

JOINT REGIONAL PLANNING PANEL

Sydney West

JRPP No	2015SYW164
DA Number	MOD0064/15
Local Government Area	Ku-ring-gai
Proposed Development	S96(2) modification to consent DA0501/12, seeking to delete the deferred commencement component of the consent, delete Condition 19 and amend unit layouts
Street Address	28 – 30 Dumaresq Street, Gordon
Applicant/Owner	Gelder Architects Pty Limited
Number of Submissions	Nil
Regional Development Criteria (Schedule 4A of the Act)	S96(2) application to a JRPP approved DA – Clause 21 SEPP (State & Regional Development) 2011
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • Local Centres Local Environmental Plan 2012; SEPP (BASIX) 2005 • Local Centres Development Control Plan 2013 • Voluntary planning agreement between Ku-ring-gai Council and Whenzou Australia Group
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> - Zoning extract map - Objectors map - Development consent issued for DA0501/12 - Applicant's legal advice - Modification plans
Recommendation	Refusal
Report by	Adam Richardson

SUPPLEMENTARY REPORT

EXECUTIVE SUMMARY

Primary Property	28 -30 Dumaresq Street, Gordon
Lot & DP	Lot 1 DP 961448
Additional Property(/ies)	32 Dumaresq Street, Gordon
Lot(s) & DP (s)	No related Land
Proposal	Modification of consent (DA0501/12) proposing to delete deferred commencement condition, delete Condition 19 and internal reconfiguration of a number of apartments
Development application no.	MOD0064/15
Ward	GORDON
Applicant	Gelder Architects
Owner	Qun Lun Developments Pty Ltd
Date lodged	19/05/2015
Issues	Consent to be modified has lapsed
Submissions	No
Land & Environment Court	N/A
Recommendation	Refusal
Assessment Officer	Adam Richardson

LEGISLATIVE REQUIREMENTS:

Zoning	Residential R4
Permissible under	KLCLEP 2013
Relevant legislation	SEPP 55 SEPP BASIX 2004

	SREP (Sydney Harbour Catchment) 2005
	KLCLEP 2012
	KLCDCP 2013
Integrated development	NO

ASSESSMENT:

At its meeting of 4 December 2015, the Sydney West Joint Regional Planning Panel considered an assessment report (**Attachment F**) that recommended refusal of the modifications sought to DA0501/12. This recommendation for refusal was on the basis that the consent to be modified had lapsed and could not be lawfully modified or acted upon. Council's position regarding its ability to consider the modifications proposed was informed by a well-considered legal opinion that advised Council it had no power to consider the modifications as the consent to be modified had lapsed. During the applications' assessment the applicant tendered their own legal advice that provided an opinion which advocated that the consent to be modified had not lapsed and could be modified as sought.

After considering Council's assessment report, Council's legal advice and the applicants' legal advice the JRPP resolved the following:

'in this matter, Panel has been provided with conflicting legal advices from the applicant and the Council and accordingly the Panel will defer and refer those advices to their own legal advisors'

Subsequent to that deferral, the Panel Secretariat, via email on 12 February 2016, advised Council of the following:

'We concur with Council's advice and the panel will not determine the s96 application'.

In response to this Council re-refers MOD0064/15 to the Sydney West Joint Regional Planning Panel for determination, with a recommendation for refusal, as detailed within the below recommendation.

CONCLUSION:

Despite the representations made by the applicant, the consent to which the modification relates has lapsed and is taken not to exist. Therefore, for the reasons discussed in the body of the original assessment report, it is recommended that the application be refused.

RECOMMENDATION:

THAT the Sydney West Joint Regional Planning Panel, refuse MOD0064/14, seeking to modify DA0501/12 at 28-32 Dumaresq Street, Gordon for the following reason:

DA0501/12 has lapsed and there is no lawful consent that can be modified.

Particulars:

DA0501/12 lapsed on 30 May 2015 as Item B specified in Schedule A of the deferred commencement consent had not been satisfied within the specified 12 months time frame, which commenced on the date of the consent 30 May 2014.

Adam Richardson
Executive Assessment Officer
Assessment

Richard Kinninmont
Team Leader Development

Corrie Swanepoel
Manager Development Assessment

Michael Miocic
Director Development &

Regulation

Attachments

A – Zoning extract

B – Objectors map

C – Development consent issued for DA0501/15

D – Applicant's legal advice

E – Modification plans

F- Original assessment report