
Sent: 4/02/2020 4:13:49 PM

Subject: OBJECTION 'AMENDED PLANS' DA2018/0304 – SECTION 34 HEARING

Hi Celia, please find below my objections to the development at 22 Redman Road Dee Why. Council refused this application for many reasons. The amended plans do not address or change many of the significant reasons for refusal made by the Panel. In addition, I believe there are new contentions that should be added to the hearing. I do not believe that Council is in a position to approve this development due to the matters listed below and believe that the case has to come before the Land and Environment Court at a full hearing.

Point 1 – Definitions void any consent. I believe if any consent is reached then the DA approval will be void. This is because the application satisfies 2 definitions of the LEP, one which is permitted (Boarding House) and one which is prohibited (Residential Flat Buildings).

boarding house means a building that—

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

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

Note.

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

residential flat building means a building containing 3 or more dwellings, but does not inc
multi dwelling housing.

There is sufficient case law that determines if rooms have kitchens and bathrooms then they are a dwelling. For
eg **Warlam Pty Ltd v Marrickville Council (2009)**.

So the question is, if there are 2 permitted uses, what takes precedence? I believe there is sufficient case law
that points to the conclusion if a use is prohibited then it over rules a permitted use. Even more so as the
ARHSEPP does not apply to the land. These are the cases that support this:

Abdo v Fairfield City Council 2012 Proceedings 10878 of 2012

- Applicant applied for a boarding house use which was permissible. The Court was satisfied that the
definition of dwelling applied therefore it was also a residential flat building.
- The ARHSEPP did not apply to the land
- Judge ruled the proposal was prohibited

Hawkesbury City Council & Anor v Sammut (2002)file 40202/99

Court of Appeal

If the tractor repair business could be fairly characterised as an “industry” then it was prohibited under Local Environment Plan, and it was irrelevant that the use could also have been categorised under the “rural industry” (*Egan v Hawkesbury City Council* (1993) 79 LGERA 321, and *Elf Farm Supplies Pty* [1999] NSWLEC 261 applied). Repair of tractors was a “manufacturing process” under the **Factories Act** and therefore was an “industry” under cl 4(1) of the **Environmental Planning and Assessment Model**

Abret Pty Ltd v Wingecarribee Shire Council 2011

- Court found that whilst the development fell within the definition of Seniors Living in the LEP (and was an innominate use which wasn’t prohibited), this did not prevent the development also being characterised as residential flat buildings.
- As residential flat buildings are expressly prohibited the court found the entire development was prohibited.

Warlam Pty Ltd v Marrickville Council (2009) File 10623 of 2008

- Cl 35 and 36 distinguishes boarding rooms with kitchens and bathrooms are dwellings and are more on the side of residential flat buildings than boarding houses

Also, in determining the two uses, consideration needs to be given to the Objectives of the zone. The key words are “...**within a low density environment**”. A boarding house of 15 dwellings catering for 30 people on a standard house block is certainly not low density.

Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

Because there are no density controls on boarding houses that are >400m from transport and shops (ARHSEPP impose a 12 room density control for sites <400m from transport and shops) it is even more imperative that the objectives of the zone have significant weight ie to provide housing within a “...low density environment”. Once again, this is not to say boarding houses are not permitted, rather it can be interpreted that in zones outside of the 400m the density should be less than the 12 room control as these areas are less suitable for boarding houses as they are not in an accessible area to shops and transport.

You may then ask what is the purpose of the boarding house definition in the LEP. In my opinion, a boarding house is still permissible if 2 of its rooms had kitchen and bathroom facilities (hence a dwelling), and the rest of the rooms did not have kitchens and bathrooms hence those rooms would not be classified as a dwelling. The boarding house use would then be undoubtably permissible. However once it tips over the threshold of having 3 dwellings, then it is undoubtably a residential flat building which is prohibited.

If the ARHSEPP did apply, it would weaken this argument because the ARHSEPP allows density up to 12 rooms and lessor weight would be given to the LEP. **This site is an anomaly in that it is to my understanding the only boarding house Northern Beaches Council have assessed that does not fall under the power of the ARHSEPP.**

Point 2: No Access Report. There is no access report provided on Council’s website. We have not had any chance to review it for correct building classification and its recommendations.

