
Sent: 20/12/2019 3:21:54 PM
Subject: re: objection to DA 2019/1119
Attachments: objection letter to council 20.12.19.pdf;

Please see the attached letter.

Regards

Andrew Minto

Principal

Minto Planning Services P/L

PO Box 225, Thornleigh 2120

Phone: 02 9875 4788 Fax: 02 9875 4799

Mobile: 0407 459 414

www.mintoplanning.com.au



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20th December 2019

The General Manager
Northern Beaches Council
799 Pittwater Road
DEE WHY 2099

Dear Sir/Madam

**OBJECTION TO DEVELOPMENT APPLICATION - PROPOSED USE OF PART
OF THE CARPARKING AREA ASSOCIATED WITH THE HARBORD BOWLING
CLUB FOR THE PURPOSES OF A MARKET
4/0 BENNETT STREET, CURL CURL
DA 2019/1119**

I refer to the subject application and on behalf of Mr Peter Walsh of 8 Holloway Place, Curl Curl, hereby object to the proposal which seeks to hold a weekly market stall in the car park of the Harbord Bowling Club.

Under the provisions of the *Warringah Local Environmental Plan 2011* the proposed use is defined as a “market”. A market is defined as:

market means an open-air area, or an existing building, that is used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.

The subject land is zoned RE2 - Private Recreation under the *Warringah Local Environmental Plan 2011*. The use of land zoned RE2 - Private Recreation for the purposes of a “market” is identified as a prohibited use.

The Statement of Environmental Effects prepared by Cambridge Markets provided with the application advises that approval is sought under Clause 2.8 of the *WLEP 2011*. Clause 2.8 is titled “Temporary use of land” and seeks to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.

Relevant to this application and submission is sub-clause (3) of Clause 2.8 and which states that:

(3) Development consent must not be granted unless the consent authority is satisfied that—

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and

(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and

(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

A legal interpretation of the effect of sub-clause (3) is provided by now Justice Moore in *Marshall Rural Pty Limited v Hawkesbury City Council and Ors* [2015] NSW LEC 197 where at paragraph 116, Justice Moore states that:

*The second element engaged by these proceedings is the requirement that the proposal will “**not adversely impact**” (emphasis added) in the fashion specified in cl 2.8(3)(b). This test, cast in absolute terms reflecting the seriousness with which an application of this nature is required to be assessed, puts a very high hurdle in the path of any such application. The placing of such a hurdle requires that the Council must approach the consideration and determination of any such application with a marked degree of precision and caution.*

The relevant consideration arising from the above is that a “temporary use” must “not adversely impact” as opposed to the normal test applied to a conventional permissible use DA that a proposal “not unreasonably impact”.

It is our opinion, having regard to the nature of the proposed use as described within the submitted Statement of Environmental Effects, that the proposal does not satisfy the test required by Clause 2.8 of the LEP and on this basis must be refused. It is also apparent that the author of the SEE is unfamiliar with the applicable test described above based upon the wording and references to terms such as “minimise impacts, reduce impacts and unlikely to have significant impact”. None of these terms would satisfy the “not adversely impact” test.

This position is demonstrated by the internal comments of Council's Environmental Health Officer and which state in part:

Noise

The proximity of the food stalls, vendor parking, a jumping castle and generators to dwellings is likely to create noise pollution in the immediate residential area. It is noted that no acoustic report has been submitted. The applicant may wish to consider another location on the site that is away from surrounding residents together with an acoustic assessment.

Additionally, attendees will be mainly parking in the surrounding residential streets on a Sunday morning with the potential to adversely impact on the residential amenity.

Odour/air pollution

Potential odour and smoke from food stalls adjacent to dwellings poses a risk of nuisance and potentially air pollution offences. Again, the applicant may wish to consider another location on the site that is away from immediate surrounding residents.

Based upon the above it is submitted that the Council cannot grant consent to the proposal.

In addition to the Council issues described above it is also submitted that the proposal has the potential to result in traffic and carparking issues associated with vehicle movements and parking by patrons within the surrounding streets. Such an impact would also not satisfy the requirements of Clause 2.8 of the LEP.

In summary, it is submitted that the proposal does not satisfy the statutory requirements of Clause 2.8 of the *WLEP 2011* regarding the temporary use of land and on this basis cannot be approved by the Council.

We accordingly look forward to Council's favourable consideration of this submission.

It is requested that should you have any queries regarding this submission that you do not hesitate to contact me to discuss.

Yours Sincerely

Andrew Minto
DIRECTOR