

21 May 2025

**Mills Oakley**  
ABN: 51 493 069 734

Our ref: EKWS/AJWS/3887784

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Dear Jessica,

**Woolworths Development Application DA-24/0212 (Development Application)**  
**Property: 231 and 233 Argyle Street, Moss Vale**

We refer to the above matter, in particular the planning report prepared by Council's consultant town planner Jeremy Swan, which was presented to the Regional Planning Panel on 20 May 2025 (**Report**).

The Report recommends the Development Application be refused for a number of reasons, including that the proposal does not include details of any proposed future use/development of the residue subdivision land (shown on the proposed plan of subdivision as 'proposed lot 2'). In our submission, it is not required that the Development Application include details of the future use of proposed lot 2. Further, the fact that a proposed future use of 'lot 2' is not included in the Development Application is not a proper planning consideration and should not be a reason for refusal.

In the matter of *Williams v Shellharbour City Council* [2020] NSWLEC 3 Justice Moore accepted that not all development applications for subdivision involve the subdivision and the subsequent use and that the Applicant can adopt a two-stage approach, being the approval for subdivision and subsequently (should the subdivision application be approved), an application for development consent for the proposed use of the subdivided land.

Further, in *Parrot v Kiama* [2004] NSWLEC 77 the then Senior Commissioner asked the question [at 17] "*when should a subdivision application include information on the buildings to be built on the resulting allotment(s)?*". He then goes on to say [at 17] "*It is normal practice in Australia to subdivide land without constraints on the buildings that can later be built. While this practice is appropriate in most cases, it is not always so.*"

Both of these cases operate to support that the lack of any nominated use for the proposed lot 2 is not a relevant planning consideration for the purposes of the assessment of this Development Application.

If you have any questions or require further information, please do not hesitate to contact Emma Whitney on +61 2 9121 9019 or [ewhitney@millssoakley.com.au](mailto:ewhitney@millssoakley.com.au).

Yours sincerely



**Anthony Whealy**  
**Partner**  
**Accredited Specialist Local Government & Planning**



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