

<b>JRPP No:</b>	2011SYE126
<b>DA No:</b>	DA2011/1571
<b>Address / Property Description:</b>	42 & 44 Myoora Road, Terrey Hills Demolition works and construction of a bulky-goods premises, restaurant and open-air cinema complex
<b>APPLICANT:</b>	Sam Mustaca
<b>REPORT BY:</b>	Malcolm Ryan, Deputy General Manager, Environment Division

### **Assessment Report and Recommendation**

<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>	DA2011/1571
<b>Application Lodged:</b>	7 December 2011
<b>Plans Reference:</b>	Drawing Nos. 100(D), 101(D); 201(A); 202(A); 203(A); 204(A); 205(A); 206(A); 207(A); 301(A); 302(A); 628.01; 628.02; 628.03; 628.04; 628.05; 29610-1/C; 29610-2/A; 29610-3/A; 29610-4/A; and 29610-5/A.
<b>Amended Plans:</b>	N/A.
<b>Owner:</b>	Planet Warriewood Pty Ltd
<b>WLEP 2000 Locality:</b>	A4 Myoora Road
<b>WLEP 2000 Category:</b>	<ul style="list-style-type: none"> <li>• Restaurant – Category 1</li> <li>• Bulky Goods Shop – Category 3</li> <li>• Entertainment Facility – Category 3</li> </ul>
<b>Variations to WLEP 2000 Controls (Clause 20/Clause 18(3)):</b>	<ul style="list-style-type: none"> <li>• Building Height Built Form Control (not supported)</li> <li>• Landscape Open Space Built Form Control (not supported)</li> </ul>
<b>WLEP 2011 Zoning:</b>	RU4 Primary Production Small Lots
<b>WLEP 2011 Permissible or Prohibited Land use:</b>	<ul style="list-style-type: none"> <li>• Restaurant – Permitted (Schedule 1 – Permitted Uses)</li> <li>• Bulky Goods Premises – Prohibited</li> <li>• Entertainment Facility - Prohibited</li> </ul>
<b>Variations to Development Standard (Clause 4.6):</b>	Building Height Built Form Control (not supported)
<b>Referred to ADP:</b>	No
<b>Referred to WDAP:</b>	Yes (Category 3 development)
<b>Referred to JRPP:</b>	Yes (CIV exceeds \$20m)
<b>Land and Environment Court Action:</b>	No Land and Environment Court action is current or pending

## SUMMARY

### Submissions:

Nine (9) submissions received:

- 8 in objection
- 1 petition which includes 152 signatures in objection

### Submission Issues:

- 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 Warringah Local Environmental Plan 2011;
- 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;
- Redirection of the watercourse;
- Removal of trees/vegetation; and
- Inadequate parking.

### Assessment Issues:

- Inconsistency with the Desired Future Character Statement of the A4 Myoora Road locality;
- Non-compliance with the Building Height and Landscaped Open Space Built Form Controls;
- Non-compliance with Clauses 38, 50, 54, 56, 57, 60, 63, 66, 68, 72, 73, 74 and 76 of the General Principles of Development Control;
- Non-compliance with Schedules 8, 15 and 17;
- The development includes prohibited land uses under Warringah Local Environmental Plan 2011;
- Non-compliance with the Building Height Development Standard under Warringah Local Environmental Plan 2011;
- Inconsistency with the Objectives of the RU4 Primary Production Small Lots zone under Warringah Local Environmental Plan 2011; and
- Inconsistency with the Objectives of the Height of Buildings Development Standard Warringah Local Environmental Plan 2011;
- Inconsistency with Council's Policy No. PL 740 Waterways (Protection of Waterways and Riparian Land Policy);
- Insufficient information to satisfactorily assess the provision of stormwater drainage and the connection of the site to Sydney Water's sewerage infrastructure.

### Recommendation:

Refusal

### Attachments:

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

### 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 14 December 2011 and ending on 31 January 2012. Furthermore, the application has been advertised within the Manly Daily on 17 December 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.

### DA2011/1025

Lodged by Planet Warriewood Pty Ltd on 10 August 2011 for demolition works and construction of a bulky-goods premises, restaurant and open-air cinema complex on Lot 122 in DP 752017, No. 42 Myoora Road and Lot 37 in DP 752017, No. 44 Myoora Road, Terrey Hills.

The application sought consent to demolish a dwelling house, various outbuildings, remove 143 trees, pipe and redirect a watercourse to construct a mix of uses which included a bulky goods shop, a fast food takeaway restaurant and an outdoor cinema (five (5) screens) with associated above and below ground car parking, internal driveways and landscape works.

The Development Application was recommended for refusal by the Warringah Development Assessment Panel on 14 December 2011 and formally refused by Council on 22 December 2011.

## **PROPOSED DEVELOPMENT**

The applicant seeks consent to demolish a dwelling house and various outbuildings, remove 132 trees, 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:

**Bulky Goods Shop (12,794m<sup>2</sup> GFA)**

Basement (RL 176.925)

- Car parking for 206 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 5,913m<sup>2</sup>;
- Open plan warehouse/storage;
- Showroom;
- Roller door entry for loading/unloading; and
- Lift and stair access/egress.

First Floor (RL 184.250)

- Gross floor area of 5,913m<sup>2</sup>;
- Open plan warehouse;
- Showroom;
- Main pedestrian entry points and associated bridges; and
- Lift and stair access/egress.

Mezzanine (RL 188.630)

- Gross floor area of 968m<sup>2</sup>;
- Office space; and
- Lift and stair access/egress.

**Restaurant (385.66m<sup>2</sup> GFA)**

Ground Floor (RL 175.000)

- Gross floor area of 233.84m<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 151.82m<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.

## **Outdoor Cinema**

- Two (2) 25.0m wide LCD screens located 21.5m from the western boundary; and
- Seating capacity for 350 patrons.

## **External Car Parking**

- 21 spaces located facing Mona Vale Road; and
- 45 spaces located adjacent to the restaurant.

## **Landscaped area**

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

## **APPLICATION HISTORY**

Following a meeting with the applicant and Council staff on 7 December 2011 to discuss the reasons for refusal of DA2011/1025, the subject Development Application was lodged with Council on 7 December 2011, being the same day.

The Development Application was subsequently advertised/notified for a period of not less than 21 calendar days terminating on 31 January 2012.

Following the completion of a preliminary assessment of the application, a letter was sent to the applicant on 16 February 2012 which identified a number of issues with the application including the fundamental matter that the development is inconsistent with the Desired Future Character of the locality under *Warringah Local Environmental Plan 2000* and constitutes prohibited development (with exception to the restaurant use) within the RU4 Primary Production Small Lots under the *Warringah Local Environmental Plan 2011*. 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 and the Joint Regional Planning Panel with a recommendation for refusal.

A second letter was sent to the applicant on 19 March 2012 which included all referral responses received. The letter also advised that the application would be referred to the Warringah Development Assessment Panel and the Joint Regional Planning Panel for determination.

To date, the applicant has not responded to Council's letters.

## **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) Warringah Local Environmental Plan 2011.

## 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 14 December 2011 and ending on 31 January 2012. Furthermore, the application has been advertised within the Manly Daily on 17 December 2011 and a notice was placed upon the site.

As a result of the public exhibition process Nine (9) submissions were received of which eight (8) were individual submissions in objection to the proposal and one was a petition which included 152 signatures in objection. The submissions were received from:

Name	Address
Tomasy Pty Ltd (on behalf of Miramare Gardens)	48 Myoora Road, Terrey Hills
St Anthony in the Fields	46 Myoora Road, Terrey Hills
J M Watts	12 Jinchilla Road, Terrey Hills
A & M Ryan	148/2 Dawes Road, Belrose
G Dowsett	15 Myoora Road, Terrey Hills
M J McGregor & J Tayles	2 Larool Street, Terrey Hills
Duffys Forest Residents Association Inc	PO Box 567, Terrey Hills
Terrey Hills Progress Association	PO Box 267, Terrey Hills
Congregation of St. Anthony in the Field Church (petition)	46 Myoora Road, Terrey Hills

The matters raised within the submissions are as follows:

### Inadequate documentation

The submission raises concern that the Traffic Report and the Statement of Environmental Effects do not adequately describe the proposal or provide a full assessment of the impacts of the development or provide any information which adequately supports the development as low intensity.

The submissions also raise concern that the Statement does not disclose if the restaurant use will be accommodated by McDonalds or a similar fast food take-away outlet resulting in greater impact.

### Comment:

This matter has been addressed in this report (refer to Schedule 15 in this report). In summary, the assessment has found that the information contained within the Statement of Environmental Effects does not satisfy the provisions of 'Schedule 15 – Statement of Environmental Effects' under Warringah Local Environmental Plan 2000.

With regards to the proposed restaurant uses, Council cannot determine which company will accommodate a restaurant but it is noted that, while the Statement does not discuss this matter, the plans do indicate that the restaurant has been designed to accommodate a fast food take-away outlet of a similar character as a McDonalds. A fast food take-away outlet demands a different car parking rate than a typical restaurant use and this has been addressed in this report (refer to Schedule 17).

This matter forms a reason for refusal.

## **Landscaping within the Mona Vale Road frontage**

The submissions raise concern that the vehicle access from Mona Vale Road will prevent the establishment of a dense bushland buffer along the road frontage.

### Comment:

This matter has been addressed in this report (refer to Landscape Adviser comments under Internal Referrals and under Desired Future Character). In summary, it was found that the development provided adequate bushland buffer along both the road frontages of Mona Vale Road and Myoora Road.

This matter does not form a reason for refusal.

## **Hours of operation**

The submissions raise concern that the Statement of Environmental Effects does not adequately describe the hours of operation for the proposed uses.

### Comment:

The Statement refers to the hours of operation as follows:

- *“Bulky Goods Retail – 7 days (8.00am to 5.00pm)*
- *Open Air Cinema – 7 days (9.00am until late. Generally first session would be at 10am and last session at 9pm)*
- *Restaurant/Café – 7 days and when cinema in operation.”*

With exception to the ‘late’ closing, the operating hours of the uses are generally clear but, given the range of uses and crossover operating hours it is recommended that the operating hours are made subject to a condition should this application be approved.

