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3 September 2021  
2021/265267

Peter Debnam  
Chair Sydney North Planning Panel  
Department of Planning, Industry and Environment  
Locked Bag 5022, Parramatta NSW 2124

CC: by email: [Suzie.Jattan@planning.nsw.gov.au](mailto:Suzie.Jattan@planning.nsw.gov.au)  
[Stuart.Withington@planning.nsw.gov.au](mailto:Stuart.Withington@planning.nsw.gov.au)

**RE: PPSSNH-186 - Ku-ring-gai Council MOD0222/20**

Dear Mr Debnam,

I refer to the email dated 30 August 2021, sent to Council by Stuart Withington on behalf of the Sydney North Planning Panel. The email requests advice from Council to assist the Sydney North Planning Panel in its consideration of the development assessment report and recommendation of modification of consent application reference - PPSSNH-186 or MOD0222/20 in the context of the recent NSW Court of Appeal decision *[2021] NSWCA 177 Ku-ring-gai Council v Buyozo Pty Ltd*.

Council has considered this decision and its implications regarding the development assessment report and recommendation. Council has formed the view that the SNPP may not approve the modification application as such would be contrary to the findings in the NSW Court of Appeal decision.

The matter has been discussed with the applicant who is aware of the implications regarding the decision and accepts that it inhibits their application advancing favourably in its current form. As a result, the applicant has advised Council in writing that they have deleted the problematic element of the application, i.e. that which seeks changes to the deferred commencement terms of the consent. The applicant has also changed the application from a Section 4.55(2) to a Section 4.55(1) being solely to correct the error in the description of the number of approved units within the development contained on the Notice of Determination. Council has accepted this change. The applicant has further advised that, given the advanced nature of the CTMP which generally aligns with the deferred commencement terms of DA0610/17, they will seek to obtain an operational consent.

The result of this is:

- (a) Council wishes to withdraw the development assessment report from the agenda of the Sydney North Planning Panel 15 September 2021 meeting, firstly; as the modification application as amended to now be a Section 4.55(1) application is not a type of modification application that is required to be determined by the Sydney North Planning Panel and secondly; as the current development assessment report includes consideration of modifications which no longer form part of the application, and

- (b) Council requests that application PPSSNH-186 listed on the Sydney North Planning Panel's section of the Planning Portal be deleted or updated in such a way in which it is clear that the application has been amended to the extent that it is no longer an application requiring determination by the SNPP.

Should you have any questions, please contact Shaun Garland, Manager Development Assessment Services on 02 9424 0988.

Yours sincerely,



Michael Miocic  
**Director Development and Regulation**