards to providing a list of any approvals that must be obtained under any other Act or law before the development may lawfully be carried out., the SEE states:</p> <p><i>"The proposal involves the discharge of stormwater from the proposed on-site detention basin to the existing watercourse which adjoins the site. Accordingly approval will be required from the NSW Office of Water under the Water Management Act."</i></p> <p><u>Comment:</u> The statement does not include details of approval to be granted by the RMS under Section 138 of the Roads Act 1993 for access/aggress onto Mona Vale Road.</p>

It is considered that the submitted Statement of Environmental Effects does not adequately address the various provisions of Schedule 15.

### Schedule 17 - Carparking Provision

Schedule 17 of WLEP 2000 requires a development to provide on-site car parking at the following rates:

#### Bulky Goods Shop:

*"Comparisons must be drawn with developments for a similar purpose. Provision to be made for car/trailer combinations and adequate on-site parking spaces for service/delivery vehicles at a convenient location, separated from customer parking."*

#### Drive-in take-away food outlet with on-site seating and drive through facilities:

*"greater of:*

- 1 space per 2 seats (internal), or*
- 1 space per 3 seats (internal and external)*
- plus queuing area for 5 to 12 cars."*

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Entertainment Facility:

*"Comparisons must be drawn with developments for a similar purpose."*

According to the information provided by TAR Technologies in their 'Traffic and Parking Study' dated August 2011, the development requires the following car parking demand:

Component	Required	Provided	Complies
Bulky Goods Shop	Comparative = 77 spaces	200 spaces	Yes
Restaurant <sup>1</sup>	1 space/3 seats (internal & External) = 36	Included in total	Yes
• Queuing	Provision for 5 to 12 cars	Provision for 4 cars	<b>No</b>
Entertainment Facility	Comparative		
Saturday night	60 spaces	Included in total	Yes
Tuesday night	82 spaces		
<b>Total</b>	173 to 195 spaces	200 spaces <sup>2</sup>	Yes

**Notes:**

<sup>1</sup> The Study incorrectly uses the car parking requirement for a restaurant use and not the correct requirement for a Drive-in take-away food outlet with on-site seating and drive through facilities" which has been applied in this instance

<sup>2</sup> The total provided car parking excludes the non-compliant car parking within the Myoora Road front setback area and accounts for the reduction of five (5) spaces to comply with the Australian Standards.

Council's Traffic Engineer disagrees with the methodology used by TAR Technologies in arriving at the car parking requirement for the bulky goods shop as the surveyed locations were not in a similar location (semi rural) and one location had a parking provision rate on the extreme low end of the surveyed results (Keith Lord with a GFA of 7,104m<sup>2</sup> and 0.07 trips per 100m<sup>2</sup>). In order to adequately establish the parking supply for this development it would be acceptable to conduct surveys of existing bulky goods warehouses within Warringah LGA. To draw a comparison previous developments in Warringah LGA have been required to provide parking at a rate of 1.9spaces/100m<sup>2</sup>.

For the purposes of comparison, the following table uses the comparative rate of 1.9spaces/100m<sup>2</sup> suggested by Council's Traffic Engineer:

Component	Required	Provided	Complies
Bulky Goods Shop	1.9 spaces/100m <sup>2</sup> = 253	200 spaces	<b>No</b>
Restaurant	1 space/3 seats (internal & External) = 36	Nil	<b>No</b>
• Queuing	Provision for 5 to 12 cars	Provision for 4 cars	<b>No</b>
Entertainment Facility	Comparative		<b>No</b>
Saturday night	60 spaces	Nil	
Tuesday night	82 spaces		
<b>Total</b>	349 to 371 spaces	200 spaces	<b>No</b>

Notwithstanding, in accordance with the advice provided by the RMS in their last response dated 17 October 2011 (see 'External referrals' in this report) which states that *"as the proposed bulky goods store tenant is not confirmed the RTA's rate for bulky goods stores shall be used for assessment not individual traffic counts from specific sites."*, the following table provides an assessment of the car parking provision based upon the findings of the traffic counts contained in the RMS's *"Trip Generation and Parking Generation Surveys"* commissioned by the Roads and Traffic Authority and conducted by Hyder Consulting Pty Ltd in January 2009.