This matter does not form 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 includes an acoustic report which satisfies Council that, in terms of noise, the development will not have any unreasonable impact upon the amenity of surrounding land.

This matter does not form a reason for refusal.

## **Overdevelopment of the site**

The submissions raise concern that the combination of proposed uses constitutes an overdevelopment of the site and that the Statement of Environmental Effects does not provide any information to address intensity.

### Comment:

This matter has been addressed in this report. In summary, the assessment has found that the development does constitute 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.

#### 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 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 development will more than double the traffic volume on Myoora Road with the most intense period being the ending of cinema sessions. The RMS has imposed a condition within their concurrence which requires the applicant to install traffic lights at the intersection of Mona Vale Road and Forest Way and to construct a new traffic lane on Myoora Road to accommodate the increased traffic volume and to manage traffic flow. Whilst this is considered to be an acceptable solution it is indicative of the overdevelopment of the site and an over-intensification of uses.

This has been reviewed by Council's Traffic Engineer who is generally in agreement as the additional land and traffic lights would be considered necessary given the increased traffic produced by this development, should this application be approved.

This matter forms a reason for refusal.

### **Lack of stormwater management**

The submissions raise 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 Warringah Local Environmental Plan 2011**

The submission raises concern that the development contains prohibited land uses under the WLEP 2011.

#### Comment:

This matter has been addressed in this report. In summary, the assessment has found that the bulky goods premises and the cinema use constitute prohibited land uses under Warringah Local Environmental Plan 2011 and that the development is not consistent with the objectives of the RU4 Primary Production Small Lots.

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.

#### 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 inconsistent 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 inconsistent with the Desired Future Character of the A4 Myoora Road locality.

This matter forms a reason for refusal.

### **Redirection 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.

## **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, whilst the development will remove 132 trees from the site, the development will include an additional 210 native trees (70 large canopy; 82 medium canopy; and 58 small canopy trees) and 1,605 native shrubs (540 screening; 450 tall; and 615 medium shrubs) which is considered to be a satisfactory outcome in terms of minimising the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.

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).

The application includes a Flora and Fauna Impact Assessment (refer to Flora and Fauna Assessment, Impact of Proposed Development dated 6 December 2011 as prepared by Footprint Green Pty Ltd) which concludes that the development will not have a significant impact on any threatened species.

This matter does not form 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.

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

The Development Application was referred to NoW for approval as Integrated Development under the provisions of Section 91 of the Environmental Planning and Assessment Act, 1979 as the development proposes the diversion of Kieran's Creek.

In their response, NoW do not raise any objection to the proposal subject to the imposition of their General Terms of Approval (GTAs).

#### Assessing Officer's Comment:

The General Terms of Approval are to be imposed in the Notice of Determination should this application be approved.

#### **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*.

The RMS has provided their concurrence to the development under Section 138(2) of the *Roads Act, 1993* subject to Council approval.

#### Assessing Officer's Comment:

The letter of concurrence includes conditions which are to be imposed in the Notice of Determination should this application be approved.

#### **NSW Rural Fire Service (NSWRFS)**

A referral response from the NSWRFS has not been received to date but it is anticipated that, given the similarities between the proposed development and DA2011/1025 and the condition of vegetation on the site, the referral response will be similar.

In this regard, the NSWRFS did not raise any objection to the previous development subject to conditions which addressed the appropriate design of buildings and require the development to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Notwithstanding, once received the updated referral response will be provided although it should be noted that the response will not change Council's recommendation for the refusal of this application.

## 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 C, dated 28 November 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.*
- 3) Finished floor level of the restaurant or cafe must 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.*

#### Diversion of the watercourse

- 1) Please refer to comments from Natural Environment Unit with regards to the proposed diversion of Kieran's Creek.*

*The stormwater drainage proposal is not satisfactory until the above issues are addressed.*

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

#### Riparian

The Riparian section of the Natural Environment Unit objects to the development and provides the following comments:

- *"The proposed piping and diversion of Kieran's Creek is against Principle 3.1(a) of Council's Policy No. PL 740 Waterways (Protection of Waterways and Riparian Land Policy) which states*
  - "(a) Natural ecological processes of waterways and riparian land shall be maintained and enhanced to the greatest extent possible by:*
    - i. Causing no net loss to biodiversity;*
    - ii. Supporting natural flow regimes;*
    - iii. Minimising bank erosion and promoting naturalistic bank protection works when stabilisation is necessary (i.e. soft engineering outcomes);*
    - iv. preventing alteration of watercourses (includes piping, channelling, relocation or removal*
    - v. Improving plant communities through natural area restoration;*
    - vi. Maintaining natural floodplains where appropriate."*

- *The proposed 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.'*
- *The NSW Office of Water has agreed to piping and diversion of Kieran's Creek and as has issued their General Terms of Approval for Controlled Activities Approval under the Water Management Act 2000.*
- *The Natural Environment Unit does not agree with the decision made by the NSW Office of Water and still refuses the proposed development as piping and diverting a watercourse is against the Council's Policy No. PL 740 Waterways (Protection of Waterways and Riparian Land Policy).*
- *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."*
- *There is no confirmation from Sydney Water with the proposal demonstrating that connection to the sewer is possible. Need confirmation from Sydney Water and or details from the applicant as to how they propose to manage their sewerage."*

Biodiversity

The Biodiversity section of the Natural Environment Unit do not raise any objection to the development subject to conditions and the matter of the creek line being appropriately addressed.

Assessing Officer's Comment:

With regards to the redirection of Kieran's Creek, 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 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.

It is noted that the development application includes a 'Description and Condition of Watercourse' report dated 5 December 2011 as prepared by Footprint Green Pty Ltd. The report describes the current condition of the watercourse on the site and notes the species which use the watercourse as habitat. The report concludes that the "*redevelopment of the site could provide a positive contribution to the site environments and the downstream catchment*".

However, it is noted that the report does not examine to any degree the impacts of the development, as a whole, upon the redirected waterway nor upon the downstream watercourse of Kierans Creek, nor does it provide any evidence to support the claim that the development could provide a positive contribution to the downstream catchment.



In this regard, and despite the concurrence of NoW, the downstream environmental impacts of the redirected watercourse, in terms of increased/decreased water velocity and flow, pollutant infiltration into the waterway and therefore, into Ku-ring-gai Chase National Park and the subsequent impacts upon any aquatic or water dependent habitat, have not been adequately examined to give Council any surety that the development will have minimal impact.

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.

The conditions required by the Biodiversity section of the Natural Environment Unit are to be imposed in the Notice of Determination should this application be approved.

Notwithstanding the support by NoW and 'Biodiversity', the proposed redirection of Kieran's Creek has been included as a reason for refusal due to its inconsistency with Council's Policy No. PL 740 Waterways - "*Protection of Waterways and Riparian Land Policy*" and Clauses 56 and 60 of the General Principles of Development Control under WLEP 2000.

### **Traffic Engineer**

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

*"This proposal is unacceptable due to the volume of traffic that will be added to Myoora Road, the adverse effect this development will have on the surrounding road network, the deficiency of parking provided and the disruption to residential amenity caused by late night vehicle movements."*

#### Parking – Revised

*The parking generation rate for the bulky goods component should be maintained as 1.9/100m<sup>2</sup> which is the rate that has been previously applied for similar developments in Warringah LGA. This creates a requirement for 243 spaces for the maximum parking occupancy.*

*The restaurant component was previously considered as 60 spaces; however it is more appropriate to consider this as a drive-in take away food outlet, which reduces the parking requirement to 40 spaces.*

*As clarified later in these comments the maximum parking occupancy for the drive in component should be considered as 116 spaces based on maximum number of patrons and the occupancy rate of vehicles.*

*The peak parking occupancy for this site will occur on Saturday afternoons when all three elements of this proposal will be operating simultaneously. At these times the bulky goods warehouse will be at peak operation, as will the restaurant. These two uses create a parking demand of 283 spaces.*

*The traffic report does not provide parking generation for the cinema use prior to 6.35pm. However based on the rate at 6.35pm on Saturdays, 50 carparking spaces will be required for this use.*

*Overall this site will have a deficiency of 60 parking spaces on Saturday afternoons. Parking generated by this site and not accommodated on this site will cause on street parking to occur on Myoora Road. This level of on street parking on Myoora Road is unacceptable. It should be noted that this coincides with the 127% increase in traffic on Myoora Road generated by this site.*

*Please note that this is for a reduced rate representing only partial use of the cinema. Should all uses be at peak operation, this site has a deficiency of 126 parking spaces.*

*In addition this site does not provide specific parking for vehicles with trailers at bulky goods warehouses as required by the LEP.*

*The applicant must demonstrate that all parking generated by this site will be accommodated on this site.*

#### **Traffic Generation - Revised**

*The previous assessment was based on a 50/50 North/South split. The applicant's traffic report assigns 75% of vehicles entering the site to the Mona Vale Road entrance. This reflects the existing use pattern of the area, and represents a 25/75 North/South split.*

*This distribution pattern removes traffic from Myoora Road and relies on the signalised intersection at Myoora Road to disperse traffic onto the arterial road network.*

*The traffic generated from this site will still have a significant impact on Myoora Road as show in the tables below based on the 25/75 North/South distribution.*

##### *Myoora Road between the site access and intersection of Aumuna Road*

<b>Time</b>	<b>Existing Volume</b>	<b>Additional Volume</b>	<b>Increase</b>
<i>Saturday 12pm-1pm</i>	228	291	+127%
<i>Thursday 4pm-5pm</i>	81	107	+132%

##### *Myoora Road between the site access and intersection of Cooyong Road*

<b>Time</b>	<b>Existing Volume</b>	<b>Additional Volume</b>	<b>Increase</b>
<i>Saturday 12pm-1pm</i>	101	97	+96%
<i>Thursday 4pm-5pm</i>	153	36	+24%

