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**Sent:** 14/12/2018 11:57:41 AM  
**Subject:** Objection to DA2018/1761 No 195-196 Sydney Road, Fairlight  
**Attachments:** Letter of objection to DA2018-1708 195-197 Sydney Road Fairlight  
20181214.pdf;

To Whom it May Concern

Please find attached letter of objection to the above Development Application.

Regards

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14 December 2018

The General Manager  
Northern Beaches Council  
725 Pittwater Road  
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Dear Sir/Madam

**LETTER OF OBJECTION TO DA 2018/1708 FOR  
FOR DEMOLITION AND CONSTRUCTION OF A BOARDING HOUSE AT 195-197 SYDNEY RD,  
FAIRLIGHT**

Reference is made to the above Development Application (DA) for No 195-197 Sydney Road, Fairlight (the subject site) which seeks consent for demolition works and the construction of two, 3 and 4 storey buildings containing a total of 75 rooms capable of housing 126 occupants. The DA also proposes the construction of a 2 storey basement car park containing 38 car spaces.

We act on behalf of the owners of No 189 Sydney Road (Strata Plan 22590), an adjoining property to the east.

I have inspected the subject site from the street and from 189 Sydney Road. I have also examined the relevant documents, plans and reports including the Statement of Environmental Effects (SEE) prepared in support of the DA.

In summary, our client objects to the DA for the following reasons:

- Inaccurate and insufficient DA documentation
- Excessive bulk and scale resulting in an overdevelopment of the site
- Unacceptable amenity impacts to the residents of No 189 Sydney Road as follows:
  - view loss
  - privacy loss
- Car parking and Traffic impacts
- Excessive excavation
- Inadequate landscaped area
- Incompatible with the character and context of the locality

Overall, the proposal represents an unreasonable development in the R1 zone with subsequent amenity impacts to surrounding residents. These issues will be discussed in further detail below.

### Our clients' property

Key aspects of our clients' property as they relate to their concerns are noted as follows and depicted in the figures below.

No 189 Sydney Road is a 4 storey residential flat building development which has an L-shaped configuration comprising of 2 buildings and containing 15 units. It has street frontage to Sydney Road and shares a common boundary (approximately 20m), at the rear, with the subject site, as shown in the figure below.



Figure 1: No 189 Sydney Rd with subject site indicated by a red star

Of the 15 units at 189 Sydney Road, 9 have views over the subject site from their balconies and windows. Figure 2 below shows the balconies and windows along the western elevation of No 189 Sydney Road, in relation to the subject site. These west facing windows and balconies enjoy views over the subject site.

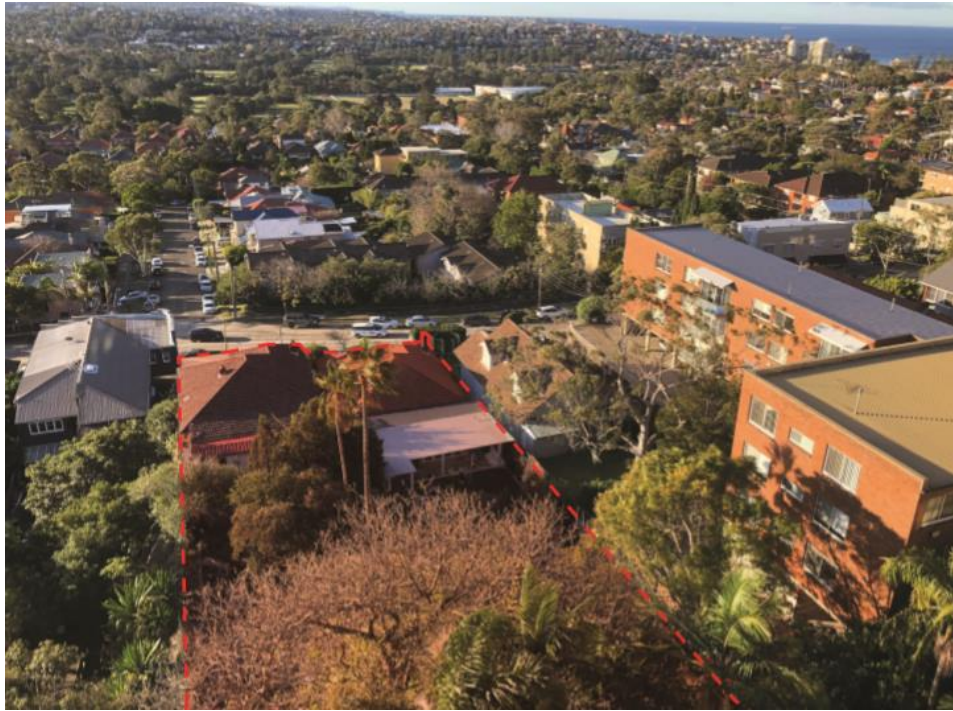


Figure 2: view looking north of subject site with 189 Sydney Rd to the right (source: Modularity)



Figure 3 North facing balconies of rear building at No 189 Sydney Rd (source: Modularity)

Figure 3 above shows the north-facing balconies on the rear building of No 189 Sydney Road. These balconies enjoy north-westerly views over the subject site.



