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Wednesday, 8 September 2021

Burwood Local Council
Building and Development
2 Conder Street
Burwood NSW 2134

Received by RECORDS

10 SEP 2021

Doc No:
BURWOOD COUNCIL

Attention: Mr. Brian Olsen

Dear Sir,

Re: Section 4.55 Modification Development Consent No. 206/103
180-186 Burwood Road Burwood NSW

As advised I act for **Double Happy Pty Limited** (ACN 060 188 356), the owners of 188-192 Burwood Road Burwood NSW being the property adjoining 180-186 Burwood Road Burwood NSW.

We note that on 10 June 2021 the owners of 180-186 Burwood Road Burwood NSW applied under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (NSW) to Council to modify Consent No. 2016/103. The modification is to remove/amend development consent conditions 4, 5, 12, 13 and 19 relating to the provision of easement access to 188-192 Burwood Road Burwood NSW.

Double Happy Pty Limited, the applicant under DA 2020.42.1 opposes the modification of 103/2016 in its present form, in that it seeks to extinguish easement access guaranteed by the Regional Planning Panel development approval. That access is essential to the proper development of 188-192 Burwood Road Burwood NSW.

On Friday, 3 September 2021, **Double Happy Pty Limited** came into possession of a document from Council addressed to C/- **GRC Property Management** of

P.O. Box 12 Wahroonga NSW 2076 dated 18 August 2021. The document was a notification of the application to modify 103/2016, and inter alia, advised that written submissions in respect thereof were to be forwarded to Council by 13 September 2021. I am instructed by my client as to the following:

1. The notification was not received by **Double Happy Pty Limited** prior to it being provided with a copy by myself on 3 September 2021. As noted in my letter to Council of 30 August 2021, my client only became aware of the modification application by chance, being advised by the tenant of 155 Burwood Road Burwood NSW, who had himself received a notification posted to his residential address.
2. Neither of the principals nor any other person at **GRC Property Management** received a copy of the notification.
3. At no time did **Double Happy Pty Limited** authorise service of notifications by Council on GRC Property Management.
4. At no time did **GRC Property Management** hold itself out as a firm that would accept notifications on behalf of **Double Happy Pty Limited**.
5. The proper place for service of documents for **Double Happy Pty Limited** is the company's registered business address of 13 Woodward Avenue Strathfield NSW 2135. No service of the notification was effected at this address.

For the reasons outlined the validity of the service of the notification is seriously open to question. Burwood Council should accept that the notification did not come into the possession of **Double Happy Pty Limited** until 3 September 2021. The subject matter of the modification is of vital importance to my client. As the owner of the benefitted property, **Double Happy Pty Limited** is clearly the most important entity effected by the modification of the easement conditions and is entitled to proper and timely service.

On reviewing the application, it is clear that the issues involved are complex and require a comprehensive response. Under the circumstances and on the grounds of procedural fairness, **Double Happy Pty Limited** seeks confirmation that Council will:-

- i. Provide an extension of time until 29 October 2021 to enable submissions to be made.
- ii. Undertake that **Double Happy Pty Limited** will be given the opportunity to consult with Council after submissions, and any replies thereto, prior to any final decision being made on the modifications.

I note that at this stage, my client is not adverse to possible modifications of the easement provisions in the development consent that would facilitate a suitable outcome for all parties.

Kindly confirm receipt of this communication and advise as to your response within 10 days, as my client is very concerned about the modifications being sought to extinguish its entitlement to easements.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'J. Doolan', with a long horizontal stroke extending to the right.

John Doolan