*This proposal will more than double the current traffic volumes of Myoora Road.*

#### **Alterations to the road network - Revised**

*It is noted that the applicant has received in principal support from Roads and Maritime Services (RMS) for alterations to the traffic signals at the intersection of Mona Vale Road/Myoora Road/Forest Way.*

#### **Cinema Parking and operating times – Revised**

*The applicant has stated the cinema will accommodate up to 350 people and acknowledges that the large majority of people will rely on private vehicles for transport. Having considered this allowing 1 parking space per 8 persons is not acceptable.*

*Comparisons between cinemas in urban areas and this location (semi rural) are tenuous. An acceptable comparison would be for a drive in theatre in a location isolated from public transport.*

*The applicant asserts that the peak parking demand for the cinema is 80 vehicles, but has a peak departure rate of approximately 110 vehicles from the cinema use.*

*The occupancy rate of vehicles attending this location is not specified, but is likely to be approximately 2.5 – 3 persons/vehicle. Based on an occupancy rate of 3 persons/vehicle 116 parking spaces will be required to accommodate the cinema use at full capacity.*

*It is accepted that the cinema will generally operate outside peak times. The data contained in the applicant's traffic report proposes that 110 vehicles are scheduled to leave the site at 11.20pm on Tuesday nights within a 10 minute interval. This volume of traffic represents a significant disruption to the residential amenity of the area."*

### Assessing Officer's Comment:

Council's Traffic Engineer notes that the development is deficient in the provision of on-site car parking (refer to Schedule 17 in this report) and that the access arrangement imposed by the RMS will result in an unacceptable doubling of the traffic volume onto Myoora Road.

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

### **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. The number of LCD screens has been reduced to two from five previously.*

#### Negative Aspects:

1. *Landscape Area - The landscape site calculations claims 70% of the site area (70% required by the LEP) is landscape area taking into consideration 'impervious car parking, roads and paths' which should not be included. It is considered that the landscaping proposed in this instance is inadequate as it can be easily complied with.*
2. *Landscaping buffer proposed should also camouflage screens from neighbouring properties especially light spill or glare at night. More information is required to demonstrate this requirement.*
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. However the North-East elevation of the warehouse building shows the lower corner exceeding the building height. This cannot be supported as it can be physically complied with.*
4. *Clause 43 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. *Warringah Local Environmental Plan 2011 was made on 9 December 2011. Under that Plan the subject site is proposed to be zoned RU4 – Primary Production Small lots, which prohibits the use of a site for the proposed purposes.*

### Conclusion

*The 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:

Points 1, 3, 4, 5 and 6 relate directly to the statutory assessment of the Development Application under the relevant provisions of WLEP 2000 which are addressed later in this report (see 'Warringah Local Environment Plan 2000' in this report).

It is noted that, in respect to Point 2, the landscape plan (refer to Plan No. 628.04 dated 6 December 2011 as prepared by Tramonte Jensen) indicates that landscape strips of between 3.5m to 4.2m along the side setback areas between the cinema screens will accommodate a dense strip of medium and large canopy trees which will adequately conceal the cinema screens from view. A condition is to be imposed (should this application be approved) which requires these trees to be of a mature height at the time of planting to ensure that any impacts to neighbouring amenity is minimised. In this regard, it is recommended that the large canopy trees have a minimum pot size, at the time of planting, of 200ltr and the medium canopy trees have a minimum pot size, at the time of planting, of 100ltr.

## **Environmental Health and Protection**

Council's Environmental Health Officer has assessed the Development Application and advises the following with regards to the provision of sewerage:

*"This proposal is reliant on Sydney Water connection in an area where connection to sewer is not normally available. There is no confirmation from Sydney Water with the proposal demonstrating that connection to the sewer is possible. As there is no waste water management plan submitted, Environmental Health & Protection are unable to assess the proposal as appropriate sewer management is essential and critical component of the application."*

*Accordingly, it is recommended that the application be refused based on lack of information being provided for sewer management."*

With regards to potential on-site contamination, the Environmental Health Officer has reviewed the Preliminary Environmental Assessment dated July 2011 and the supplementary letter to that Assessment dated 6 December 2011 both prepared by Aargus Pty Ltd and does not raise any objection to subject to conditions.

### Assessing Officer's Comment:

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.

The application does not include any confirmation from Sydney Water that the site can be provided with appropriate infrastructure sufficient to support the intensity of the development. In this regard, and in accordance with the 'Newbury Test' as established in the NSW Land and Environment Court, Council cannot issue a consent which does not provide any certainty that an imposed condition can be satisfactorily addressed.

This matter has been included as a reason for refusal.

## **Landscape Adviser**

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

*"Following further discussion and clarification of the interpretation of the landscape requirements for the Mona Vale Road setback, no objections are raised to the proposed landscape treatment to Mona Vale Road."*

*The side setbacks adjacent to the bulky goods building provide little space for adequate landscaping on the boundary to provide a meaningful buffer to the adjacent properties and the locality in general given the size and bulk of the building proposed. A minimum 5m buffer would be more appropriate."*

*The calculations for Landscape Open Space include driveway and parking areas associated with the outdoor cinema and drive through restaurant. It is not considered that these should be included as landscape open space as they are roadways and parking servicing the development on a permanent basis.*

*The relocation of the natural creek line requires removal of a significant natural feature on the site and may not be in accordance with Clause 56 - Retaining Unique Environmental Features on Sites. I would however defer to comments from Council's NEU Riparian Section with regard to the significance or otherwise of this feature.*

*If the development is to be approved, the conditions below are recommended. It is also recommended that the Landscape Plans be included in approved drawings to ensure replacement planting is undertaken."*

**Assessing Officer's Comment:**

The conditions recommended by the Landscape Adviser are to be imposed in the Notice of Determination should this application be approved.

**Building Certificate and Fire Safety**

Council's Building Assessment and Compliance Officer does not raise any objection to the development subject to conditions requiring compliance with the Building Code of Australia and the provision of a Final Fire Safety Certificate prior to the issue of the Interim/Final Occupation Certificate.

**Assessing Officer's Comment:**

The conditions recommended by the Building Assessment and Compliance Officer are to be imposed in the Notice of Determination should this application be approved.

**Waste Management**

Council's Waste Management Officer does not raise any objection to the development subject to conditions requiring compliance with Warringah Council's Policy No. PL 850 – Waste.

**Assessing Officer's Comment:**

The conditions recommended by the Waste Management Officer are to be imposed in the Notice of Determination should this application be approved.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

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	Not applicable.
<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.

Section 79C 'Matters for Consideration'	Comments
	Clause 92 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	<p>(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.</p> <p>(i) The proposed development will not have a detrimental social impact in the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed land use.</p>
<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.
<b>Section 79C(1)(e)</b> – the public interest	<p>The development is not in the public interest in that:</p> <p>a) The proposal does not comply with the relevant local planning controls of the Warringah Local Environment Plan 2000.</p> <p>b) The proposal is inconsistent with the Desired Future Character Statement for the A4 Myoora Road Locality under Warringah Local Environment Plan 2000.</p> <p>c) The proposal provides for prohibited land uses within the RU4 Primary Production Small Lots zone and is inconsistent with the Objectives of that zone under Warringah Local Environmental Plan 2011.</p> <p>d) The site is located within ‘Area 1’ under Schedule 1 of Warringah Local Environmental Plan 2011. ‘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>

The proposal has been considered against the relevant matters for consideration under Section 79C of the *Environmental Planning and Assessment 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.



## ENVIRONMENTAL PLANNING INSTRUMENTS:

### Warringah Local Environmental Plan 2011

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.

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

##### Comment:

The Draft WLEP 2009 was gazetted as WLEP 2011 on 9 December 2011.

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

##### Comment:

See commentary below.

#### **3. The existence and applicability of savings provisions in Draft LEP.**

##### Comment:

Warringah Local Environmental Plan 2011 was made on 9 December 2011. This application was lodged on 7 December 2011 and is therefore subject to assessment under the provisions of Clause 1.8A 'Savings provision relating to development applications' of WLEP 2011. Notwithstanding, the following consideration is given to the application under the relevant zoning and Development Standard provisions of WLEP 2011 to ascertain permissibility and compliance.

#### **Definition of uses within the proposed development:** (ref. WLEP 2011 Dictionary)

##### Commercial Premises Group

- Retail Premises Sub-Group
  - **'Food and Drink Premises'** means "*premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:*
    - (a) a **'restaurant or café'** means "*a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided*".

- (b) a 'take away food and drink premises' means *"premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises"*.
- (c) a 'pub' means *"licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises"*.
- o **'Bulky Goods Premises'** means *"a building or place the principal purpose of which is the sale, hire or display of bulky goods, being goods that are of such size or weight as to require:*
    - (a) *a large area for handling, display or storage, and*
    - (b) *direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire, and including goods such as floor and window supplies, furniture, household electrical goods, equestrian supplies and swimming pools, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or hire or display of bulky goods."*

**'Entertainment Facility'** is a use outside of the Commercial Premises group term and means *"a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club."*

**Land Use Zone:** RU4 Primary Production Small Lots

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

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

The site is located within 'Area 1' under Schedule 1 of the Warringah Local Environmental Plan 2011 which designates educational establishments, hospitals, places of public worship, recreational facilities (indoor), registered clubs, restaurants and hotel or motel accommodation as permitted uses with consent. Therefore, with exception to the restaurant use, the remainder of the proposed uses are not permitted within 'Area 1'.

**Assessment of prohibition:**

**1. The extent of conflict between the development and the objectives of the zone contained in Warringah Local Environmental Plan 2011.**

The planning objectives of the RU4 Primary Production Small Lots zone are as follows:

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

**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 encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Whilst providing a diversity of employment opportunities the use within the development do not relate to primary industry enterprises.

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

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

Comment:

The development proposes three (3) uses which are collectively considered to be of a high intensity. The intensification of the site will have significant impact upon the local road network by doubling the traffic volume onto Myoora Road and on the land uses within the zone.

