

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Development Application Number: REV2018/0035

Planner: Claire Ryan, Principal Planner

Property Address: 14 Wyatt Avenue, Belrose

Property Description: Lot 2597 DP 752038

Recommendation: **REFUSAL**

Clause 20 Variation: Yes

Proposal: Construction of a boarding house with 24 rooms including a manager's residence.



SITE DESCRIPTION

The subject site is a single allotment located on the north-western side of Wyatt Avenue, Belrose. The site is rectangular in shape and has a width of 28.595 metres and a depth of 80.42 metres, equating to an overall surveyed area of 2,298 square metres.

At present, the site accommodates heavy planting of canopy trees of varying species and heights. The majority of the trees are located parallel to the eastern property boundary, with several trees interspersed around the allotment. A hedge approximately 3m in height exists parallel to the street frontage. The trees parallel to the eastern boundary are scattered amongst boulders and the like, identified as a 'watercourse' in the provided survey.

The site is not developed and includes a driveway that extends for the length of the site and connects to the rear portion of 16 Wyatt Avenue to the north.

The site slopes approximately 10 metres from south to north (front to rear) via a gradual slope, and no exceptional topographical features can be found on the site.

The site is bound by 16 Wyatt Avenue to the west and north. 16 Wyatt Avenue accommodates a multi-storey detached dwelling house and an in-ground swimming pool. The portion of 16 Wyatt Avenue that the driveway on the subject site leads to (to the north) accommodates a tack shed, horse facilities and an informal helicopter landing area. 16 Wyatt Avenue extends approximately 115 metres to the north-west before adjoining bushland. East of the subject site is 12 Wyatt Avenue, which is identical in shape to the subject allotment, and is vacant of structures. South of the site and across Wyatt Avenue are six detached dwelling houses on allotments far smaller than those on the northern side of Wyatt Avenue.

SITE HISTORY

The land has been vacant for an extended period of time. A search of Council's records has revealed that there are no recent or relevant applications for this site prior to the prelodgement meeting and development application DA2018/0401 described below. This application (REV2018/0035) is for the review of the determination of DA2018/0401, which was refused by the Northern Beaches Local Planning Panel (NBLPP) on 26 October 2018.

It is important to note a historical subdivision pattern of the land on 8 March 1974 which is referenced in the Housing Density standards of WLEP 2000. A copy of this subdivision pattern is shown on Figure 1 below from Council records:



The red circle (added) shows that Nos. 14 and 16 Wyatt Avenue were in the same ownership at 8 March 1974. This background history becomes relevant later in this assessment.

Prelodgement Meeting

A prelodgement meeting was held between the applicant and Council on 30 November 2017 to discuss the proposal for the construction of a boarding house (refer PLM2017/0139), summarised as follows:

The proposal was for a part two-, part three-storey boarding house with 33 rooms, nine car parking spaces and seven motorcycle spaces. The proposal accommodated one common room.

It was agreed that the State Environmental Planning Policy (Affordable Rental Housing) 2009 does not apply to the development, but, *notwithstanding the applicability of the SEPP ARH to this particular development, it is considered that the standards contained with Cl.40 of the SEPP ARH should be considered in the design of the development.*

It was agreed that the development for the purpose of a boarding house is a Category Two development by virtue of being an innominate use, and is therefore permitted with consent in the locality.

It was agreed that, if any form of development is to occur on this site, the specified location is the most suitable with regard to minimising impacts on trees and the landform.

Insufficient detail was provided regarding the materiality and proposed landscaping to make a judgement of whether the development will be enhancing and complementary to the natural landscape.

The onus was placed on the applicant to provide legal advice regarding whether or not the development can comply with the requisite housing density standard.

The development proposed side boundary setbacks as little as 3m, where 10m is required by the WLEP 2000. This element was not supported, and it was recommended that a minimum setback of 6m be required given the width of the site, subject to the building having sufficient articulation and it being demonstrated that the variation will have no unreasonable impact.

A minimum of 50% landscaping is required, and a landscape plan is to accompany the application.

The report concluded that, where possible, the applicant should attempt to undertake preliminary consultation with neighbours prior to lodgement given the controversial nature of boarding house developments. This is not a legislative or statutory requirement, only a recommendation.

Development Application DA2018/0401

DA2018/0401 sought consent for the following works:

- Construction of a boarding house, comprising:
 - Basement car park containing 10 car spaces, 8 motorcycle spaces, 18 bicycle spaces, laundry facilities, services and circulation spaces (lift and stairs);
 - 27 boarding rooms (including one caretaker's unit and two adaptable units), capable of holding up to 54 residents (including caretaker); and
 - Two communal living areas.
- New driveway; and
- Landscaping works.

DA2018/0401 was refused by the Northern Beaches Local Planning Panel on 26 October 2018 for the following five reasons:

1. *The flood risk assessment report submitted with the development application contains insufficient information to allow a proper and thorough assessment to determine if the development would be likely to have adverse flood risk impacts.*
2. *For that reason the Panel is not satisfied that for the C8 Belrose North Locality the development is consistent with the Warringah Local Environmental Plan 2000 (WLEP 2000) desired future character requirement of protection and, if possible, enhancement of the natural environment.*
3. *The Panel is not satisfied that the development is consistent with the WLEP 2000 desired future character requirement of conformity with the maximum housing development standard of 1 dwelling per 20 hectares. Although the Panel has a discretion to consent notwithstanding this contravention, it does not consent given the extent of the contravention, the smallness of the site relative to 20 hectares, the large size of the development relative to the site size, and the matters referred to in the other reasons for refusal. If the Panel were prepared to consent (which it is not), then the prescribed concurrence of the Director would be required because the contravention is far more than 10%.*
4. *The Panel is not satisfied that the site is suitable given the matters referred to above and the Panel's assessment that it is an overdevelopment of the site because the building footprint and the total built upon area are too large for the site.*
5. *It is not in the public interest to consent given the matters referred to above.*

PROPOSED DEVELOPMENT IN DETAIL

REV2018/0035 seeks consent for the following works:

- Construction of a boarding house, comprising:
 - Basement car park containing 12 car spaces, 8 motorcycle spaces, 18 bicycle spaces, laundry facilities, services and circulation spaces (lift and stairs);
 - 24 boarding rooms (including one caretaker's unit and two adaptable units), capable of holding up to 48 residents (including caretaker);
 - Two communal living areas (one indoor and one outdoor); and
 - Two communal kitchen/dining rooms.
- New driveway; and
- Landscaping works.

REV2018/0035 provides an amended design that attempts to address the reasons for refusal in the following ways:

1. DA2018/0401 was recommended for deferred commencement approval by the previous Assessing Officer, subject to Deferred Commencement conditions as follows:
 1. *Stormwater Drainage*
This consent must not operate until the following deferred commencement conditions have been satisfied.
 1. *The flood report prepared by Northern Beaches Consulting Engineers dated 8 March 2018 shall be amended to include appropriate modelling, design and reporting sufficient to inform works required to manage overland flows. The*

flood report is to demonstrate that for the proposed works, there are no adverse effects on neighbouring lots (including the road reserve) relating to changes in flood levels, velocities or overland flow location, for the 1%, 5%, and 20% AEP events.

2. *Plans of the proposed works shall be submitted to Council that demonstrate compliance with the requirements of Condition 1. These plans are to:*
 - a) *Include concept plans demonstrating how drainage will be conveyed through the proposed stormwater drainage works and kerb and gutter for the full frontage of 14 Wyatt Avenue.*
 - b) *Demonstrate that any stormwater runoff from the public road that will be captured by the proposed kerb and gutter, is conveyed through the site.*
 - c) *Demonstrate compliance with Council's AUS-SPEC ONE specifications and Water Management Policy, Policy no. PL 850*
 - d) *Delineate the overland flow path through the subject property*
 - e) *Ensure trees are not planted within the stormwater easement*

Details demonstrating compliance with the above are to be submitted to Council's satisfaction, prior to activation of the Development Consent, within twelve months of determination.

Reason: To ensure adequate provision is made for stormwater drainage in a proper manner that protects adjoining properties.

The proposal attempts to provide the additional information. However, not all information was provided, and additional issues have arisen in assessment of this review application, as detailed in the section of this report relating to Referrals (see Development Engineering referral comments).

DA2018/0401 attempted to deal with shortcomings in relation to stormwater management through deferred commencement conditions. However, the NBLPP noted that this was not an appropriate way to deal with the shortcomings, and that the matters must be resolved prior to any approval. The NBLPP subsequently refused DA2018/0401. As such, the shortcomings in relation to stormwater management under REV2018/0035 warrant refusal of the application.

2. In addition to the above at point 1, the proposal also attempts to reduce the technical housing density of the proposal (see comments below in relation to point 3). The proposal also reduces the bulk and scale of the proposed development (see below in relation to point 4). The Applicant accordingly considers the proposal to be in greater consistency with the Desired Future Character of the C8 Belrose North Locality.
3. The amended proposal states kitchenettes have been removed from the boarding room designs, in order to attempt to consider the application as one domicile, rather than 24 domiciles, and thereby reduce the housing density proposed. The proposal instead includes communal kitchen facilities.

It is important to note that the rooms retain plumbing separate to the bathroom (in the form of a kitchen-like sink), and appliances could be installed for cooking purposes. While the Plan of Management stipulates rooms are not to be used for cooking, it is the opinion of the Assessing Officer that the proposal effectively retains kitchenettes, and that the proposal is comprised of 24 domiciles. Notwithstanding this, calculation of housing density is provided in relation to one domicile versus 24 domiciles in the section of this report relating to Non-Compliance with Built Form Controls – Housing Density.

4. The proposal provides the following amendments in order to address the NBLPP's concern that the building is an overdevelopment of the site:

- Increased side setbacks;
- Increased separation between building 'pavilions';
- Increased landscaped area from 50% to 54%;
- Increased number of canopy tree plantings from 54 to 59; and
- Increased car parking from 10 to 12 spaces.

5. The Applicant considers the above adequate in demonstrating the application is in the public interest.

Clause 8.3 (3) of the *Environmental Planning and Assessment Act 1979* states:

In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

As described above, the proposal has been amended in order to address the previous Panel's reasons for refusal. While the amendments are relatively conservative in nature, they combine to result in a considerable and meaningful reduction in impact compared to the original proposal. As such, the amended proposal is considered substantially the same as the original proposal.

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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect 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.

MEDIATION

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

PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the EP&A Regulation 2000 and the Warringah Development Control Plan 2011. As a result of the public exhibition of the application Council received 68 submissions. A list of the persons which

made submissions against the application can be found attached to this report as an Appendix.

Of the 68 submissions received, 6 were in support, and 62 were in objection. The following issues were raised in the submissions and each has been addressed below:

Review of Determination

Concern was raised that the original application was refused, and that a review application should not be allowed. Objectors raised that all previous submissions should be considered under this review. It was also raised that the large number of objections received should result in refusal.

Comment:

Clause 8.3 of the *Environmental Planning and Assessment Act 1979* (the Act) provides that an applicant may request a consent authority to review a determination. The Applicant of DA2018/0401 has a lawful right to seek the review of the refusal of the application. The objections raised in relation to the previous application are also raised in relation to this review application, and are therefore addressed in this section of the report.

