

Proposed Boarding House

16 Wyatt Avenue, Belrose

Amended Statement of Environmental Effects

19 December 2021

Ref: 21122/3

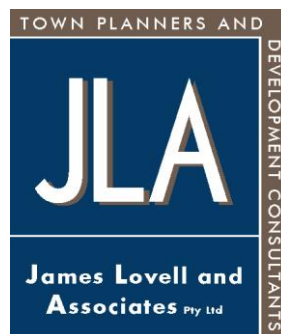


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1. INTRODUCTION

1.1 Preamble

This Amended Statement of Environmental Effects (SEE) has been prepared to accompany a Development Application (DA) to Northern Beaches Council for the demolition of the existing dwelling house and construction of a boarding house at No. 16 Wyatt Avenue, Belrose.

The subject site is located on the north-western side of Wyatt Avenue, approximately 380 metres to the south-west of Forest Way. The site encompasses an area of approximately 9,345m², and is irregular in shape with a frontage of 28.745 metres to Wyatt Avenue.

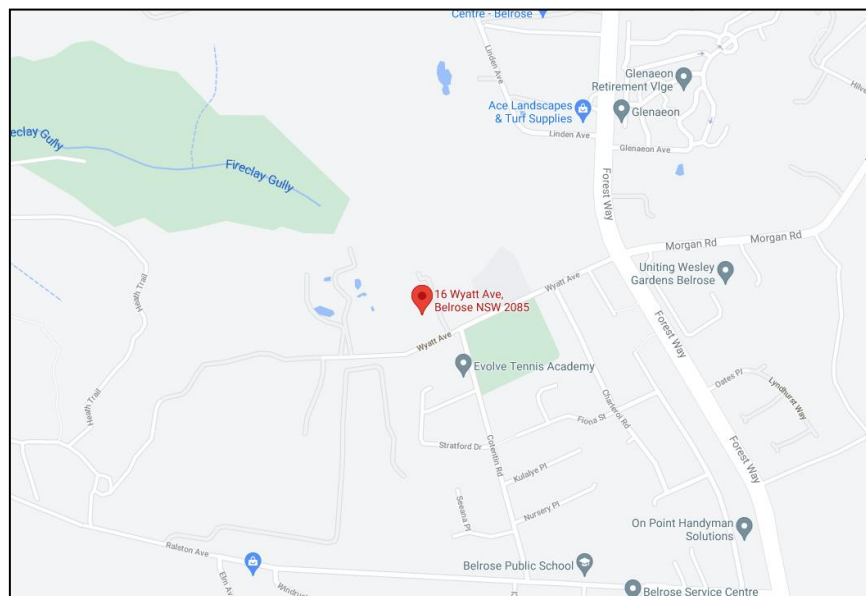


Figure 1: Location

The site is currently occupied by a 2-storey dwelling house setback approximately 35 metres from Wyatt Avenue. Off-street car parking is located within an attached garage located in front of the dwelling, setback approximately 29 metres from Wyatt Avenue. The site is accessed via a combined entry/exit driveway located along the Wyatt Avenue frontage.

A swimming pool is located to the rear of the dwelling, and a series of outbuildings occupy the rear (north-western) portion of the site. Further, the site accommodates an informal helipad that is used on a relatively frequent basis.

The proposed development comprises the demolition of the existing structures, and the construction of a boarding house. The proposed boarding house accommodates 55 boarding rooms, including a manager's room.

Off-street parking is proposed for 35 vehicles, 13 motorcycles, and 55 bicycles. Vehicular access to the front building is proposed via a combined entry/exit driveway located along the Wyatt Avenue frontage of the site. Vehicular access to the rear building is proposed via an extension of the approved access driveway servicing the approved boarding house to the east (No. 14 Wyatt Avenue).

The site is located in the *Belrose North Locality* pursuant to the Warringah Local Environmental Plan (LEP) 2000, and "boarding houses" are permissible in the Locality with the consent of Council.

The Northern Beaches Local Government Area (LGA) is statistically one (1) of the most expensive LGA's in New South Wales (NSW). In that regard, the Northern Beaches *Local Strategic Planning Statement* (LSPS) (March 2020) notes that:

There is limited supply of social housing and affordable rental housing on the Northern Beaches.

The lack of affordable housing is pronounced for households on lower incomes, driving the demand for social housing and affordable rental housing.

Providing more diverse and affordable rental and social housing options will help very low to moderate income households, including key workers, such as police and health care workers, stay in the area. It will mean people of all incomes and backgrounds can participate in the community.

The proposed development has been carefully designed to provide a good level of amenity for future residents, without imposing any significant or unreasonable impacts on the amenity of surrounding land.

Further, the proposed development has been designed to respect the environmental characteristics of the site, with the building form designed to negotiate the topographical fall of the site towards the rear (north-

west), and maintain and enhance the overall landscaped setting of the site and surrounds.

Finally, the overall bulk and scale of the proposed development has been moderated by separating the built form into two (2) separate buildings, with both the upper and lower buildings adopting a series of interconnected modules to further reduce the perceived bulk and scale of the individual buildings.

1.2 Background

The Warringah Local Environmental Plan (LEP) 2011 was gazetted on 9 December 2011. The site (amongst other areas) is identified as a “deferred matter” and is not subject to the provisions of the Warringah LEP 2011.

The Warringah LEP 2000 adopts “Local Statements” for individual areas, and does not prescribe land use zones. Accordingly, the provisions of State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 2009 do not specifically apply to the proposed development.

Irrespective, the provisions of the SEPP have been considered where there is an absence of relevant controls relating to boarding houses in the LEP.

On 20 January 2021, the Land and Environment Court upheld an appeal (*Platform Architects Pty v Northern Beaches Council [2020] NSWLEC 185*) in relation to the refusal of a DA for a boarding house on the adjoining property to the south-east, identified as No. 14 Wyatt Avenue, Belrose.

The approved boarding house accommodates 25 boarding rooms, including a manager’s room. Off-street car parking was approved for 13 vehicles, eight (8) motorcycles and bicycle storage. Vehicular access was approved via a combed entry/exit driveway extending to/from the Wyatt Avenue frontage of the site.

