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**From:** [REDACTED]  
**Sent:** 18/07/2023 7:58:48 PM  
**To:** Council Northernbeaches Mailbox; Maxwell Duncan  
**Cc:** Steven Findlay; [REDACTED]; 'Alba Severino'  
**Subject:** TRIMMED: DA2023/0803 - 287 Mona Vale Road, Terrey Hills - Letter of Objection - Alterations and Additions to the existing Hills flower Market Site  
**Attachments:** Objection to DA2023-0803 -287 Mona Vale Road - 18 July 2023.pdf;

Good evening, Maxwell

Please find attached a letter of objection in respect of the above Development Application. Tomasy Planning represents Santo and Alba Severino, the owners/operators of Miramare Gardens which shares a common boundary with the site the subject of the DA.

Our clients are so concerned about the proposed development and, in particular, the discharge of stormwater onto their property. They have formally requested Council inspect their site so that Council officers can see first hand the concerns that have been raised in this letter of objection.

Happy to discuss any matter with you, at your convenience.

Regards  
Denis Smith

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**Denis Smith**  
Director, Planning and Property



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Mona Vale, NSW 2103 e: [REDACTED]

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18 July 2023

General Manager  
Northern Beaches Council  
724 Pittwater Road  
DEE WHY NSW 2099  
Email: [council@northernbeaches.gov.au](mailto:council@northernbeaches.gov.au)

**Att: Maxwell Duncan – Assessment Officer**

**RE: Letter of Objection – DA 2023/0803**

**287 Mona Vale Road, Terrey Hills (Lot 1 DP845094)**

Tomasy Planning has been engaged by Alba and Santo Severino who own the property at 48 Myoora Road, Terrey Hills (known as Miramare Gardens). Miramare Gardens shares a common property boundary with the site the subject of DA 2023/0803. Miramare Gardens comprises a conference and events centre together with a boutique hotel/motel and restaurant. Their development has been in existence for 20 years and was the subject of an approval granted in March 2004 by Warringah Council. In preparing this submission, a comprehensive review of Development Application 2023/0803 has been undertaken together with an inspection of the property by Tomasy Planning .

Our clients agreed that a letter of objection be submitted as the subject proposal will have a number of adverse impacts on the Miramare Garden's property at 48 Myoora Road, Terrey Hills.

Some of the key documents that have been reviewed by Tomasy Planning are listed below:

- Architectural master set prepared by BN Architectural
- Landscape Plans prepared by Arcadia;
- Civil Engineering Plan prepared by Henry and Hymas;
- Traffic Engineering Report prepared by Ason Group
- Statement of Environmental Effects prepared by Leathwaite Planning Group;
- Contamination Report and Geotech report prepared by GEO-Logix;
- Access Consultants report prepared by Morris Goding Access Consulting;
- Acoustic Report prepared by Stantec;
- Arborist report by Naturally Trees.

## SITE DESCRIPTION

This immediate precinct comprises a number of land uses which include the International Educational Facility, Terrey Hills Swim School, a new private hospital under construction, a Catholic Church, and The Hills Flower Market (the subject site of the DA which comprises a café and various rural buildings). Other parts of this precinct are used for agricultural purposes which include nurseries and the growing of flowers, two pre-schools, and Australian Native Landscapes. The character of the area can be described as a mixture of special uses (schools, nurseries, accommodation, various cafes and restaurant, a caravan park and short term accommodation); however, notwithstanding the development that has taken place in recent times, the character of the area still remains a semi-rural environment which has been strongly promoted by Northern Beaches Council and, in particular, the manner in which the land is zoned being RU4 Primary Production Small Lots. It can be argued that this Myoora Road precinct does comprise substantial areas of bushland and rural industries which include such activities as the Flower Power Nursery, ANL Nursery and the Palms Nursery.



**Miramare Gardens - 48 Myoora Road (Objectors Land)**

**287 Mona Vale Road (Subject site of DA)**



Source: Six Maps



**Miramare Gardens - 48 Myoora Road (Objectors Land)**

**287 Mona Vale Road (Subject site of DA)**

Source: Six Maps



## THE PROPOSAL

The author of the SoEE describes the proposal in terms of the following:

*“In accordance with the plans prepared by BN Architecture and Arcadia, the proposal seeks development consent to undertake alterations and additions to the existing Hills Marketplace development located at No. 287 Mona Vale Road, Terrey Hills. The two proposed new buildings will accommodate a garden centre and rural supplies outlet and a new restaurant that will include a small area for ancillary brewing equipment.*