Refusal of an application based wholly or partly on the number of objections received does not constitute an objective, thorough, or fair assessment. The application has been assessed based on its merits and a recommendation has been applied accordingly.

These matters do not warrant the refusal of the application.

Assessment Considerations

Concern was raised that the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH) should not be a consideration in the assessment of this review of the determination. Objectors raised concern that the development should be considered commercial and, therefore, a Category 3 development under the *Warringah Local Environmental Plan 2000*.

Comment:

It is agreed that the SEPP ARH does not strictly apply to this site. However, in the absence of controls for the assessment of boarding house developments under the WLEP 2000, it is warranted to consider the application against the relevant provisions of the SEPP ARH. Notwithstanding this, assessment against the SEPP ARH holds no determining weight to the recommendation of this application.

The intention of a boarding house is to provide residential accommodation. The proposed development is no more a commercial development than a residential flat building or single dwelling house. The proposal is considered Category 2 development under the WLEP 2000.

These matters do not warrant the refusal of the application.

Affordable Housing

Concern was raised that this type of housing is not 'affordable'.

Comment:

The property market will set the rate for rental prices, as there is no legislation capping rental prices for this development.

This matter does not warrant the refusal of the application.

Substantially the Same Development

Objectors raised that the development is not substantially the same, as the Applicant states that by removing the kitchenettes from the boarding room designs, the proposal can be classified as 'one' domicile, not 24 individual domiciles (or 27 in the original application). The density of the development should be calculated on a site area excluding the driveway/right of way through to 16 Wyatt Street. Additionally, the design submitted for the review application adds common rooms, adds a lift, reduces the number of rooms, alters the proposed layout and landscaping, and modifies the plan of management.

Comment:

The density of this application (including calculation of the variation of the housing density development standard) is addressed in the section of this report relating to the Non-Compliance with Built Form Controls – Housing Density. The density of the proposal is assessed as being substantially the same as the original proposal.

The changes to the proposed building and landscape design and the plan of management are assessed as being substantially the same as the original proposal.

These matters do not warrant the refusal of the application.

Desired Future Character

Concern was raised that the proposed development is not in character with the C8 Belrose North Locality, sets a poor precedent, and is not low impact and low intensity as required.

Comment:

The proposed development is considered acceptable in relation to the desired future character of the locality for the reasons detailed in the section of this report relating to the WLEP 2000. The proposal is therefore not considered a poor precedent, and is low intensity and low impact.

This matter does not warrant the refusal of the application.

Building Form

Concern was raised that the proposal is over development of (i.e. too large for) the site. Objectors also raised concern that the proposal included non-compliances, and that the rooms were not of adequate size for families. There is public benefit in maintaining the planning controls.

Comment:

The proposed bulk and scale of the development, including non-compliances, are acceptable for the reasons detailed in the section of this report relating to WLEP 2000 (Appendix C) Built Form Controls. The section also demonstrates that proposal is in the public benefit notwithstanding the development controls.

The proposed boarding rooms are of acceptable size in accordance with the SEPP ARH. This report establishes the relevance of considering the SEPP ARH notwithstanding that it does not strictly apply to this development. It is important to note that boarding rooms are not intended to be used by more than two individuals.

These matters do not warrant the refusal of the application.

Traffic and Parking

Objections noted that the proposed development does not provide enough parking onsite. Concern was raised that Wyatt Avenue lacks on-street car parking, due to the nearby school and the activities associated with Wyatt Reserve. Concern was also raised regarding the congestion of the local road network and that the proposed development will exacerbate the traffic and congestion, such as when garbage is collected. Finally, objectors raised concern that the site was not adequately serviced by public transport.

Comment:

The proposed development provides compliant parking in accordance with the SEPP ARH. This report establishes the relevance of considering the SEPP ARH notwithstanding that it does not strictly apply to this development.

The proposed development is supported by a detailed traffic and parking report prepared by a suitably qualified traffic engineer. The report and the proposed development have been reviewed by Council's Traffic Engineer, who raised no objection to the traffic generation resulting from the development.

These matters do not warrant the refusal of the application.

Environmental Impacts

Concern was raised regarding the following environmental impacts:

- Removal of trees and the impact this may have upon any wildlife corridors and threatened species (no flora/fauna study was submitted);
- The site is in a riparian zone;
- The site poses a flood risk;
- The proposal relies on deep excavation;
- The application does not detail pollution prevention measures;
- The proposed landscaping is not all native and does not equate to 54% of the site;
- The use of the boarding house will result in unreasonable light spill.

Comment:

The extent of tree removal is supported based on Council's Landscape Officer's advice and the provision of replacement planting that will offset the effects of the tree removal. The subject site is not classified as containing threatened species or wildlife corridors. The site is supported by an Arboricultural report relating to the proposed tree loss, and is adequately landscaped with compensatory trees. This is considered adequate in providing habitat for flora and fauna on site.

The original application was reviewed by Council's Riparian Lands and Creeks team, and no objection was raised as the subject site is not identified as being subject to detailed Waterways and Riparian Lands assessment.

The proposal involves significant earthworks to allow for basement car parking. However, as discussed in the section of this report relating to the Desired Future Character Statement, this excavation allows the development to respond better to the topography by reducing the overall height and bulk of building visible above the ground surface. Externally, the resulting building steps down to form three pavilion-like segments, in response to the sloped topography of the site.

The development is for the purpose of a boarding house and is not anticipated to result in the emission of pollutants that would unreasonably diminish the amenity of adjacent properties, the locality, or waterways.

The Assessing Officer has calculated that 53.5% (1,231sqm) of the site is landscaped, thereby providing compliance with the landscaped area required on site. Clause 63 of the WLEP 2000 provides that development is to enable the establishment of indigenous vegetation and habitat for native fauna. Clause 63A of the WLEP 2000 provides that development is to provide opportunities for the planting of substantial native trees. As such, not all planting is required to be native. The proposed development includes 59 canopy tree plantings, all of which are native. Of the remaining 20 species of smaller trees, shrubs, groundcovers and grasses, 16 are native. This poses a significant majority of native planting and is acceptable in accordance with Clauses 63 and 63A of the WLEP 2000.

Light spill is considered reasonable based on the design of the proposal, its residential use and physical separation from adjoining residential premises.

The above matters do not warrant the refusal of the application.

The subject site is not classified as affected by flood hazard. A flood hazard report was prepared to assess the impact of the proposed development on the site in consideration of large storm events and overland flow. As with the original application, the flood risk assessment report submitted with the review application contains insufficient information to allow a proper and thorough assessment to determine if the development would be likely to have adverse flood risk impacts.

The above matter warrants the refusal of the application.

Social Impacts / Concerns

Concern was raised that residents of a boarding house are 'transient' and will be responsible for decreased property value, increased insurance premiums, increased crime, decreased safety, unreasonable noise, bad behaviour, and unclean living. Concern was also raised that the location of these residents is inappropriate near a school / near children. Concern was raised that there are not enough social activities for the residents to remain occupied.

Comment:

Derogatory and unfounded remarks need not be considered in assessment of this application. Residents of a boarding house are typically less established than residents who have lived in the locality for many years. However, this does not automatically result in an adverse impact on the locality.

A premises accommodating 48 persons may produce more noise than a single dwelling house. However, a boarding house is subject to stricter requirements in relation to resident behaviour (including noise) than a standard dwelling house. The application is supported by a Plan of Management that details how the ongoing use of the boarding house will be managed. The original application was supported by an Acoustic Report that details that the development in its original form (being of greater impact than this amended form) is unlikely to have any adverse or unreasonable acoustic impacts upon adjoining properties. This matter has been reviewed by Council's Environmental Health Officer who raises no objections to the development, subject to conditions as recommended.

The area is suitable in terms of social activities for the existing residents of the locality. As such, the area is considered suitable for potential boarding house residents.

These matters do not warrant the refusal of the application.

Stormwater and Groundwater Management

Concern was raised that the proposal is inadequate in relation to stormwater management.

Comment:

The proposed development has been reviewed by Council's Development Engineer and is recommended for refusal in relation to inadequate stormwater management measures, and inadequate information relating to stormwater.

This matter warrants the refusal of the application.

Housing Density

Concern was raised that the proposal results in a significant variation to the housing density development standard of the WLEP 2000, regardless of whether the site is considered one domicile or 24 domicile. Objectors also raised that the proposal should be limited to 12 boarding rooms, and the site should be considered to be zoned E3 Environmental Management or R5 Large Lot Residential land, following consultation with the Department of Planning and Council.

Comment:

The density of this application (including calculation of the variation of the housing density development standard) is addressed in the section of this report relating to the Proposed Development in Detail.

A recent amendment was made to the SEPP ARH to limit the number of rooms in a boarding house development to 12 applies to land zoned R2 Low Density Residential. The SEPP ARH does not apply, as the subject site is not zoned under one of the relevant zones listed at Clause 26 *Land to which Division applies* of the SEPP ARH. As such, the limit on the number of rooms does not apply in this circumstance.

Recent consultation between the Department of Planning and Environment, Council and landowners in the C8 Belrose North Locality has not led to any amendments to zoning. As such, the land cannot be considered to be zoned E3 Environmental Management or R5 Large Lot Residential land.

These matters do not warrant the refusal of the application.

Noise

Objectors raised concern that the subject site is in appropriate for residential use, given the proximity to a heliport.

Comment:

The heliport in question relates to a residential property only, and is not considered to be of such frequent use to be a noise nuisance.

This matter does not warrant the refusal of the application.

Bushfire Risk

Concern was raised that the subject site is bushfire prone land and/or surrounded by bushfire prone land, the evacuation of residents in the event of a bushfire, and access to the site and surrounding sites in the event of a bushfire.

Comment:

The subject site is not identified as bushfire prone land, while surrounding land is affected by this classification. As such, no further assessment is required or warranted on these matters.

This matter does not warrant the refusal of the application.

Accessibility

Concern was raised that the clothesline, private open space, fire exit, and path of egress are not accessible for people with a disability. Concern was also raised that the proposal includes BCA non-compliances. It was also raised that there is no accessible route from the site to a bus stop. One submission queried what the adaptable rooms are used for.

Comment:

The application was referred to Council's Building Assessment team, who raised no objections to the proposal, subject to conditions of consent. The proposed development is recommended for refusal, in relation to stormwater and flood risk management. Should the application be approved, appropriate conditions can be included in the consent, requiring compliance with the BCA, all relevant Australian Standards and other legislation, including the *Disability Discrimination Act 1992*.

The proposed development provides disabled access throughout the entire building. While disabled access may not be provided to all outdoor areas, the proposal includes disabled access to outdoor private open space in the form of the rear deck, and drying facilities in the laundry. The building is supported by a ramp of a compliant grade, to allow access to and from the road reserve. There is no legislative requirement for a boarding house development to provide accessible paths between the subject site and bus stops.

An adaptable room is of dimensions suitable for general use, as well as conversion for use as an accessible room.

These matters do not warrant the refusal of the application.

Future Use of Building / Land

Concern was raised that the building could be converted to a residential flat building in future. Concern was also raised in related to the future use of the nearby TAFE site.

Comment:

The proposed development relates to a boarding house, not a residential flat building. Should this application be approved, any change of use that is not considered exempt or complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* will require separate future application to Council.

