

**3.2 24-25 The Strand Dee Why – Regulisation of Restaurant Use, Storage and Delivery Area(s)**

**DEVELOPMENT ASSESSMENT REPORT**

<b>Assessment Officer:</b>	Andrew Cowan
<b>Address / Property Description:</b>	Lot 13 Sec 7 DP 6953 24-25 The Strand DEE WHY NSW 2099 Regulisation of restaurant use, storage and delivery area(s)
<b>Development Application No:</b>	DA2009/0937
<b>Pre-lodgement No :</b>	PLM2009/0039 – 26 May 2009 (see attached notes)
<b>Application Lodged:</b>	22/07/2009
<b>Plans Reference:</b>	Drawing No.1A & 1B, prepared by George Webster dated July 2009
<b>Amended Plans:</b>	Nil
<b>Applicant:</b>	J L Webster
<b>Owner:</b>	Brestan Pty Ltd
<b>Locality:</b>	E18 The Strand
<b>Category:</b>	Category 1 – Restaurant
<b>Draft WLEP 2009 Permissible or Prohibited Land use:</b>	Yes
<b>Variations to Controls (Cl.20/Cl.18(3)):</b>	Nil
<b>Referred to ADP:</b>	Yes
<b>Referred to WDAP:</b>	Not applicable
<b>Land and Environment Court Action:</b>	No
<b>SUMMARY</b>	
<b>Submissions:</b>	Nil
<b>Submission Issues:</b>	Nil
<b>Assessment Issues:</b>	Car parking, hours of operation
<b>Recommendation:</b>	Refusal
<b>Attachments:</b>	Storage Floor Plans

**LOCALITY PLAN** (not to scale)



**Subject Site:**

The subject site is identified as Lot 13 Sec 7 in DP6953 , Shop 2 24-25 the Strand Dee Why

**Public Exhibition:**

Under the provisions of the applicable Development Control Plan the subject application has been notified to the adjoining property owners and occupiers. As such, there were **57** notification letters sent.

The properties notified were consistent with the notification list and notification plan.

**SITE DESCRIPTION**

The subject site is identified as Lot 13 Sec 7 DP6953 which accommodates a two (2) storey mixed use residential/commercial building comprising two (2) Cafés on the ground floor (Shop 1 and 2) and four (4) self contained apartments on the first floor.

The site is located on the western side of The Strand and is regular in shape and has an area of 766.72m<sup>2</sup>.

The site currently provides a total of 15 car spaces, three (3) in the northwest corner of the site and eight (8) spaces in four (4) stack parking garages (two 2 spaces per garage) within the building. Two (2) car parking spaces are provided for the subject tenancy Shop 2. All car parking are accessed via the Right of Carriageway to the rear of the site which runs from Howard Avenue. The Right of Carriageway benefits the subject site over Nos. 20 & 22-23 The Strand.



## **SITE HISTORY**

### **Relevant Background**

Applications determined relevant to the subject development application and property are as follows:

DA2000/4591	29 August 2007, consent was granted for the premises to operate as a café/takeaway food shop.
DA2004/1060	13 September 2009, consent was granted for the residential and commercial strata of the premises.
MOD2004/1060/1	21 August 2006, Consent granted to modify condition No. 6(a) of DA2004/1060 and change the Strata Subdivision to Stratum.
LEC 10822 of 2006	13 November 2006, Land & Environment Court Consent issued in relation to garbage disposal for the subject premises.
PLM2009/0039	26 May 2009, pre-lodgement advice issued as to what Council deems acceptable in relation to car parking provision on-site (see pre-lodgement notes attached)

As such, the premises has operated as a Restaurant since 2003. The subject application seeks to formalise its use and use the two (2) stacked car parking spaces as storage.

### **Other Development Applications on the Strand**

#### **DA2004/0104 – Lot 8, SP 21583, Shop No.8/20 the Strand Dee Why**

Development consent was granted on 26 April 2005 for the change of use from a dry cleaning business to a café takeaway food shop. The use of the premises as a takeaway food shop was approved with no on-site car parking for customers or staff.

