

The Grumpy Baker Pty Ltd
PO Box 644
VAUCLUSE NSW 2030

D108/06
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 108/06/3 – APPROVAL**

Development Consent Number: 108/06/3

Land to which this applies: 64A Clark Road, North Sydney
Lot No.: 1, DP: 583185

Applicant: The Grumpy Baker Pty Ltd

Proposal: S4.55(1A) – Change of hours for existing food and drink premises.

Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **108/06** and registered in Council's records as Application No. **108/06/3** relating to the land described as **64A Clark Road, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 22 May 2006, has been determined in the following manner: -

1. Condition 13 is to be modified as follows:

Hours of Operation

13. The hours of operation are restricted to:

Monday to Sunday - Cafe: 7.00am-7.00pm
Outdoor Dining: 8.00am-7.00pm

Upon expiry of the permitted hours:

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

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

2. *Condition I20 is to be imposed as follows:*

Trial Period – Hours of Operation

I20. Notwithstanding Condition **I3 Hours of Operation** above the outdoor dining area may operate between 7:00am and 7:00pm daily for a trial period of 12 months. 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 and 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 forty-two (42) days prior to the expiration of the trial period otherwise the trial period must lapse.

(Reason: To ensure the amenity of surrounding areas is maintained should the proposed hours be unsuitable)

Reason for approval:

The proposed modification to the hours of operation would provide standard hours of operation for a café within a group of neighbourhood shops surrounded by a residential area. The premises has a small area of outdoor seating providing outdoor dining for a maximum of 8 patrons and is not likely to result in adverse impacts however a trial period has been recommended to ensure that the outdoor dining area does not result in unreasonable acoustic impacts within the early hours of the day.

How community views were taken into account:

The development application was notified in accordance with Council's notification policy however no submissions were received. The amenity of the surrounding residential area has been considered and a trial period recommended where there is potential for amenity impacts that may require reconsideration as the consent operates.

The conditions attached to the original consent for Development Application No. 108/06 by endorsed date of 22 May 2006 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Robyn Pearson**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of the Environmental Planning and Assessment Act 1979 (as amended), you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing, subject to any further advice to the contrary from Council's Solicitors and senior staff. Such an approach is less adversarial, it achieves a quicker decision than would be the case through a Court hearing and it can give rise to considerable cost and time savings for all parties involved.
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) Prior to commencing any building, subdivision or associated constructions works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:
- (i) A Construction Certificate is to be obtained in accordance with Section 6.3 of the Act.
 - (ii) A Principal Certifier is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6 of the Act.
 - (iii) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with Section 6.6(2)(a) of the Act.
- (d) You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a further modification under Section 4.55 of the Environmental Planning & Assessment Act, 1979 (as amended).

Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of the Environmental Planning & Assessment Act.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER ASSESSMENTS