

**ITEM 3 DEVELOPMENT APPLICATION: 6F COWPER WHARF ROADWAY,
WOOLLOOMOOLOO**

FILE NO: D/2005/2205

SUMMARY

Date of Submission: 21 December 2005

Applicant: Burley Katon Halliday

Summary: Change of use from a café/bakery into a licensed restaurant, including new internal fit-out to the ground floor, 15sqm of additional floor area to the mezzanine level, replacement of existing centre bay door with new bi-fold door and seating for 162 patrons consisting of 12 seats on the mezzanine level, 76 seats on the ground floor level and 74 located within the outdoor eating area. The proposed hours of operation are 7:00am to Midnight, seven days.

The development application initially included a Place of Public Entertainment (POPE) application; however this part of the application was withdrawn in response to residents concerns about noise.

Summary Recommendation: The NSW Maritime is the landowner and has granted consent to lodgement of the integrated Development Application to City of Sydney.

The site is listed as a State Heritage item. The NSW Heritage Council has granted conditions of approval pursuant to Section 60 of the NSW Heritage Act 1977. The conditions of approval are listed in the recommendation under Schedule 3.

The DA attracted 21 submissions and a petition signed by 15 people in objection to the proposal. The main concerns raised by residents relate to the POPE application and hours of operation. The POPE component was subsequently withdrawn.

A condition of consent recommends a 12 month trial period for the proposed trading hours of between 10pm to 12 midnight, seven days.

The partial extension of the existing mezzanine level, is considered to be acceptable with regards to the intended use of the area as a private dining room with seating for twelve (12) people and considering the hotel occupies the first, second and third floors directly above.

Summary Recommendation (continued): Given that the POPE application has been withdrawn, the previous approval of the premise as a bakery/café with approved trading hours of 6am to 10pm, granting consent is appropriate subject to conditions.

Development Controls:

- (i) Sydney Local Environmental Plan (LEP) 2005
- (ii) Central Sydney Development Control Plan 1996
- (iii) City of Sydney Notification of Planning and Development Applications DCP 2005
- (iv) City of Sydney Access Development Control Plan 2004
- (v) City of Sydney Outdoor Café Policy
- (vi) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Attachments:

- A - Selected Drawings
- B - Furniture/Seating Plans

RECOMMENDATION

It be resolved that consent be granted subject to the following conditions:-

SCHEDULE 1A

Approved Development/Design Modifications/Covenants and Contributions/Use and Operation

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2005/2205 dated 21/12/05 and Statement of Environmental Effects and Heritage Impact Statement for 6F Cowper Wharf Road, Woolloomooloo prepared by City Plan Services, and drawings numbered A.01, A.02, A.03 prepared by Burley Katon Halliday dated 12.10.05 and as amended by the conditions of this consent:

(2) HOURS OF OPERATION – SENSITIVE USES

- (a) The hours of operation must be restricted to between 7am and 10pm Mondays to Sundays inclusive.
- (b) Notwithstanding (a) above, the use may operate between 10pm to 12 Midnight for a trial period of 12 months from the date of issue of Occupation Certificate.
- (c) A further application may be lodged to continue the trading hours outlined in (b) above before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

(3) FOOTWAY SEATING

The following conditions apply to footway seating:

- (a) The use of the subject area for outdoor seating is only allowed in conjunction with the provision of a simultaneous food service from the associated approved restaurant use.
- (b) The operator of the outdoor café must ensure that the surrounds of the building including pavements and gutters are to be kept clean and free of litter at all times.
- (c) A maximum of 25 tables and 74 chairs are approved to be located within the footway area.

- (d) All furniture must be kept strictly within the boundaries of the area defined on the approved drawing A.01.
 - (e) All outdoor furniture and planting must be maintained at all times in a physically sound and aesthetically acceptable condition.
 - (f) No furniture or other structure is to be fixed to the pavement, without the consent of Council.
 - (g) All outdoor furniture and the pavement are to be kept clean and free of food scraps.
 - (h) Ash trays used within the outdoor area are to be covered to prevent ash and cigarette butts from polluting the street gutters and the stormwater system.
 - (i) A separate development application for any proposed signs which are either externally fitted or applied must be submitted for the approval of Council prior to the erection or display of any such signs.
- (4) All outdoor furniture should be stacked or folded and stored away in a designated furniture storage area within the premise within the approved trading hours**
 - (5) All outdoor furniture, including chairs, tables, planters, etc shall be the subject of Council approval prior to commencement of the use. The furniture must comply with the requirements of the Outdoor Café Policy 1996.**
 - (6) SIGNS - SEPARATE DA REQUIRED**
 - (7) REMOVAL OF GRAFFITI**
 - (8) NO SPEAKERS OR MUSIC OUTSIDE**
 - (9) LIQUOR LICENSING ACCORD**
 - (10) COPIES OF APPROVALS AND MANAGEMENT PLANS**
 - (11) REMOVAL OF GLASS**
 - (12) WASTE AND RECYCLING COLLECTION**
 - (13) CARE OF BUILDING SURROUNDS**
 - (14) NOISE FROM GLASS REMOVAL**
 - (15) NEIGHBOURHOOD AMENITY**
 - (16) NO PUBLIC ENTERTAINMENT**
 - (17) NOISE - USE**
 - (18) NOISE - MECHANICAL PLANT**
 - (19) INTRUDER ALARM**