Historically, a car parking space was not allocated to the subject premises and as such the operation of the premises as takeaway food shop did not detract from the existing provision of on-site car parking.

#### **DA2006/1016 – Lot A, DP412474, No.16 the Strand Dee Why**

Development consent was granted on 4 January 2007 for the fit out and use of a ground floor retail unit as a restaurant. The development was approved with no on-site car parking space for the restaurant.

Development consent DA2005/0328 granted approval for the erection of a mixed use development comprising residential and retail, the determination was appealed in the Land & Environment Court of NSW. Condition No.76 of LEC Direction 11345 of 2005 required residential units 1 & 2 be allocated 2 on-site car parking spaces each, with no on-site car spaces allocated to the retail component. As such there was no decrease in the existing provision of on-site car parking as a result of the restaurant.

#### **DA2008/0196 – LOT B, DP306167, 13 the Strand Dee Why**

Development consent was granted on 24 June 2008 to occupy an existing 1<sup>st</sup> floor mezzanine level, approximately 63sqm in area, for use as additional seating for the existing restaurant. No additional on-site car parking was provided as a result of the overall increase in seating capacity. The additional seating capacity did not detract from the existing on-site car parking provision.

## PROPOSED DEVELOPMENT

The proposal seeks to formalise the use as a restaurant. The proposal is considered to be a change of the approved use from a café/takeaway food shop to a restaurant and the conversion of the two (2) existing approved car spaces to storage area for the proposed restaurant.

Section 76A (1) of the Environmental Planning and Assessment Act 1979, states that:

'If an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land to which the provision applies, unless:

- (a) Such consent has been obtained and is in force, and
- (b) The development is carried out in accordance with the consent and the instrument.'

In light of Section 76A (1) of the Environmental Planning and Assessment Act 1979, Clause 7 of the Warringah Local Environmental Plan 2000 (WLEP 2000) states that:

All development requires consent except:

- (a) Exempt development, being development of minimal environmental impact identified in Schedule 1 (Exempt development), when carried out in accordance with the requirements of that Schedule, and
- (b) Development identified in Schedule 2 (Other development not requiring consent), when carried out in accordance with the requirements of that Schedule.'

The proposed development is not exempt development or development identified in Schedule 2 and therefore requires development consent.

The matter of unauthorised works has been referred to Council's Compliance division for consideration of issuing the applicant with a Penalty Infringement Notice (PIN) and orders to re-instate the carparking spaces under the Environmental Planning and Assessment Act 1979 for undertaking unauthorised construction work.

## AMENDMENTS TO THE SUBJECT APPLICATION

Nil

## STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979;
- b) Environmental Planning and Assessment Regulations 2000;
- c) State Environmental Planning Policy – Infrastructure;
- d) State Environmental Planning Policy No. 55 – Remediation of Land;
- e) Warringah Local Environment Plan 2000;
- f) Warringah Development Control Plan; and
- g) Draft Environmental Planning Instruments

## REFERRALS

### (a) Environmental Health

Council's Environmental Health Officer has inspected the premises stating that the approved car parking spaces are been utilised for storage space of food products.

A referral was issued to Council's Development Assessment Officer dated 13 August 2009. No objection is raised to the proposed storage area subject to conditions of consent.

## (b) Building Assessment Compliance - Fire Safety

Council's Building Assessment Officer has inspected the premises. A referral was issued to Council's Development Assessment Officer dated 2 August 2009. No objection is raised to the proposal subject to conditions of consent.

### PUBLIC EXHIBITION

The application was notified in accordance with the Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2000 (WLEP 2000) and Warringah Development Control Plan. Seventy (57) adjoining property owners and occupiers were notified of the application by letter dated 03/08/2009. The notification period was from 03/08/2009 to 18/08/2009.

No submissions were received in response to this application.

### MEDIATION

As there were no submissions received for the subject modification application, Mediation was not requested.

