

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0342
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Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 8 DP 75738, 120 Pittwater Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA0065/2012 granted for demolition works and construction of a boarding house
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Band Pty Ltd
Applicant:	BBF Town Planners

Application lodged:	04/07/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	10/07/2018 to 26/07/2018
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	Approval

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 - 4.4.9 Boarding Houses

SITE DESCRIPTION

Property Description:	Lot 8 DP 75738 , 120 Pittwater Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Pittwater Road Manly. The site is irregular in shape with a frontage of 12.19m along Pittwater Road and a depth of 35.2m. The site has a surveyed area of 423.7m². The site is located within the R3 medium density zone and accommodates a two storey boarding house. The site is generally flat and does not include any significant landscape features. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential accommodation and includes dwelling houses, residential flat buildings and semi-detached dwellings.

Map:



SITE HISTORY

On 15 November 2012 Council (as the then Manly Council) granted development consent for the erection and use of a boarding house at 120 Pittwater Road Manly pursuant to the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 ("SEPP(ARH)").

That development consent included conditions ANS04(a) and (b) and ANS05 (a), (b) and (c) which were as follows:

"ANS04

Use of premises as a boarding house.

(a) The premises shall be used as a boarding house as defined in Section 516(1A) of the Local Government Act 1993, being a building wholly or partly let as lodging in which each letting provides the tariff-paying occupant with a principal place of residence.

(b) Each tariff charged shall not exceed the maximum tariff for boarding houses or lodging houses for the time being determined by the Minister by order published in the Government Gazette. If requested by Council, the operator shall provide details of the rental tariff charged at the subject boarding house.

Reason: To comply with legislation.

ANS05

The following restriction applies to buildings approved for boarding house use:

(a) The accommodation of the building must be used as a boarding house only and not for the purposes of permanent residential accommodation nor hotel, motel, serviced apartments, private hotel, tourist or backpackers' accommodation or the like.

(b) The maximum rental tariff to be charged to occupants shall not exceed the maximum rental tariff for the time being determined by the most recent Office of State Revenue, 'Revenue Ruling (201 1 - LT87) - Exemption - Land Used and Occupied Primarily for a Boarding House.'

(c) A restrictive covenant is to be registered on the title of the development site restricting the maximum rental tariff to be charged for boarding houses or lodging houses for the time being determined by the most recent Office of State Revenue, 'Revenue Ruling (201 1 - LT87) - Exemption - Land Used and Occupied Primarily for a Boarding House. The covenant is to be

registered on title prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, to the satisfaction of the Council. All costs of the preparation and registration of all associated documentation are to be borne by the applicant.

Reason: To comply with legislation."

The applicant subsequently lodged Modification Application No. DA0065/2012 – S96(1A) – Part 3 ("the Part 3 modification application") which sought to delete conditions ANS04(b) and ANS05(b) and (c).

When considering the Part 3 modification application the assessing officer considered minutes of a meeting of the Ocean Beach Precinct Community Forum on 26 February 2013 which are as follows:

"DA 65/2012

120 Pittwater Road, Manly

Section 96 to modify approved Demolition of existing structures and construction, of a two (2) storey boarding house including eleven (11) boarding rooms – involving modification conditions ANS04 and ANS05 relating to the operation of the boarding house and regulation of the tariffs – Part 3.

Ocean Beach Precinct records its deep concern that this development was sold to the public and council under the pretence that it was providing necessary affordable housing for key workers.

The owner is, through a supposed technical loophole, attempting to subvert the public's expectations of the development and concessions given to the applicant.

OBP does not agree that the proposed modifications of the consent are in accordance with the aims, objectives and principles contained in the State Environmental Planning Policy (Affordable Rental Housing) 2009.

OBP requests Council do everything in it's power to ensure that the maximum rental tariffs are retained so that this proposal and others made under the same legislation perform as intended in terms of providing affordable housing within a high rent environment."

When dealing with the objections that had been received by Council the assessing officer made the following comments:

"Comment on submissions:

- The removal of the parts of the conditions as applied for does not alter the approved use and all conditions pertaining to its being managed as a Boarding House;*
- The application was assessed under SEPP (Affordable Rental Housing) 2009 under Part 2 'New Affordable Rental Housing'. This is not the same as 'Affordable Housing' as defined below:*

'Part 1, Clause 6

Affordable housing

Note. The Act defines affordable housing as follows:

affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

(1) In this Policy, a household is taken to be a very low income household, low income household or moderate income household if the household:

(a) has a gross income that is less than 120 per cent of the median household income for the time being for the Sydney Statistical Division (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or

(b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.

(2) In this Policy, residential development is taken to be for the purposes of affordable housing if

the development is on land owned by the Land and Housing Corporation.'

The application does not remove or lessen the approved use as a Boarding House nor change the way it would be considered by Council nor remove myriad other conditions that pertain to Boarding Houses.

To ensure that all relevant current legislation applies to this application and to allay public concerns, the assessing officer has also include an additional non-standard condition requiring compliance with The Boarding Houses Act 2012 and ensure that this Boarding House is included in any registration of such establishments and protect residents as per the Act."

