

**4.2****317 MONA VALE ROAD, TERREY HILLS - REVIEW OF COUNCIL'S REFUSAL INCLUDING SUBMISSION OF ADDITIONAL INFORMATION SEEKING CONSENT FOR BUILDING WORKS REQUIRED TO COMPLETE PARTIALLY CONSTRUCTED BUILDINGS (DA2003/0590) AND USE OF BUILDINGS FOR THE PURPOSE OF A RETAIL PLANT NURSERY (DA2003/1302)****Reporting Officer**

Acting Director Planning and Assessment Services

**Purpose**

To gain a Council determination on an application referred from both the Development Assessment Unit and the Independent Hearing and Assessment Panel.

**Report**

The above Development Application was detailed in the report of the Development Assessment Unit dated 9 April 2003 and was referred to IHAP as there are three unresolved objections. The IHAP Report (Attachment 1) and the recommendation of the Acting Director Planning and Assessment Services to IHAP (Attachment 2) are attached. The original assessment report is detailed in Attachment 3. The application is referred to Council for determination and it is noted that IHAP does not substantially concur with the staff recommendation.

**Impact on Council Budget**

N/A

**RECOMMENDATION OF INDEPENDENT HEARING & ASSESSMENT PANEL**

The panel does not recommend approval of the development application to complete the buildings nor the development application for the retail plant use on the site (being parts of Lot 152 and Lot B) until such time as a landscaping plan that complies more closely with the standard in the area has been provided or a serious and convincing justification made for failure to meet the standard.

**ITEM 3.2      317 MONA VALE ROAD TERREY HILLS - REVIEW OF COUNCILS REFUSAL INCLUDING SUBMISSION OF ADDITIONAL INFORMATION SEEKING CONSENT FOR BUILDING WORKS REQUIRED TO COMPLETE PARTIALLY CONSTRUCTED BUILDINGS (DA2003/590), AND USE OF BUILDINGS FOR THE PURPOSE OF A RETAIL PLANT NURSERY (DA2003/1302)**

**1.      Application Details**

This is an application for the council to review its previous decision to refuse the application under s82A of the *Environmental Planning and Assessment Act 1979*.

The application was previously refused because of a failure to meet a landscaping standard and the failure to justify the non-compliance. The landscaping standard in this locality is 70% of the site and what was proposed here was 42% according to the council report or 58.8% according to the applicant's report. The applicant supplied a report from a visual assessment expert that claimed – whatever was the standard that what had been provided here was appropriate and sufficient and worked well. The panel agrees that there are certainly some beautifying aspects to the proposed landscaping and that the screening effect to Mona Vale Road will probably be achieved. There have been longstanding complaints from neighbours about alleged illegalities of work on the site and one such complaint relates to the height of a pavilion feature with the roof of canvas that extends beyond the approved height limit in the area. Whilst the top of the pavilion will be seen from neighbouring sites and from Mona Vale Road the panel agrees with Mr Lamb's assessment that this is not a significant impact on the view and that the landscaping provided will go some way towards shielding any unsatisfactory impact from the viewing of that breach of the height limit. The panel does not find this non-compliance to be unsatisfactory.

The panel finds the application to be confusing and the lack of a master plan or explanation that details exactly how the development occurring on both sites and the whole of each site will comply with the Desired Future Character sought by the locality statement for the area is needed. A proper site analysis would assist in understanding the impact of the development on the whole landholding, and the appropriate conditions that may need to be imposed on the various land uses. These details are presently not available and the panel does not recommend that council review its decision and approve this application as it presently stands. The panel upholds the previous reasons for refusal.

The panel, however, does not recommend approval of the development application to complete the buildings nor the development application for the retail plant use on the site (being parts of Lot 152 and Lot B) until such time as a landscaping plan that complies more closely with the standard in the area has been provided or a serious and convincing justification made for failure to meet the standard.

VOTING REFUSAL 4/0

### **RECOMMENDATION OF INDEPENDENT HEARING & ASSESSMENT PANEL**

The panel, however, does not recommend approval of the development application to complete the buildings nor the development application for the retail plant use on the site (being parts of Lot 152 and Lot B) until such time as a landscaping plan that complies more closely with the standard in the area has been provided or a serious and convincing justification made for failure to meet the standard.

**3.2****317 MONA VALE ROAD TERREY HILLS - REVIEW OF COUNCIL'S REFUSAL INCLUDING SUBMISSION OF ADDITIONAL INFORMATION SEEKING CONSENT FOR BUILDING WORKS REQUIRED TO COMPLETE PARTIALLY CONSTRUCTED BUILDINGS (DA 2003/0590), AND USE OF BUILDINGS FOR THE PURPOSE OF A RETAIL PLANT NURSERY****Reporting Officer**

Manager Development Assessment

**Purpose**

To provide Panel members with the Planning and Assessment Services's assessment of the above Development Application.

Development Application No.2003/590DA was lodged with Council on 23 May 2003 seeking consent for building works required to complete partially constructed buildings and Development Application No.2003/1302 was lodged with Council on 30 September 2003 seeking consent for the use of buildings for the purpose of a retail plant nursery.

The application was reported to the Independent Hearing and Assessment Panel meeting on 28 January 2004, recommended for approval by the Manager of Local Approvals Service Unit. The Panel recommended refusal.

The Application is detailed in the attached report to the Development Unit dated 9 June 2004 2004 and is being referred to IHAP as it is a Class 2-9 classification and there are three unresolved objections.

