

Original signed by Robyn Pearson on 28/8/2020
Date determined: 21/8/2020
Date operates: 28/8/2020
Date lapses: 28/8/2025

Norman Fullard
C/- Fragar Planning & Development
PO Box 7228
LEURA NSW 2780

D97/20
AB7(CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
NOTICE OF DETERMINATION – Approval

Development Application Number: 97/20

Land to which this applies: Shop 3, 467-473 Miller Street, Cammeray
Lot No.: 3, SP: 95373

Applicant: Norman Fullard
C/- Fragar Planning & Development

Proposal: Fit-out and use of tenancy as a fitness and activity centre for children.

Determination of Development Application: Subject to the provisions of Section 4.17 of the Environmental Planning and Assessment Act 1979, approval has been granted subject to conditions in the notice of determination.

Date of Determination: 21 August 2020

The proposal has been assessed under the relevant planning instruments including NSLEP 2013 and NSDCP 2013 and generally found to be acceptable. The proposed use will not involve any construction or demolition of the existing building beyond internal fit-out works and is considered to be a minimal and sympathetic addition to the streetscape and the local Neighbourhood Centre.

Reason for approval: Subject to conditions to ensure the maintenance of acceptable acoustic privacy for adjoining commercial and residential properties, the proposed use of this ground floor retail space as a child-based fitness centre is not considered to be an excessive intensification of the use of the site, with the existing accessibility to the site maintained by its proximity to public transport along Miller Street and the Council-owned car park at the rear of the site at Miller Lane.

Appropriate conditions are recommended for imposition with the granting of consent to this change of use application to ensure that residential amenity is maintained

Consent to operate from: 28 August 2020

Consent will lapse on: 28 August 2025

Period of Consent Subject to Section 4.20 of the Act, this consent becomes effective and operates from the date listed above. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To activate this consent, works must physically commence onsite by 28 August 2025.

How community views were taken into account: The application was notified to adjoining properties for 14 days.

One (1) submission was received by Council, regarding acoustic privacy for adjoining tenancies. As demonstrated in the planning report, it is considered that the proposal has adequately addressed the issues raised in the submission and by Council, including limits on the use of the rear terrace and play/sports area and other conditions imposed to minimise noise and vibration impacts on adjoining properties

Review of determination and right of appeal: Within 6 months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

Plans endorsed by the consent authority – please refer to condition A1.

Endorsed for and on behalf of North Sydney Council

DATE

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

(i) Conditions

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of the Environmental Planning & Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning & Assessment Regulation 2000 (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to Section 4.17 of the Act.

(ii) Definitions

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act* 1987 as in force at the date of consent.

Applicant means the applicant for this consent.

Approved Plans means the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or ***AS/NZS*** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

NCC means the National Construction Code as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means North Sydney Council.

Court means the Land and Environment Court.

Local Native Plants means species of native plant endemic to North Sydney LGA.

Stormwater Drainage System means all works, facilities and documentation relating to:

- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner Builder has the same meaning as in the *Home Building Act* 1989.

Principal Certifier for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6 (1) or for the subdivision work under section 6.12 (1).

Principal Contractor for building work means the person responsible for the overall coordination and control of the carrying out of the building work.

Note: If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the *Home Building Act 1989*.

Professional Engineer has the same meaning as in the *NCC*.

Public Place has the same meaning as in the *Local Government Act 1993*.

Road has the same meaning as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

Site means the land being developed subject to this consent.

NSLEP 2013 means *North Sydney Local Environmental Plan 2013*

NSDCP 2013 means *North Sydney Development Control Plan 2013*

Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of any waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: **Interpretation of Conditions** – Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

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A. Conditions that Identify Approved Plans

Development in Accordance with Plans/documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Drawing No.	Title	Drawn By	Dated	Received
DA-006	Sections (1)	Council Approval Design	05/03/2020	14/05/2020
DA-007	Sections (2)	Council Approval Design	05/03/2020	14/05/2020
DA-008	Elevations	Council Approval Design	05/03/2020	14/05/2020
DA-009	Proposed Retail Floor Plan	Council Approval Design	05/03/2020	14/05/2020

(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 plans, specifications and documents submitted and approved with the Construction Certificate) must 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.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(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.

(Reason: To ensure compliance with the approved development)

Terms of Consent

- A4. Approval is granted for the use of the premises as a fitness centre for children, including in classes of a maximum of 20 children per class, to be located at the ground level of the subject property.

No approval is given or implied in this consent for the use of the space as a child care centre, or building works, both internal and external, within the subject property, beyond internal fit outs for the use of fitness space and to comply with **Condition C7**.

Use of the premises from its current proposed use must not intensify without further approval from Council.

(Reason: To ensure the terms of the consent are clear.)

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated).*

Garbage and Recycling Facilities

C1. Adequate provision must be made for the storage of waste and recyclable material generated by the premises. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the provision of appropriate waste facilities and to ensure efficient collection of waste by collection contractors)

Noise from Plant and Equipment

C2. The use of all plant and equipment installed on the premises must not:

(a) Contribute an LAeq (15min) which will cause the total LAeq (15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver . The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

(b) Cause “offensive noise” as defined in the *Protection of the Environment Operations Act 1997*.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Vibration from Plant and Equipment

C3. The use of all plant and equipment to be installed on the premises must comply with the vibration limits specified in “Assessing Vibration: a technical guideline” issued by the NSW Environment Protection Authority, at the boundary of any affected receiver.

A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Certifying Authority, certifying that all plant and equipment on the site, together with the proposed plant and equipment, operating contemporaneously will comply with the requirements of this condition.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and commercial premises and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected residence.

