

TO: Sydney Central City Planning Panel

SUBJECT: 65-71 Kerrs Road LIDCOMBE NSW 2141

APPLICATION No: M2018/210/B

Application lodged	11 December 2019
Applicant	Fuse Management Pty Ltd
Owner	Mr S M Allam
Application No.	M2018/210/B
Description of Land	65-71 Kerrs Road LIDCOMBE NSW 2141, Lot 9 Sec C DP 3431, Lot 10 Sec C DP 3431
Proposed Development	Section 4.55(2) modification application for alterations and additions to approved boarding house including an additional three (3) boarding rooms and a communal living room, reconfiguration of fire stairs and alterations to the external appearance and finishes of the building
Site Area	1872.8sqm
Zoning	R2 Residential Low Density
Disclosure of political donations and gifts	Nil disclosure
Heritage	No
Principal Development Standards	Height of Building Permissible: 9m Approved: 7.3m Proposed: 7.3m
Issues	Boarding room numbers Submission

SUMMARY

1. Development Application No. M2018/210/B was received on 11 December 2019 for the Section 4.55(2) modification application for alterations and additions to approved boarding house including an additional three (3) boarding rooms and a communal living room, reconfiguration of fire stairs and alterations to the external appearance and finishes of the building.
2. The application was publicly notified to occupants and owners of the adjoining properties for a period of 14 days between 21 January 2020 and 4 February 2020. In response, one (1) submission was received.
3. It is noted that SEPP (Affordable Rental Housing) 2009 permits a maximum provision of 12 boarding rooms and pre-lodgement advice was previously issued to the applicant advising that Council would not support a further request to increase the number of rooms. Notwithstanding, an increase in the number of boarding rooms from 37 to 40 is sought by this application on the basis that due to the inclusion of single boarding rooms, the maximum occupancy number is reduced from 72 lodgers to 63.
4. The application is recommended for conditional approval subject to the amended conditions as provided in the attached schedule.
5. The original application is referred to the Panel as the proposal was lodged under Affordable Rental Housing and has a CIV above 5 million dollars. The proposed modification is referred to panel as it is a s4.55(2) modification application.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The subject site is legally described as Lot 9, Section C and Lot 10, Section C DP3431. The development site is shaped like a parallelogram with a frontage of 45.72m to Kerrs Road and a total site area of 1,972sqm.

The site is situated within an established residential area close to the intersection of Kerrs Road and Carroll Street. The land is zoned R2 Residential Low Density and is within 730m walking distance to Lidcombe train station. Bus stops with regular services to Auburn, Merrylands, Granville and Bankstown are located in close proximity to the development site.

The site is surrounded by predominantly older residential building stock in the form of single and double storey dwelling houses however a three storey walk-up residential flat building is located across the road and a two storey walk-up residential flat building is located on the neighbouring property to the west.