**RECOMMENDATION OF DIRECTOR – PLANNING AND ASSESSMENT SERVICES (CONSENT)****GENERAL CONDITIONS**

1. Development being generally in accordance with plans numbered 03.025.001 (7 sheets), dated April 2003, submitted 23 May 2003 as modified by any conditions of this consent/approval. (C1)
2. At least 2 days prior to work commencing on site Council must be informed, by the submission of Form 7 of the Environmental Planning and Assessment Regulation 1998 of the name and details of the Principal Certifying Authority and the date construction work is proposed to commence. (C168)
3. Compliance with Building Code of Australia
  - a. All building work must be carried out in accordance with the provisions of the

- Building Code of Australia.
- b. This clause does not apply to the extent to which an exemption is in force under Clause 80H or 80I, subject to the terms of any condition or requirement referred to in Clause 80H (6) or 80I (4). (C375)
4. Payment of the Long Service Leave Levy is required prior to the release of the Construction Certificate. This payment can be made at Council or to the Long Services Payments Corporation. This payment is not required where the value of the works is less than \$25,000. (C3)
5. A Construction Certificate is required to be approved by either Council or an Accredited Certifier, prior to the commencement of any works on the site. (C165)
6. Compliance Certificates are required at the following stages of construction:-
- a. Final - prior to occupation/use, the satisfactory completion of the building works with respect to:-
- (i) Compliance Certificates as nominated
- (ii) Compliance Certificates (components) as nominated (C396)
7. The following component certificates are required to be submitted to Council where Council is the nominated principal certifying authority prior to occupation/use of the building, to ensure compliance with the Building Code of Australia and relevant Australia Standards:(C399)
- a. Structural Engineer / Accredited Certifiers certificate covering the supervision of all structural work and adequacy of the building.
- b. Electrical contractors certificate stating the smoke alarm system has been installed in accordance with AS 3786-1993 "Fire Alarms".
- c. Hydraulic Engineer's certification (and Works as Executed plans where departure from approved plans has taken place) indicating that the on-site detention system has been installed in accordance with the approved plans and will perform in accordance with Warringah Council's publication "On-Site Stormwater Detention - Technical Specification, March 1998".
- d. Certification that the development is in accordance with the Building Code of Australia (part D and F – disabled access and facilities).
8. "No Stopping" signposting is to be installed across the Mona Vale frontage of the subject site.
9. Operations carried out at the site must be in accordance with the provisions of any Environmental Management Plan approved by Council.
10. Change of building use:
- a. A building in respect of which there is a change of building use must comply with the Category 1 fire safety provisions applicable to the proposed new use.  
NOTE. The obligation under this subclause to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is

- proposed or required in the relevant development consent.
- b. This clause does not apply to the extent to which an exemption is in force under Clause 187 or 188, subject to the terms of any condition or requirement referred to in Clause 187(6) or 188(4).
  - c. In this clause, Category 1 fire safety provision has the same meaning as it has in Part 7B. (C376)
11. This consent relates only to those works to be constructed on site. Existing works on site are to be the subject of the Building Certificate application submitted on 16 May 2003.

**PRIOR TO RELEASE OF THE CONSTRUCTION CERTIFICATE**

12. Payment of the Long Service Leave Levy is required prior to the release of the Construction Certificate. This payment can be made at Council or to the Long Services Payments Corporation. This payment is not required where the value of the works is less than \$25,000. (C3)
13. The payment of the following developer contributions prior to the approval/release of the construction certificate.

\$ 4,192.83 Total (Account 6924)

These amounts have been calculated using the Warringah Section 94 Contributions Plan. They are current at the time of issue of this Consent. They will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). An updated schedule of Council's contribution rate is issued each quarter and is available at Council's office. Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated. (C7)

14. The fee(s) required for a Council Compliance Certificate is \$110 and it is to be paid prior to Council issuing the Construction Certificate. NOTE: Each Compliance Certificate fee is \$110. Where external accredited certifiers issue construction certificates and compliance certificates the above fee is not required. (C397)
15. Submission at the Construction Certificate stage of the anticipated schedule of current and proposed fire safety measures to be implemented in the building, and such fire safety schedule shall specify the minimum standard of performance for each fire safety measure. (C371)

**PRIOR TO THE COMMENCEMENT OF WORKS**

16. At least 2 days prior to work commencing on site Council must be informed, by the submission of Form 7 of the Environmental Planning and Assessment Regulation 1998 of the name and details of the Principal Certifying Authority and the date construction work is proposed to commence. (C168)
17. The sediment and erosion control facilities are to be installed, and approved by the Principal Certifying Authority, prior to the commencement of any other works on the

site. These facilities are to be maintained in working order during the construction works and up to the completion of the Maintenance Period. All sediment traps are to be cleared on a regular basis and after each major storm, and/or as directed by the Principal Certifying Authority, with all silt being removed from the site, or to an approved location within the site. (C116)

18. Final design plans of the access driveways to Mona Vale Road (if the existing are to be reconstructed or altered in anyway) are to be submitted to the Roads and Traffic Authority for approval prior to the commencement of any roadworks.

#### **DURING WORKS**

19. Hours of construction being restricted to 7am to 5pm Monday to Friday, Saturday 7am to 1pm if audible at residential premises. No audible construction work to take place outside these hours. (C326)

20. Provision shall be made throughout the period of construction to prevent transmission of soil to the public road and drainage system by vehicles leaving the site. (C44)

21. Signs to be Erected on Building and Demolition Sites. (C382)

- a. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - (i) stating that unauthorised entry to the work site is prohibited, and
  - (ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
- b. Any such sign is to be removed when the work has been completed.
- c. This clause does not apply to:
  - (i) building work carried out inside an existing building, or
  - (ii) building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.

