
Sent: 31/01/2020 7:15:44 AM
Subject: Objection to DA2019/1478 for 1 Narrabeen Park Parade North Narrabeen
Attachments: SUBMISSION and attachmentsTO NBC ON DA 2019.docx; Comments re amended Statement of Environmental Effects attached to DA2019.docx;

Dear Sir

Please find attached 2 word documents being my submission regarding the above;

Attn;- Tony Collier.

Yours Sincerely

Michael Morris

SUBMISSION TO NBC ON DA 2019/1478

Introduction

DA2019/1478 can only be considered in conjunction with the existing restaurant situation and the current issues, summarised below.

Existing Restaurant

- 1) ONE restaurant is on R2 residential zoned land and may only operate under Existing Use provisions (EPA 1979 No 203, Div. 411, EPA Regulation 2000 clauses 41-45).

Warringah Council DA 87/200 modified 17/6/90, allowed change from existing milk bar to restaurant, with attached dwelling and garage, for 50 diners.

The DA provided conditions, including:

Hours:

- 12.00-3.00pm Wed to Sunday
- 6.30pm to 10.30pm Wednesday Thursday and Sunday
- 6.30pm to 11.30pm Friday and Saturday.

(Compare to current advertised hours, Attachment 1)

Clause 11:

- *“Noise emitted from the premises shall not be “offensive” as defined by the Noise Control Act when measured at any nearby residence at any time.”*

- 2) **Outdoor Dining Approval** under the Roads Act 1993, in 2017, for a 10x4m area immediately outside the SW corner, (shown on the sketch map on that approval; *(see Appendix 3 of Environmental Statement with DA2019/1478)* for outside chairs and tables, from 1/9/17 to 1/9/20.

Note that under the NBC Outdoor Dining Footpath Merchandise Policy, being Crown Land reserve, this may need Local Government Act 1993 approval, which may not have occurred.

Note also one of the Policy principles of:

“fostering neighbourhood amenity through minimising noise, visual and other impacts.”

Current Issues

- 1) Around June 2019 a series of apparently unauthorised alterations and additions took place, both on the property itself and an adjacent area of Lake Park Crown Reserve along the southern boundary of 1 Narrabeen Park Parade, for the length of the building, some 6x27m.

(pre-existing unauthorised structures as at 2015 are shown in attachment 2.)

The apparently unauthorised structures and additions on the Reserve from June 2019 onward included;

- a) A service entrance for Sushi@One on the southern aspect at the eastern end.
- b) Pairs of groups of large permanent wooden posts with waist high benches on top, set on the perimeter of the above area of Crown Reserve, with stools, well beyond the approved area of Outdoor Dining approval. Also a number of chairs tables and outdoor umbrellas , on the Reserve outside the Sushi@One entrance, again well beyond the area of the Outdoors Dining Permit. *(See attachments 3 & 4).*
- c) Placement of very large landscaping boulders on the Reserve in front of Sushi@One. *(see attachment 5).*
- d) Lacing a network of cables and lights over the area, from the side of the restaurant, out to and attaching to the Norfolk Pines. These pines are currently the subject of a Local Heritage Application, with a history going back to 1941 and McKinnon's Store, which is still the original building. Also fairy lights wrapped around one of the pines. *(attachment 6)*
- f) A dozen large vertical timber beams between 1 and 3m high set in ground to form a fence some 5m long at the eastern end of the Crown reserve land, completing the enclosure and impeding free access to public land. *(see attachment 5).*
- g) Additionally there are pavers over the entire area of Reserve in front of Sushi@One, and numerous sleepers covering the Reserve from Sushie@One 1 to the outside Dining area, and pavers covering the Outside Dining Area, all out almost to the pines. Also there is a 5x4m demountable stage on the pavers at the eastern end of Reserve area.
- h) A series of large unsightly rectangular planter pots.

A schema of the current occupation of the adjacent Reserve is seen in *Attachment 7.*

- 2) It appears no Council Development Consent authority exists for any of these works, but in any case ones understanding is that although Council consent is required for enlargement expansion and intensification of existing use, clause 42 (2)(b) of EPA Regulation 2000 provides that such work

“must be carried out only on the land on which the existing use was carried out...”

i.e. 1 Narrabeen Park Parade, not the Reserve.

In other words a DA cannot issue for enlargement etc. of existing uses beyond the original existing use property boundary.

