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The General Manager  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1655

Dear Sir/Madam,

**DEVELOPMENT APPLICATION No. 2018/0401**  
**14 WYATT AVENUE, BELROSE**

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**Introduction**

This Statement of Environmental Effects (SEE) has been prepared to accompany an Application to amend Development Consent No. 2018/0401 pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979*.

The subject site formally comprises Lot 2567 in Deposited Plan 725038, and is commonly known as No. 14 Wyatt Avenue, Belrose.

The site is located on the north-western side of Wyatt Avenue, approximately 360 metres to the south-west of Forest Way. The site encompasses an area of approximately 2,298m<sup>2</sup>, and is rectangular in shape with a frontage of 28.595 metres to Wyatt Avenue.

The site is currently vacant, with an informal driveway extending to the rear (north-western) boundary and connecting to the rear of the adjoining property identified as No. 16 Wyatt Avenue. The site accommodates a scattering of trees, shrubs and groundcovers.

**Approved Development**

On 20 January 2021, the Land and Environment Court upheld an appeal against the refusal of Development Application (DA 2018/0401) for *"The erection of a part two and part three storey boarding house"*.

The approved boarding house provides 25 boarding rooms, including two (2) accessible rooms and a caretakers room, two (2) communal rooms with kitchens and dining facilities, and a communal outdoor area.

Off-street car parking was approved for 13 vehicles, eight (8) motorcycles, and 11 bicycles. Vehicular access was approved via a combined entry/exit driveway located along the Wyatt Avenue frontage of the site.

The approved development includes extensive new landscaping, including around the perimeter of the site. The approved landscaping provides a hierarchy of trees, shrubs and groundcovers.

### **Proposed Amendments**

The Applicant has identified a series of proposed amendments to the approved development, generally intended to improve the amenity of the individual boarding rooms, and facilitate access for emergency vehicles.

In that context, the proposed amendments include the addition of cooktops within the individual boarding rooms to provide boarders with the option to prepare their meals within their own rooms.

Further, the vehicular access driveway is being slightly widened by up to 400mm in three (3) locations along the alignment of the approved driveway to facilitate access for emergency vehicles.

Finally, a series of minor adjustments are proposed to satisfy the requirements of essential services providers, comprising the addition of a hydrant and sprinkler booster adjacent to the access driveway, and internal adjustments to ensure compliance with the National Construction Code (NCC).

The proposed amendments do not change the number, size, design or location of the boarding rooms, or the range, number, location and nature of the communal facilities.

Further, the proposed amendments do not alter the approved number of bicycle and motorcycle spaces, and the car parking provision has been reduced by one (1) space to facilitate the provision of an additional accessible space.

Finally, no changes are proposed to the external form of the approved building, and the proposed landscaping has been adjusted to reflect the minor changes to the approved access driveway, with no trees requiring removal.

### **Legislative Context**

Section 4.56 of the *Environmental Planning and Assessment Act 1979* specifies that:

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the consent if:*
- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
  - (b) *it has notified the application in accordance with:*
    - (i) *the regulations, if the regulations so require, or*
    - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
  - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
  - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Further, Section 4.56(1A) specifies that in determining an application of a consent, the consent authority shall take into consideration such of the matters referred to in Section 4.15 as are of relevance to the development the subject of the application.

### **Substantially the Same Development**

In *Tipalea Watson Pty Ltd v Ku-ring-gai Council NSWLEC 253*, it was held that substantially the same development maintains the “essential characteristics” of the approved development. Further, in *Moto Projects (No. 2) Pty Ltd v North Sydney Council* [1991] 106 LGERA 298, Bignold J said (at 309 [56]):

*The requisite factual finding requires a comparison between the development as currently approved and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is essentially or materially the same as the currently approved development. The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where the comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being prepared in their proper contexts.*

The reference of Bignold J to “essentially” and “materially” the same is derived from Stein J in *Vacik Pty Ltd v Penrith City Council* (unreported), Land and Environment Court NSW, 24 February 1992, where his Honour said in reference to Section 102 of the *Environmental Planning and Assessment Act 1979* (the predecessor to Section 4.55 and 4.56) that

*“Substantially when used in the Section means essentially or materially or having the same essence”.*

In terms of a qualitative assessment, the proposed amendments do not change the physical form of the approved building, its external appearance, or its physical relationship with surrounding land.