On 16 May 2013 Council determined that modification application and amended ANS04 and ANS05 and included ANS24 as follows:

“ANS04

Use of premises as a boarding house.

(a) The premises shall be used as a boarding house as defined in Section 516(1A) of the Local Government Act 1993, being a building wholly or partly let as lodging in which each letting provides the tariff-paying occupant with a principal place of residence.

Reason: To comply with legislation.

ANS05

The following restriction applies to buildings approved for boarding house use:

(a) The accommodation of the building must be used as a boarding house only and not for the purposes of permanent residential accommodation nor hotel, motel, serviced apartments, private hotel, tourist or backpackers' accommodation or the like.

Reason: To comply with legislation.

ANS24

The Boarding House as approved is to comply fully with the relevant requirements of The Boarding Houses Act 2012.

Reason: Compliance with current legislation

All other conditions to remain in force. “

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the deletion or amendment to the condition ANS04(a) which currently reads as follows:

"ANS04(a): The premises shall be used as a boarding house as defined in Section 516(1A) of the Local Government Act 1993, being a building wholly or partly let as lodging in which each letting provides the tariff-paying occupant with a principal place of residence."

The proposed amendment to the condition is to remove any reference to imposing tariffs or rent capping on the subject site.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 DA65/2012, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(1A) - Other Modifications	Comments
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:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA65/2012.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan.
(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	See discussion on "Notification & Submissions Received" in this report.

Section 4.15(1A) - Other Modifications	Comments
may be.	

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	None applicable.
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 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements

Section 4.15 'Matters for Consideration'	Comments
	under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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	(i) Environmental Impact 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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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 “Public Exhibition” 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 development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Peter John Nass	69 Whistler Street MANLY NSW 2095
Mr Mark Andrew Bateman Mrs Jennifer Christine Bateman	126 Pittwater Road MANLY NSW 2095
Mr Francis Nicholas Wilson	110 Pittwater Road MANLY NSW 2095
Mr Alan John Butler	93 Pittwater Road MANLY NSW 2095

The following issues were raised in the submissions and each have been addressed below:

- Application approved as affordable housing as a concession to compliance with the controls
- There is a need for affordable housing within the area
- Potential of change of use and subdivision

The matters raised within the submissions are addressed as follows:

- Application approved as affordable housing as a concession to compliance with the controls
Comment:
This application is solely to review the condition imposed by Council. Councils position is that the condition is beyond the scope of the Boarding House definition and therefore does not pass the Newberry test. As such it is recommended the condition be amended to require compliance with the definition of a boarding house within the Manly LEP 2013.
- There is a need for affordable housing within the area
Comment:
The proposed modification does not change the approved use..
- Potential of change of use and subdivision
Comment:
There is no mechanism to subdivide boarding houses. Any development application for a change of use will be assessed and determined on the merits of that application.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

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".

The proposed modification will not alter the sites compliance with SEPP (ARH).

Regarding the modification to condition ANS04(a), the following assessment is provided:

The development application was submitted in accordance with the provisions of the EP&A Act and relied upon SEPP(ARH). Section 516(1A) of the LGA is contained in Part 3 – Ordinary rates which is in Chapter 15 – How are councils financed. This section is as follows:

"516 Categorisation as residential

(1) Land is to be categorised as residential if it is a parcel of rateable land valued as one assessment and:

- (a) its dominant use is for residential accommodation (otherwise than as a hotel, motel, guest-house, backpacker hostel or nursing home or any other form of residential accommodation (not being a boarding house or a lodging house) prescribed by the regulations), or*
- (b) in the case of vacant land, it is zoned or otherwise designated for use under an environmental planning instrument (with or without development consent) for residential purposes, or*
- (c) it is rural residential land.*

(1A) For the purposes of this section, a boarding house or a lodging house means a building wholly or partly let as lodging in which each letting provides the tariff-paying occupant with a principal place of residence and in which:

(a) each tariff charged does not exceed the maximum tariff for boarding houses or lodging houses for the time being determined by the Minister by order published in the Gazette for the purposes of this subsection, and
(b) there are at least 3 tariff-paying occupants who have resided there for the last 3 consecutive months, or any period totalling 3 months during the last year, and includes a vacant building that was so let immediately before becoming vacant, but does not include a residential flat building, licensed premises, a private hotel, a building containing serviced apartments or a backpacker hostel or other tourist establishment.

(2) The regulations may prescribe circumstances in which land is or is not to be categorised as residential."

It is noted that the introductory words in s.516(1A) are "For the purposes of this section". The description of a boarding house or a lodging house being a building wholly or partly let as lodging in which each letting provides the tariff-paying occupant with a principal place of residence set out in s.516 (1A) is only for the purpose of identifying which boarding houses or lodging houses attract the rating benefit set out in s.516A.

Development for the purposes of a boarding house is dealt with in Division 3 of SEPP(ARH). In-fill affordable housing is dealt with in Division 1.

