

3.3 2-6 Yindela Street, Davidson – Use of Premises as a Restaurant

DEVELOPMENT ASSESSMENT REPORT

Assessment Officer: Alex Keller
Address / Property: Lot 6 SP82389, No. 2-6 Yindela Street, Davidson
Description: Use of premises as a restaurant.

Development Application No: DA2010/1259
Application Lodged: 13/8/10
Plans Reference: Drawing No.YR-1/B by Dee Why Drafting
Amended Plans/Additional Information: Plan of Management submitted 7/10/10
Applicant: Tomasy Pty Ltd
Owner: Salt & Pepper Projects Pty Ltd

Locality: C1 Middle Harbour Suburbs
Category: Category 1- Restaurants in a Local Retail Centre
Draft WLEP 2009 Permissible or Prohibited Land use: B1 Neighbourhood Centre- Permissible with Consent
Variations to Controls (CI.20/CI.18(3)): Nil
Referred to ADP: Yes (more than 2 unresolved submissions)
Referred to WDAP: Not applicable
Land and Environment Court Action: None

SUMMARY

Submissions: 23 submissions
Submission Issues: Restaurant use, noise, odour, illumination, traffic, carparking, hygiene, safety, undesirable social behaviour, waste management, operating hours and impact on property values
Assessment Issues: Noise, odour, traffic, carparking and Operational Management
Recommendation: Approval- subject to conditions
Attachments: Site Plan

LOCALITY PLAN (not to scale)



Subject Site: Lot 6, SP 82389. (Shop 6),
2-6 Yindela Street, Davidson

Public Exhibition: This application was publicly notified by letter on the 24 August 2010 to 19 adjoining landowners and occupiers. A second notification was required by letter dated 10 September 2010 to 39 adjoining owners and occupiers due to some properties being missed in the first notification and to comply with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan (adopted 13 December 2005).

SITE DESCRIPTION

The site is legally described as Lot 6, SP 82389, and is commonly known as Shop 6, No. 2-6 Yindela Street, Davidson.

The site located at the western corner of the intersection of Yindela Street and Pound Avenue. The site is an identified Local Retail Centre on the WLEP 2000 Map and is zoned "B1 Neighbourhood Centre" under the Draft WLEP 2009. It is occupied by a mixed residential and retail building. The dominant land use surrounding the neighbourhood centre is residential dwelling houses, and there is a public reserve abutting the north-western boundary of the site.

Shop 6 is located at the eastern corner of the building fronting Yindela Street generally opposite the residential dwellings at 7 Yindela Street & 80 Pond Avenue. The subject premises has been approved for retail use under the original development consent and is currently vacant.

SITE HISTORY

Relevant background

DA2004/0952- Development consent was granted on the 10 October 2006 for a mixed-use (residential and retail) development. The consent conditions include a requirement for separate development applications for the first use occupations of the retail premises. This enables Council to assess relevant issues such as carparking, environmental health and potential impacts of future occupations on surrounding amenity.

DA2010/0641 – Development consent was granted by Council's Application Determination Panel on 20 September 2010 for the use of Shop 4 (adjacent) as a takeaway food (pizza) shop.

PROPOSED DEVELOPMENT

This application seeks consent for the fit out and use of shop No.6 as a restaurant which is proposed to be operated in the following manner:

- Operating hours: 6am to 10pm Tuesdays to Sundays (9pm close for alfresco dining)
- Staff: 3 full time staff plus a casual staff (if required)
- Seating estimate: 40 persons (30 internal dining and 10 alfresco dining)
- Carparking: Customer parking provided in the form of 19 shared spaces at grade that serve the ground level shops. Also two (2) carparking spaces are available (on title) within basement level of the building for staff parking.
- Entertainment: No live music is proposed. Amplified music will be available.
- Food & Drink: Café Restaurant style eat-in for breakfast lunch and dinner including takeaway coffee. The premises will be licensed for the sale of alcohol.
- Advertising: No signage that exceeds Council's Exempt & Complying development controls is proposed. Signs to be fitted to the existing generic signage panels approved under DA2004/0952

The applicant submitted an Plan of Management during the assessment of the application in response to the resident issues and Council's assessment issues.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979)
- b) Environmental Planning and Assessment Regulations 2000.
- c) Local Government Act 1993
- d) Food Act 2003
- e) State Environmental Planning Policy No.55- Remediation of Land
- f) Warringah Local Environmental Plan 2000
- g) Warringah Development Control Plan
- h) Draft Warringah Local Environmental Plan 2009

PUBLIC EXHIBITION

This application was publicly notified by letter on the 24 August 2010 to 19 adjoining landowners and occupiers. A second notification was required by letter dated 10 September 2010 to 39 adjoining owners and occupiers due to some properties being missed in the first notification and to comply with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan (adopted 13 December 2005).