Additionally, the development proposes to redirect the watercourse within the site. The watercourse forms the headwater of Kieran's Creek which flows into Ku-ring-gai Chase National Park and the reports accompanying the application do not provide sufficient information to satisfy Council that the development will not have any detrimental impact upon downstream biodiversity or upon the water quality of the creek.

- *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 between 6.5m to 10.0m facing Mona Vale Road and a height of between 8.8m to 10.0m 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:

Currently, the site is largely vacant of structures, is densely vegetated and accommodates a watercourse which extends into the property from the south-west corner. Of the 132 trees to be removed, the 'Arboricultural Impact Assessment' dated 6 December 2011 and prepared by Footprint Green Pty Ltd records that 32 (23%) have a 'high' to 'significant' landscape significance and includes (amongst other species) 18 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. The majority of the trees to be removed generally follow the line of the existing watercourse and visually contribute towards the rural character of the area by providing a remnant pocket of native vegetation which has a clear relationship to the vegetation within the nearby Garigal National Park.

The landscape plan (see Plan No. 628.04 dated 6 December 2011 as prepared by Tramonte Jensen) indicates that the development will include an additional 210 native trees (70 large canopy; 82 medium canopy; and 58 small canopy trees) and 1,605 native shrubs (540 screening; 450 tall; and 615 medium shrubs) which is considered to be a satisfactory outcome in terms of minimising the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.

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.

Notwithstanding, Council's Natural Environment Unit have advised that the development will have a significant impact upon the watercourse and that the 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.

Additionally, 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).

In this regard, and in particular with respect to the redirection of the watercourse and the significant shortfall in landscaped open space, the development is considered to be inconsistent with this objective.

- *To ensure low intensity of land use other than land uses that are primary industry enterprises.*

#### 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."*

#### Size and scale

The application proposes the construction of four (4) structures (bulky goods shop, restaurant and two (2) 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 Building Height and Landscaped Open Space 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 approximately 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*
<b>Site Area</b>		8,100m <sup>2</sup>	16,087m <sup>2</sup>	31,911.87m <sup>2</sup> .
<b>Housing Density</b>	1 dwelling/2ha	N/A	N/A	N/A
<b>Building Height</b> (Overall)	8.5m	8.5m	8.455m	6.5m to <b>10.0m</b>
<b>Building height</b> (Natural ground to topmost ceiling)	7.2m	N/A	N/A	6.2m to <b>9.8m</b>
<b>Front Setback</b> Mona Vale Road Other Roads	30.0m 20.0m	22.5m 20.0m	55.0m – 88.3m 20.0m	33.0m 21.0m
<b>Rear Building Setback</b>	7.5m	7.5m	N/A	N/A
<b>Side Building Setback</b> North South	7.5m 7.5m	18.0m – 21.8m 7.5m	7.5m 7.5m	7.5m to 17.0m 15.0m to 17.0m
<b>Building Site Coverage</b>	20%	19%	Unavailable	19.7% (6,297m <sup>3</sup> )
<b>Landscaped Open Space</b>	70%	62% (5,022m <sup>2</sup> )	70% (11,260m <sup>2</sup> )	<b>59% (18,827.4m<sup>2</sup>)</b>

\*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 Statement of Environmental Effects which accompanies the application, notes that the three uses within the development will operate at the following times:

- Bulky Goods Shop – 8.00am to 5.00pm (7 days per week);
- Entertainment Facility – 9.00am to late (7 days per week); and
- Restaurant – As per entertainment facility (7 days per week).

Therefore, the operating hours of the three (3) uses will result in the development being in continual operation between 8.00am 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 generate 20 vehicle trips per hour and the bulky goods store will generate 263 vehicle movements per hour on Thursday between 4.00pm and 5.00pm and 732 vehicle movements per hour on Saturday between Noon and 1.00pm (see page 3.3 of that report). The entertainment facility will operate between 9.00am and 11.30pm (noting that the first session will begin at 10.00am and the last session will begin at 9.00pm) and has the capacity to accommodate up to 350 people at any one time.

Council's Traffic Engineer notes that the traffic generated from this site will have a significant impact on Myoora Road and will result in a 127% and 132% increase in traffic volume between the site access and the Aumuna Road intersection and a 24% and 96% increase in traffic volume between the site access and the Cooyong Road intersection. In this respect, Council's Traffic Engineer points out that the development will more than double the current traffic volumes of Myoora Road.

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

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

Comment:

Currently, the site is largely vacant of structures, is densely vegetated around the perimeter of the site and along the natural watercourse extends into the property from the south-west corner.

The landscape plan (see Plan No. 628.04 dated 6 December 2011 as prepared by Tramonte Jensen) indicates that the development will include an additional 210 native trees (70 large canopy; 82 medium canopy; and 58 small canopy trees) and 1,605 native shrubs (540 screening; 450 tall; and 615 medium shrubs) which is considered to be a satisfactory outcome in terms of minimising the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.

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.

Whilst the development will provide an appropriate level of tree coverage, the construction of three (3) new highly intensive uses which do not relate to the continued semi-rural use and character of the land.

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

Council's Environmental Health Officer has assessed the Development Application and notes 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. It is also noted that there is no confirmation from Sydney Water demonstrating that sewer connection is achievable, and that no waste water management plan has been submitted, Council are unable to assess this element of the application. Accordingly, it is recommended that the application be refused based on lack of information being provided for sewer management.

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 inconsistent with this objective.



## 2. The existence and applicability of savings provisions in Warringah Local Environmental Plan 2011.

### Comment:

In relation to the third principle, WLEP 2011 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)."*

### Comment:

Warringah Local Environmental Plan 2011 was made on 9 December 2011. This application was lodged on 7 December 2011 and is therefore subject to assessment under the provisions of Clause 1.8A 'Savings provision relating to development applications' of WLEP 2011. Therefore, in accordance with the above judgement, the proposal cannot be supported as it is inconsistent with the aims and objectives of the RU4 Primary Production Small Lots zone.

### 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	6.5m to 10.0m	No	See commentary below

**Note:** The building height development standard in the WLEP 2011 is taken from the *existing* ground level as opposed to the *natural* ground level stipulated in WLEP 2000.

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

The site is located within the RU4 Primary Production Small Lots zone and is subject to a Building Height Development Standard of 8.5m (as measured from the existing ground level which, in this instance, is consistent with the natural ground level due to the undeveloped nature of the site).

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 WLEP 2011. 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 WLEP 2011 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 WLEP 2011 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 surrounding and nearby development.*

#### Comment:

The proposed height, bulk and scale of the proposed bulky goods premises, and the collective scale of the development as a whole, is not considered to be compatible with the height, bulk and scale of surrounding and nearby development.

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 relevant elements of the objective:

#### Visual impact

The site currently accommodates land uses consisting of a dwelling house 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.

The development proposes four (4) distinct structural components consisting of a bulky goods premises, a restaurant and two (2) large LCD cinema screens (the heights of the screens have not been provided but the widths are measured at between 25.0m each).

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 minimised. However, the proposed landscaping along the side boundaries will not adequately conceal the scale of the bulky goods premises from neighbouring private properties.

It is also noted that the application does not include lux diagrams which detail the luminosity of the cinema 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

Apart 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).

The development includes sufficient physical separation which will mitigate against unreasonable overlooking by patrons of the outdoor cinema. No unreasonable overlooking opportunities exist from the bulky goods premises or the proposed restaurant.

The application includes a Noise Emission Assessment dated 20 December 2011 as prepared by Acoustic Logic. The Assessment notes that the development will comply with the DECCW Industrial Noise Policy and the DECCW Guidelines for Sleep Arousal. Therefore, subject to the recommendations included in the Assessment, the development is unlikely to result in a loss of visual or acoustic privacy.

#### 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 premises 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.

Therefore, in summary 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 mitigated from the public domain to the east and west by the setbacks and incorporation of dense vegetation along the front boundaries facing Mona Vale Road and Myoora Road. In this regard, the proposal will not have an adverse visual impact on the scenic quality of Warringah's bush environment, most notably represented by Ku-ring-gai Chase National Park and Garigal National Park.

The development satisfies this objective.

- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

#### Comment:

The setbacks and vegetation coverage along the street frontages of Mona Vale Road and Myoora Road is such that it would adequately mitigate the visual impact of the development when viewed from public places such as the Ku-ring-gai Chase National Park (Dardabong

Reserve) 350m to the west, the Garigal National Park 380m to the south-east and to Mona Vale Road and Myoora Road.

The development satisfies 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 Primary Production Small Lots zone.

**4. Is the variation to the development standard consistent with the objectives of Clause 4.6 of WLEP 2011?**

The objectives of Clause 4.6 – 'Development Standards' of WLEP 2011 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.*

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:*
- b) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- c) *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 Clause 4.6(4)(a)(i), Subclause 3 in WLEP 2011 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 does not acknowledge the non-compliance to the Height of Buildings Development Standard and therefore, does not include a written request under Clause 4.6(3) of WLEP 2011 to vary the Development Standard.

Therefore, Council cannot grant consent because the application does not adequately address the matters required to be demonstrated and 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 Primary Production Small Lots zone.

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

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the Objectives of the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard cannot be assumed to be given.

**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 WLEP 2011, as set out above.

**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 which is supported by a supplementary letter prepared by Aargus Australia dated 6 December 2011.

The methodology of the investigation included 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. In this respect, Aargus advises that the site is considered to be suitable for the proposed development and that a Phase 2 investigation is not required.

The Development Application was referred to Council's Environmental Health Officer who does not raise any objection to this element of the application.

## **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,
- 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 subject to conditions which are to be imposed in the Notice of Determination should this application be approved.

### 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.

The RMS has provided their concurrence to the development under Section 138(2) of the *Roads Act, 1993* subject to Council approval. The letter of concurrence includes conditions which are to be imposed in the Notice of Determination should this application be approved.

