

337 Mona Vale Road, TERREY HILLS
Section 96 Application – DA2012/1554

1.0 Introduction

The applicant *Maria Pollifrone* makes application under section 96(1A) to modify the consent to DA 2012/1554 for a proposed new child care centre at 337 Mona Vale Road, Terrey Hills (Lot 72 DP752017), issued by Warringah Council, 10 May, 2013.

The proposed amendments are all identified in the attached plans prepared by *Artiva Architects* (Drawing No's A01 Issue P1 & A11 Issue P2).

The modifications sought to the following conditions as follows:

(a) Approved Plans

Architectural Plans – Endorses with Council's stamp		
Drawing No	Dated	Prepared by
Site Plan A01 Issue P1	5 Nov, 2013	ARTIVA
Floor Plan A11 Issue P2	10 Nov, 2013	ARTIVA
Elevations Section DA 21 Issue A	21 Dec, 2012	ARTIVA
Finishes Schedule DA 91 Issue A	21 Dec, 2012	ARTIVA

(d) The development is to be undertaken generally in accordance with the following:

Landscape Plans – Endorsed with Council's stamp		
Drawing No	Dated	Prepared by
Landscape plan, Section A-A and sample play items CPL/337MV/DA/G	8 Nov, 2013	JCA

4. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 7.00 am to 5.00 pm Monday to Saturday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

5. 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 94 Development Contributions Plan Contribution based on a total development cost of \$980,000		
Contributions	Levy rate	Payable
Total Section 94A levy	0.95%	\$9,310
Section 94A Planning and Administration	0.05%	\$ 490
Total	1%	\$9,800
Less contributions paid under DA 2003/1222 to be surrendered		\$4,924
TOTAL PAYABLE		\$4,876

42. Water Usage Monitoring

The childcare operation's are not to generate more than 3800 litres of water usage per day. To ensure the hydraulic load for the effluent disposal system operates in accordance with the proposed hydraulic modelling a water meter to be installed to monitor water usage within the building. A bi-annual report, prepared by a suitably qualified environmental expert is to be submitted to Warringah Council detailing the daily and monthly usage data. Details of the report are to include an inspection report of the wastewater treatment system and soil condition inspection of the wastewater treatment/disposal area.

Reason: Public health and environmental protection.(DACHPGOG3)

50. Maximum Enrolment

The maximum enrolment for the childcare centre operations is not to exceed 110 children.

This submission addresses the pre-requisite tests for approval pursuant to section 96(1A) and the merits of the proposed amendments.

Specifically, the Council may grant consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).

2.0	Threshold Tests– s96(1A)
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2.1 Environmental Impact

"Minimal", in the context of s 96 construed as a whole, take its ordinary meaning of "very small" or "negligible". The "minimal" requirement qualifies the "environmental impact" of the proposed modification, rather than the proposed modification itself - which is subject to the "substantially the same" requirement in s 96(1A)(b). Hence, the focus must be on the *impact or effect of the modification on the environment*.

The changes which are internal must be conceded as having negligible impact and are simply a rationalization of the interior planning of the centre.

The increase in the number of children represents a modest 10% increase which has no perceptible difference to traffic or noise impacts.

The external changes to the first floor maintain the status quo in terms of relationship with the adjoining residential property to the east as there are no external changes to the eastern elevation at this level.

The external changes to the fencing etc are to be expected given the existing site characteristics and expected in terms of noise and privacy attenuation. It is within acceptable parameters within the commercial environment and juxtaposition with surrounding land uses.

2.2 Substantially the same development

"To modify" has been accepted to mean "to alter without radical transformation". The Council can reasonably and comfortably conclude that the proposal remains substantially the same development as that originally approved, i.e it is essentially or materially or having the same essence as the approved two storey dwelling house, which is the established means of consideration adopted by the Court (*Vacik Pty Ltd v Penrith City Council* (unreported); *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998); and *Moto Projects No. 2 Pty Ltd v North Sydney Council* (1999)).

The proposed changes do not change the gross floor area, setbacks or site coverage, nor the aesthetics, form or bulk and scale of the building. There will be no perceptible change from the streetscape or any other public place.

Further, there is no resultant breach of any development standard under the LEP, nor any notable control under the DCP.

3.0 Discussion on Proposed Modifications

Construction Hours

As the subject site is surrounded by commercial uses including a commercial office building and bus depot to the east, a garden centre to the west and to the north and further west a supermarket, there will be no adverse amenity impacts arising by allowing extended construction hours on a Saturday. This will also assist in reducing the construction program and hence have a net benefit to surrounding properties.

Number of Children

The approval to remove the termite infested tree in the front setback area, has allowed for the rationalization and increase of the carparking on site. As a consequence there are three (3) spaces surplus to Council's DCP requirements on the basis of 1 space/4 children. Accordingly the site and parking numbers can comfortably absorb an additional 12 children, whilst still compliant with Council's DCP.

The existing building floor area and outdoor play area are sufficient to comply with the NSW Education and Care Services National Regulations for 110 children.

The plans have been accordingly amended to facilitate the increased number. No external changes have been required.

Section 94A contribution

Condition No 16 requires the consent for DA2003/1222 for the approved restaurant to be surrendered. As part of this consent \$4,924 was paid in s94A contributions, 25 May, 2012. As Council's Plan provides:

18 In what circumstances are s94A levies to be refunded?

Levies collected from a developer under this Plan will only be refunded upon the formal surrender or lapsing of the relevant development consent to which the contribution was applied.

We therefore request that the condition be modified accordingly to factor in the entitled refund.

Water Usage

Council has recently granted approval under s68 of the Local Government Act for the installation of waste water treatment system utilising the "Ecomax" sand filter / absorption mound combination which provides primary, secondary and tertiary water treatment at advanced quality levels and has a greater efficiency and capacity than the previously proposed system. If this condition is to remain then it should be modified accordingly.

Fencing

To minimize potential impacts on adjoining properties particularly the office building to the east and to provide privacy and amenity for the centre from the west, and new colorbond fence is proposed with retaining walls (as necessary). Such fencing is to be in a variety of colours and orientation to provide visual interest.

4.0 CONCLUSION

The proposed development has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, and deemed to be satisfactory.

Given:

- ☐ The proposal still complies with Council's planning controls in respect of carparking, height, setbacks, site coverage and landscaped area;
- ☐ The proposed changes are minor in the context of the existing approval and have negligible environmental impact;
- ☐ The works are within the existing approved footprint and envelope;
- ☐ The proposed development is not inconsistent with any Council's Planning objectives for the site and the locality,
- ☐ The proposed development remains substantially the same as to which consent was originally granted,
- ☐ The modification will have minimal environmental impact,

it is concluded that the proposal warrants approval.



Joe Vescio
11 November, 2013