As a result of the public exhibition process, 23 submissions have been received from the following parties:

Name	Address
L Koolman	2 Yindela Street, Davidson
R & K Murray	44 Aranda Drive, Davidson
K Warner	46 Aranda Drive, Davidson
S Rigby	80 Pound Avenue, Frenchs Forest
F Dennis	76 Pound Avenue, Frenchs Forest
D Buerckner	3 Yindela Street, Davidson
L & S Dulvey	1 Yindela Street, Davidson
J & D Bransfield	84 Pound Avenue, Frenchs Forest
C Porter	78 Pound Avenue, Frenchs Forest
M Watt	5 Yindela Street, Davidson
A Yourell	2 Yindela Street, Davidson
F D Collins	2 Yindela Street, Davidson
O Duval & K Wren	2 Yindela Street, Davidson
W Pringle	2 Yindela Street, Davidson
J Spanos	2-6 Yindela Street, Davidson
R Lee	8/ 2-6 Yindela Street, Davidson
J Howard	Level 1 / 283 Penshurst St Willoughby (Strata Manager)
F Joslin	4/2-6 Yindela Street Davidson
G Rolfe	2 Yindela Street Davidson
C Grace	L5/287 Elizabeth Street Sydney (Owners Corp. Lawyers)
C Hall	9/2 Yindella Street Davidson
S Young	82 Pound Avenue Davidson
E & R Green	6/ 2-6 Yindela Avenue Davidson

The submissions have raised the following concerns, which are addressed below:

1. Inappropriate Land use

- a) *The proposal is inconsistent with the residential character of the surrounding area and the neighbourhood centre. This is evidenced by the local retail centre that is predominantly for residential use and the slow take up rate of the retail premises at the site.***
- b) *The intended use of the premises is for service and professional businesses, not food outlets.***
- c) *The proposal is inconsistent with the assurance given by real estates agents that the shops would not be used as food outlets.***
- d) *The previous food shop at the shopping centre within the original centre should not set precedent to allow this proposal.***
- e) *The proposal is contrary to the peaceful enjoyment of neighbouring properties.***
- f) *The proposal sets an undesirable precedent for businesses of a similar nature at the site.***
- g) *The site is located in a suburban setting, next to a bushland, with limited road access that is unsuitable for the proposal.***

Comment:

The proposed development is for a Category 1 “restaurant” use within an existing mixed use (restaurant-top housing) development. The proposed use is consistent with the intended future uses permissible in a Local Retail Centre within the building in terms of it being a business that will serve the surrounding area and compliment the diversity of retail shops within the centre.

The assessment of the proposal against the desired future character statement for the C1 – Middle Harbour Suburbs Locality and Clause 39 “Local Retail Centres” is contained elsewhere in this report. In summary, the proposed development is a permissible use under WLEP 2000 and is assessed on its merits against the relevant planning controls.

The proposal is consistent with the relevant planning controls and is a suitable and appropriate use in the locality, subject to consent conditions to mitigate and manage potential impacts. An operational Plan of Management has been prepared to ensure the restaurant is managed in a manner that does not cause unreasonable impacts to neighbouring properties.

Accordingly, the concerns in relation to the land use do not warrant the refusal of this application.

2. Safety & Security

- a) *The proposal would become associated with anti-social behaviour, such as youth congregating, loitering, litter and graffiti, causing nuisance at the site and the adjoining Yindela Reserve.***
- b) *The use of the internal public access to the basement carpark and foyer is shared with the residents of the building that will have negative impact on the safety and security, and the maintenance of the building.***
- c) *The proposal would have a negative impact on the safety and security of personal and common property at No.2-6 Yindela Street.***

Comment:

Safety and security in the locality as a result of the proposed development is addressed under the heading Clause 50 “Safety and Security” later in this report. Consideration has been given to the proposed restaurant use, the operating hours in relation to the local retail centre development, the close interrelationships with adjoining and surrounding residential properties and the public interest. In summary the proposal is not likely to generate anti-social behaviour, loitering, graffiti and the like.

It is noted that the use of the internal access is consistent with the approval of the common areas of the building and accessibility thereto where it is shared between the residential units and the commercial units. Conditions are included in the draft consent so that the Plan of Management includes space management strategies, addressing activity co-ordination, hygiene, security, customer management, repair of vandalism and removal of graffiti, general site cleanliness and maintenance of the common areas of the building and areas immediately around the subject premises.

Subject to conditions, the proposal will not have an adverse impact on the safety and security of the locality, and is satisfactory in addressing Clause 50 of WLEP 2000.

Accordingly, the concerns in relation to safety and security do not warrant the refusal of this application.

3. Carparking

- a) *The available 19 spaces and the basement parking and on-street carparking are not allocated exclusively to the premises.*
- b) *Deliveries and customers of the restaurant do not necessarily use the basement carpark and will overspill to on-street carparking which is inappropriate.*
- c) *Public access to the basement carpark is not available after 8pm. Customer parking after 8pm will overspill to the surrounding streets which is inappropriate.*
- d) *On-street carparking has resulted in blocked access to the driveways*

Comment:

Council's Traffic Management Section has reviewed the proposal in relation to carparking issues and raises no objections to the proposal.