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Component	Required	Provided	Complies
Bulky Goods Shop <sup>1</sup>			
Weekdays	113 spaces	200 spaces	Yes
Weekends	201 spaces		
Restaurant <sup>2</sup>	1 space/3 seats (internal & External) = 36	Included in total	No
• Queuing	Provision for 5 to 12 cars	Provision for 4 cars	
Entertainment Facility	Comparative		
Saturday night	60 spaces	Included in total	No
Tuesday night	82 spaces		
<b>Total</b>			
Weekdays	209 to 319 spaces	200 spaces <sup>3</sup>	No

**Notes:**

<sup>1</sup> Traffic count derived from RMS's "Trip Generation and Parking Generation Surveys" and is based on the GFA of the bulky goods shop.

<sup>2</sup> Schedule 17 refines the definition of restaurant to include "Drive-in take-away food outlet with on-site seating and drive through facilities" which has been applied in this instance.

<sup>3</sup> The total provided car parking excludes the non-compliant car parking within the Myoora Road front setback area and accounts for the reduction of five (5) spaces to comply with the Australian Standards.

Given that Council's Traffic Engineer does not accept the comparative findings of TAR Technologies and that the car parking requirement does not comply with the results of the RMS's "Trip Generation and Parking Generation Surveys, Council cannot be satisfied that the development complies with the car parking requirements under Schedule 17 and is included as a reason for refusal.

**POLICY CONTROLS****Warringah Section 94A Development Contribution Plan**

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of	\$	6,000,000.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	57,000
S94A Planning and Administration	0.05%	3,000
<b>Total</b>	<b>1.0%</b>	<b>\$60,000</b>

**Applications for Development Handling of Unclear, Non-Conforming, Insufficient and Amended Applications Policy (adopted 11 December 2007)**

An opportunity was presented to the applicant by letter dated 4 October 2011 to withdraw the application within seven days from the date of the letter with a view to preparing the required information then resubmitting at a later date. The applicant was offered a substantial refund of the Development Application fee and advised that failure to withdraw the application would result in Council determining the application based upon the information provided at lodgement.

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Following advice that the applicant was overseas a further opportunity was presented to the applicant by email dated 4 October 2011 to withdraw the application within seven days from the date of the email otherwise Council will be obliged to refuse the application.

The applicant advised by email dated 18 October 2011 that the application will not be withdrawn.

## OTHER MATTERS FOR CONSIDERATION

There are no other matters for consideration.

## CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000, Draft Warringah Local Environmental Plan 2009 and the relevant codes and policies of Council.

The application was referred to internal departments and external authorities. In the responses, the Roads and Maritime Services issued provisional support for the development subject to the development being redesigned to allow for left-in access only from Mona Vale Road thereby requiring further information to be prepared and submitted. Additionally, the application was referred to the NSW Office of Water (NoW) as Integrated Development. NoW requested additional information to be prepared and submitted for their consideration. NoW have not issued their approval for the development.

Council's Development Engineer, Natural Environment Unit, Traffic Engineer, Environmental Health Officer, Landscape Officer and Urban Designer each raised fundamental concerns.

The development attracted 15 submissions of which one (1) was in support, 13 individually objected and one (1) consisted of a petition which contains 64 signatures in objection. The majority of the submissions raised concerns with regards to the proposed scale being inconsistent with character of the area; pedestrian safety and traffic congestion. Other issues raised referred to insufficient car parking; the impact upon existing infrastructure; impacts upon neighbouring amenity; the impacts upon the environment and overdevelopment. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report.

The assessment of the Development Application against the provisions of *Warringah Local Environmental Plan 2000* found that the proposal was inconsistent with the Desired Future Character statement for the A4 Myoora Road locality in that the development constituted a 'high intensity' business which was dependent upon exposure to passing trade for continued operation, did not retain or establish a dense bushland buffer along Mona Vale Road and did not provide safe vehicular access to the satisfaction of Council and the RMS.