## Inaccurate and insufficient DA documentation

A review of the DA documentation available to the public on Council's website has raised concerns with the following:

- **Possible breaches of building height**

Concern is raised that the proposed development exceeds the maximum building height of 8.5m and that there is no written request to vary this development standard as required by Clause 4.6 of Manly Local Environmental Plan 2013 (MLEP 2013).

While the Statement of Environmental Effects (SEE) lodged in support of the DA states that the proposal complies with the maximum building height of 8.5m, a review of the levels shown on the plans and the survey indicates that there may be a breach of the building height. This is also suggested by the eastern elevation (extract below) which shows the lift overrun breaching 8.5m.



Figure 4: Extract of eastern elevation showing breach of 8.5 building height (source: Modularium Pty Ltd)

A review of the levels shown architectural plans and the spot levels on the survey suggest other possible breaches of the 8.5m height plane. These breaches are located along the northern edge of level 5 (of the rear building) and the northern edge of level 4 (of the front building).

Clause 4.6(3) states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- that there are sufficient environmental planning grounds to justify contravening the development standard*

If there is a non-compliance with building height, development consent cannot be issued as there is no Clause 4.6 request.

- **Use of rooftops**

The DA is also lacking in detail regarding the use of the rooftops. These areas have been included in open space and landscaped area calculations. However, the plans do not include balustrading or access details (if used for recreational areas) nor do they show the appropriate soil depth of 1m (if these areas are to be included in landscaped area calculations). The use of the rooftops requires clarification.

- **Plant equipment not shown**

There is limited information provided on the location of air conditioning units, mechanical ventilation, central hot water, solar panels and other plant. Such equipment is often located on the roof or in side setback areas which can result in detrimental amenity impacts. This information should be provided with the DA to allow appropriate assessment.

- **Plan inaccuracies**

The scale shown on some of the plans (e.g. A01.00 and A01.06) appears to be incorrect. In addition, there is no information available (on the publicly available plans) to indicate the location of Sections AA, BB, CC and DD.

### Excessive bulk and scale, density leading to an overdevelopment of the site

The proposal represents a gross overdevelopment of the site both in terms of overall building bulk and scale and population density. The FSR concessions for boarding houses result in a building bulk which is approximately double that ordinarily permitted in the R1 zone. The maximum occupancy of 126 persons is significantly greater than that of the 2 existing detached dwellings.

The following non-compliances with numerical controls are all indicative of the overdevelopment:

Control	Required	Proposed
Front setback	6m	2m to 5.2m (ground level)
Rear setback	8m	5m
Side setbacks	3m	2m/2.5m
Landscaped Area	626m <sup>2</sup>	379m <sup>2</sup>
Communal open space	155m <sup>2</sup>	135m <sup>2</sup>

*Table 1: Numerical non-compliances*

The visual bulk of the proposed development far exceeds that which would reasonably be expected from a compliant dwelling house or town house development.

The proposed development fails to demonstrate a contextual connection to the wider neighbourhood. The proposal presents intrusive mass and bulk to the streetscape. Council's Urban Design Response to the DA notes that "blocks to the middle and rear/south of the site still present as large monolithic blocks" and recommends the deletion of 4-6 units.

## Unacceptable impacts to No 189 Sydney Road

The proposed development will result in a number of significant detrimental impacts to the residents of No 189 Sydney Road. These include: view loss, privacy impacts (both visual and acoustic), traffic and parking impacts and potential excavation impacts. These will be discussed below:

### Views

The proposal will result in view loss to some of the units in 189 Sydney Road. Our clients are concerned that these impacts will reduce the level of amenity currently enjoyed and negatively impact their property's financial value.

The SEE incorrectly claims that the development will have no significant impact on views or outlook from neighbouring properties. This is incorrect.

We have visited the site and have made a preliminary assessment of views from Unit 11, No 189 Sydney Road (see figures 5 and 6 below) and believe there will be a significant loss of views to this unit as well as others in SP 22590. However, in order to allow for an accurate assessment of view impacts, it is requested that profiles of the proposed building envelope be constructed on the site and that Council undertake a detailed view loss assessment of all affected dwellings within No 189 Sydney Road.