The approved building adopts a series of interconnected modules to negotiate the topographical fall of the site towards the rear (north-west), and reduce the overall bulk and scale of the built form.

In that regard, the proposed development has adopted a number of the overarching design principles incorporated in the approval of the boarding house on the adjoining property to the south-east.

In particular, the upper building adopts a similar footprint as the approved boarding house, with substantially the same setbacks to the front and side boundaries. The lower (north-western) building has been designed to achieve full compliance with the side and rear boundary setback controls.

Further, the proposed development adopts a similar privacy treatment along the south-western boundary, with off-set blade walls maintaining the privacy of the surrounding land to the south-west.

The buildings adopt a similar architectural composition, incorporating vertical and horizontal articulation, a refined palette of external materials and finishes, and stepped form to negotiate the topographical fall of the site towards the rear (north-west).

Finally, the proposed development adopts a similar landscaped treatment for the site, including the retention of the majority of the existing trees, with the retained trees supplemented by a hierarchy of new trees, shrubs and groundcovers.

1.3 Purpose

This SEE has been prepared pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and accompanying *Regulation*. To that end, it:

- identifies the site and provides details of its locational context;
- describes the physical characteristics and operational of the proposed development;
- identifies the environmental planning instruments and policies that apply to the site and considers the proposed development against those that are relevant; and
- provides an assessment of the proposed development against the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

2. SITE DESCRIPTION

2.1 Site Details

The site formally comprises Lot 2566 in Deposited Plan 752038, and is commonly known as No. 16 Wyatt Avenue, Belrose.

The subject site is located on the north-western side of Wyatt Avenue, approximately 380 metres to the south-west of Forest Way. The site encompasses an area of approximately 9,345m², and is irregular in shape with a frontage of 28.745 metres to Wyatt Avenue.

The site is currently occupied by a 2-storey dwelling house setback approximately 35 metres from Wyatt Avenue. Off-street car parking is located within an attached garage located in front of the dwelling, setback approximately 29 metres from Wyatt Avenue. The site is accessed via a combined entry/exit driveway located along the Wyatt Avenue frontage.

A swimming pool is located to the rear of the dwelling, and a series of outbuildings occupy the rear (north-western) portion of the site. Further, the site accommodates an informal helipad that is used on a relatively frequent basis.



Photograph 1: Subject Site Viewed from Wyatt Avenue

The topography of the site typically falls downhill from the south-east to the north-west, with a total level change of approximately 29 metres.

The existing vegetation on the site comprises a scattering of trees, shrubs and groundcovers. The existing trees are primarily located to the rear of the existing dwelling, and in the north-eastern corner of the site.

2.2 Site Context

The site is located within a mixed-use precinct characterised by a mix of detached dwellings, townhouses, a boarding house, educational facilities, and specialist landscape supply/nurseries.

The site is well located with respect to access to services and facilities. In that regard, the site is located approximately 40 metres walking distance of a bus stop on Cotentin Road, within 200 metres walking distance to the nearest bus stop on Wyatt Avenue, and within 400 metres of the bus stops located on Forest Way.

Accordingly, the site has convenient access to shopping facilities at Warringah Mall, Forest Way, Ralston Avenue, and Glenrose Shopping Centre, employment opportunities at the new Northern Beaches Hospital, Glanaeon Retirement Village, Wesley Gardens Retirement Village, Belrose Country Club Retirement Village, Austlink Business Park, Belrose, Dee Why and Brookvale, and to a range of educational facilities at Belrose and Brookvale TAFE, and to multiple recreational facilities.

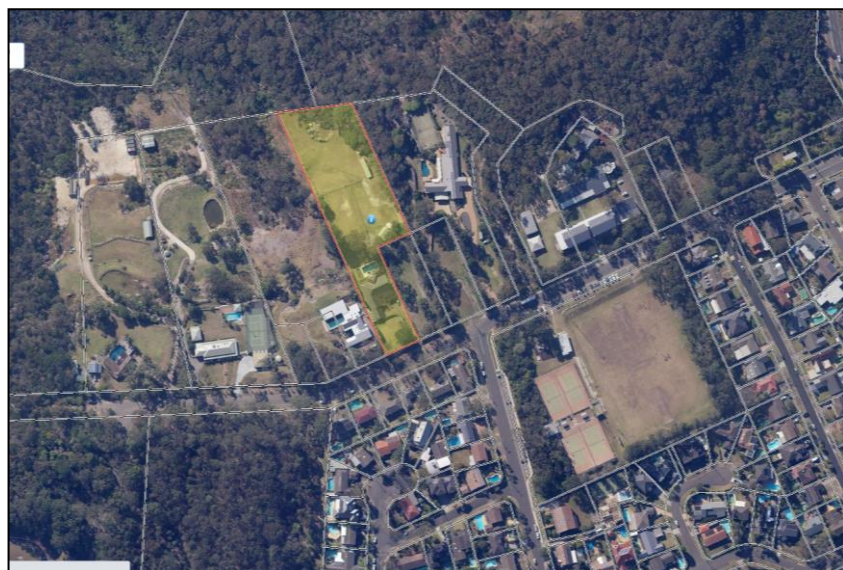


Figure 2: Site Context

On 20 January 2021, the Land and Environment Court upheld an appeal (*Platform Architects Pty v Northern Beaches Council [2020] NSWLEC 185*) in relation to the refusal of a DA for a boarding house on the adjoining property to the south-east, identified as No. 14 Wyatt Avenue, Belrose.

The approved boarding house accommodates 25 boarding rooms, including a manager's room. Off-street car parking was approved for 13 vehicles, 8 motorcycles and bicycle storage. Vehicular access was approved via a combed entry/exit driveway extending to/from the Wyatt Avenue frontage of the site.

