

Moukazo Design
Suite 406 56 Bowman Street
PYRMONT NSW 2009

D54/08
MS (PDS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
ROADS ACT 1993, AND LOCAL GOVERNMENT ACT 1993 AS APPLICABLE**

Notice to Applicant of Determination of a Development Application

Pursuant to Section 81 of the Act, notice is given that Development Application No. **54/08** proposing fit-out of food shop on land described as **37/155 Miller Street, North Sydney** was determined under delegated authority by the granting of consent subject to the conditions below. Where indicated, approval is also granted for works on public roads under the provisions of Section 138 of the Roads Act 1993 and Section 68 of the Local Government Act 1993.

A. *Conditions that Identify Approved Plans*

Development in Accordance with Plans

- A1. The development being carried out in accordance with Drawings numbered TU/02 to TU/11 (inclusive), dated 10 December 2007, drawn by Mouzako Design P/L, and received by Council on 22 February 2008, and endorsed with Council's approval stamp, except where amended by the following conditions.

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

Plans on Site

- A2. A copy of all stamped approved plans, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) shall be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

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

No Demolition of Extra Fabric

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is shown to be retained.

(Reason: To ensure compliance with the approved development)

C. Conditions that Require Subsidiary Matters to be Completed Prior to Issue of a Construction Certificate

Cleanliness and Maintenance of Food Preparation Areas

- C1. 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 (as amended);
- (b) the Food Regulation (as in force);
- (c) AS4674 (Design, Construction and Fit-Out of Food Premises);
- (d) Council's Food Premises Code;
- (e) Sydney Water Corporation - Trade Waste Section;
- (f) the Clean Air (Plant and Equipment) Regulation;
- (g) AS 1668 Part 1;
- (h) AS 1668 Part 2;
- (i) the Protection of the Environment Operations Act; and
- (j) the Building Code of Australia.

The relevant matters to be taken into account under this approval relate to:-

- (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.

Details from an appropriately qualified person showing that these design requirements have been met shall be submitted to, and approved by, the Certifying Authority prior to the issue of a Construction Certificate.

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

D. Conditions That Must Be Addressed Prior To Any Commencement

Excavation/Demolition

D1. No building work, demolition or excavation shall be carried out until a Construction Certificate has been issued.

(Reason: To ensure compliance with statutory provisions)

E. Conditions that Must be Complied With During Demolition and Building Work

Approved Materials

E1. The colour, texture and substance of all external materials shall be generally as detailed in the application.

(Reason: To ensure compliance with the terms of this development consent)

Removal of Extra Fabric

E2. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification given to Council. No work is to resume until the written approval of Council is obtained. Failure to comply with the provisions of this condition will result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

Noise

E3. Noise emissions and vibration must be minimised where possible and work is to be carried out in accordance with Environment Protection Authority guidelines for noise emissions from construction/demolition works and must also comply with the provisions of the Protection of the Environment Operations Act 1997.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Dust Emission and Air Quality

E4. Materials must not be burnt on the site.

Vehicles entering and leaving the site with soil or fill material must be covered.

Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction. Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Vibration from Works

- E5. Vibration from works is to be undertaken in accordance with industry best practice, to ensure excessive levels of vibration do not occur to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Construction Hours

- E6. Building construction shall be restricted to within the hours of 7.00 am to 5.00 pm Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works shall be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only.

Notes:

For the purposes of this condition:

“Building construction” means any physical activity on the site involved in the erection of a structure, cladding, external finish, formwork, fixture, fitting of service installation and the unloading of plant, machinery, materials or the like.

“Demolition works” means any physical activity to tear down or break up a structure (or part thereof) or surface, or the like, and includes the loading of demolition waste and the unloading of plant or machinery.

“Excavation work” means the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders, or the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site and includes the unloading of plant or machinery associated with excavation work.

The builder and excavator shall display, on-site, their twenty-four (24) hour contact telephone number, which is to be clearly visible and legible from any public place adjoining the site.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Health and Safety

- E7. The work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that; warn the public to keep out of the site, and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Occupation Certificate Required

E8. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of those parts of the building.

