

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2013/0233
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 70 DP 752017 , 339 Mona Vale Road TERREY HILLS NSW 2084
Proposed Development:	Modification of Development Consent DA2013/0885 granted for Use of premises as a Garden Centre and ancillary dwelling.
Zoning:	LEP - Land Zoned RU4 Primary Production Small Lots LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Maria Pollifrone
Applicant:	Maria Pollifrone

Application lodged:	28/11/2013
Application Type:	Local
State Reporting Category:	Commercial/Retail/Office
Notified:	12/12/2013 to 14/01/2014
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	0
Recommendation:	Approval

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided

by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D2 Private Open Space

SITE DESCRIPTION

Property Description:	Lot 70 DP 752017 , 339 Mona Vale Road TERREY HILLS NSW 2084
Detailed Site Description:	The subject land has a site area of 3,390sqm with a variable width of 31.5m (Mona Vale Road frontage) to 28.1m and a depth of 114m. The land has an even slope and falls 8.0m from southeast to northwest, away from Mona Vale Road. A easement to drain water exists at the north east corner of No.337 Mona Vale Road (same ownership as the site) to drain water to Myoora Road along the northern boundary of Lot 100 DP 630909. Existing development on the site consists of a two storey brick dwelling of which the ground floor is occupied by (sales / customer service) operations for nursery and landscape / garden supplies that have expanded onto the site from the approved nursery operating on No.337 Mona Vale Road. Development surrounding the site to the north consists of a bus depot and main administration building for "Forest Coach Lines", and land to the west is used for a pine tree plantation in association with "Forest Way Fresh" fruit store at No.2 Myoora Road. 'Austlink Business Park' is also located nearby, at the south-west corner of Forest Way and Mona Vale Road. Garigal National Park is situated opposite the site on the eastern side of Mona Vale Road. A childcare centre has been approved (DA2012/1554) for the future use of adjacent land at No.337 Mona Vale Road. The site is approximately 30m north-east of the signalised intersection of Forest Way, Mona Vale Road and Myoora Road. Mona Vale Road is a divided four lane arterial road and therefore vehicle access is only possible from a south-western approach (on the western side of Mona Vale Road). The speed zone in front of the site is 80km/h and the <i>NSW Roads and Maritime Service</i> traffic manage Mona Vale road.

There are no unique rock outcrops and no significant vegetation on the site with the exception of some mature trees within the front setback area of the site. The land is within a bushfire protection area and adjoins a public reserve lot adjacent the south western corner of the site.

Map:



SITE HISTORY

Development Application No.DA2013/0885 for a landscape and garden supplies was approved by Council on 5 November 2013.

Development Application No.DA6000/6494 for a mixed use development including a service station, three (3) restaurants, rental outlet and car wash was approved by Council on 18 May 1999.

Development Application No. DA2002/0084 for the demolition of existing structures and the construction of a restaurant, car parking and site landscaping on was approved under Deferred Commencement on 4 February 2003. The Deferred Commencement conditions were addressed on 28 June 2007 and the Consent became active on 30 August 2007. The Consent lapses on 30 August 2012. CC2012/0341 has been issued for this consent.

Development Application No.DA2002/0969 for the use of the property to accommodate an eight (8) car garage for holding of motor vehicles with parking on the adjoining land at No. 337 Mona Vale Road. The Development Application was refused on 15 July 2003 due to a lack of sufficient information.

Modification Application No.MOD2003/1123/1 for a modification to the existing car parking area, landscaping and display area to an existing nursery on No. 337 Mona Vale Road including expansion onto No.339 Mona Vale Road (unauthorised use of the adjoining lot had already occurred). The modification was

approved on 10 April 2008 however the unauthorised works on No.339 Mona Vale Road were not approved.

Development Application No.DA2007/0273 for a proposed through access driveway and changes to service a nursery business on No. 339 Mona Vale Road was approved on 13 August 2007. The consent lapsed on 13 August 2010.