Figure 1 – Locality Plan of subject site



Figure 2 – Aerial view of subject site

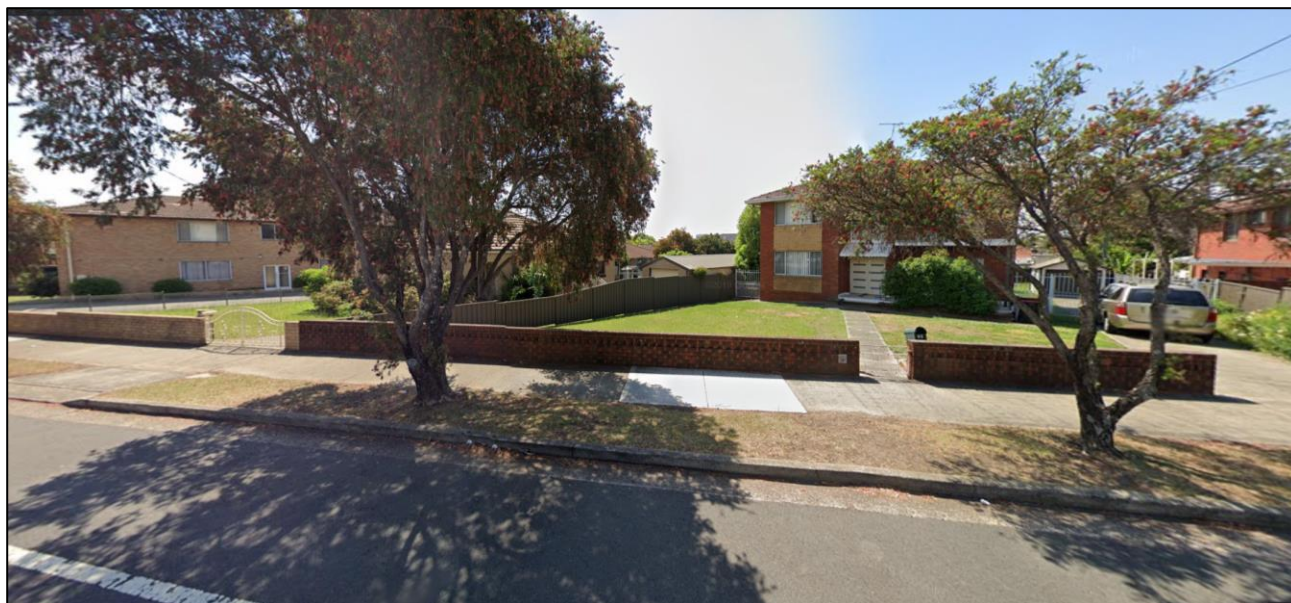


Figure 3 – Street view of subject sites, 65 and 71 Kerrs Road Lidcombe

DESCRIPTION OF THE PROPOSED DEVELOPMENT

Council has received a Section 4.55(2) modification application to increase the number of boarding rooms, and various internal and external design changes including building materials. Each element of the proposed modifications is discussed in greater detail below.

Increase the number of boarding rooms

The total number of boarding rooms is proposed to increase by 3 from 37 to 40 (inclusive of onsite boarding manager). In addition, the mix of boarding rooms is modified from 36 double rooms to 24 double rooms and 15 single rooms. As a result, the total capacity of boarders decreases from 72 to 63 (excluding the onsite boarding manager).

Internal design changes specific to each level

Basement Level

- The layout of the basement level is modified by relocating stairwells, the lift, 'shared zones', motorbike parking spaces and storage areas.

Ground Level

- The number of boarding rooms increases from 18 to 19.
- A double height foyer is introduced which provides a connection to the central courtyard.
- The relocated stairwells and lift are reflected on the ground level.
- Two stairwells providing access to Level 1 are deleted.
- Configuration of the centrally located communal open space is modified.
- Bike racks are provided within the communal open space area.
- Building manager's room is relocated to the western side of the floorplan.
- The number of accessible units increases from 1 to 2.

Level 1

- The number of boarding rooms increases from 19 to 21.
- The shape of the eastern common room is modified and increases in size from 25sqm to 42sqm.

Change to the use of materials

- Façade panels and cladding of various colours are proposed on all elevations in place of exposed and painted face brick.
- The design of balustrades to balconies is modified from frameless glass to vertically proportioned aluminium palisades.

HISTORY

On 2 January 2017, Pre-lodgement advice (PL-67/2017) was issued for the construction of a three-storey boarding house complex containing 44 rooms, 1 managers unit and 12 at-grade car parking spaces.

On 13 June 2019, a Deferred Commencement approval (DA-210/2018) was granted by the Sydney Central City Planning Panel for the demolition of existing structures and construction of a two-storey boarding house containing 37 boarding rooms over basement parking.

On 16 September 2019, Pre-lodgement advice (PL-47/2019) was issued for various modifications to the development application DA-210/2018. The proposed modifications included the following:

- Additional four (4) boarding rooms.
- Additional two (2) car spaces in the basement.
- Reduction in the number of fire safety stairwells from 6 to 2.
- Alter the design of roof resulting in a height increase of 170mm.
- Increase the size of windows to boarding rooms on the south elevation.
- Reduce the width of the stormwater easement to 900mm and relocate it to 8 Matthew Road.

On 22 January 2020, a Section 4.55(1A) modification application (M2018/210/A) was approved by Council staff under delegated authority to reconfigure the basement size and layout including the addition of two parking spaces and associated changes to the levels above.

APPLICANTS SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects (SEE) prepared by Think Planners dated 03/12/2019 and a 'Supplementary Statement' to complement the SEE prepared by Fuse Management and dated March 2020. These documents were received by Council on 11 December 2019 and 31 March 2020 in support of the application.

CONTACT WITH RELEVANT PARTIES

The assessing officer has undertaken a site inspection of the subject site and surrounding properties and has been in regular contact with the applicant throughout the assessment process.

INTERNAL REFERRALS

Development Engineer

The development application was referred to Council's Development Engineer for comment who has advised that there is no objection to the proposed modifications. The amended basement layout complies with the relevant Australian Standards and stormwater plans are consistent with the proposed changes.