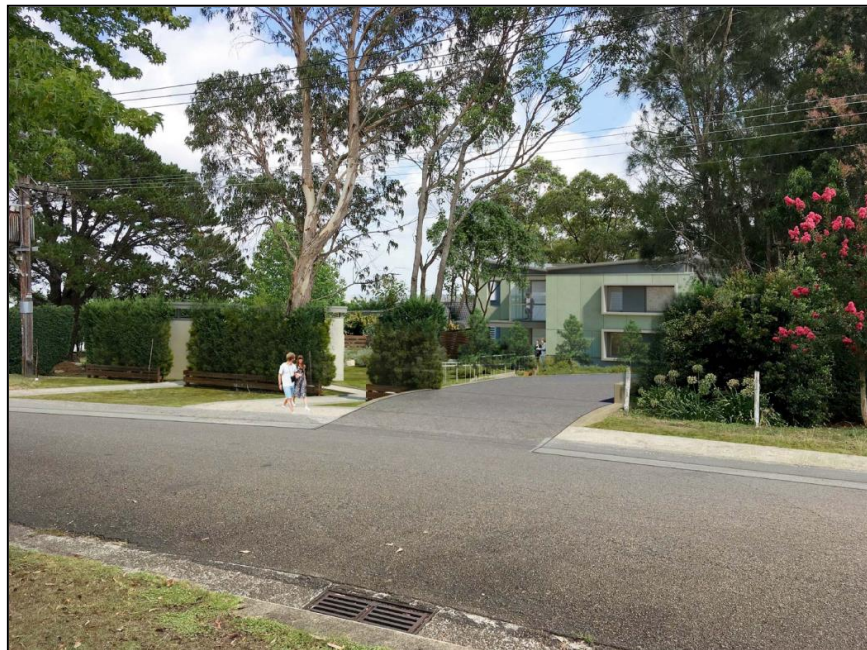


Figure 3: Approved Boarding House to the East

On 17 March 2020, Council granted Development Consent (DA 2019/0238) for the construction of a child care centre and caretakers residence at No's 10 – 12 Wyatt Avenue, Belrose.

The approved child care centre is intended to provide long day care for up to 60 children between 7.00am and 6.30pm, Monday to Friday. Off-street car parking was approved for 16 vehicles, accessed via a combined entry/exit driveway located along the Wyatt Avenue frontage.

The approved building is 1 – 2 storeys in height, setback 20 metres from Wyatt Avenue, with the off-street car parking facilities located between the approved building and the front boundary.

The site is adjoined to the south-west by a single storey dwelling house setback approximately 20 metres from Wyatt Avenue. The dwelling includes a centralised swimming pool and off-street car parking facilities, accessed via a combined entry/exit driveway extending to/from the Wyatt Avenue frontage.



Photograph 2: Adjoining Property to the West

The surrounding development to the north-east comprises heavily vegetated bushland, and the surrounding development to the south-west (on the opposite side of Wyatt Avenue) comprises a series of 1 – 2 storey detached dwelling houses, typically on allotments with an area of approximately 680m².

3. PROPOSED DEVELOPMENT

3.1 General Description

The proposed development is illustrated in the Architectural Plans prepared by *Platform Architects*, dated 8 December 2021.

The proposed development comprises the demolition of the existing structures, and the construction of a boarding house. The proposed boarding house accommodates 55 boarding rooms, including a manager's room.

Off-street parking is proposed for 35 vehicles, 13 motorcycles, and 55 bicycles. Vehicular access to the front building is proposed via a combined entry/exit driveway located along the Wyatt Avenue frontage of the site. Vehicular access to the rear building is proposed via an extension of the approved access driveway servicing the approved boarding house to the east (No. 14 Wyatt Avenue).

Building Form

The proposed development has been separated into an upper (south-eastern) and lower (north-western) building, intended to negotiate the topographical fall of the site towards the rear (north-west), and reduce the overall bulk and scale of the built form.

The upper building accommodates 23 boarding rooms, including the manager's room (with a private courtyard). The individual rooms include ensuites, and no kitchens or laundries are provided within the individual rooms.

The upper building includes common laundry, drying and storage facilities, and two (2) common rooms with kitchens, including a common room with access to a north-west facing terrace.

Off-street parking is provided for 11 vehicles (including 2 accessible spaces), 5 motorcycles and 23 bicycles. The off-street parking facilities are located within a partially excavated basement level, accessed via a combined entry/exit driveway extending to/from Wyatt Avenue.

The upper building is separated into three (3) interconnected modules to negotiate the topographical fall of the site towards the rear (north-west).

The lower building accommodates 32 boarding rooms. The individual rooms include ensuites, and no kitchens or laundries are provided within the individual rooms.

The lower building includes common laundry, drying and storage facilities, and four (4) common rooms with kitchens, including two (2) with access to a north facing terraces.

Off-street parking is provided for 20 vehicles (including 2 accessible spaces), four (4) visitor spaces, 8 motorcycles and 32 bicycles. The off-street parking facilities are located within a partially excavated basement level, accessed via a continuation of the driveway extending past the upper building.

The lower building is separated into three (3) interconnected modules to negotiate the topographical fall of the site towards the rear (north).

Landscaping

The existing vegetation on the site comprises a scattering of trees, shrubs and groundcovers. The DA is accompanied by an *Arboricultural Impact Assessment* which provides an assessment of 47 trees.

The Assessment includes recommended protection measures to ensure the retention of 31 existing trees as part of the proposed development. Further, six (6) of the trees being removed are exempt species, and four (4) trees are eligible for removal on the basis of the current 10/50 bushfire clearing entitlements.

The DA is accompanied by a *Landscape Plan* which describes the proposed landscaped treatment of the site. In that regard, the proposed development provides a hierarchy of new trees, shrubs and groundcovers, intended to maintain and enhance the overall landscaped setting of the site and surrounds.

Materials and Finishes

The schedule of external materials and finishes includes a combination of fibre cement cladding, face brickwork, corrugated metal cladding, timber or painted FC sheets, fibre cement fascias, and natural stone cladding.

The Project Architects have described the intention of the proposed colour palette as follows:

The palette of the development is based on colours of the neighbourhood – mostly houses with neutral ochre to brown tones. This is complemented with neutral colours of the surrounding natural bushland. These colours are used in a way to optically reduce the bulk of the building and to underline the separation into modules.

3.2 Operational Details

A Plan of Management (POM) has been prepared to regulate the operation of the proposed boarding house. The POM generally aims to ensure there are no adverse impacts arising from the facility on any adjoining property or the neighbourhood, to provide procedures to receive and resolve complaints, maintain the internal and external amenity of the building, and ensure residents enjoy their stay in a safe environment.