Similar provisions in Clause 43 mean that a DA can only issue for alteration or extension of building and works (43(2b))

“..erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant date”

i.e. 1 Narrabeen Park Parade itself, not the Reserve.

- 3) The trading hours as set under the DA 87/200 reflect an existing use on R2 residential land.

These hours have been breached on a daily basis despite representations to NBC by local residents and attendances by NBC rangers.

Hours advertised on the One Restaurant website (*see attachment 1*) bear no relation to those allowed by DA87/200 (modification)

- 4) Regular, advertised musical performances take place, not on the premises of the restaurant, but instead between 1 & 4 performers are set up on the reserve itself, usually near the rear of the building on the Crown Reserve, or on the Outside Dining Area.

This site has an uninterrupted line to adjacent properties at 3 & 5 Narrabeen Park Parade, 12 13 and 14 Peel Place, and the amplified music is also loudly audible at 7 & 9 Narrabeen Park Parade and beyond, and at Lake Park Camping area immediately opposite.

These performances occur up to 3 days a week, usually during the out-of-hours trading period from 3.00 to 6.00 accompanied by active trading in food and drink on the Reserve land, not being the Outside Dining area.

Neighbours have complained to NBC and rangers attendances have been documented by NBC.

Proposed DA 2019/1478

As submitted, the DA form omits much of what is apparently sought, but taken in conjunction with the attached Statement of Environmental Effects it appears to seek the following.

1) Increased hours:

-Mon-Saturday: 6.30am to midnight.

-Sunday:6:30am to 10pm.

-New Years Eve: until 2.00am closing.

2) Increased number of diners:

from 50 to 100, the increased number to be distributed between the interior, and the existing approved Outside Dining Area.

3) New works

a) "New pergola over the existing tiled area" (*outside Sushi@One, above the unapproved enclosed tiled area on Crown reserve, beyond Outside Dining Area*).

b) "New landscaping" (*no details, but all on Crown reserve beyond Outside Dining Area*).

c) "New concrete path" (*replaces existing to Outside Dining area.*)
(*My italics*)

Objections and Recommendations to proposed DA

This restaurant currently operates in a residential zoning as an Existing Use of what was the historic McKinnon's store built around 1941, then a milk bar then a café.

Therefore:

1. Since current approved hours are not being observed despite Council's efforts:

-No expansion of hours should be considered without strict supervision and enforceable safeguards. Note the Outside dining area is limited to 10pm.

-The hours should reflect the residential zoning and hours of similar nearby restaurants in R2 zoning e.g. Oceans. Note that the Outdoor Dining Approval sets closing time at 10.00pm.

-No permission to extend New Year's Eve hours beyond existing.

This is a residential area, and the public nuisance caused by an extraordinary commercial party this NYE has already been communicated to NBC. It involved revellers, dancing, drinking and an amplified four piece band with searchlights and strobe lighting, all on the Crown Reserve, which ended after 12.30 am only when Police were called. The noise level was outstanding, and must have been intolerable at the Caravan Park opposite. (*see Attachment 8, billboard advertising "sushi canapes all night"*)

2. Numbers of diners.

Should not exceed those of nearby restaurants, with particular requirement that there only be 40 outside at any time, with no use of the Reserve beyond the existing Outside Dining Area at the western corner. Currently there are numbers of tables, chairs, benches stools and a demountable stage over the paved area outside Sushi@1 at the eastern end, all apparently unauthorised,

which should to be removed before considering any approvals for numbers of diners. (See above, Current Issues 1 a) to 1 h))

3. Proposed pergola over the Crown reserve would give the appearance of the area being private land and should not proceed. The existing apparently unlawful enclosure of the Reserve along the southern aspect of 1 Narrabeen Park Parade by the various works listed above already gives that appearance and denies public access, and all should be removed before further consideration of this DA, and the area remediated. (See above, Current Issues 1 a) to h).)

Also, although none of the unauthorised works above are referred to in the DA application or its attached “Statement of Environmental Effects” some are depicted in the attached plans and surveys.

It is submitted that all such works be explicitly rejected in any approval, lest approval for them be implied.

4. No merit exists in approving 2 areas of landscaping (details unspecified), entirely on public land adjacent to the historic Norfolk Island Pines. The applicant has previously applied to have four of these pines removed (see PP0001/17), and has currently attached suspended lights over the Reserve area demarcated, and wound fairy lights around one of the trunks. These lights should be removed.