This application does not relate to land other than Lot 2597 DP 752038. Consideration of the future use of other land is not a relevant planning matter for consideration under the *Environmental Planning and Assessment Act 1979*.

These matters do not warrant the refusal of the application.

Support for Application

Six submissions were received in support of this application.

Comment:

Noted.

REFERRALS

Referral Body Internal	Comments	Consent Recommended
<p>Building Assessment – Fire and Disability upgrades</p>	<p>COMMENTS ON ORIGINAL APPLICATION: <i>Proposal review limited to final certification issues only in the event the proposal is approved. No project /proposal assessment conducted. Accordingly, this assessment is restricted to simply provision of a condition for Final Certification of Essential Services and an ongoing Fire Safety Services Maintenance condition.</i></p> <p>COMMENTS ON REVIEW APPLICATION: As above.</p>	<p>Yes</p>
<p>Environmental Health (Industrial)</p>	<p>COMMENTS ON ORIGINAL APPLICATION: No objections to the proposed development, subject to conditions as recommended.</p> <p>COMMENTS ON REVIEW APPLICATION: As above.</p>	<p>Yes</p>
<p>Landscape Officer</p>	<p>COMMENTS ON ORIGINAL APPLICATION: <u>Original Comment:</u> <i>Concern is raised regarding side setback landscape treatments which may be able to be addressed via design amendments.</i></p> <p><i>The proposed driveway along the north eastern side of the site occupies a significant proportion of the side setback. It is noted that side setbacks proposed are less than those required under the planning controls.</i></p> <p><i>The resultant area for landscape planting along the north eastern side is relatively narrow adjacent to the building. Integration into the locality and improved alignment with the planning controls would be better achieved if the driveway could be narrowed to single lane (with passing bays), or, preferably, removed from the north eastern side and access directly under the building from Wyatt Ave, providing more</i></p>	<p>Yes</p>

opportunity for enhancing the landscape in the side and rear setbacks.

It is unclear why the driveway needs to continue onto the adjoining property through the subject Lot when existing access is available to the adjoining property off Wyatt Avenue. Reducing or removing the driveway along the length of the north eastern boundary would provide for better integration of building bulk, maintaining and enhancing the character of the Locality and improved pedestrian access and use of outdoor spaces.

At this stage the proposal is not supported with regard to landscape issues, however if amended plans or additional information regarding the comments above are provided, additional assessment can be undertaken.

It is noted that several trees along the Wyatt Ave frontage of the site indicated to be retained on the Architectural Plans will be required to be removed (as indicated on the Landscape Plans) to accommodate the works proposed. It is also noted that the Landscape Plans do not provide for local native species as required under the Locality Statement - Bushland setting

Bushland setting

A minimum of 50 per cent of the site area is to be kept as natural bushland or landscaped with local species.

These issues can, however, be addressed via conditions.

Additional information and amended plans. Comment 21/09/2018:

Following further discussion and review of amended plans, it is apparent that retention of the trees along the north eastern side of the site is not feasible due to vehicle passing bays for RFS access as well as stormwater infrastructure upgrade works by Council.

In view of the above, the issues raised previously regarding relocation of the drive to enable tree retention are no longer pressed.

In consideration of the information provided, the DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.

COMMENTS ON REVIEW APPLICATION:

No objections to the proposed development, subject to conditions as recommended.

<p>NECC (Development Engineering)</p>	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>Development Engineers have reviewed the proposal and raise no objections subject to conditions.</p> <p>Appropriate conditions are also issue to comply with Council's Traffic Engineers, Roads Assets, Stormwater Assets Teams with respect to driveway width, kerb and gutter alignment, management of public road stormwater, etc.</p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p><i>Reference is made to Development Engineering Referral Response dated 03/08/18 and the Local Planning Panel Meeting resolution for Item 3.1 on 26/10/18 for DA2018/0401, and the additional information submitted by the Applicant under REV2018/0035.</i></p> <p><i>In regard to DA2018/0401:</i></p> <p><i>Insufficient information has been provided to satisfactorily address of the Deferred Commencement Conditions recommended in the Engineering Referral Response. The following matters are raised:</i></p> <ul style="list-style-type: none"> • <i>The Flood Risk Management Report does not consider the 5% or 20% AEP storm events in analysis.</i> • <i>Insufficient information is provided to demonstrate how stormwater will be conveyed along Wyatt Avenue and through the subject site. The proposed works within Wyatt Avenue are not satisfactory.</i> <p><i>Council's Planning section should consider whether the matters raised by the Local Planning Panel have been addressed by the Applicant.</i></p> <p><i>Further Assessment:</i></p> <p><i>In addition to the above, the following matters have been raised in assessment of the current submission. Please note that some of these items were previously addressed in the form of recommended engineering conditions:</i></p> <p><i>Council Road/Stormwater Infrastructure:</i></p> <ul style="list-style-type: none"> • <i>Full hydrological and hydraulic details have not been provided for the pipeline/headwall, in accordance with Council's Building Over and Adjacent to Constructed Council Drainage Systems and Easements Technical Specification Section 3 and 4.</i> • <i>A longsection of the proposed drainage with Wyatt Avenue has not been provided.</i> • <i>Cross-sectional information of the drainage channel along the eastern boundary has not been provided.</i> 	<p>Yes</p>
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- *The proposed kerb breaks and rip-rap within the road reserve are not supported.*
- *Detail has not been provided for the provision of 1.5m wide footpath for the full property frontage. Adjustments to the proposed drainage arrangement will be required to facilitate the footpath.*
- *Discharge from the headwall within Wyatt Avenue should be extended to cater for the 1.5m wide footpath and directed towards the existing easement.*
- *Detail has not been provided for the provision of a 5.5m wide vehicle crossing for the development.*

Stormwater:

- *Discharge from the OSD tank to the existing easement is not supported. Stormwater shall be directed to a suitably designed stormwater dispersion system. Total stormwater discharge including bypass and controlled flows shall be limited to the 1 in 5 year ARI "state of nature" storm event (0% impervious), for all storm events up to and including the 100-year ARI.*

Overland Flows:

- *The Flood Report does not provide an analysis for the 5-year and 20-year storm event.*
- *The Report appears to incorrectly identify the existing geometry plan, which shows an impact on the model results.*
- *The DRAINS model has not been provided for assessment. The DRAINS summary in Figure 10 provides insufficient information for a detailed assessment to be undertaken.*

The proposed application cannot be supported by Development Engineering due to lack of information to address:

- *Deferred Commencement Conditions recommended in the Engineering Referral Response dated 03/08/18.*
- *Pedestrian access along Wyatt Avenue for the development in accordance with clause C2 Traffic, Access and Safety.*
- *Stormwater drainage for the development in accordance with clause C4 Stormwater.*
- *Council's stormwater pipeline clearance for the development in accordance with clause C6 Building Over or Adjacent to Constructed Council Drainage Easements.*

Referral Body Recommendation

	<i>Recommended for refusal</i>	
NECC (Riparian Lands and Creeks)	<p>COMMENTS ON ORIGINAL APPLICATION: No objection to the proposal as the property is not identified as being subject to detailed Waterways and Riparian Lands Assessment.</p> <p>COMMENTS ON REVIEW APPLICATION: Given the above, no referral was sent to the Riparian Lands and Creeks team for the review application.</p>	Yes
NECC (Water Management)	<p>COMMENTS ON ORIGINAL APPLICATION: No objection to the proposal, subject to conditions.</p> <p>COMMENTS ON REVIEW APPLICATION: Given the above, no referral was sent to the Water Management team for the review application.</p>	Yes
Urban Design	<p>COMMENTS ON ORIGINAL APPLICATION: No objections to the proposed development and no conditions recommended.</p> <p>COMMENTS ON REVIEW APPLICATION: <i>The Revised Development can be supported provided the following design issues are addressed in the final design;</i></p> <p><i>1. Fenestration</i></p> <p><i>It is difficult to see how cross ventilation will be achieved particularly to the apartments on the western wing of the building. The windows in the monolithic walls show one small operable window central to the bank/suite of windows in each blade wall. Whilst it is understood this is the western elevation and as such will have considerable heat gain in the summer and be governed by the requirements under Section J of the NCC, design should address larger and/or additional windows with operability to achieve both increased cross ventilation and increased solar gain to address internal amenity.</i></p> <p><i>2. Balconies/Private Open Space</i></p> <p><i>The balconies provided to the western aligned apartments show a door opening onto a what looks like a balustrade balcony. These spaces provided little to no room for occupation or sufficient space to manoeuvre around. Suggest these are either deleted or increased in size to accommodate positioning of seating, small table etc.</i></p> <p><i>3. Entrance Ramp</i></p>	Yes

	<p><i>Whilst the revised design has provided some articulation to the ramp design needs to ensure that the entrance landing dimension is compliant with the requirements of AS1428.1. No dimensions have been provided on the drawings.</i></p> <p>4. Western Blade Walls</p> <p><i>Whilst the revised drawings demonstrate a reduction on the monolithic plane of the western blade walls with a podium materiality change, the reference to material in the materials palette does show a window suite with no window reveals. In order to address the initial comments to reduce the monolithic nature of the wall the design detail should consider the fine grain detail of window and reveal articulation to assist to create some articulation to these walls.</i></p> <p><u>Assessing Officer's Response:</u></p> <ol style="list-style-type: none"> 1. The matter of ventilation for the western boarding rooms is addressed with the inclusion of Juliet-style balconies in the north-western corners of the rooms, which can be opened to provide access to air flow. Being north-west-facing, these Juliet balconies will also assist in providing solar access to the rooms, while retaining adequate privacy for the subject site and adjacent sites. 2. As above, the western boarding rooms include Juliet-style balconies in the north-western corners of the rooms to provide access to air flow. Their inclusion is not for individual recreation space, and they are suitable as proposed. 3. Should the proposal be approved, this matter can be dealt with via conditions of consent. 4. The western walls are designed with lesser window openings in order to provide a suitable privacy response to the property to the west. 	
<p>Traffic Engineer</p>	<p>COMMENTS ON ORIGINAL APPLICATION: (31 May 2018)</p> <p><i>The proposal is for construction of a boarding house containing 27 rooms.</i></p> <p><i>The car parking and bicycle parking provision complies with the SEPP requirements, but there are 4 motorbike spaces provided within the car park while the provision of 6 motorbike spaces designed in accordance with Australian Standards AS2890.1:2004 is required.</i></p> <p><i>The passing bay proposed next to the access driveway shall be extended to kerb providing a 5.5m wide access driveway and 5.5m wide passing bay for the first 6m of the driveway from the property boundary.</i></p>	<p>Yes</p>

Footpath and kerb and guttering shall be constructed at cost of the applicant from its boundary with No. 16 Wyatt Avenue continuing to the existing footpath and kerb guttering outside No. 12 Wyatt Avenue. The footpath and kerb and guttering shall be consistent with the existing footpath and kerb and guttering and is to meet the Council's development engineer's requirements.

The proposed passing bay on the northern side of the site is to be improved by extending the passing bay and provision of a convex mirror improving the inter-visibility between vehicles exiting the car park and the vehicles turning onto the ramp leading to the car park.