Modification Application No.MOD2008/0010 for a modification to the car park levels on No.339 Mona Vale Road (associated with DA2002/0084) was approved on 4 June 2008.

Development Application No.DA2010/0341 for a retail plant nursery, including reconfiguration of vehicular access and erection of fencing and signage and the use of part of an existing dwelling as office space on No.339 Mona Vale Road was refused by Council on 25 August 2010.

Building Certificate No.BC2010/0041 to regularise the construction of a colour-bonded metal awning attached to the front of the dwelling on No.339 Mona Vale Road was issued by Council on 7 July 2010.

Development Application No.DA2011/0337 for installation of storage (shipping) containers for use as a self storage facility including construction of an internal roadway and landscaping, was refused by Council on 10 October 2011.

Development Application No.DA2012/1556 for use of the premises as a Garden Centre was withdrawn by the applicant on the 20 March 2013.

PROPOSED DEVELOPMENT IN DETAIL

The modification includes the following changes to DA2013/0885 and conditions of consent:

- Extension to increase the construction and demolition work hours on Saturdays;
- Change to engineering conditions to allow road base gravel for driveway and parking areas;
- Reduction in side and rear landscaped setbacks;
- Deletion of requirement to address SEPP 55;
- Delete conditions for stormwater inspection requirements;
- Delete requirements to comply with Australian Standards;
- Delete requirement to surrender Consent No.2002/0084;
- Delete requirement for a vehicle loading bay;
- Delete requirement for a site management plan;
- Delete requirement for private open space for the existing dwelling house;
- Enlarge the front setback display area to cover the full width of the site frontage.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2013/0885 in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(2) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that the modification proposed to the conditions approved under DA2013/0885 would no longer satisfy the DCP and removal of those conditions (with minor exception) would warrant the proposal unsuitable for approval or not address critical environmental considerations as detailed in this report.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2013/0885 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah

Section 96(2) - Other Modifications	Comments
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application for modification.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations. No Additional information was requested. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent

Section 79C 'Matters for Consideration'	Comments
	<u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed (modified) development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development subject to the conditions of consent as originally applied with only minor exception.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	The modifications proposed are not in the public interest and would justify the refusal of the modification application, with the exception of the changes / minor modifications concurred with as detailed in the recommendation.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections subject to conditions including required 'Building Code of Australia' building upgrade. <u>Planning Comment:</u> Existing conditions of consent are satisfactory to address building code requirements including BCA matters and compliance with Australian Standards. Note: dwelling becomes a Class 4 structure as the ground floor was converted (without consent) to another use.
Development Engineers	Development Engineers have reviewed the proposal and advise the proposal cannot be supported for the following reason: <u>Condition 9 : parking surface treatment</u> 1.The applicant states that compacted road base "is a suitable hard wearing material" similar to bitumen or asphalt. The applicant has not submitted a certificate from a suitably qualified and experienced civil engineer stating that compacted road base is a suitable sealed wearing surface material for the expected traffic use, pedestrian and service life of the development. Generally, a sealed wearing surface material needs to sustain both foot and vehicle traffic, minimise risk of pavement failure and therefore minimise the maintenance required to the pavement,etc. In this regard, Council does not accept the modification of this condition due to lack of supporting documentation from the civil engineer. 2.No objections are raised with regards to the deletion of conditions 11 and 23. <u>Recommendation:</u> Not supported for approval due to lack of information to address pavement considerations for the development in accordance with Part C3 <i>Parking Facilities</i> of the DCP <u>Planning Comment:</u> Condition 9 is required to ensure suitable surface that will also enable disabled persons to accessibility along the driveway areas from the carparking spaces. A gravel road base does not serve this requirement especially where it may be eroded and rutted due to regular vehicle traffic (trucks, cars) . As a minimum the driveway areas should be bitumen material to serve this purpose. The PCA needs to take account of requirements to meet the Australian Standards for disable persons access as well as provide a suitable durable surface for daily customer / delivery traffic. Conditions 11 and 23 are no required to be deleted as they are in the process of being satisfied and allow for "as

