
Sent: 14/12/2018 5:38:09 PM
Subject: DA 1708/2018 - Objection to Proposed Development
Attachments: Objection - DA 1708-2018.pdf;

A submission by way of objection to DA 2018/1708 (195-197 Sydney Road, Fairlight) is **attached**.

Yours faithfully

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General Manager, Planning, Place & Community
Northern Beaches Council
725 Pittwater Road
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14 December 2018
Our Ref: MJS:18172088

council@northernbeaches.nsw.gov.au

Dear Sir

195-197 Sydney Road, Fairlight – DA 2018/1708 – Proposed Boarding House Development - Objection

1 Purpose of this letter

We act for The Owners – Strata Plan 22590 whose premises are located at 189 Sydney Road, Fairlight (**Owners**).

The Owners live next door to 195-197 Sydney Road, Fairlight, which is the site of a pending application for development consent to demolish existing structures and to construct a boarding house (**DA 2018/1708**).

This letter contains a submission by way of objection to DA 2018/1708.

The Owners have also engaged DM Planning to prepare an objection to the proposed development (**DM Planning Submission**). This letter adopts the objections raised in the DM Planning Submission and should be read in conjunction with that document.

2 Summary of submissions

The Owners submit that Council ought to refuse DA 2018/1708 having regard:

- (a) to the grounds of objection raised in the DM Planning Submission;
- (b) to the fact that the design of the proposed development will be incompatible with the character of the local area for the purposes of cl 30A of the ARH SEPP (**Incompatibility Objection**); and
- (c) to the problematic urban design of the proposed development (**Urban Design Objection**).

3 Discussion

3.1 Incompatibility Objection

Clause 30A of the *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)* states:

“A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.”

The DM Planning Submission objects to the design of the proposed development on the basis that it is incompatible with the character of the local area: see p 11-12. We respectfully agree with and adopt that objection subject to the additional comments below.

The Land and Environment Court has developed a Planning Principle to guide the assessment of the compatibility of a proposal with surrounding development (“**Compatibility Planning Principle**” or “**CPP**”): see *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191 at [22]–[31].

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The approach endorsed under the CPP is readily applicable to the assessment required under cl 30A of the ARH SEPP.

An analysis of urban compatibility under the CPP starts with the proposition that “compatibility” does not equate with “sameness” in this context. Rather, compatibility is established by demonstrating that a proposal is capable of “existing in *harmony* with surrounding development”.

The “cl 30A analysis” set out in the Statement of Environmental Effects (**SEE**) (at pp 16-17) does not expressly deal with the degree of harmony between the proposal and the surrounding development. Instead, the analysis focusses narrowly upon the physical characteristics of the development site and the nature of the existing development it will replace.

The applicant, perhaps obliquely, attempts to show that the proposal is compatible with surrounding development by stating that the “... scale of development is consistent with that envisaged by the planning instruments in terms of building height ... and also setback from front and side property boundaries”.

However, this statement is not correct. As noted in the DM Planning Submission, there are in fact significant non-compliances with front, rear and side setbacks: see Table 1.

The CPP provides that a critical step in determining whether a proposal is compatible with surrounding development is establishing its physical and visual impacts. In this context, its physical impacts can relevantly include impacts due to noise, view loss, traffic, and so on.

As outlined in the DM Planning Submission, the proposed development will have a range of unacceptable physical impacts upon the Owners. Some of these impacts will also be suffered by the occupants of other neighbouring development. These impacts alone strongly suggest that the proposed development is “incompatible” for the purposes of cl 30A of the ARH SEPP.

Determining the likely visual impacts of a proposal under the CPP involves an investigation into its “urban character”. The CPP provides that important contributors to a proposal’s urban character are its setbacks and its landscaping.

In this regard, the CPP relevantly states:

- (a) “Front setbacks and the way they are treated are an important element of urban character. Where there is a uniform building line, even small differences can destroy unity”;
- (b) “Setbacks from side boundaries determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way”; and
- (c) “Landscaping is also an important contributor to urban character. In some areas landscape dominates buildings, in others building dominate the landscape”.

The proposed development has front setbacks which deviate significantly from most other development in the street (there are exceptions) and side setbacks which are unresponsive to the existing “rhythm of building and void” in the street. This is unsurprising given that neither the proposed front or side setbacks comply with the applicable planning controls.

In addition, the proposed development provides a wholly inadequate landscaped area (as explained at pp 9-10 of the DM Planning Submission) which is inconsistent with the landscape character of other development in the street.

In circumstances where:

- (a) the applicant has provided no detailed assessment of whether the proposed development is capable of existing in harmony with surrounding development;
- (b) the proposed development will have unacceptable physical impacts on surrounding development; and
- (c) where the proposed development must, *prima facie*, be assumed to have visual impacts and an urban character that is not compatible with surrounding development owing to the problems with its front and side setbacks and landscaped area referenced above,

Council could not reasonably be satisfied that the applicant has demonstrated that the proposed development is consistent with the character of the local area for the purposes of cl 30A of the ARH SEPP and it would be reasonably open to it to refuse to grant consent to DA 2018/1708 on this basis.

3.2 Urban Design Objection

This objection is closely related to the Incompatibility Objection outlined above. The key point is that the proposed design involves a significant overdevelopment of the site which, *inter alia*, affects its compatibility with surrounding development including for the purposes of cl 30A of the ARH SEPP.

This issue is highlighted in Council's "Urban Design Referral Response" which relevantly concludes that the design of the proposed development requires further refinement to reduce its bulk and scale to "relate contextually to the existing pattern of development in the area".

These design amendments are especially important on this site which, due to its "topography and location in the context of neighbouring properties" effectively presents the proposed building "in the round".

Unless and until the development is amended to address the issues raised in its own Urban Design Referral Response, it is submitted that Council could not reasonably conclude that the proposed development:

- (a) is compatible with the local area for the purposes of cl 30A of the ARH SEPP; or
- (b) will have acceptable impacts upon the surrounding built environment for the purposes of s 4.15(1)(b) of the *Environmental Planning & Assessment Act 1979*.

4 Conclusion

For the above reasons, the Owners submit that Council should refuse to approve DA 2018/1708.

Yours faithfully



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