**(20) SECTION 61 CONTRIBUTIONS PAYABLE - COST SUMMARY REPORT –
SUBMITTED AND VERIFIED PRIOR TO ISSUE OF CONSTRUCTION
CERTIFICATE**

EXTERNAL LIGHTING

SCHEDULE 1B

Prior to Construction Certificate/Commencement of Work/Health and Building

Note: Prior to the issue of the Construction Certificate, sufficient information must be forwarded to the certifying authority (whether Council or a private accredited certifier) illustrating compliance with the relevant requirements of the Building Code of Australia (and a copy forwarded to Council where Council is not the certifying authority). If Council is to be the certifying authority, please contact the Building Unit to discuss the requirements prior to submission of the application for construction certificate.

- (22) WASTE AND RECYCLING COLLECTION CONTRACT**
- (23) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES**
- (24) INSTALLATION OF DUAL-FLUSH TOILETS**
- (25) INSTALLATION OF WATER EFFICIENT TAPS**
- (26) DEMOLITION, EXCAVATION AND CONSTRUCTION MANAGEMENT**
- (27) BARRICADE PERMIT**
- (28) RECEPTACLES FOR CIGARETTE BUTTS**
- (29) STRUCTURAL CERTIFICATION FOR DESIGN – BCA CLASS 2 – 9**
- (30) MECHANICAL VENTILATION**
- (31) CONTINUED PERFORMANCE OF MECHANICAL VENTILATION**
- (32) FIRE SAFETY CERTIFICATE TO BE SUBMITTED**
- (33) CONSTRUCTION AND FITOUT OF FOOD PREMISES**
- (34) FOOD PREMISES DATA BASE**
- (35) NOTIFY NSW FOOD AUTHORITY**

SCHEDULE 1C

During Construction/Prior to Occupation/Completion

- (36) OCCUPATION CERTIFICATE TO BE SUBMITTED**
- (37) HOURS OF WORK AND NOISE – OUTSIDE CBD**
- (38) CONNECTION TO SEWERS OF SYDNEY WATER CORPORATION**

- (39) HAZARDOUS AND INDUSTRIAL WASTE**
- (40) COVERING OF LOADS**
- (41) VEHICLE CLEANSING**
- (42) NO OBSTRUCTION OF PUBLIC WAY**

SCHEDULE 2

The prescribed conditions in accordance with Clause 98 of the Environmental Planning and Assessment Regulation 2000 apply to the development.

SCHEDULE 3

Terms of Approval

Other Integrated Development Approvals

The Terms of Approval for Integrated Development as advised by *NSW Heritage Office* are as follows:

- (1)** All work shall comply with the following documentation:
 - (a)** Drawings A01 and A02 prepared by Burley Katon Halliday dated 12 October 2005; and
 - (b)** Heritage Impact Statement prepared by City Plan Heritage dated October 2005

And except as amended by the following conditions of this consent

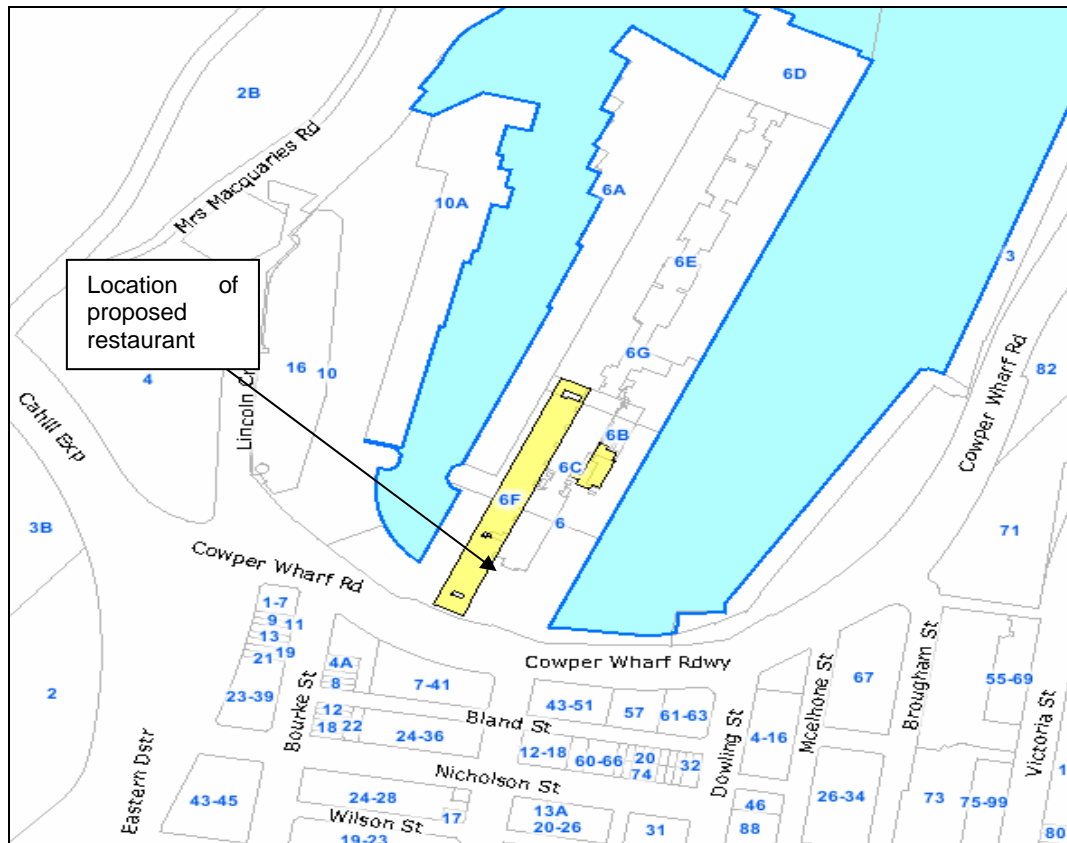
- (2)** All work shall be supervised by a qualified heritage consultant to ensure that the impact of the works on the heritage significance of the building is minimised and all work has been carried out in accordance with the approved documentation and the conditions of this consent.
- (3)** All work shall be carried out by a suitably qualified tradesman with practical experience in conservation and restoration of similar heritage items. The nominated heritage consultant in Condition 2 shall be consulted prior to the selection of appropriate tradesmen.
- (4)** Significant built elements are to be adequately protected during the works from potential damage. Protection systems must ensure historic fabric is not damaged or removed.
- (5)** A schedule of proposed colours and finishes shall be submitted to and approved by the Director, NSW Heritage Office prior to work commencing.
- (6)** No signage is part of this approval and requires a separate application.
- (7)** This approval shall be void if the activity to which it refers is not physically commenced within five years after the date of the approval or within the