The carparking requirements of the proposed development are addressed in the Clause 74 "Provision of Carparking" and Schedule 17 sections of this report. Based on the fact that the proposed "drive-in food restaurant use" is a more intense use than the approved "restaurant" use, there is an additional carparking requirement, however, such requirements can be accommodated within the existing development.

In relation to the availability of public access to the basement carpark, a condition is included to ensure such access is available during the operating hours of the restaurant, and that the delivery of goods to the restaurant takes place within the confines of the site.

The occurrence of customer cars obstructing access to private driveways in Yindela Street is an offence under the Roads Act and is the responsibility of the Police and Council. However, this is not a matter for assessment under this application, except that the plan of management should include a provision for management advising customers and staff to refrain from doing so and direct them to the off street parking area.

The screening between the carpark area associated with 2-6 Yindela Street and No.48 Aranda Drive is an existing approved situation that does not affect the determination of this application.

In summary, the concerns in relation to carparking do not warrant the refusal of this application.

4. Hygiene

The proposed restaurant is likely to be associated with vermin and rodents, as was the takeaway shop in the previous shopping centre.

Comment:

Council's Environmental Health and Protection Section has reviewed the proposal and raised no particular concerns in relation to hygiene as such matters can be addressed by way of appropriate conditions to require the proposed operation to be conducted in accordance with the relevant NSW State Regulations. The Plan of Management also includes quarterly pest inspections.

Accordingly, the concerns on hygiene grounds do not warrant the refusal of this application.

5. Amenity

- a) The proposed operation will be associated with odour and will have a negative impact on the amenity of the surrounding residents,***
- b) The illumination of the premises will have a negative impact on the amenity of No.3 Yindela Street.***

Comment:

Council's Environmental Health and Protection Section has reviewed the proposal and raised no concerns in relation to odour as such matters can be addressed by way of appropriate conditions to require the proposed operation to be conducted in accordance with the relevant Australian Standards and Health Regulations.

Illumination impacts are discussed under the heading Clause 38 "Glare and Reflection" later in this report. The proposed use is for seated dining in a café style setting and therefore the internal illumination is consistent with the zoning of the land. The internal lighting of the restaurant will create some illumination, however this is entirely consistent with expectations for a local retail centre. Owing to the separation distances to surrounding residential dwellings, the proposed recessed lighting and the Plan of Management, no significant overspill from artificial illumination is likely that would diminish the amenity of the locality. Notwithstanding, a condition will require the lighting systems to have an adjustable intensity in the event that the illumination causes nuisance.

Accordingly, the concerns in relation to amenity do not warrant the refusal of this application.

6. Operating Hours and Noise

- a) The operation in the evening will have a negative noise impact on the surrounding residents.***
- b) The proposed closing time at only refers to the cessation of service, when clean up is likely to occur after this is inappropriate.***
- c) Deliveries at early and late hours will have a negative noise impact on the surrounding residents.***

Comment:

Operating hours are discussed in the Clause 43 "Noise" section of this report. Consideration has been given to the approved restaurant use of the premises under the original DA and the potential for amenity impacts on the residents within the development and in the areas surrounding the local retail centre. In this regard, conditions are recommended in relation to restrictions on waste collection and delivery hours which are consistent with a local retail centre and the normal noise restrictions of a maximum of 5dB (A) requirement for noise and equipment. A condition will also prohibit any amplified music.

Subject to the proposed conditions, the proposal will not result in noise emissions or intrusion which would unreasonably diminish the amenity of the area or which would be unreasonable to the residential occupants. The proposal is consistent with Clause 43 of WLEP 2000. Accordingly, the concerns in relation to operating hours do not warrant the refusal of this application.

7. Additional Traffic and Traffic Noise

- b) The proposal is likely to be associated with traffic increase that would result in traffic safety issues on the narrow Yindela Street.***
- c) The associated traffic noise will have a negative impact on the amenity of the area.***

Comment:

Council's Traffic Management Section has reviewed the proposal in relation to traffic generation and impacts on the surrounding road network, and on the environmental amenity of the location and raises no objections to the proposal.

The noise associated with staff and customer cars visiting the premises, delivery vans and trucks and delivery driver's cars/motorbikes will result in noise that is within normal expectations for restaurant use within a local retail centre. Furthermore, the behaviour and timing of visitations will be managed through conditions and the Plan of Management.

Accordingly, the concerns in relation to increased traffic and noise do not warrant the refusal of this application as they can be managed through the conditions of consent, including the OMP.

8. Waste Management

- a) The proposed use of the internal access to the commercial waste room will have a negative impact on the maintenance of the building.***
- b) The proposed use of the waste room would result in odour in the air circulation for the building.***

Comment:

Council's Environmental Health and Protection Section has reviewed the proposal and raised no concerns in relation to waste issues. In this regard, the proposed waste management is consistent with that approved for the mixed-use base building.

Conditions are included in the draft consent so that the Plan of Management includes cleanliness and maintenance of the internal access between the restaurant and the waste room.

Accordingly, the concerns in relation to waste management do not warrant the refusal of this application.

