

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0430
<b>Responsible Officer:</b>	Kye Miles
<b>Land to be developed (Address):</b>	Lot 2 DP 589654, 197 Sydney Road FAIRLIGHT NSW 2094 Lot 87 DP 1729, 195 Sydney Road FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Modification of Development Consent DA2018/1708 granted for Demolition works and construction of a boarding house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Kevin Bruce Andrews Michael Ben Vance Kelly Maree Vance Joan Lynette Andrews Arch Manly Management (Australia) Pty Ltd
<b>Applicant:</b>	Balance Planning

<b>Application Lodged:</b>	11/08/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	18/08/2023 to 01/09/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposal involves modifications of Development Consent DA2018/1708 granted by the Sydney North Planning Panel (SNPP) for demolition works and the construction of a 75-room boarding house with basement car parking. The proposed modifications include:

#### Level 0

- Relocation of columns between car parking spaces.

- Reconfigure services cupboard to allow additional landscaping.

### **Level 1**

- Reconfigure communal room, to provide laundry (relocated from L2).
- Stone clad western boundary wall.

### **Level 2**

- Reorganisation of plant room to remove the common laundry room.
- Reconfiguration of fire stair.

### **Level 3,4,5**

- Replace glazed louvre windows on the rear (southern) elevation of L3/L4/L5 with a combination of fixed and sliding windows.
- Reduction of corridor west of the lift on L4.
- Remove planters from L5 balconies.

### **Roof**

- Construction of metal roof is proposed over the corridor spaces of the front and rear buildings.

### **Unauthorised Demolition Works**

The unauthorised works undertaken on the site following approval of DA2018/1708 and Mod2020/0655 are limited to minor excavation works along the western side boundary. As no unauthorised construction works have occurred and no retrospective consent is sought, the case law established in *Ku-ring-gai Council v Buyozo Pty Ltd* [2021] NSWCA 177 has no relevance to the subject development. In addition, landowner's consent has been provided by the neighbouring site (No.199 Sydney Road) for the proposed works along this shared boundary.

### **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.2 Privacy and Security

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 589654 , 197 Sydney Road FAIRLIGHT NSW 2094 Lot 87 DP 1729 , 195 Sydney Road FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject site consists of two allotments on the southern side of Sydney Road in Fairlight.</p> <p>The site is irregular in shape with a frontage of 27.16m along Sydney Road and a varying depth of between 66.83m and 78.94m. The site has a surveyed area of 1,789m<sup>2</sup>.</p> <p>The site falls approximately 12 metres from the rear boundary (south) to the street (north). The subject site sits on a rock shelf traversing the site east to west.</p> <p>The site is located within the R1 General Residential Zone under Manly Local Environmental Plan 2013.</p> <p>The subject site is currently under construction. Surrounding development is characterised by a mix of dwelling houses, multi dwelling housing, and residential flat buildings. To the north are single dwelling houses and multi dwelling housing. To the south is a group of three multi-storey residential flat buildings. To the east and west are single dwellings and residential flat buildings. The Fairlight local centre is located approximately 265 metres to the east of the subject site.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant recent history:

- DA0020/2017 (at 195 Sydney Road, Fairlight) for demolition and construction of multi-dwelling housing was approved under delegation on 6 July 2017.
- DA2018/1708 (at 195 & 197 Sydney Road, Fairlight) for demolition and construction of a boarding house was approved by the SNPP on 27 June 2019.
- Mod2020/0655 (at 195 & 197 Sydney Road, Fairlight) for modification of Development Consent DA2018/1708 was approved by the DDP on 14 April 2021.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1708, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
<p>A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modifications largely represent minor internal and cosmetic changes, which have no implications to the development as approved in terms of any further increases in bulk, scale or streetscape modifications.</li> <li>• As above, the proposal is remaining consistent with the approved built form, with minor changes to the basement, internal room layouts and communal areas.</li> <li>• The proposed modifications seeks to remove the common laundry room resulting in a reduction of GFA.</li> <li>• The modifications do not result in any adverse neighbouring impacts.</li> </ul>
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2018/1708 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposed modification does not change the approved use.</li> <li>• The approved density remains unchanged.</li> <li>• The approved built form has not been significantly altered.</li> <li>• The proposed modifications are of a minimal environmental impact.</li> </ul>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.</p>



Section 4.55(1A) - Other Modifications	Comments
the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent</p>

Section 4.15 'Matters for Consideration'	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 18/08/2023 to 01/09/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The Modified application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.

