



Mr Ben Dransfield
Brenham Pty Ltd
PO Box 106
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D404/16
TH2 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 404/16/5 - APPROVAL**

Development Consent Number:	404/16
Land to which this applies:	284-286 West Street, Cammeray Lot No.: 8, Sec A, DP: 1922
Applicant:	Brenham Pty Ltd
Date of Determination:	25 May 2023
Proposal:	Modification of Consent No 404/16 to permit care of children between the ages of 0 and 2 years

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. **404/16** and registered in Council's records as Application No. **404/16/5** relating to the land described as **284-286 West Street, Cammeray**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **3 May 2017**, has been determined in the following manner:

A. Modify Conditions 12, 13, 18 and 19 as follows:

Number of Children

12. The child care centre is restricted to a maximum of 16 children between the ages of 0 and 5 years old.

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

Plan of Management

13. The Plan of Management as prepared by Rosemary Hanna dated 10/01/2022 and received by Council on 01/02/2023 must be complied with at all times, except as modified below and by other conditions of this consent:

- (a) Music shall be played indoors only with doors and windows closed to a volume that limits the noise emission from any such music to LAeq(15min) 5 dB(A) above background levels when measured at any point on the boundary of the childcare centre.

- (b) Music shall not be played in outdoor areas at any time.
- (c) Play equipment used in the outdoor play areas shall not include any noise producing devices (such as horns, whistles, bells, and the like).

Any changes to the Plan of Management must be approved by Council.

(Reason: To ensure the ongoing operation of the child care centre is in accordance with the terms of this consent)

Noise and Vibration Impact

18. The on-going use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent including recommendations in the acoustic report prepared by RWDI Australia Pty Ltd, dated 13 January 2023 inclusive of the requirement for Perspex or glass backing to the slatted timber of the outdoor play area.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Noise and Vibration Impact (Compliance)

19. Within 60 days of commencement of operation of the premises further acoustic testing must be undertaken and a report from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, prepared to demonstrate that the use of the premises complies with the conditions of this consent and/or the Acoustic Report prepared by *Acouras Consultancy, dated 30 March 2017* and acoustic report prepared by RWDI Australia Pty Ltd, dated 13 January 2023 inclusive of the requirement for Perspex or glass backing to the slatted timber of the outdoor play area.

The testing must be carried out when the premises is operating at full capacity. A copy of the report must be submitted to Council within 14 days of its completion.

If the use is found not to comply with the noise conditions, the use must cease immediately until appropriate measures to remedy the breach are implemented to the satisfaction of Council.

(Reason: To ensure compliance with acceptable noise levels to maintain the amenity of adjoining land uses)

Reasons for Approval:

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP & A Act 1979. Furthermore, the modifications are unlikely to result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granting of development consent to the original development application and are considered to be acceptable.

The modification application seeking to amend an operational condition to permit the care of children between ages of 0 to 2

years old is supportable after consideration of the applicable requirements in the Education and Care Services Regulations and Chapter 3 'Educational Establishments and childcare facilities' of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

The existing childcare centre has an adequate internal and external physical environment and sufficient facilities to accommodate children between the ages 0 – 5 years old and the maximum number of children to attend the childcare centre will remain at 16 children therefore not having an increased demand on provision of additional indoor/outdoor space or facilities including car parking provision.

The application provides sufficient evidence confirming the attendance of children between 0-2 years old will result in a reduction in noise emitted from the child care centre. The acoustic report that accompanies the modification application recommends additional noise mitigation measures to the outdoor space therefore operational conditions of consent have been modified to ensure the additional acoustic mitigation measures are implemented.

An updated Plan of Management accompanies the modification application detailing the ongoing operation of the childcare centre for children between the ages of 0 and 5 years old therefore the operational condition of consent (I3 Plan of Management) is amended to reflect the updated Plan of Management.

Having regard to the provisions of section 4.55 and 4.15(1) of the Environmental Planning and Assessment Act 1979, the proposed development as modified is substantially the same development as originally consented to. The application is, therefore, recommended for **approval**.

How community views were taken into account:

The modification application was notified to adjoining properties and the Bridgeview Precinct for 14 days. No submissions were received following notification of the modification application. Nevertheless, neighbouring amenity and impact on the neighbourhood has been considered and the proposed modification is considered to be in the public interest.

The conditions attached to the original consent for Development Application No. **404/16** by endorsed date of **3 May 2017** still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Thomas Holman**. 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 and 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 and Assessment Act*.

Endorsed for and on behalf of North Sydney Council

25 May 2023

DATE



Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)