9. Property value

The proposal would have a negative impact on the value of surrounding residential properties

Comment:

The proposal is consistent with the relevant planning controls applying under WLEP 2000. Accordingly, existing and future residents are aware of the possible range of uses which are permissible on the site and which are likely to occupy the development.

Furthermore, Section 79C of the Environmental Planning and Assessment Act 1979 (Matters for Consideration) does not provide for the consideration of impacts on property values as a result of proposed development and in this case, no detailed information has been submitted to substantiate any sustained negative impact on land values. Therefore, no further consideration of this issue is warranted.

MEDIATION REQUESTS

No mediation requests have been lodged.

REFERRALS

Department	Referral Comment	Planning Comment
Environmental Health and Protection	No objection, subject to conditions	The recommended conditions are included in the draft consent.
Traffic Engineers	Peak parking demand is likely to occur after the trading hours of other retail shops (with the exclusion of any Thursday night trading). A retail restaurant use requires 1 parking spaces per 3 seats giving a total of 13 spaces. Given the geographically isolated location of the centre within Davidson it is unlikely that car parking demand would exceed seating ratio requirements and normally likely to be substantially less. The minor overlap of parking supply and offset uses (eg shared parking demand within the complex), is acceptable. Staff should be required to use the allocated basement parking for the strata lot and not use customer parking spaces within the site.	Refer to assessment under the General Principles - Clause 71 to 75.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	The proposal is consistent with the relevant environmental planning instrument. See "WLEP 2000" section in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	The proposal is consistent with the Draft Warringah Local Environmental Plan 2009.
Section 79C (1) (a)(iii) – Provisions of any development control plan	This application has been notified in accordance with the Warringah Development Control Plan.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). Conditions address the provisions. Clause 93 of the EPA Regulation 2000 requires the consent authority to consider the fire safety of development. Conditions are imposed to address the requirement.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed fit-out and use of an approved restaurant premises is relatively minor in terms of the scale of works and the intensity of its operation. In this regard, the proposed use will not have an adverse impact on the natural environment.

Section 79C 'Matters for Consideration'	Comments
	The proposed restaurant use is consistent with the desired future character of the locality and the local retail centre. Subject to conditions of consent in relation to lighting, noise, signs, hours of operation, waste management, carparking and delivery times, including the matters incorporated within the Plan of Management the proposed use will not have an unreasonable and unacceptable impact on the amenity of the surrounding residents. Therefore, it is considered that the proposal will not have an adverse impact on the built environment. The proposed restaurant is consistent with uses envisaged for a local retail centre. On this basis, the proposed use will not have an adverse social impact in the locality and the management of patron behaviour will be performed under the OMP. Conditions are included in the draft consent to ensure that the Plan of Management addresses potential social issues, including loitering, anti-social behaviour, noise, illegal parking, vandalism, littering and the like. The proposed restaurant is a small scale operation and is not likely to have an economic impact on other centres or uses.
Section 79C (1) (c) – the suitability of the site for the development	There are no site specific or location constraints preventing the proposal from taking place in a satisfactory manner at the subject site. The proposed use is located within an existing Local Retail Centre which is surrounded by residential properties, which is a common scenario in suburban Warringah. In this regard, carparking, access and waste facilities are shared however the site is geographically isolated and does not rely on passing trade therefore visitation rates are generally low. Accordingly, the site is considered to be suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	23 submissions were received in response to the notification of this application which are addressed in “Public Exhibition” section of this report.
Section 79C (1) (e) – the public interest	The wider public interest is served by the occupation of the site in accordance with the provisions of WLEP 2000. The local public interest raising concerns on the potential impacts of the proposal are mitigated or managed by way of conditions and an Plan of Management. Accordingly, the proposal is consistent with the public interest.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Definition: Restaurants

Land Use Zone: B1 Neighbourhood Centre

Permissible or Prohibited: Permissible with Consent

Principal Development Standards: This application is for the fit out and use of an approved premises. Accordingly, the Principal Development Standards, including subdivision lot size and building height, are not relevant to this application.

The objectives of the B1 Neighbourhood Centre Zone are:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

- *To ensure that neighbourhood centres provide a village like atmosphere that provides safety and comfort for pedestrians.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

The proposed café restaurant is a small-scale business and will service the local area in providing food and beverages, including outdoor dining for people who live and work in the broader neighbourhood. The restaurant will contribute to an active street front and a village like atmosphere in a comfortable and safe environment. The restaurant operations will be conducted in accordance with an operational Plan of Management and conditions to ensure minimal impact on the amenity and reduce land use conflict.

In summary, the proposed development is consistent with the aims and objectives of the Draft WLEP 2009.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policy No.55- Remediation of Land

The site has been recently developed for a mixed residential and retail building in which the suitability of the site was addressed as satisfactory having regard to SEPP 55.

State Environmental Planning Policy- Infrastructure 2007

This application does not require referral to the electricity supply authority.