Internal Referral Body	Comments
	Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Landscape Officer	<p>The application is for modification to development consent DA2018/1708 including minor adjustments to the boarding house to improve constructability, resident amenity, and building functionality, and to regularise additional rock removal that has occurred along the western boundary per instructions of the project geotechnical / structural engineers.</p> <p>In terms of this Landscape Referral, the modification includes deletion of the southern planters at Level 5, due to the following reason as outlined in the Statement of Environmental Effects "Planters on the southern elevation of the building, which are below balustrade level and difficult to access, are not preferred from a maintenance and viability perspective", and no concerns are raised by Landscape Referral. It is advised that development consent conditions 17, 18, 41, and 52, relative to landscape works remain unaltered.</p>

### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

### **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

#### **SEPP (Affordable Rental Housing) 2009**

The original application (DA2018/1708) was determined pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) for the construction of a 75-room boarding house. As per the savings and transitional provisions pursuant to Schedule 7A SEPP (Housing) 2021, an assessment against the provisions of the Housing SEPP is not required in this instance. Therefore, an assessment against the relevant provisions of SEPP ARH is as follows.

### **Division 3: Boarding houses**

#### Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:



"(a) is wholly or partly let in lodgings, and  
 (b) provides lodgers with a principal place of residence for 3 months or more, and  
 (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and  
 (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that  
 accommodate one or more lodgers,

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means "a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	<b>Consistent</b> The subject site is located within the R1 General Residential and, as such, the proposed use is permissible with consent under MLEP 2013.

Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Approved	Section 4.55 Modification Compliance
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.  <b>Note: Accessible area</b> means land that is within:  (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act	<b>Consistent</b> The site is located within the R1 General Residential zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	No change from original development consent.

1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.		
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	Not applicable. The site is located within the Sydney region.	No change from original development consent.

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Section 4.55 Modification Compliance
<b>(1) Density and scale</b> A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or (b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of	A floor space ratio of 0.6:1 applies to this site under Clause 4.4 Floor Space Ratio of the MLEP 2013. The subject site is located within the R1 General Residential zone, which permits residential flat buildings with consent. The subject site is not heritage listed, nor does a heritage order apply on site. As such, the	Complies, the proposed modification has a floor space ratio of 1.086:1 (1943.2sqm).

	<p>development permitted on the land, or</p> <p>(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>	<p>subject site is eligible for an additional 0.5:1 floor space ratio. The maximum floor space ratio on site becomes 1.1:1 (1967.9sqm). The proposed modification has a floor space ratio of 1.093:1 (1956sqm).</p>	
<p>(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p>			
<b>(a) building height</b>	<p>if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,</p>	<p>The maximum height of building applying to the site under Clause 4.3 Height of Buildings of the MLEP 2013 is 8.5m. The maximum height proposed is 8.5m.</p>	<p>Complies, the proposed corridor roofs are below the 8.5m height limit.</p>
<b>(b) landscaped area</b>	<p>if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,</p>	<p>The proposal involves the removal of the cafe and the addition of landscaped areas within the front setback. These changes are in response to conditions of consent and have been assessed by Council's Landscaping and Urban Design divisions. The outcomes</p>	<p>Complies, the proposed modification involves the reconfiguration the services cupboard to facilitate additional landscaping within the front setback.</p>

		of both assessments were supportive raising no issues with the landscape treatment within the front setback. Overall, the Sydney Road streetscape includes development in landscaped settings and the proposed development is consistent with this existing landscaped setting.	
<b>(c) solar access</b>	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The proposed development includes three communal living rooms. Each living room receives at least three hours of direct sunlight between 9am and 3pm in midwinter.	No change from original development consent.
<b>(d) private open space</b>	if at least the following private open space areas are provided (other than the front setback area):  (i) one area of at least 20m <sup>2</sup> with a minimum dimension of 3.0m is provided for the use of the lodgers,  (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m <sup>2</sup> with a minimum dimension of 2.5m is provided adjacent to that accommodation,	(i) The proposed development includes a courtyard of over 200sqm with a minimum dimension of 8.8m for use of the lodgers. (ii) The proposed development includes a boarding house manager. The boarding house manager's room includes private open space of 9.0sqm with dimensions of greater than 2.5m accessible from the living area of the room.	No change from original development consent.
<b>(e) parking</b>	if:  (i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking	The approved parking provision remains unchanged under this modification.	No change from original development consent.