There is no definition of a boarding house in SEPP(ARH). Manly Local Environmental Plan 2013 defines a boarding house as:

"boarding house means 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.

Note.

Boarding houses are a type of residential accommodation—see the definition of that term in this Dictionary."

This relevant definition of a boarding house for the purpose of the assessment of the current modification application.

Clause 6 of SEPP(ARH) contains the flowing note and explanation of its operation with respect to affordable housing:

"Note. The Act defines affordable housing as follows:

affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

(1) In this Policy, a household is taken to be a very low income household, low income household or moderate income household if the household:

- (a) has a gross income that is less than 120 per cent of the median household income for the time being for the Sydney Statistical Division (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or*
- (b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.*
- (2) In this Policy, residential development is taken to be for the purposes of affordable housing if the development is on land owned by the Land and Housing Corporation.”*

It is apparent that a boarding house may contain affordable housing but not all boarding houses must contain affordable housing. The definition of a boarding house in MLEP 2013 does not contain any reference to affordable housing. The nature of the accommodation contained in a boarding house with the restrictions as to the size of boarding rooms contained in cl.30 of SEPP(ARH) will generally mean accommodation in boarding houses will be more affordable than other housing options, the provision of affordable housing as described in cl.6 of SEPP(ARH) is not part of the assessment regime set out in Division 3 of SEPP(ARH).

In *Sales Search Pty Ltd v The Hills Shire Council* [2013] NSWLEC 1052 (2 April 2013) Commissioner Morris made the following comments at par 90-93 (Last Updated: 4 April 2013)

“90. Conditions 63 iii and iv require the creation and registration of restrictions and positive covenants on the title of the land that require, for a 10 year period from the date an Occupation Certificate is issued, the dwellings/units be used for the purposes of affordable housing and the accommodation is managed by a registered community housing provider. Secondly, it is proposed to limit the number of bedrooms and the extent of any building works within those rooms. The wording of that condition relates to creation of the restriction on the title of each dwelling.

91. The applicant opposes the conditions and says that the boarding house will be privately managed and that there is no requirement within either of the SEPPARHs to limit the management or fee structure.

*92. The first condition is similar to ones that I considered in *Revelop Projects Pty Ltd v Parramatta City Council* [2013] NSWLEC 1029 where at [49-50] I stated:*

*49 The conditions sought to be imposed by the council that require registration of a restrictive covenant have been the subject of review by this Court. *Lloyd J in MacDonald v Mosman Municipal Council* [1999] NSWLEC 215, supports Mr Arch's proposition that it is unnecessary and inappropriate to impose a condition requiring a restrictive covenant in some circumstances. I agree that the provisions of the LEP are such that any change of use of the building would require consent and therefore do not consider the restrictive covenant provisions contained in conditions 99 or 127 are necessary however, it is appropriate to specify the use of the building and its purpose as a boarding house.*

50 I also agree that it is a matter for the applicant whether it exercises its ability to obtain land tax exemptions and therefore link tariffs to those specific fees. Whilst it is important to ensure that the aims of SEPPARH are met, the policy does not contain any provisions in relation to boarding houses that limit tariffs whereas there are requirements that require infill development and supporting accommodation to provide affordable housing and the registration of a covenant to ensure compliance. In this case, market forces will determine the tariffs paid by lodgers and I do not consider that it is necessary that these tariffs should be linked to those set by the Office of State Revenue when assessing land tax.

*93. There is no matter raised by the council that would distinguish this case from that considered in *Revelop* and accordingly condition 63 iii should be deleted.”*

Commissioner Morris has identified the correct approach to the question of the imposition of the

unilateral attempt to impose a fees structure on a consent without the request or consent of an applicant. Should an applicant wish to avail itself of rate relief by providing affordable housing this is a decision for the applicant.

In this matter the applicant proposed the construction and use of a boarding house but did not put forward any proposal for affordable housing.

Accordingly, it is recommended condition ANS04 be amended to require the premises to be used as a boarding house as defined by the Manly LEP 2013.

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

The proposal will not alter the sites compliance with any principal development standards.

Manly Development Control Plan

Built Form Controls

The proposal will not alter the sites compliance with any built form controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.9 Boarding Houses	Yes	Yes

Detailed Assessment

4.4.9 Boarding Houses

The proposal is for the amendment to condition ANS04(a). The proposed amendments will not change the use of the boarding house nor will it change the boarding houses compliance with the built form controls of the Manly DCP 2013.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this 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 2000;
- 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. Mod2018/0342 for Modification of Development Consent DA0065/2012 granted for demolition works and construction of a boarding house on land at Lot 8 DP 75738,120 Pittwater Road, MANLY, subject to the conditions printed below:

A. Modify Condition ANS04 to read as follows:

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Boarding House

A Boarding House is defined as:

“boarding house means 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.

Note.

Boarding houses are a type of residential accommodation—see the definition of that term in this Dictionary.”

(development is defined by the Manly Local Environment Plan 2013 (Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent. (DACPLB03)