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character (C1 Middle Harbour Suburbs)

The site is located in the C1 Middle Harbour Suburbs Locality under Warringah Local Environmental Plan 2000. The Desired Future Character Statement for this locality is as follows:

The Middle Harbour Suburbs locality will remain characterised by detached-style housing in landscaped settings interspersed by a range of complementary and compatible uses. The land adjacent to Middle Harbour and occupied by the Mosman Rowing Club will be retained for low-scale recreational use sympathetic to its natural setting. The land occupied by the Killarney Heights Tennis Centre at Lot 841 DP 210006 and land occupied by the Killarney Heights Swim Centre at Lot 854 DP 210006 on Tralee Avenue and the land occupied by Belrose Bowling Club at Lot 2 DP 851739 on Forest Way, will continue to be used only as recreation facilities.

The south-west section of the Killarney Heights High School grounds contains bushland and rock outcrops: this area may be developed for housing. Development in this section will recognise the bushland outlook, views and privacy enjoyed from residences adjoining the northern and western boundaries of the site and ensure development reasonably maintains these qualities. The retention of existing landscaping is encouraged, where practical.

Future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality. The streets will be characterised by landscaped front gardens and consistent front building setbacks. Unless exemptions are made to the density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.

The relationship of the locality to the surrounding bushland will be reinforced by protecting and enhancing the spread of indigenous tree canopy and preserving the natural landscape, including rock outcrops, remnant bushland and natural watercourses. The use of materials that blend with the colours and textures of the natural landscape will be encouraged.

Development on hillsides or in the vicinity of ridgetops must integrate with the natural landscape and topography. Development on land which adjoins Middle Harbour shall have regard to the principles contained in Schedule 14.

The locality will continue to be served by the existing local retail centres in the areas shown on the map. Future development in these centres will be in accordance with the general principles of development control listed in clause 39.

Future development of the environmentally sensitive land shown cross-hatched on the map will be limited to one dwelling per allotment. Such dwelling will be constructed having regard to the constraints, potential instability, visual sensitivity and impact on the water quality of Middle Harbour.

The proposed development is identified as Category 1 development in this locality, being a “restaurant” in a local retail centre.

As the proposal is located within the local retail centre, it is assessed against Clause 39 “Local Retail Centres” of WLEP 2000. The proposal is consistent with the provisions of Clause 39 (as detailed in the following table) and therefore, is consistent with the Desired Future Character of the locality.

Built Form Controls for the C1 Middle Harbour Suburbs Locality

The Built Form Controls are not relevant to this application as no works are proposed apart from the internal fit-out of the existing restaurant.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	The proposal will require the replacement of the existing glazing with bi-fold doors on the street frontage to enhance the restaurant amenity. The internal illumination of the premises is longer than other retail (9 to 5 operations) due to the nature of the restaurant to service before and after work customers for food and beverages. The 6am to 10pm operations is not uncommon for café style restaurants that serve morning coffee, breakfast, lunch and dinner in order to maintain business viability and customer service to the community. A condition has been imposed requiring compliance with AS 4282 “The Obtrusive Effects of Outdoor Lighting”. Also, a condition will require the lighting systems to have an adjustable intensity should the illumination cause nuisance problems. In summary, the proposal will not result in overspill or glare from artificial illumination which would unreasonably diminish the amenity of the locality, and is satisfactory in addressing this Clause.	Yes, Subject to conditions
CL39 Local retail centres	Yes	The site is located within an identified local retail centre on the WLEP 2000 Map. In terms of the requirements of Clause 39, the following observations are made: The proposal is for the internal fit-out and use of an existing approved retail premises. It will substantially maintain the approved restaurant front that is consistent with the intended village-like atmosphere and will maintain a safe	YES

General Principles	Applies	Comments	Complies
		and comfortable environment for pedestrians. - The proposal does not include external building works. It will not affect the established pattern and external appearance of the centre, will not affect the continuity of existing streetscapes or the building height at the site. - As discussed in Clause 43, 44 and 72 in this report, the proposal will not have an adverse impact on the amenity of the surrounding residential developments in terms of noise, pollutants and traffic. This is particularly the case given the localised scale of the business and the fact that the site is not dependant on passing trade. In summary, the proposal is satisfactory in relation to this Clause.	
CL40 Housing for Older People and People with Disabilities	No	Not applicable	NA
CL41 Brothels	No	Not applicable	NA
CL42 Construction Sites	Yes	The fit-out works will be undertaken within the premises, containing adequate area for the handling and storage of construction materials. Standard conditions of consent will ensure that air and water borne pollutants are minimised to protect the amenity of the surrounding area. In summary, subject to conditions, the construction works will satisfy the requirements of this Clause.	YES subject to condition
CL43 Noise	Yes	The proposal seeks consent for the following operating hours: Tuesday to Sunday 6am to 10pm - The proposed use for a café style restaurant is consistent with the category one uses preferred under the DFC statement for a local retail centre context. 6am to 10pm operation is not uncommon or unreasonable in a local retail centre, in terms of business viability and potential impact on the amenity of the surrounding residents. - It is not considered that prior opening before 6am is necessary and customers should be required to leave within a 30 minute period prior to closing time at 10pm. A draft condition is included to ensure that the Plan of Management addresses these matters. - The surrounding residential development adjacent to and within the local retail centre is reasonably expected to be more resilient to noise levels as it is within normal expectations when living nearby to a retail development. - The potential traffic increase and thereby the associated traffic noise is consistent with the mixed residential/ retail use of the building in the local retail centre where customer parking is shared between the retail occupancies. - Conditions are included so that the Plan of Management addresses patronage noise levels and behaviour that generates excessive noise. - A condition will limit any amplified music. - A condition will prohibit any live entertainment. The following conditions are also included in the draft consent to address this Clause: a) All noise emissions are to comply with the maximum 5dB(A) at the nearest residential boundary as measured under the Environment Protection Authority's Industrial Noise Policy guidelines for noise from combined operation of all	YES subject to condition