In view of above, no objection is raised to the proposal subject to conditions.

COMMENTS ON REVIEW APPLICATION

(7 January 2019):

The application seeks review of the original application DA2018/0401 which was previously refused.

The application has amended the submission based on the comments of refusal being:

- *Reduced bulk and scale of the development with reduction from 27 to 24 rooms*
- *Associated landscaping*
- *Increase in parking provisions from 10 to 12 spaces*

Traffic:

Based on 24 units, the anticipated generation of the site would be deemed as medium density. Therefore it can be expected that the site will produce up to 12 vehicles in the peak period. This is deemed negligible on the local road network.

Parking:

The development proposes 12 parking spaces. Based on SEPP requirements, the following breakdown is necessary:

- *0.5 spaces per room - $0.5 \times 24 = 12$ spaces*
- *1 space for Manager = 1*
- *1 space per 5 dwellings (visitors) - $0.2 \times 24 = 4.8 \sim 5$ spaces*

Therefore the total number of spaces required would be 18. This equates to a 6 space shortfall. These spaces must be accommodated onsite. Council may consider a discounted rate provided adequate assessment of the local amenity is undertaken.

Car Park Layout:

The car park is generally in compliance with AS2890.1:2004, however based on the additional parking

provisions required, the layout will need to be altered to accommodate the shortfall.

AMENDED COMMENTS ON REVIEW APPLICATION

(14 January 2019):

I have based my comments on the following extract from the WLEP2000:

Housing for older people or people with a disability:

Note that clause 29 imposes the following requirements as to parking:

Hostel or residential care facility:

1 space per 10 beds plus

1 space per 2 employees on duty at any one time plus

1 ambulance space

AND

0.5 spaces per bedroom where the application is made by a person other than the Department of Housing or a local government or community housing provider, or

~~1 space per 5 dwellings where the application is made by, or is made by a person jointly with, the Department of Housing or a local government or community housing provider~~

Visitor parking:

~~In the case of development that comprises less than 8 dwellings and is not situated on a clearway, no visitor parking is required~~

In the case of development that comprises 8 or more dwellings or is situated on a clearway, visitor parking is required

I have provided a 'strikethrough' on the items which are not applicable to the development.

Assessing Officer's Response:

Clause 29 of the WLEP 2000 referred to above provides the grounds on which housing for older people or people with a disability cannot be refused. This application relates to a boarding house, which is not considered housing for older people or people with a disability. As such, Clause 29 of the WLEP 2000 is applicable in this case. Schedule 17 of the WLEP 2000 provides car parking provision requirements for developments under the WLEP 2000. The Schedule does not provide a parking requirement for boarding houses. In this case, the most appropriate parking rate is under Clause 29 of the SEPP ARH.

	<p>(Note: This report establishes the relevance of considering the SEPP ARH notwithstanding that it does not strictly apply to this development.)</p> <p>Clause 29 of the SEPP ARH states that a boarding house development not carried out by or on behalf of a social housing provider (as in this case) cannot be refused on the basis of parking, if at least 0.5 parking spaces are provided for each boarding room, and if not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site (manager). No visitor parking is required.</p> <p>The proposed development is for 24 boarding rooms, including on manager's room (noted as a caretaker's unit on plans). This requires at least 12 parking spaces, including no more than one for the manager. The proposal includes 12 parking spaces, including one for the manager. This is compliant with the requirement of the SEPP ARH and does not warrant refusal of the application.</p>	
Waste Officer	<p>COMMENTS ON ORIGINAL APPLICATION: No objections to the development.</p> <p>COMMENTS ON REVIEW APPLICATION: No response was received from the Waste Officer regarding the review application at the time of writing this report. However, the amended proposal reduces density while retaining the same number of bins as the original proposal. As such, it can be reasonably assumed that no objections are raised to the amended development from a waste perspective.</p>	Yes

Referral Body External	Comments	Consent Recommended
Aboriginal Heritage Office	<p>COMMENTS ON ORIGINAL APPLICATION: (6 April 2018)</p> <p><i>Reference is made to the proposed development at the above area and Aboriginal heritage.</i></p> <p><i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i></p> <p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW</i></p>	Yes – subject to conditions

	<p><i>Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.</i></p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>Given the above, no referral was sent to AHO for the review application.</p>	
Ausgrid	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>The following comments were received from Ausgrid in relation to the review application:</p> <p><i>Let you know that there transmission underground cables and overhead power line in front of the development work site on the road. Any excavation job close the transmission cables, you may need stand by person from the Ausgrid.</i></p> <p><u>Assessing Officer's Comment:</u></p> <p>Suitable conditions can be applied, if the application is to be approved.</p>	Yes
Sydney Water	<p>COMMENTS ON ORIGINAL APPLICATION:</p> <p>(24 April 2018)</p> <p><i>Due to the proximity of the proposed development to Sydney Water assets, we recommend that Council imposing the following conditions of consent:</i></p> <p><i>Building Plan Approval</i></p> <p><i>The approved plans must be submitted to the Sydney Water <u>Tap in™</u> online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.</i></p> <p><i>The Sydney Water <u>Tap in™</u> online self-service replaces our Quick Check Agents as of 30 November 2015.</i></p> <p><i>The <u>Tap in™</u> service provides 24/7 access to a range of services, including:</i></p> <ul style="list-style-type: none"> • <i>building plan approvals</i> • <i>connection and disconnection approvals</i> • <i>diagrams</i> • <i>trade waste approvals</i> 	Yes – subject to conditions

	<ul style="list-style-type: none"> • <i>pressure information</i> • <i>water meter installations</i> • <i>pressure boosting and pump approvals</i> • <i>changes to an existing service or asset, e.g. relocating or moving an asset.</i> <p><i>Sydney Water's <u>Tap in™</u> online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</i></p> <p>Section 73 Certificate</p> <p><i>A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.</i></p> <p><i>It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.</i></p> <p><i>Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.</i></p> <p>COMMENTS ON REVIEW APPLICATION:</p> <p>Given the above, no referral was sent to Sydney Water for the review application.</p>	
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ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 4.15 Matters for Consideration	
Section 4.15 (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 4.15 (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	Yes
Section 4.15 (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 4.15 (1) (a)(iiia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	Yes
Section 4.15 (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	Yes

Section 4.15 (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	Yes
Section 4.15 (1) (c) – Is the site suitable for the development?	Yes
Section 4.15 (1) (d) – Have you considered any submissions made in accordance with the EP&A Act or EP&A Regs?	Yes
Section 4.15 (1) (e) – Is the proposal in the public interest?	Yes

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATIONS 2000

Regulation Clause	Applicable	Conditioned
Clause 92 (Demolition of Structures)	Yes	Yes
Clause 93 & 94 (Fire Safety)	Yes	Yes
Clause 98 (BCA)	Yes	Yes

ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) is ordinarily the prevailing environmental planning instrument in the assessment of boarding house developments. However, this is not the case for this particular application. Clause 26 of the SEPP details the zones to which the boarding house policy applies, and these zones are limited to:

- (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.

The subject site is not within a 'zone'. Rather, it is in the C8 Belrose North Locality pursuant to WLEP 2000, which does not conform to the 'standard instrument'. It must then be determined if this locality can be considered as an equivalent land use zone pursuant to Clause 5 of the SEPP, and pursuant to Clause 1.6 of the SEPP (Exempt and Complying Development Codes) 2008.

Clause 1.6 (1A) reads:

Land identified as “Deferred matter” on the Land Application Map within the meaning of Warringah Local Environmental Plan 2011 is, for the purposes of this Policy, taken to be in Zone E3 Environmental Management.

Therefore, it can be considered that the C8 Belrose North Locality is the equivalent zoning of E3 Environmental Management of a standard instrument. Clause 26 of SEPP ARH does not stipulate that the boarding house policy applies to Zone E3 Environmental Management and therefore, the SEPP ARH does not apply to the development for the purpose of a boarding house upon this land. Notwithstanding this, the WLEP 2000 lacks controls for the assessment of boarding house developments, and it is therefore warranted to consider the application against the relevant provisions of the SEPP ARH. However, this assessment against the SEPP ARH holds no determining weight to the recommendation of this application.

An assessment of the application against Clause 30 (1) – Standards for boarding houses – of the SEPP ARH is as follows:

(a) If a boarding house has 5 or more boarding rooms, at least one communal living room will be provided.

The boarding house includes 24 rooms. The rooms are supported by two indoor communal living rooms and one outdoor communal living area, and therefore complies with this requirement.

(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 25m².

The architectural plans detail the total floor area of each whole boarding room, including kitchen and bathroom facilities, with rooms having an area of between 22sqm and 27sqm. When bathroom and kitchenette facilities are excluded from the floor area of each room, the proposed development complies with this requirement.

(c) No boarding room will be occupied by more than 2 adult lodgers.

No boarding room proposed has the capacity to accommodate more than 2 adult lodgers. This is supported by the accompanying Plan of Management. Accordingly, the development complies with this requirement.

(d) Adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodged.

Each boarding room has a private bathroom and kitchenette, and communal kitchen facilities are provided, thereby satisfying this requirement.

(e) If the boarding house has a capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager.

The development has the capacity to accommodate 48 lodgers. One boarding room has been dedicated to be occupied by a caretaker. Accordingly, the development complies with this requirement.

(f) If the boarding house is on land zoned primary 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.

The subject site is not zoned primarily for commercial purposes. This control does not apply.

(g) At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.

According to the above, five bicycle and five motorcycle spaces are required (based on 24 rooms). The development includes 18 bicycle spaces and eight motorcycle spaces. Accordingly, the development complies with this requirement.

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

The development application was not lodged with a BASIX Certificate. During the assessment of the original application, Caselaw from the Land & Environment Court of NSW established that individual rooms in a boarding house can be classified as 'dwellings' in circumstances where rooms can be reasonably described as self-contained and capable of being occupied or used as a separate domicile. Such is the case for this application, where each boarding rooms has kitchen, bathroom and living facilities.

Accordingly, following a request from Council, the Applicant supplied a BASIX Certificate for the original development. No updated BASIX Certificate was provided for the amended design. A condition of consent can be applied, requiring submission and endorsement of an updated BASIX Certificate relevant to the amended design.

(Note: See *SHMH Properties Australia Pty Ltd v City of Sydney Council [2008] NSWLEC 66*)

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 of State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. Comments from Ausgrid are detailed in the section of this report relating to Referrals.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been vacant 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2000

Locality: C8 Belrose North

Development *Boarding house:*

Definition:

(a) means any premises that:

(i) are wholly or partly let as a lodging for the purposes of providing the occupants with a principal place of residence, and

(ii) are used and occupied by at least 4 long term unrelated residents, and

(iii) include a communal living space used for eating and recreation, and

(iv) are not licensed to sell liquor, and

(b) does not include premises that have been subdivided or in which there is separate ownership of parts of the premises.

Category of Development: Category 2

Desired Future Character Statement (numbering added):

- (1) The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.*
- (2) The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*
- (3) Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.*
- (4) A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.*
- (5) Development in the locality will not create siltation or pollution of Middle Harbour.*

Is the development consistent with the Locality's Desired Future Character Statement? Yes

Category 2 Assessment Against the Desired Future Character Statement

Requirement 1:

The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

Comment:

In consideration of whether the development will change the character of the C8 Belrose North locality, the existing character of the area must be first established. In the circumstance of this particular application, character is established via two separate assessments: land use and visual appearance.