### 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	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on "Draft Environmental Planning Instruments" in this report.  The proposed use is defined as a restaurant under the provisions of the Draft Warringah Local Environmental Plan 2009. Restaurants are permissible within the B2 Local Centre Zone subject to development consent.
Section 79C (1) (a)(iii) – Provisions of any development control plan	This application was 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	Clause 98 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. Should this application be deemed worthy of approval, relevant conditions could adequately address the provisions.  Clause 93 & 94 of the EPA Regulations 2000 requires the consent authority to consider the fire safety upgrade of development. Should this application be deemed worthy of approval, relevant conditions could adequately address the provisions.
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	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report which demonstrates an unacceptable environmental impact with regard to Clause 74 – Provision of Carparking.

Section 79C 'Matters for Consideration'	Comments
	<p>(ii) The proposed development will have a detrimental social impact in the locality considering the increased demand on carparking within the surrounding streets.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the commercial nature of the existing land use.</p>
<p><b>Section 79C (1) (c) – the suitability of the site for the development</b></p>	<p>(a) The proposed restaurant is sited within an established commercial precinct with similar uses of scale and nature to that proposed. The proposal seeks to formalise the existing use as a restaurant. The approved use is a café/takeaway shop, as such the existing restaurant is unauthorised. Schedule 17 of the WLEP requires 27 car spaces for the premises to operate as a restaurant.</p> <p>No on-site car spaces are to be provided for the proposed restaurant as the two (2) existing approved car spaces are to be converted to storage space. The provision of no on-site car spaces for the premises will increase the demand for on-street car parking on the Strand. Whilst the commercial nature of the site will be retained, the provision of no on-site car spaces will set a precedent for future development on the Strand. The proposal fails to demonstrate that the precinct is able to accommodate on-street car parking as result of no-on-site car spaces provided for all premises on the Strand.</p> <p>Maintaining the existing two (2) tandem car spaces is deemed reasonable in the context of the proposal. As such the subject site fails to accommodate such provision of car parking and is therefore deemed unacceptable. An alternative design solution could be provided which retains the parking although this may require a reduction in seating.</p> <p>For the reasons stated above the subject site is not suitable for the proposed development.</p> <p>(b) The proposal provides for seating for eighty two (82) seated customers. This is deemed to be unsuitable for the subject tenancy as there is insufficient Gross Floor Area to accommodate such capacity. In this regard the proposal is deemed unsuitable for the subject site as it will result in the storage space encroaching on the car parking areas. As a result no on-site car parking will be provided resulting in additional parking demand to the surrounding streets.</p> <p>The proposed loading and unloading area to the rear of the site is over the existing right-of carriageway. In this regard the proposal is unsuitable for the site as it will obstruct vehicle access and movements to the subject premises and the adjoining premises.</p>
<p><b>Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</b></p>	<p>See discussion on “Public Exhibition” in this report.</p>

Section 79C 'Matters for Consideration'	Comments
<p><b>Section 79C (1) (e) – the public interest</b></p>	<p>Pursuant to case law of Ex Gratia P/L v Dungog Council (<i>NSWLEC 148</i>), the question that needs to be answered is “<i>Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development?</i>”.</p> <p>For the reasons stated in this report, it is apparent that there is a public disadvantage in that the proposed development results in a deficient provision of carparking resulting in an increased demand for on-street carparking. This is a significant departure from the WLEP 2000 Schedule 17 – Car Parking and as such fails to achieve the broader planning objectives detailed under the Local Environmental Planning Instrument – WLEP 2000.</p> <p>In this regard, the balancing of these matters results in a finding that the disadvantages outweigh the advantages and as such the proposed development will have an overall public disadvantage.</p>

**DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:**

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Definition: Restaurant

Land Use Zone: B2 Local Centre

Permissible or Prohibited: Permissible

Additional Permitted used for particular land – Refer to Schedule 1: No additional permitted uses

Principal Development Standards:

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Minimum Subdivision Lot Size:	N/A	N/A	N/A	N/A
Rural Subdivision:	N/A	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A	N/A	N/A	N/A
Height of Buildings:	13M	10.6 (Existing and unchanged)	N/A	N/A

The proposed development is consistent with the aims and objectives of the Draft WLEP 2009.