The facility will be managed by an experienced operator who will oversee the day-to-day operations of the boarding house, including matters such as general maintenance and cleanliness of common areas, observance by residents of house rules, and services.

The proposed boarding house will provide lodgers with a principal place of residence for periods of three (3) months or more. The lodgers will have access to their private rooms, and the communal facilities in accordance with the POM.

4. SECTION 4.15 ASSESSMENT

The heads of consideration incorporated in Section 4.15 of the *Environmental Planning and Assessment Act 1979* comprise:

- any environmental planning instrument;
- any proposed instrument that is or has been the subject of public consultation and that has been notified to the consent authority;
- any development control plan;
- any planning agreement or draft planning agreement;
- any matters prescribed by the Regulation;
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality;
- the suitability of the site for the development;
- any submissions made in accordance with the Act or the Regulations; and
- the public interest.

4.1 Environmental Planning Instruments

The following environmental planning instruments are of relevance to the proposed development:

1. State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land;
2. State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 2009; and
3. Warringah Local Environmental Plan (LEP) 2000.

SEPP No. 55 – Remediation of Land

SEPP No. 55 specifies that a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is, or is likely to be contaminated, and if the land is, or is likely to be contaminated, whether the land requires remediation before the land is developed for the proposed use.

The site is currently used for residential purposes, and evidently has not been zoned or used for industrial, intensive agricultural or defense purposes at any times in the lands recent history.

In the circumstances, there is no evidence to suggest that the land is likely to be contaminated to the extent that would render it unsuitable for use as a boarding house.

SEPP (Affordable Rental Housing) 2009

SEPP (Affordable Rental Housing) 2009¹ generally aims to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses, and non-discretionary development standards.

The SEPP prevails to the extent of any inconsistency with any other environmental planning instrument, and Division 3 applies to boarding houses.

The Warringah LEP 2000 adopts “*Local Statements*” for individual areas, and does not prescribe land use zones. Accordingly, the provisions of the SEPP do not specifically apply to the proposed development.

Irrespective, the provisions of the SEPP have been considered in the event of an absence of controls relating to boarding houses in the LEP.

Clause 29 of the SEPP specifies development standards which, if complied with, cannot be used to refuse consent. Further, Clause 30 specifies development standards which must be satisfied. The standards are considered in Table 4.1.1 as follows:

| Table 4.1.1 – SEPP (Affordable Rental Housing) 2009 | | |
|--|--|---------------------|
| Clause 29 – Standards that cannot be used to refuse consent | | |
| Standard | Proposed | Satisfactory |
| Floor Space Ratio | | |
| The existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus 0.5:1, if the existing maximum floor space ratio or | The Warringah LEP 2000 does not prescribe a maximum FSR control. | Noted |

¹ SEPP (Affordable Rental Housing) 2009 was repealed on 26 November 2021, and replaced by SEPP (Housing) 2009. Irrespective, SEPP (Affordable Rental Housing) 2009 continues to apply to “a development application made, but not yet determined, on or before the comments date”, pursuant to Schedule 7.

| | | |
|---|---|-----|
| 2.5:1 or less. | | |
| Building Height | | |
| The maximum building height permitted under another environmental planning instrument for any building on the land. | The Warringah LEP 2000 specifies a maximum building height of 8.5 metres, and the proposed development extends to a maximum height of 8.5 metres. | Yes |
| Landscaped Area | | |
| If the landscaped treatment of the front setback area is compatible with the streetscape in which the building is located. | The proposed development provides extensive landscaping within the front setback, and the landscaped treatment of the front portion of the site is compatible with the existing and approved development in the locality. | Yes |
| Solar Access | | |
| Where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter. | The upper and lower level buildings both include common living rooms and terraces that will receive in excess of 3 hours sunlight between 9am and 3pm during mid-winter. | Yes |
| Private Open Space | | |
| If at least one area of at least 20m ² with a minimum dimension of 3 metres is provided for the use of lodgers (other than the front setback area). | The proposed development includes six (6) common rooms, and four (4) common terraces, all of which have an area of more than 20m ² with minimum dimensions of more than 3 metres. | Yes |
| Parking | | |
| At least 0.2 parking spaces are provided for each boarding room (the site is located within an "accessible area"). | The proposed development provides 55 boarding rooms, generating a requirement for 11 off-street car parking spaces. The proposed development provides off-street car parking for 35 vehicles. | Yes |
| Accommodation Size | | |
| If each boarding room has a gross | The gross floor area of the | Yes |

| | | |
|--|--|-------|
| floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least 16m ² in the case of a boarding room capable of accommodating more than a single lodger). | individual boarding rooms exceeds 16m ² (excluding the en-suites), and the rooms are variously designed to accommodate either one (1) or two (2) lodgers. | |
| Clause 30 Standards for boarding houses | | |
| If a boarding house has 5 or more boarding rooms, at least one communal living room will be provided. | The proposed development provides six (6) common rooms, including four (4) with common terraces. | Yes |
| No boarding room will have a gross floor area (excluding any area used for the purposes of private kitchens or bathroom facilities) of more than 25m ² . | None of the boarding rooms have a gross floor area of more than 25m ² (excluding the area of the en-suites). | Yes |
| No boarding room will be occupied by more than 2 adult lodgers. | None of the boarding rooms will be occupied by more than 2 adult lodgers. | Yes |
| Adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger. | The individual boarding rooms include en-suites, and the common rooms include kitchen facilities. | Yes |
| If the boarding 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 proposed development includes a designated manager's room. | Yes |
| At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms. | The proposed development provides 55 boarding rooms, generating a requirement for 11 bicycle and 11 motorcycle spaces. The proposed development provides 55 bicycle spaces and 13 motorcycle spaces. | Noted |

Finally, Clause 30A of the SEPP specifies that the consent authority must not consent to development unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

The Land and Environment Court has established a number of *planning principles* relating to “compatibility” in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*.

The fundamental principle established in *Project Venture* is that compatibility means capable of existing together in harmony. As explained in *Project Venture*:

Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

To test whether a proposal is compatible with its context, *Project Venture* poses two (2) questions that need to be addressed as follows:

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development of surrounding sites.*
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The proposed development will present to the street as a 2-storey building setback a minimum compliant distance of 20 metres from the front boundary.