## **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.*

*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 respectively defined as a Bulky Goods Shop and an 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 classified as a Category 1 development within the locality.

Clause 12(3)(b) of WLEP 2000 requires that, prior to granting consent for Category 3 development, the consent authority must 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' under WLEP 2011) 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 minimised.

The development is inconsistent with this part of the Desired Future Character statement with regards to constituting low intensity business, community and leisure uses which do not rely on exposure to passing trade for their continued operation.

*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* and Schedule 3 of *State Environmental Planning Policy (Infrastructure) 2007* as traffic generating development.

The RMS has provided their concurrence to the development under Section 138(2) of the *Roads Act, 1993* subject to Council approval. The letter of concurrence includes conditions which are to be imposed in the Notice of Determination should this application be approved including a condition to install an additional lane on Myoora Road to accommodate the additional traffic volume.

Notwithstanding the concurrence of the RMS, Council's Traffic Engineer notes that the development will double the current traffic volumes of Myoora Road resulting in a significant impact. This will be especially evident at the departure of cinema patrons at the ending of cinema sessions which will represent a significant disruption to the amenity of the area and to the safety of the vehicles and pedestrians on Myoora Road.

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 regular box design common to typical warehousing. However, the building includes vertical architectural elements coupled with elevated roof forms along the eastern façade 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 approximately 11% (3,510.3m<sup>2</sup>) which is considered to be a significant and unacceptable shortfall from the minimum requirement of 70% (22,337.7m<sup>2</sup>). It is considered that, given the area of the site, and that this application constitutes a total redevelopment of that site, there is no reason why any development could not comply with the landscaped open space requirement. This is particularly noted along the southern elevation of the bulky goods shop where the provision of deep soil area is limited and the provision of plantings is sparse.

The Development Application includes a Schedule of Colours and Finishes which indicates that the external walls of the bulky goods shop and the restaurant will finished in a light colour which is not considered to blend with the colours and textures of the natural landscape, especially with regards to the monolithic scale of the bulky goods shop which will be accentuated by the colour scheme. Notwithstanding, this could be addressed through the imposition of an appropriate condition should this application be approved.

The development is inconsistent with this part of the Desired Future Character statement with regards to the provision of landscaping around buildings and the proposed colours and finishes of the development, in particular to the bulky goods shop.

Summary Comment of Desired Future Character

Given the above assessment, the development is considered to be inconsistent with the Desired Future Character statement of the A4 Myoora Road Locality with regards to constituting low intensity business, community and leisure uses; that the development will not provide safe vehicular access to the satisfaction of the Council; and the deficient provision of landscaped open space such that it does not adequately conceal the bulk and scale of the bulky goods shop from neighbouring properties.

Definition and Category of Development

**Restaurant** means *a building or place, the principal purpose of which is the provision of food to paying customers for consumption on the premises*

A Restaurant is a Category 1 development in the A4 Myoora Road locality.



**Bulky Goods Shop** means “a building or place used for the sale by retail or auction of goods or materials which are of such a size, shape or weight as to require:

- (a) a large area for handling, storage or display, or
- (b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading items into their vehicles after purchase,

but does not include a building or place used for the sale of foodstuffs or clothing.”

A Bulky Goods Shop is a Category 3 development in the A4 Myoora Road locality.

**Entertainment Facility** means “a building or place used for the purpose of sport, entertainment, exhibitions, displays or cultural events, and includes:

- (a) sports stadiums, showgrounds, racecourses and the like, and
- (b) theatres, cinemas, music halls, concert halls, open air theatres, drive-in theatres and the like.”

An Entertainment Facility is a Category 3 development in the A4 Myoora Road locality.

**Note:** Category 1 development is development that is generally consistent with the desired future character of the locality. Category 3 development is development that is generally inconsistent with the desired future character of the locality.

#### 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
<b>Housing Density</b>	1 dwelling/2ha of site area	N/A	N/A
<b>Building Height</b> (Overall)	8.5m	6.5m to 10.0m	<b>No</b> (+ 1.5m)
<b>Building height</b> (Natural ground to topmost ceiling)	7.2m	6.2m to 9.8m	<b>No</b> (+ 2.6m)
<b>Front Setback</b> Mona Vale Road Other Roads	30m 20m	33.0m 21.0m	Yes Yes
<b>Rear Building Setback</b>	7.5m	N/A	N/A
<b>Side Building Setback</b> North South	7.5m 7.5m	7.5m to 17.0m 15.0m to 17.0m	Yes Yes
<b>Building Site Coverage</b>	20% (6,382.2m <sup>2</sup> )	19.7% (6,297m <sup>2</sup> )	Yes
<b>Landscaped Open Space</b>	70% (22,337.7m <sup>2</sup> )	59% (18,827.4m <sup>2</sup> )	<b>No</b> (- 11.0%)

The development fails to satisfy the Locality’s Building Height 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, 50, 54, 56, 57, 60, 63, 66, 68, 72, 73, 74 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).

**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 consistent with applicable State Environmental Planning Policies.. Accordingly the proposal qualifies 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 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
<b>Building Height</b> (Overall)	8.5m	6.5m to 10.0m	<b>No</b> (+ 1.5m)
<b>Building height</b> (Natural ground to topmost ceiling)	7.2m	6.2m to 9.8m	<b>No</b> (+ 2.6m)

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.”*

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



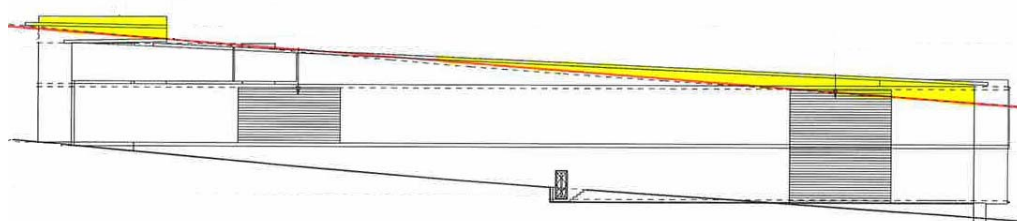
**Figure 1** Western (rear) elevation

Source: Adapted by the author from Plan No. 205A dated 17 September 2008 prepared by Rodney Albert Yannakis & Associates



**Figure 2** Eastern (front) elevation

Source: Adapted by the author from Plan No. 205A dated 17 September 2008 prepared by Rodney Albert Yannakis & Associates



**Figure 3** Northern (side) elevation

Source: Adapted by the author from Plan No. 206A dated 17 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, being the architectural features which support the elevated roofs to the front of the building and the triangular sections along the northern side and western rear elevations.

When viewed directly from Mona Vale Road, the architectural features do not overemphasise the building height nor add to the bulk of the building due to their relative concealment by the landscaped buffer within the front setback area.

However, when viewed from the neighbouring property to the north, the non-compliant building height adds to the already considerable and unarticulated side elevation of the bulk and scale of the building. This is emphasised by the lack of any substantial landscaping along the northern side setback which would otherwise provide some visual relief to the bulky goods shop. Please note that, while the above comments refer specifically to the northern elevation to the area of non-compliance, the comments are equally relevant to the southern side elevation with regards to the visual dominance of the bulky goods shop.

The development is not considered to be consistent with this objective due to the visual dominance of the development when viewed from neighbouring properties.

- *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

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 visual or acoustic privacy.

#### Solar access

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 solar access to neighbouring properties.

The development is considered to be consistent with this objective.

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

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 limitations to located car parking at ground level due to the spatial layout of the development, most notably the cinema use which occupies approximately 7,455m<sup>2</sup> (23%) 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 break up the roof form.

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 bulky goods shop and the extent of excavation proposed, the Clause 20 variation to the Building Height Built Form Control is not supported.

## Landscaped Open Space

### Area of inconsistency with Control:

Control	Requirement	Provided	Compliant
Landscaped Open Space	70% (22,337.7m <sup>2</sup> )	59% (18,827.4m <sup>2</sup> )	No (- 11.0%)

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.”*

Plan No. 628.01 dated 6 December 2011 as prepared by Tramonte Jensen indicates that the site will accommodate 70% landscaped open space. The Plan shows that this calculation is based upon the inclusion of driveways, car parking areas and pedestrian footpaths as landscaped area which is in contravention of the above methodology of calculating landscaped open space under WLEP 2000. It should be noted that Council does not accept the use of permeable pavers in lieu of deep soil landscaped area.

### 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 approximately 11% (3,510.3m<sup>2</sup>) which has a significant impact upon the ability to establish appropriate planting to maintain and enhance the desired future character of the locality.

The development is considered to be inconsistent with this objective.

- 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, and along the side boundaries of the cinema area, includes tall canopy trees with a height of between 12m to 20m which are considered to be of a scale and density commensurate to the height, bulk and scale of the development when viewed from the public domains of Mona Vale Road and Myoora Road.

However, the planting along the northern side boundary adjacent to the bulky goods shop includes small canopy trees with a height of approximately 4.0 to 5.0m. The southern side boundary does not include any canopy trees due to the limitations of landscaped area. Council's Landscape Adviser notes that these side setback areas “provide little space for adequate landscaping on the boundary to provide a meaningful buffer to the adjacent properties and the locality in general given the size and bulk of the building proposed. A minimum 5m buffer would be more appropriate.” In this regard, the development does not provide appropriate planting that is of a scale and density commensurate with the building height, bulk and scale.

The development is considered to be inconsistent with this objective.

- *Enhance privacy between dwellings.*

This matter has been assessed earlier in this report (see the objectives listed under 'Assessment of prohibition' in WLEP 2011) where it was found that the development will not have any significant impact upon visual or acoustic privacy.

The proposed physical separation and planting along the side boundaries adjacent to the cinema use will enhance visual privacy to neighbouring properties.

The development is considered to be consistent with this objective.

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

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

- *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.

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 redirection of a natural watercourse which is considered to be a significant feature of the site in that it contributes towards the bushland appearance of the site which complements the open, semi-rural landscape.

The development is considered to be inconsistent with this objective.