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)**

### **State Environmental Planning Policies (SEPPs)**

#### **State Environmental Planning Policy No 55 – Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

#### **State Environmental Planning Policy - Infrastructure**

Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
- immediately adjacent to an electricity substation,
- within 5m of an overhead power line
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line

The proposal is not within or immediately adjacent to any of the above electricity infrastructure and does not include a proposal for a swimming pool; as such the development application is not required to be referred to the electricity supply authority. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

### **Regional Environment Plans (REPs)**

Nil

### **Local Environment Plans (LEPs)**

#### ***Warringah Local Environment Plan 2000 (WLEP 2000)***

##### **1 Desired Future Character (DFC)**

The subject site is located in the E8 – The Strand Locality under Warringah Local Environmental Plan 2000.

The Desired Future Character Statement for this locality is as follows:

The Strand will be a vibrant locality comprising a mix of leisure, office and residential uses, interspersed by a range of complementary and compatible uses. Ground floor premises will be characterised by restaurants, cafes, shops and leisure-related uses that create active building fronts and contribute to the life of the streets. Housing will characterise upper floors.

The interrelationship between the beach and park and development along The Strand is an important aspect of the character of the locality. The design of buildings and shopfronts will have a

strong complementary relationship to their beach and parkland setting and help create comfortable, interesting and safe pedestrian environments. Outdoor eating areas in particular will be encouraged.

Above the second storey, buildings will step back from The Strand, Oaks and Howard Avenues and Dee Why Parade and building height will be restricted to maintain solar access to the parklands and ensure the scale of buildings does not dominate public spaces or views from the park or beach.

The corners of Howard Avenue and The Strand, however, are to be strongly defined by virtue of building height and design.

A laneway will be established between Dee Why Parade and Howard Avenue and between Howard Avenue and Oaks Avenue for access and servicing of development fronting The Strand.

The proposed development is defined as Restaurant under the WLEP 2000 dictionary. Restaurants are identified as Category 1 development in this locality.

Clause 12(3)(a) of WLEP 2000 requires the consent authority to consider Category 1 development against the locality's DFC statement.

The proposed development has been considered against the locality's DFC statement and it is considered that the proposed land use is consistent with the provisions of the Locality, accordingly further assessment is provided hereunder.

- The proposed restaurant will maintain the complementary and compatible uses with the ground floor component characterised as a restaurant
- The existing upper floors will remain characterised by housing
- The existing shopfront will maintain a strong complementary relationship with the beach and the parkland opposite to create a safe interesting and comfortable environment
- The proposal will maintain the existing outdoor eating area

#### Built Form Controls (Development Standards)

The Built Form Controls of the E18 The Strand Locality Statement being Building Height, Floor to Ceiling Height, Landscape Open Space, Rear Setback, Front Building Setback, Side Boundary Envelope and Side Setback are not relevant to the assessment of this application as there are no works proposed exterior to the premises.

## **2 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:

<b>General Principles</b>	<b>Applies</b>	<b>Comments</b>	<b>Complies</b>
<b>CL38 Glare &amp; reflections</b>	No	The proposed restaurant does not involve any works exterior to the premises. As such the proposal will have no impact in this regard.	
<b>CL39 Local retail centres</b>	Yes	The proposed restaurant will	
<b>CL40 Housing for Older People and People with Disabilities</b>	No	No comment	
<b>CL41 Brothels</b>	No	No comment	