period of consent specified in the relevant development consent under the Environmental Planning and Assessment Act, 1979, whichever occurs first.

BACKGROUND

The Site and Surrounding Development

1. The subject site is identified as Lot 3, DP 1007565 known as Shop 2, 6F Cowper Wharf Roadway, Woolloomooloo. The site is located on the western side of the Wharf building. The wharf is located on the northern side of Cowper Wharf Road and to the east of Lincoln Crescent. The proposed restaurant is situated on the western side, towards the southern end of the Wharf.
2. The wharf building is three storeys in height and is occupied as a hotel and residential units on the first and second floors with commercial space on the ground floor. The subject site proposes to occupy three and a half bays on the ground and mezzanine levels. The site is currently vacant and was previously occupied by a bakery/café ('Laurent Boulangerie Patisserie').
3. The ground floor, western side of the wharf building is predominantly characterised by restaurants, with outdoor eating areas, similar to that which is proposed in this application.
4. Cowper Wharf is listed as a State Heritage Item and is also listed under Part 2 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 as a State Significant Heritage Item.
5. A Site location plan is provided below:



Map 1: Location Plan 6F Cowper Wharf Road, Woolloomooloo

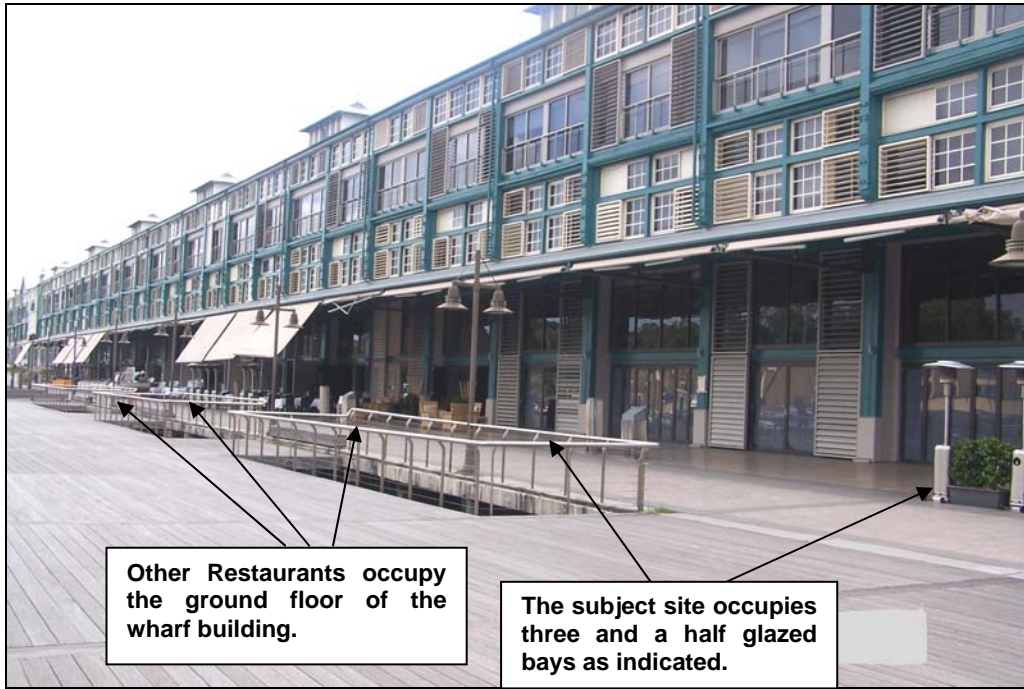


Figure 1: Front elevation looking north along Cowper Wharf



Figure 2: Front elevation of the subject site

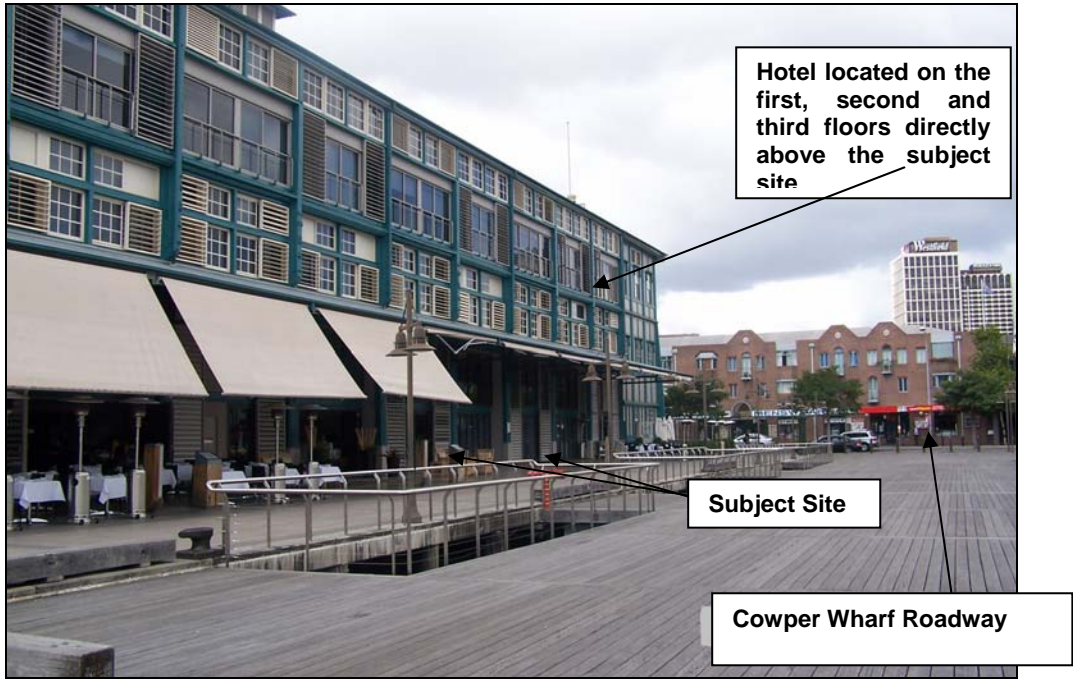


Figure 3: Cowper Wharf, looking South towards Cowper Wharf Roadway

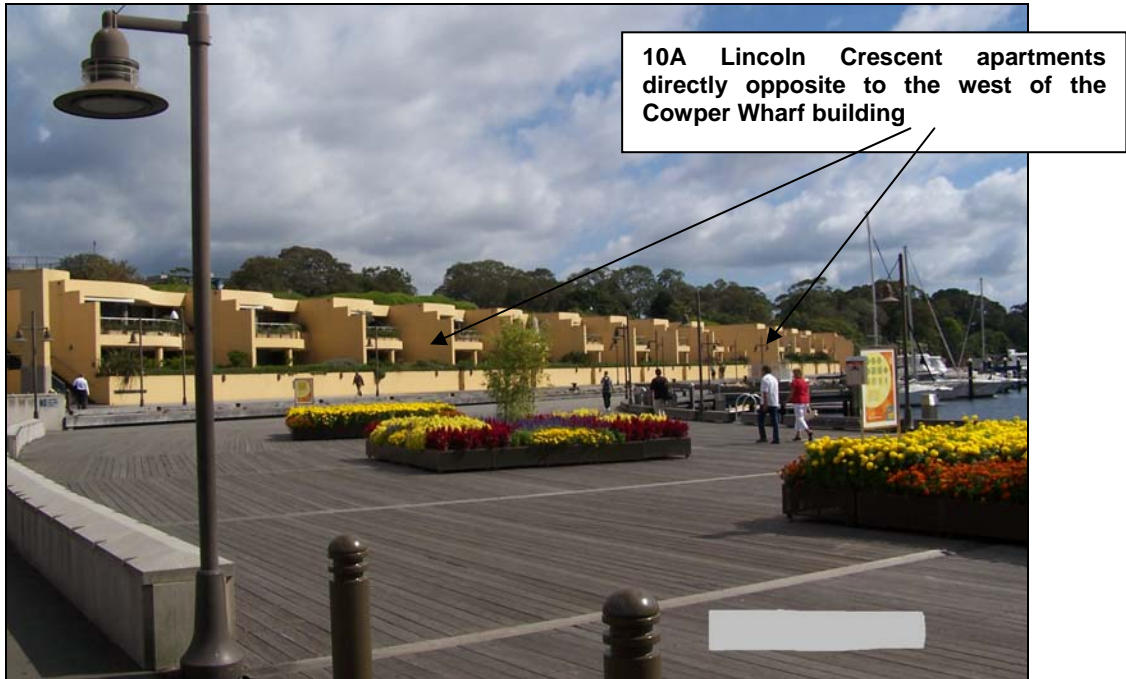


Figure 4: Residential apartments immediately to the west of the subject site.