The location of the building on the site remains unchanged, and the boundary setbacks remain unchanged. Similarly, the overall building appearance, envelope, height and volume remain unchanged.

Further, the architectural composition of the building and the palette of external materials and finishes remain unchanged.

Finally, the addition of cooktops within the individual boarding rooms does not change the nature in which the rooms will be occupied as a principal place of residence by lodgers, and is intended only to provide the option for more convenient (and private) food preparation by lodgers that would otherwise occur within the approved communal dining/kitchen areas.

In terms of a quantitative assessment, the proposed amendments do not change the number, size, design or location of the boarding rooms, or the range, number, location and nature of the communal facilities.

Further, the proposed amendments do not alter the approved number of bicycle and motorcycle spaces, and the car parking provision has been reduced by one (1) space to facilitate the provision of an additional accessible space.

Finally, the proposed amendments do not alter the approved gross floor area of the building, and the change to the approved landscaped area from 1,226.9m<sup>2</sup> to 1,181.5m<sup>2</sup> represents a change of less than 3.8%.

In any event, the amended development provides a landscaped area of 51.4% of the site area which complies with the requirement of 50% of the site area specified in the *Belrose North Locality*.

Finally, in *Stavrides v Canada Bay City Council [2007] NSWLEC 248*, the Court identified a number of criteria of relevance to determining whether an amended development remains “*substantially the same*” as the approved development. A number of those criteria are relevant to the proposed amendments including:

- the approved use for the purposes of a boarding house remains unchanged;
- the location of the building on the site remains unchanged, and the boundary setbacks remain unchanged;
- the overall building appearance, envelope, height and volume remain unchanged; and

- the proposed amendments do not change the physical or operational relationship between the subject site and surrounding land having regard to views, privacy, visual bulk and overshadowing.

In the circumstances, the amended development maintains the essential features and characteristics of the approved development, and the use, operation and function of the site remain substantially unchanged. On that basis, the approved development is not being radically altered, and the amended development remains substantially the same as the approved development.

### **Consultation and Notification**

The approved development was formally exhibited in accordance with the relevant legislative requirements, and the consent authority remains responsible for any formal exhibition of the proposed amendment, if required.

Irrespective, the location of the building on the site remains unchanged, and the boundary setbacks remain unchanged. Similarly, the overall building appearance, envelope, height and volume remain unchanged.

Further, the proposed amendments will not change the physical or operational relationship between the subject site and surrounding land having regard to views, privacy, visual bulk and overshadowing.

### **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 environmental planning 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;
- 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.

### Environmental Planning Instruments

*SEPP (Housing) 2021*

SEPP (Housing) 2021 generally aims to enable the development of diverse housing types, encourage housing that will meet the needs of vulnerable members of the community, provide residents with a reasonable level of amenity, make good use of existing and planned infrastructure, minimise adverse climate and environmental impacts, support short-term rental accommodation, and mitigate the loss of existing affordable rental housing.

The SEPP prevails to the extent of any inconsistency with any other environmental planning instrument, and Division 2 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 are of some indirect relevance in the event of an absence of controls relating to boarding houses in the LEP.

Clause 24 of the SEPP specifies development standards which, if complied with, cannot be used to refuse consent. Further, Clause 25 specifies development standards which must be satisfied.

The proposed amendments do not change the number, size, design or location of the boarding rooms, or the range, number, location and nature of the communal facilities.

Further, the proposed amendments do not alter the approved number of bicycle and motorcycle spaces, and the car parking provision has been reduced by one (1) space to facilitate the provision of an additional accessible space.

Finally, no changes are proposed to the external form of the approved building, and the proposed landscaping has been adjusted to reflect the minor changes to the approved access driveway, with no trees requiring removal.

In the circumstances, SEPP (Housing) 2021 does not include any further controls of specific relevance to the proposed amendments.

#### *Warringah LEP 2000*

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*".

### Locality Statement

Clause 12 requires the consent authority to be satisfied that the proposed (and amended) 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 amendments do not include any changes to the external form of the approved building, and the proposed landscaping has been adjusted to reflect the minor changes to the approved access driveway, with no trees requiring removal.