Point 3: No “Building over or adjacent to constructed council drainage systems and easements

technical specifications” report. Part C6 of the WDCP deals with “Building over or adjacent to constructed council drainage easements”. The application did not address this and just in case it was missed at the site inspection, there is a significant constructed watercourse abutting the northern boundary of the site that takes overland water down to Burne Ave. Part C6 of the WDCP states that any development must comply with “Building over or adjacent to constructed council drainage systems and easements technical specifications”. No such report has been provided so this clause has not been assessed. Also, this means there is no way clause 6.2 (3)(g) of the WLEP relating to impact on watercourses could have been considered.

Point 4: Inadequate Hydrogeological & Stability Assessment Report. I know as a child living in the area that there was a well at the bottom of the property at the east of the site which indicates the area is subject to significant water events. The Hydrogeological & Stability Assessment Report dated 14 January 2020 page 6 advises that no long term groundwater monitoring was carried out. Also, only 2 boreholes were drilled, one to 0.4m and one to 2.2m. The basement excavation is about 3m deep. Additionally, the report says that the drilling occurred following a period of intermittent light rainfall. The Australian Bureau of Meteorology records shows that 2.4mm of rainfall occurred on the 19th Dec 19 (day of drilling) and no rain occurred since the 8th Dec. Therefore it was in a period of dryness. It concluded that “..the proposed basement excavation is not expected to extend into the groundwater table”. Cl 6.4 (3)(c) of the LEP says development consent must not be granted unless the consent authority is satisfied that “the development will not impact on or affect the existing subsurface flow conditions”. I do not believe that the consent authority could grant consent based on the poor assumptions in the report.

Point 4: Inadequate access to public transport and shops due to the 71 steps. A share car that is proposed does not provide equitable access to the shops and transport for the elderly, young and frail/sick or disabled occupants. For example if someone borrows the car and parks the share car near Dee Why bus stop to get a bus into town, that takes away the ability for remaining residents to have a high level of access to the shops and transport for that entire day. Other residents may not even have a car licence and therefore cannot use the car for access at all. It is a poor solution that does not solve the problem of the 71 stairs.

Point 5: Out of Character. The proposal is still completely out of character with existing homes in the neighbourhood, particularly in relation to having regard to the extent of windows, doors balconies and screenings dominating each side of the development. No homes in R2 Zone have that feature. It fails the character test in Cl 1.2(2)(d)(ii) to be compatible in appearance with neighbouring development. If a house was being designed for this block, there is no way that it would be designed with so much visible glazing and screens dominating the east and west facades particularly. There is still minimal building articulation along the western side where it will be very visible to the public because of the building next to the private right-of-way. This is a unique situation where there will never be an adjoining house built so the long west façade will always be visible in its entirety anywhere in a 270 degree angle. It is very different than if the boarding house was abutted by 2 houses like it would be in a normal streetscape. The visual impact of the extent of glazing and screening would generally not be seen by the neighbourhood in that case. I reiterate that this is a unique site setting that magnifies the appearance which causes the development not to be in harmony with the neighbourhood. The application should be refused on this basis alone.

Warringah Local Environmental Plan 2011

Current version for 9 November 2018 to date (accessed 4 December 2018 at 22:26)

Part 1 ► Clause 1.2

1.2 Aims of Plan

- (1) This Plan aims to make local environmental planning provisions for land in that part of Northern Beaches local government area to which this Plan applies (in this Plan referred to as **Warringah**) in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to create a land use framework for controlling development in Warringah that allows detailed provisions to be made in any development control plan made by the Council;
 - (b) to recognise the role of Dee Why and Brookvale as the major centres and employment areas for the sub-region;
 - (c) to maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors;
 - (d) in relation to residential development, to:
 - (i) protect and enhance the residential use and amenity of existing residential environments, and
 - (ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and
 - (iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,