<b>General Principles</b>	<b>Applies</b>	<b>Comments</b>	<b>Complies</b>
<b>CL42 Construction Sites</b>	Yes	The proposed building works pertain to the interior of the premises. As such the proposed works are minor and will have no significant impact in this regard.	Yes
<b>CL43 Noise</b>	Yes	The proposed hours of operation for the proposed restaurant are 7am to Midnight Monday through Sunday. If approval were to be granted it would be conditioned that the hours of operation be restricted to 7am to 11:30pm on Fridays, Saturdays and the night immediately before a public holiday with other days and 7am to 10:30pm on all other days. This is to ensure that there is no adverse impact on the residential amenity of the locality.	No
<b>CL44 Pollutants</b>	No	No comment	
<b>CL45 Hazardous Uses</b>	No	No comment	
<b>CL46 Radiation Emission Levels</b>	No	No Comment	
<b>CL47 Flood Affected Land</b>	No	No comment	
<b>CL48 Potentially Contaminated Land</b>	Yes	Based on the previous land uses is its unlikely that the subject site is contaminated. In this regard the proposal is suitable for the site.	
<b>CL49 Remediation of Contaminated Land</b>	No	No comment	
<b>CL49a Acid Sulfate Soils</b>	No	No comment	
<b>CL50 Safety &amp; Security</b>	Yes	The proposal will maintain the existing level of safety and security afforded in the area. No alterations are proposed to the exterior of the building to have a significant impact in this regard.	Yes
<b>CL51 Front Fences and Walls</b>	No	No comment	
<b>CL52 Development Near Parks, Bushland Reserves &amp; other public Open Spaces</b>	Yes	The subject site is located opposite the Dee Why Reserve. In this regard the proposal will have no impact on the amenity or function of the reserve.	Yes
<b>CL53 Signs</b>	Yes	The existing flush wall signage is to be retained. No detail has been provided of the dimensions of the existing signage or the location on the site.	Yes
<b>CL54 Provision and Location of Utility Services</b>	Yes	Adequate utilities are provided to the site for the proposed development.	Yes
<b>CL55 Site Consolidation in 'Medium Density Areas'</b>	No	No comment	
<b>CL56 Retaining Unique Environmental Features on Site</b>	No	No comment	

General Principles	Applies	Comments	Complies
<b>CL57 Development on Sloping Land</b>	No	No comment	
<b>CL58 Protection of Existing Flora</b>	No	No comment	
<b>CL59 Koala Habitat Protection</b>	No	No comment	
<b>CL60 Watercourses &amp; Aquatic Habitats</b>	No	No comment	
<b>CL61 Views</b>	No	No comment	
<b>CL62 Access to sunlight</b>	No	No Comment	
<b>CL63 Landscaped Open Space</b>	No	No Comment	
<b>CL63A Rear Building Setback</b>	No	No Comment	
<b>CL64 Private open space</b>	No	No comment	
<b>CL65 Privacy</b>	No	No comment	
<b>CL66 Building bulk</b>	No	No comment	
<b>CL67 Roofs</b>	No	No comment	
<b>CL68 Conservation of Energy and Water</b>	No	No comment	
<b>CL69 Accessibility – Public and Semi-Public Buildings</b>	Yes	Disabled access is existing and available to the premises via the front of the building. The proposal has undergone assessment by Council's Building Assessment Compliance Officer and is deemed satisfactory.	Yes
<b>CL70 Site facilities</b>	Yes	Adequate site facilities are existing and provided to the rear of the building with a garbage enclosure and waste facilities.	Yes
<b>CL71 Parking facilities (visual impact)</b>	No	No car parking facilities are proposed for the subject premises. The existing car parking area is to be utilised as storage maintaining the roller door for access to the rear. In this regard the visual impact will remain unchanged.	
<b>CL72 Traffic access &amp; safety</b>	Yes	Access to the site will be maintained in its current form over the right of carriage way. Vehicles of patrons will be required to park on-street as it is proposed to provide no on-site car parking. In this regard the proposal will have no significant impact on traffic and access of the subject site as vehicle parking is limited to on-street.	Yes
<b>CL73 On-site Loading and Unloading</b>	Yes	On-site loading and unloading are proposed at the rear of the site. This area is a designated right-of carriage way. As such, unloading and loading in this area provides opportunity to obstruct vehicle access.	No
<b>CL74 Provision of Carparking</b>	Yes	Refer to Schedule 17 in this report	No