Land Use

A detailed analysis of the pattern of land use in the C8 locality has been carried out to establish if the use proposed under this application is a use that already exists within the locality, and then to establish whether the use is compatible with other land uses. The pattern of land use in C8 Belrose North locality exists as follows:

- 13 x dwelling houses (including one dual occupancy)
- 1 x 31 room boarding house
- 1 x riding school
- 1 x Optus satellite communication facility
- 1 x sandstone quarry
- 3 x plant nurseries
- 1 x plant nursery / landscape wholesaler / restaurant
- 1 x electricity substation
- 5 x schools (over various parcels of land, both developed and undeveloped)
- 1 x child care centre (plus one approved, but unbuilt childcare centre)

From this review, it is evident that the C8 Belrose North locality has a wide array of land uses. Additionally, it should be noted that more than 50% of the land within the C8 Belrose North locality is presently undeveloped bushland owned by the Metropolitan Local Aboriginal Land Council.

It can be concluded from the above that residential land use exists as the *prevailing* typology of land use, but that this land use is arguably not the *dominant* land use of the C8 Belrose North locality, given the actual physical scale of the residential development in consideration of other land uses in the locality. Accordingly, it can be concluded that the proposed use of the land for the purpose of a boarding house is complementary to the prevailing residential land use, and is not incompatible with or inconsistent with other developments within the locality. It can also be concluded that by virtue of this compatibility, the development will be able to co-exist in harmony with the rest of the C8 Belrose North locality, and the character of the locality will remain 'unchanged' by the development.

Visual Appearance

In assessment of the physical development (its visual appearance) commensurate to other buildings, it should be noted the desired future character control requires character compatibility over the whole of the locality itself, and not on a street-by-street basis.

Whilst this Assessment Report goes into some detail regarding the physical attributes of the proposed building and how it compares with its surrounds, it can be established from a visual inspection of other buildings in the locality that the proposal is of a physical bulk and scale that is consistent with the established character of buildings in the locality. Therefore, it can be concluded that the character of the building proposed (regardless of its use) is of a bulk, scale and architectural typology that will not change the character of the area.

Accordingly, it is found that the development as proposed will not change the present character of the Belrose North Locality.

Requirement 2:

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Comment:

The landscape of the development site is generally characterised by lawn that falls from the road to the rear boundary of the site. Many trees are present on the land, with the vast majority existing parallel to the eastern boundary. Several other trees exist along the front and rear boundaries, and few trees are free-standing within the lawn area.

A review of the earliest available aerial imagery of the site (1943), established that the properties on the northern side of Wyatt Avenue had little canopy coverage and appear to generally accommodate ground-cover species and shrubbery. As such, it can be assumed that the pattern of trees planted directly along the property boundary were introduced upon the release of the subdivision pattern of the area. Notwithstanding this history, for the purpose of this assessment, all trees and topography will be considered as a part of the natural landscape.

The proposal seeks to remove two thirds of the trees on the site, and seeks consent for substantial excavation works to accommodate part one, part two levels of the building. Evidently, the natural landform will be greatly modified comparative to its existing state. However, it is also apparent that modification to the landform would occur if a different type of development were to be proposed upon the site, such as a single dwelling house. In this regard, impact to the natural environment is inevitable if the site is to be granted the ability to accommodate any form of development (that the *Environmental Planning and Assessment Act 1979* enables). Therefore, the consideration must be formed on the basis of enhancement.

The development application is accompanied by a comprehensive landscape plan by Paul Scrivener, Landscape Architect. The planting schedule details that an additional 59 canopy trees (and shrubbery) will be provided on the site to replace the vegetation proposed to be removed. This will significantly contribute to the site's compatibility with the bushland to the north. This replacement of tree stock will also provide growth opportunities for the new trees to establish, as some of the existing older trees reach the end of their useful life. On this basis, the impact on the vegetation on the site is found to be inevitable and suitably mitigated by replacement stock.

With regard to the impact on natural landform consequent of the proposed excavation, reference is made to recent Caselaw, *Boston Blyth Fleming v Hornsby Shire Council [2018] NSWLCE 1270*, which relates to the construction of a large seniors housing development on rural land and has circumstantial similarities to the subject application. At 26 Commissioner Walsh notes (extract, names removed):

*I note Mr ****'s point that considerable excavation is required and that the development involves substantial modification to the landform. For me, this is an appropriate response to balance the achievement of local area compatibility while delivering a substantial project which, as he agrees, is in need.*

... This principle is concerned with preserving topography which assists in reducing the visual dominance of a building. In my view, the circumstances here

are different. The proposed excavation is concerned with reducing the visual dominance of a building.

With acknowledgement of the above citing, the purpose of the excavation sought as a part of this subject application is to accommodate basement car parking and to reduce the visual dominance of a building as it progressively recesses in height as the topography slopes away. Therefore, it is considered that if the site is to accommodate a development of this scale, the most suitable design response is to manipulate the topography of the land where necessary to reduce perceivable bulk and scale. Accordingly, the development as proposed is found to enhance the landscape environment.

Requirement 3:

Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

Comment:

Development on this site is required to conform to low intensity, low impact use as described in the Land & Environment Court of NSW judgement *Vigor Master Pty v Warringah Shire Council [2008] NSWLEC 1128* as follows:

“Intensity - is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore “low intensity” would constitute a development which has a low level of activities associated with it”.

“Impact - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore ‘low impact’ would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality”.

An assessment of the application in accordance with the above citing is required to ascertain whether the development sought can reasonably conform as a low intensity, low impact use.

Detached Style Housing

The proposed boarding house serves the purpose of providing additional housing on undeveloped land. The proposal includes several ‘pavilion’-like forms, in order to break up building bulk. Additionally, the proposal reads from the street as a two-storey dwelling, being below the maximum overall building height, and including suitable setbacks. As such, the proposal has the appearance from the street as being detached housing, and meets the intention of the first portion of Requirement 3.

Low Intensity Assessment

The proposal is for a boarding house that provides for additional residential accommodation in the locality. The use of the land for residential purposes has already been established as the prevailing land use within the C8 Belrose North locality, and the form of residential accommodation as a boarding house is an innominate Category Two development. Therefore, the intensity of the land use conforms with the prevailing pattern of development in the locality, and the level of activities associated with it will

be limited (i.e. eating, sleeping, vehicle movements etc.) comparative to other forms of permissible land uses.

The assessment of 'low intensity' is not required under the desired future character to consider the density of the development.

Low Impact Assessment

The above Court citing lists a range of potential amenity impacts that could be used in the consideration of whether a development is low impact, including (but not limited to) visual impact, noise, traffic, vegetation, streetscape, privacy, solar access etc. As such, it is necessary to establish whether the development will have an impact, and then compare this impact with the likely impacts of other land uses in the C8 Belrose North locality to ensure that the development will be unlikely to significantly change the amenity of the locality as a whole.

An assessment on the potential impacts consequent of the development follows:

1. Visual Impact / Streetscape

The assessment of visual impact and streetscape impact relates to how the building will present to the street.

The proposed development is negligibly non-compliant with the front boundary setback control and the maximum height of building control and is acceptable for the reasons detailed in this report, demonstrating suitable presentation to the street. The front setback area is proposed to be heavily landscaped with canopy trees, smaller trees, bushes and groundcover/grasses. By virtue of consistency with the relevant numerical controls and the merits of the landscaping, the development is of an acceptable visual impact.

Other forms of development within the locality are found to be of a greater visual impact due to a lesser front setback, car parking within the front setback, a wider façade addressing the street, and/or a lesser landscaped outcome. As such, in consideration of other existing developments in the locality, the proposed development sought is unlikely to change the amenity of the locality.

2. Noise

The assessment of noise relates to the likely acoustic impact of the development upon surrounding developments.

The proposed development is for residential accommodation in the form of a boarding house. If the proposal is approved, occupants of the boarding house will be subject to a comprehensive Plan of Management, which manages occupants' noise and behaviour. This is enforced by the boarding house manager. The density and type of the development is likely to result in the building accommodating persons of different professions who work at different hours throughout the day and night. Therefore, use of the common areas and kitchens can be assumed to be spread out at varying times. It can be assumed that noise will be adequately managed on the site for both the amenity of occupants of the development, and for neighbouring properties.

In comparison, detached dwelling houses are not subject to any Plan of Management or noise policy. Therefore, there is no management, restrict or limitation to the noise that they could cause, with the exception of Police response to a complaint. Additionally, it can be reasonably assumed that schools and child care centres

(examples of which are in the C8 Belrose North locality) would generate a higher level of noise than a boarding house.

Accordingly, the level of noise associated with the boarding house is of a low impact and will not change the amenity of the locality.

3. Traffic

For the purpose of this application, the most appropriate traffic assessment is derived from one of the primary issues raised in submissions, being traffic congestion on the local road network, particularly in consideration of the nearby school and sports fields.

While the SEPP ARH (which requires boarding houses to be located within an accessible area, i.e. within 400m of a bus stop) does not apply to this development, there is a general expectation that occupants of boarding house developments will heavily rely on and utilise public transport. As above, occupants of the proposed boarding house are likely to work in various professions with varying working hour requirements. As such, it can be assumed that occupants will be coming and going from the boarding house at varying hours of the day and night, rather than all leaving and arriving at the same time. Accordingly, the vehicle trips associated with the development are unlikely to detrimentally impact the local road network. This consideration is supported by a traffic and parking assessment submitted in support of the application, and by the review conducted by Council's Traffic Engineer.

The level of vehicle movements associated with the site is evidently lesser than that of other land uses within the C8 Belrose North locality. Much of the objection received for this boarding house application pertains to traffic congestion that is supposedly caused by the nearby school and Wyatt Reserve.

The development for the purpose of a boarding house is found to be of a low traffic impact.

4. Vegetation

The assessment on the impact the development will have upon the vegetation on the site has been addressed throughout this report. The removal of vegetation and the replacement planting are sufficient to warrant the works to be of a low impact.

5. Privacy

The assessment of the impact on privacy relates to the opportunities for direct overlooking that are caused by the development upon adjoining properties.

The properties that are likely to be most affected by the proposed development in relation to privacy are 12 Wyatt Avenue to the north-east, and 16 Wyatt Avenue to the south-west.

12 Wyatt Avenue is presently vacant of structures and is identical in dimension to the subject site. 16 Wyatt Avenue is developed with a two-storey detached dwelling and swimming pool. There is currently no boundary fence between the subject site and 12 Wyatt Avenue. Accordingly, due consideration is to be given to the level of overlooking the proposed boarding house causes to the current dwelling and pool at 16 Wyatt Avenue, and how the proposal may affect development of 12 Wyatt Avenue.

The subject development includes side setbacks that vary from around 6-10.7m to the south west (towards 16 Wyatt Avenue) and 8.5-15.8m to the north east (towards 12 Wyatt Avenue). The dwelling at 16 Wyatt Avenue is set approximately 2.4m away from

its boundary with 14 Wyatt Avenue. As such, a spatial separation of approximately 8.4-13.1m exists between these buildings.