Internal Referral Body	Comments
	required". Just because a condition may have already been satisfied this is not a reason to delete it from the original consent. If the consent commences and then the use ceases the consent remains valid and it may be years before the use is taken up again therefore the conditions detailing the standards required for the use should remain. The change or deletion of conditions 9, 11, 15 and 23 are therefore not supported.
Environmental Health and Protection (Contaminated Lands)	The conditions that have been placed on the site are recommended to not be removed. The site is potentially contaminated due to past uses that occurred without consent. If the conditions are not enforced, it may lead to potential harm and risk to the community. <u>Planning Comment:</u> Concur with Environmental Health Officer comments.
Environmental Health and Protection (unsewered lands)	Deletion of conditions 28 and 29 by the applicant is not supported due to environmental protection / management and health risk minimisation they provide. Site has an existing septic system, subject to routine inspection. Septic disposal area should be managed so there is no risk to public health (customers coming to the site) from the disposal area. The grassed ground level POS area for the dwelling (Condition 41) may be used subject to suitability / inspection (on the NE side of the dwelling) as the dwelling also has a balcony area for alternate POS of occupants. <u>Planning Comment:</u> Condition 28 requires a Plan of Management which ensures the premises are well run for the mixed operational use (outdoor equip, landscaping products, plants, pots and a managers residence). The condition is not designed to be onerous or restrictive but to ensure good environmental practice and operational management. This will also ensure Council would have minimal instances to investigate land use issues / problems from potential issues arising. Condition 29 is not intended to be onerous but only require the normal necessary investigation to meet obligations in addressing SEPP 55. Some previous uses required investigation by Council and it is unclear if contamination occurred since testing was done on adjacent land but not this site. The applicant is required to provide a standard and simple expert validation since the site will be frequented by the general public and it is unknown if they could be exposed to risks from previous unauthorised (contaminating) activities on the land. Therefore, deletion of condition 28, 29 and 41 is not supported.
Landscape Officer	The application relates to modifying conditions of consent attached to the DA approval. With regard to the landscape conditions to be amended (Conditions 11 & 12), the matters relate to the provision of a bioswale along the boundaries and vehicular access this is also a planning, drainage and traffic matter and should be addressed through those sections. Condition 50 relates to display areas at the front of the site. The amendment of this condition is not supported. The amended condition

Internal Referral Body	Comments
	proposed indicates a 5 metre strip across the length of the front boundary for use as a display area. This is not considered to be in accordance with the intent of the LEP and DCP. <u>Planning Comment:</u> Concur with Landscape Officer that condition 50 not be changed and changes to conditions 11 and 12 are not consistent with planning requirement for a 7.5m landscaped buffer along the side setbacks and a 7.5m landscaped buffer along the rear setback. The applicant proposes a setback of as little as 0.0m which is unacceptable (except where the existing driveway is beside the house and the setback is confined by this space).
Parks, reserves, beaches, foreshore	Parks Reserves and Foreshores raises no objection and has no comment to the modifications. <u>Planning Comment:</u> Condition 11, 21, 37, 46 and 50 are not onerous and ensure Councils reserves assets that have been damaged by the current operator / operations are restored / rehabilitated and protected from further damage as well as that the main road streetscape is maintained in a landscaped setting as per the DCP.
Traffic Engineer	The applicant has indicated that the disabled parking space can be provided without removing the adjoining space. This is acceptable provided that the disabled parking space and the shared area conform to AS2890.6 and that the adjoining spaces conform to dimensions provided in AS2890.1. There are no objections to the proposed modification with regard to traffic. <u>Planning Comment:</u> The traffic engineering comments do not account for planning considerations that the site has a number of substantial non-compliances with landscaping and landscaped setbacks. The purpose of the condition is to increase the landscape setting in the secondary setback area while maintaining compliant carparking and providing a disabled persons parking space at the closest position to the main customer display area. In addition the loading bay was not adequately dimensioned to demonstrate compliance however the location is suitable for small rigid trucks and service vehicles near the main carpark. Deletion of conditions 19 and 20 are therefore not supported.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many

provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for agricultural, nursery, landscaping supply purposes, vehicle repair and rural residential for a significant period of time with prior land uses of agriculture and rural residential use. In this regard, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the Garden Centre land use.

The applicant is seeking the removal of Condition 29 - Site Management, relating to validation and site monitoring and condition 29 - Plan of Management. Council records show the site has been used for a number of ad-hoc uses, including some having occurred without a necessary development consent in place. This includes a period of use as a waste transfer station - the details of processed / stored materials is unknown. A contamination report was completed for the adjacent site of No.337 Mona Vale Road (by Geo Logix dated 25 October 2011) and included the subject land (No.339 Mona Vale Road) within the description for the report, however data provided within the report show no bore hole sampling was conducted on this site. Therefore, due to the unknown details of some previous ad-hoc uses and the sensitive nature of the adjacent use for a child care centre condition 28 - *Plan of Management* and condition 29 *Site Management* are recommended to remain. These documents are not required to be exhaustive, but should provide up-to-date management and satisfaction that the future use and existing state of the land does not pose a risk for land that will be frequented by the general public, and is also adjacent a child care centre (No.337 Mona Vale) and a food premises (Forestway Fresh Fruit Barn).

Note: Previous contamination reports of: Phase 1 Report No.1707.1 AC by *Environmental Investigations* dated 30 October 2012 and the Phase 2 Report No.12/1990 by *SMEC Testing Services* dated December 2012 were carried out to address only No.337 Mona Vale Road (Lot 72 DP752017).

SEPP (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 5.0m 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 5.0m of an overhead electricity power line.

Comment:

The modification proposal was not required to be referred to *Ausgrid* as no referral response or conditions were provided to the original development application, it is assumed that no objections are raised and no modification to conditions are recommended.

Roads and Maritime Service (RMS)

Clause 101 SEPP requires that development with frontage to a Main Road are referred to the RMS.

Comment:

The RMS provided a referral response and conditions for the original development application. The modification application was not referred to the RMS since the modification does not raise any changes to the original proposed access from Mona Vale Road. Therefore no modification to conditions are recommended.

Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	No change to existing dwelling	No change	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
18 Use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	5.9m (Existing - No change)	No changes	Yes
B4 Site Coverage Site area = 3,390sqm	30% for sites <3500sqm (1,695 sqm)	285 sqm (12%) (Dwelling and awning footprint)	N/A	Yes
B5 Side Boundary Setbacks (North-eastern boundary)	7.5m	2.0m (by condition)	0.0m to 1.0m	No - as approved
B5 Side Boundary Setbacks (South-western boundary)	7.5m	0.0m to 6.0m (2.0m past rear of dwelling)	0.0m to 6.0m	No - as approved
B7 Front Boundary Setbacks	30m (Buildings)	30.6m (Building)	30.6m (Building)	Yes
Primary	15m (Carparking)	24.3m (Awning)	24.3m (Awning)	No - as approved
Secondary setback	50% (242sqm)	12.5m to 13.2m (Landscaped setback)	12.5m to 13.2m (Landscaped setback)	No - as approved
		15% (38 sqm)	15% (38 sqm)	No - as approved
B9 Rear Boundary Setbacks	7.5m	2.0m	0.0m	No - as approved
B14 Main Roads Setback Mona Vale Road	30m	30m (Buildings)	30.6m (Dwelling)	Yes
		15m (Carparking)	24.4m (Awning)	
D1 Landscaped Open Space and Bushland Setting	50% (1,695 sqm)	30.7% (1,041 sqm)	38%	No - as approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B4 Site Coverage	Yes	Yes
B5 Side Boundary Setbacks	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
Mona Vale Road	No	No
B7 Front Boundary Setbacks	No	No
RU4 Land with frontage to Mona Vale Road	No	No
B9 Rear Boundary Setbacks	No	No
Land in the vicinity of Mona Vale Road - RU4	Yes	Yes
B14 Main Roads Setback	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Non-Residential Development	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	No	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D23 Signs	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The DCP requires a 7.5m landscaped setback. The landscaping on the side boundary setbacks varies from 0.0m to 6.0m and is predominantly 1.0m or less. The modification seeks a predominant side setback of as little as 0.0m rather than a minimum of 2.0m for extensive lengths of the side boundaries.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To provide opportunities for deep soil landscape areas.*