22. Toilet Facilities

- a. Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
- b. Each toilet provided:
  - (i) must be a standard flushing toilet, and
  - (ii) must be connected:
    - A. to a public sewer, or
    - B. if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or
    - C. if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by Council.
- c. The provision of toilet facilities in accordance with this clause must be completed

- before any other work is commenced.
- d. In this clause:
- (i) accredited sewage management facility means a sewage management facility to which Division 4A of Part 3 of the Local Government (Approvals) Regulation 1993 applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in Clause 95B of the Regulation.
  - (ii) approved by the council means the subject of an approval in force under Division 1 of Part 3 of the Local Government (Approvals) Regulation 1993.
  - (iii) public sewer has the same meaning as it has in the Local Government (Approvals) Regulation 1993.
  - (iv) sewage management facility has the same meaning as it has in the Local Government (Approvals) Regulation 1993. (C383)
23. Trade materials, product and plant to be kept within the confines of the building at all times. (C30)
24. The public footways and roadways adjacent to the site shall be maintained at all times during the course of the work in a safe condition. (C88)

#### **PRIOR TO OCCUPATION**

25. The building shall not be occupied until an Occupation Certificate has been issued. (C162)
26. To ensure the safety of occupants of the building a "Fire Safety Certificate" which identifies the schedule of "Fire Safety Measures" that have been completed to satisfactory standard shall be provided to Council prior to the issue of an "Occupation Certificate" as required in Part 7B of the "Environmental Planning and Assessment Amendment Act 1997". (C387)

## REVIEW OF DEVELOPMENT APPLICATION DETERMINATION

**No:** 2003/590DA and 2003/1302

**Lodged:** 7 May 2004

### Development Proposal

Review of Council's refusal including submission of additional information seeking consent for building works required to complete partially constructed buildings (DA2003/590), and use of buildings for the purpose of a retail plant nursery (DA2003/1302).

### Site Description

Lot B, DP370875, No. 315 and Lot 152, DP 75201, No.317 Mona Vale Road, Terrey Hills.

### Applicant's Name and Address

Australian Native Landscapes Pty Ltd  
317 Mona Vale Road  
TERREY HILLS NSW 2084

### Owner's Name and Address

P & S Soars  
77 Myoora Road  
TERREY HILLS NSW 2084

Felzip Pty Ltd  
77 Myoora Road  
TERREY HILLS NSW 2084

### Locality Details

The land is situated in the A4 Myoora Road Locality pursuant to the provisions of Warringah Local Environmental Plan 2000. The proposal is permissible with consent.

### Background

Since the application the applicant has submitted additional information and is seeking a review of Council's refusal.

- 1. Non-compliance with significant provisions of the Warringah Local Environmental Plan 2000 and because there is no sufficient explanation for the failure to comply;*
- 2. That failure to comply with the Landscaped Standards and side setbacks will not be in accordance with the Desired Future Character of the area in relation to future development on neighbouring properties;*

3. *The lack of a Master Plan for the whole site is unsatisfactory and it should be supplied together with an Environmental Management Plan for the whole of the site before any further approvals are given.*

Council's Administrator adopted the recommendation of the IHAP at a Council meeting held on 10 February 2004.

By letter dated 5 May 2004, the applicant requested a Review of Determination of the application pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979, as amended, which is the subject of this report. A copy of the original report is attached to this report.

The Applicant has lodged a Class 1 Appeal in the Land and Environment Court in relation to Council's refusal of these applications.

### **Right to Review**

Section 82A (4) of the Environmental Planning and Assessment Act 1979 states:

- (4) *The council may review the determination if:*
  - (a) *it has notified the request for review in accordance with:*
    - (i) *the regulations, if the regulations so require, or*
    - (ii) *a development control plan, if the council has made a development control plan under section 72 that requires the notification or advertising of requests for the review of its determinations, and*
  - (b) *it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan, as the case may be, and*
  - (c) *in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same development as the development described in the original application.*
- (4A) *As a consequence of its review, the council may confirm or change the determination.*

The application to review Council's determination was notified to adjoining property owners and to those people who made submissions previously, in accordance with Council's Development Control Plan No.1. Therefore it is considered that (a) is satisfied.

The submissions received in response to the notification of the application to review are considered and discussed below in this report. Therefore it is considered that (b) is satisfied. The applicant has not proposed any amendments to the development described in the original application. The information submitted with the application to review the determination provide additional detail in response to the reasons for refusal recommended by IHAP, but does not alter the proposed development. Therefore, it is considered that (c) is satisfied.

Given that parts (a), (b) and (c) of Section 82A(4) are satisfied, Council may alter or confirm the determination as a consequence of this review of the application.

### **Additional Information Submitted by the Applicant**

The applicant has submitted the following additional information in support of the request to review Council's determination:

- Landscape master plan and report;
- Environmental management plan;
- Sewage system report;
- Visual impact and landscape assessment report; and
- Planning report.

The information submitted by the applicant has been discussed in relation to the reasons of refusal recommended by the IHAP, as discussed below:

- 1. Non-compliance with significant provisions of the Warringah Local Environmental Plan 2000 and because there is no sufficient explanation for the failure to comply;*

The planning report submitted with the application to review the determination provides justification for the non-compliances with the relevant provisions of the Warringah Local Environmental Plan 2000. It is considered sufficient explanation for the failure to comply has now been provided, and the explanations given by the applicant are supported.