The landscaping areas proposed at the eastern end would add to the impression of private ownership and further impede public access and use.

5. It is submitted that in view of the provisions of EPA Regulation 2000 (cl.42 (2b) and cl.43(2b)) no increase in building or works of an existing use, or enlargement of an existing use, can be approved **unless** it be on the land of the original existing use i.e. 1 Narrabeen Park Parade. Therefore, the it may be that the only new works that can be approved is the new path to Outdoor Dining Area to replace existing.

6. It is further submitted that should the DA or any part of it be approved, that it be accompanied by:

a) Prohibition of performance of music on any portion of the Crown Reserve adjacent to the Restaurant or the Outside Dining area. Music performances, amplified, on this Reserve have been the subject of repeated complaints by neighbours to NBC, not only on New Year’s Eve.

To allow music outside would be an expansion of an Existing Use beyond the subject property, prohibited under EPA Regulation 2000 (above).

- b) Prohibition of meals or consumption of alcohol on any portion of the Crown reserve adjacent to the Restaurant, except serving of meals or consumption of alcohol while seated on the approved Outside Dining Area.
- c) Council reserving the right to withdraw any or all of the DA in the event of non-compliance.

Finally in support of the above Objections and Recommendations, attention is drawn to the report to Council by Executive Manager Strategic Land Use Planning, Trim File Ref 2017/183323 in regard to PP0001/17.

The proposal then was different, but the following recommendations remain highly relevant, given the current and proposed commercial annexation and use of the Reserve between the Restaurant and the Norfolk Island Pines. These 6 pines are currently the subject of a pending Local Heritage Application with NBC.

“ENVIRONMENTAL IMPACT

- a) Adequate assessment should be undertaken as part of the Gateway process to the possible significance of the Norfolk Island Pines for native species including Osprey and White-bellied Sea Eagle.*
- b) The Planning Proposal will have adverse impacts on heritage and is inconsistent with Local Planning Direction 2.3 Heritage Conservation.”*

Amplified music, lights and activity in close proximity to the pines will surely impact adversely on the habitat for the native birds if the Reserve is allowed to be used in this way. Paving and sleepers will impact the root zone of the pines.

Summary

1. Approval of the proposed works would legitimate the present unlawful Crown Land Reserve works (paving, sleepers, posts, benches, lights and boulders), as well as the present unauthorised use for playing amplified music, also chairs tables with outside dining and alcohol consumption. It would approve exclusive private commercial occupation and use of this portion of the Lake Park Reserve. None of this is in the public interest.
2. Therefore the application for the pergola and two areas of landscaping on the Reserve should be rejected. Any approval should also specifically exclude all the unauthorised structures on the Crown reserve currently impeding public access and use, lest approval for these be implied.

3. The current unauthorised works and usage are preventing quiet enjoyment of the reserve by people and wildlife alike, and represent a threat to the historic Norfolk Island Pines.
4. The hours should reflect the residential zoning and hours of similar nearby restaurants in R2 residential zoning e.g. Oceans.
5. No permission to extend New Year's Eve hours beyond usual closing time should be considered.
6. All unauthorised works on the Crown Reserve should be removed and the site remediated.
7. Any approvals should be appropriate to the residential zoning, and to the Lake Park camping area opposite, with strict conditions and closely monitored for compliance. Given the likely presence of children and infants in both these areas, and the native bird habitat of the Norfolk Island pines, excess noise at any time needs to be prevented.

Yours sincerely

Michael Morris

5 Narrabeen Park Parade
North Narrabeen 2101

Attachment 1: advertised trading hours (compare with DA 87/200)

ONE One Cafe North Narrabeen
Cafe · Restaurant
Open now · 06:30 - 22:00

Book Now

Home Reviews Photos Posts

About

1 Narrabeen Park Parade, Narrabeen, New South Wales, Australia 2101

285 people checked in here

(02) 9011 7663

admin@onecafebar.com

Open now · 06:30 - 22:00

Sunday	06:30 - 22:00
Monday	06:30 - 15:00
Tuesday	06:30 - 15:00
Wednesday	06:30 - 22:00
Thursday	06:30 - 23:00
Friday	06:30 - 00:00
Saturday	06:30 - 00:00

Attachment 2 Pre-existing unauthorised structures on reserve 2015, from PP0001/2017 Heritage Report page 13.



Fig.10: 1 Narrabeen Park Parade viewed looking north from public pathway with base of Norfolk Pines in close proximity to building.