*Development consent is also sought to undertake minor alterations and additions throughout the ground floor level of the existing building including to the area occupied by the existing Garden Centre, Taste Buds Café and the area formerly occupied by Piemonte Restaurant and to carry out minor reconfiguration and expansion of the existing flower shop.*

*The proposal also seeks consent to demolish various existing structures and at-grade parking, to undertake preparatory bulk earthworks, to remove 28 site trees, to comprehensively upgrade the site landscaping, to provide additional at-grade parking and to install new business identification signage.*

*Development consent is sought to operate a mix of land uses from the Hills Marketplace site encompassing an expanded garden centre with ancillary plant growing cultivation area, a new restaurant (including ancillary brewing equipment), the existing café/restaurant and a new rural supplies outlet. The existing flower shop is also proposed to continue operating from the Hills Marketplace site”.*

### **Key Development Statistics**

*The gross floor area (GFA) associated with the existing and proposed land uses is summarised as follows:*

- Flower Shop – 473.6m<sup>2</sup>
- Garden Centre (including shared amenities) – 1,042m<sup>2</sup>
- Café / restaurant - 244m<sup>2</sup>
- Restaurant (including ancillary brewing equipment) – 467.6m<sup>2</sup> N.B. In addition, the proposed restaurant also comprises alfresco areas including the terrace and lawn.
- Rural Supplies – 350.7m<sup>2</sup>

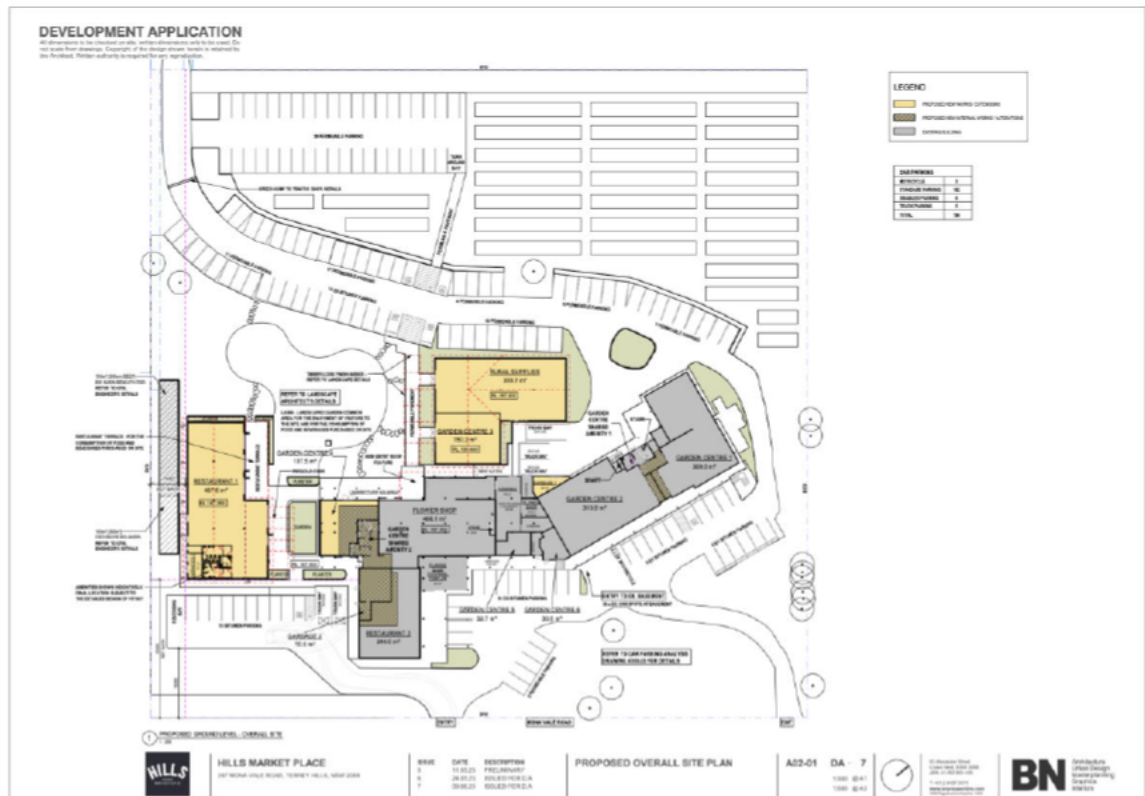
*N.B Garbage rooms are provided in addition to the above.*

*Existing ancillary office space is also provided at the mezzanine level, however no change to this area is proposed in this DA.*