The assessment of the Development Application against the provisions of *Warringah Local Environmental Plan 2000* found that the proposal did not comply with the Building Height, Front Setback, Side Setback, Building Site Coverage and Landscape Open Space Built Form Controls such that, because of the inconsistency with state planning policies, the Desired Future Character of the locality and the General Principles of Development Control, they could not be considered for variation under Clause 20 of *Warringah Local Environmental Plan 2000*.

The assessment of the Development Application against the provisions of *Warringah Local Environmental Plan 2000* found that the proposal was not consistent with Clauses 38, 43, 48, 49, 50, 56, 57, 58, 60, 63, 65, 66, 68, 72, 73, 74, 75 and 76 under the General Principles of Development Control.

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Additionally, the assessment of the Development Application against the provisions of *Warringah Local Environmental Plan 2000* found that the proposal did not comply with the requirements of Schedules 8, 16 and 17.

Finally, the assessment the Development Application against the provisions of *Draft Warringah Local Environmental Plan 2000* found that the bulky goods premises and entertainment facility components of the proposal constituted prohibited development which were not consistent with the objectives of the RU4 Rural Small Holdings zone and that the proposed building height of the bulky goods premises does not comply with the Building Height Development Standard and was inconsistent with the Objectives of 'Clause 4.6 – Exceptions to Development Standards'.

It is considered that the proposed development does not satisfy the appropriate controls, is not in the public interest and that all processes and assessments have been satisfactorily addressed.

As a direct result of the application and the consideration of the matters detailed within this report it is considered that the consent authority refuse the Development Application for the reasons detailed within the "Recommendation" section of this report.

## RECOMMENDATION - REFUSAL

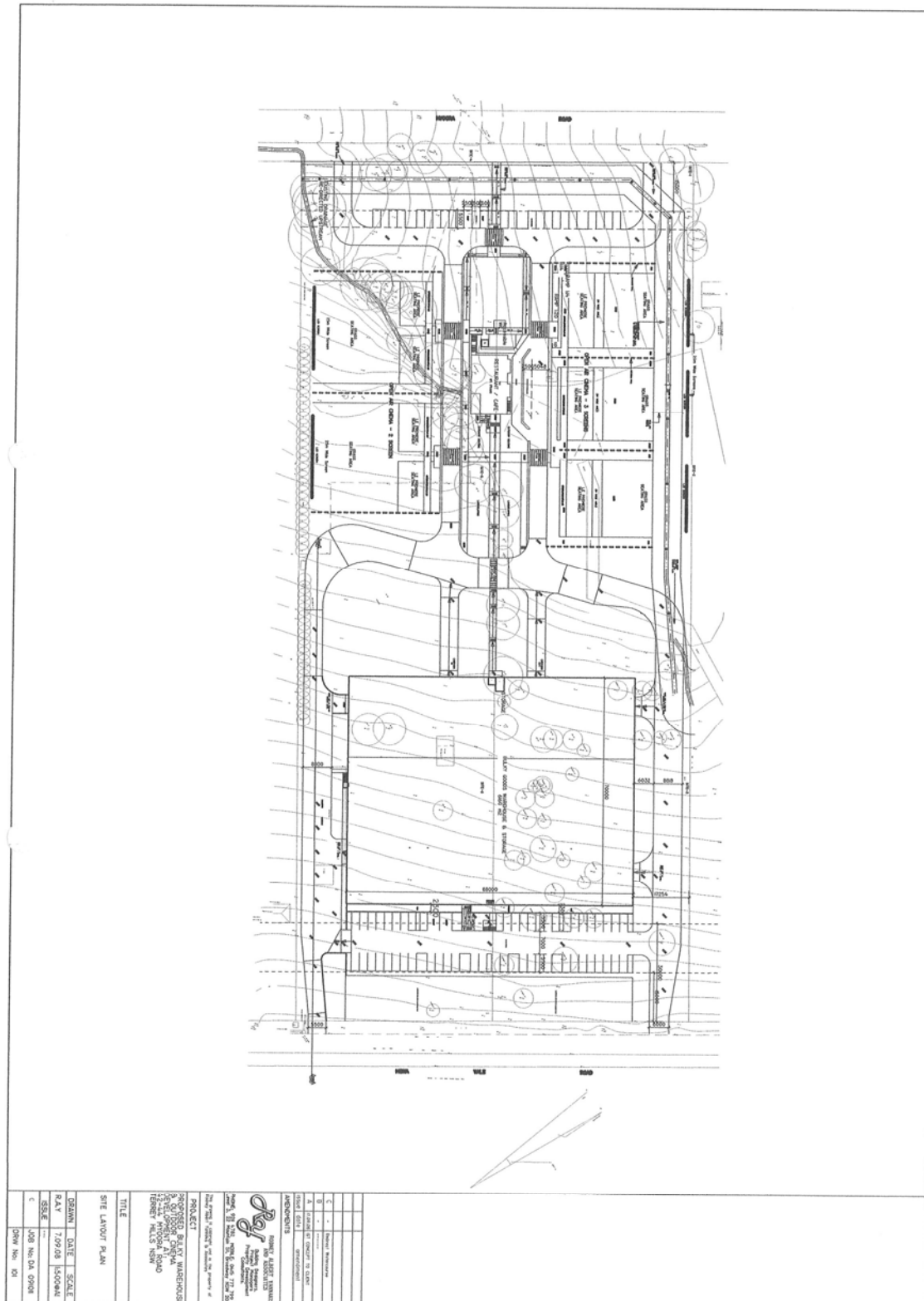
THAT the Warringah Development Assessment Panel recommends to the General Manager to **refuse** Development Consent to Development Application No DA2011/1025 for demolition works and construction of a bulky-goods premises, restaurant and open-air cinema complex at Lot 122 in DP 752017, No. 42 Myoora Road and Lot 37 in DP 752017, No. 44 Myoora Road, Terrey Hills subject to the reasons outlined as follows:

1. Pursuant to Section 91A(4) of the *Environmental Planning and Assessment Act, 1979*, the NSW Office of Water has not provided its approval that is required in order for the development to be granted consent.
2. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(3)(b) of *Warringah Local Environment Plan 2000* (as amended), the proposed development is inconsistent with the Desired Future Character of the A4 Myoora Road Locality in the following manner:
  - a) The development does not constitute a low impact business;
  - b) The development does not provide safe vehicular access to the satisfaction of the Roads and Traffic Authority and Council;
  - c) The development does not consist of building materials which blend with the textures of the natural landscape.
3. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(2)(b) of *Warringah Local Environment Plan 2000* (as amended), the development is does not comply with the Building Height, Front Setback, Side Setback, Building Site Coverage and Landscape Open Space Built Form Controls (Development Standard).
4. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000* (as amended), the development is considered to be inconsistent with the following General Principles of Development Control as follows:
  - Clause 38 – Glare and reflection;
  - Clause 43 – Noise;
  - Clause 48 – Potentially contaminated land;
  - Clause 49 – Remediation of contaminated land;

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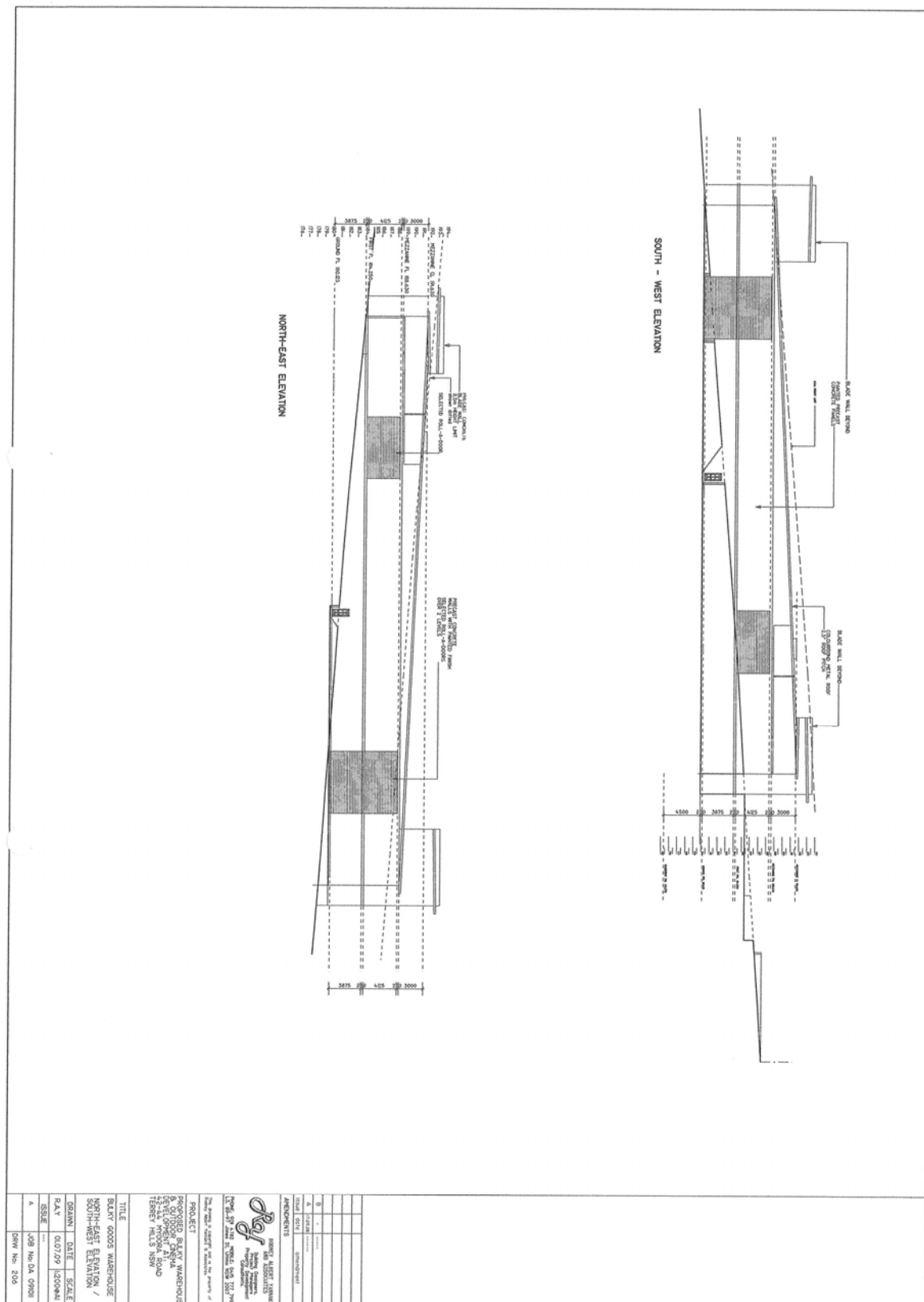
- Clause 50 – Safety and Security;
  - Clause 56 – Retaining distinctive environmental features on sites;