General Principles	Applies	Comments	Complies
<b>CL75 Design of Carparking Areas</b>	No	The proposal does not provide any car parking spaces. As such this General Principle is not applicable.	
<b>CL76 Management of Stormwater</b>	No	No increase is proposed in the building footprint that would necessitate stormwater management for the site.	
<b>CL77 Landfill</b>	No	No comment	
<b>CL78 Erosion &amp; Sedimentation</b>	No	No comment	
<b>CL79 Heritage Control</b>	No	No comment	
<b>CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service</b>	No	No comment	
<b>CL82 Development in the Vicinity of Heritage Items</b>	No	No comment	
<b>CL83 Development of Known or Potential Archaeological Sites</b>	No	No comment	

## Other Relevant WLEP 2000 Clauses

### SCHEDULES

#### Schedule 8 - Site analysis

2.1 Site Analysis	A site analysis plan has been provided to satisfy the requirements of schedule 8.
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#### Schedule 17 - Carparking Provision

2.2 Carparking Provision	<p>Under the provisions of Schedule 17 of the WLEP 2000 a Restaurant requires 1 space per 3 seats or 1 space per 15sqm GFA (whichever is the greater). As the Restaurant proposes seating for 82 persons, 27 car spaces are required. No car spaces are proposed to be provided on-site.</p> <p>Historically, since 2003 the premises has operated as a restaurant with no on-site car parking provided, catering for 82 seated customers. Two (2) car parking spaces for the subject premises are provided within the rear of the building both of which have been utilised for the purpose of storage.</p> <p>The traffic survey conducted by Ray Dowsett Traffic and Transport Planning Pty Ltd dated 17 July 2009 indicates the following in relation to the ability of the precinct to accommodate on-street car parking for the proposed restaurant:</p> <ul style="list-style-type: none"> <li>(a) There is ample parking within the Dee Why Surf Club during peak trading periods;</li> <li>(b) No on-site car parking is currently provided, the proposal will therefore not generate any additional demand on car parking;</li> <li>(c) The net gain of 14 spaces as part of the Stage 4 Dee Why Beach Reserve upgrading concept plan will result in improvements in the Dee Why Beach restaurant precinct.</li> </ul> <p>The traffic survey fails to identify the flow-on effects to the on-street car parking as a result of no car parking being provided for other premises located on the Strand. Council deems this a necessary consideration to maintain consistency for future development on the strand to ensure that surrounding streets are capable of accommodating such demand.</p>
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	<p>Furthermore, The argument submitted in the Statement of Environmental Effects prepared by Boston Blyth Flemming dated July 2009 is rejected. Page 12 of the SEE states:</p> <p><i>“Having regard to we object to the requirement that the traffic parking report is to examine the flow on effects to on-street parking using the assumption that each and every retail and commercial premises located on the strand will also apply for a reduction in car parking to 1 on-site car parking space. For such a hypothetical scenario to be relevant and/or determinative there needs to be a real probability that such a scenario will be realised. With respect we feel that such outcome is neither real nor probable”.</i></p> <p>A such, consideration of the wider strategic implications in regard to car parking have not been incorporated into the proposal.</p> <p>In this regard the provision of no on-site car parking is deemed unreasonable as the proposed use results in significant non-compliance with car parking provision of Schedule 17 of the WLEP 2000. The deletion of the existing two (2) approved car spaces is deemed unreasonable and is not warranted. Internal re-design of the premises is required to utilise the tandem car parking spaces within the rear of the premises.</p> <p>The proposal is not satisfactory in accordance with Schedule 17, accordingly it is not supported.</p>
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## **POLICY CONTROLS**

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

Not applicable.

## **OTHER MATTERS FOR CONSIDERATION**

**Nil**

## **CONCLUSION**

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000, Draft Warringah Local Environmental Plan 2009 and the relevant codes and policies of Council.

The proposal's inability to satisfy Section 79C of the Environmental Planning and Assessment Act 1979, in that the proposed development will result in an unreasonable social impact and is not in the public interest, and inconsistencies with the General Principles of Development Control of Warringah Local Environmental Plan 2000, including 74 *Provision of Carparking*, demonstrates that the proposed development is not suitable for the site and therefore unacceptable.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

As a direct result of the application and the consideration of the matters detailed within this report it considered that Council as the consent authority refuse approval for the reasons detailed within the "Recommendation" section of this report.



