
Sent: 14/03/2021 5:21:44 PM
Subject: re: Major OBJECTION to MOD2021/0047 (DA2019/0123) - 22 Jubilee Avenue Warriewood.
Attachments: MOD2021_0047_Objection_Submission~14Mar21.pdf;

Hello Thomas,

Attached is my **OBJECTION** to the above **MOD** which is identical in terms of Approvals requested and supporting Documents provided by the Applicant for the yet to be resolved/determined **REV2020/0029**.

A brief summary of why Council should **REFUSE** this **MOD** follows:

1. Time to Lodge a Legitimate MOD Application Expired Months Ago

In accordance with Condition **10** of the Consent under which this 'trial' market has been operating the final date for a legitimate MOD application was 31 December 2020.

Council has wrongly allowed **MOD2021/0047** to be lodged **2** months late and, when queried last week, has asked the Applicant to withdraw it.

2. Hard Evidence Proves 'Market Location' Breaches Amenity and/or Intrusive Noise Criteria (long-term view)

Environmental Health's 11 March 2021 Referral Response which emphatically reprises their 8 January 2021 Referral Response states: *"Environmental Health is of the opinion that in the absence of further data to the contrary, the application should be refused based on the reported breach (of Amenity and/or Intrusive Criteria), and the fact that any increase in the intensity of use of the site for the purposes of an organic market, would only exacerbate any potential noise issues."*

This vindicates the traffic noise concerns repeatedly raised by 'nearby-market' residents and RMS/Network Operations' comments that '... there is a road capacity issue which is unresolvable at present ...'.

3. Likely Traffic Market Flow Entering/Exiting the RSL Carpark Will be Intolerable & Risky

Within my **DA2019/0123** submission (March 2019/pre-pandemic) 'vehicle flow/movements' were computed and the following results reported: *"On Sundays with the market in full swing, vehicle movements escalate the baseline figure by ten-times to reach an estimated total of **2356** with **90%** (i.e. 2120) directly attributable to the overall operations of the 'proposed' market."*

When possible, would you please ensure that this email plus Attachment is uploaded to the **MOD2021/0047** site.

Kind Regards,

Dr Peter McDonald
Apt 10, 6 Foley Street
Mona Vale NSW 2103
m: +61 414 452 231

Major Objection

Submission

MOD2021/0047(DA2019/0123)

Address: Lot 120 DP135512 & Lot 27 DP5055 & Lot 26 DP654262
80-82 & 84 Mona Vale Road MONA VALE
and 22 Jubilee Avenue WARRIEWOOD

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- A. Time to Lodge a Legitimate MOD Application Expired Months Ago**
- B. Hard Evidence Proves Market Location Breaches Amenity and/or Intrusive Noise Criteria (long-term view)**
- C. Likely Market Traffic Flow Entering/Exiting the RSL Carpark Will Be Intolerable & Risky (Extract from DA2019/0123 Submission, March 2019)**

Appendix (Attachments)

- 1. MOD2020/0175 – Notice Of Determination – 5 August 2020**
- 2. Environmental Health Referral Response – 8 January 2021**
- 3. Environmental Health Referral Response – 11 March 2021**

Signed:

Dr Peter McDonald

10/6 Foley Street,
Mona Vale 2103
m: +61 414 452 231

PMcD – 14 March 2021

Submission in Detail

MOD2021/0047(DA2019/0123)

Address: Lot 120 DP 135512 and Lot 27 DP 5055 and Lot 26 DP 654262 80-82 & 84 Mona Vale Road MONA VALE and 22 Jubilee Avenue WARRIEWOOD

A. Time to Lodge a Legitimate MOD Application Expired Months Ago

Within the 5 August 2020 Notice of Determination for MOD2020/0175 (refer Attachment 1, page 3) Condition 10 reads:

“This consent expires in 21 months from the date of commencement of the operation of the market on site unless by no later than 16 months after the date of commencement the applicant lodges a modification application to extend the expiry date to 5 years and Council thereafter approves the modification.”

Given the market commenced operations on site on 1 September 2019 and 16mths was 31 December 2020, MOD2021/0047 should *actually* have been rejected by Council at lodgement stage as it was 2mths beyond the Condition 10 timeframe.