Figure 5: View looking west from the balcony of Unit 11, No 189 Sydney Road



Figure 6: View looking north-west from the balcony of Unit 189 Sydney Road

The two principal planning considerations in relation to the assessment of views are:

- The NSW Land and Environment Court's Planning principle for view assessment
- Manly DCP clause D7 Views
- **The NSW Land and Environment Court's Planning principle for view assessment**

The NSW Land and Environment Court's *Planning principle*: *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, provides the accepted method for assessing view impacts. A preliminary view assessment for unit 11 against the court's criteria is provided within the table below.

KEY Steps	Assessment
1. What are the views that the proposed development will affect?	District views, including bushland are available to the west and north-west from the balcony and windows of unit 11 (see figures 5 and 6 above).
2. How reasonable is it to retain the view?	The views are obtained across a side boundary. Views are currently enjoyed from a range of sitting and standing positions.
3. What is the extent of the impact? • Quantitatively? • Qualitatively?	Unit 11 currently enjoys views from its only balcony, living room and from two bedroom windows.  It is estimated that 80% of this view will be lost.



KEY Steps	Assessment
	The view loss will be moderate to severe.
4. What is the reasonableness of the development causing the view loss?	The proposed development does not comply with all of the relevant planning controls and therefore the view impact is not acceptable.

Table 2: NSW Land Court Planning Principle - View Assessment of unit 11, No 189 Sydney Road

The proposal involves several planning control exceedances and inconsistencies with planning objectives, which directly results in impacts on our client's views. These include non-complying setbacks, building height and open space.

- **Maintenance of Views – DCP**

Clause 3.4.3 of Council's DCP sets out the relevant objectives in relation to maintenance of views. These are as follows:

**Objective 1)** *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

**Objective 2)** *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

**Objective 3)** *To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

a) *The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.*

b) *Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.*

As outlined above, it is assessed that the proposal does not adequately address these provisions.

In our opinion the proposal results in unacceptable view impacts to the units at No 189 Sydney Road, and in its current form, the application is inappropriate and should not be supported by Council.

## Unacceptable acoustic impacts to No 189 Sydney Road

The proposed development will result in unacceptable acoustic impacts on the residents of 189 Sydney Road, most notably from noise generated from outdoor use of the 75 balconies and, in particular, the outdoor communal areas.

The development will house up to 126 residents with very small living areas. Outdoor use of the balconies and communal open space is expected to be intense and much higher of that normally expected in an R1 zone.

In addition, there will be a substantial increase in noise levels generated from additional traffic movements, mechanical plant, garbage trucks, garage door openings and the overall drastic intensification of the use of the site.

## Car parking and Traffic impacts

The proposed number of parking spaces is considered inadequate to cater for the number of residents. This shortfall will lead to an increase in the demand for on-street carparking which is already in short supply.

The additional traffic generated by the proposed development will add to the already congested and dangerous Sydney Road traffic network.

Concern is also raised over impacts to existing residents resulting from construction traffic, particularly given the amount of excavation proposed and the trucks required to export material from the site. Sydney Road is a busy, one lane road. Details of how access will be maintained for existing residents and emergency vehicles has not been provided.

## Inadequate landscaped area

As most of the subject site is covered by the basement building footprint, the proposal has only limited opportunity for effective landscaping. This is further restricted by the pathways and stairs located along the length of the side boundaries which further reduces landscaped area and is contrary to council's Pre-Lodgement recommendation which sought a minimum 2m strip of landscaping in the side setbacks.

The MDCP defines total opens space as:

***total open space*** means that part of a site which is designed or designated to be used for active or passive recreation and includes

As the rooftop areas are not designed for recreational use, they can't be included in total open space calculations.

The MDCP defines landscaped area as:

***landscaped area*** means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

The MDCP also states that only areas with a soil depth of at least 1m can be included in calculations for landscaped area.

The applicant's calculations for open space and landscaped area are therefore incorrect as they both include the rooftop areas.

### Excessive excavation

Concern is raised over the substantial excavation (up to 10m in depth) proposed within close proximity to the adjoining properties which could result in potential damage. The Geotechnical Report submitted with the DA acknowledges the potential for damage to adjoining properties as follows:

*Excavators alone without assistance will not be able to remove any significant amount of the rock. Hydraulic breakers mounted on an excavator or jack hammers will be required to break up the majority of the rock before it can be removed using an excavator.*

*Particular care will be required to ensure that buildings or other developments on adjacent properties are not damaged when excavating the rock. The structures on the adjacent properties are likely to be founded directly on the sandstone. Buildings founded directly on rock can often be very susceptible to damage from vibrations.*

The investigations documented in the Geotechnical report are extremely limited (4 x boreholes were drilled using a hand auger) and provide very limited information on the site conditions.