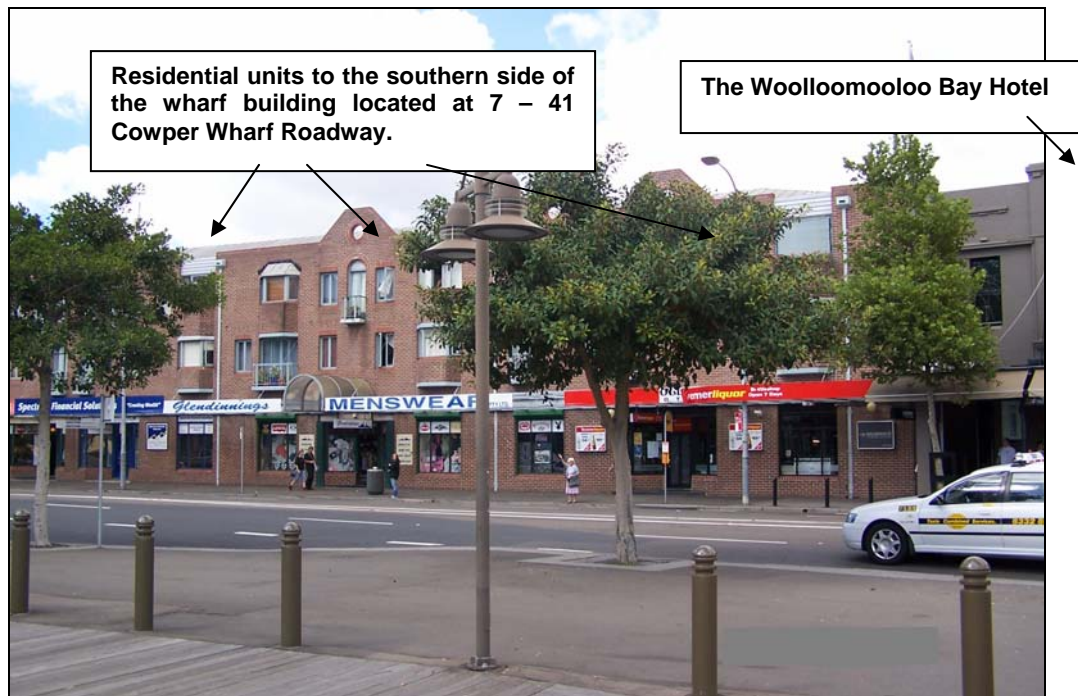


Figure 5: Cowper Wharf Roadway, immediately to the south of the wharf

History of Development Applications Relevant to this Site

6. The following Development Application is considered to be relevant to the site:
 - (a) Development Application Z/96/00591, (Parts 1 to 39) contains the initial approval (approved 5 December 1996) for the redevelopment of the finger wharf and subsequent series of Section 96 modifications to the original consent. The initial application included the approval for the commercial tenancies located on the western side ground floor of the wharf building.
 - (b) Development Consent DB/96/00591/W is the most recent Section 96 modification consent and includes the approved hours of operation for the various restaurants located along the ground floor, western side of the wharf. The approved hours of operation are detailed in the Issues section of the report.

Pre-Development Application Discussions

7. There have been no pre-development application discussions in respect of this development.

PROPOSAL

8. The application seeks development consent for a change of use to a restaurant and fit-out of the ground floor and mezzanine levels, with proposed operating hours of 7am to 12 midnight seven days a week.

9. The internal ground floor fit-out consists of a new kitchen, a new bar area, cool room, freezer room, retention of the existing staff toilet, egress/loading access, existing cupboards, removal of existing metal stair and construction of a new stair, and proposed seating for seventy six (76) people.
10. The ground floor exterior modifications include the replacement of the existing swing windows with new sliding windows. The existing window size and framing will be retained. New bi-fold doors are proposed to central bay at the existing entryway. The proposed bi-fold doors are designed to match adjacent bi-fold doors.
11. An extension of the existing floor area (15sqm) is proposed to the existing mezzanine level, which will cater for a private dining area for twelve (12) people. A manager's office and restaurant toilets are also located on this level. The existing plant room and air conditioning cupboard is to be retained, with a suspended timber framed wine storage unit also proposed.
12. The restaurant proposes an outdoor eating area consisting of 100sqm. Seventy four (74) seats are proposed in this area. A furniture plan has been submitted with the application detailing the proposed location of the seating. (Refer attachment B)
13. The proposal will retain existing garbage and storage facilities which are accessed via an internal car park. The facilities are communal and shared by the tenants of Woolloomooloo Wharf.