## RECOMMENDATION:

## REFUSAL

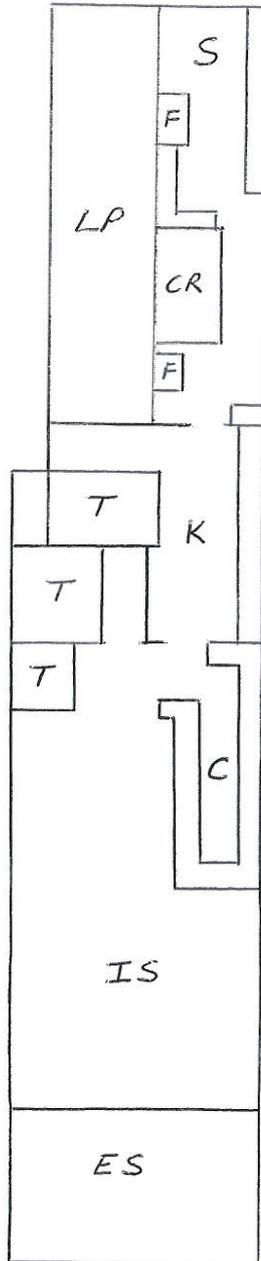
That Council, as the consent authority refuse Development Consent to Development Application No DA2009/0937 for the Change of Use from a café/take away food shop to a Restaurant and conversion of existing approved car parking spaces to storage space on land at Shop 2 24-25 the Strand Dee Why subject to the reasons outlined as follows:

1. Pursuant to Section 79(C)(1)(a) of the Environmental Planning and Assessment Act 1979 and Clause 12(1)(a) of Warringah Local Environmental Plan 2000, the proposed modifications are inconsistent with the following General Principles of Development Control:
  - (a) *Clause 74 – Provision of Carparking* The proposed restaurant fails to provide for the minimum number of car parking spaces required under Schedule 17 of the WLEP 2000 and further reduce the existing provision of two (2) approved spaces to nil car parking spaces.
2. Pursuant to Section 79(C)(1)(a) of the Environmental Planning and Assessment Act 1979 and Clause 12(2)(a) and (b) of Warringah Local Environmental Plan 2000, the proposed development does not satisfy the requirements of Schedule 17 *Carparking Provision* as contained within Warringah Local Environmental Plan 2000.
3. Pursuant to Section 79(C)(1)(b) of the Environmental Planning and Assessment Act 1979, the inconsistency with General Principles of Development Control demonstrate that the proposed development will have an unacceptable environmental and social impact on the locality.
4. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 12(1)(a) and Clause 18(1) of Warringah Local Environment Plan 2000 (as amended) in that portions of the proposed development are inconsistent with the General Principles outlined under Part 4 of WLEP 2000, in particular *Clause 74 – Provision of Carparking*
8. Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979 the subject site is considered to be unsuitable for the proposed development in that the proposed development will reduce the provision of carparking to the subject site which will result in an increased demand on surrounding streets, resulting in an unacceptable environmental impact.
9. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest in that, the proposed development undermines the local planning controls and will create an unacceptable demand on surrounding streets.



Floor Plans

SHOP 2, 24-25 THE STRAND, DEE WHY



ES	EXT. SEATING
IS	INT. SEATING
C	COFFEE PREP
K	KITCHEN
T	TOILETS
S	STORAGE
F	FREEZER
CR	COOL ROOM
LP	LANDLORD PARKING

(LOT 13, SECT 7, DP 6953)