Comment:

The proposal does not provide adequate opportunities for deep soil landscape areas in conjunction with Landscape Open Space requirements. Development work extends within the side setback areas and up to the boundary line in places with insufficient setbacks to provide a wide deep soil zone for landscaping. Landscaping is generally confined to the front setback with one small length (<2.0m along the boundary) of landscaping that is 6.0m wide. In this regard, deep soil planting along the north-western side boundary is recommended to be 2.0m, capable of supporting deep rooted landscaping as a buffer to No.2 Myoora Road (adjacent Forest Fresh Fruit shop) and a 2.0m side setback to the Childcare Centre building / playgrounds approved at No.337 Mona Vale Road. A 2.0m side setback will ensure deep soil planting space for trees and enable a landscaped filtration strip and protect the side boundary from miscellaneous items being placed against boundary line (refer "Submissions" in the original DA assessment report). Subject to the existing conditions the proposal is satisfactory in achieving this objective.

- *To ensure that development does not become visually dominant.*

Comment:

Without adequate landscape buffer future development work and miscellaneous items can be placed along the boundary lines and the use of the site will become visually dominant with no landscaping along the side boundaries to prevent the development becoming visually dominant. The DCP requires a 7.5m landscaped buffer however as the proposed use is for nursery items a setback of 2.0m at the sides boundary will ensure adequate space for canopy trees and screen protection and assist in complementing the landscaped buffer provided on adjacent land, and allowing for a new operator that may include changes to nursery / landscape supplies to maintain a functional buffer to adjacent lands.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The proposal does not include the construction of large buildings therefore a reduced setback of less than 7.5m is considered acceptable provided adequate space of 2.0m at the side is provided to augment the landscaped buffer provided on adjacent land and enable planting that will support an effective / functional buffer between adjacent land uses.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity*

and solar access is maintained.

Comment:

The site is adjoined by an approved childcare centre on No.337 Mona Vale Road that also has a reduced landscaped buffer. The provision of a 2.0m buffer (including swale drain) along the north-eastern boundary will protect the amenity and privacy of the childcare centre from operational activities in the nursery area (noise, dust, irrigation, drift-sprays, drainage, and other operation's). Along the south-western boundary the site is adjoined by "Forest Way Fresh" fruit shop at No.2 Myoora Road that is also expanding operation's and a new building adjacent the boundary. The provision of a 2.0m side setback (except beside the driveway section adjacent the house) to support an effective landscaped buffer and prevent operational activities of the nursery from being placed hard up against the side boundary with no protection for landscaping or drainage management.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The site is not affected by view sharing issues and therefore will not affect this objective.