It is considered that the applicants' submission satisfactorily addresses this reason for refusal.

- 2. That failure to comply with the Landscaped Standards and side setbacks will not be in accordance with the Desired Future Character of the area in relation to future development on neighbouring properties;*

The planning report, visual impact and landscape assessment report and landscape master plan and report submitted address the impact of the non compliance with the landscape and side setback controls. The applicants' assertion that the proposed

development will not have an adverse impact upon the future development on neighbouring properties is concurred with.

It is considered that the applicants' submission satisfactorily addresses this reason for refusal.

3. *The lack of a Master Plan for the whole site is unsatisfactory and it should be supplied together with an Environmental Management Plan for the whole of the site before any further approvals are given.*

The applicant has submitted a landscape masterplan for that portion of the site that the Development Application applies to, and has submitted an updated Environmental Management Plan for the site.

The applicant has not provided a masterplan for the whole site as there is no such requirement for one to be submitted within the provisions of the WLEP 2000, and the present development applications do not relate to the whole site, they only relate to No.315 and 317 Mona Vale Road. However, details of the operations at the entire site are provided within the planning report submitted by the applicant.

It is considered that the applicants' submission satisfactorily addresses this reason for refusal.

### **Notification**

In accordance with Development Control Plan No.1 – "Public Exhibition and Notification" – adopted 27/2/2001 in force 10/3/2001, the application to review the determination was notified by letter dated 13 May 2004 to adjoining property owners and those who submitted an objection previously.

A total of three submissions were received, of which one supported the proposal and two objected for various reasons that have been addressed as follows. A petition containing sixty-four (64) names objecting to the proposed development was also received.

- *A management plan for the whole ANL site must be submitted as requested by IHAP.*

Comment: as discussed above in this report there is no legal requirement for the applicant to submit a masterplan pursuant to the provisions of the LEP or the Environmental Planning and Assessment Act 1979.

- *The landscape plan and report needs to be more explicit.*

Comment: the submitted landscape plan indicates plant species and locations of plantings. It is considered that sufficient detail has been provided.

- *The Environmental Management Plan still requires more detail.*

Comment: the environmental management plan that was submitted with the application relates to the entire site and not specifically to the current applications, however it is being assessed for the required level of detail. A condition of consent is recommended to be

imposed on the consent requiring operations to be carried out at the site in accordance with an approved EMP. Therefore it is not critical for the EMP relating to the whole site to be approved prior to consent being granted, particularly as conditions of consent will control the construction works related to these applications, and the EMP will control the ongoing operations of the remainder of the site.

- *Plans submitted are incomplete / do not show all buildings currently built on site.*

Comment: the submitted plans show all buildings proposed to be constructed or used as part of the current Development Applications. Other buildings existing on adjoining allotments but part of the site that are unrelated to this application are not required to be shown on the submitted plans.

- *Safety issues not addressed.*

Comment: the reasons for refusal of the application did not raise any issues in relation to safety, however it is considered that there is not a significant safety risk at the site.

- *Hours of operation.*

Comment: the hours of operation are addressed in the planning report submitted by the applicant, and it is noted that the reasons for refusal of the applications did not raise any issues with the proposed hours of operation.

- *Not complying with Land and Environment Court orders.*

Comment: there are no Land and Environment Court orders in relation to the current applications. Orders in relation to other uses at the site are separate to the current applications and have no relevance to consideration of the current Development Applications.

- *Does not meet LEP 2000 built form controls/Council should maintain the appropriate standards.*

Comment: the non-compliances with LEP 2000 have been addressed in the planning report submitted by the applicant, and variations to the controls have been justified by the applicant. As discussed in this report, variations to LEP 2000 controls are supported.

- *Entry and exit to the retail plant nursery must be maintained from Mona Vale Road and not allowed from Myoora Road.*

Comment: the proposed development provides for access from Mona Vale Road, and no access from Myoora Road forms part of this proposal.

- *Unclear how many off street parking numbers are provided and whether this is sufficient.*

Comment: the submitted planning report states that parking for 48 cars and 2 car/trailers will be provided, which is sufficient to meet the requirements of Schedule 17 of the LEP.

- *Council should ensure that the proposed gates be installed to prevent vehicular movements between Mona Vale Road and Myoora Road.*

Comment: the applicant proposes to install gates to prevent vehicular movement between Mona Vale Rd and Myoora Road as part of this application. Issues of ongoing compliance at the site are an enforcement issue, separate to the determination of the applications.

- *Registered rights of carriageway need to be established over the affected properties to ensure the future uninterrupted operation of this site.*

Comment: this issue relates to private property rights, and is matter for the land owners to settle if a dispute arises or part of the site is sold.

- *Council must maintain ongoing vigilance to ensure conformity with the Myoora Road locality statement.*

Comment: the proposed development is a Category One development within this Locality, and the variations to the built form controls have been supported and is therefore considered to conform to the locality statement. Issues of ongoing compliance at the site are an enforcement issue, separate to the determination of the applications.

## Mediation

In addition to lodging a submission applicants may consider mediation. Council's Mediation Service operates independently from the Local Approvals process and provides the opportunity for applicants and objectors to meet to discuss issues of concern directly. Meetings are overseen by an independent and impartial mediator and are particularly effective at addressing specific issues such as overshadowing, privacy and aspects of design.

Requests for mediation are made in the appropriate form and manner and submitted separately to the Mediation Co-ordinator.