**Source: SoEE prepared by Leathwaite Planning Group**

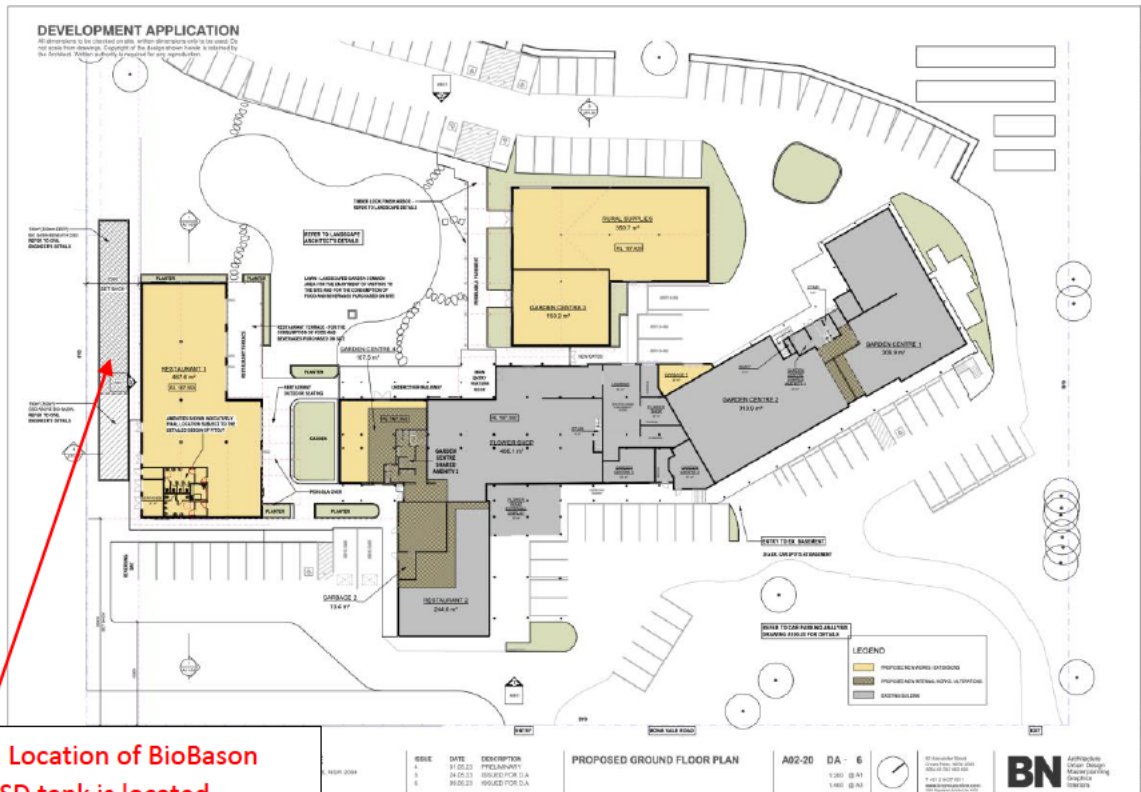
It is noted, together with the above alterations and additions that the SoEE references the report prepared by Henry and Hymas who have calculated that the proposed bulk earthworks zone will have an area of 11,641sqm and will involve 1,820.64 cubic metres of cut and 3,479 cubic metres of fill. Accordingly, 1,658 cubic metres of imported fill will be required on-site. It is also important to appreciate that 28 trees will need to be removed to accommodate the proposed development. Set out below are a number of images from the architectural plans that depict the scale of the development.