Having regard to the above assessment, it is concluded that the proposed modification of the development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the modification to proposal is not supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

Primary and Secondary setbacks of (30m and 15m) are specified for *Land with Frontage to Mona Vale Road*. The area between the Primary and Secondary setback area is proposed to have 15% as landscaping area, when 50% landscaped area is required. The applicant is seeking a 5.0m strip along the front boundary for display of goods, signs and miscellaneous items.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

No change is proposed to the existing building footprint on the site and the existing sense of openness will be maintained provided no masonry walls and other constructed display elements for

the nursery are located within the secondary (front 15m) setback area. A condition is recommended to ensure this area is maintained for landscaping and not used as a product display area for storage and sale of miscellaneous items / structures. The 5.0m wide strip along the full frontage is not supported as it will enable this area to be cluttered with items for sale and display on a permanent basis. A smaller area adjacent the front entry (20sqm being 4m x 5m) is supported as it will not dominate the landscape frontage.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The general pattern of buildings will remain unchanged by the proposed nursery operation's in relation to the works within the primary and secondary setback areas. The additional planting of three (3) spotted gum trees is recommended to provide adequate landscape elements and ensure the display areas shown within the secondary setback do not become visually dominant.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposal seeks to utilise more than 50% of the secondary setback area for display and sales area and car parking. In this regard, the planting of (3) canopy trees evenly spaced on the north-eastern side of the driveway and within the 15m to 30m setback area will enhance the visual quality of the development when viewed from the street. The three parking spaces on the south-western side of the driveway are recommended to be changed to a single disabled persons car parking space to comply with parking requirements and reduce parking and enhance landscaping in the front setback area. The proposed change to have a 5.0m strip display area across the full frontage is not supported as it will be cluttered with miscellaneous items for display and sale, including signs, banners, promotions etc that do not enhance the visual quality of the streetscape.

To achieve reasonable view sharing.

Comment:

The site is not affected by view sharing issues between adjacent land uses.

Having regard to the above assessment, it is concluded that the proposed modification of condition 50 is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the modification to the proposal is not supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The site requires a 7.5m rear setback. The proposed setback is 0.0m with the modification submitted.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The proposed use of the rear setback includes 'pots on pallets', crushed stone pathways and unspecified 'display areas' with no opportunity for deep soil landscape areas. As no building structures are proposed a reduced setback of 3.0m is considered acceptable to enable a swale bio-filter drain for surface runoff and medium canopy trees as deep rooted planting. The operational use of the site with no setback and placing pots, display items and driveway areas hard up against the boundary fencing is not consistent with the setback requirement also applying to adjacent land. In this regard, a rear landscaped setback of 3.0m (with a swale drain) will assist to screen the nursery operation's and provide a buffer against noise activity, dust, runoff, irrigation, sprays and other operational activities.

- *To create a sense of openness in rear yards.*

Comment:

A landscaped rear setback of 25.0m is maintained for the adjacent rear yard of No.337 Mona Vale Road to the childcare building. This setback includes a 3.0m wide drainage and landscaping strip planted with medium canopy trees.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The proposed 0.0m rear setback to No.2 Myoora Road does not enable any separation buffer between adjoining land uses along the rear boundary. Therefore, the proposal does not protect the boundary setback area from potential issues of pollution runoff, irrigation, erosion, dust, sprays, or operational activities and items placed against the fence line. There are no buildings adjoining the rear boundary at present however future development may occur on adjacent land and therefore the provision of a suitable setback of at least 3.0m to suit the nursery operation's is appropriate for the site. In addition future land uses are exposed to each other by the lack of a buffer / setback to contain or prevent cross boundary impacts (e.g spray drift, visual impacts, runoff and the like). Therefore reducing the rear setback to less than 3.0m is not supported.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The 25m wide rear yard of No.337 Mona Vale Road includes a 3.0m wide drainage and landscaping strip planted with medium canopy trees along the rear boundary. In order to maintain the visual continuity of rear setback areas and landscape elements a 3.0m setback is recommended to provide interlinking drainage (bio filter zone) and landscaping continuity of tree planting. The proposed 0.0m setback does not maintain visual continuity or establish any landscaping therefore a condition is recommended to provide a 3.0m setback for natural landscape elements instead of pot display, gravel pathways and other unspecified nursery display areas.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

There are no dwellings or private open space in close proximity to the rear boundary at present therefore a full 7.5m landscaped setback is not warranted for the proposed nursery operation's. A reduced setback width of 3.0m to enable surface drainage bio-filter buffer, underground stormwater lines and tree planting is suitable for the proposal.