**Has mediation been requested by the residents?** NO

**Has the applicant agreed to mediation?** N/A

## Conclusion

It is considered that the additional information submitted by the applicant addresses the reasons for refusal of the application recommended by IHAP. Therefore, it is considered that Council alter the refusal determination of the application, and grant approval to the applications subject to appropriate conditions of consent.

## Recommendation (Consent)

That the Development Application No.2003/590 and 2003/1302 for building works required to complete partially constructed buildings and use of buildings for the purpose of a retail plant nursery at Lot B DP 3708755, Part Lot 152, DP 72017, No. 315 Mona Vale Road, Terrey Hills, be approved subject to conditions.

## DEVELOPMENT APPLICATION DETERMINATION

**No:** 2003/590 and 2003/1302DA

**Lodged:** 23 May 2003 and 30 September 2003

### Development Proposal

Building works required to complete partially constructed buildings, and use of buildings for the purpose of a retail plant nursery.

### Site Description

Lot B, DP370875, No. 315 and Lot 152, DP 75201, No.317 Mona Vale Road, Terrey Hills. The sites are rectangular in shape, with frontage to Mona Vale Road.

The site is presently used the landscape supply business Australian Native Landscapes Pty Ltd ("ANL"). ANL occupies four separate allotments in Terrey Hills, being No.315 and 317 Mona Vale, and No.24 and 26 Myoora Road. The Myoora Road properties are used to store and supply landscaping materials, such as sand, gravel, mulch and compost which are stored in bins and stockpiles. Two office buildings and a truck wheel wash and wash down area are located adjacent to the driveway to Myoora Road. The Mona Vale Road properties contain an office building, carparking area, landscape supplies and the helicopter landing area.

Land surrounding the subject site is used for a variety of purposes. To the south of the site is a motel and caravan park at 319 Mona Vale Road and animal boarding kennels at 22 Myoora Road. To the north of the site are a number of buildings used as an animal boarding establishment at 313 Mona Vale Road. To the east and west of the site are a number of dwelling houses, located along Myoora Road and Mona Vale Road.

### Applicant's Name and Address

Australian Native Landscapes Pty Ltd  
317 Mona Vale Road  
TERREY HILLS NSW 2084

### Owner's Name and Address

P & S Soars  
77 Myoora Road  
TERREY HILLS NSW 2084

Felzip Pty Ltd  
77 Myoora Road  
TERREY HILLS NSW 2084

### Locality Details

The land is situated in the A4 Myoora Road Locality pursuant to the provisions of Warringah Local Environmental Plan 2000. The proposal is permissible with consent.

## Background

ANL has operated a landscape supply business at the subject site since 1971. A number of development consents have been issued for the site, and the primary consent controlling the use of the land is Consent No.79/337 (as modified), which permitted use of part of the land for the purposes of a rural industry, in particular a landscape supply business.

Council has received a number of complaints made about the operation of the site, including the carrying out of works on the site without obtaining the prior development consent of Council and non-compliances with development consents issued for the site.

Complaints about the site relating to dust, helicopter flight path and movements, and operation of the business outside of approved trading hours are being investigated by Council's environmental compliance section and are separate to the issue of these development applications.

Complaints about the site relating to the carrying out of further building works on the site without consent, vehicular access into the site and operation of a retail plant nursery are the subject of this report relating to the two Development Applications and an accompanying report relating to a Building Certificate.

## Proposal in Detail

Development Application No.2003/590 seeks development consent for building works required to complete the buildings partially erected on site without the prior consent of Council. A Building Certificate has been lodged in relation to those works carried out without the prior consent of Council, which is addressed in a separate report.

The building works that consent are sought for relate to eight buildings/structures, and the proposed building works to complete these buildings comprise:

- *Timber portico/entrance and walkway*: external and internal linings, doors and windows, building services (hydraulic, electrical and fire);
- *Timber posts and decking attached to the portico and existing dwelling house*: hydraulics and building services;
- *Steel and fabric shade house*: fitting of shade screens, paving, building services and painting of steel structure;
- *Boundary wall on northern boundary*: adjacent brick paving, painting and landscaping;
- *Boundary wall on western boundary*: painting and building services;
- *Stormwater detention tank*: concrete paving surround to roof and surface water catchment, roof deck adjustment, brick paving adjacent to the roof deck, maintenance and servicing platform, building services and tank discharge structure;
- *Timber cabin*: building services;
- *Steel carport attached to southern wall of existing dwelling house*: building services.

Development Application No.2003/1302 seeks consent for the use of the above described buildings and the site for the purposes of a retail plant nursery. This use will entail the display and sale of garden related products, with proposed hours of operation of 8am to 6pm, seven days a week. The timber cabin is proposed to be used for the purposes of garden classes for up to twelve participants, between the hours of 9am and 5pm.

Vehicular access into the site is proposed by way of ingress driveway on 317 Mona Vale Road and egress driveway on 315 Mona Vale Road. An open parking area is proposed within the front setback area to Mona Vale Road, situated behind a landscaped strip along the road frontage.

## WARRINGAH LOCAL ENVIRONMENTAL PLAN 2000

### Desired Future Character

The subject site is located in the A4 Myoora Road locality under Warringah Local Environmental Plan, 2000. The Desired Future Character Statement for this locality is as follows

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

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

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

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

The proposed development is identified as Category One development in this locality, being development for the purposes of a retail plant nursery and ancillary further education.

The proposed retail plant nursery is in addition to the landscape supply business use that has operated at the subject site since the 1970s, which has developed a well known reputation for the products sold. Therefore, the business will not solely rely on exposure to passing trade for the continued operation of the business.

