



David Scobie Architects Pty Ltd
Unit 2, 35-37 The Boulevard
CAMMERAY NSW 2062

D259/23
TH2 (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
NOTICE OF DETERMINATION - Approval**

Development Application Number:	259/23
Land to which this applies:	463 Miller Street, Cammeray Lot No.: A, DP: 442393
Applicant:	David Scobie Architects Pty Ltd
Proposal:	Change of Use of a Ground Floor Restaurant to a Bakery (Retrospective)
Determination of Development Application:	Subject to the provisions of Section 4.17 of the <i>Environmental Planning and Assessment Act 1979</i> , approval has been granted subject to conditions in the notice of determination.
Date of Determination:	2 April 2024

Reasons for Approval

The development application has been assessed against the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and generally found to be satisfactory.

The site is zoned E1 Local Centre under the provisions of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). The ground floor bakery is a type of take away food and drink premises falling under the definition retail premises which is defined as a form of commercial premises pursuant to the NSLEP 2013. Commercial premises are permissible with the consent of Council.

The ground floor use as a take away food and drink premises (bakery) meet the applicable objectives of the E1 Local Centre providing a retail service to people in the area, is an employment generator and the bakery is appropriately located on the ground floor providing activation to the street.

Unauthorised works have occurred relocating air conditioner

units, utilising part of the ground floor car parking and loading area for the storage of fridges and freezers for the ground floor bakery therefore due to the alterations in provision and location of plant and equipment conditions of consent are recommended to ensure all plant and equipment including air conditioner units maintains an appropriate level of amenity for adjoining land uses.

The current location of the bins and management of waste is not supported, and conditions of consent are recommended requiring bins to be located within the premises screened from the lane and commercial waste and recycling bins are to be separate from residential waste and recycling bins.

A trial period is required for the operating hours proposed to monitor and assess the management performance of the premises and impact on neighbouring amenity.

Having regard to the provisions of Section 4.15 (1) of *the Environmental Planning and Assessment Act 1979*, the proposed development will not result in any unreasonable amenity or environmental impacts. The application is considered satisfactory and is recommended for approval.

Consent to operate from: 2 April 2024

Consent will lapse on: 2 April 2029

Period of Consent

Subject to Section 4.20 of the Act, this consent becomes effective and operates from the date listed above. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To activate this consent, works must physically commence onsite 2 April 2029.

How community views were taken into account:

The application has been notified in accordance with Council's Community Consultation Plan with adjoining properties and the Plateau/Bridgeview Precinct notified between 15 September to 29 September 2023. In response to the notification Council received no submissions to the proposal.

Review of determination and right of appeal:

Within six months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

Plans endorsed by the consent authority - please refer to condition A1.

Endorsed for and on behalf of North Sydney Council

2 April 2024

Thomas Holman

DATE

Signature on behalf of consent authority
THOMAS HOLMAN
SENIOR ASSESSMENT OFFICER

(i) **Conditions**

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning and Assessment Regulation 2021 (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to Section 4.17 of the Act.

(ii) **Definitions**

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act* 1987 as in force at the date of consent.

Applicant means the applicant for this consent.

Approved Plans means the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or **AS/NZS** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

NCC means the National Construction Code as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means North Sydney Council.

Court means the Land and Environment Court.

Local Native Plants means species of native plant endemic to North Sydney LGA.

Stormwater Drainage System means all works, facilities and documentation relating to:

- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner Builder has the same meaning as in the *Home Building Act* 1989.

Principal Certifier for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6 (1) or for the subdivision work under section 6.12 (1).

Principal Contractor for building work means the person responsible for the overall coordination and control of the carrying out of the building work.

Note: If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the *Home Building Act* 1989.

Professional Engineer has the same meaning as in the *NCC*.

Public Place has the same meaning as in the *Local Government Act 1993*.

Road has the same meaning as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

Site means the land being developed subject to this consent.

NSLEP 2013 means *North Sydney Local Environmental Plan 2013*

NSDCP 2013 means *North Sydney Development Control Plan 2013*

Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of any waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: **Interpretation of Conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

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A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

A1. The development must be carried out in accordance with the following drawings endorsed with Council's approval stamp and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Rev.	Description	Prepared by	Received
101	C	Ground Floor and First Floor Record Plan	David Scobie Architects	12/08/2023
102	C	Second Floor and Attic Floor Record Plan	David Scobie Architects	12/08/2023
103	C	Roof Plan and Section B-B	David Scobie Architects	12/08/2023
104	C	Section A-A Record Plan	David Scobie Architects	12/08/2023
105	C	Front and Rear Record Plan Elevations	David Scobie Architects	12/08/2023
106	C	North and South Record Plan Elevations	David Scobie Architects	12/08/2023

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Terms of the Consent

A2. Approval is granted for the change of use of the ground floor only to a take away food and drink premises.

No approval is given or implied for any works undertaken prior to 16 January 2024 associated with the change of use of the premises. The consent holder may consider a building information certificate application should it be desired to regularise any such works.

(Reason: To ensure the terms of consent are clear)

F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation

National Construction Code

F2. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Noise Certification

G1. The use of all plant and equipment installed including air conditioner equipment on the premises must not:

- (a) Contribute an LAeq (15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Fact Sheet C of the EPA Noise Policy for Industry 2017 shall be applied.

- (b) Cause “offensive noise” as defined in the *Protection of the Environment Operations Act 1997*.
- (c) Cause vibration impact to adjoining tenancies.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and parks and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Noise Policy for Industry published by the NSW Environment Protection Authority.

Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Principal Certifier certifying that the noise and vibration from use of the development complies with terms of this condition of consent.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Cleanliness and Maintenance of Food Preparation Areas

G2. To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas, all building work in connection with the occupation or use of the premises for the preparation and storage of food shall be designed and carried out in accordance with the requirements of:

- a) the Food Act 2003;
- b) the Food Regulation;
- c) the relevant Australian Standards;
- d) Council’s Food Premises Code;
- e) Sydney Water Corporation - Trade Waste Section;
- f) the Protection of the Environment Operations Act and associated Regulations; and
- g) the Building Code of Australia.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Occupation Certificate.

The Occupation Certificate plans and documentation must incorporate details of the following:

- a) construction, materials and finishes;
- b) installation of fixtures, fittings and equipment;
- c) washing facilities, other facilities and special requirements;
- d) mechanical ventilation and exhaust discharges; and
- e) temperature control

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Occupation Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure compliance with acceptable standards for the construction of food premises established under environmental health and safety legislation)

Garbage and Recycling Facilities

- G3. Adequate provision must be made for the storage of waste and recyclable material generated by the premises.

An appropriate area must be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by the premises. The storage area must be adequately screened from the street or lane. Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Occupation Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, fully satisfy the requirements of this condition.

(Reason: To ensure the provision of appropriate waste facilities and to ensure efficient collection of waste by collection contractors)

I. Ongoing/Operational Conditions

Garbage and Recycling Facilities

- I1. An appropriate area must be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by the premises. The storage area must be adequately screened from the street or lane.

(Reason: To ensure the provision of appropriate waste facilities and protect community health)

Noise from Plant and Equipment

- I2. The use of all plant and equipment installed on the premises must not:
- (a) Contribute an LAeq (15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Fact Sheet 4 of the EPA Noise Policy for Industry shall be applied.
 - (b) Cause “offensive noise” as defined in the Protection of the Environment Operations Act 1997.
 - (c) Cause vibration to adjoining tenancies.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and parks and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Noise Policy for Industry published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Hours of Operation

13. The hours of operation are restricted to:

Monday - Sunday: 7.00 am - 3.30 pm

Upon expiry of the permitted hours:

- (a) all service must immediately cease;
- (b) no person shall be permitted entry; and
- (c) all customers on the premises must be required to leave.

(Reason: To ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality)

Hours of Operation - Trial Period

14. Notwithstanding **Condition 13 Hours of Operation**, above, the approved use may operate between 6.30 am and 3.30 pm, Monday to Sunday for a trial period of 12 months from the date of issue of the first Occupation Certificate, being interim or otherwise. Council must be informed in writing of the date of commencing the trial period.

In order for the above trial hours of operation to be confirmed as ongoing, a modification application must be lodged with Council prior to the expiration of the trial period. The assessment of the application to continue the use in accordance with the trial, will consider amongst other things, the impact of the use on surrounding areas the performance of the operation in relation to compliance with development consent conditions.

In the event that no modification application is lodged, or an application is not approved, then the hours of operation for the premises must revert to the standard hours of operation identified by this consent.

Note: Any person acting on this consent is advised that any modification application to the trial hours of operation period should be submitted to Council a minimum of thirty (30) days prior to the expiration of the trial period otherwise the trial period must lapse.

(Reason: To ensure safety and security and protect the amenity of surrounding areas)

Trade Waste

15. Trade wastewater must be disposed of in accordance with the permit requirements of Sydney Water Corporation Ltd, Wastewater Source Control Branch.

(Reason: To ensure compliance with Sydney Water's requirements and protect the environment)

Hours of Illumination

16. The under-awning sign must cease illumination between the hours of 4.00 pm and 7.00 am daily.

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties)

Signage Illumination Intensity

17. The sign(s) must be installed and used at all times in accordance with AS 4282-1997 control of obtrusive effects of outdoor lighting and must be restricted in accordance with the following:

- (a) At no time is the intensity, period of intermittency and hours of illumination of the sign to cause objectionable glare or injury to the amenity of the neighbour-hood.
- (b) The level of illumination and/or lighting intensity used to illuminate the signage must not cause excessive light spill or nuisance to any nearby residential premises.
- (c) The signage illumination must not flash.

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties)

No Illumination

18. No consent is given or implied for any form of illumination or floodlighting to the building or any sign. A separate development application must be lodged and approved prior to any external floodlighting or illumination of the building, approved sign or site landscaping.

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties)

No Entertainment

19. This approval is for takeaway food and drink premises only and does not authorise musical or other forms of entertainment. A separate development consent is required for any proposed entertainment.

(Reason: Clarification of terms of this consent and ensure compliance with relevant legislation)

Daily Cleaning

110. The proprietor/operator is to ensure that at all times when the premises are open and at the end of each day after the premises have closed, all rubbish including loose papers, cigarette butts, bottles etc which may be left on the subject premises, site or immediately adjacent area is picked up and placed in the proprietor's/operator's rubbish bins.

(Reason: To ensure waste generated by the approved use or activity is properly managed by the person acting upon this consent, to prevent unsightly build-up of waste material)

Commercial Waste and Recycling Storage

111. Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.

(Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed)

Waste Collection

- I12. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the amenity of surrounding properties)

Delivery Hours

- I13. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10.00 pm and 6.00 am on any day.

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

Shop Premises Registration

- I14. The shop premises must be registered with Council. Shop Premises Registration must be maintained at all times.

Note: Council registration forms can be found at <http://www.northsydney.nsw.gov.au>.

(Reason: To ensure compliance with environmental health legislation)

Maintenance of Structures on Public Land

- I15. The owner of the premises at **463 Miller Street, Cammeray**, is to maintain the awning approved by this consent and located over Council's footpath, directly adjacent to the property. This awning must be maintained at all times to a structurally sound condition in order to provide an acceptable level of public safety.

(Reason: To ensure pedestrian and public safety and ensure that structures located on public land for private benefit are maintained to an acceptable standard.