

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

DETERMINATION OF DEVELOPMENT APPLICATION NO. 331-7-2003

(FILE NO. S03/02063)

**FITOUT AND USE OF RETAIL UNITS 5 AND 6, JONES BAY WHARF, PYRMONT
AS A THAI RESTAURANT**

I, Michael Brown, A/Team Leader, Urban Assessments, as delegate of the Minister for Infrastructure and Planning, under Instrument of Delegation dated 4 August 2003, pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 14 of Sydney Regional Environmental Plan No.26 – City West, determine the development application referred to in the attached Schedule 1, by granting consent to the application subject to the conditions of consent in the attached Schedule 2.

The reasons for the imposition of conditions are:

- (1) To maintain the residential amenity of the local area;
- (2) To maintain the heritage significance of the wharf apron.



**Michael Brown
A/Team Leader
Urban Assessments**

Sydney, *27 October* 2003

SCHEDULE 1**PART A—TABLE**

Application made by:	3R Design Suite 6, Level 6 46-58 Holt Street Surry Hills NSW 2010
Application made to:	Minister for Infrastructure and Planning
Development Application:	No.331-7-2003
On land comprising:	Lot 12 in DP 883135, Lot 34 in DP 835994, Lot 113 in DP 872490 and Lots 2, 3, 4, 5, 6, 7, 8 and 9 in DP 1002200 Retail Units 5 and 6, Shore Building West, Jones Bay Wharf, Pirrama Road, Pyrmont, NSW, 2009
For the carrying out of:	Development described in Condition A1, Part A, Schedule 2
Estimated Cost of Works	\$75 000.00
Type of development:	Local Development
S.119 Public inquiry held:	No
BCA building class:	6
Approval Body / Bodies:	Not Integrated
Determination made on:	24 October 2003
Determination:	The development consent is granted subject to the conditions in the attached Schedule 2.
Date of commencement of consent:	This development consent commences on the date identified in the accompanying letter.
Date consent is liable to lapse	This consent will lapse 5 years from the date of commencement of consent, unless: <ul style="list-style-type: none"> ▪ a shorter period of time is specified by the Regulations or a condition in Schedule 2, or ▪ the development has substantially commenced.

PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 331-7-2003***Responsibility for other approvals / agreements***

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

Appeals

The applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid:

- (1) for a development application, within 12 months after the date on which the applicant received this notice, or

- (2) for a modification to the consent, within 3 months after the date on which the application received this notice.

Appeals—Third Party

For designated development, a third party has the right to appeal to the Land and Environment Court on the merits of this decision under Section 98 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only available within 28 days of the date of commencement of this consent.

A third party right to appeal to this development consent is available under Section 123, subject to Section 101, of the *Environmental Planning and Assessment Act, 1979*.

Legal notices

Any advice or notice to the consent authority shall be served on the Director-General.

PART C—DEFINITIONS

In this consent,

Act means the *Environmental Planning and Assessment Act, 1979* (as amended).

Applicant means 3R Design or any party acting upon this consent.

Approval Body has the same meaning as within Division 5 of Part 4 of the Act,

BCA means the Building Code of Australia.

Certifying Authority has the same meaning as Part 4A of the Act.

Council means Council of the City of Sydney

DA No. 331-7-2003 means the development application and supporting documentation submitted by the applicant on 15 July 2003.

Department means the Department of Infrastructure, Planning and Natural Resources or its successors.

Director means the Director of the Urban Assessments (or its successors) within the Department.

Director-General means the Director-General of the Department.

Minister means the Minister for Infrastructure and Planning.

PCA means a Principal Certifying Authority and has the same meaning as Part 4A of the Act.

Regulations means the *Environmental Planning and Assessment Regulations, 2000* (as amended).

Subject Site has the same meaning as the land identified in Part A of this schedule.