A landscaped bushland strip 15 metres to 28 metres in width is proposed to be retained along the frontage of the subject site to Mona Vale Road. Additional plantings within this landscape strip are also proposed.

Vehicular access for the proposed retail plant nursery is via separated ingress and egress driveways from Mona Vale Road. Driveway access from Myoora Road will remain available for vehicles entering the Myoora Road properties of the site. Subject to conditions of consent, the vehicular access is satisfactory.

No signage additional to that existing at the site is proposed as part of this application. The proposed buildings (which are partially completed) are low scale, articulated structures, and landscaped spaces, both permanent and product display are situated around the buildings and structures. The landscape strip and low scale nature of the structures of the site minimise the visual impact of the site within the locality.

On the basis of the above, it is considered that the proposal is consistent with the Desired Future Character Statement for this locality.

### **Built Form Controls**

The following table outlines compliance with the Built Form Controls of the above locality statement;

<b>Built Form Controls</b>			
<b>Standard</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance Comment</b>
Housing Density	1 dwelling per 2ha	No dwellings proposed	Not applicable
Building Height Metres / Storeys	2 storeys, 8.5m	1 storey, 10.5m	No*
Front setback	30m, carparking to 15m	26m to building 15m to parking	No*
Rear Setback	7.5m	60m	Yes
Side setbacks	7.5m	6m to covered walkway	No*
Building site coverage	20% of site area	13%	Yes
Landscaped open space	70%	42%	No*

### ***Building Height***

The partially constructed buildings, when completed, will comply with the height limit in both height and storeys. However, the proposed 'rainforest pavilion' structure has a total height of 10.5m, which exceeds the 8.5m height limit.

The proposed rainforest pavilion is situated within the centre of the site, and the roof is steeply pitched so that only a small triangular portion with a width of 6m exceeds the 8.5m

height limit. The structure will not be visible from Mona Vale Road as it is situated behind other buildings on lower ground, and the height will not significantly impact upon adjoining properties in terms of overshadowing or outlook. On this basis, a variation to this control pursuant to Clause 20 of the LEP is supported.

### ***Front Setback***

The entry portico to the building labelled 'hardgood sales' is setback 26m from the Mona Vale Road property boundary, although the majority of the building is set back 30m. Therefore portions of this building do not comply with the required 30m setback.

The carparking situated in the front setback encroaches 15m into the setback area, does not cover more than 50% of the setback area and maintains the landscape strip. This portion of the development complies with the requirements.

The non-compliance of the proposed building by up to 4m into the front setback is considered minor, and will result in minimal impact upon the locality. The majority of the building meets the required setback, and it is a low level screened by a landscape strip along the property boundary. For this reason, it is considered that a variation to this control pursuant to Clause 20 of the LEP is appropriate and is supported.

### ***Side Setback***

A covered walkway is to be located along the north-eastern side property boundary, setback 6m from the boundary, and a stone retaining wall is to be setback 3m from that property boundary. This does not comply with the LEP control which states that the minimum side building setback is 7.5m which is to be landscaped and free of any structures.

The objectives specifically related to the side setback control listed in the Warringah Design Guidelines are as follows:

- Provide separation between buildings;
- Provide opportunities for landscaping; and
- Create a sense of openness

The buildings at the site are setback 14.5m from the boundary, which will provide sufficient separation between this site and the adjoining. There is opportunity for landscaping between the property boundary and the location of the retaining wall and covered walkway.

Furthermore, the low scale nature of the retaining wall and covered walkway are considered not to reduce the sense of openness in the locality. It is therefore considered that a variation to this control pursuant to Clause 20 of the LEP is appropriate.

### ***Landscaped Open Space***

The allotment upon which the building works are proposed (No.315 Mona Vale Road) is comprised of a mixture of hard and soft surfaces, including stockpile of landscape supplies, buildings, parking areas and landscaped areas. This allotment, when the buildings are completed, will have 42% landscaped open space, which does not meet the requirement.

The applicant, in the submitted Statement of Environmental Effects states that as the development application relates to completing buildings already partly constructed the landscaped open space requirement does not apply. This argument is not agreed with, as consideration must be given to compliance with the controls when determining whether to allow illegally constructed buildings to remain.

The objectives for the landscaped open space control as contained within the Warringah Design Guidelines are as follows:

- maintain and enhance streetscape
- enable the establishment of landscaping commensurate with height and scale of buildings
- enhance privacy
- accommodate recreational needs
- provide space for service functions
- facilitate water management
- incorporate any plant species nominated in the locality statement
- conserve significant features

It is considered that the landscape strip along the Mona Vale Road property frontage will maintain and enhance the streetscape of the site. This landscaping has sufficient height and density to filter views of the buildings constructed on the site. Privacy to adjoining properties will not be affected as a concrete boundary wall will prevent direct views into the adjoining buildings, which are well situated away from the site and are not used for residential purposes. Recreational needs and service functions are not required as no residential dwellings are proposed on site. The stormwater detention tank that will enable the re-use of the stormwater runoff on the site will adequately facilitate water management. There are no plant species nominated in the locality and the site does not have any significant features to retain.

Whilst the amount of landscaped open space provided at the site is a significant non-compliance with the LEP control, the development will meet the objectives behind this control for the reasons discussed above. Therefore, it is considered that it is appropriate to allow a variation pursuant to Clause 20 of the LEP in these circumstances.

### **General Principles of Development Control**

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

### **Clause 43 Noise**

The applicant has submitted an acoustical assessment that considers the noise impacts of the proposed retail plant nursery. This report concludes that the proposed development will not generate significant noise emission due to a lack of major noise producing equipment at the site, infrequent use of small bobcat or forklift truck during the day, and the nature of the proposed use of the site.