Concerns are also raised regarding the noise impacts emanating from rock cutting equipment and the expected lengthy duration of construction works given the large volume of excavation proposed.

Concern are also raised regarding the health and safety impacts from airborne pollution arising from the rock cutting. This has not been addressed in the DA documentation.

The SEE argues that the degree of excavation required is a result of the need to achieve sufficient onsite car parking. Given that the amount of car parking is directly linked with the number of boarding rooms proposed the need for such excessive excavation is therefore demonstrative of the fact that the proposed development is an overdevelopment of the site.

### Non-compliances with Planning Controls:

As demonstrated in Table 2, the proposed development does not meet the following planning controls and the non-compliances have not been adequately justified:

#### Front setback

The proposed front setbacks do not comply with the required 6m front setback. The garage facade is setback at a distance of between 4.2 to 5.5 metres and the entry concierge/cafe is setback only 2 metres.

The applicant argues that the contraventions are justified on the basis that they are similar in alignment to the building at 199 Sydney Road. However, this property is anomaly and should

not be used as a benchmark. Almost all other surrounding properties have setbacks much further from the street frontage.

### **Rear setback**

Similarly, with regard to the rear setback, we note that the DA proposes a setback of 5.5m, rather than the required 8 metres.

The applicant argues that earlier versions of the design were consistent with the rear setback requirements and that this has since been amended in order to increase communal space areas.

This argument is not supported. The proposal should meet both requirements. A complying rear setback does not exclude an appropriate amount of open communal spaces. The fact that both requirements can't be met is further evidence of overdevelopment.

### **Common Area**

The proposed common area provided is considered too small for the number of residents proposed to occupy the building.

The proposed development only provides an aggregate of 135m<sup>2</sup> rather than 155m<sup>2</sup> required by MDCP.

The proposed development also fails to comply with the second requirement of having communal living areas located on each level of the multi-storey boarding house. Instead, the proposal has allocated communal spaces across the ground and first floor.

The failure to comply with these design requirements is, in our view, unacceptable and further evidence of overdevelopment.

## **Incompatible with the character and context of the locality**

Clause 30A of the Affordable Rental Housing SEPP (ARH SEPP) states that a consent authority must not consent to development unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

It is our opinion that the proposed development is both physically and visually incompatible with the character of the immediate surrounding neighbourhood.

This is evidenced by the various inconsistencies with the MDCP including front and rear setbacks, landscaped area and excavation depth.

In this regard, it is noted that the proposal relies on the 'bonus' floor space provisions contained in the ARH SEPP which allows an additional 0.5:1 FSR on top of the 0.6:1 allowable under the MLEP, nearly doubling the size of allowable GFA on the site.



Commissioner Morris in the case of Capital Development Pty Ltd v Auburn City Council [2013] NSLEC 1040 (8 DA145-12-112 Sydney Road, Manly, March 2013) stated that “Like majority of planning controls and development standards, they represent a maximum rather than a right. So too does the FSR bonus provided for under the ARH SEPP. That only applies when a development is designed so as to be compatible within its context”.

In the case of the proposed development on the subject site the applicant is seeking to benefit from the FSR concession provided by the ARH SEPP as well as the proposed FSR provided by the MLEP. This results in a development which is considered to be far too excessive for the site and would cause adverse amenity impacts on the immediate adjoining properties along with the desired future character of the local area.

It is questionable whether this bonus should be granted as the proposal fails to comply with numerous planning controls and objectives including visual bulk, front and side setbacks, amenity impacts on neighbours, character of the locality and inconsistencies with the ARH SEPP. Consequently, the applicant’s entitlement for the bonus FSR has not been substantiated.

## Conclusion

In summary, our client objects to the DA for the following reasons:

- Inaccurate and insufficient DA documentation
- Excessive bulk and scale resulting in an overdevelopment of the site
- Unacceptable amenity impacts to the residents of No 189 Sydney Road as follows:
  - view loss
  - privacy loss
- Car parking and Traffic impacts
- Excessive excavation
- Inadequate landscaped area
- Not in keeping with the character and context of the locality

The proposed development fails to meet both Council's planning controls and the merit assessment guidelines outlined in the planning principle for view sharing. The proposed development does not satisfy front and rear setback provisions, excavation depth, bulk and scale or communal area provision.

The proposal is out of character with the area and results in detrimental amenity impacts on surrounding properties. The proposed development represents an overdevelopment of the site and should not be approved in its current form.

Before determining this application our client requests that building templates be erected on the site and a view assessment undertaken by Council.

Yours faithfully,



**Danielle Deegan** BEc, Grad Dip Planning  
Director