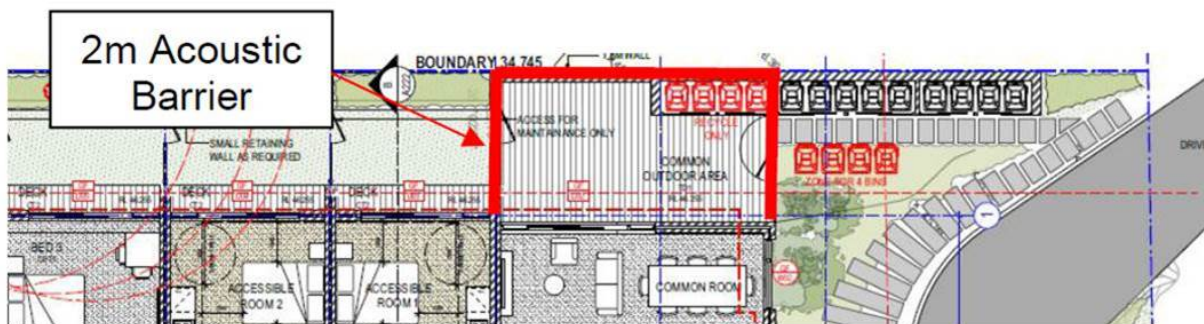


Photo showing the unique setting and the 270 degree view that the neighbourhood will see of the

proposed development.

Point 6: Plans do not reflect acoustic report. The acoustic report marks up the communal space being enclosed by a continuous wall on the south and west sides. The applicant has drawn a door in the southern acoustic wall thereby negating the purpose of the wall when the door is opened/left open. This is a sneaky attempt to amend the consultants recommendations.

Concerningly, the previous acoustic report showed another wall to the north enclosing the north of the communal space. See the diagram below.



This north wall has not been included in the new acoustic report. This raises grave doubt on the validity of the acoustic report. Nothing else has changed so why has the consultant changed their initial recommendation? Further investigation may reveal some mismanagement from the consultant. How can Council be satisfied on the validity of the acoustic information received? An alternate acoustic report should be commissioned. As a side note, the renderings show a wall to the north but the plans don't.

Point 7: Poor sunlight amenity to common space area in winter. Refer to SK 24B which shows minimal sun entering the space.

Point 8: Encroachment of common area into side setback controls. The enclosure is only 300mm off the western boundary. Why does the community need to see a 2m high wall encroaching on the side setbacks? The controls are there to contain bulk, and with such a contentious development why is the encroachment being considered? It is a clear example of too much bulk being crammed into the site. It just doesn't fit into the character of the area. Containing the common area within the footprint may lower the density which the site demands.

Point 9: Privacy screens ineffective. Drawing SK28C clearly shows how easy it is for a standard height person to look over the privacy screens into the properties to the east below. It is completely ineffective. Likewise on drawing SK26C which shows how the angle of the louvres do not do anything to prevent looking down into the properties below. Additionally there are no screens to the managers apartment.

Point 9: Traffic congestion in the cul-de-sac. This is a non-typical street arrangement where not only there is a cul-de-sac, but it converges with a private drive to the west and a private drive to the east (coming up the stairs). Converging 9 cars from the proposed site with the existing 9 cars that come down the private driveway plus services impacting at cul-de-sac, right of way and driveway exit. The cul-de-sac is already congested with cars. A significant amount of cars park up either sides of the cul-de-sac along Redman Rd there during the week and also on weekends. Cars are also starting to park on the private grass strip adjoining the west boundary of the site. During construction

management of tradesmen is going to be problematic on this private property. More so though, spillover of cars from the completed development will all be looking for the closest parking opportunity and are most likely to park on this strip of private property. This will lead to community friction and angst. This fails the character test in cl 1.2(2)(d)(i) of the LEP which is to “protect and enhance the residential use and amenity of existing residential environments”.



Photo showing the already congested parking arrangements before adding the needs of potentially another 30 residents.

Point 10 Basix Report – this report even refers to the development as a residential flat building with 15 dwellings. How can a report be accepted that basis its assumptions on a prohibited use?

Regards

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