Having regard to the above assessment, it is concluded that subject to conditions the proposed modification of the development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposed modification is not supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal is required to maintain 50% (1,695 sqm) of landscaped open space however 30.7% (1,041 sqm) is proposed. Display and pathway areas of gravel or "pots on pallets" are not included as landscaping as they cannot support deep rooted landscaped or contribute to a bushland setting. The modification seeks to reduce the side and rear setbacks to as little as 0.0m.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To enable planting to maintain and enhance the streetscape.*

Comment:

Due to the non-compliance with the side and rear setbacks that are proposed as a 0.0m setback in places a minimum of 2.0m side setback (except the driveway adjacent the house) and 3.0m rear setback is recommended to enable planting and enhance the visual appearance of the site when viewed from the road. This will also enhance the quantum of landscaped area on site and provide an effective bio-filter with screen planting along a shallow swale drain.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The provision of three (3) additional *spotted gum* trees is recommended and a landscaped setback of 2.0m at the side boundary with 3.0m at the rear, to enable increased indigenous vegetation planting and habitat for wildlife. The proposal includes display areas for pots and unspecified nursery items on a 0.0m setback with only 30.7% landscaping, therefore habitat for wildlife is not being enhanced or conserved. Conditions are therefore recommended for increased landscaping in the primary setback and side and rear setbacks in order to satisfy this objective.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The nursery operation's proposed consist of the display and sale of garden furniture, pots, garden plants and nursery items. In this regard the development will use the site as display area and landscaping around most of the side perimeter the site of a 2.0m width, plus 3.0m at the rear, and 15m to 30m at the front setback is suitable to enable suitable medium shrubs and spaced canopy trees to mitigate the view of buildings and operational nursery activities.

- *To enhance privacy between buildings.*

Comment:

The site adjoins an approved childcare centre on the north-eastern side at No.337 Mona Vale Road and at No.2 Myoora Road a dwelling house and Forestway Fresh Fruit shop on the south-western boundary. The proposed landscaping is 0.0m wide in some sections along the side boundaries and therefore in order to enhance privacy a 2.0m continuous landscaped buffer is recommended on the side boundaries.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

No ground level lawn area for the occupants of the existing dwelling has been nominated for the proposal. In this regard a suitable area (60sqm) on the north-eastern side of the house adjacent the residential entry stair is recommended to be provided. This is addressed by conditions. In addition, the dwelling has a 40 sqm balcony on the northern side of the dwelling to serve the needs of the occupants. It is not agreed that the ground level open space be deleted thus denying the managers residence (which is capable of accommodating a family with children) access to a safe, sunny, grassed open POS area in a rural environment.

- *To provide space for service functions, including clothes drying.*

Comment:

The existing dwelling (retained within the first floor of the main garden centre building) has a balcony space of approximately 40 sqm (min approx. 3.0m) as private open space to serve the needs of the occupant/s for clothes drying and other service functions.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The proposal includes a drainage plan for on-site detention and a system of pits and pipes to collect surface water. However, this does not act as a perimeter drain and potentially contaminated water can enter the OSD tank. The provision of a 2.0m landscaped side and 3.0m at the rear setback with a shallow surface swale drain will ensure space for an effective bio-filter with screen planting along the boundaries to protect the OSD system and contain irrigation runoff, pollution, and enhance water management including infiltration.

Having regard to the above assessment, it is concluded that proposed modification to condition 13, 14, 19, 41 and 50 that all lead to a reduction in net landscaping (further worsening the current non-compliances) are inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposed modification is not supported, in this particular circumstance.