EXTERNAL REFERRALS

The application was not required to be referred to any external government authorities for comment.

PLANNING COMMENTS

Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (EP & A Act)

Pursuant to Section 4.55(2), 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:

Council is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).

Comment: The development as proposed to be modified is substantially the same as the original consent. That is, the use, building mass and appearance and impact on the surrounding properties is consistent with the current approval.

Council has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent.

Comment: No Minister, public authority or other approval body was required to be consulted regarding the proposed modification.

Council 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 that requires the notification or advertising of applications for modification of a development consent.

Comment: The extent of surrounding property owners/residents notified of the modification application was undertaken as per the neighbour notification undertaken as part of the assessment of the original DA. Persons that made a submission in response to the original DA were also notified of the modification application.

Council 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.

Comment: Refer to submissions section of this report.

Relevant matters referred to in Section 4.15(1) of the act have been taken into consideration.

Comment: The proposed modification is not contrary to the public interest and the likely environmental impacts of the development as modified are considered acceptable.

The provisions of any Environmental Planning Instruments (EP&A Act s4.15 (1)(a)(i))

State Environmental Planning Policies

The proposed development is affected by the following State Environmental Planning Policies:

(a) State Environmental Planning Policy (State and Regional Development) 2011

The original DA is a development of a type that is listed in Schedule 7 of *SEPP (State and Regional Development) 2011*. It was defined as 'Regional Development' as it had a Capital Investment Value (CIV) of over \$5 million.

The proposal is a s4.55(2) modification application of a regionally significant development and is therefore required to be determined by the panel.

(b) State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

Clause 7 of SEPP 55 requires Council to be satisfied that the site is suitable or can be made suitable to accommodate the proposed development. The matters listed within Clause 7 were considered in the assessment of the original development application. It was concluded that the site is suitable for the intended use which remains applicable to the modification application.

(c) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

BASIX Certificate 918957M_06 dated 30 March 2020 prepared by Outsource ideas P/L has been submitted with Council and is considered to be satisfactory.

(d) State Environmental Planning Policy (Affordable Rental Housing) 2009

The relevant objectives and provisions of the ARHSEPP 2009 have been considered in the following assessment table.

Relevant Clause(s)	Compliance with Requirements
<p>26. land to which Division applies</p> <p>This Division applies to land within a land use zone that is equivalent to any of those zones-</p> <ul style="list-style-type: none"> (a) Zone R1 General Residential, (b) Zone R2 Low Density Residential, (c) Zone R3 Medium Density Residential, (d) Zone R4 High Density Residential, (e) Zone B1 Neighbourhood Centre, (f) Zone B2 Local Centre, (g) Zone B4 Mixed Use. 	<p>Yes – The subject site is located within the R2 Low Density Residential Zone as identified in ALEP 2010.</p>
<p>29. Standards that cannot be used to refuse consent</p> <p>1) 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—</p> <ul style="list-style-type: none"> (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 development permitted on the land, or (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— (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1. <p>(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds—</p> <p>(a) building height</p> <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>(b) landscaped area</p>	<p>There is no FSR requirement that applies to the subject development as per the ALEP 2010.</p> <p>Yes – The overall massing of the development is generally consistent with the original approval and the building height remains unchanged. Permitted building height = 9m Approved building height = 7.3m Proposed building height = 7.3m</p> <p>Yes – No change to the provision of landscaping within the setback areas of the development is proposed.</p>

<p>if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,</p> <p>(c) solar access 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,</p> <p>(d) private open space if at least the following private open space areas are provided (other than the front setback area)—</p> <p>(i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,</p> <p>(e) parking if—</p> <p>(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 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>(f) accommodation size 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>(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.</p> <p>(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).</p>	<p>Yes – A single communal living area is provided on the eastern side of Level 1 and will receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.</p> <p>Yes – Private open space is maintained within the building in a central location on the ground floor and along the majority of the northern setback area which satisfies this requirement. A 20sqm private courtyard is provided adjacent to the managers room.</p> <p>Yes – No change is proposed to the approved number of car spaces (23 spaces).</p> <p>Yes – 0.5 x 39 boarding rooms = 19.5</p> <p>Yes – 1 space required for the boarding manager. Therefore, the total number of required spaces is 20.5 (rounded to 21). 23 car spaces are provided in the basement level, therefore this control is satisfied.</p> <p>Yes – The GFA of each boarding room excluding any area used for the purposes of private kitchen or bathroom facilities complies with the minimum requirement.</p> <ul style="list-style-type: none"> - 24 x rooms are over 16sqm - 15 x rooms are between 12sqm and 16sqm
<p>30. Standards for boarding houses</p> <p>(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—</p> <p>(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,</p>	<p>Yes – A communal boarding room is provided on Level 1. It is enlarged from 25sqm to 42sqm and is considered to be of sufficient</p>