  - Clause 57 – Development on sloping land;
  - Clause 58 – Protection of existing flora;
  - Clause 60 – Watercourses and aquatic habitat;
  - Clause 63 – Landscaped open space;
  - Clause 65 – Privacy;
  - Clause 66 – Building bulk;
  - Clause 68 – Conservation of energy and water;
  - Clause 72 – Traffic Access and safety;
  - Clause 73 – On-Site Loading and Unloading;
  - Clause 74 – Provision of Carparking;
  - Clause 75 – Design of Carparking Areas; and
  - Clause 76 – Management of Stormwater.
5. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 15(1) of *Warringah Local Environment Plan 2000* (as amended), the Statement of Environmental Effects does not adequately address the items listed in Schedule 15.
6. Pursuant to Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act, 1979* the development is a prohibited use in the RU4 Rural Small Holdings zone and is not consistent with the Objectives of that zone as defined under the Draft Warringah Local Environmental Plan 2009.
7. Pursuant to Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act, 1979* the development does not comply with the Building Height Development Standard and was inconsistent with the Objectives of 'Clause 4.6 – Exceptions to Development Standards' under the Draft Warringah Local Environmental Plan 2009.
8. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the development is not in the public interest.
9. Pursuant to Section 79C(1)(b), the development application was not accompanied by adequate and appropriate information to enable a full and proper consideration and assessment of the application to determine the likely impacts of the development.