D2 Private Open Space

Description of non-compliance

A landscaped / grassed area of 60sqm adjoining the dwelling access, at ground level is to be dedicated and maintained as 'private open space' for the occupants for the dwelling house.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that all residential development is provided with functional, well located areas of private open space.*

Comment:

The existing dwelling will be denied access to grassed open space in rural setting to serve the needs of the occupants. While the dwelling has a west facing balcony this provided limited functional space to suit a family. The location of POS on the north side of the building near the stair entry is well located.

- *To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.*

Comment:

The dwelling will have the benefit and option to use the balcony and ground level private open space that is accessed from the entry point on the side of the dwelling

- *To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.*

Comment:

The private open space is adjacent a childcare centre and therefore will not cause any adverse impact on adjoining land.

- *To ensure that private open space receives sufficient solar access and privacy.*

Comment:

The existing condition allows for a sunny, north facing grassed area to be provided for the enjoyment of occupants of the managers residence, that may include a family with children, in a rural setting instead of being confined to the existing balcony space. Therefore the deletion of the ground level POS in favour of commercial use / landscaping products is not supported.

Having regard to the above assessment, it is concluded that the proposed modification of the development to delete the ground level private open space is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Section 94 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by

the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval Modification Application No. Mod2013/0233 for Modification of Development Consent DA2013/0885 granted for Use of premises as a Garden Centre and ancillary dwelling. on land at Lot 70 DP 752017,339 Mona Vale Road, TERREY HILLS, subject to the conditions printed below:

A. Modify Condition 6 - General requirements to read as follows:

6. 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:

- 8.00 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).

(b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property or land controlled by the *Roads and Maritime Service*.

(h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warmwater system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.warringah.nsw.gov.au

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

B. Modify Condition 17 Surrender of Consent to read as follows:

17. Surrender of Consent

The applicant shall surrender to Warringah Council, Development Consent No:DA2007/0273 (Driveway Access) (including any modifications to those consents), in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent inconsistencies between consents applying the site (ref s80A (5) EPAA & cl97 EPA Reg). (DACPLCPCC1)

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

Signed

Alex Keller, Senior Development Assessment Officer

The application is determined under the delegated authority of:

Lashta Haidari, Development Assessment Manager

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

Notification Document	Title	Date
 2013/355394	Notification Map	10/12/2013

ATTACHMENT C

Reference Number	Document	Date
 2013/342905	invoice for ram applications - Maria Pollifrone	28/11/2013
 2013/342911	DA Acknowledgement Letter - Maria Pollifrone	28/11/2013
 2013/347665	application to modify a consent	03/12/2013
 2013/347668	applicant details	03/12/2013
 2013/347669	statement of environmental effects	03/12/2013
 2013/353020	File Cover	09/12/2013
 2013/353094	Referral to Development Engineers	09/12/2013
 2013/355377	Delete	10/12/2013
 2013/355394	Notification Map	10/12/2013
 2013/355761	Traffic Engineer Referral Response	11/12/2013
 2013/355764	Traffic Engineer Referral Response	11/12/2013
 2013/355950	Referral Response Landscape	11/12/2013
 2013/356020	Landscape Referral Response	11/12/2013
 2013/357363	Notification Letters - 5	12/12/2013
 2013/362114	Parks, Reserves and Foreshores Referral Response	17/12/2013
 2014/005067	Development Engineering Referral Response	08/01/2014
 2014/122112	Environmental Health and Protection (unsewered lands) - Assessment Referral - Mod2013/0233 - 339 Mona Vale Road TERREY HILLS NSW 2084	02/05/2014
 2014/122115	Environmental Health and Protection (Contaminated Lands) - Assessment Referral - Mod2013/0233 - 339 Mona Vale Road TERREY HILLS NSW 2084	02/05/2014
 2014/128124	Environmental Health and Protection Referral Response - contaminated lands 337 mona vale road	09/05/2014
 2014/143217	Building Assessment Referral Response	20/05/2014