(Reason: To ensure compliance with the provisions of the Environmental Planning and Assessment Act)

Prohibition on Use of Pavements

E9. Building materials shall not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand) and a suitable sign to this effect shall be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

Plant & Equipment Kept Within Site

E10. All plant and equipment used in the erection of the building, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, shall be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like shall be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

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

Building Code of Australia

F1. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

(Reason: Prescribed - Statutory)

Site Sign

- F2. (1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- (a) stating that unauthorised entry to the work site is prohibited;
 - (b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - (c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- (2) Any such sign must be maintained while building work or demolition work is being carried out, but must be removed when the work has been completed.
- (3) This condition does not apply to building works being carried out inside an existing building.

(Reason: Statutory requirement)

Toilets

- F3. (1) Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
- (2) Each toilet provided:
- (a) must be a standard flushing toilet, and
 - (b) must be connected:
 - (i) to a public sewer; or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
 - (iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.
- (3) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- (4) In this clause:

accredited sewage management facility means a sewage management

facility to which Division 4A of Part 3 of the Local Government (Approvals) Regulation 1993 applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the Regulation.

approved by the Council means the subject of an approval in force under Division 1 of Part 3 of the Local Government (Approvals) Regulation 1993.

public sewer has the same meaning as it has in the Local Government (Approvals) Regulation 1993.

sewage management facility has the same meaning as it has in the Local Government (Approvals) Regulation 1993.

(Reason: To ensure adequate facilities are provided for workers on the site)

G. Conditions which Must be Complied With Prior to Issue of Occupation Certificate

Mechanical Exhaust Ventilation

G1. The mechanical exhaust system shall be installed in accordance with AS1668, and be operated in such a way so as to minimise/prevent the creation of odours, fumes and excessive noise which may adversely affect the amenity, or interfere unreasonably with the comfort or repose of occupants of the building and adjoining premises.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

Damage to Adjoining Properties

G2. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

On completion of the works and prior to the issue of a final Occupation Certificate, a certificate is to be prepared to the effect that that no damage has resulted to adjoining premises, and is to be provided to Council and the Principal Certifying Authority.

Alternatively, if damage is identified which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to the issue of a final Occupation Certificate.

(Reason: To ensure adjoining owner's property rights are protected)

Construction Consistent with Development Consent

G3. Prior to issuing a final Occupation Certificate for the proposed building work, the Principal Certifying Authority shall certify that the building, as constructed, is

consistent with the details shown on the plans approved under this development consent, referred to in condition A1.

(Reason: This requirement is considered consistent with the role of the PCA as currently outlined within the provisions of the Environmental Planning and Assessment Act and Regulations. Council considers that confirming compliance with the approved plans and conditions is an essential and fundamental role of a PCA)

I. Ongoing Conditions that Must be Complied with at All Times

Hours of Operation – Refreshment Rooms

I1. The refreshment room may be open for business only between the following hours:-

- 9:00am – 7:00pm, seven days

Upon expiry of the permitted hours, all restaurant service (and entertainment) shall immediately cease, no person shall be permitted entry and all customers on the premises shall be required to leave within the following half hour.

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

Trade Waste

I2. Trade waste water shall 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)

Impact on Amenity of Surrounding Area – Non-Residential Areas

I3. The implementation and intensity of this development shall not adversely affect the amenity of the neighbourhood by reason of excessive levels of illumination (internal or external) or solar glare arising from the building materials utilised in any construction processes or fitout.

(Reason: To ensure that the amenity of the surrounding locality is not adversely affected by the nature of the approved activity)

Existing Dock

I4. The existing loading dock shall be maintained and utilised for use in connection with the proposed development.

(Reason: To ensure that deliveries occur within the site and do not adversely affect traffic or pedestrian amenity)

Loading Within Site

I5. All loading and unloading operations shall be carried out wholly within the confines of the site, at all times.

(Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian amenity)

Daily Cleaning

I6. The proprietor 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 area or immediately adjacent is picked up and placed in the proprietor'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)

Waste Collection

I7. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

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

Delivery Hours

I8. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

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

Shop Premises Registration

I9. The shop premises must be registered with Council and NSW Food Authority prior to commencement of business. This will require the following:-

(a) A registration application has been submitted to Council's Health and Environmental Protection for the Food Shop, and

(b) Notification to the NSW Food Authority under Standard 3.2.2 Division 2 Section 4 Notification. This requirement is to be met by notification through the following website: www.foodnotify.nsw.gov.au.

(Reason: To ensure compliance with environmental health legislation)

DATE OF DETERMINATION:

DATE FROM WHICH CONSENT OPERATES:

DATE CONSENT LAPSES:

Council further resolved that pursuant to Section 95(2) of the Environmental Planning and Assessment Act 1979, it vary the provisions of Section 95(1) and advise the applicant that the consent will lapse 3 years from the date from which the consent operates, in accordance with Section 83.

ADVISINGS

Notes

(a) Council is always prepared to discuss its decisions, and in this regard please do not hesitate to contact **Merryn Spray**. However, if you wish to pursue your rights of appeal in the Land and Environment Court pursuant to Section 97 of the Act, 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. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.

(b) 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 modification under Section 96 of the Environmental Planning & Assessment Act 1979. Any such changes warranting a State Environmental Planning Policy No. 1 objection (where no objection was previously required) may not be able to be determined under Section 96 of the Act but may need to be subject of a separate Development Application.

Please bear this in mind before preparing documentation in support of a Construction Certificate application. 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 96 of the Environmental Planning & Assessment Act.

(c) Section 82A of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within twelve (12) months *after receipt of this Notice of Determination*, together with payment of the appropriate fees. It is recommended that the applicant discuss any request for a review of the determination with Council Officers before lodging such a request.

(d) 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) Relevant approvals must be obtained under the provisions of Section 138 of

the Roads Act, 1993 for any works on public roads which are not the subject of this consent.

- (ii) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
 - (iii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act.
 - (iv) Council is to be notified at least two (2) days before the intention to commence building works, in accordance with Section 81A(2)(c) of the Act.
- (e) The applicant may apply to the Council or an Accredited Certifier for the issuing of a Construction Certificate and to be the Principal Certifying Authority to monitor compliance with the approval and issue necessary documentary evidence or certificate/s.

(f) **Sydney Water Requirements**

You are advised that any building works may also require prior approval from Sydney Water. Further details can be obtained from the Sydney Water website at www.sydneywater.com.au.

(g) **Telecommunications**

Prior to the installation of any telephone cabling contact is to be made with Construction Research Australia Pty Ltd on telephone 1800 180 118 or Sydney 9428 1254.

(h) **Dial before you dig**

Before you dig call “Dial before you dig” on 1100 (listen to the prompts) or facsimile 1300 652 077 (with your street no./name, side of street and the distance to the nearest cross street) for underground utility services information for any excavation areas.

Council’s officers can provide these services, and further information, including a copy of the terms of agreement and fee schedule, can be obtained by telephoning Council’s Customer Service Centre on **9936 8471**.

Please note that all building work must be carried out fully in accordance with the development consent and conditions of approval and it is an offence to carry out unauthorised building work or building work that is not in accordance with Council’s approval.

An offence under the Environmental Planning and Assessment Act 1979 and Regulations is subject to a penalty up to \$110,000 and \$11,000 respectively.

Council may also serve a notice and an order to require the demolition/removal of unauthorised building work or to require the building to be erected fully in accordance with the development consent.

On the spot penalties will be imposed for works which are carried out in breach of this

consent, or without consent.

An amended development application is required to be submitted to and approved by Council, and a Construction Certificate is to be obtained from the Council or an Accredited Certifier, prior to commencement of any variations from the approved plans and conditions of approval.

DATE

Signature on behalf of consent authority
ANTONIA STUART
TEAM LEADER (ASSESSMENTS)