IMPLICATIONS OF THE PROPOSAL

Section 79C Evaluation

14. An assessment of the proposal under Section 79C of the Environmental Planning and Assessment Act 1979 has been made, including the following:-

Section 79C(1)(a) Environmental Planning Instruments, DCPs and Draft Instruments

Sydney LEP 2005

15. Compliance of the proposal with the LEP controls is summarised below:

COMPLIANCE WITH SYDNEY LEP 2005

Development Controls	Permissible under Sydney LEP 2005	Proposal as assessed under Sydney LEP 2005
Consistency with Development Plan	Development Plan not required	Sites are required to lodge a development plan if in excess of 1500sqm in area. The subject site occupies a total area of 238 sqm, therefore does not require a development plan. Despite this, it is an adaptive reuse and not a major development.

Development Controls	Permissible under Sydney LEP 2005	Proposal as assessed under Sydney LEP 2005
Zoning	City Edge	The proposal is permissible within the City Edge zone.
Floor Space Area	Not specified	The total floor area of the subject site amounts to 331sqm.
Floor Space Ratio (Site area = 238m²)	No Floor Space Ratio control is given for this site in accordance with the LEP 2005. SREP (Sydney Harbour Catchment) 2005 applies to Cowper Wharf, however does not detail an FSR for this site.	A partial extension of the mezzanine level is proposed of 15 sqm in total. The FSR for the whole site is not stated in the initial development consent. The proposed extra 15sqm to the mezzanine level will result in a 6% increase in floor area for the tenancy, which is considered to be a minor increase in floor area. This will be discussed further in the issues section of the report.
Height	Existing height	The existing height of the building will not be affected as a result of this proposal.
Parking	No parking spaces are allocated to the tenancies located along the ground floor of the wharf building, in accordance with the original development consent.	No car-parking spaces were allocated to the retail tenancies located on the ground floor of the wharf building in accordance with the original development consent. A public carpark with seventy spaces located off Lincoln Crescent was created as part of the re-development of the finger wharf. This will serve as parking facilities for patrons of the proposed restaurant. The wharf is also highly accessible via public transport.

COMPLIANCE WITH LEP Chapter 1 PART 5 Division 2 – DESIGN EXCELLENCE

Matter to be Considered (clause 26)	Complies	Comment
High standard of architectural design, materials & detailing	✓	Complies: The proposed internal design, materials and detailing is considered to be acceptable. A condition of consent will require a schedule of proposed colours and finishes to be submitted to and approved by the Director NSW Heritage Office prior to work commencing.
Form & external appearance of the building improves quality & amenity of the public domain	✓	Complies: The external modifications are considered to be minor and will not adversely affect the external appearance of the building. The NSW heritage office has raised no objections to the external modifications.

SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

Clause 55 Protection of Heritage Items applies to this development

16. The site is located within Woolloomooloo Finger Wharf, a state significant item listed on the State Heritage Register and the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.
17. The NSW Heritage Office has reviewed the development application and associated Heritage Impact Statement and has raised no objections to the proposal, subject to appropriate the terms of approval.
18. The proposal has been assessed under the provisions of SREP (Sydney Harbour Catchment) 2005, Clause 55 Protection of Heritage Items. The proposal is addressed in the table below in relation to the relevant clauses of the SREP.

SREP (Sydney Harbour Catchment) Clause 55 Protection of Heritage Items	Complies	Comment
<p>Part 1: The following development may be carried out only with development consent:</p> <p>(a) Altering a heritage item by making structural or non-structural changes to its exterior, including changes to its detail, fabric, finish or appearance.</p> <p>(b) Altering a heritage item by making structural changes to its interior</p>	✓	<p>Complies: The proposal is for a new internal fit-out to the ground and mezzanine levels including partially extending the mezzanine floor area and modifications to the external glazing. Structural changes are proposed to the interior.</p> <p>In accordance with this clause development consent is required.</p>
<p>Part 4: Before granting development consent as required by this clause, the consent authority must assess the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item concerned.</p>	✓	<p>Complies: Council's Heritage Specialist has reviewed the application and associated Heritage Impact Statement and considers that the proposed works will have minimal heritage impact, in regards to modifying the mid 1990's fabric proposed external modifications to the glazing.</p> <p>The application was granted approval by the Heritage Office under S60 of the Heritage Act. The conditions imposed by the Heritage Office are detailed in Schedule 3 of the recommendation.</p>

SREP (Sydney Harbour Catchment) Clause 55 Protection of Heritage Items	Complies	Comment
<p>Part 5: The assessment must include consideration of a heritage impact statement that addresses at least the following issues:</p> <p>(a) The heritage significance of the item as part of the environmental heritage of the land to which this Part applies, and</p> <p>(b) The impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features, and</p> <p>(c) Whether any archaeological site or potential archaeological site would be adversely affected by the proposed development, and</p> <p>(d) The extent to which the carrying out of the proposed development would affect the form of any historic subdivision.</p>	✓	<p>Complies: A heritage impact statement was prepared by satisfy the requirements of this clause.</p> <p>As discussed above, the proposal is for a new internal fit-out, will have minimal heritage impact, in terms of modifying the internal fabric which was modified as part of the re-use of the former finger wharf.</p> <p>The proposal respects the heritage significance and existing setting of the wharf as the proposed changes will be consistent with the existing façade of the building.</p>
<p>Part 6: The consent authority may also decide to grant development consent until it has considered a conservation management plan, if it considers the development proposed should be assessed with regard to such a plan.</p>	✓	<p>Complies: A Conservation Management Plan was prepared by Clive Lucas Stapleton and Partners in 1994 to guide the then conversion of the Finger Wharf to residential and hotel building.</p> <p>The Heritage Impact Statement has been reviewed by the NSW Heritage Office and Council's Heritage Specialist who raise no objections to the proposal.</p>

