

DETERMINATION AND STATEMENT OF REASONS

SYDNEY NORTH PLANNING PANEL

DATE OF DETERMINATION	13 May 2022
DATE OF PANEL DECISION	11 May 2022
DATE OF PANEL MEETING	11 May 2022
PANEL MEMBERS	Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Martin Smith and Kim Wheatley
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 27 April 2022.

MATTER DETERMINED

PPSSNH-281 - MOD0223/21 – Ku-ring-gai - 2-8 Pymble Ave Pymble, Modification to Land and Environment Court Approval 159352 of 2016 (DA0145/15) to change the approved neighbourhood shop to a rental management office.

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to refuse the application for modification of consent pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979*.

The Panel's decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to refuse the modification application for the reasons outlined below and in Council's Assessment Report.

In 2016, the NSW Land and Environment Court upheld an appeal in relation to DA0145/15 for construction of residential flat buildings, a neighbourhood shop, basement parking and associated landscaping on the site. The site is zoned R4 High Density Residential under the Ku-ring-gai LEP.

The current modification application was lodged in November 2021 and seeks to modify DA0145/15 specifically in respect of the change of Lot 94 in SP 97280 from the approved neighbourhood shop to a rental management office. Council has assessed the application and recommended refusal on a number of grounds.



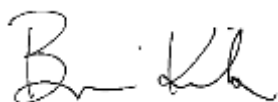
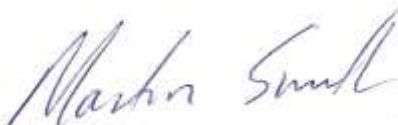

The Panel extensively canvassed the relevant issues with Council and the Applicant during the 11th May Panel meeting. The Panel also considered the Applicant's suggestion, made during the meeting, that a 5 year limit be placed on approval of the modification application.

However, on balance, the Panel concurs with Council that the application was properly assessed against relevant planning controls and that approval of the modification application would not be in the community's interest.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered one written submission, made during public exhibition, which raised concerns with permissibility, not substantially the same development and retrospective

approval. The Panel believes these concerns have been adequately addressed in the Assessment Report.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Julie Savet Ward
 Brian Kirk	 Martin Smith
 Kim Wheatley	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSNH-281 - MOD0223/21 – Ku Ring Gai
2	PROPOSED DEVELOPMENT	Modification to Land and Environment Court Approval 159352 of 2016 (DA0145/15) to change the approved neighbourhood shop to a rental management office.
3	STREET ADDRESS	2-8 Pymble Ave Pymble
4	APPLICANT/OWNER	Applicant - BFD Pymble Pty Ltd Owner – The Owners of SP 97280
5	TYPE OF REGIONAL DEVELOPMENT	The application is a Section 4.56 modification application to a development consent for works with a capital investment value of more than \$30 million.
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Ku-ring-gai Local Environmental Plan 2015 (LEP) Draft environmental planning instruments: Draft State Environmental Planning Policy (Remediation of Land) Draft State Environmental Planning Policy Environment Development control plans: <ul style="list-style-type: none"> Ku-ring-gai Development Control Plan (DCP) Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality

		<ul style="list-style-type: none"> • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 11 April 2022 Click here to enter a date. • List any council memo or supplementary report received: 12 April 2022 • Written submissions during public exhibition: 1
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 30 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Julie Savet Ward (acting chair), Brian Kirk, Martin Smith, Kim Wheatley ○ <u>Council assessment staff</u>: Luke Donovan, Michael Miocic, Shaun Garland, Jonathan Goodwill, Kerry Frair ○ <u>Applicant</u>: Jay Wang, Steven Chen, James Lovell, Ben Lin • Final briefing to discuss council's recommendation: 11 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Peter Debnam (Chair), Julie Savet Ward, Brian Kirk, Martin Smith, Kim Wheatley ○ <u>Council assessment staff</u>: Luke Donovan, Michael Miocic, Shaun Garland, Jonathan Goodwill, Kerry Frair ○ <u>Applicant</u>: Jay Wang, Steven Chen, James Lovell, Ben Lin
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A