## Proposed Overall Site Plan



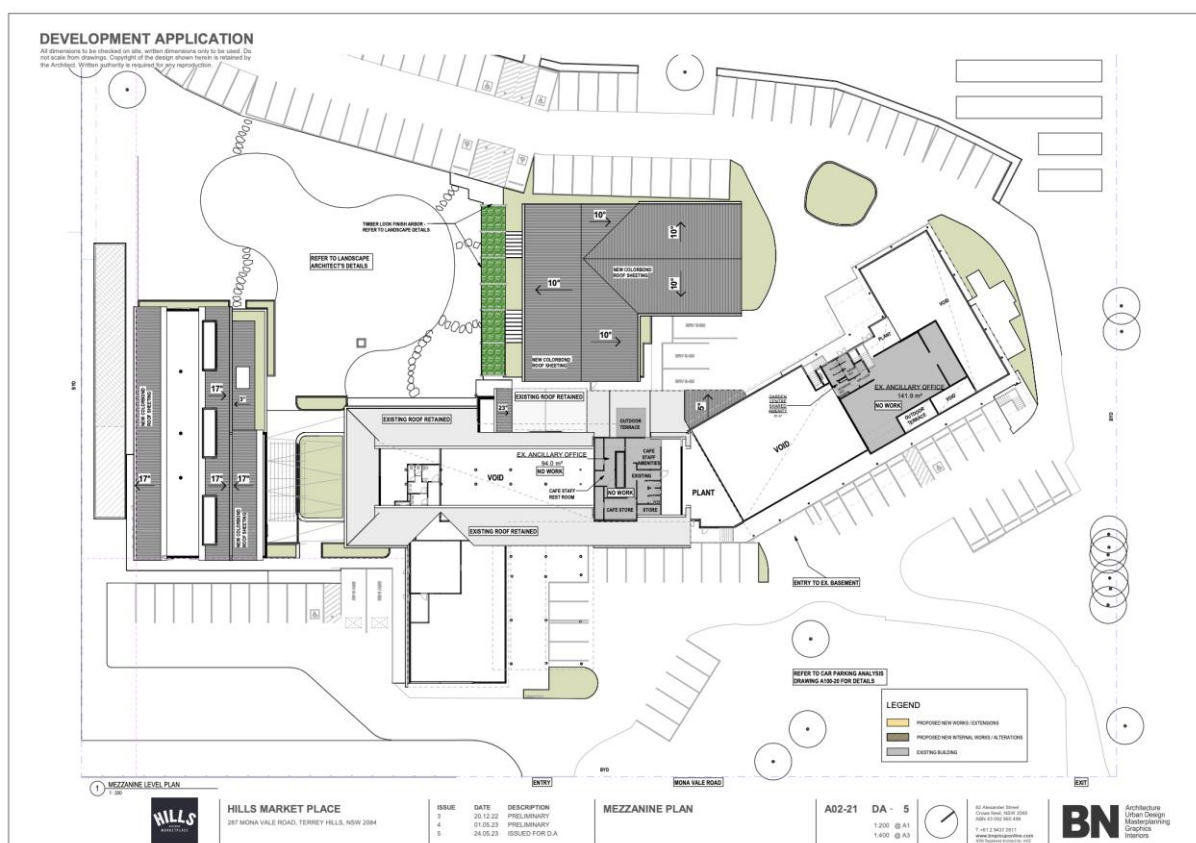
Source: Architectural Drawing A02-01 DA – 7

## Proposed Ground Floor Plan



**Note:** Location of BioBasin and OSD tank is located immediately adjacent to our clients common boundary

Source: Architectural Drawing A02-20 DA – 6



Source: Architectural Drawing A02-21 DA – 5

### PROPOSED ROOF PLAN



Source: Architectural Drawing A02-40 DA – 5



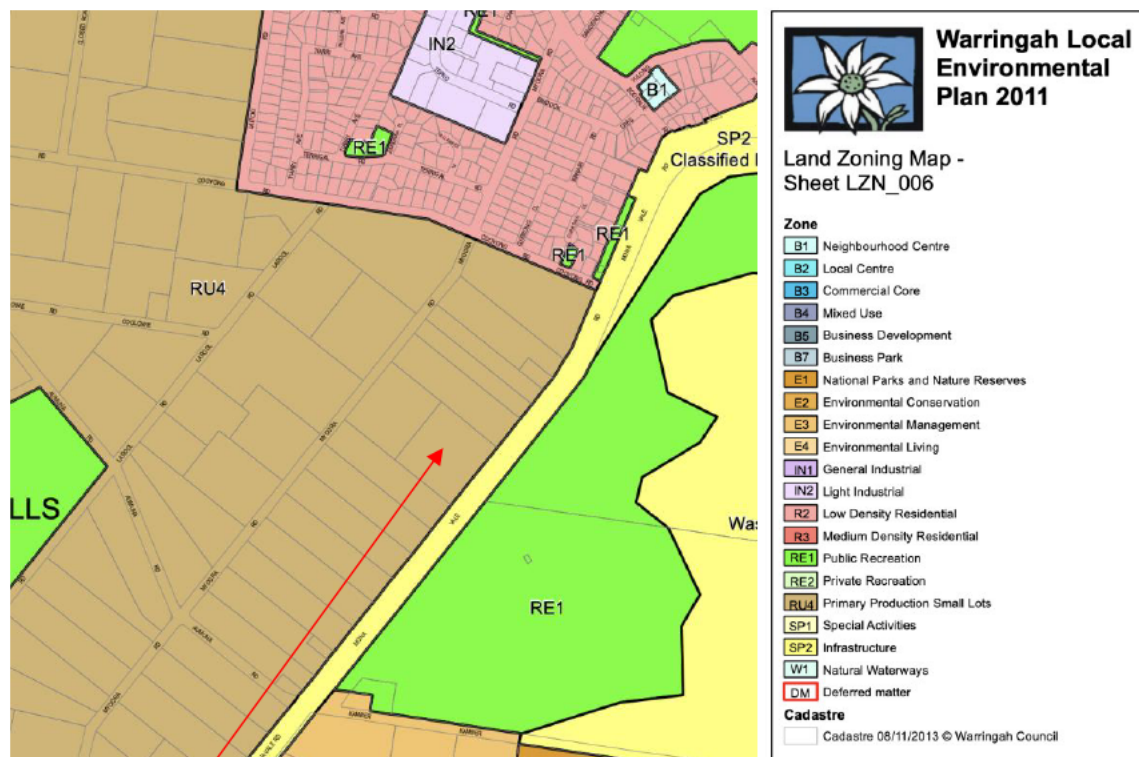
**COMMENT:** The drawings A02 - 01 (Overall Site Plan) and A02-20 (Proposed ground floor plan) clearly demonstrate the scale of the development that is proposed to take place on this site. It represents a significant expansion over and above the building footprints that currently prevail. In particular, there is a new restaurant of 469sqm with areas shown on the architectural drawings as restaurant outdoor seating with no numbers to show the total number of people that could be accommodated within the area defined for outside dining both on the restaurant terrace and the area between the proposed restaurant and an area shown as 'gardens' on drawing A02-020.

