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Contact: Luke Donovan

Ref: MOD0223/21

16 May 2022

LFD Pymble Pty Ltd
Suite 4 Level 24.
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Sir/Madam

NOTICE OF DETERMINATION OF A SECTION 4.56 APPLICATION BY THE SYDNEY NORTH PLANNING PANEL

Issued under the Environmental Planning and Assessment Act 1979

Application No.: MOD0223/21
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
Property: 2-8 Pymble Avenue PYMBLE NSW 2073

I refer to your application made under Section 4.56 of the Environmental Planning and Assessment Act 1979, to modify the consent to the above Development Application.

You are advised, pursuant to Section 118 of the Environmental Planning and Assessment Regulation 2021, the application to modify the development consent has been refused for the reasons specified in this Notice.

Date of determination: 13/05/2022

The reasons for refusal are as follows:

1. A prospective use that is independent of the dominant use and prohibited in the land use zone

The prospective use as a rental management office is independent of and not ancillary to the use of the site as a residential flat building and is thereby prohibited in the R4 High Density Residential zone.

Particulars

- a) In respect of the nature of the use, the applicant has advised the following:
- a. *"It is anticipated that the initial enquiries may occasionally lead to further enquiries in relation to the availability of properties [outside of the subject site] if they cannot be accommodated within the existing building.*

- b) As the use of the subject tenancy may involve rental and sales enquiries of residential apartments on properties outside of the subject site it would be independent of and not ancillary to the use as a residential flat building. It would be used as office premises that would not solely serve the dominant purposes as a residential flat building and would therefore be prohibited in the R4 High Density Residential zone.

2. The prospective use would result in a development that is not substantially the same as that approved in the development consent to DA0145/15

The prospective use of the tenancy as a rental management office would not be essentially or materially the same as the approved use of the tenancy as a neighbourhood shop

Particulars

- a) The prospective use of the tenancy alters the essence and character of the development from a residential flat building with a neighbourhood shop that sells general merchandise and provides for the day to day needs of people in the area to a residential flat building with an office premises that manages sales and rental enquiries both within and outside of the subject site.
- b) The prospective use of the tenancy would not be substantially the same development as the development for which the development consent was granted and therefore would not satisfy section 4.56(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended)

3. Retrospective approval cannot be obtained by way of development consent

Development consent cannot be granted in respect of fit-out works which require consent and which have already been carried out without development consent.

Particulars

- a) Section 4.2 of the Environmental Planning and Assessment Act 1979 states that development may only be carried out except with development consent which has been obtained and is in force.
- b) The fit-out works to the tenancy are completed and are unauthorised.
- c) Retrospective development consent cannot be granted in respect of these unauthorised works.
- d) The prospective use relies upon these fit-out works that are unauthorised and unlawful.
- e) A Building Information Certificate application, seeking to regularise the fit-out works, has not been lodged.

4. Insufficient information

The application is not supported by sufficient information confirming the use of the remainder of Lot 94 in SP 97280 (subject lot) which is located on the lower ground floor of Building A within the complex.

Right of appeal

If you are dissatisfied with this decision, Section 8.9 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six (6) months of the date on which this decision was notified or registered on the NSW Planning Portal.

Right of review

If you are dissatisfied with this decision, Section 8.2 of the Environmental Planning and Assessment Act 1979 gives you the right to request a review of the determination. A determination cannot be reviewed after 28 Days of the date of determination of this application. It is recommended that the applicant discuss any request for a review of determination with Council staff before lodging such a request. There is no right of review in respect of designated development and crown development.

Advisory Notes

- (a) Council is always prepared to discuss decisions, and in this regard do not hesitate to contact Luke Donovan on telephone **9424 0000**.



Signature on behalf of consent authority

Jonathan Goodwill

Team Leader

Development Assessment

cc: The Owners of Sp 97280 (owners)