Further, the proposed development provides a total landscaped area of approximately 6,269.9m², representing 67% of the site area, which significantly exceeds the minimum landscaped area requirement of 50% of the site area within the Locality.

The site is of sufficient size to accommodate the proposed development without imposing any significant or unreasonable impacts on the amenity of surrounding properties in terms of the key considerations of visual bulk, overshadowing, privacy and views.

The shadows cast by the proposed development will substantially fall within the boundaries of the site, with the only exception being a period of approximately 2 hours between 9.00am and 11.00am in mid-winter. In

the circumstances, the surrounding properties will continue to receive good levels of solar access at all times of the year.

The lower (north-western) building complies with the side and rear boundary setback controls, and will not contribute to any significant or proximate overlooking of surrounding properties.

The upper (south-eastern) building substantially complies with the side boundary setback control along the south-eastern boundary, and the south-western façade incorporates off-set blade walls specifically designed to mitigate overlooking towards the south-west.

Finally, the proposed development includes the retention of the majority of the existing trees on the site, with the retained trees supplemented by a hierarchy of new trees, shrubs and groundcovers.

In the circumstances, it is reasonable to conclude that the proposed development will be compatible with the existing and likely future character of the locality, and will not be perceived as offensive, jarring or unsympathetic to the existing and likely future character.

Warringah LEP 2000

Permissibility

The site is located within the C8 – *Belrose North Locality* pursuant to the Warringah LEP 2000. A “boarding house” is identified as a Category Two use within the Locality, with Category Two uses considered “*development that may be consistent with the desired future character of the locality*”.

The LEP defines a “boarding house” as follows:

boarding house—

- (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.*

The proposed boarding house will provide lodgers with a principal place of residence for periods of three (3) months or more. The facility will accommodate more than four (4) long term unrelated residents, and the facility includes multiple communal living spaces capable of being used for eating and recreation.

Further, the proposed facility will not be licensed to sell liquor, and the proposed development does not include subdivision of the premises into separate ownership.

Locality Statement

Clause 12 requires the consent authority to be satisfied that the proposed development is consistent with the desired future character described in the Locality Statement.

The desired future character of the *Belrose North Locality* is expressed as follows:

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

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.

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

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

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

The proposed development is consistent with the desired future character of the Locality on the basis that:

- the proposed development will present to the street as a 2-storey building setback a minimum compliant distance of 20 metres from the front boundary;
- the proposed development includes extensive existing and new landscaping within the front setback, contributing to the overall landscaped setting of the building and associated facilities;
- the proposed development provides a total landscaped area of approximately 6,269.9m², representing 67% of the site area, which significantly exceeds the minimum landscaped area requirement of 50% of the site area within the Locality;
- the site is of sufficient size to accommodate the proposed development without imposing any significant or unreasonable impacts on the amenity of surrounding properties in terms of the key considerations of visual bulk, overshadowing, privacy and views;
- the proposed development has been separated into an upper (south-eastern) and lower (north-western) building, intended to negotiate the topographical fall of the site towards the rear (north-west), and reduce the overall bulk and scale of the built form;
- the individual separated into interconnected modules to further reduce the bulk and scale and negotiate the topographical fall of the site towards the rear (north-west);
- the palette of external materials and finishes will complement the neutral colours of the surrounding natural bushland, and optically reduce the bulk of the buildings and to reinforce the physical separation into modules; and
- normal precautions will be taken during the demolition and construction of the proposed development to ensure there are no adverse impacts in terms of runoff and water quality.

Intensity and Impact

In *Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128* referred to definitions of "intensity" and "impact" 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.

The proposed boarding house provides a form of residential accommodation, which typically represents a low intensity land use relative to other land uses that can be accommodated in the Locality (e.g. child care centres).

Further, the activity of residents is regulated by the POM, which generally aims to ensure there are no adverse impacts arising from the facility on any adjoining property or the neighbourhood, to provide procedures to receive and resolve complaints, maintain the internal and external amenity of the building, and ensure residents enjoy their stay in a safe environment.

The DA is accompanied by a *Traffic and Parking Impact Assessment* which concludes that the car parking demands will be met on-site, and that the additional vehicular trips generated by the proposed development can be accommodated in the nearby intersections without significantly affecting the performance of any turn movement, approach arm or the overall intersection.

Finally, in *Platform Architects Pty Ltd v Northern Beaches Council [2020] NSWLEC 185*, Duggan J, made the following comments in relation to the intensity and impact of the approved boarding house on the adjoining site to the east:

55. *In this case, I accept the evidence of the Town Planning experts that the nature of the propose use is of a residential type, that is, that people will resort to the premises to sleep and recreate. Whilst the number of unrelated individuals may exceed that of*

a single family home, the impact is unlikely to cause unacceptable amenity impacts due to the design of the building with the communal areas directed away from the street frontage, the management of external noise by the Plan of Management and the design of the building that limits opportunities for overlooking of adjoining residential premises. Further, the design, building height and landscaping will provide a development that is consistent in its visual impact to development within the C8 Locality and the adjoining R2 residential development.

56. *I also accept the assessment of traffic impacts undertaken by both the Council and the Applicant that the number of trips associated with the boarding house use will be of low intensity and will be consistent with the current uses in the locality. In this regard, I note that a number of the persons who made submissions that opposed the DA cited existing traffic congestion arising from the school that is in close proximity to the Site. The traffic engineers observed (and I accept) that the users of the boarding house are unlikely to be unreasonably contributing to traffic during these periods and are likely to be heavy users of the public transport facilities available such that the impact of traffic generated by the DA is low in intensity and impact.*
57. *Accordingly, the boarding house use proposed in the DA is properly characterised as a low intensity, low impact use and is, therefore, capable of being consistent with the Desired Future Character Statement of the C8 Locality.*

Built Form

The Locality Statement specifies a maximum housing density of 1 dwelling per 20 hectares of site area.

The proposed boarding house rooms do not include kitchen facilities, and the POM expressly prevents food preparation or cooking from the individual rooms.