The location of the building on the site remains unchanged, and the boundary setbacks remain unchanged. Similarly, the overall building appearance, envelope, height and volume remain unchanged.

In the circumstances, the amended development remains consistent with the desired future character of the locality.

### Intensity and Impact

In *Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128* the Court 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 amendments do not change the number, size, design or location of the boarding rooms, or the range, number, location and nature of the communal facilities.

Further, the proposed amendments do not alter the approved number of bicycle and motorcycle spaces, and the car parking provision has been reduced by one (1) space to facilitate the provision of an additional accessible space.

In the circumstances, the proposed amendments do not change the approved intensity or impacts of the approved development.

### Built Form

The proposed amendments do not include any changes to the external form of the approved building.

The location of the building on the site remains unchanged, and the boundary setbacks remain unchanged. Similarly, the overall building appearance, envelope, height and volume remain unchanged.

Further, the architectural composition of the building and the palette of external materials and finishes remain unchanged.

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

The proposed amendments include the addition of cooktops within the individual boarding rooms to provide boarders with the option to prepare their meals within their own rooms. In the circumstances, the individual boarding rooms could potentially be considered "dwellings" for the purposes of the housing density control.

Irrespective, the addition of cooktops within the individual boarding rooms does not change the nature in which the rooms will be occupied as a principal place of residence by lodgers, and is intended only to provide the option for more convenient (and private) food preparation that would otherwise occur within the approved communal dining/kitchen areas.

In summary, the addition of cooktops within the individual boarding rooms is considered reasonable and appropriate on the basis that:

- no changes are necessary or proposed to the external form of the approved building;



- no changes are proposed to the number, size, design or location of the boarding rooms, or the range, number, location and nature of the communal facilities;
- no changes are proposed to the nature in which the rooms will be occupied as a principal place of residents by lodgers;
- the addition of cooktops will simply provide lodgers with the option for more convenient (and private) food preparation that would otherwise occur within the approved communal dining/kitchen areas;
- the substantial majority of contemporary boarding houses include cooking and food preparation facilities within the individual boarding rooms;
- to the extent that the housing density control is broadly intended to regulate the intensity and impact of development, the proposed amendments do not alter the external form of the approved building, and no changes are proposed to the number of boarding rooms, or the number of motorcycle and bicycle spaces; and
- no useful planning purpose is served by unnecessarily preventing food preparation within the individual (approved) boarding rooms.

The *Development Application Assessment Report* prepared in relation to the approved development recommended approval of the DA, prior to the appeal being upheld in the Land and Environment Court. The proposed development (at that time) included kitchen facilities within each of the individual boarding rooms. That is, the Council staff supported the inclusion of food preparation facilities within each of the individual boarding rooms.

Finally, 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 amended development provides a landscaped area of 1,181.5m<sup>2</sup>, representing 51.4% of the site area. Further, the proposed landscaping has been adjusted to reflect the minor changes to the approved access driveway, with no trees requiring removal.

#### Proposed Environmental Planning Instruments

There are no proposed environmental planning instruments of specific relevance to the proposed amendments.

#### 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.

#### Impacts of the Development

The proposed amendments do not include any changes to the external form of the approved building.

The location of the building on the site remains unchanged, and the boundary setbacks remain unchanged. Similarly, the overall building appearance, envelope, height and volume remain unchanged.

Further, the architectural composition of the building and the palette of external materials and finishes remain unchanged.

The proposed amendments will not change the physical or operational relationship between the subject site and surrounding land having regard to views, privacy, visual bulk and overshadowing.

The amended development provides a landscaped area of 51.4% of the site area which complies with the requirement of 50% of the site area specified in the *Belrose North Locality*. Further, the proposed amendments do not require the removal of any trees.

The addition of cooktops within the individual boarding rooms does not change the nature in which the rooms will be occupied as a principal place of residence by lodgers, and is intended only to provide the option for more convenient (and private) food preparation that would otherwise occur within the approved communal dining/kitchen areas.

Finally, the amended development maintains the essential features and characteristics of the approved development, and the use, operation and function of the site remain substantially unchanged.

## **Conclusion**

I trust this submission is satisfactory for your purposes, however should you require any further information or clarification please do not hesitate to contact the writer.

Yours Sincerely,



James Lovell  
Director  
James Lovell and Associates Pty Ltd