When this major discrepancy was queried with the NBC’s Executive Manager, Development Assessment, he replied: *‘Council has raised with the applicant that it (MOD application) has not been made within the legislated timeframe and we are awaiting a response from the Applicant, i.e. to withdraw it.’*

B. Hard Evidence Proves Market Location Breaches Amenity and/or Intrusive Noise Criteria (long-term view)

Of the **38** Objectors to DA2019/0123, concerns about the build-up of *existing* traffic in Foley and adjacent streets were raised by **11** of those who gave home addresses. Here is an example –

“Given that this is already a busy intersection in a residential neighbourhood, we don’t feel the need for a market to add to the congestion or noise. The entry and exits for Pittwater RSL already cause confusion and delay traffic.”

Mrs Chantal Bristow, B2/3 Vineyard St (10/3/2019)

While this resident’s observation was emblematic of the Foley St Level of Service results SIDRA modelled in the Greys Consulting 7/4/2019 Report (pages 16, 17).

Greys calculated the following ‘Foley St x Sunday Midday LoS peaks:

1. Existing/December 2018 LoS result was **E** (average delay of 65.0sec/veh).
2. Future/Market development, normal/no signal change LoS result crashed to **F** (average delay of 168.7sec/veh) - the lowest LoS level!

Furthermore, with the ‘trial’ market actually in operation, **6** (of the 15) MOD2019/0547 Objectors raised similar traffic concerns, for example -

“The markets themselves do not impact on us but the traffic is the issue. Cars bank up on the western side of Foley St waiting for the lights to change. There is also the problem of cars accessing entry to (the RSL) carpark from both directions and when they have to wait to get into the carpark it causes impatience to through traffic who then beep cars waiting to turn in.”

Mrs Janice Bilton, Apt8, 6 Foley St, (2/12/2019)

Recognising that traffic issues are not the responsibility of NBC but **RMS**, I sent them the following ‘Enquiry’ email on 25 July 2020 -

“At various times of the day we observe a build-up of traffic that stretches from the Foley St/Mona Vale Rd intersection, to the intersection of Jubilee and Vineyard Avenues. Would you please advise whether any changes on any day of the week have been made to the phasing of the Foley St/Mona Vale Rd traffic lights (Traffic Controller 3945) – since January 2020.”

On 28 July 2020, RMS Customer Relations referred me to the **Network Operations** team that manage SCATS ‘*who make any necessary adjustments to the timings to ensure the signals are working to maximum efficiency*’. Later that day, I spoke to a Network Operations Officer (have his Name and Mobile details) who explained that: “no signals’ changes have been made, there is a road capacity issue which is unresolvable at present - we will monitor from time to time.”

This ‘road capacity issue’ was part of my MOD2019/0547 ‘objection’ online/ phone discussion with the 29 July 2020 **NBLPP** and may conceivably have led to their inclusion of ‘trial’ Condition **12** – ‘Appointment of SafeWork NSW qualified Traffic Wardens’ - which the Applicant did not adopt or request be removed.

In net, the Network Operations Officer’s explanation not only vindicates the traffic noise concerns repeatedly raised by ‘nearby-market’ residents but also supports NBC Environmental Health’s **REFUSAL** of the Applicant’s MOD2021/0047 for the ‘market-location’ noise breach reasons in their 11/03/2021 Referral Response.

To quote Acoustic Consultant, Ian McGrath – “The constant presence of the contribution to the noise environment by existing local traffic movement is significant and can’t easily be ignored, it would be remiss to do so.”

C. Extract from DA2019/0123 Submission

3. Likely Market Traffic Flow **Entering/Exiting the RSL Carpark Will** **Be Intolerable & Risky.**

In line with the market operator's experience that "*markets tend to generate a flow of traffic across the market hours rather than a large flow inwards at opening and out at closing*" (Page 3, Environmental Impact Statement, January 2019), estimates of hourly 'vehicle movement' were developed in explicit detail (Refer Table 3).

Table 3

Sunday 'Vehicle Movement' Estimates by Hourly Time Blocks.