In the circumstances, the proposed boarding house does not comprise "housing" or a "dwelling", and the housing density standard within the Locality does not apply (refer to *Platform Architects Pty Ltd v Northern Beaches Council [2020] NSWLEC 185*).

The Locality Statement specifies a maximum building height of 8.5 metres measured to the topmost point of the building, and 7.2 metres measured to the underside of the ceiling of the uppermost floor.

The proposed development complies with the 8.5 metre building height control, however some portions of the ceiling of the uppermost floors extend above the 7.2 metres ceiling height control.

In that regard, the 8.5 metre building height control is the more relevant criteria in relation to the appropriateness of the building height, circumstances in which the partial variations to the ceiling height do not contribute to any external impacts on the amenity of surrounding land.

The Locality Statement specifies a minimum front boundary setback of 20 metres.

The proposed development provides a minimum front boundary setback of 20 metres, excluding the bin storage area occupying the south-western corner of the site.

In that regard, the bin storage area is similar in size and location as the approved boarding house on the adjoining site to the south-east, and the location is intended to satisfy Council's requirement for bin storage areas to be located close to the street frontage for ease of movement for collection purposes.

The Locality Statement specifies minimum side and rear boundary setback of 10 metres.

The proposed development provides a minimum rear boundary setback of 43.085 metres, and side boundary setbacks of 9.25 – 15.755 metres along the north-eastern boundary, and 6.06 – 33.12 metres along the south-western boundary.

The proposed development complies with the side and rear boundary setback controls over the rear (north-western) portion of the site, and the partial variation over the side boundary control over the front portion of the site primarily relates to the limited site width of 28.745 metres.

In that regard, strict compliance with the side boundary setback controls would generate a long and narrow built form over the front portion of

the site, and effectively render that portion of the site impractical to develop in accordance with the remainder of the applicable planning controls.

Finally, the proposed side boundary setbacks are similar to, or greater than, the setbacks of the substantial majority of buildings in the immediate surrounds, including the approved boarding house on the adjoining site to the south-east (No. 14 Wyatt Avenue), the approved child care centre on the property further to the south-east (No's 10 – 12 Wyatt Avenue), and the adjoining dwelling house to the south-west (No. 18 Wyatt Avenue).

The Locality Statement specifies that a minimum of 50% of the site area is to be kept as natural bushland or landscaped with local species.

The proposed development provides a total landscaped area of approximately 6,269.9m², representing 67% of the site area.

General Principles of Development Control

Clause 12 of the LEP requires the consent authority to be satisfied that the proposed development is consistent with the relevant principles of development control set out in Part 4.

The relevant principles² of development control are summarised and considered in Table 4.3.1 as follows:

| Table 4.3.1 – Warringah LEP 2000 | | |
|---|--|---------------------|
| Part 4 – General Principles of Development Control | | |
| Control | Proposed | Satisfactory |
| Clause 38 – Glare and Reflection | | |
| Development is not to result in overspill or glare from artificial illumination or sun reflection, which would unreasonably diminish the amenity of the locality. | The palette of external materials and finishes, and the balance between hard surfaces and glazing, will ensure the proposed development does not unreasonably diminish the | Yes |

² The relevant provisions of Part 4 of the LEP comprise those which relate specifically to the proposed development and/or those which would not normally be required and/or provided as Conditions of Consent and/or as part of a Construction Certificate.

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| | amenity of the locality. | |
| Clause 42 – Construction Sites | | |
| Construction sites are not to unreasonably impact on the surrounding amenity, pedestrian or road safety or the natural environment. | The construction phase will be appropriately managed to ensure there are no unreasonable impacts on the surrounding amenity, pedestrian or road safety, or the environment. | Yes |
| Clause 43 – Noise | | |
| Development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants. | The proposed boarding house provides a form of residential accommodation, which typically represents a low intensity and low impact land use. Further, the facility will be operated in accordance with the POM which includes measures to minimise potential noise impacts. | Yes |
| Clause 48 – Potentially Contaminated Land | | |
| The consent authority must consider whether the land is likely to be contaminated, and if so, whether the land requires remediation to be made suitable for the proposed use. | The site is currently used for residential purposes, and there is no evidence to suggest that the land is likely to be contaminated to the extent that would render it unsuitable for use as a boarding house. | Yes |
| Clause 50 – Safety and Security | | |
| Development is to maintain and where possible enhance the safety and security of the locality. | The proposed development will improve opportunities for casual surveillance of the public domain. Further, access to the building and car parking facilities will be monitored and controlled. The on-site manager will also be responsible for manager resident and visitor behaviour. | Yes |
| Clause 51 – Front Fences and Walls | | |
| Fences, including side fences, located within the street setback area (as identified in the Locality | The proposed development includes the retention of the existing hedge extending along | Yes |

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| Statement) are to be compatible with the existing streetscape character unless the applicable Locality Statement provides otherwise. | the front boundary, and is it not proposed to install new fencing. | |
| Clause 52 – Development Near Parks, Bushland Reserves/Other Public Open Space | | |
| Development adjacent to parks, bushland reserves and other public open spaces, including land reserved for public open space, is to complement the landscape character and public use and enjoyment of that land. | The proposed development maintains a substantial setback of 43.085 metres to the (rear) north-western boundary, which substantially exceeds the minimum requirement of 10 metres. Further, the proposed landscaped treatment of the north-western portion of the site includes the retention of the existing trees/bushland adjacent to the boundary. | Yes |
| Clause 54 – Provision and Location of Utility Services | | |
| If proposed development will involve a need for them, utility services must be provided to the site of the development, including provision for the supply of water, gas, telecommunications and electricity and the satisfactory management of sewage and drainage. | The site is serviced by all necessary infrastructure, and the proposed development does not generate a demand for any new infrastructure that is not already available to the site. In particular, the proposed boarding house will be connected to the existing <i>Sydney Water</i> sewer and water systems extending along Wyatt Avenue, and the Applicant has liaised with <i>Sydney Water</i> who have confirmed that sufficient capacity is available to service the proposed development. | Yes |
| Clause 56 – Retaining Distinctive Environmental Features on Sites | | |
| Development is to be designed to retain and complement any distinctive environmental features of its site and on adjoining and nearby land. | The proposed development has been designed to respect the environmental characteristics of the site, with the building form designed to negotiate the topographical fall of the site | Yes |