To the south west, the boarding rooms are designed with angled windows and large blade walls that act to restrict direct overlooking into 16 Wyatt Avenue, whilst still allowing for access to sunlight and air for the proposed development. To the north east, the proposal sets windows and Juliet balconies a minimum of 8.5m from the boundary, providing meaningful separation between the proposed development and 12 Wyatt Avenue. Additionally, the side setback areas are planted with significant canopy trees, smaller trees, and bushes, which cannot be solely relied upon for privacy, but do assist with obstruction of overlooking.

The proposed outdoor communal deck is raised above ground, though includes a planter box around the perimeter, preventing users of the space from accessing the edge of the deck (where overlooking would be greatest). Further, this deck is located 9.2m from the side boundary, providing meaningful separation from the adjacent property. Finally, as above, the side (and rear) setback areas are planted with significant vegetation to assist in obstructing views.

The proposed development is appropriately designed in order to mitigate unreasonable overlooking, and the impact on privacy is low.

6. Solar Access

The assessment of the impact of solar access relates to the level of overshadowing that the proposed development causes upon surrounding properties.

Given the site orientation, the front, side and rear setbacks proposed and the location of structures on surrounding allotments, the development will not have a significant or unreasonable overshadowing impact upon the subject site or adjacent sites.

Therefore, the level of overshadowing is found to equate to a low impact on solar access.

Conclusion

Given the above, it can be reasonably deduced that the impact of the development is low and, in the context of the site and surrounding developments, is unlikely to change the level of amenity enjoyed by the locality.

Requirement 4:

A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Comment:

The subject development site does not adjoin Forest Way and accordingly this requirement is not applicable to the subject development. The architectural plans do not detail any fencing and, therefore, no fencing is assessed or approved as a part of this application.

Requirement 5:

Development in the locality will not create siltation or pollution of Middle Harbour.

Comment:

If the proposal is deemed worthy of approval, adequate conditions can be imposed on to ensure that siltation and pollution does not enter Middle Harbour.

WLEP 2000 (Appendix C) Built Form Controls

Built Form Compliance Table C8 Belrose North Locality Statement					
Built Form Standard		Required	Proposed	Comment	Compliance
Building Height	Ridge	8.5m	Max. 8.5m	The development is beneath the maximum permissible Building Height, thereby satisfying this requirement.	Yes
	Ceiling	7.2m	Max. 8m	See discussion in the section of this report relating to Non-Compliance with Built Form Controls	No
Housing Density		1 dwelling per 20ha	24 dwellings on 0.1855 ha (0.2998ha including driveway)	The development seeks a housing density variation of 258,700% and requires the concurrence of the Minister for Planning.	No
Front Setback		20m	19.6m	See discussion in the section of this report relating to Non-Compliance with Built Form Controls	No
Side Setback (North East)		10m	8.5-15.8m	See discussion in the section of this report relating to Non-Compliance with Built Form Controls	No
Side Setback (South West)		10m	6-10.7m to building proper	See discussion in the section of this report relating to Non-Compliance with Built Form Controls	No
Rear Building Setback		10m	10m to building proper	The development provides a rear setback of 10m, thereby satisfying this requirement.	Yes
Rear Setback Area		Free other than fence	Driveway	The proposed development provides a driveway only within	Yes

	and driveway		the rear setback area, thereby satisfying this requirement.	
Bushland Setting	50% (1,149m ²)	53.5% (1,231m ²)	More than 50% of the site is landscaped with local species, thereby satisfying this requirement.	Yes

Non-Compliance with Built Form Controls

The proposed development does not comply with the following Built Form Controls:

- Height of Building (Ceiling Height)
- Housing Density
- Front Setback
- Rear and Side Setbacks (Side Setbacks)

Accordingly, assessment of the proposed non-compliances is as follows, based on the objectives within the Warringah Design Guidelines for Warringah Local Environmental Plan 2000.

Building Height (Ceiling Height)

Appendix C of the WLEP 2000 requires that buildings are not to exceed 7.2 metres from natural ground level to the underside of the ceiling. The development attains a maximum ceiling height of up to 8 metres resultant of the raked ceiling design and therefore varies the control by up to 11.1% (800mm). The proposed development is acceptable in relation to the relevant objectives of this clause, as follows:

Ensure that development does not become visually dominant by virtue of its height and bulk.

Comment:

The proposed building is generally set well below the overall height limit of 8.5m, and generally steps down the slope of the site, helping to minimise the height and bulk. The proposal is designed in three pavilion-like forms, which provide suitable articulation on site to break up the visual impact of the development and provide visual relief. Additionally, the proposed colours and materials provide varied (yet complementary) finishes to further break up the visual bulk.

Preserve the amenity of surrounding land.

Comment:

As detailed in the section of this report relating to the WLEP 2000 General Principles of Development Control and Public Exhibition, the proposed development will retain adequate amenity for the subject site and adjacent sites. The proposed ceiling height of 8m does not result in a non-compliance with the maximum height of building set by Appendix C of the WLEP 2000 and does not result in any unreasonable impacts on overshadowing, privacy, or view loss.

Ensure that development responds to site topography and minimises excavation of the natural landform.

Comment:

The proposal involves significant earthworks to allow for basement car parking. However, as discussed in the section of this report relating to the Desired Future Character

Statement, this excavation allows the development to respond better to the topography by reducing the overall height and bulk of building visible above the ground surface. Externally, the resulting building steps down to form three pavilion-like segments, in response to the sloped topography of the site.

Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.

Comment:

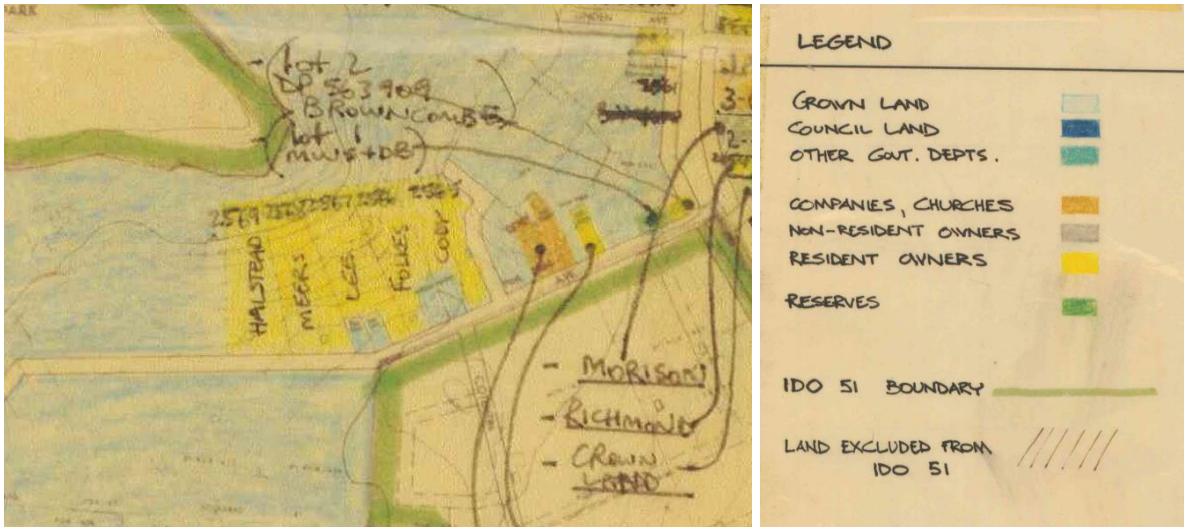
The proposed development is generally well below the overall 8.5m height limit, and sufficient room remains for variation in roof design. The proposed roof form is raked, with a generally low skillion pitch, and is considered to fit with the overall architectural style of the building.

Housing Density

Appendix C of the WLEP 2000 provides the following built form standards for housing density as relevant to the application (number added):

- i. The maximum housing density is 1 dwelling per 20 ha of site area, except:*
- ii. where this standard would prevent the erection of one dwelling on an existing parcel of land, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 ha, and*
- ii. However, consent may be granted for development that will contravene these housing density standards but, if by more than 10 per cent, only with the concurrence of the Director.*
- iii. The matters which shall be taken into consideration in deciding whether concurrence should be granted are:*
 - iv. (a) whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and*
 - v. (b) the public benefit of maintaining the planning controls adopted by this plan.*

The standard is prescriptive in that the housing density standard for this development has an exception provision as per (ii) above. This relates to the Site History section of this report, as the subject site and the adjoining Lot 2616 DP 752038 (known as 12 Wyatt Avenue) were held in the same ownership at the specified date, as per the below reproduced map:



M A P S H O W I N G L A N D O W N E R S H I P A T 8.3.1974.

THIS MAP WAS PREPARED TO SHOW "EXISTING PARCELS" OF LAND UNDER INTERIM DEVELOPMENT ORDER NO. 51, SHIRE OF WARRINGAH, GAZETTED 8.3.1974. IT WAS COMPILED LARGELY FROM COUNCIL'S RATE BOOKS AT THE TIME, WITH FURTHER INFORMATION BEING OBTAINED FROM STATE PLANNING AUTHORITY RECORDS.

The two sites shown to be in the same ownership at 8 March 1974 are very similar in shape and size, and have a total approximate area of 4,596sqm (or just under 0.46ha). Despite the two adjoining sites being in the same ownership at 8 March 1974, the combined area of the sites is less than 2ha, and the exception provisions of the control do not apply. As such, a housing density of 1 dwelling per 20ha applies. Assessing Officer's calculation of the variation to the housing density development standard is as follows:

24 domiciles per 0.2298ha
 $24 / 0.2298 \times 20 = 2,088.77$ (rounded to 2,089)
 Equates to a density of 2,089 domiciles across 20ha
 $2,089 - 1$ (being 1 allowable dwelling on 20ha) = 2,088
 $2,088 \times 100 = 208,800\%$

1 domicile per 0.2298ha
 $1 / 0.2298 \times 20 = 87.03$ (rounded to 87)
 Equates to a density of 87 domiciles across 20ha
 $87 - 1$ (being 1 allowable dwelling on 20ha) = 86
 $86 \times 100 = 8,600\%$

Submissions raise that the driveway (which is used to access 16 Wyatt Avenue to the north) should be excluded from the calculation of site area. Appendix C of the WLEP 2000 (in relation to C8 Belrose North locality) states:

In calculating housing density, the area of any access corridor (including any right-of-carriageway, access handle, accessway or other area that provides for vehicle access) is to be excluded, whether that access corridor is to be created or is in existence at the time of application for subdivision.

As such, housing density calculations are adjusted as follows:

The area for the proposed driveway is 443sqm.
 $2,298\text{sqm} - 443\text{sqm} = 1855$

24 domiciles per 0.1855ha
 $24 / 0.1855 \times 20 = 2,587.6$ (rounded to 2,588)
Equates to a density of 2,588 domiciles across 20ha
 $2,588 - 1$ (being 1 allowable dwelling on 20ha) = 2,587
 $2,587 \times 100 = 258,700\%$

1 domicile per 0.1855ha
 $1 / 0.1855 \times 20 = 107.8$ (rounded to 108)
Equates to a density of 108 domiciles across 20ha
 $108 - 1$ (being 1 allowable dwelling on 20ha) = 107
 $107 \times 100 = 10,700\%$

It is established by recent Caselaw that each room in a boarding house can be defined as a 'domicile' and therefore, a dwelling (refer SHMH Properties Australia Pty Ltd v City of Sydney Council). For the purpose of the housing density assessment, the subject site is proposed to accommodate 24 domiciles. It is also established by Appendix C of the WLEP 2000 that the area for the driveway is to be excluded from the site area for the purpose of calculating the housing density. Therefore, the calculable variation to the housing density standards is 258,700%, being 24 dwellings on 0.1855ha (the area of the lot minus the area for the driveway).