The number of garden centres has increased significantly together with the area listed as 'rural supplies'. One must not forget the existing restaurant will be expanded and will comprise on area of some 244sqm.

At the time the approval was granted for the Miramare Gardens Conference and Events Centre, an easement for drainage was created specifically to allow water to drain from the site the subject of the application through Miramare's property to an existing creek on land owned by the Catholic Church (property south of Miramare Gardens).

## STATUTORY PROVISIONS

The land is zoned RU4 Primary Production Small Lots under Warringah Local Environmental Plan 2011. The zoning map is provided below:



**Subject site – 287 Mona Vale, Terrey Hills**

## **Zone RU4 Primary Production Small Lots**

### **1 Objectives of zone**

- To enable sustainable primary industry and other compatible land uses.
- 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.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.
- To maintain and enhance the natural landscape including landform and vegetation.
- To ensure low intensity of land use other than land uses that are primary industry enterprises.
- To maintain the rural and scenic character of the land.

### **2 Permitted without consent**

Home-based child care; Home occupations

### **3 Permitted with consent**

Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Environmental protection works; Extensive agriculture; Farm buildings; Home businesses; Home industries; Intensive plant agriculture; Landscaping material supplies; Plant nurseries; Recreation areas; Respite day care centres; Roads; Roadside stalls; Rural supplies; Veterinary hospitals

### **4 Prohibited**

Any development not specified in item 2 or 3

**Comment:** Set out below are comments relating to the relevant Objectives of the RU4 zoning as it applies to the subject proposal.

- The proposal does permit sustainable primary production which is one of the principal Objectives of the RU4 zoning.
- The proposal does not maintain the natural landscape including land form and vegetation as the proposal involves the removal of 28 trees with significant cut and fill over parts of the site.
- The proposal does not result in a low-density form of land use noting the multiple number of buildings proposed and the number of restaurants, garden centres and rural supply buildings which result in an overdevelopment of the land.
- The proposal does not maintain a rural scenic character of the land due to the dominant number of buildings and scale of development that would result if this DA were to be approved.

In respect to permissibility of the land uses proposed, it is submitted that there is reference throughout the Statement of Environmental Effects and the architectural drawings to 'ancillary offices'. There are no details provided on how these ancillary offices relate to the existing or proposed land uses and under the Provisions of WLEP2011, business premises and office premises are a prohibited land use. An electronic search of Council's records has been undertaken; no evidence was found of any approvals for ancillary offices. If ancillary offices have been approved, could Council please produce evidence of these approvals.

In respect to the proposed brewery that will be associated with the new 469sqm restaurant and extensive outdoor dining areas, it is submitted that a brewery is a prohibited land use. It fails to fulfil the definition of an 'artisan food and drink industry' and Warringah Council in the past has considered breweries to fall within the definition of an 'industry'. Our practice has been involved in numerous applications both in the former Warringah area and Pittwater area where breweries are deemed to be a 'light industry'. A light industry is a prohibited land use within the RU4 zoning under WLEP2011. It is sheer chicanery by the applicants to state that it is an 'ancillary land use' to the restaurant. The definition of a light industry under WLEP2011 is set out below:

*"light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following—*

- (a) high technology industry,*
- (b) home industry,*
- (c) artisan food and drink industry,*
- (d) creative industry.*

*Note—*

*Light industries are a type of industry—see the definition of that term in this Dictionary."*

The definition of an industrial activity under WLEP2011 is as follows:

***industrial activity means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.***

**Comment:** It is black and white that a brewery is an industrial activity as it involves the manufacturing, production and the processing of goods, substances, food and products for commercial purposes. The SoEE states that the general public will be able to consume the products produced by the brewery on-site or purchase them for off-site consumption.