This conclusion is agreed with, given the high level of existing road noise generated by Mona Vale Road, and the separation between the proposed retail plant nursery and the adjoining residential dwellings at the caravan park it is considered that noise will not be a significant impact upon the amenity of this locality.

The hours of operation of the retail plant nursery are proposed to be 8am to 6pm, seven days a week. Seven day trading is typical of the other commercial premises along Mona Vale Road in this vicinity, including Bonds Nursery, the Hills Flower Market, Terrey Hills Tavern and the Fruit World.

#### **Clause 44 Pollutants**

It is noted that the ANL site has been the subject of complaints relating to dust, odour and soil erosion onto Myoora Road and environs, however these complaints relate to the operations located on the Myoora Road properties and are a separate issue to these applications.

The proposed retail plant nursery is not anticipated to generate pollutants that would unreasonably diminish the amenity of adjacent properties, the locality or waterways due to the nature of the products proposed to be sold, that is no open stockpiles of bulk supplies will form part of the products for sale, and provision of a stormwater detention tank to capture water for reuse. Furthermore, an Environmental Management Plan for operations at the entire site has been submitted to Council, which is presently under assessment by Council's environmental operations staff. A condition of consent is recommended to be placed on the consents requiring compliance with the approved version of the Environmental Management Plan to ensure that future operations are managed to so as to reduce impacts upon adjoining properties.

#### **Clause 53 Signs**

No signage is proposed as part of this application. A condition will be placed on the consent requiring separate application to Council for any future proposed signage.

#### **Clause 68 Conservation of energy and water**

The applicant proposes (and has partially constructed) a detention tank in the north-western corner of the portion of the site proposed to be occupied for the retail plant nursery. This tank will allow for the capture, storage and re-use of water run-off from the surface area of the proposed retail plant nursery, and to enable the water to be re-used for nursery watering purposes.

**Clause 69 Accessibility – public and semi-public buildings**

Wheelchair access ramps are proposed to enable access from the carparking area through the entry/sales area and down to the plant display within the 'rainforest pavilion'. The width and gradients of these ramps are suitable to provide safe and convenient access to people with limited mobility.

**Clause 71 Parking facilities (visual impact)**

The parking area for the proposed development is situated behind a wide landscaped strip to Mona Vale Road, which screens its visual appearance from the road so that it is not the dominant visual feature.

**Clause 72 Traffic access and safety**

The application was referred to the Roads and Traffic Authority for their assessment as Mona Vale Road is classified as a state road. To date, no response has been received from the RTA. Clause 30(2) of the LEP 2000 states that if the RTA has not made its views known within 21 days of receiving the application the consent authority may proceed to determine the application.

It is noted however, that the RTA has granted approvals for vehicular access from Mona Vale Road to other business uses within this vicinity in recent times. These approvals have been issued subject to conditions, including the submission of final design plans of access to the RTA for approval prior to the commencement of any roadworks. A similar condition is recommended to be placed on the consent for this application in order to satisfy any RTA requirements.

Council's traffic engineer has assessed the proposal and advises that no objections are raised except for the proposed limitation of customer access to and from the site to Mona Vale Road only. The application proposes to change the existing access arrangements by denying current customer access from Myoora Road and requiring all customers to enter and exit via Mona Vale Road. This arrangement would deny customers wishing to travel to the west or south from accessing Mona Vale Road and Forest Way in relative safety via the traffic lights at the intersection of Mona Vale Road/Myoora Road and Forest Way.

Council's development unit has considered the proposal, and does not support the position of Council's traffic engineer for the following reasons:

- Submissions have been received from Myoora Road residents objecting to additional traffic entering and exiting the site into Myoora Road;
- The Myoora Road properties of the ANL site are used by heavy trucks and machinery such as forklifts, bobcats and the like that move bulk materials around between

stockpiles. Encouraging light vehicle movements through this area would present a traffic conflict and safety problems.

- Some other businesses along this portion of Mona Vale Road rely solely on Mona Vale Road for customer access (with approval from the RTA), and there is not an existing apparent problem for customer traffic flows.

For these reasons, it is considered that the proposed method of ingress and egress from Mona Vale Road only is satisfactory, and that use of Myoora Road by customers of the retail plant nursery should not be permitted.

### **Clause 73 On-site loading and unloading**

Sufficient area is available within the parking area for vehicles with trailers or trucks to park to enable loading and unloading of goods. The layout of the parking area will allow all vehicles, including those who are loading/unloading to enter and leave the site in a forward direction.

### **Clause 74 Provision of carparking**

Schedule 17 of LEP 2000 states that a retail plant nursery requires 15 spaces or 0.5 spaces per 100m<sup>2</sup> of site area, whichever is the greatest. The portion of the site proposed to be used as the retail plant nursery, excluding parking and landscaped areas, is approximately 2860m<sup>2</sup>. Therefore, 15 (14.3) spaces are required for the proposed retail plant nursery.

A total of 45 parking spaces for customers are proposed adjacent to the buildings proposed to be used for the retail plant nursery. It is however noted that the parking spaces located adjoining the southern side of the administration building (open and within the carport) are in existence, and are currently utilised by customers to other portions of the site. Furthermore, some existing spaces will be removed to enable car/trailer parking to the proposed retail plant nursery. Also, condition 24 of Development Consent 79/337 requires the provision of ten (10) visitor parking spaces to be provided on site.