It should be noted as per the above (in relation to the calculation of 1 domicile per 0.1855ha) that any form of residential development on the site, including a single dwelling house, would result in a variation to the housing density development standard. To require strict compliance with the housing density development standard would sterilise the site of any residential development. It is reasonable to assume Council would be supportive of a single dwelling on the site. As such, while it is acknowledged that the technical variation is 258,700%, it is reasonable to consider that the site is 23 times greater (or 230%) the density of a single dwelling house. Additionally, while the technical calculation of the variation to housing density appears astronomical, the proposed development is demonstrated to be of low intensity and low impact throughout this report. As such, a significant variation does not necessarily constitute an inappropriate development.

Given that the quantum of variation is greater than 10%, the concurrence of the 'Director' (Minister of Planning or their delegates) is required, should the application be found worthy of support by the NBLPP. The standard contains two matters for consideration for the Director in determining whether to grant concurrence or not, being:

(a) whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the planning controls adopted by this plan.

It is not for Council to determine whether or not concurrence should be granted. However, the WLEP 2000 lacks any objective assessment when considering the variation to the housing density standard other than the above. It is therefore warranted to address the two matters for consideration.

Whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning

There are no known environmental planning instruments that would consider the variation request to be detrimental to any matter of significant for State of regional planning. The development satisfies this requirement.

The public benefit of maintaining the planning controls adopted by this plan

The WLEP 2000 is 18 years old at the time of writing this report and, comparative to other similar environmental planning instruments, is outdated.

There are several matters that establish that there is no discernible public benefit in maintaining the housing density planning control adopted by this plan:

- Any form of residential development on this land would be contrary to the housing density standard. If the control were to be strictly enforced, the land would be undevelopable.
- The site is bound by land to the south that is zoned for R2 Low Density Residential development pursuant to the Warringah Local Environmental Plan 2011. Each of these R2 sites located some 20m away could accommodate a boarding house development of the same scale as the proposal.
- The development provides alternate housing choices and housing for essential workers and. The provision of additional housing in the Northern Beaches area is in the public interest and need not be justified in this report.
- The development complies with the Desired Future Character of the C8 Belrose North Locality.
- The development has potential to result unreasonable or adverse impact upon adjoining land, in relation to stormwater and flood risk, as detailed in this report. However, this is not directly related to the housing density variation, as these matters relate most closely to the footprint of the building, and a single dwelling on site could reasonably be of similar building footprint as the proposed boarding house.

Therefore, it is concluded that there is public benefit in the development itself, and that strictly maintaining the housing density development standard is contrary to the public benefit and restricts (and sterilises) the ability to development the site. As such, the variation sought to the housing density standard is supported in this particular circumstance.

If the NBLPP is of a mind to approve this application, concurrence must be sought by the Director for the variation to the housing density standard prior to consent being issued.

Rear and Side Building Setback (Side Setbacks)

Appendix C of the WLEP 2000 requires that development provide minimum side building setbacks of 10m. Side setback areas are to be landscaped and free of any structures,

car parking or site facilities other than driveways and fences. The proposal includes side setbacks to the building proper of 8.5-15.8m on the north-east side, and 6-10.7m on the south west side. The proposed development is acceptable in relation to the relevant objectives of this clause, as follows:

Preserve the amenity of the surrounding land.

Comment:

As detailed throughout this report, the proposal maintains a reasonable level of amenity for the subject site and adjacent sites. The development will not unreasonably overshadow neighbours, nor create any unreasonable privacy impacts or view loss. This has been discussed in detail in the Desired Future Character Statement and Public Exhibition sections of this report.

Provide separation between buildings.

Comment:

The proposed setbacks will maintain a significant and meaningful separation between the proposed building onsite and existing or future buildings on adjacent sites. The neighbouring building to the south-west will be a minimum of 9m from the proposed building, and there is currently no building adjacent to the north-east (although the proposed side setback on that side is larger to the north-eastern boundary). This provides adequate room for significant landscaping to contribute to amenity, and spatial separation between buildings.

Provide opportunities for landscaping.

Comment:

The proposed side setbacks provide opportunities for landscaping. The proposal includes a comprehensive landscaping plan that will result in a substantial number of trees being planted on site, with many of the new and retained trees being concentrated along the side boundaries within the side setbacks.

Create a sense of openness.

Comment:

The proposed building is well articulated along both side elevations, and provides varied side setbacks and architectural features to break up the built form and help to create a sense of openness. The side setbacks provided enable significant landscaping and separation between buildings. A strong sense of openness is provided.

WLEP 2000 General Principles of Development Control

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	The building is not anticipated to result in any unreasonable glare and reflection. Notwithstanding this, a condition can be recommended restricting the roof of the development to a medium to dark range colour.	Yes
CL39 Local retail centres	No	The site is not identified as being within a local retail centre.	N/A

CL40 Housing for Older People and People with Disabilities	No	The development is not for the purpose of Housing for Older People and People with Disabilities.	N/A
CL41 Brothels	No	The development is not for the purpose of a brothel.	N/A
CL42 Construction Sites	Yes	Conditions can reasonably be imposed on any consent to ensure that development does not unreasonably impact on the surrounding amenity, pedestrian or road safety, or the natural environment. Accordingly, this General Principle can be addressed by way of condition.	Yes
CL43 Noise	Yes	The development application is supported by an acoustic report that demonstrates that the development will not have any unreasonable acoustic impacts upon adjoining properties. The application and report have been reviewed by Council's Environmental Health Officer, who has raised no objections to the development, subject to conditions.	Yes
CL44 Pollutants	No	The development for the purpose of a boarding house is not anticipated to result in the emission of pollutants that would unreasonably diminish the amenity of adjacent properties, the locality, or waterways.	N/A
CL45 Hazardous Uses	No	Development for the purpose of a boarding house is not found to be a hazardous use.	N/A
CL46 Radiation Emission Levels	No	The development is for the purpose of a boarding house that will not cause excessive radiation emission levels.	N/A
CL47 Flood Affected Land	No	The site is not identified as being flood affected land.	N/A
CL48 Potentially Contaminated Land	Yes	The site has been vacant for an extended period of time and is considered unlikely that the land would be contaminated. Accordingly, the land is suitable for the proposed development.	Yes
CL49 Remediation of Contaminated Land	No	See response to Clause 38 above.	N/A

CL49a Acid Sulphate Soils	No	The site is not identified as being subject to Acid Sulphate Soils.	N/A
CL50 Safety & Security	Yes	The development is found to enhance the safety and security of the area compared to the site's vacant present state. The building will allow for casual surveillance.	Yes
CL51 Front Fences and Walls	No	The architectural plans do not detail any proposed front fence or wall.	N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	The subject site is in proximity of a large area of bushland to the north. However, the subject site does not directly adjoin this bushland, as it is separated bound by residential properties on all sides. Notwithstanding this, the development is found not to threaten nearby bushland or public open spaces.	N/A
CL53 Signs	No	The application does not propose the addition of any signage at the development. A condition can be included in the recommendation of this report requiring a DA to be lodged for any signage.	N/A
CL54 Provision and Location of Utility Services	Yes	Utility services can be provided and relevant conditions can be included in the recommendation.	Yes
CL55 Site Consolidation in 'Medium Density Areas'	No	The site is not within a locality identified as a 'Medium Density Area'.	N/A
CL56 Retaining Unique Environmental Features on Site	Yes	The subject development site is not considered to accommodate any distinctive environmental features. The development requires the removal of a large number of trees and significant excavation into the landform. However, the development is not considered to unreasonably impact upon rock outcrops, remnant bushland or watercourses. The works will not result in any impacts upon environmental features on adjoining sites, including the large parcel of bushland to the north.	Yes
CL57 Development on Sloping Land	Yes	The topography of the site (as described earlier in this report) warrants Clause 57 of General Principles to be assessed. The development is found to meet the intent of the	Yes

		<p>clause as the building progressively steps down the slope of the land, reducing in height as it does, and is split into three individual pavilions to reduce visual scale. The quantum of excavation is discussed in detail earlier in this report with reference to recent Caselaw that justifies the level of excavation.</p> <p>Additionally, the development application is supported by a Geotechnical Investigation by White Geotechnical Group that determines that the development is suitable for the site.</p>	
CL58 Protection of Existing Flora	Yes	As discussed earlier in this report, the level of replacement planting is satisfactory.	Yes
CL59 Koala Habitat Protection	No	The site is not identified as being a koala habitat protection area, and a review of the site reveals a low chance that koalas would traverse the site.	N/A
CL60 Watercourses & Aquatic Habitats	Yes	Council's Riparian Lands and Creeks and Water Management teams are satisfied that the proposal will not adversely impact upon any watercourses.	Yes
CL61 Views	Yes	Clause 61 stipulates 'Development is to allow for the reasonable sharing of views'. In determining view loss, the principles outlined within the Land and Environment Court Case Tenacity Consulting Pty Ltd Vs Northern Beaches Council (2004) NSWLEC 140, have been used. In Tenacity Consulting Pty Ltd Vs Northern Beaches Council (2004) NSWLEC 140 the Land and Environment Court provided a four (4) planning principles to be used in the assessment of view loss. The development is not found to cause any unreasonable nor adverse view loss from any surrounding public or private properties, and thereby allows for the reasonable sharing of views.	Yes
CL62 Access to Sunlight	Yes	The development ensures a compliant level of solar access remains available to the private open spaces of adjoining sites, thereby satisfying the objectives of this General Principle.	Yes
CL63 Landscaped Open Space	Yes	The provision of landscaped open space provided by the development and the quantum and variety of plants shown on the landscape plan accompanying the application	Yes

		adequately demonstrate that the proposal satisfies the objectives of this General Principle.	
CL63A Rear Building Setback	Yes	<p>The proposed development has a 10m rear setback with a driveway traversing through the rear setback area. The rear setback is consistent with the objectives of this General Principle in that:</p> <ul style="list-style-type: none"> • The proposal does not detract from a sense of openness in that the rear setback area is generally clear of structures; • The proposal does not impinge or impact upon the amenity of adjacent land; • The proposal is consistent with the pattern of driveways upon surrounding allotments; • The proposal does not result in unreasonable privacy impacts for adjacent properties; and • The proposal provides substantial and suitable planting. 	Yes
CL64 Private open space	Yes	The development provides sufficient private open space in the form of communal rooms (totalling 161sqm), a communal deck (120sqm) and garden areas.	Yes
CL65 Privacy	Yes	<p>The subject site is adjoined by a dwelling house to the west (16 Wyatt Avenue), and a vacant lot to the east. The privacy provided by the development is found to be satisfactory by virtue of the increased and appropriate building setbacks, architectural treatment and orientation of the windows, and the proposed landscaping.</p> <p>Accordingly, it is found that the development provides a satisfactory provision of privacy and does not cause unreasonable direct overlooking into habitable rooms and principal private open space of other dwellings (both existing and future).</p>	Yes
CL66 Building Bulk	Yes	The proposal has been designed to ensure the building elements contain articulation and a built form that is contained in three pavilion-like forms. This combined with the increased front, side and rear setbacks ensures the proposal has a bulk and scale when viewed	Yes