Furthermore, the definition of a Restaurant or Café is as follows:

***restaurant or cafe 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, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—***

- (a) an artisan food and drink industry, or***
- (b) farm gate premises.***



### **Note—**

*Restaurants or cafes are a type of **food and drink premises**—see the definition of that term in this Dictionary.*

**Comment:** The above definition of a restaurant under WLEP2011 does not assist the applicant in any way and again confirms that a brewery is a prohibited land use.

### **Warringah DCP 2011**

Under the Provisions of Warringah DCP2011, Part D – Design – D1 Landscaped Open Space and Bushland Setting minimum equals 70% x site area. The proposal the subject of this DA seeks development consent for a total “green area provision” of 12,344sqm (61.7%) of site area. It is important for Council to acknowledge that the ‘green area’ comprises the following:

- Soft landscaped area 10,132sqm (50.7% of the site area);
- Permeable landscaping surfacing equals 2,212sqm (11.1% of the site area).

With respect, it is submitted that the amount of the site that is being designated as ‘landscaped open space (soft landscaping) is approximately 50% of the site. To include 11% of the site comprising permeable landscaping (car parking) does not fit within the objectives of Landscaped Open Space Part D – Design. If you adopted the applicants’ approach, one could develop 70% of the site as permeable landscaped surfacing for car parking without any soft landscaping at all. That, in our opinion, is a ridiculous scenario and Council has in the past had a strict policy since the introduction of WDCP2011 to aim to achieve the 70% of the site to be landscaped open space. Car parking and associated roads do not fall within the umbrella of ‘Soft Landscaping’. On this factor alone, Council should refuse the application on the basis that the amount of development proposed is unsuitable for a site of this size. A breach of the 70% requirement for landscaped area to 50% as shown on the plans when you deduct the 11% permeable landscaped surfacing for carparking is significant and unjustified.

### **Major Grounds of Objection**

The major grounds of objection relate to the flood impacts this development could have on the grounds of Miramare Gardens and the main building caused by the discharge of water onto our client’s property from the pipes that currently discharge overland flow through an easement. This easement was created as a result of a condition of consent to an approval in 2004 for Miramare Gardens. The easement was never intended to cater for the volume of water that will flow from the roofs and hardstand of the proposed development. The scenario of allowing overland flow to drain through our client’s property will change dramatically, as a result of the scale of development now proposed. Immediately adjacent to the point of discharge of overland flow is a restaurant with a roof area of 500sqm.

We note that there is a detention tank proposed adjacent to our client’s common property; however, once the tank is full, water would then flow freely through our client’s property resulting in a deleterious impact upon their development. The current drainage system in our client’s property was never designed to accommodate the velocity of stormwater that could be expected to now enter our client’s land.

The SoEE is silent on this matter and makes no reference on how the stormwater will be dealt with once it leaves the applicants’ property. The design of the stormwater on our client’s property is quite unique and complex. Photographs of this component of the stormwater system are set out on the following pages.

We note on the civil engineering drawings that the discharge of stormwater over the subject site will be discharged straight into the existing pipe which leads onto our client's land. There are no pipes on our client's property. The pipe referred to in the civil drawings terminates on the common boundary of the two properties.

The water is then discharged into a complex drainage system designed to take the overflow of groundwater from the subject property; the system *is not* designed to take stormwater from a new, 500 square metre restaurant, together with a new drainage system which leads directly into the detention tank. If the detention tank were full, the result would have a catastrophic effect on our client's property and building.



**Comment:** the above photograph shows the drainage system currently in place on the Miramare Gardens property, where the pipe from the adjoining property discharges.



**Comment:** drainage pipe referred to in the Civil Engineering drawings is shown above. This pipe does not extend through our client's property.