	<u>07.00</u>	<u>08.00</u>	<u>09.00</u>	<u>10.00</u>	<u>11.00</u>	<u>12.00</u>	<u>1.00</u>	<u>Totals</u>
<u>Arrivals:</u>								
Traders	77	43	0	0	0	0	0	120
Market Customers	0	154	198	200	198	190	0	940
Club Members*	0	0	29	10	16	24	117	196
Sub-total:	<u>77</u>	<u>197</u>	<u>227</u>	<u>210</u>	<u>214</u>	<u>214</u>	<u>117</u>	<u>1256</u>
<u>Vehicles/Minute</u>	<u>1.3</u>	<u>3.3</u>	<u>3.8</u>	<u>3.5</u>	<u>3.6</u>	<u>3.6</u>	<u>1.9</u>	<u>3.0</u>
<u>Departures:</u>								
Traders	0	0	0	0	0	43	77	120
Market Customers	0	154	198	200	198	190	0	940
Club Members	0	0	0	15	5	8	12	40
Sub-total:	<u>0</u>	<u>154</u>	<u>198</u>	<u>215</u>	<u>203</u>	<u>241</u>	<u>89</u>	<u>1100</u>
<u>Vehicles/Minute</u>	<u>0.0</u>	<u>2.6</u>	<u>3.3</u>	<u>3.6</u>	<u>3.4</u>	<u>4.0</u>	<u>1.5</u>	<u>2.6</u>
<u>Total Movements</u>								
Traders	77	43	0	0	0	43	77	240
Market Customers	0	308	396	400	396	380	0	1880
Club Members	0	0	29	25	21	32	129	236
Grand Totals:	<u>77</u>	<u>351</u>	<u>425</u>	<u>425</u>	<u>417</u>	<u>455</u>	<u>206</u>	<u>2356</u>
<u>Vehicles/Minute</u>	<u>1.3</u>	<u>5.9</u>	<u>7.1</u>	<u>7.1</u>	<u>7.0</u>	<u>7.6</u>	<u>3.4</u>	<u>5.6</u>

* Note: Club member 'arrivals' created on an *incremental* basis to deliver 196 car spaces required by 1.00pm

These ‘vehicle movement’ estimates have been computed on a *flow versus static* basis using the ‘raw’ parking data featured in Scenario **B**, Table 3-5, Page 15, **Greys Consulting Parking & Traffic Impact Report**, 7 January 2019.

When undertaking this task, it has been assumed that:

1. Trader and local staff (20%) vehicles of 120 are in place by 8.30am and have cleared the site by 2.00pm (as per January 2019 Operational Management Plan).
2. Market customers arrive, do their shopping and depart within half an hour.
3. Club member arrivals have been created on an *incremental* basis to deliver the 196 car spaces required by 1.00pm (as per Scenario B).
4. Half of the Club members depart within two hours after having breakfast, or brunch, and so forth.

On a normal Sunday, the estimated total baseline figure for ‘vehicle movements’ is **236** which consists entirely of RSL Club members using their club.

On Sundays with the market in full swing, vehicle movements escalate that baseline figure by ten-times to reach an estimated total of **2356** with **90%** (i.e. 2120) directly attributable to the overall operations of the ‘proposed’ market.

Just imagine, every 8 seconds on Sunday morning from 8.30am to 12.30pm on Foley Street a vehicle will stop, pivot and either enter or exit the RSL carpark.

In net, an intolerable and risky carpark Entry/Exit situation with excessive vehicle noise, congestion, and pollution totally *destroying* the amenity of nearby residents.

Note: the market operator has rightly indicated that the Jubilee Avenue Entry/Exit will be closed for any vehicle movements during the market trading hours.

Appendix

List of Attachments

REV2021/0047(DA2019/0123)

Address: Lot 120 DP135512 & Lot 27 DP5055 & Lot 26 DP654262
80-82 & 84 Mona Vale Road MONA VALE
and 22 Jubilee Avenue WARRIEWOOD

1. MOD2020/0175 – **Notice Of Determination** – 5 August 2020
2. **Environmental Health Referral Response** – 8 January 2021
3. **Environmental Health Referral Response** – 11 March 2021

5 August 2020

Organic Food Markets
3 / 1741 - 1745 Pittwater Road
MONA VALE NSW 2103

Dear Sir/Madam

Application Number: Mod2020/0175
Address: Lot 27 DP 5055 , 22 Jubilee Avenue, WARRIEWOOD NSW 2102
Lot 51 DP 1237461 , 84 Mona Vale Road, MONA VALE NSW 2103
Lot 52 DP 1237461 , 80 - 82 Mona Vale Road, MONA VALE NSW 2103
Proposed Development: Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market

Please find attached the Notice of Determination for the above mentioned Application.