Given the inability to establish appropriate plantings that are of a scale and density commensurate with the building height, bulk and scale, 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 which indicates that the development will use light colours on external walls and light to dark colours on the roof.</p> <p>This matter could be addressed via an appropriate condition should this application be approved.</p> <p>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 diagram 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.</p>	<b>No</b> Insufficient information provided to accurately determine compliance
<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>• <i>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,</i></li> <li>• <i>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,</i></li> <li>• <i>construction waste is to be minimised, legally handled, transported and disposed of,</i></li> <li>• <i>dedicated safe pedestrian access is, at all times, to be provided around the site, and</i></li> <li>• <i>construction sites will be managed to ensure air and water borne pollutants such as noise, dust, odour and liquids and the like are minimised.</i></li> </ul> <p>The development will involve 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>	Yes Subject to condition should this application be approved.

General Principle	Applies	Comments	Compliant
		<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> <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 application includes a Noise Emission Assessment dated 20 December 2011 as prepared by Acoustic Logic. The Assessment notes that the development will comply with the DECCW Industrial Noise Policy and the DECCW Guidelines for Sleep Arousal. Therefore, subject to the recommendations included in the Assessment, the development is unlikely to result in unreasonable acoustic privacy.</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> <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</li> </ul>	<p>Yes</p> <p>Subject to condition should this application be approved.</p>



General Principle	Applies	Comments	Compliant
		<p><i>carried out</i></p> <ul style="list-style-type: none"> <li><i>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).</i></li> </ul> <p>Council's Environmental Health Officer has reviewed the Preliminary Environmental Assessment dated July 2011 and the supplementary letter to that Assessment dated 6 December 2011 both prepared by Aargus Pty Ltd and does not raise any objection to subject to conditions.</p> <p>Notwithstanding, the Preliminary Environmental Assessment includes recommendations which are to be imposed as conditions of consent should this application be approved.</p>	
<b>CL49 Remediation of Contaminated Land</b>	Yes	<p>Council's Environmental Health Officer has reviewed the Preliminary Environmental Assessment dated July 2011 and the supplementary letter to that Assessment dated 6 December 2011 both prepared by Aargus Pty Ltd and does not raise any objection to subject to conditions which address requirements to notify Council of any new evidence of contamination on the site and the appropriate off-site disposal of any contaminated soil in accordance with the Protection of the Environment Operations Act 1997 (NSW) and the Environment Protection Authority's Environmental Guidelines: 'Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999)'.</p> <p>These conditions are to be imposed in the Notice of Determination should this application be approved.</p>	Yes Subject to condition should this application be approved.
<b>CL49a Acid Sulfate Soils</b>	No	The site is not located within an acid sulphate soil 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
<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>	Yes Subject to condition should this application be approved.

General Principle	Applies	Comments	Compliant
		<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><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>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.</p> <p>The application does not include any confirmation from Sydney Water that the site can be provided with</p>	<b>No</b>

General Principle	Applies	Comments	Compliant
		appropriate infrastructure sufficient to support the intensity of the development. In this regard, and in accordance with the 'Newbury Test' as established in the NSW Land and Environment Court, Council cannot issue a consent which does not provide any certainty that an imposed condition can be satisfactorily addressed.	
<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 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>Notwithstanding the support by 'Biodiversity', the proposed redirection of the watercourse has been included as a reason for refusal due to its inconsistency with Council's Policy No. PL 740 Waterways - "<i>Protection of Waterways and Riparian Land Policy</i>".</p>	<b>No</b>
<b>CL57 Development on Sloping Land</b>	Yes	<p>Clause 57 requires that, <i>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> <li>• <i>The geotechnical stability of sloping land to support development is to be demonstrated.</i></li> </ul> <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>	<b>No</b>

General Principle	Applies	Comments	Compliant
		<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>	
<b>CL58 Protection of Existing Flora</b>	Yes	<p>Clause 58 requires that <i>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 132 trees from the site which represents 83.5% of the recorded tree population. However, the landscape plan (see Plan No. 628.04 dated 6 December 2011 as prepared by Tramonte Jensen) indicates that the development will include an additional 210 native trees (70 large canopy; 82 medium canopy; and 58 small canopy trees) and 1,605 native shrubs (540 screening; 450 tall; and 615 medium shrubs) which is considered to be a satisfactory outcome in terms of minimising the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.</p>	Yes
<b>CL59 Koala Habitat Protection</b>	Yes	<p>Clause 59 <i>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> <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 Impact Assessment (see pages 28 &amp; 29 of the Assessment dated 6 December 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</p>	Yes

General Principle	Applies	Comments	Compliant
		<p>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 redirection of the watercourse which traverses the site from the south-western corner.</p> <p>The application was referred to NoW for approval as Integrated Development under the provisions of Section 91 of the Environmental Planning and Assessment Act, 1979 as the development proposes the diversion of Kieran's Creek.</p> <p>In their response, NoW do not raise any objection to the proposal subject to the imposition of their General Terms of Approval (GTAs). The General Terms of Approval are to be included, in their entirety, in the Notice of Determination should this application be approved</p> <p>The application was also referred to Council's Natural Environment Unit who advises (see 'Internal referrals' in this report) that the development will have a significant impact upon the watercourse and that the redirection of the watercourse is not in accordance with Council Policy No. PL 740 Waterways - "<i>Protection of Waterways and Riparian Land Policy</i>".</p> <p>The proposed redirection of the watercourse has been included as a reason for refusal due to its inconsistency with Council's Policy No. PL 740 Waterways - "<i>Protection of Waterways and Riparian Land Policy</i>".</p>	<b>No</b>
<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 to 10.0m facing Mona Vale Road and a height of 8.8m to 10.0m facing the internal areas of the site. Given the difference in height</p>	Yes

General Principle	Applies	Comments	Compliant
		<p>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 west 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>	
<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 future character of the locality.</i></li> </ul> <p>The planting located along the street frontages, and along the side boundaries of the cinema area, includes tall canopy trees with a height of between 12m to 20m which are considered to be of a scale and density commensurate to the height, bulk and scale of the development when viewed from the public domains of Mona Vale Road and Myoora Road.</p> <p>The planting along the northern side boundary adjacent to the bulky goods shop includes small canopy trees with a height of approximately 4.0 to 5.0m. However, the southern side boundary does not include any canopy trees due to the limitations of landscaped area. Council's Landscape Adviser notes that these side setback areas "provide little space for adequate landscaping on the boundary to provide a meaningful buffer to the adjacent properties and the locality in general given the size and bulk of the building proposed. A minimum 5m buffer would be more appropriate." In this regard, the development does not provide appropriate planting that is of a scale and density commensurate with the desired future character of the locality.</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>	No

General Principle	Applies	Comments	Compliant
		<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 northern side boundary adjacent to the bulky goods shop includes medium canopy trees with a height of between 5.0m to 6.0m which 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 southern side boundary adjacent to the bulky goods shop includes groundcover and shrubs with a height of between 2.0m to 4.0m. 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 bulky goods shop.</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> <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 dwelling component.</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.</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 deficient such that a clear decision could not be made.</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 landscape plan (see Plan No. 628.04 dated 6 December 2011 as prepared by Tramonte Jensen) indicates that the development will include an additional 210 native trees (70 large canopy; 82 medium canopy; and 58 small canopy trees) and 1,605 native shrubs (540 screening; 450 tall; and 615 medium shrubs) which is considered to be a satisfactory outcome in terms of minimising the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.</p>	

General Principle	Applies	Comments	Compliant
		<ul style="list-style-type: none"> <li>• <i>Conserve significant features of the site.</i></li> </ul> <p>The development application includes a Description and Condition of Watercourse report dated 5 December 2011 as prepared by Footprint Green Pty Ltd. The report describes the current condition of the watercourse on the site and notes the species which use the watercourse as habitat. The report concludes that the “<i>redevelopment of the site could provide a positive contribution to the site environments and the downstream catchment</i>”.</p> <p>However, it is noted that the report does not examine to any degree the impacts of the development, as a whole, upon the redirected waterway nor upon the downstream watercourse of Kierans Creek, nor does it provide any evidence to support the claim that the development could provide a positive contribution to the downstream catchment.</p> <p>In this regard, the downstream environmental impacts of the redirected watercourse, in terms of increased/decreased water velocity and flow, pollutant infiltration into the waterway and therefore, into Ku-ring-gai Chase National Park and the subsequent impacts upon any aquatic or water dependent habitat, have not been adequately examined to give Council any surety that the development will have minimal impact.</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>Apart 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).</p> <p>The development includes sufficient landscaped screening along the northern and southern side boundaries which will mitigate against overlooking by patrons of the outdoor cinema. No overlooking opportunities exist from the bulky goods premises or the proposed restaurant.</p> <p>The application includes a Noise Emission Assessment dated 20 December 2011 as prepared by Acoustic Logic. The Assessment notes that the development will comply with the DECCW Industrial Noise Policy and the DECCW Guidelines for Sleep Arousal. Therefore, subject to the recommendations included in the Assessment, the development is unlikely to result in unreasonable impacts on privacy.</p>	Yes
<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>	No



General Principle	Applies	Comments	Compliant
		<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 bulky goods shop does not include side and rear setbacks which are progressively increased (ie: stepped). Rather, the side elevation of the bulky goods shop consists of continuous flat wall planes which lack articulation to provide visual relief.</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 elevation. The rear and side walls consists of continuous flat wall planes which do not provide visual relief.</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 proposed planting 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 northern side boundary adjacent to the bulky goods shop includes medium canopy trees with a height of between 5.0m to 6.0m which 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 southern side boundary adjacent to the bulky goods shop includes groundcover and shrubs with a height of between 2.0m to 4.0m. 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 bulky goods shop.</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 not 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.</i></p> <p><i>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> </ul>	<p><b>No</b></p> <p>Insufficient information provided to accurately determine compliance</p>