Central Sydney DCP 1996

COMPLIANCE WITH THE CENTRAL SYDNEY DCP 1996

Matter to be Considered	Complies	Comment
Street frontage activities CI 2.5	✓	<p>Complies: The proposal incorporates 100 sqm of outdoor dining area, located in front of the restaurant entry doors. Outdoor dining is generally permissible subject to compliance with Councils Outdoor Café policy. The proposed number of patron's amounts to 162 patrons in total, split over three different areas. This will be discussed further in the issues section of the report.</p>
Building exteriors CI 2.7	✓	<p>Complies: Proposed works to the exterior of the existing shop include replacing the existing doors with new bi-fold doors to match the adjacent existing bi-fold doors. This modification to the exterior is considered to be appropriate, as it responds to the existing style of the building.</p>
Extension to Heritage Items CI 2.9	✓	<p>Complies: The proposed use, internal fit-out and external modifications are considered to be appropriate with regards to maintaining the heritage significance of Cowper Wharf.</p>
Easy access CI 3.8	✘	<p>Able to comply: Disabled access to the ground floor of the subject site is provided through a continuous accessible path of travel; No disabled access is provided to the mezzanine level.</p> <p>In accordance with the initial redevelopment of the wharf building, the restaurants located along the ground floor of the wharf may use the disabled toilet facilities provided on level 1 of the Hotel. A disabled lift is accessible from the wharf concourse.</p>

Matter to be Considered	Complies	Comment
Noise reduction CI 4.4	✓	<p>Complies: The applicant has withdrawn the Place of Public Entertainment application in response to concerns raised about noise. This will be discussed in further detail in the issues section of the report.</p> <p>Standard noise conditions have been placed on the recommendation in relation to the use of the premise.</p>
Delivery & service vehicles CI 5.4	✓	<p>Complies: All loading and unloading will take place to the rear (eastern side) of the subject site. An existing egress loading access door is provided.</p>

Issues

19. The issues identified in the above instruments/policies as non-complying or requiring further discussion in the abovementioned tables are discussed in detail below:-

Place of Public Entertainment Licence/ Noise

20. The initial development application sought a Place of Public Entertainment (POPE) Licence for a DJ to play live music in the restaurant in association with the proposed change of use to a restaurant and fit-out.
21. Concern was raised by residents in relation to the potential for noise impacts from the live music entertainment. The applicant has responded by formally withdrawing the Place of Public Entertainment component of the application.

Hours of Operation

22. As previously noted the proposed hours of operation are 7am to Midnight, seven days.
23. Concern has been raised by residents that the proposed hours of operation are inappropriate within a residential area.
24. It is acknowledged that the proposed restaurant is surrounded by the hotel immediately above and residential apartments to the north, west and south; however the conversion of the finger wharf provided for the opportunity for retail, café and restaurant uses to be located on the ground floor of the wharf building.

25. Development Consent for the finger wharf re-development (**D/DB/96/00591/W**) condition 156 details the approved hours of operation for the various restaurants located along the wharf. The previous tenants of the subject site, a bakery/cafe had approved operating hours of 6:00am to 10:00pm.
26. A summary of the approved hours of operation, for the various food premises located along the western side of Cowper Wharf, as detailed in Development Consent D/DB/96/00591/W are provided below: All of those premises have 7 day trading:
 - (a) Wharf Bistro (areas 1 & 2) – 7:00am to 10:00pm
 - (b) Bakery/Cafe (area 3) (subject site) – 6:00am to 10:00pm
 - (c) Restaurant (area 4) – 6:00am to 10:00pm
 - (d) Restaurant (area 6) 10:00am to Midnight
 - (e) Restaurant (area 7) 10:00am to Midnight
 - (f) Restaurant (area 8) 7:00am to Midnight
 - (g) Restaurant (area 9a) 7:00am to Midnight
 - (h) Restaurant (area 9b) 7:00am to Midnight
27. In relation to the above trading hours the proposed trading hours of 7am to 12 midnight, seven days are consistent with surrounding restaurants. However, the hours of 10pm to 12 midnight are recommended for a trial period of 12 months. The applicant may lodge a separate application to Council for the continuation of these trading hours upon completion of the 12 months; otherwise revert back to the perpetual approved trading hours of 7am to 10pm, seven days.
28. A 12 month trial period will enable Council to assess the performance of the operator in relation to compliance with the development consent conditions and any substantiated complaints received.