Please be advised that a copy of the Assessment Report associated with the application is available on Council's website at www.northernbeaches.nsw.gov.au

Please read your Notice of Determination carefully and the assessment report in the first instance.

If you have any further questions regarding this matter please contact the undersigned on 1300 434 434 or via email quoting the application number, address and description of works to council@northernbeaches.nsw.gov.au

Regards,



Rodney Piggott
Manager Development Assessments

NOTICE OF DETERMINATION

Application Number:	Mod2020/0175
Determination Type:	Modification of Development Consent

APPLICATION DETAILS

Applicant:	Organic Food Markets
Land to be developed (Address):	Lot 27 DP 5055 , 22 Jubilee Avenue WARRIEWOOD NSW 2102 Lot 51 DP 1237461 , 84 Mona Vale Road MONA VALE NSW 2103 Lot 52 DP 1237461 , 80 - 82 Mona Vale Road MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market

DETERMINATION - APPROVED

Made on (Date)	29/07/2020
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The request to modify the above-mentioned Development Consent has been approved as follows:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Reports

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Operational Management Plan	June 2020	M A Choularton
Noise Emission Compliance Report	28 May 2020	Rodney Stevens Acoustics

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Modify Condition 4 Amendment to Plan of Management to read as follows:

The submitted Operational Management Plan is to be amended to include:

- Hours of Operation, being:
 - Access for stall traders: 7:30am-2:30pm; and
 - Trading hours: 8:30am-1:00pm.
- Methods for restricting access to the site prior to 7.30am and in relation to trading hours;
- Complaints Register: A complaints register is to be kept up to date at all times, logging complaints received, and action taken;
- Complaints Contact: A contact person is to be nominated in the Operational Management Plan along with a phone number;
- Stall Numbers: Market events are not to exceed 100 stalls at any time; and
- Market events must not exceed 42 days in 12 months.

Reason: To ensure appropriate amenity, complaints resolution and consistency with the consent.

C. Modify Condition 6 Noise Minimisation to read as follows:

1. External sound amplification equipment or loud speakers must not be used for the announcement, broadcast, playing of music (including live music) or similar purposes if audible from the boundary of any residential premises.
2. Set up of stalls is not to commence before 7:30am.
3. Refrigeration motors/generators and the like not being audible from the boundary of any residential premises.

Reason: To protect the acoustic amenity of neighbouring properties.

D. Modify Condition 7 Hours of Operation to read as follows:

The hours of operation are to be restricted to:

- Sundays:
 - Set Up: 7:30am-8:30am
 - Trading: 8:30am to 1:00pm
 - Pack Down: 1:00pm-2:30pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises for the purpose of the markets shall be required to leave. Stallholders and site managers may commence set up from 7:30am and must vacate the site by 2:30pm. No access to the site for the purpose of market stall set up is permitted before 7:30am.

Reason: Information to ensure that amenity of the surrounding locality is maintained. At the public meeting, the applicant indicated that approval was only being sought to operate the market on Sundays.

E. Modify Condition 10 Trial Period to read as follows:

This consent expires in 21 months from the date of commencement of operation of the market on site unless, by no later than 16 months after the date of commencement, the applicant lodges a modification application to extend the expiry date to 5 years and Council thereafter approves the modification.

Reason: To monitor the operation of the consent to ensure no adverse impact on any adjoining land or the amenity of the neighbourhood and the temporary use of the land in accordance with the consent.

F. Add Condition 11 Operation to read as follows:

Operation of the markets is to be in accordance with the approved Operational Management Plan and

Noise Emissions Compliance Report.

Reason: To ensure operation of the markets does not result in unreasonable impacts to the amenity of surrounding residential properties.

G. Add Condition 12 Traffic Warden(s) to read as follows:

A suitably qualified traffic warden(s), under the requirements of SafeWork NSW, must be appointed to monitor and control traffic movements and car parking along Warriewood Road, Vineyard Street, Jubilee Avenue and Foley Street, Warriewood. Such warden(s) shall commence duties no later than 7.15am through to 2.45pm.

Reason: To ensure safe and orderly traffic movements and parking and to manage amenity impacts to local residents.