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| | towards the rear (north-west), and maintain and enhance the overall landscaped setting of the site and surrounds. | |
| Clause 57 – Development on Sloping Land | | |
| On sloping land, the height and bulk of development, particularly on the downhill side, is to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. | The proposed development has been designed to respect the environmental characteristics of the site. The building form has been designed to negotiate the topographical fall of the site towards the rear (north-west), with the stepped floor levels and articulated building form reducing the overall building mass. | Yes |
| Clause 58 – Protection of Existing Flora | | |
| Development is to be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species. | The existing vegetation on the site comprises a scattering of trees, shrubs and groundcovers. The DA is accompanied by an <i>Arboricultural Impact Assessment</i> which provides an assessment of 47 trees. The Assessment includes recommended protection measures to ensure the retention of 31 existing trees as part of the proposed development. The proposed development provides a hierarchy of new trees, shrubs and groundcovers, intended to maintain and enhance the overall landscaped setting of the site and surrounds. | Yes |
| Clause 61 – Views | | |
| Development is to allow for the reasonable sharing of views. | The proposed development will have no significant or adverse impacts on any existing views. | Yes |
| Clause 62 – Access to Sunlight | | |
| Development is not to unreasonably reduce sunlight to | The shadows cast by the proposed development will | Yes |

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| surrounding properties. | substantially fall within the boundaries of the site, with the only exception being a period of approximately 2 hours between 9.00am and 11.00am in mid-winter. In the circumstances, the surrounding properties will continue to receive good levels of solar access at all times of the year. | |
| Clause 63 – Landscaped Open Space | | |
| Development is to provide landscaped open space that contributes to the amenity of the area. | The Locality Statement specifies that a minimum of 50% of the site area is to be kept as natural bushland or landscaped with local species. The proposed development provides a total landscaped area of approximately 6,269.9m ² , representing 67% of the site area. | Yes |
| Clause 63A – Rear Building Setback | | |
| The objectives of the rear building setbacks are to create a sense of openness in rear yards, preserve the amenity of adjacent land, maintain the visual continuity and pattern of buildings, rear gardens and landscape elements, provide opportunities to maintain privacy between dwellings, minimise the visual effect of podiums and to control the density of development, and provide opportunities for the planting of substantial native trees. | The Locality Statement specifies minimum side and rear boundary setback of 10 metres, and the proposed development maintains a minimum setback of 43.085 metres from the rear boundary. The lower (north-western) building complies with the side boundary setback controls, and the proposed landscaped treatment of the north-western portion of the site includes the retention of the existing trees/bushland adjacent to the boundary. | Yes |
| Clause 65 – Privacy | | |
| Development is not to cause unreasonable direct overlooking of habitable rooms and principal private open spaces of other | The upper (south-eastern) building substantially complies with the side boundary setback control along the south-eastern | Yes |

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| <p>dwellings.</p> | <p>boundary, and the south-western façade incorporates off-set blade walls specifically designed to mitigate overlooking towards the south-west. Further, the lower (north-western) building complies with the side and rear boundary setback controls, and will not contribute to any significant loss of privacy.</p> | |
| Clause 66 – Building Bulk | | |
| <p>Buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise.</p> | <p>The proposed development the site is of sufficient size to accommodate the proposed development without imposing any significant or unreasonable impacts on the amenity of surrounding properties in terms of the key considerations of visual bulk, overshadowing, privacy and views. The proposed development has been separated into an upper (south-eastern) and lower (north-western) building, intended to negotiate the topographical fall of the site towards the rear (north-west), and reduce the overall bulk and scale of the built form. Further, the individual separated into interconnected modules to further reduce the perceived bulk and scale. Finally, the proposed development will present to the street as a 2-storey building setback a minimum compliant distance of 20 metres from the front boundary.</p> | Yes |
| Clause 67 – Roofs | | |
| <p>Roofs are to complement the local skyline. Lift overruns and other mechanical equipment is</p> | <p>The proposed development incorporates a mix of flat and skillion roof forms, which will</p> | Yes |

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| not to detract from the appearance of roofs. | complement the local skyline. The lift overruns are substantially setback from the boundaries, and contained within the overall roof form. | |
| Clause 68 – Conservation of Energy and Water | | |
| Development is to make the most efficient use of energy and water. | The proposed development will include energy efficient fixtures and appliances, and the building form and materials will minimise overall energy consumption. | Yes |
| Clause 70 – Site Facilities | | |
| Site facilities including garbage and recycling bin enclosures, mailboxes and clothes drying facilities are to be adequate and convenient for the needs of users and are to have minimal visual impact from public places. | The proposed development includes appropriate site facilities including garbage and recycling enclosures, mailboxes, and clothes drying facilities, all of which are adequate and convenient, and will have an appropriate visual impact from public places. | Yes |
| Clause 71 – Parking Facilities (Visual Impact) | | |
| Parking facilities (including garages) are to be sited and designed so as not to dominate the street frontage or other public spaces. | The proposed development includes basement level car parking that will not be visible from the street frontage or other public places. | Yes |
| Clause 72 – Traffic Access and Safety | | |
| Vehicle access points for parking, servicing or deliveries, and pedestrian access, are to be located in such a way as to minimise traffic hazards, vehicles queuing on public roads, the number of crossing places to a street, traffic and pedestrian conflict, and interference with public transport facilities. | The DA is accompanied by a <i>Traffic and Parking Impact Assessment</i> and a <i>Carpark, Ramp and Driveway Certification</i> . The Assessment and Certification confirm that the proposed development provides safe vehicular and pedestrian arrangements, and no interference to any public transport facilities. | Yes |
| Clause 73 – On-site Loading and Unloading | | |