General Principles	Applies	Comments	Complies
		mechanical plant and equipment must comply with the provisions of the Protection of the Environment Operations Act 1997. b) Waste collection and delivery vehicles are not to operate between 8pm and 8am. In summary, subject to conditions, the proposal will not result in noise emissions or intrusion which would unreasonably diminish the residential amenity of the area and is satisfactory in addressing this Clause.	
CL44 Pollutants	Yes	Council's Environmental Health and Protection Section has reviewed the proposal and raised no particular concerns on pollutants, including atmospheric (odours), subject to conditions that are included in the recommendation. Accordingly, subject to condition, the proposal would not diminish the amenity of adjacent properties or the locality in terms of odours, and is satisfactory in addressing this Clause.	YES subject to condition
CL45 Hazardous Uses	No	Not applicable	NA
CL46 Radiation Emission Levels	No	Not applicable	NA
CL47 Flood Affected Land	No	Not applicable	NA
CL48 Potentially Contaminated Land	Yes	The suitability of the site was assessed under the original development application for the retail centre.	Yes
CL49 Remediation of Contaminated Land	No	Not applicable	NA
CL49a Acid Sulfate Soils	No	Not applicable	NA
CL50 Safety & Security	Yes	The following considerations are made in relation to safety and security: - The proposal will maintain the existing shop corner frontage, and thereby the outlook and casual surveillance to Yindela Street will be maintained. - The proposal includes the use of the internal access to the basement carpark of the building, for staff that is consistent with the intention of the approved development. - Conditions are included in the recommendation so that the Plan of Management includes management strategies for site cleanliness, rapid repair and/or removal of vandalism and graffiti, the replacement of security lighting, preventing unapproved signage and maintenance of the common area of the building and areas immediately around the subject premises to ensure that the area is well maintained. Accordingly, subject to conditions, the proposal will not have an adverse impact on the safety and security of the locality, and is satisfactory in addressing this Clause.	Yes subject to condition
CL51 Front Fences and Walls	No	Not applicable	NA
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	Yes	The north-western boundary of No.2-6 Yindela Street abuts a public open space. Shop 6 is located at the south-eastern part of the building that does not have a frontage to the public open space. In addition, the proposal is for a fit-out and restaurant use that is relatively minor in terms of the scale of works.	Yes

General Principles	Applies	Comments	Complies
		Accordingly, the proposal will not affect the landscape character, public use and enjoyment of the public open space, and is satisfactory in addressing this Clause.	
CL53 Signs	Yes	The proposed signs are exempt development for business identification purposes and will comply with Schedule 1 restrictions for signs. A condition will be imposed to ensure any additional signs are subject to a separate DA for signs where they do not comply with Council's exempt and complying development controls.	Yes, subject to condition
CL54 Provision and Location of Utility Services	Yes	Satisfactory provision of utility services exists within the building.	Yes
CL55 Site Consolidation in 'Medium Density Areas'	No	Not applicable	NA
CL56 Retaining Unique Environmental Features on Site	No	Not applicable	NA
CL57 Development on Sloping Land	No	Not applicable	NA
CL58 Protection of Existing Flora	No	Not applicable	NA
CL59 Koala Habitat Protection	No	Not applicable	NA
CL60 Watercourses & Aquatic Habitats	No	Not applicable	NA
CL61 Views	No	Not applicable	NA
CL62 Access to sunlight	No	Not applicable	NA
CL63 Landscaped Open Space	No	Not applicable	NA
CL63A Rear Building Setback	No	Not applicable	NA
CL64 Private open space	No	Not applicable	NA
CL65 Privacy	No	Not applicable	NA
CL66 Building bulk	No	Not applicable	NA
CL67 Roofs	No	Not applicable	NA
CL68 Conservation of Energy and Water	No	Not applicable	N/A
CL69 Accessibility – Public and Semi-Public Buildings	Yes	The original approval for the mixed-use building addressed accessibility. Standard conditions have been imposed on the restaurant fit-out to ensure premises comply with AS1428.2 and relevant legislation (DDA).	YES subject to condition
CL70 Site facilities	Yes	The original approval for the construction of the building ensured adequate area for site facilities as per this Clause.	Yes
CL71 Parking facilities (visual impact)	Yes	The proposal will rely upon staff using the basement carpark of the building.	Yes