General Principle	Applies	Comments	Compliant
		<ul style="list-style-type: none"> <li>reuse of stormwater for on-site irrigation and domestic use is to be encouraged, subject to consideration of public health risks,</li> <li>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 <i>Solar Access for Lots: Guidelines for Residential Subdivision</i>, copies of which are available at the offices of the Council.</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>CL69 Accessibility – Public and Semi-Public Buildings</b>	Yes	<p>The Development Application includes an Access Report dated 6 December 2011 as prepared by Accessibility Solutions (NSW) Pty Ltd which concludes that the Development satisfies the accessibility provisions of the Building Codes of Australia and the DDA Premises Standards.</p> <p>The Report includes recommendations which are to be imposed as conditions of consent should this application be approved.</p>	Yes Subject to conditions.
<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>traffic hazards, and</li> <li>vehicles queuing on public roads, and</li> <li>the number of crossing places to a street, and</li> <li>traffic and pedestrian conflict, and</li> <li>interference with public transport facilities.</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 accordance with the requirements of the RMS, the development proposes a left-in only access arrangement from Mona Vale Road. This results in all vehicles leaving the site onto Myoora Road which is considered by Council's Traffic Engineer to be an unacceptable outcome</p>	No

General Principle	Applies	Comments	Compliant
		as the arrangement will more than double the current traffic volumes of Myoora Road thereby impacting upon vehicular and pedestrian safety.	
<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> <p>The Development Application involves three (3) commercial uses 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 with the northern elevation in that they do not show the roller door closest to the north-eastern corner of the building. Additionally, the roller doors appear to be elevated above ground level and do not include any detail as to how the docks will be accessed or how the docks will operate. Furthermore, 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>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>CL74 Provision of Carparking</b>	Yes	<p>This matter is discussed under Schedule 17 in this report. In summary, the development has been found to not comply with the car parking provisions and results in a shortfall of 60 spaces during week day/weekend day time hours of operation.</p> <p>This matter has been included as a reason for refusal.</p>	<b>No</b>
<b>CL75 Design of Carparking Areas</b>	Yes	The Development Application was referred to Council's Traffic Engineer who advises that no provision has been made for car/trailer combinations in accordance with the requirements of Schedule 17. However, it is noted that the basement car park area includes two (2) spaces at the northern side which can accommodate car/trailer combinations.	Yes
<b>CL76 Management of Stormwater</b>	Yes	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.	<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</i></p>	Yes Capable of complying subject to condition.

General Principle	Applies	Comments	Compliant
		<p><i>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>	
<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
<b>CL81 Notice to Heritage Council</b>	N/A	No further assessment required.	N/A
<b>CL82 Development in the Vicinity of Heritage Items</b>	N/A	No further assessment required.	N/A
<b>CL83 Development of Known or Potential Archaeological Sites</b>	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 plan labelled 'Site Analysis' (see Plan No. 100(D) dated 5 December 2011 as prepared by Rodney Albert Yannakis and Associates) was submitted with the application but appears to be a survey diagram overlaid with contours and tree locations only. The Plan does not include any analysis to show that the design of the development was thoroughly and sensitively considered with reference to its surrounds.

This matter has been included as a reason for refusal.

## Schedule 10 – Traffic Generating Development

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.

The Development Application includes a Statement of Environmental Effects, prepared by Charles Hill Planning and dated December 2011. 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 by way of the Introduction to the Statement.
(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 reasons set out in this report, including an assessment of the general principles of development, and the development control standards prescribed in WLEP 2000”.</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 adequately demonstrate how the development constitutes a low intensity business, community and leisure uses nor does it explain through supporting evidence (such as an Economic Impact Statement) how the development does not rely on exposure to passing trade for continued operation.</li><li>• The Statement does not adequately explain how the development will provide safe vehicular access to the satisfaction of the Council.</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>

Consideration	Response
	<ul style="list-style-type: none"> <li>• <u>Clause 50 – Safety and Security.</u> The Statement does not fully address the safety and security of the site in terms of CPTED.</li> <li>• <u>Clause 54 – Provision and location of utility services.</u> The Statement does not address the lack of sewerage in the area and provides brief commentary on approval currently being sought for the provision of a rising main to deal with waste water which will be provided to Council on receipt. To date, no approval has been forthcoming to address this matter.</li> <li>• <u>Clause 56 – Retaining unique environmental features on site.</u> The Statement notes that the watercourse is to be 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 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 132 trees on the site but does not provide any planning justification as to why the trees are required to be removed except to say that the trees are not considered to be locally occurring species and to claim that the redirection of the watercourse would “provide a positive contribution to the site environments and downstream catchment”.</li> <li>• <u>Clause 63 – Landscaped Open Space.</u> The Statement does not address the shortfall in landscaped open space as identified in the Landscaped Open Space Built Form Control in this report.</li> <li>• <u>Clause 73 – On-Site Loading and Unloading</u> The Statement does not provide any evidence to support the claim that the development provides appropriate facilities which comply with this clause.</li> <li>• <u>Clause 68 – Conservation of energy and water.</u> 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 to accommodate land uses which are in keeping with the character of the surrounding locality, and which will complement surrounding land uses.</i></p> <p><i>The proposal in particular, seeks to provide a cinema for the entertainment of the local and broader community, which is otherwise lacking in this locality. 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 not considered to be adequate in describing the objectives of the development in that it only discusses the entertainment facility and disregards the restaurant and the bulky goods shop.</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</i></p>

Consideration	Response
	<p><i>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><b>Comment:</b> 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> <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 2 and 3 of this report.</i></p> <p><i>(b) A description of the subject site and the surrounding development is included in Section 2 and 3 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 considered 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.</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>

Consideration	Response
	<p><u>Comment:</u> 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>
(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>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, including redirecting, establishing a riparian corridor, and landscaping the existing drainage channel."</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 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 6 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 6 of the SEE largely consists of statements which address the various requirements under Section 79C of the EP&amp;A Act, WLEP 2000 and the General Principles of Development Control. As found earlier under Point 1 in this table, the Statement does not adequately address important environmental matters including 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.

This matter has been included as a reason for refusal.



## Schedule 17 - Carparking Provision

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

Use	Schedule 17 Calculation	Required	Provided	Difference
<b>Bulky Goods Shop<sup>1</sup></b> 12,794m <sup>2</sup> GFA	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	1.9 spaces/100m <sup>2</sup> GFA = <b>243 spaces</b>	273 spaces	
<b>Restaurant<sup>2</sup></b> 385.66m <sup>2</sup> GFA (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	120 seats (internal and external) = <b>40 spaces</b>		
<b>Entertainment Facility<sup>3</sup></b> 350 person Capacity	Comparisons must be drawn with developments for a similar purpose	3 persons/vehicle = <b>117 spaces</b>		
<b>Total</b>		<b>399 spaces</b>	<b>273 spaces</b>	<b>-126 spaces</b>

### Notes:

- <sup>1</sup> Traffic count is 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. The use requires a sufficient driveway length to accommodate queuing for 5 to 12 vehicles.
- <sup>3</sup> Council's Traffic Engineer recommends a parking rate of 3 persons per vehicle which is an assumed rate for drive-in theatres.

The Supplementary Traffic and Parking Study dated December 2011 as prepared by Tar Technologies notes that, because of the mixed use nature of the development, the potential exists for dual usage (or 'reciprocal' car parking) of the car parking spaces. Using this principle and applying Council's calculated rates as required by Schedule 17, it can be seen that the following car parking demands are required:

Use	Week Day	Saturday Day	Tuesday Night	Weekend Night	Thursday Night
<i>Bulky Goods Shop</i>	243 spaces	243 spaces	Closed	Closed	243 spaces
<i>Restaurant</i>	40 spaces	40 spaces	40 spaces	40 spaces	40 spaces
<i>Entertainment Facility</i>	50 spaces	60 spaces	117 spaces	117 spaces	60 spaces
<b>Total Required</b>	<b>333 spaces</b>	<b>343 spaces</b>	<b>157 spaces</b>	<b>157 spaces</b>	<b>343 spaces</b>
<b>Total Provided</b>	<b>273 spaces</b>				
<b>Difference</b>	<b>-60 spaces</b>	<b>-70 spaces</b>	<b>+116 spaces</b>	<b>+116 spaces</b>	<b>-70 spaces</b>

### Note:

The Supplementary Traffic and Parking Study does not provide sufficient data to ascertain with any certainty the peak operating hours of each use. Therefore, Council's Traffic Engineer has based the above information on a reasonable estimation of the busy periods.

Therefore, notwithstanding the overall car parking shortfall of 126 spaces, which is based upon all uses operating at capacity at the same time, it would be more appropriate to consider the car parking provision based upon reciprocal car parking due to the variety of uses within the development. In this respect, it can be seen from the above table that the combined operation of the three uses during daytime hours during the week and on Saturday results in a car parking shortfall of 60 spaces and 70 spaces respectively. It is noted that the Statement of Environmental Effects does not address Thursday night trading. If Thursday night trading is included then this would result in a requirement of 343 spaces and a resultant shortfall of 70 spaces on Thursday night. The shortfall of car parking is considered to be a consequence of the overdevelopment of the site.

This matter has been 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 \$ 20,497,000.00		
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	194,722.00
S94A Planning and Administration	0.05%	10,249.00
<b>Total</b>	<b>1.0%</b>	<b>\$204,970.00</b>

A condition requiring payment of the Section 94A contribution is to be imposed if this application is approved.

### 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.

The applicant has not responded to Council's letter.

### 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 concurrence subject to conditions including a condition which requires the developer to construct an additional lane on Myoora Road. Additionally, the application was referred to the NSW Office of Water (NoW) as Integrated Development who have also issued their concurrence subject to conditions.

Council's Development Engineer, Natural Environment Unit, Traffic Engineer, Environmental Health Officer, Landscape Officer and Urban Designer each raised fundamental concerns which are detailed in the "Internal Referrals" section of this report.