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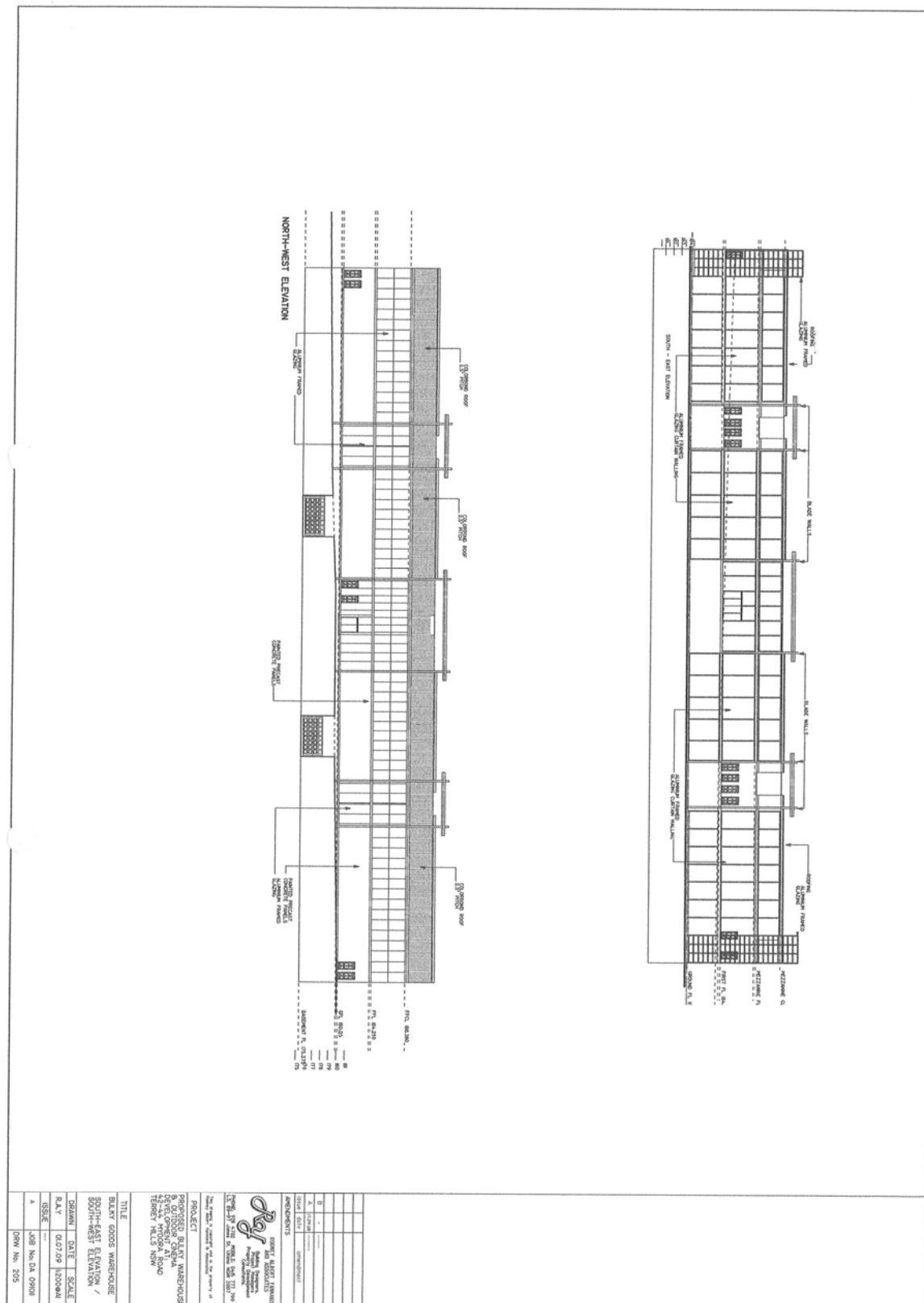




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