General Principles	Applies	Comments	Complies
CL72 Traffic access & safety	Yes	The following summary comments are made in relation to traffic issues: a) The proposed use of the basement carpark for staff and customers is consistent with the approval for the base building. b) Council's Traffic Engineers have reviewed the proposal and raised no objections (see comments in referrals section). Accordingly, the proposal has been assessed as not having a detrimental impact on traffic access and safety, and is satisfactory in addressing this Clause.	Yes
CL73 On-site Loading and Unloading	Yes	The subject premises will have access to the loading bay within the ground level carpark at the rear of the building. The proposed café restaurant is not anticipated to generate significant loading and unloading demand. Accordingly, the loading and unloading facility at the site is capable of accommodating the proposed business and is satisfactory in addressing this Clause. Standard conditions ensure deliveries to the premises are undertaken within the site and at restricted times to protect amenity.	YES subject to condition
CL74 Provision of Carparking	YES	A retail restaurant use requires 1 parking spaces per 3 seats giving a total of 13 spaces. Peak parking demand is likely to occur after the trading hours of other retail shops (with the exclusion of any Thursday night trading). The proposal has two (2) staff carparking spaces on title in the basement level which are for staff and shared use of the nineteen (19) spaces which are provided for all visitors to the site (accessed off Pound Avenue). Given the geographically isolated location of the centre within Davidson it is unlikely that car parking demand would exceed seating ratio requirements and normally likely to be substantially less. The minor overlap of parking supply and offset uses (eg shared parking demand within the complex), is acceptable. Staff should be required to use the allocated basement parking for the strata lot and not use customer parking spaces within the site In summary, subject to condition, the proposal is satisfactory in addressing this Clause.	YES subject to condition
CL75 Design of Carparking Areas	No	Not applicable	NA
CL76 Management of Stormwater	No	Not applicable	NA
CL77 Landfill	No	Not applicable	NA
CL78 Erosion & Sedimentation	No	Not applicable	NA
CL79 Heritage Control	No	Not applicable	NA
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	No	Not applicable	NA

General Principles	Applies	Comments	Complies
CL81 Notice to Heritage Council	Repealed		
CL82 Development in the Vicinity of Heritage Items	No	Not applicable	NA
CL83 Development of Known or Potential Archaeological Sites	No	Not applicable	NA

Schedule 17 - Carparking Provision

Land use	Required	Proposed	Comment
Restaurant	1 space per 4 seats	2 allocated staff spaces plus 19 communal visitor spaces	Adequate carparking is provided for reasons mentioned in this report

As discussed in the Clause 74 section there is adequate staff and general visitor parking for the proposed use.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan (adopted 14 November 2006)

Warringah S94A Development Contribution Plan is not applicable to the proposal which the value of work is less than \$100,000.

CONCLUSION

The proposal has been considered against the relevant matters for consideration under Section 79C of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, the Statement of Environmental Effects, all other documentation supporting the application and public submissions.

The proposal is a Category One use under the C1 – Middle Harbour Suburbs Locality Statement in a local retail centre, which is envisaged to be consistent with the desired future character of the locality the. The proposal is considered to be satisfactory having regard to Clause 39 (Local Retail Centres).

The proposal is for internal fit-out and use of an approved retail premises for a café style restaurant. It is not an unreasonable or uncommon use in similar sized local retail centres in Warringah. In terms of the size and intensity of the use, the operating hours and likely noise generation and odour emission, the proposed use is a suitable and appropriate use of the site and in the locality, subject to conditions.

Environmental assessment issues of carparking, traffic, odour, hygiene, safety and waste management, the maintenance and management of the public areas surrounding the premises and issues raised in the residents submissions are addressed by way of conditions. Relevant issues are also incorporated within the submitted Plan of Management to ensure ongoing operations do not adversely affect neighbours amenity. Subject to compliance with the recommended conditions, the proposal, when in operation will not have an unreasonable or unacceptable impact on the amenity of the surrounding area and residents or the social environment in the vicinity of the local retail centre.

Accordingly, subject to conditions, the proposal is satisfactory and is recommended for approval.

RECOMMENDATION (Approval)

That Development Application No. DA2010/0641 for use of the premises as a restaurant at Lot 6, No. 2-6 Yindela Street, Davidson, be approved subject to the following conditions.

GENERAL CONDITIONS

CONDITIONS THAT IDENTIFY APPROVED PLANS

1. Approved Plans and Supporting Documentation

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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.		
Restaurant plans YR-1 to YR-3 dated 11/8/10 drawn by Dee Why Drafting		

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

The development is to be undertaken generally in accordance with the following (except as amended by any other condition of consent):

Supporting Documents - Endorsed with Council's stamp		
Document name	Dated	Prepared By
Plan of Management	Sep 2010	Dennis Smith

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. No Approval for any Signage

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2000 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage. (DACPLB06)

3. Prescribed Conditions

All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

Reason: Legislative Requirement. (DACPLB09)

4. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:
7.00 am to 5.00 pm inclusive Monday to Friday

8.00 am to 1.00 pm inclusive on Saturday,
No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:
8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (d) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (e) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (f) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)
- (g) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. Plan of Management (Operational Plan)

The "Operational Plan for Proposed base Sydney P/L, Restaurant 4, 2-6 Yindela Street, Davidson", dated 06/2010 prepared by Mr Youssef Gabriel is to be amended to incorporate/address the following matters and submitted with the Construction Certificate Application to the Principal Certifying Authority:

- a) Include measures to manage the noise levels at the premises, including patron noise during operating hours and cleaning activities after hours.
- b) Include measures to ensure the cleanliness of the common areas of the building in the vicinity of the restaurant (including the internal access to the basement carpark).