The development attracted nine (9) individual submissions in objection of which one (1) was a petition which contains 152 signatures. 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 development includes two (2) Category 3 uses (the bulky goods shop and the entertainment facility) which are considered under *Warringah Local Environmental Plan 2000* to be inconsistent with the desired future character of the locality. The assessment of the Development Application has found that the proposal is 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 provide safe vehicular access to the satisfaction of Council, did not provide a sufficiently articulated built form and was significantly deficient in landscaped open space such that generous landscaping around buildings (in particular the bulky goods shop) was not provided.

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 and Landscape Open Space Built Form Controls such that, because of the inconsistency with 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, 50, 54, 56, 57, 60, 63, 66, 68, 72, 73, 74 and 76 under the General Principles of Development Control.

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, 15 and 17.

Finally, the assessment the Development Application against the provisions of *Warringah Local Environmental Plan 2011* 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 Primary Production Small Lots 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’.

All processes and assessments have been satisfactorily addressed and it is considered that the proposed development is not in the public interest.

As a result of the application and the consideration of the matters detailed within this report it recommended that the consent authority refuse the Development Application for the reasons detailed within the “Recommendation” section of this report.

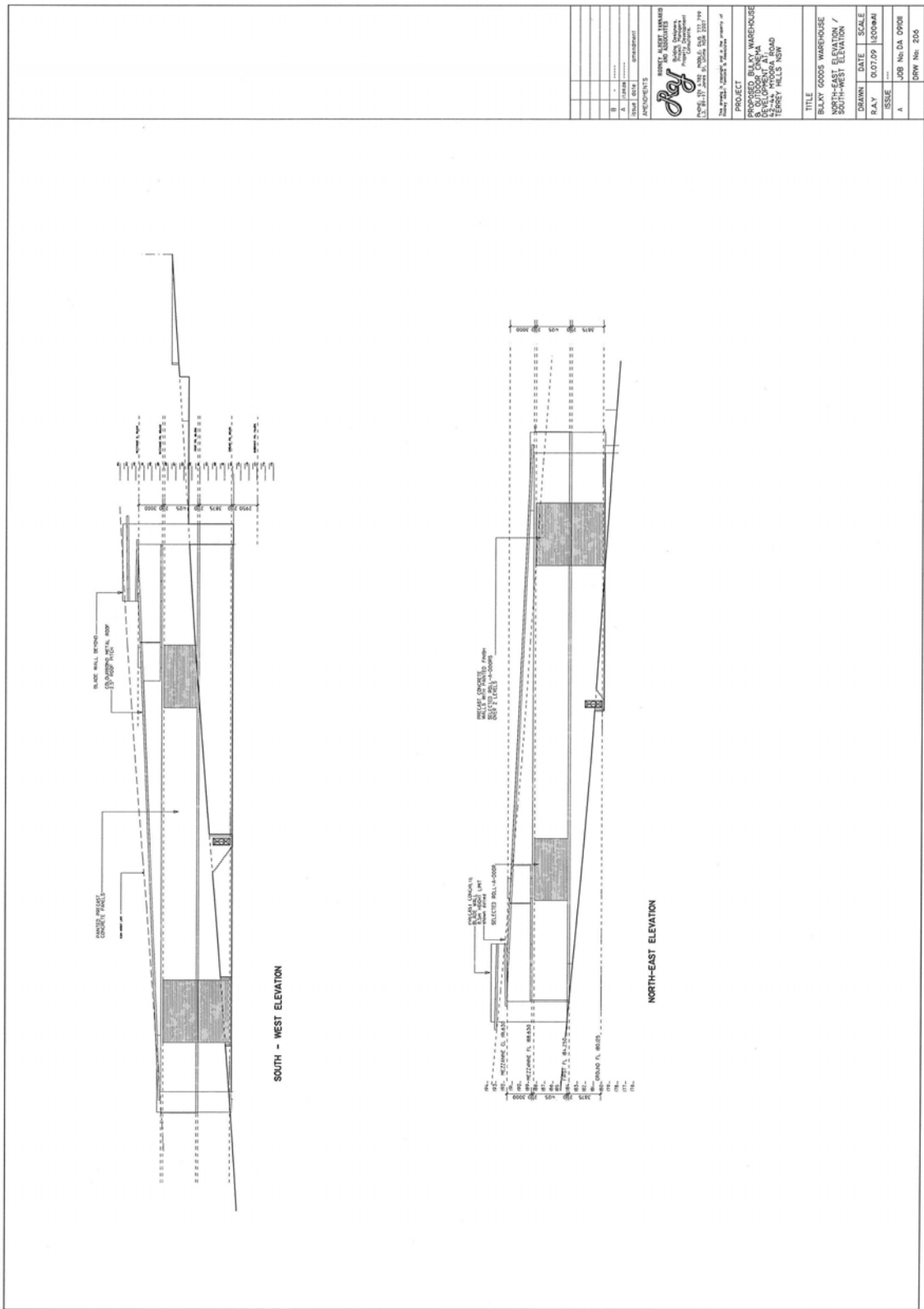
## **RECOMMENDATION - REFUSAL**

THAT the Joint Regional Planning Panel **refuse** Development Consent to Development Application No. DA2011/1571 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 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 Council;
  - c) The development does not consist of building materials which blend with the textures of the natural landscape;
  - d) The development does not provide sufficient articulation to provided visual relief; and
  - e) The development is deficient in landscaped open space such that it does not adequately minimise visual impact.
2. 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 and Landscape Open Space Built Form Controls (Development Standard).
3. 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 50 – Safety and Security;
  - Clause 56 – Retaining distinctive environmental features on sites;
  - Clause 57 – Development on sloping land;
  - Clause 60 – Watercourses and aquatic habitat;
  - Clause 63 – Landscaped open space;
  - 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; and
  - Clause 76 – Management of Stormwater.
4. 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 Schedules 8 and 15.
5. Pursuant to Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act, 1979* the development is a prohibited use in the RU4 Primary Production Small Lots zone and is inconsistent with the Objectives of that zone as defined under *Warringah Local Environmental Plan 2011*.
6. 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 is inconsistent with the Objectives of 'Clause 4.6 – Exceptions to Development Standards' under *Warringah Local Environmental Plan 2011*.
7. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the development is not in the public interest.
8. 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.

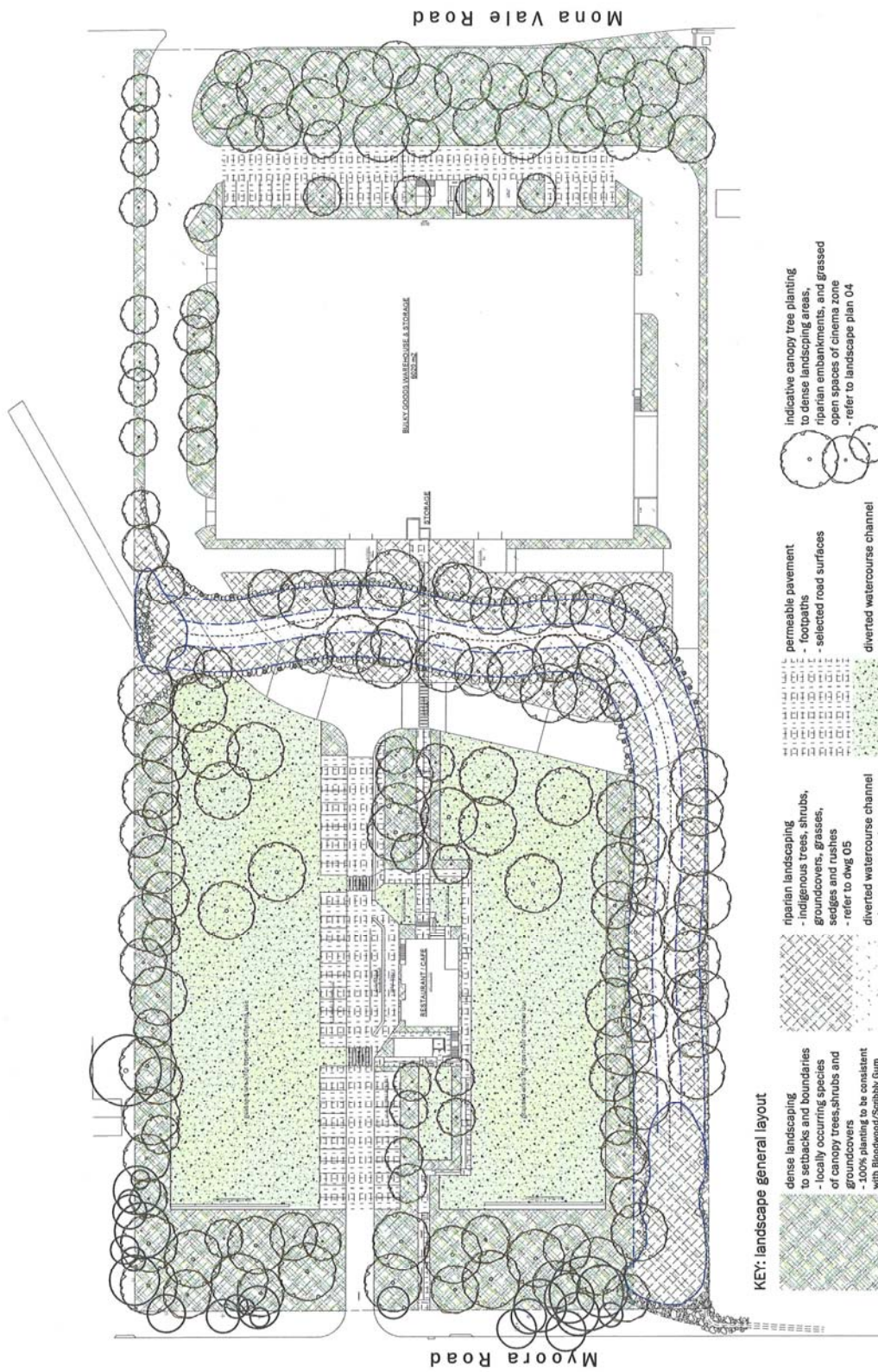













**landscape plan**  
 GENERAL LAYOUT  
 42-44 Myoora Road Terrey Hills

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