SCHEDULE 2**CONDITIONS OF CONSENT****DEVELOPMENT APPLICATION NO. 331-7-2003****PART A—ADMINISTRATIVE CONDITIONS****A1 Development Description**

Development consent is granted only to carrying out the development described in detail below:

- (1) Fitout and use of retail units 5 and 6, Shore Building West, Jones Bay Wharf as a licensed Thai Restaurant and associated outdoor seating on the wharf apron.

A2 Development in Accordance with Plans

The development shall be generally in accordance with development application number 331-7-2003 submitted by the applicant on 15 July 2003, and in accordance with the supporting documentation submitted with that application, including, but not limited to, the following:

Statement of Environmental Effects prepared by 3R Design, undated.			
Architectural (or Design) Drawings prepared by 3R Design			
Drawing No.	Revision	Name of Plan	Date
0.01	B	Site Plan	21.10.03
0.02	A	Facilities Plan	16.06.03
1.01	A	Existing Layout	16.06.03
1.02	B	Proposed Layout	21.10.03
1.02A	-	Proposed Layout	16.06.03
1.03	A	Set Out Plan	16.06.03
1.04	A	Finishes Plan	16.06.03
1.05	A	Reflected Ceiling Plan	16.06.03
1.06	A	Equipment Plan	16.06.03
2.01	A	Section	16.06.03
2.02	A	Section	16.06.03
2.04	A	Kitchen Section	16.06.03

A3 Prescribed Conditions

The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.

PART B—PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

Design Details and Changes

B1 Design Modifications

In order to ensure the proper interpretation of the architecture of the building and to ensure the wharf apron remains uncluttered, no awnings or outdoor umbrellas are to be installed or utilised without further approval.

B2 Outdoor furniture

All outdoor furniture must be of high quality and must comply with the Jones Bay Wharf Outdoor Furniture Guidelines, March 2003.

B3 Outdoor Lighting

All outdoor lighting shall comply with, where relevant, AS/NZ1158.3: 1999 *Pedestrian Area (Category P) Lighting* and AS4282: 1997 *Control of the Obtrusive Effects of Outdoor Lighting*. Details demonstrating compliance with these requirements are to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

B4 Disabled Access

Access and facilities for people with disabilities shall be provided in accordance with Part D3 of the BCA's Access Policy. Prior to the issue of a Construction Certificate, a certificate certifying compliance with this condition from an appropriately qualified person shall be provided to the Certifying Authority.

Health

B5 Mechanical Ventilation

All mechanical ventilation systems shall be installed in accordance with Part F4.5 of the Building Code of Australia and shall comply with Australian Standards AS1668.2 and AS3666 *Microbial Control of Air Handling and Water Systems of Building*, to ensure adequate levels of health and amenity to the occupants of the building and to ensure environment protection. Details shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

B6 Design of Food Premises

The fitout of the food premises shall be carried out in accordance with *The National Code for the Construction and Fitout of Food Premises*. Details of compliance with the relevant provisions of the Code shall be prepared by a suitably qualified person and submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Waste Management

B7 Storage and Handling of Waste

The design and management of facilities for the storage and handling of waste must comply with the requirements of Council's Waste Management Policy. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

PART C—PRIOR TO COMMENCEMENT OF WORKS***C1 Structural Details***

Prior to the commencement of construction, the Applicant shall submit to the satisfaction of the PCA structural drawings in relation to the new shopfront, prepared and signed by a suitably qualified practising Structural Engineer that comply with:

- (1) the relevant clauses of the Building Code of Australia,
- (2) the relevant development consent,
- (3) drawings and specifications comprising the Construction Certificate, and
- (4) the relevant Australian Standards listed in the BCA (Specification A1.3).

Compliance***C2 Compliance Report***

Prior to the commencement of works, the Applicant, or any party acting upon this consent, shall submit to the Department a report addressing compliance with all relevant conditions of this consent.

PART D—DURING CONSTRUCTION

D1 *Approved Plans to be On-site*

A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the site at all times and shall be readily available for perusal by any officer of the Department, Council or the PCA.