“contemporaneously” means *existing at or occurring in the same period of time* (Macquarie Dictionary 3rd rev. ed. 2004).

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Noise Control (Fitness Centres)

C4. The use of the premises shall comply with the following:

Music and Vocal

- (a) The LA10 noise level emitted from the use of the premises must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 6.00am and 7.00pm when assessed at the boundary of any affected residence.
- (b) The LA10 noise level emitted from the use must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 7.00pm and 6.00am on the following day when assessed at the boundary of any affected residence.
- (c) Notwithstanding compliance with (a) and (b) above, the noise from the use must not be audible within any habitable room or sleeping area in any affected residence between the hours of 7.00pm and 6.00am on the following day.
- (d) The LA10 noise level emitted from the use must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises with windows closed.
- (e) The use of the premises must be controlled so that any emitted noise is at a level so as not to create an “*offensive noise*” as defined in the *Protection of the Environment Operations Act 1997*.

LA10 is the average maximum A-weighted Fast Response sound level emitted from the premises.

LA90 shall be measured in the absence of all noise from the premises (including mechanical plant noise).

Use of Gym Equipment

The LAavmax noise level emitted from the use of gym equipment must not exceed the background noise level (LA90) by more than 5dB when assessed inside any affected residence with the windows of the affected residence closed.

LAavmax is the average maximum A-weighted Fast Response sound level emitted from use of gym equipment on the premises.

LA90 shall be measured in the absence of all noise from the premises (including mechanical plant noise) with the windows of the affected residence closed and any air-conditioning in the residence turned off. If the LA90 is less than 20dB then it is taken to be 20dB.

General

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To ensure the amenity of surrounding land uses)

Compliance with Acoustic Report

C5. The recommendations contained in the acoustic report prepared by Blackett Acoustics, dated July 2020, must be implemented during construction and use of the development.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Compliance with Accessibility Report

C6. The recommendations contained in the accessibility report prepared by Access-I dated 3 July 2020, must be implemented during construction and use of the development.

(Reason: To maintain an appropriate level of accessibility amenity for the subject tenancy)

Provision of Accessible Paths of Travel

- C7. Access from the pedestrian entry to the premises and access throughout the building must be designed and constructed to provide access and facilities in accordance with the *Building Code of Australia and Disability (Access to Premises – Buildings) Standards 2010*. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Notes:

1. If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council prior to a Construction Certificate being issued. Approval of a modification application may be required.
2. It is not within Council's power to set aside National legislation which requires the upgrade of buildings to meet modern access standards. Such decisions remain the jurisdiction of the Building Professionals Board Access Advisory Committee who may grant an exemption in certain exceptional circumstances.
3. Information on making an application for an "unjustifiable hardship exemption" under the accessibility standards can be found in the website of the NSW Building Professional Boards at <http://www.bpb.nsw.gov.au/page/premises-standards>

(Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)

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

National Construction Code

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

G. *Prior to the Issue of an Occupation Certificate*

Noise Certification

G1. Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Certifying Authority certifying that the noise and vibration from use of the development complies with the conditions of consent herein.

(Reason: To ensure acoustic amenity)

Plan of Management and COVID-19 Safety Plan

G2. Prior to issue of the Occupation Certificate the following is to be submitted to, and approved by, Council's Team Leader Development Services prior to occupation:

- 1) A comprehensive Plan of Management outlining the general operations of the business including the supervision of children during classes and the requirement of employees, contractors, and volunteers to have a current 'Working with Children' Check. The Plan of management must also identify the following:
 - a. provision of baby change facilities;
 - b. signage and documented procedures which addresses the conveying of information to clients, parents, and carer, e.g. clear and user-friendly, on accessing toilets, change facilities, training of staff, etc.
 - c. Clarification as to the use of the rear terrace and play/sports area
 - d. Procedures for managing noise and noise complaints
 - e. Safety and security measures
- 2) A COVID-19 Safety Plan outlining the public health procedures to be undertaken during the operations of the business, in accordance with the Plan of Management's requirement to exercise a duty of care to prevent harm, which are reasonably foreseeable in the course of providing a service.

(Reason: To ensure that the proposed use of the premises is in accordance with community safety)

I. *On-Going / Operational Conditions*

Hours of Operation

II. The hours of operation are restricted to:

7am – 8pm (Monday to Friday)

7am – 3pm (Saturday)

Closed (Sunday)

Upon expiry of the permitted hours:

- (a) all activities must immediately cease;
- (b) no person shall be permitted entry; and
- (c) all customers and/or visitors to the premises must be required to leave within the following half hour.

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

Noise Impact

- I2. 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.

Use of the premises from its current proposed use must not intensify without further approval from Council. Should use of the premise be found to give rise to noise and/or vibration transfer to any adjoining tenancy, then the activity that is the cause of the noise and/or vibration transfer must cease until such time as the noise and/or vibration has been addressed to Council's satisfaction.

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

Waste Collection

- I3. 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 amenity of surrounding properties)

Delivery Hours

- I4. 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)

Maximum Capacity – Premises

- I5. The maximum number of children per class allowed by this consent is 20 persons/seats.

Use of the premises from its current proposed use must not intensify without further approval from Council.

(Reason: Protection of residential amenity, provision of public information, and to assist in assessing ongoing compliance)

Signage

I6. No signage is to be erected that purports to reflect that the use provides any form of childcare.

(Reason: To fulfil the purpose of not misleading the public concerning the activities engaged by the business)

Rear terrace and play/sports area

I7. Intensive recreational activities likely to cause vibration and acoustic privacy impacts for adjoining properties such as basketball are not to be undertaken within the rear terrace area at the eastern end of the tenancy. No music is to be played within this space at any time.

(Reason: To ensure the amenity of surrounding properties)