		from the public domain maintains the appearance of single residential development, considering the context of the street and area.	
CL67 Roofs	Yes	The roof design of the building is satisfactory in that it contributes to the overall architectural form and facilitates clerestory windows for additional solar access.	Yes
CL68 Conservation of Energy and Water	Yes	The proposal includes energy- and water-saving elements.	Yes
CL69 Accessibility – Public and Semi-Public Buildings	No	The development is not a public or semi-public building.	N/A
CL70 Site Facilities	Yes	The design of the proposal has placed service function structures like clothes drying and waste storage away from the street level, so as not to be visible from the public domain.	Yes
CL71 Parking Facilities (Visual Impact)	Yes	The entrance to the carpark is located at the rear of the site and is not visible from the public domain. The carpark is located in a partially underground, so as to limit view of the car parking area.	Yes
CL72 Traffic Access & Safety	Yes	The development application (including the proposed vehicle access) has been reviewed by Council’s Traffic Engineer who raises no objection to the development in relation to traffic impacts, subject to recommended conditions.	Yes
CL73 On-site Loading and Unloading	Yes	The development does not have any formal on-site loading / unloading zone. However, this is found to be satisfactory as such occurrences would be infrequent, and the majority of loading and unloading would generally be restricted to clothing and accessories to fill a single bedroom. Sufficient area exists on site to facilitate the safe loading and unloading of items without impacting on the amenity or traffic safety of occupants of the development.	Yes
CL74 Provision of Carparking	Yes	Schedule 17 of the WLEP 2000 does not include a car parking ratio for Boarding House developments. In this instance, the development was designed in accordance	Yes

		<p>with the SEPP ARH standards that applied at the time of lodgement of the original development (being 0.2 spaces per room, totalling 5 required parking spaces for the amended number of rooms). After lodgement of the original development application, the SEPP ARH parking standards increased to 0.5 spaces per room (totalling 12 spaces for the amended number of rooms). However, as detailed later in this report, SEPP ARH does not apply to this development either. Accordingly, the provision of car parking must be solely assessed against General Principle Clause 74.</p> <p>Clause 74 requires that adequate off-street carparking is to be provided with regard to:</p> <ul style="list-style-type: none"> • the land use • availability of public transport • availability of alternative car parking <p>The development is a Category Two land use and is located in close proximity to several bus stops. Unrestricted car parking is available on Wyatt Avenue. However, reliance on street parking is not a sustainable solution in perpetuity, and can therefore only be relied upon as a bonus or additional parking when a development provides a satisfactory provision of car parking on site.</p> <p>The proposal includes 12 car parking spaces (including one accessible space), eight motorcycle spaces and 18 bicycle parking spaces. This assessment relies upon the traffic and parking assessment provided by the Applicant, and the assessment undertaken by Council's Traffic Engineer. As both of these assessments are favourable to the provision of car parking provided, it is found that the development satisfies this General Principle.</p>	
CL75 Design of Carparking Areas	Yes	Council's Traffic Engineer has reviewed the proposed car park design and is satisfied that it is compliant with the relevant Australian Standards. Conditions of consent requiring compliance with Australian Standards will ensure that the car park is adequately built.	Yes
CL76 Management of Stormwater	Yes	The provision of stormwater management has been assessed by Council's Development Engineering and Stormwater Assets teams who are unsupportive of the proposal for the	No

		reasons detailed in the section of this report relating to referrals.	
CL77 Landfill	Yes	The development will require minimal landfill adjacent to the areas of excavation, to a scale that would not have adverse impacts upon the visual and natural environment or the amenity of adjoining of surrounding properties.	Yes
CL78 Erosion & Sedimentation	Yes	Should the application be approved, standard conditions can be applied requiring adequate erosion and sedimentation fencing and measures to be in place.	Yes
CL79 Heritage Control	No	The site is not within the vicinity of any heritage item.	N/A
CL80 Notice to Metropolitan Aboriginal Land Council	Yes	The original application was subject to a review by the Aboriginal Heritage Office. It was concluded that there were no visible items of Aboriginal history or significance on the site (see referral comments later in this report). Standard conditions can be applied requiring works to stop if any items of Aboriginal significance are located during excavation or building.	Yes
CL82 Development in the Vicinity of Heritage Items	No	The development is not within the vicinity of any heritage items.	N/A
CL83 Development of Known or Potential Archaeological Sites	No	The site is not on land that is known to accommodate any potential archaeological sites. It is not anticipated that any potential archaeological sites or items will be located during the excavation period of this application.	N/A

WLEP 2000 Schedules

Schedule	Applicable	Compliant
Schedule 5 State policies	Yes	Yes
Schedule 6 Preservation of bushland	Yes	Yes
Schedule 7 Matters for consideration in a subdivision of land	No	N/A

Schedule 8 Site analysis	Yes	Yes
Schedule 9 Notification requirements for remediation work	No	N/A
Schedule 10 Traffic generating development	N/A	N/A
Schedule 11 Koala feed tree species and plans of management	N/A	N/A
Schedule 12 Requirements for complying development	N/A	N/A
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach	N/A	N/A
Schedule 14 Guiding principles for development near Middle Harbour	N/A	N/A
Schedule 15 Statement of environmental effects	Yes	Yes
Schedule 16 Principles and standards for housing for older people or people with disabilities	N/A	N/A
Schedule 17 Carparking provision	N/A	N/A

WLEP 2000 Clause 20

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

General Principles of Development Control

The proposal is consistent with the General Principles of Development Control and accordingly, qualifies for consideration of a variation to the development standards, under the provisions of Clause 20(1). See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency.

Desired Future Character of the Locality

The proposal is consistent with the Locality’s Desired Future Character Statement and accordingly, qualifies for consideration of a variation to the development standards, under the provisions of Clause 20(1). See discussion on “Desired Future Character” in this report for a detailed assessment of consistency.

Relevant State Environmental Planning Policies

The proposal has been assessed as being consistent with all applicable State Environmental Planning Policies (refer to earlier discussion under ‘State Environmental Planning Policies’). As such, the proposal qualifies for consideration of a variation to the development standards, under the provisions of Clause 20(1). As detailed above, the proposed development satisfies the requirements to qualify for consideration under Clause 20(1). It is for this reason that the variation to the housing density, ceiling height, and side setbacks, (Development Standards) pursuant to Clause 20(1) is supported.

SITE INSPECTION ANALYSIS

Site constraints and other considerations	
Bushfire Prone?	No
Flood Prone?	No
Affected by Acid Sulphate Soils	No
Located within 40m of any natural watercourse?	Yes
Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW Coastal Policy?	No
Located within 100m of the mean high watermark?	No
Located within an area identified as a Wave Impact Zone?	No
Any items of heritage significance located upon it?	No
Located within the vicinity of any items of heritage significance?	No
Located within an area identified as potential land slip?	No
Is the development Integrated?	No
Does the development require concurrence?	Yes
Is the site owned or is the DA made by the “Crown”?	No
Have you reviewed the DP and s88B instrument?	Yes
Does the proposal impact upon any easements / Rights of Way?	No
Does the site inspection confirm the assessment undertaken against the relevant EPI’s?	Yes
Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?	No

Are there any existing unauthorised works on site?	No
If YES has the application been referred to compliance section for comments?	N/A

CONCLUSION

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions. As summary of the key issues within this report is as follows:

- The amended proposal is considered substantially the same as the original proposal, as detailed within this report.
- The application received 68 submissions, raising a number of issues with the proposed development, as detailed and addressed within this report.
- This report demonstrates that the proposal is low intensity and low impact, in accordance with the requirements of Category 2 Development in the C8 Belrose North locality.
- The proposed non-compliances with building height, housing density, front setback and side setbacks are reasonable (despite the significant numerical variation to housing density).
- The proposal does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties, with the exception of potentially in relation to stormwater and flood risk (there is insufficient information to be certain in this regard, as detailed in this report).

As such, given the lack of suitable information in relation to stormwater and flood risk, the proposed development is not demonstrated to be suitable for the subject site. The absence of demonstration of suitability means that the consent authority cannot be sure the proposal results in a good or reasonable planning outcome, and is in the public interest. Therefore, the application is recommended for refusal. It is considered that all processes and assessments have been satisfactorily addressed and that the proposed development does not satisfy the appropriate controls.

SITE INSPECTION AND ASSESSMENT UNDERTAKEN BY:



Signed _____

Date _____

Claire Ryan, Principal Planner

RECOMMENDATION – REFUSAL

That the Northern Beaches Local Planning Panel as the consent authority:

REFUSE the *Review of Determination of Application DA2018/0401 for Construction of a Boarding house with 27 rooms including a manager's residence* for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of Clause 76 Management of Stormwater of the *Warringah Local Environmental Plan 2000*:
 - (a) Insufficient information is provided to demonstrate how stormwater will be conveyed along Wyatt Avenue and through the subject site. The proposed works within Wyatt Avenue are not satisfactory.
 - (b) Full hydrological and hydraulic details have not been provided for the pipeline/headwall, in accordance with Council's Building Over and Adjacent to Constructed Council Drainage Systems and Easements Technical Specification Section 3 and 4.
 - (c) A longsection of the proposed drainage with Wyatt Avenue has not been provided.
 - (d) Cross-sectional information of the drainage channel along the eastern boundary has not been provided.
 - (e) The proposed kerb breaks and rip-rap within the road reserve are not supported.
 - (f) Detail has not been provided for the provision of 1.5m wide footpath for the full property frontage. Adjustments to the proposed drainage arrangement will be required to facilitate the footpath.
 - (g) Discharge from the headwall within Wyatt Avenue should be extended to cater for the 1.5m wide footpath and directed towards the existing easement.
 - (h) Detail has not been provided for the provision of a 5.5m wide vehicle crossing for the development.
 - (i) Discharge from the OSD tank to the existing easement is not supported. Stormwater shall be directed to a suitably designed stormwater dispersion system. Total stormwater discharge including bypass and controlled flows shall be limited to the 1 in 5 year ARI "state of nature" storm event (0% impervious), for all storm events up to and including the 100-year ARI.
 - (j) The Flood Risk Management Report does not consider the 5% or 20% AEP storm events in analysis.

- (k) The Report appears to incorrectly identify the existing geometry plan, which shows an impact on the model results.
- (l) The DRAINS model has not been provided for assessment. The DRAINS summary in Figure 10 provides insufficient information for a detailed assessment to be undertaken.

As such, stormwater runoff from development is not demonstrated to have minimal impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake, waterway or the like.

“I am aware of Council’s Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest”:



Signed

Date

Claire Ryan, Principal Planner

The application is forwarded to the Northern Beaches Local Planning Panel under the delegated authority of:



Signed

Date

Matt Edmonds, Manager Development Assessment