D2 *External Lighting*

External Lighting shall comply with AS4282: 1997 *Control of the Obtrusive Effects of Outdoor Lighting*. Upon installation of lighting, but before it is finally commissioned, the applicant shall submit to the consent authority evidence from an independent qualified practitioner demonstrating compliance in accordance with this condition.

D3 *Hours of Work*

The hours of construction, including the delivery of materials to and from the site, shall be restricted as follows:

- (1) between 7:00 am and 5.30 pm, Mondays to Fridays inclusive;
- (2) between 8:00 am and 3:00 pm, Saturdays;
- (3) no work on Sundays and public holidays.

Works may be undertaken outside these hours where:

- (1) the delivery of materials is required outside these hours by the Police or other authorities;
- (2) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm;
- (3) the work is approved through the Construction Noise and Vibration Management Plan; and
- (4) residents likely to be affected by the works are notified of the timing and duration of these works at least 48 hours prior to the commencement of the works.

Ecologically Sustainable Development

D4 *Water Conservation*

Water saving devices shall be fitted to all taps within the development to reduce water consumption and promote energy efficiency. All toilets are to be fitted with dual flush cisterns.

Compliance

D5 *Compliance Report*

The Applicant, or any party acting upon this consent, shall, for the duration of construction period, submit to the Department a three monthly report addressing compliance with all relevant conditions of this consent.

PART F—PRIOR TO OCCUPATION OR COMMENCEMENT OF USE***F1 Mechanical Ventilation***

Following completion, installation and testing of all the mechanical ventilation systems, the applicant shall provide evidence to the satisfaction of the PCA, prior to the issue of the Occupation Certificate, that the installation and performance of the mechanical systems complies with:

- (1) The Building Code of Australia;
- (2) Australian Standard AS1668 and other relevant codes;
- (3) The development consent and any relevant modifications; and,
- (4) Any dispensation granted by the New South Wales Fire Brigade.

F2 Structural Inspection Certificate

A Structural Inspection Certificate or a Compliance Certificate must be submitted to the satisfaction of the PCA in relation to the new shopfront, prior to the issue of an Occupation Certificate and/or use of the premises. A copy of the Certificate with an electronic set of final drawings (contact consent authority for specific electronic format) shall be submitted to the consent authority and the Council after:

- (1) The site has been periodically inspected and the Certifier is satisfied that the Structural Works is deemed to comply with the final Design Drawings; and,
 - (2) The drawings listed on the Inspection Certificate have been checked with those listed on the final Design Certificate/s.
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PART G—POST OCCUPATION

G1 *Hours of Operation*

The hours of operation shall be restricted to between 9.00am and 10.00pm Mondays to Sundays. All patrons are to have left the premises by 10.30pm on each night and all outdoor furniture is to be stacked within the premises and entrance doors secured by 10.30pm on each night.

G2 *Noise Control – Licensed Premises*

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5 dB between 7:00am and 12 midnight and 12 midnight to 7:00am at the boundary of any affected residence.

G3 *Public Way to be Unobstructed*

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances.

Compliance

G4 *Compliance Report*

The Applicant, or any party acting upon this consent, shall submit to the Department a three monthly report addressing compliance with all relevant conditions of this consent.

ADVISORY NOTES

AN1 *Sydney Water*

An application shall be made to Sydney Water for a Certificate under Part 6, Division 9, Section 73 of the *Water Board (Corporatisation) Act, 1994* (Compliance Certificate). Evidence that a Compliance Certificate has been applied for (i.e. Notice of Requirements) shall be produced to the satisfaction of the PCA prior to the issue of a Construction Certificate. The Section 73 Certificate shall be submitted to the PCA prior to the occupation of the development or release of the linen plan.

AN2 *Compliance Certificate, Water Supply Authority Act, 2000*

Prior to issuing a subdivision certificate, a Compliance Certificate shall be provided to the consent authority showing that the development has met with the detailed requirements of the relevant water supply authority for the region that the subject site is located within.

