



# Traffic concerns torpedo infill site development proposal

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Those who work on refurbishment or development of infill sites are well aware of the critical issue that traffic plays in the approval process.

Invariably expert traffic reports are commissioned and often recommendations are made regarding traffic management to minimise the traffic impact of a development.

This process was followed by the owner seeking development approval to redevelop a retail centre at 710 Military Road, Mosman, adjacent to the Mosman fire station. The redevelopment of the Centre would include removing small shops on one level and replacing it with a retail supermarket, and other changes over the basement to second floor level to enhance and update the shopping area. It was expected that the supermarket would have 60 staff. The Centre car park would be open from 7am to 10pm each day.

The Centre fronted Military Road, a busy road, and had rear access to a laneway, Horsnell Lane. On the other side of the fire station was a side street Field Way which provides access from Horsnell Lane to Military Road.

There are a number of planning controls applicable to the site. In particular the Mosman LEP 1998 includes the following objectives:

- “(j) to limit potential for additional traffic on the road system and to reduce car dependence through development that supports public transport, cycling and walking ...*
- “(k) to minimise the level of, with the aim of eliminating, pollution of all types, including air, land, water, visual and noise pollution, which may result from development allowed by this plan”.*

The Mosman Business Centres Development Control Plan sets out guidelines to achieve the desired future character of the area which is to facilitate:

*“The promotion of the heritage and natural streetscapes within the Mosman Business Centre, and to enhance pedestrian activity to create vibrant and attractive retail centres”.*

The owner appealed to the Land and Environment Court against the rejection of the application by Mosman Council.

In refusing the development application Council argued that the site was not suitable for the proposed development because the

development would constitute a significant intensification of use from the existing development, particularly increased traffic generation. The owner, on the other hand, argued that the intensification would be incremental only and that traffic and other issues of concern could be satisfactorily managed by the imposition of appropriate conditions of consent.

The Court held that the critical issues concerned the road network performance, traffic generation, vehicle types and pedestrian safety and residential amenity. The traffic experts for each side jointly assessed these matters and agreed that the

crucial traffic issue was the operation of the Military Road and Field Way intersection. The critical movement is the right turn from Field Way into Military Road. The experts agreed that this issue could be addressed by the introduction of a permanent no right turn restriction, but there was no evidence that a no right turn restriction would be allowed by road authorities. The left turn movements into the flow of traffic could be accommodated. However the experts did not agree on the result in traffic intensity at the intersection if right turns could not be prevented.

In examining the expert evidence the Court noted that the owner’s traffic expert used a



free flow model which did not include a traffic flow/gap/queuing assessment. It concluded that there would be no unacceptable impacts at an existing poor performing intersection.

The Council's traffic expert considered that it was more realistic to take into account the lane's reduced capacity caused by vehicle queuing, stop traffic, force flow in Military Road traffic flows. These factors acted to reduce the absorption capacity of the main road to accept vehicles entering from a right turn out of Field Way. After considering comments from the Sydney Regional Development Advisory Committee, the Court concluded that it was apparent that there was a high degree of congestion along this section of Military Road, particularly in proximity to the Field Way intersection. The Court concluded that imposing of a condition of consent for a no right turn at the intersection was insufficient. Furthermore the Court doubted that it had the power to impose such a condition.

The Court then considered the traffic impact on Horsnell Lane at the rear of the Centre. After a close examination of the conflicting evidence the Court found that there would be approximately 230 trips per hour which would increase with the service and delivery vehicles, longer term parkers, movements and

staff turnovers. This, the Court concluded, significantly exceeded the environmental capacity of the road system in the area.

The Court also noted problems with the loading dock and truck manoeuvring at the Military Road and Field Way intersection.

Other objections raised by Council to the proposal included noise impact and waste disposal.

The cumulative effect of all these negative environmental impacts was that the Court also refused the application.

One of the features of the hearing was the owner's proposal to include several conditions in a development consent to address some matters not fully resolved by the evidence. The owner submitted that the imposition of conditions is reasonable because the Court generally assumes people will obey the law, otherwise enforcement action could be taken. The Court was cautious about this rather optimistic view of pedestrian and traffic control. The Court observed that Councils frequently lack resources to pursue the enforcement of all conditions of development consents at all times. Consequently the community is left with a lower level of amenity. This was particularly relevant on the

strict control necessary on delivery vehicle movements and timing which the Court considered would be difficult to control due to the use of contract vehicles operating within the congested surrounding road environment.

In summary, the Court held that the public interest would not be well served by granting consent on the basis proposed by the owner and the application was refused.

The case usefully illustrates the detailed assessment of all environmental impacts required in respect of infill developments in dense suburban areas. It indicates that overcoming relevant environmental issues cannot always be achieved by the imposition of consent conditions. The Court will take a broad view of the development application having regard to the relevant planning instruments and objectives for the site and the area. A proposed development which clearly breaches the relevant planning guidelines may not be salvageable by the imposition of conditions including, as in this case, a condition regarding turning onto a main road which was in all likelihood a decision for the RTA and could not be imposed by the Court. *[FKP Funds Management Pty Limited v Mosman Council]* [2011] NSW LEC 1000. ▀

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