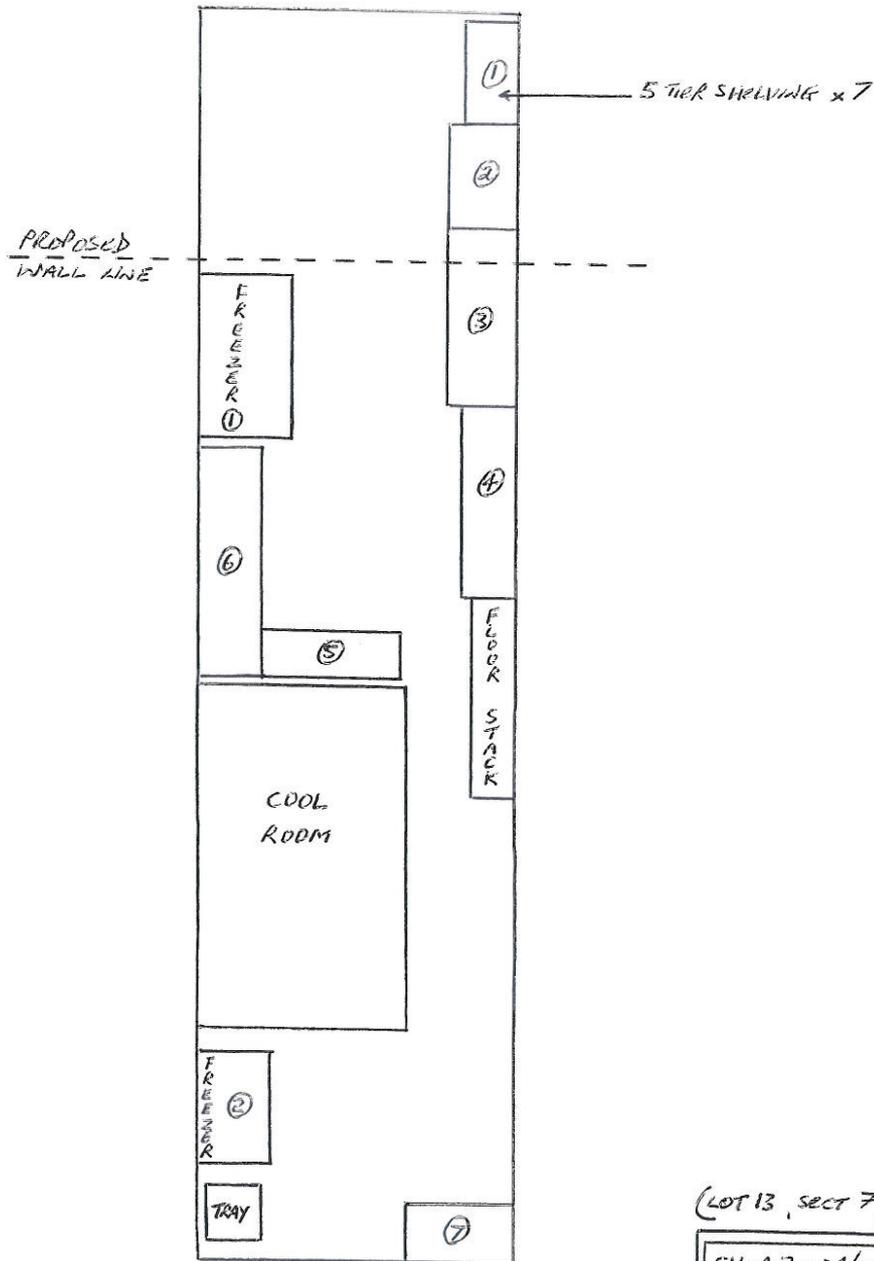
SHOP 2, 24/25 THE STRAND DEE WHY BEACH SANDBAR CAFE
FLOOR PLAN SCALE 1:150
DRAWING NO 1A JULY 2009 GEORGE WEBSTER



Floor Plans

STORAGE FLOOR PLAN

→ N



(LOT 13, SECT 7, DP 6953)

SHOP 2 - 24/25 THE STRAIN  
DEE LINDY BEACH  
SANDBAR CAFE  
STORAGE FLOOR PLAN  
SCALE 1:50  
DRAWING N° 1B  
JULY 2009  
GEORGE WEBSTER