<p>(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 25 square metres,</p> <p>(c) no boarding room will be occupied by more than 2 adult lodgers,</p> <p>(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,</p> <p>(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,</p> <p>(f) (Repealed)</p> <p>(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,</p> <p>(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.</p> <p>(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.</p>	<p>size to accommodate the number of boarding rooms and boarding capacity of the modified development.</p> <p>Yes – The maximum boarding room size (excluding kitchen and bathroom facilities) is 22sqm.</p> <p>Yes – This requirement is enforced by existing conditions of consent.</p> <p>Yes – Kitchen and bathroom facilities are provided within each boarding room.</p> <p>Yes – The modified development is designed to accommodate a maximum of 63 boarders. A manager's room is provided on the Ground Level at the south western part of floor.</p> <p>Yes subject to amendment of Condition 15 – Insufficient bicycle and motorcycle spaces are provided within the site. Condition 5 shall be amended to ensure the following number of parking spaces noted below is provided.</p> <p>Bicycle spaces $39/5 = 8$ Motorcycle spaces $39/5 = 8$</p>
<p>30AA Character of local area</p> <p>A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.</p>	<p>Yes - The original DA was assessed with regard to case law and the Planning Principle '<i>Surrounding Development – Compatibility of the proposal with surrounding development</i>' (<i>Project Venture Developments Pty Ltd v Pittwater Council [2005] NSW/LEC 191</i>) and was deemed to be compatible with the local area despite proposing 36 boarding rooms.</p> <p>The modification application seeks to increase the number of boarding rooms by 3 (from 37 to 40) inclusive of the managers room. Despite the additional boarding rooms, the modified proposal is considered to maintain consistency with the character of the local area on the basis of the following points:</p> <ul style="list-style-type: none"> - The maximum capacity of boarders will decrease from 72 to 63 due to the introduction of single boarding rooms. - The building envelope of the development remains consistent with the current approval as it maintains similar building setbacks and an unchanged building height. <p>The modified development will remain visually consistent with the residential character of the area as evidenced by the submitted materials schedule (Sheet: A4.00).</p>
<p>30A Character of local area</p> <p>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.</p>	<p>Yes – Refer to comments above.</p>

The provision of the Auburn Local Environmental Plan 2010 (ALEP 2010) is applicable to the development proposal. It is noted that the development achieves compliance with the key statutory requirements of the ALEP 2010 and the objectives of the R2 Low Density Residential zone.

(a) Permissibility:-

The proposed development is defined as a 'Boarding House' and is permissible in the R2 Residential Low Density zone with consent.

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.

The relevant matters to be considered under ALEP 2010 and the applicable clauses for the proposed development are summarised below.

Figure 4 – Auburn LEP 2010 Compliance Table

DEVELOPMENT STANDARD	COMPLIANCE	DISCUSSION
Is the development consistent with the aims of the LEP?	Yes	The modified proposal is consistent.
Is the development consistent with the zone objectives?	Yes	The modified proposal is consistent.
4.3 Height of Buildings max. 9m	Yes	No change from current approval.
4.4 Floor Space Ratio N/A	N/A	FSR does not apply in the R2 Residential Low Density zone.
Heritage Conservation	Yes	Local heritage item 129 being two dwellings at 53 and 55 Kerrs Road, Lidcombe is located in proximity to the subject development site. The modified development is not considered to negatively impact the heritage significance of this item.
Acid Sulphate Soils	Yes	Class 5.
Earthworks	Yes	No change to the approved extent of earthworks is proposed.
Flood Planning	N/A	
Biodiversity Protection	N/A	
Water Protection	N/A	

The provisions of any proposed instrument that is or has been the subject (EP&A Act s4.15 (1)(a)(ii))

The Draft Cumberland Local Environmental Plan 2020 (Draft CLEP) has been prepared by Cumberland Council to provide a single planning framework for the future planning of Cumberland City. The changes proposed seek to harmonise and repeal the three existing LEPs currently applicable to the Cumberland local government area, those being Holroyd Local Environmental Plan 2013, Parramatta Local Environmental Plan 2011, and Auburn Local Environmental Plan 2010.