Important Information

This letter should therefore be read in conjunction with DA2019/0123 dated 19 June 2019.

Please note that on site works cannot proceed unless a Construction Certificate application for the modified proposal has been lodged with and approved by Council or an accredited certifier, and relevant conditions of the Development Application have been carried out.

Right to Review by the Council

You may request Council to review this determination of the application under Division 8.2 of the Environmental Planning & Assessment Act 1979. Any Division 8.2 Review of Determination application should be submitted to Council within 3 months of this determination, to enable the assessment and determination of the application within the 6 month timeframe.

Right of Appeal

Section 8.10 of the Environmental Planning and Assessment Act confers on an applicant who is not satisfied with the determination of the Consent Authority a right of appeal to the Land and Environment Court within 6 months of determination.

NOTE: A fee will apply for any request to review the determination.

Signed

On behalf of the Consent Authority



Name

Rodney Piggott, Manager Development Assessments

Date

29/07/2020

Environmental Health Referral Response - industrial use

Application Number:	REV2020/0029
Date:	08/01/2021
To:	Thomas Prosser
Land to be developed (Address):	Lot 27 DP 5055 , 22 Jubilee Avenue WARRIEWOOD NSW 2102

Reasons for referral

This application seeks consent for large/and or industrial development.

And as such, Council's Environmental Investigations officers are required to consider the likely impacts.

Officer comments

General Comments

Environmental Health have been requested to provide comment in regard to this proposal for "Review of Determination of Application No. MOD2020/0175 in relation to a DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market" which seeks to:

1. To extend the expiry date of the DA to 5 years
2. To allow the number of markets per year to increase to any new limit set under any new LEP
3. To remove additional condition 12 requiring traffic wardens

Reference is made to the report included with the application documentation titled "Noise Impact Statement Review" dated October 2020 by Acoustic Consultant Ian McGrath.

The report acknowledges noise monitoring undertaken for the purposes of the report reveals that the Amenity Criteria and or the Intrusive Criteria has been breached.

The report also makes comparisons to noise levels measured sampled in the inner city suburb of Annandale which are seen to be not applicable to this proposal.

The report further states "The source of breaches of the Amenity Criteria and or the Intrusive Criteria being prescribed as L10 level \leq rating background level or (L90), plus 5, are in the environment under study most likely generated by local through traffic movements at the crossroad not from the markets activity itself".

Accordingly, Environmental Health is of the opinion that in the absence of further data to the contrary, the application should be refused based on the above breach, and the fact that any increase in intensity of use of the site for the purpose of an organic market, would only exacerbate any potential noise issues.

Recommendation

REFUSAL

The proposal is therefore unsupported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Recommended Environmental Investigations Conditions:

Nil.

Environmental Health Referral Response - industrial use

Application Number:	Mod2021/0047
Date:	11/03/2021
To:	Thomas Prosser
Land to be developed (Address):	Lot 27 DP 5055 , 22 Jubilee Avenue WARRIEWOOD NSW 2102

Reasons for referral

This application seeks consent for large/and or industrial development.

And as such, Council's Environmental Investigations officers are required to consider the likely impacts.

Officer comments

General Comments

Environmental Health have been requested to provide comment in regards to the proposal for 'Modification of Development Consent DA2019/0123 granted for use of the carparking area associated with the Pittwater RSL Club for the purposes of an organise food market'.

Reference is made to the report included with the application documentation titled "Noise Impact Statement

Review" dated October 2020 by Acoustic Consultant Ian McGrath. The report acknowledges noise monitoring undertaken for the purposes of the report reveals that the Amenity Criteria and or the Intrusive Criteria has been breached.

The report also makes comparisons to noise levels measured sampled in the inner city suburb of Annandale which are seen to be not applicable to this proposal. The report further states "The source of breaches of the Amenity Criteria and or the Intrusive Criteria being prescribed as L10 level \leq rating background level or (L90), plus 5, are in the environment under study most likely generated by local through traffic movements at the crossroad not from the markets activity itself".

Accordingly, Environmental Health is of the opinion that in the absence of further data to the contrary, the application should be refused based on the above breach, and the fact that any increase in intensity of use of the site for the purpose of an organic market, would only exacerbate any potential noise issues.

Recommendation

REFUSAL

The proposal is therefore unsupported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Recommended Environmental Investigations Conditions:

Nil.