Seating Capacity/ City of Sydney Outdoor Café Policy 2001

29. The restaurant proposes to have seating capacity for 162 patrons in total. The seating for the restaurant is to be split over three areas. The mezzanine level private dining room will hold a maximum of twelve (12) patrons, with seventy six (76) inside on the ground floor and seventy (74) seats located outside on the promenade.
30. The partial extension of the existing mezzanine level will increase the total floor area of the tenancy by 15sqm; this area will accommodate a private dining area seating twelve (12) patrons. The increase in floor area will not impact on the bulk and scale of the existing wharf building. Considering that the hotel is located above the subject site on the first, second and third floors of the wharf building, the intended use of the mezzanine level as a private internal dining room is considered to be appropriate and will not impact on the amenity of surrounding the residents.

31. The City of Sydney Outdoor Café Policy 2001 applies to this development proposal. The proposed outdoor furniture is to be located along the promenade of Woolloomooloo Wharf. The seating area is set back more than 2 metres from the water's edge and a 2 metre setback is maintained adjacent to the building line, for pedestrian circulation. The proposed furniture is to be located within a privately leased area (100sqm) that has been designated for the purpose of outdoor seating.
32. A condition of consent will state that a maximum of seventy four (74) seats are to be located are in the outdoor dining area.
33. A condition of consent will require that all outdoor furniture, umbrellas, lighting, heating, etc shall be subject of Council approval prior to commencement of the use. The furniture must comply with the requirements of the Outdoor Café Policy.

Section 79C(1)(b) Other Impacts of the Development

34. The proposed development will not result in any significant additional impacts other than those already identified and discussed above.

BCA Matters

35. The BCA Classification of the building is Class 6.
36. The development is capable of satisfying the requirements of the BCA without significant modification.

Section 79C(1)(c) Suitability of the site for the development

37. The site is suitable for the proposed development. Site suitability has already been discussed in the table and issues section above

Section 79C(1)(e) Public Interest

38. The proposed development is generally consistent with the relevant controls. In this regard it is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being imposed on any consent.

POLICY IMPLICATIONS

39. Not applicable to this report.

FINANCIAL IMPLICATIONS/SECTION 61 CONTRIBUTIONS

40. The cost of the development is in excess of \$200,000 and is therefore subject to a development levy pursuant to the Central Sydney (Section 61) Contributions Plan 2003. An appropriate condition has been included in the recommendation of this report.

PUBLIC CONSULTATION

Section 79C(1)(d)

EXTERNAL REFERRALS

41. Adjoining and nearby owners and occupiers of buildings were notified of the proposal and invited to comment. In addition, notices were placed on the site and the proposal was advertised in the daily press in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications Development Control Plan 2005.

42. Twenty one (21) submissions and a petition signed by fifteen (15) people were received. The grounds for objection are summarised as follows:-

- (a) ***Place of Public Entertainment – Proposed DJ will create too much noise for surrounding residents***

Comment: The applicants have addressed this concern by withdrawing the Place of Public Entertainment component of the application.

- (b) ***The hours of operation are too long i.e. 7am to 12 midnight, seven days and inconsistent with surrounding restaurants.***

Comment: This has been addressed in the issues section of the report.

- (c) ***Potential for people loitering to 12:30 – 1am***

Comment: A condition of consent will stipulate that the restaurant be closed and the outdoor eating area be cleared away within the approved operating hours each night.

- (d) ***Restaurant capacity and outdoor dining area.***

Comment: Concern was raised in relation to the proposed patron capacity of the restaurant. The proposal provides for a maximum seating capacity of 162 patrons, split over two levels. The proposed capacity is considered to be in context with capacity and outdoor seating areas of surrounding restaurants.

The proposed outdoor dining area occupies 100sqm and proposes 74 seats with 25 tables. This compares with “Otto” restaurant, which occupies a total area of 70sqm, with approved outdoor seating for 54 people and 17 tables. “Nove” restaurant located adjacent to “Otto” has an approved outdoor dining area occupying 60.75sqm, with 42 seats and 12 tables.

In comparison to other restaurants the proposed outdoor dining area is considered to be acceptable and appropriate.

Integrated Development

43. The proposal is Integrated Development.

44. The Terms of Approval of the Heritage Council has been received within the statutory time. The conditions from the Authority have been included in the Recommendation.

INTERNAL REFERRALS

45. The application was referred to Council's Heritage Architect, Building Services Unit, and Health Unit. No objection to the proposed development was raised, subject to the imposition of appropriate conditions.
46. Appropriate conditions have been included in the recommendation of this report to reflect these requirements.

RELEVANT LEGISLATION

47. The Environmental Planning and Assessment Act 1979.
48. Heritage Act 1977.

CONCLUSION

49. The assessment has revealed that the proposed development for the change of use to a restaurant and associated fit-out, with proposed operating hours 7am to 12 midnight, seven days, and the hours from 10pm to 12 midnight subject to a 12 month trial period, should be approved subject to conditions of consent.
50. It is recommended that the period after which the development consent will lapse be two years.

JASON PERICA

Director City Planning

(Kate Fleming, Planner)