The current planning controls for the subject site, as contained within the Auburn LEP 2010, are not proposed to change under the Draft CLEP.

The provisions of any Development Control Plans (EP&A Act s4.15 (1)(a)(iii))

The Auburn Development Control Plan 2010 (ADCP 2010) provides guidance for the design and operation of development to achieve the aims and objectives of the ALEP 2010. There are no controls under ADCP 2010 that are relevant to boarding house development.

The provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 (EP&A Act s4.15(1)(a)(iia))

There is no draft planning agreement associated with the subject Development Application.

The provisions of the Regulations (EP&A Act s4.15 (1)(a)(iv))

The proposed development raises no concerns as to the relevant matters arising from the *Environmental Planning and Assessment Regulations 2000* (EP&A Reg).

The Likely Environmental, Social or Economic Impacts (EP&A Act s4.15 (1)(b))

It is considered that the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

The suitability of the site for the development (EP&A Act s4.15 (1)(c))

The subject site and locality is not known to be affected by any natural hazards or other site constraints likely to have a significant adverse impact on the proposed development. Accordingly, it is considered that the modified proposal is suitable in the context of the site and surrounding locality.

Submissions made in accordance with the Act or Regulation (EP&A Act s4.15 (1)(d))

Advertised (newspaper) ☒ Mail ☒ Sign ☒ Not Required ☐

In accordance with Council's Notification requirements contained within the ADCP 2010, the proposal was publicly notified for a period of 14 days between 21 January 2020 and 4 February 2020. The notification generated one (1) submission in respect of the proposal. The issues raised in the public submissions are summarised and commented on as follows:

1. Issue: The development is too large for the area and by adding additional rooms will make it even larger.

Planner's comment: While the total number of boarding rooms will increase, by three the building mass of the modified development will remain consistent with the current approval noting that building height and setbacks will remain largely unchanged. On this basis, the modified development is not considered to be too large for the area.

2. Issue: The development is too close to the boundary and impacts privacy and security of adjoining residents.

Planner's comment: The modified development is not considered to unreasonably impact the privacy or security of the surrounding properties for the following reasons:

- The north and west elevations of the development maintain large setbacks of 10m and 7.6m respectively which are sufficient to maintain an adequate level of privacy to the adjacent properties.
- The east elevation of the building is setback 1.5m from the shared boundary with a dwelling house. The window on this elevation is associated with a communal living room on the first level of the development and has an elevated sill height measuring 1.6m which redirects views away from the neighbouring property.

The public interest (EP&A Act s4.15(1)(e))

In view of the foregoing analysis it is considered that the development, if carried out subject to the conditions set out in the recommendation below, will have no significant adverse impacts on the public interest.

SECTION 7.11 (FORMERLY S94) CONTRIBUTION TOWARDS PROVISION OR IMPROVEMENT OF AMENITIES OR SERVICES

The development requires the payment of contributions in accordance with Council's Section 94 Contributions Plans and was based on the number of boarding rooms provided by the development. In this regard, the development contributions have been amended to reflect the proposed increase in the number of boarding rooms (from 37 to 40).

As at 20 May 2020, the amended fee payable is \$123,873.00. This figure is subject to indexation as per the relevant plan. The draft determination attached includes a condition requiring payment of the contribution prior to issue of a Construction Certificate.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

The applicant and notification process did not result in any disclosure of Political Donations and Gifts.

CONCLUSION

The modification application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*, *State Environmental Planning Policy (Affordable Rental Housing) 2009*, Auburn Local Environmental Plan 2010 and Auburn Development Control Plan 2010 and is considered to be satisfactory for approval subject to the amendment of Schedule B conditions of consent.

RECOMMENDATION

1. **That Development Application No. M2018/210/B for Section 4.55(2) modification application for alterations and additions to approved boarding house including an additional three (3) boarding rooms and a communal living room, reconfiguration of fire stairs and alterations to the external appearance and finishes of the building on land at 65-71 Kerrs Road LIDCOMBE NSW 2141 be approved subject to attached conditions.**
2. **Persons whom have lodged a submission in respect to the application be notified of the determination of the application.**

ATTACHMENTS

1. Draft Notice of Determination
2. Architectural Plans
3. Landscape Plan
4. Solar Access plan to the rooms and communal room
5. Stormwater Plans
6. Statement of Environmental Effects
7. Supplementary Statement