Attachment3 .(<https://www.commercialrealestate.com.au/property/1-narrabeen-park-parade-north-narrabeen-nsw-2101-2015663476#>) showing current unauthorised paving, structures, tables chairs stools and lights.



Attachment 4 (<https://www.commercialrealestate.com.au/property/1-narrabeen-park-parade-north-narrabeen-nsw-2101-2015663476#>) showing current unauthorised paving, structures, tables, chairs, stools pots and lights.



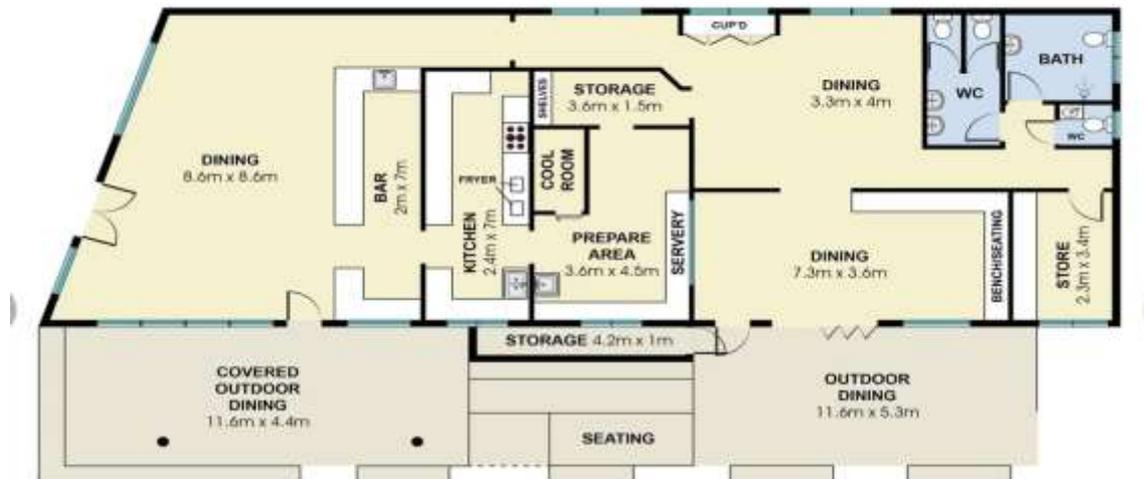
Attachment 5 Structures etc. as above, also large boulders and vertical black wood beam enclosure at eastern end. (jpeg4857 6/1/2020, by author)



Attachment 6. Lights from building to and around trees. (jpeg 4859 10/1/2020 by author)



Attachment 7 Schematic plan showing current reserve encroachments. (<https://www.commercialrealestate.com.au/property/1-narrabeen-park-parade-north-narrabeen-nsw-2101-2015663476#>)



Attachment 8 Billboard outside One (jpeg 4840 29/12/2019 by author)



Submissions re amended Statement of Environmental Effects attached to DA2019/1478.

P.3 Letter of Consent

“The Application is supported by a letter (dated 29 August 2019 – Ref: 2019/491647).. ” etc.

This is not so; the letter cited (29/8/2019 Ref: 2019/491617) is not attached. However reference to that letter shows it refers to

“...your request to undertake works to the outdoor dining area..”

and is therefore clearly unrelated to this DA except possibly in regard to the replacement footpath to the 10x4m Outside Dining area.

P.4 Proposed Outdoor Eating Area

“The proposed work will enhance the function of the outdoor dining area and provide improved amenity for the patrons. ”

The DA only involves the Outdoor Dining Area to the extent of replacing an existing path. The proposed pergola and landscaping are well away from the area, on the Reserve and would provide no amenity for patrons unless it is intended to continue the present unlawful and non-compliant use of Crown land for restaurant purposes.

Furthermore the POM cited requires that such leases etc *“not substantially diminish public use of or access to open space”* and *“not adversely affect the natural environment, the heritage significance of any heritage items or..the existing amenity of the area.”*

Clearly the existing encroachments and the DA proposals fail that test.

P.11

“It appears that the subject restaurant was lawfully erected (ie. within the Residential zone) in 1987 “

In fact the present building has been there since 1941.