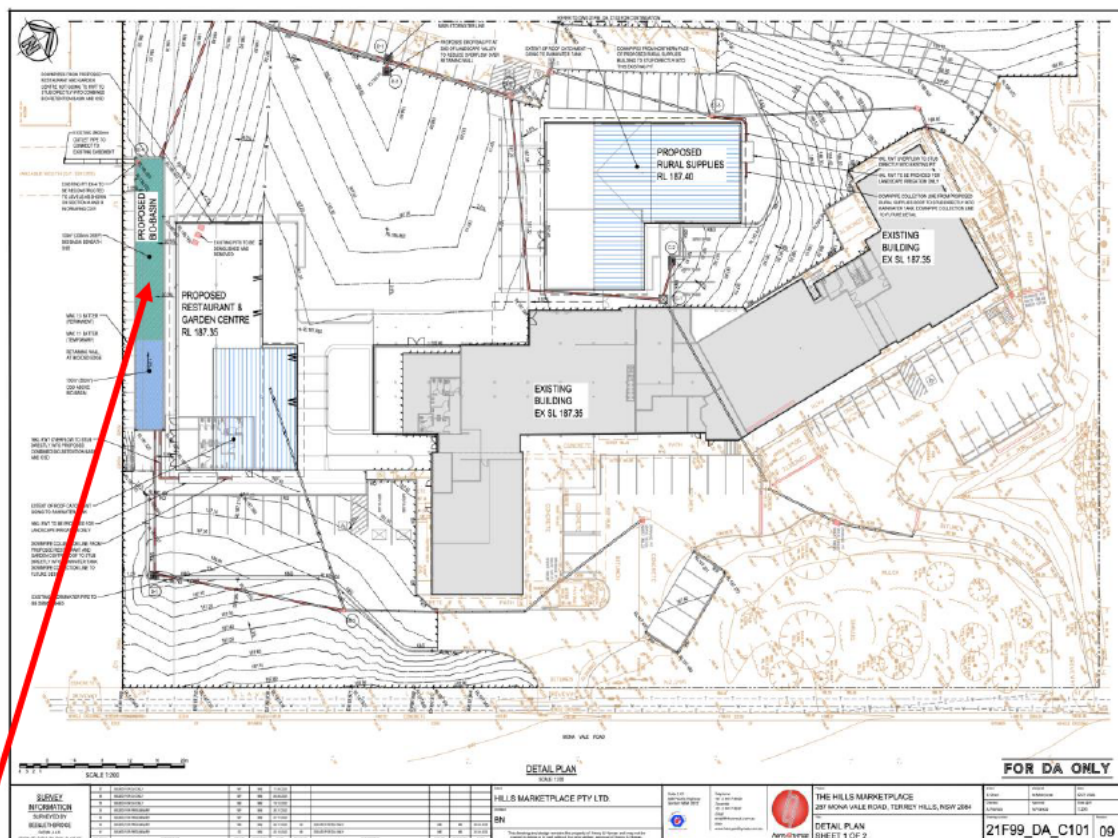


**Comment:** drainage outlet for water overflow onto Miramare property.



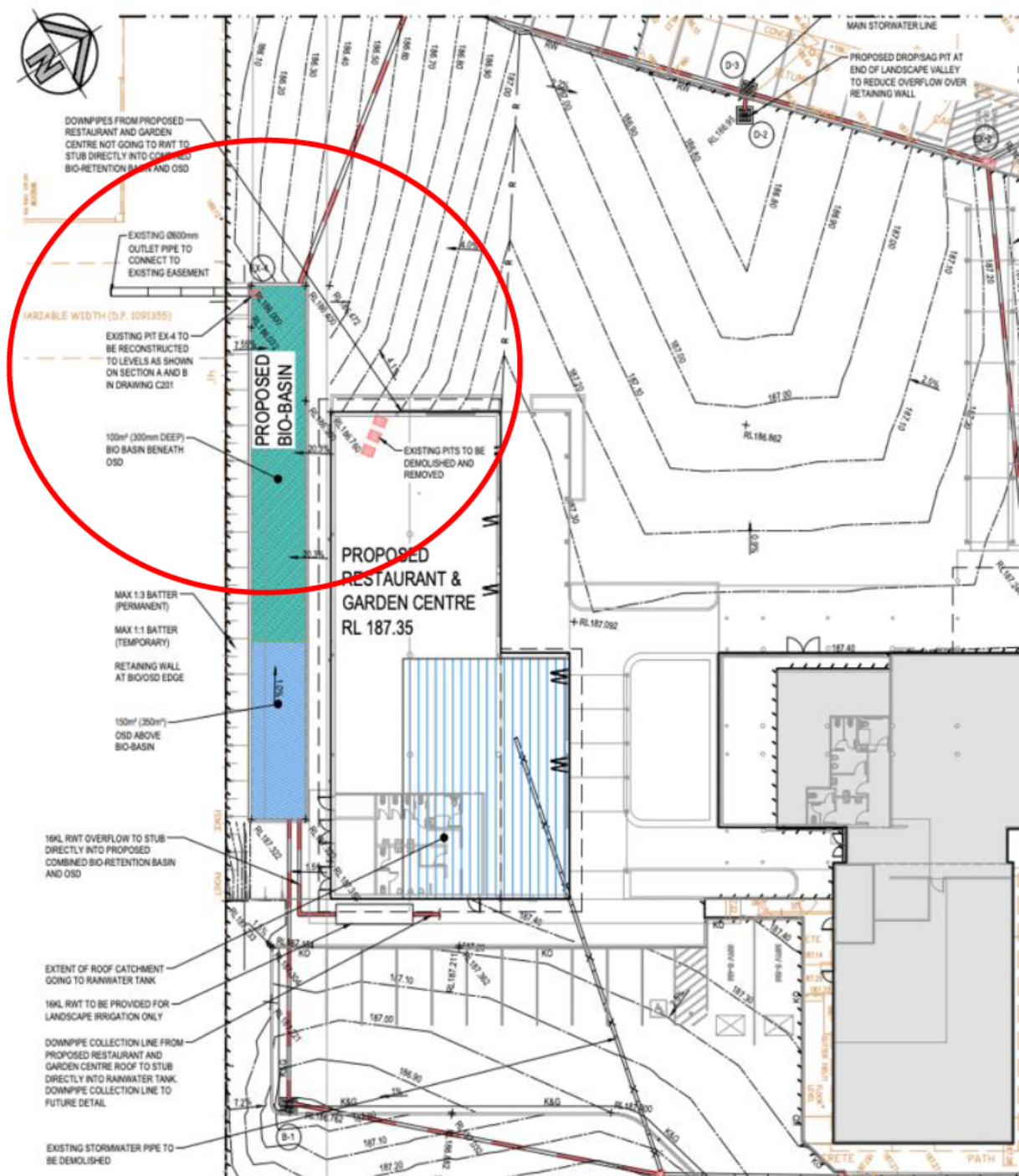


**Comment:** any excess flow of water would lead to damage to the main Miramare building.



**Proposed detention tank and biofilter**

**Source:** Civil engineering drawings, Henry & Hymas



Source: Civil engineering drawings, Henry & Hymas

**Comment:** the above civil engineering drawing states, “existing 600mm outlet pipe to connect to existing easement”. We cannot locate any hydraulic analysis regarding the quantity of stormwater that has been catered for by way of the significant enlargement of the new development and how the existing drainage system would cope with the volume of stormwater from the new buildings and other infrastructure that will flow into the detention tank.

This is a critical matter that has alarmed our client and needs to be addressed comprehensively by the applicants’ consultants.



In our client's opinion there are only two viable options, i.e., the applicants agree and implement one of the following:

1. Redirect all stormwater by way of a pipe system to Council's stormwater drainage system in Myoora Road, consistent with other new development requirements.
2. Construct a piped drainage system within the easement of our client's property to enable the stormwater to discharge into the creek system which is located on the Catholic Church property. All works would be carried out in accordance with an agreement between both landowners and the works would be undertaken at a cost to the applicants, including any restoration of the existing drainage area.