	<p>spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>		
<p><b>(f) accommodation size</b></p>	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	<p>The proposed development includes single and double rooms of at least 16 square metres (and up to 23 square metres), excluding private bathroom and kitchen facilities.</p>	<p>No change from original development consent.</p>
	<p>(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not</p>	<p>The proposed development includes private bathroom and kitchen facilities in each room.</p>	<p>No change from original development consent.</p>

	required to have those facilities in any boarding room.		
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	The proposed development complies with the standards set out in subclauses (1) and (2).	No change from original development consent.

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Section 4.55 Modification Compliance
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	The proposed development includes 75 rooms including one managers room. The proposal includes four communal rooms.	No change from original development consent.
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m <sup>2</sup> ,	The proposed development includes rooms to a maximum area of 23sqm (excluding private bathroom and kitchen facilities).	No change from original development consent.
(c) no boarding room will be occupied by more than 2 adult lodgers,	The maximum number of lodgers in each room is two.	No change from original development consent.
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each room contains private bathroom and kitchen facilities.	No change from original development consent.
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The proposed development includes 75 rooms for up to 126 residents. A room for the manager is included on site.	No change from original development consent.
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	Not applicable. The subject site is zoned R1 General Residential.	Not applicable



(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	The proposed development includes 75 rooms, requiring 15 bicycle and 15 motorcycle spaces. The proposed development provides 15 bicycle and 15 motorcycle spaces.	No change from original development consent. .
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	Subclause (1) applies as the proposal is for the construction of a boarding house.	No change from original development consent.

### Clause 30: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

#### Comment:

The proposed modification involves minimal changes to the approved built form, as the changes are largely internal. In this regard, it is considered that the scale of the development is compatible with the streetscape and consistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

#### Comment:

As above, the proposed modification is consistent with the approved built form, such that the development remains reasonably articulated through sufficient breaks between buildings and is broken down by generous landscaping. In this regard, the development is considered to be compatible with the scale of surrounding development and consistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

The Sydney Road streetscape is characterised by landscaped front setbacks and natural features (rock outcrops). The modified landscape treatment of the front setback area is compatible within the Sydney Road streetscape in that it includes articulated sandstone walls, and sufficient planting in the front setback commensurate to its scale and form. In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance in terms of the topography and the proposed development is consistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The modified development maintains a mix of materials and finishes, including sandstone, timber, glazing, louvres, metals, and concrete (perforated and smooth). These materials form a modern architectural style, while providing consistency with existing materials and finishes within the streetscapes. In this regard, the development is considered to be consistent with the fourth principle.

The above principles were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 to include the following:

*Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The proposed modification retains compliance with the approved side and rear setbacks.

Privacy

The modified proposal remains acceptable in relation to privacy as it is consistent with the requirements of Clause 3.4.2 Privacy and Security of the MDCP 2013, and provides adequate side setbacks (including a landscaping), privacy screening to key openings and balconies, and ground levels commensurate to adjacent properties.

Overshadowing

The proposed modification will not result in any additional overshadowing.

Noise

The approved development is supported by an Acoustic Report, demonstrating that the proposal does not result in unreasonable acoustic impacts.

Conclusion to Character Assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the modified proposal remains compatible with the character of the local area and surrounding wider locality.

## SEPP (Building Sustainability Index: BASIX) 2004

The application is supported by BASIX Assessment cover letter (prepared by Efficient Living, dated 21 July 2023), which indicates that the proposed modifications do not affect the approved BASIX Assessment and an update to the report is not required.

## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

## Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	8.2m (Corridor roof)	N/A	Yes
Floor Space Ratio	1.1:1 (0.6:1 under MLEP 2013 plus 0.5:1 under SEPP ARH) (1967.9qm)	1.093:1 (1956sqm)	FSR: 1.086:1 (1943.2sqm)	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Clause	Compliance with Requirements
6.12 Essential services	Yes

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 1,789sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	West: 7.6m (based on gradient 1:5.5)	9.1m	No change	N/A
	East: 7.5m (based on gradient 1:6)	8.4m	No change	N/A
4.1.2.2 Number of Storeys	2	6 (including up to 3 basement storeys)	No change	N/A
4.1.2.3 Roof Height	Height: 2.5m	Flat	Flat	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.0m-5.4m, consistent with prevailing setback	No change	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: 3.03m (based on wall height)	3.32m	No change	N/A
	East: 2.8m (based on wall height)	3.3m	No change	N/A
	Windows: 3m	Min. 3m	No change	N/A
4.1.4.4 Rear Setbacks	8m	5.7m	No change	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total open space: Min. 55% of site area (983.95sqm)	63.73% (1,140.3sqm)	No change	N/A
	Open space above ground: Max. 40% of total open space (649.32sqm)	33.3% (542sqm)	No change	N/A
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of total open space (568.15sqm)	43.9% (500.3sqm)	No change	Yes
	3 native trees	>3 trees	> 3 trees	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.8m (<50% frontage)	No change	N/A

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.9.1 Communal Rooms and Areas	Yes	Yes
4.4.9.2 Bedrooms	Yes	Yes
4.4.9.3 Open Space	Yes	Yes
4.4.9.4 Parking	Yes	Yes
Schedule 7 – Part A – Boarding Houses	Yes	Yes

#### Detailed Assessment

### **3.4.2 Privacy and Security**

#### Compliance with control

The proposed modification seeks to replace glazed louvre windows on the rear (southern) elevation of L3/L4/L5 with a combination of fixed and sliding windows. The approved rear setback remains unaltered under this modification. Notwithstanding, the existing rock outcrop and vegetation coupled with the notable level difference will prevent direct views of the adjoining private space. Overall, the modified southern elevation has been appropriately designed prevent any significant visual privacy impacts, given the generous building separation, elevation difference and landscaping.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0430 for Modification of Development Consent DA2018/1708 granted for Demolition works and construction of a boarding house on land at Lot 2 DP 589654, 197 Sydney Road, FAIRLIGHT, Lot 87 DP 1729, 195 Sydney Road, FAIRLIGHT, subject to the conditions printed below:



## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-357683 - Mod2023/0430	The date of this notice of determination	<p>Modification of Development Consent DA2018/1708 granted for Demolition works and construction of a boarding house.</p> <ul style="list-style-type: none"> <li>Add Condition No.1B - Modification of Consent - Approved Plans and supporting Documentation</li> </ul>
PAN-51936 - Mod2020/0655	14 April 2021	<p>Modification of Development Consent DA2018/1708 granted for Demolition works and construction of a boarding house.</p> <ul style="list-style-type: none"> <li>Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation.</li> <li>Modify Condition 8 - On-site Stormwater Detention.</li> <li>Delete Condition 12 - Bin Room and Path.</li> <li>Add Condition 12 - Building Code of Australia Upgrade requirements and Fire Safety Upgrade.</li> <li>Modify Condition 17 - Amended Landscape Plans.</li> <li>Delete Condition 22 - Deletion of Cafe.</li> <li>Add Condition 22 - Access and Facilities for People with Disabilities.</li> </ul>

### Modified conditions

#### **A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting documentation, to read as follows:**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan

A01.00	E	Level 0 Plan	Mostaghim	20 June 2023
A01.01	C	Level 1 Plan	Mostaghim	20 June 2023
A01.02	B	Level 2 Plan	Mostaghim	20 June 2023
A01.03	C	Level 3 Plan	Mostaghim	20 June 2023
A01.04	B	Level 4 Plan	Mostaghim	20 June 2023
A01.05	B	Level 5 Plan	Mostaghim	20 June 2023
A01.06	B	Roof Plan	Mostaghim	20 June 2023
A03.01	C	Elevations North + South	Mostaghim	20 June 2023
A03.02	D	Elevations East + West	Mostaghim	20 June 2023
A04.01	D	Section A-A + Section B-B	Mostaghim	20 June 2023
A04.02	C	Section C-C+ Section D-D	Mostaghim	20 June 2023
A06.01	B	Demolition Plan	Mostaghim	20 June 2023

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
Geotechnical Letter	33708PNE3 SR12	JK Geotechnics	3 August 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Kye Miles, Planner**

The application is determined on 16/02/2024, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**