P12. *“The proposal seeks to rely on the existing use rights provisions to provide for the alterations to and extension of the subject building.”*

As noted in regard to P14 and P16, 6.3,

- The proposed additions are not in the R2 zone, but on RE1 Crown reserve.
- Existing Uses rights may only be extended on the subject land, not adjacent reserve. (EPA 2000 regulations Clauses 42 and 43.)

P.14

“It is therefore necessary to seek consent pursuant to Clause 43 of the Environmental Planning and Assessment Regulation 2000, for alteration and extension of the building on the property the subject of the existing use, in accordance with this development proposal.”

However, these same Regulations provide **no** such approval or consent is possible for expansion or extension of any existing use or activity beyond the boundary of the subject property. (Clause 42, 2b and clause 43, 2b.)

P.15

“The collected stormwater will be directed to the existing stormwater system.”

Where and how will run off from the present unauthorised pavers and sleepers be dealt with if they are allowed to remain? More development on public reserve land?

P.16, 6.3

“This application seeks approval for additions and alterations to the existing restaurant will rely on the establishment of “existing use rights” for the building.

“The modest additions to the existing restaurant are not considered to be inconsistent with the objectives of the R2 zone “

- The proposed additions are not in the R2 zone, but on RE1 Crown reserve.
- Existing Uses rights may only be extended on the subject land, not adjacent reserve. (EPA 2000 regulations Reg 42 and 43.)
- The proposal is inconsistent with all three R2 objectives listed, and the RE1 objectives listed, preventing or diminishing them.

P.17, “The EP & A Act under Section 4.66 states that if provisions of an environmental planning instrument will derogate from the existing use rights provisions, then these provisions do not have any force or effect whilst the existing use rights remain.”

4.66(1) is selectively misquoted, as it goes on to say

“except where expressly provided in this act”.

It **is** expressly so provided in the next sub clause (2) not authorising in regard to expansion etc of works and uses, and in particular (in regard to the existing DA87/200 trading hour conditions), not authorising

“(d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17 (1) (b), or...”

P.18

“The proposal seeks consent for the carrying out of alterations and additions to the building which is consistent with Section 4.67 of the Act.”

This is incorrect. It is actually seeking consent over adjacent public land, which under EPA 2000 Regulations is not available (Clauses 45 and 46.)

P.19 Clause 7.6 – Biodiversity protection

Fails to mention harm to Norfolk Island pines due to hardening of root zones and the excavation already done, and the effect of human activity, lights etc. on bird life.

P.20; It is submitted that in 2nd last paragraph (below), clarification of terms in bold is required:

“The proposed works are **largely** within the **existing disturbed portion** of the site and will not require the removal of any **significant** trees.”

P22. B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land

“The controls seek to achieve the outcomes:

“The long-term viability and enhancement of locally native flora and fauna and their habitats. (En)

“The proposal will not require the removal of any significant vegetation to accommodate the new works, and is therefore not considered to impact on any wildlife corridors. New landscaping is to be provided. “

It is submitted that paving, lights, dining, music and increased human activity on or adjacent to the Norfolk Pines and the reserve **must** adversely affect the pines and the substantial native bird habitat they provide.

P23. B6.3 Off-Street Vehicle Parking Facilities

“This control seeks to achieve the outcome:

“An adequate number of parking and service spaces that meets the demands generated by the development.

“Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.

“Safe and convenient parking.

“The proposal provides for minor additions to an existing restaurant, which maintain the existing gross floor area of the use. The current approvals issued by Council provide for up to 90 patrons. The proposed increase to a total of 100 patrons is not considered to significantly alter the current parking demand in the area, with patrons being largely from the local area or holidaying at the local Council controlled Sydney Lakeside Holiday Park. The site adjoins a public car park, which provides adequate parking to meet the needs of the use.”

It is submitted that

- a) Double the diners will double the parking requirements, and parking is already at a premium on Narrabeen Park Parade and the Reserve carpark at the relevant times and
- b) Current Council approval is for 50, not 90, as is acknowledged in this Report at P3. and set out in Appendix 2 of the Report. Appendix 3 contains no authorisation as to an increased number of persons, only permission for a maximum outside chairs (40) and tables (10).

P24 6.4.3 section D etc

We submit that:

Point one of the Community’s Vision cited is not compatible with proposed construction of a pergola attached to the southern side of the restaurant across quiet shady reserve adjacent to the 6 historic Norfolk Pines, nor with all the existing unauthorised structures already on the Crown Reserve.