Our clients are genuinely concerned that the proposed Bio-Basin and OSD tank will be built almost on their boundary. They are also alarmed that there will be extensive excavation to accommodate this drainage infrastructure, which could adversely affect the stability of their existing fence and wall which form an integral part of their drainage system. Infrastructure of this length and depth should be located a minimum of 5m from any common boundary. When Miramare was approved, Council required a 5m setback of the building and any structure. To allow a setback of 1m for the proposed infrastructure as shown on the civil engineering drawings is absurd. There is ample room on this site to move the Bio-Basin and OSD facility to the north to ensure a minimum 5m setback. Once again, the 1m setback shows little or no regard for our clients and the detrimental impact certain components of this development will have on Miramare Gardens.

At no stage has the owner of the site the subject of the DA discussed any aspect of this development with our clients.

It is noted that this development will comprise 180 off-street carparking spaces and a number of the vehicles using these carparking spaces will either enter or leave the site from Myoora Road. This road is at capacity, with a serious accident waiting to happen. Any increase by way of traffic movements onto Myoora Road represent a potential disaster to both the local and wider communities.

Our clients have formally requested that Council inspect the existing Miramare Gardens drainage system so that they can show Council staff, first hand, the genuine issues they have raised and are elaborated upon in this letter of objection.

It is respectfully requested that Council refuse the subject application based upon the reasons submitted in this letter of objection.

I am happy to discuss any matters with you.

Yours faithfully



**DENIS SMITH**  
Principal