The developer shall obtain the Compliance Certificate from the relevant local water supply authority and produce this to the satisfaction of:

- (1) the certifying authority before release of the Construction Certificate,
- (2) the consent authority before the release of the subdivision certificate, and
- (3) the principal certifying authority prior to occupation.

AN3 *Requirements of Public Authorities for Connection to Services*

The applicant shall comply with the requirements of any public authorities (e.g. Energy Australia, Sydney Water, Telstra Australia, AGL, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the PCA prior to the issue of the Construction Certificate.

AN4 *Compliance with Building Code of Australia*

The applicant is advised to consult with the PCA about any modifications needed to comply with the BCA prior to submitting the application for a Construction Certificate.

AN5 *Structural Capability for Existing Structures*

The structural capabilities of an existing structure will need to meet the requirements of the BCA and may require engaging a structural engineer.

AN6 *Application for Hoardings and Scaffolding*

A separate application shall be made to Council for approval under Section 68 of the *Local Government Act, 1993*, to erect a hoarding or scaffolding in a public place. Such an application shall include:

- (1) Architectural, construction and structural details of the design in accordance with Council's Policy for Hoardings,
- (2) Structural certification prepared and signed by an suitably qualified practising structural engineer.

The applicant shall provide evidence of the issue of a Structural Works Inspection Certificate and structural certification shall be submitted to the satisfaction of the PCA prior to the commencement of works.

AN7 Construction Inspections

Compliance certificate/s shall be issued by the Principal Certifying Authority and submitted to Council in accordance with the mandatory inspection requirements of the *Building Legislation Amendment—Quality of Construction Act, 2002* for each stage of construction, such as the following:

- (1) Foundations,
- (2) Footings,
- (3) Damp proof courses and waterproofing installation,
- (4) Structural concrete, including placing of reinforcement and formwork prior to pouring,
- (5) Structural beam and column framing,
- (6) Timber wall and roof framing, and
- (7) Stormwater disposal.

Any Compliance Certificate issued for the above stages of construction shall certify that all relevant ancillary or dependent work has been undertaken in accordance with the Building Code of Australia and any other conditions of consent.

AN8 Noise Generation

Any noise generated during the construction of the development shall not exceed the limits specified in the *Protection of the Environment Operations Act, 1997* or exceed approved noise limits for the site.

AN9 Application under Part 4A of the Act

An application under Part 4A of the Act shall be submitted to the consent authority along with a plan of subdivision prepared by a registered surveyor, for certification prior to the issue of the Subdivision Certificate.

AN10 Application under Section 37 of Strata Titles (Freehold Development) Act, 1973

Section 37 of the *Strata Titles (Freehold Development) Act, 1973* requires an application to be submitted to the consent authority for approval prior to the issue of the certified strata plan of subdivision.

AN11 Compliance with Conditions

The applicant will be required to submit, documentary evidence that the property has been developed in accordance with plans approved by Development Application No. 331-7-2003 and of compliance (or a Compliance Certificate) with the conditions of that consent, prior to the issuing of Strata Plan of Subdivision.

AN12 Street Numbering

Street numbers and the building name(s), if any, will need to be clearly displayed at either end of the ground level frontages in accordance with Council's Policy, prior to the occupation of the building(s) or commencement of the use.

If street numbers or a change to street numbers are required, a separate application shall be made to Council.

AN13 Place of Public Entertainment

The applicant will be required to obtain approval for the use of the premises as a "Place of Public Entertainment" under the provisions of the *Local Government Act, 1993*. The applicant shall provide evidence of receipt of the approval to the satisfaction of the PCA prior to the occupation of the building(s) or commencement of the use.

AN14 Compliance with National Code for Construction and fitout of food premises

An applicant shall obtain a certificate from a suitably qualified tradesperson, certifying that the kitchen, food storage and food preparation areas have been fitted in accordance with the *National Code for the Construction and Fitout of Food Premises*. The applicant shall provide evidence of receipt of the certificate to the satisfaction of the PCA prior to the occupation of the building(s) or commencement of the use.
