
From: Stephen Choularton [REDACTED]
Sent: Thursday, 8 February 2024 8:55 AM
To: Planning Panels - Northern Beaches
Subject: Mod2023/0476 (22 Jubilee Avenue Warriewood & 80-82 Mona Vale Road Mona Vale & 84 Mona Vale Road Mona Vale)

Categories: NBLPP

Hi

I write as a director of the applicant.

Please accept my apologies as I am out of Sydney and unable to attend the meeting.

Please accept this email as my further submission in respect to the recommendations on this matter.

Generally we concur with the recommendations save in two respects:

A five year time limit

The obligation to apply for extensions from time to time is onerous and costly, can be fatal to an existing DA if one misses a diary note made for years in the future and raises questions among the traders and customers of the market as to whether or not it will continue. This market has been established for a number of years and has demonstrated that it causes no nuisance to neighbours either from noise or from traffic generation. The market is well supported by the public. We would ask the consent authority to grant an open-ended DA .

The power to do so is supported legally in *Marshall Rural Pty Limited v Hawkesbury City Council* [2015] NSWLEC 197; where it was argued (inter alia) with respect to the 'temporal limitation' ... cl 2.8 permitted development consent for a maximum period of 12 months from the date of consent. The Court, however, held that the ordinary, obvious reading of cl.2.8 does not impose a second limitation in addition to the number of days in any period of 12 months and that it was open to the consent authority to grant a consent pursuant to cl 2.8 for any nominated limiting period or indeed one that was open-end.

Preparation of a further Traffic Management Plan

A Traffic Management Plan was prepared in 2020 and has already been submitted to Council and the market has been operated in accordance with it without incident. There is no evidence that a further report is required. It is a costly process the expense of which will fall on us and we would ask for the current DA conditions relating to traffic to remain unchanged given they work well.

Failing this we ask that the condition that 'The TMP to be submitted to and approved by Council's Traffic Engineer within 6 weeks of the date of this consent.' be varied by the removal of the words 'and approved'. As the applicant we should be in a position to ensure a TMP is submitted within a six week time period but it's approval lies outside our control and we submit it would not be reasonable for us to be placed in breach of a DA condition for something totally out of our control.

Regards

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