- c) Include quarterly pest inspection and treatment by a licensed pest controller.
- d) Include measures to address loitering, graffiti and safety, including rapid repair and/or removal of vandalism and graffiti, the replacement of security damaged/faulty lighting of the building and areas immediately around the subject premises to ensure that the area is well maintained,
- e) Advice to staff and customers not to obstruct neighbouring private driveways.
- f) Installation and maintenance of an adjustable lighting system within the restaurant.
- g) No amplified music.
- h) Restrictions on deliveries and garbage removal in accordance with the conditions of consent.
- i) Contact details, name and phone number, of person to be contacted in case of complaint. Such person and number to be available at all times the restaurant is open.
- j) Detail responsibilities for ensuring the Plan of Management is complied with including conditions of development consent.

A copy must be forwarded to Warringah Council prior to the issue of Construction Certificate. This document must provide for annual review and updated versions must also be forwarded to Warringah Council.

Reason: To ensure the orderly operation of the premises.

6. Compliance with Standards

The development (where applicable) is to be carried out in accordance with all relevant Australian Standards.

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

AS 1428.2 - 1992, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities.

AS 4282 "The Obtrusive Effects of Outdoor Lighting".

Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website www.hreoc.gov.au/disability_rights/buildings/good.htm.

(Note: that the above list is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

7. Bonds

A bond (determined from cost of works) of \$500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

(NOTE: This bond may be refunded and replaced by the Maintenance Bond upon submission to Council of the final Compliance Certificate or Subdivision Certificate.)

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection)

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate protection of Council infrastructure. (DACENC01)

8. Food Premises

The premises shall comply with the requirements of Australian Standards 4674 (Design, Construction and Fit Out of Food Premises).

Details demonstrating the installation of a hand wash basin within the food preparation area is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with the applicable food standards. (DACHPC06)

9. Mechanical ventilation

Certification from a suitably qualified person certifying that the mechanical ventilation system complies with AS 1668 Parts 1 and 2 is required to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure compliance with applicable standards.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

10. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACPLF07)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

11. Noise Impact of Plant

All sound producing plant, equipment, machinery or fittings shall not emit noise exceeding 5 dB(A) above the background level (LA90) when measured at the property boundary.

Reason: To ensure that noise generated from the development does not result in offensive noise to any other party.

12. Staff Carparking

Two (2) staff car parking spaces at the basement carpark of the building shall be provided for staff employed at Restaurant 6, made accessible and maintained at all times.

Staff shall park their vehicles within the visitor parking spaces for the site.

Reason: To ensure that adequate carparking is provided for the premises.

13. Access to Customer Carpark

During the operating hours of the use, the customer carparking area is to be freely accessed.

Reason: To provide access to the customer parking.

14. Adjustable Lighting Intensity

The lighting systems installed in the restaurant are to be adjustable to allow for reductions in intensity should the illumination cause nuisance problems for neighbouring residential properties.

Reason: To protect residential amenity.

15. No amplified Music

No amplified music is to be played at any time.

Reason: To protect residential amenity.

16. Hours of Operation

The hours of operation of the restaurant are to be restricted to:

- Tuesday to Thursday 6:00am to 10pm,
- Friday and Sunday 6:00am to 10pm (inclusive). Outdoor seating areas shall be closed at 9pm

Upon expiration of the final closing time, all service shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the thirty (30) minutes.

Staffs on the premises are required to leave the premises in the following sixty (60) minutes from closing time.

Reason: Information to ensure that amenity of the surrounding locality is maintained.
(DACPLG08)

17. Loading Within Site

All loading and unloading operations shall be carried out wholly within the confines of the site and within the approved loading areas, at all times.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity. (DACPLG20)

18. Delivery Hours

No deliveries, loading or unloading associated with the premises are to take place between the hours of 8pm and 8am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties. (DACPLG21)

19. Plan of Management

The operation of the Restaurant is limited to seating for 40 customers only (including 10 outdoor seats) and is to be in accordance with the Plan of Management dated Sep 2010 prepared by Tomasy Pty Ltd (as amended by the conditions of this consent). In the event of any inconsistency with the Plan of Management and the conditions of consent the development consent conditions shall prevail.

Reason: To ensure the orderly operation of the premises.



POUND AVENUE



PROPOSED RESTAURANT FIT OUT TO SHOP 6, 2-6 YINDELA ST.

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