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| Facilities for the loading and unloading of service, delivery and emergency vehicles are to be appropriate to the size and nature of the development. | The residential nature of the proposed development is such that dedicated loading facilities are not considered necessary. In any event, vehicles associated with the occasional changing of furniture, and the like, can be temporarily and conveniently accommodated within the individual basements. | Yes |
| Clause 74 – Provision of Carparking | | |
| Adequate off-street carparking is to be provided within the subject property boundaries having regard to the nature of the use. | The proposed development provides 55 boarding rooms, generating a requirement for 11 off-street car parking spaces. The proposed development provides off-street car parking for 35 vehicles. | Yes |
| Clause 75 – Design of Carparking Areas | | |
| Car parking is to avoid the use of mechanical stackers, not be readily apparent from public places, provide safe and convenient pedestrian and traffic movement, include adequate manoeuvring space, allow all vehicles to enter and exit in a forward direction, and make reasonable provision for accessible parking. | The proposed development does not include mechanical stackers, and the basement levels will not be apparent from public places. The pedestrian and traffic movements are safe, and all vehicles will be able to enter and exit the site in a forward direction. Finally, the proposed car parking facilities include two (2) accessible spaces. | Yes |
| Clause 76 – Management of Stormwater | | |
| Stormwater runoff from development is to discharge to a Council drainage system approved by the Council for the purpose and is to have minimal impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake, waterway or the like. Water quality control measures are to be | The DA is accompanied <i>Stormwater Management Plans</i> which describe the proposed method of stormwater collection and disposal. Further, the DA is accompanied by a <i>Watercourse and Riparian Assessment</i> and a <i>Soil Erosion and Sediment Control Plan</i> intended to maintain the quality of waterways in the | Yes |

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| provided in accordance with the Northern Beaches Stormwater Management Plan. | locality. | |
| Clause 78 Erosion and Sedimentation | | |
| Development is to be sited and designed, and related construction work carried out, so as to minimise the potential for soil erosion. | The DA is accompanied by a <i>Watercourse and Riparian Assessment</i> and a <i>Soil Erosion and Sediment Control Plan</i> intended to maintain the quality of waterways in the locality. | Yes |

4.2 Proposed Environmental Planning Instruments

There are no proposed environmental planning instruments that have been the subject of public consultation and that have been notified to the consent authority of specific relevance to the proposed development.

4.3 Development Control Plans

The Warringah LEP 2000 provides the level of detail normally incorporated in a development control plan (DCP), and there are no further DCP controls of specific relevance to the proposed development.

4.4 Planning Agreements

There are no planning agreements of relevance to the proposed development.

4.5 Impacts of the Development

The proposed development has been carefully designed to provide a good level of amenity for future residents, without imposing any significant or unreasonable impacts on the amenity of surrounding land.

Further, the proposed development has been designed to respect the environmental characteristics of the site, with the building form designed to negotiate the topographical fall of the site towards the rear (north-west), and maintain and enhance the overall landscaped setting of the site and surrounds.

The site is of sufficient size to accommodate the proposed development without imposing any significant or unreasonable impacts on the amenity of surrounding properties in terms of the key considerations of visual bulk, overshadowing, privacy and views.

In the circumstances, it is reasonable to conclude that the proposed development will be compatible with the existing and likely future character of the locality, and will not be perceived as offensive, jarring or unsympathetic to the existing and likely future character.

In an operational sense, a POM has been prepared to regulate the operation of the proposed boarding house. The POM generally aims to ensure there are no adverse impacts arising from the facility on any adjoining property or the neighbourhood, to provide procedures to receive and resolve complaints, maintain the internal and external amenity of the building, and ensure residents enjoy their stay in a safe environment.

The facility will be managed by an experienced operator who will oversee the day-to-day operations of the boarding house, including matters such as general maintenance and cleanliness of common areas, observance by residents of house rules, and services.

The proposed boarding house will provide lodgers with a principal place of residence for periods of three (3) months or more. The lodgers will have access to their private rooms, and the communal facilities in accordance with the POM.

4.6 Suitability of the Site

The site is located within a mixed-use precinct characterised by a mix of detached dwellings, townhouses, a boarding house, educational facilities, and specialist landscape supply/nurseries.

The site is well located with respect to access to services and facilities. Further, the site is of sufficient size to accommodate the proposed development without imposing any significant or unreasonable impacts on the amenity of surrounding properties in terms of the key considerations of visual bulk, overshadowing, privacy and views.

Finally, on 20 January 2021, the Land and Environment Court upheld an appeal (*Platform Architects Pty v Northern Beaches Council [2020] NSWLEC 185*) in relation to the refusal of a DA for a boarding house on the adjoining property to the south-east, identified as No. 14 Wyatt Avenue, Belrose.

4.7 Public Interest

The Northern Beaches LGA is statistically one (1) of the most expensive LGA's in NSW. In that regard, the Northern Beaches LSPS (March 2020) notes that:

There is limited supply of social housing and affordable rental housing on the Northern Beaches.

The lack of affordable housing is pronounced for households on lower incomes, driving the demand for social housing and affordable rental housing.

Providing more diverse and affordable rental and social housing options will help very low to moderate income households, including key workers, such as police and health care workers, stay in the area. It will mean people of all incomes and backgrounds can participate in the community.

The proposed development will serve the public interest by providing a good level of amenity for future residents, without imposing any significant or unreasonable impacts on the amenity of surrounding land.

5. CONCLUSION

The subject site is located on the north-western side of Wyatt Avenue, approximately 380 metres to the south-west of Forest Way. The site is currently occupied by a 2-storey dwelling house setback approximately 35 metres from Wyatt Avenue.

The proposed development comprises the demolition of the existing structures, and the construction of a boarding house. The proposed boarding house accommodates 55 boarding rooms, including a manager's room.

Off-street parking is proposed for 35 vehicles, 13 motorcycles, and 55 bicycles. Vehicular access to the front building is proposed via a combined entry/exit driveway located along the Wyatt Avenue frontage of the site. Vehicular access to the rear building is proposed via an extension of the approved access driveway servicing the approved boarding house to the east (No. 14 Wyatt Avenue).

The proposed development has been carefully designed to provide a good level of amenity for future residents, without imposing any significant or unreasonable impacts on the amenity of surrounding land.

The proposed development complies with the substantial majority of the applicable planning controls, and the building form adopts a number of the overarching design principles incorporated in the approval of the boarding house on the adjoining property to the south-east.

In the circumstances, the proposed development is considered appropriate from a town planning perspective, and suitable for approval having regard to the matters for consideration set out in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