However, it is considered that, as an additional 15 parking spaces will be provided along the area of existing lawn to cater for the increased customer parking demand generated by the retail plant nursery, that a sufficient amount of parking in accordance with this control has been provided.

### **Clause 75 Design of carparking areas**

The proposed parking areas have sufficient area to allow for vehicle manoeuvring to enable vehicles to enter and leave the site in a forward direction. Each parking space has sufficient dimensions to meet the minimum required.

### **Clause 76 Management of stormwater**

Stormwater runoff from the area of the site proposed to be occupied by the retail plant nursery will be captured in a detention tank with a capacity of 600m<sup>3</sup>. This water is to be reused for irrigation and watering of nursery plants. Overflows from this tank are discharged via a stormwater pipe to a drainage channel along the north-eastern boundary of the site, which connects with another detention tank located adjacent to Myoora Road, before entering the street drainage system.

### Notification

In accordance with Development Control Plan No.1 – “Public Exhibition and Notification” – adopted 27/2/2001 in force 10/3/2001, Development Application No.2003/590 was notified by letter dated 15 July 2003 to seventeen (17) adjoining property owners. Development Application No.2003/1302 was notified by letter dated 17 October 2003 to nine (9) adjoining property owners, and was re-notified by letter dated 15 December 2003 to eleven (11) adjoining property owners and those who made a submission to DA2003/590.

A total of 6 submissions were received in relation to DA2003/590, and two in response to DA2003/1302, all of which objected for various reasons. Those objections relating to existing complaints, including noise, odour and hours of operation of the existing operations, helicopter flights, boundary encroachments and problems with the Myoora Road verge are not addressed in this report as they are unrelated to these Development Applications and are being separately dealt with by Council’s compliance section.

Those objections relevant to the Development Applications are addressed as follows:

- *The proposed development will cause an increase in traffic from ANL into Myoora Road causing more noise disruption and adding to the safety issue of the blind entrance/exit.*

Comment: as discussed above, no additional traffic will be directed into Myoora Road. This objection is not supported as a reason of refusal.

- *All four ANL sites should be dealt with as a whole. Council should defer consideration of the application until ANL gives indication of their development plan for the whole site/ all of the site should undergo an audit to ensure all works and uses have Council approval.*

Comment: Council can only consider development upon that land applied for under the Development Application. Council’s environmental compliance section have investigated the site in relation to any illegal land works or uses, and this issue is separate to consideration of these Development Applications. This objection is not supported as a reason of refusal.

- *ANL should be required to undergo the same DA process as others before any development occurred.*

Comment: ANL have submitted the required Development Applications and Building Certificate applications under the relevant legislation. This objection is not supported as a reason of refusal.

- *The planning report contains motherhood statements and does not address issues of site coverage and landscaped areas.*

Comment: it is considered that the planning report submitted provides sufficient information for Council to adequately assess the application. Issues of site coverage and landscape areas are addressed above in this report. This objection is not supported as a reason of refusal.

- *There are encroachments to the rear boundary to minimum building alignments.*

Comment: the concrete block retaining wall and timber cottage are approximately 60m from the rear boundary of No.315 Mona Vale Road. The proposal complies with the minimum required. This objection is not supported as a reason of refusal.

- *Dwellings and buildings on adjoining properties are not shown on the submitted plans.*

Comment: It is considered that it is not essential for the submitted plans to indicate the location of the buildings on adjoining properties, given the size of the subject site, the separation between buildings on respective sites, and the fact that the adjoining sites are not residential in nature and therefore indication of window placement etc is not a paramount concern. Furthermore, several site inspections have been undertaken, and Council's GIS which contains aerial photographs has provided sufficient information to determine the impacts upon adjoining properties. This objection is not supported as a reason of refusal.

- *The proposed development cannot be allowed to go forward just because some buildings have been illegally constructed.*

Comment: the development has been considered on its merits in relation to the LEP, and the fact that some buildings are already constructed was not a consideration when recommending these applications for approval. This objection is not supported as a reason of refusal.

- *No toilets are shown on the plans, and no details of effluent and wastewater disposal.*

Comment: Toilets are shown within the administration building on the submitted plans. These toilets are within the existing building formerly used as a dwelling, and the septic tank arrangements will continue. It is noted that the BCA does not require toilets to be provided for customers for this type of application. This objection is not supported as a reason of refusal.

- *A nursery should not be approved adjacent to a heliport on safety grounds.*

Comment: it is considered that there is sufficient separation between the helipad and the buildings proposed to be used for the retail plant nursery. This objection is not supported as a reason of refusal.

- *Myoora Road residents were not informed of the Development Applications.*

Comment: the Development Application was notified in accordance with Council's Development Control Plan No.1 – Notification and Public Exhibition. Development Application 2003/1302 was renotified to include not only adjoining property owners, but also those who made a submission to DA2003/590. This objection is not supported as a reason of refusal.

- *The setback from Mona Vale Road has not been dealt with.*

Comment: the front building setback is discussed above in this report. This objection is not supported as a reason of refusal.

### **Conclusion**

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, Warringah Local Environmental Plan, 2000 and the relevant codes and policies of Council. It is considered that the proposed development satisfies these controls and accordingly is recommended for Approval.

### **Recommendation (Consent)**

That Development Application No.2003/590 for building works required to complete partially constructed buildings and Development Application No.2003/1302 for a retail plant nursery at Lot 152, DP 75201, No. 315 & 317 Mona Vale Road, Terrey Hills, be approved subject to conditions.

Review of Development Application Determination



