



Mr Joseph Toth  
Envision Group  
6A/27 Justin Street  
SMITHFIELD NSW 2164

D29/22  
TH2 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 29/22/2 - APPROVAL**

**Development Consent Number:** 29/22

**Land to which this applies:** Shop 1, 118-124 Willoughby Road, Crows Nest  
Lot No.: 2, DP: 559367

**Applicant:** Joseph Toth

**Proposal:** To modify a consent for a change of use of a retail shop to a 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. **29/22** and registered in Council's records as Application No. **29/22/2** relating to the land described as **Shop 1, 118-124 Willoughby Road, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **15 August 2022**, has been determined in the following manner:

**A. Add Condition A3 and I2 as follows:**

**Development in Accordance with Plans (s4.55 Amendments)**

A3. The development being carried out in accordance with plans identified in Condition A1 of the consent and endorsed with Council's approval stamp, except as modified by the modifications shown on:

| Plan No. | Rev | Title                             | Drawn by               | Received   |
|----------|-----|-----------------------------------|------------------------|------------|
| DA 01    | E   | Site Context Plan                 | Envision Group Pty Ltd | 10/07/2023 |
| DA 02    | E   | Floor Plan, Elevation and Section | Envision Group Pty Ltd | 10/07/2023 |

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

### Operating Use

12. The tenancy at Shop 1, 118-124 Willoughby Road approved under Development Application No. 29/22 and subsequent modification No. 29/22/2 is approved for the preparation and retail sale of juices, smoothies and shakes. The sale of ice creams and pre-packaged food that is manufactured off site is permitted.

No cooking is permitted on site or preparation of food other than the food/products that is listed within this operational condition.

(Reason: To ensure the operations of the food and drink premises comply with the relevant requirements of environmental health and safety legislation)

**B. Modify Condition G1 as follows:**

### Cleanliness and Maintenance of Food Preparation Areas

- G1. 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 2003;
- b) the Food Regulation;
- c) the relevant Australian Standards; (apart from the flooring subject to compliance with Operational Condition I2 - Operating Use)
- d) Council's Food Premises Code; (apart from the flooring subject to compliance with Operational Condition I2 - Operating Use)
- e) Sydney Water Corporation - Trade Waste Section;
- f) the Protection of the Environment Operations Act and associated Regulations; and
- g) the Building Code of Australia.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Occupation Certificate.

The Occupation Certificate plans and documentation must incorporate details of the following:

- 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

The Certifying Authority must ensure that the building plans and specifications submitted, fully satisfy the requirements of this condition.

To comply with the requirements of AS 4674 - Design, Construction and Fitout of Food Premises the following must be provided at the shop: -

A double bowl sink or dishwasher/glasswasher and single bowl sink where all the food contact equipment will fit in the dishwasher/glasswasher.

A separate hand wash facility must also be provided and must only be used for the washing of hands, arms and face.

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

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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 do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the grant of development consent to the originally approved development and is considered to be acceptable.

**Reasons for Approval:**

The retention of the existing flooring is permitted subject to an operational condition of consent detailing the scope of food and drink preparation and retail sale permitted within the food and drink premises (12 Operating Use).

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**.

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**How community views were taken into account:**

The subject application was not notified to adjoining properties and the Holtermann Precinct because the nature of the modification application does not need notification pursuant to directions in paragraph 3.4.2 'Modifications to Development Consent by Council' of the North Sydney Council Community Engagement Protocol.

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The conditions attached to the original consent for Development Application No. **29/22** by endorsed date of **15 August 2022** 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**

**1 December 2023**

DATE

*Thomas Holman*

Signature on behalf of consent authority  
THOMAS HOLMAN  
**SENIOR ASSESSMENT OFFICER**