P24 D14.1 Character as Viewed from a Public Place

“The required controls to achieve the outcomes are to ensure that the building maintains a compatibility with the locality through appropriate design relief including roof forms textures, materials, the arrangement of windows modulation, spatial separation, landscaping etc. “

Submitted that the meaning is obscure, that there is no roof or windows to the pergola and that the statement

“additions to the restaurant will be complementary in terms of bulk and scale to the existing surrounding development. “

is incorrect.

P25. D14.2 Scenic protection - General

“and the nature of the development will be complementary to existing surrounding development in the locality. “

It is submitted that a large wooden pergola will not complement the surrounding Norfolk Pines and the Reserve generally, but rather will add to the existing alienation of the site by the present unauthorised paving, benches, boulders and posts.

P26. D14.7 Front building line

“The front building line of the dwelling remains unchanged.

“The proposed new works maintain the existing southern setback, with no change to the southern building line. The proposal provides for a new pergola over an existing tiled area, together with associated landscaping.”

This is incorrect, as there is no southern setback, and as stated the southern building line is proposed to acquire a pergola over the existing unauthorised paving and the other unauthorised structures already on the reserve land. This will further alienate public access to and public use of reserve land.

D14.11 Building envelope

“The proposal will not see any change to the existing building envelope.”

In fact the existing building would acquire a pergola on the southern aspect.

D14.12 Landscaped Area – General

“The proposal will not see any change to the existing landscaped area.”

One of the approvals sought is for several new areas of landscaping, details unspecified, but clearly shown on Crown Land, not the applicants property.

7.3 Any development control plan

“The development has been designed to comply with the requirements of Council’s Pittwater 21 Development Control Plan.

“It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing mixed recreational/residential character of the area and is compatible with the existing uses in the vicinity.

“The development respects the streetscape character objectives of the DCP and will provide a cohesive and sympathetic addition to the site which will make a positive contribution to the area. “

It is submitted with respect that each of the above statements is incorrect.

7.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

“No matters of relevance are raised in regard to the proposed development. “

It is submitted that Existing Use Rights may only be extended on the property where existing use rights already exist, and may not be extended beyond that property. (see EPA 2000 regulations Cl. 42 and 43, quoted above at P.16, 6.3).

P.30 7.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is submitted that the proposed alterations and additions, altered trading hours, and numbers of patrons represent an inappropriate extension of structure and of use of what was only allowed originally as an existing use in a residential zoning. It is even more inappropriate in view of immediate proximity to and occupation of the Lake Park Reserve, adjacent to the historic Norfolk Island Pines, and the native bird habitat they currently provide.

7.7 The suitability of the site for the development

“The subject land is currently zoned R2 Low Density Residential under the Pittwater Local Environmental Plan 2014 and is considered suitable for the proposed development.”

In fact, the land involved by this DA application covers 2 properties, as is stated at P5. 2.0 of the Statement of Environmental Effects:

“Lot 1 is zoned R2 Low Density Residential and Lot 7069 is zoned RE1 Public Recreation under the Pittwater Local Environmental Plan 2014.”

So far as we are aware, the applicant has no permission from NBC and/or Crown Lands Department for structures on or any other use of the Lake Park Reserve land that is being sought by this DA, other than an Outdoor Dining

Permit issued by NBC in 2017 for an area 10x4m for chairs and tables adjacent to the SW corner of the restaurant, and a letter from NBC authorising works (unspecified) to the same area, 29/8/2019 Ref: 2019/491617.

It is submitted that no such permission for private commercial use of Lake Park Reserve should be given, and further, that the structures and use proposed by DA2019/1478 should be rejected as they would be contrary to the present designated use of the land, and to the public interest.

7.9 The public interest

“The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.”

As detailed above, it is submitted there would be a considerable detriment to the environment and the character of the locality under and adjacent to the pines, and to the local amenity. The public interest was clearly shown in 2017 when PP0001/17 proposing use of this same area of reserve, and removal of four of the six Norfolk Island Pines, was rejected after Council received almost 200 submissions, of which an overwhelming majority expressed opposition to the proposal.

8.0 Conclusion

“It is considered that the proposed works satisfy the stated objectives of Council’s Development Controls and reinforce the residential character of the area.”

The proposed works would be in fact on public reserve land, and it is submitted would do nothing to reinforce either the character of the reserve, or that of the adjacent residential area, but rather would detract from both.

Yours sincerely,

Michael Morris

5 Narrabeen Park Parade

North Narrabeen 2101