
Sent: 3/02/2022 9:59:36 PM
Subject: Submission Mod 2021/0996 14 Wyatt Ave Belrose
Attachments: Submission McElroy Mod2021-0996 14 Wyatt.pdf;

ATT: Adam Mitchell

Please find attached my submission for Mod2021/0996 14 Wyatt Avenue, Belrose

Regards,

Clare McElroy

Clare McElroy
5 Wyatt Ave
Belrose NSW 2085

31 January 2022

General Manager
Northern Beaches Council
Attention: Adam Mitchell

RE: Mod 2021/0996

Lot 2597 DP 752038 14 Wyatt Avenue BELROSE

Modification of Development Consent DA2018/0401 granted for the erection of a part two and part three storey boarding house

Thank you for the opportunity to comment on this modification of DA2018/0401 for a boarding house at 14 Wyatt Avenue.

I strongly object to this latest application.

The addition of kitchen facilities in rooms is a significant departure from the proposal that was approved by the Land and Environment Court. To circumvent housing density controls, the proposal put before the LEC did not include kitchen facilities in individual rooms. This resulted in the application being assessed by the court as a single dwelling. Conversely, the inclusion of kitchen facilities in rooms results in a development comprising 25 individual dwellings or “domiciles”, which is contrary to the court approval and far exceeds planning controls for the subject site.

Proposed Amendments

The SEE included in the application, lists the proposed modifications as:

- the addition of cooktops within the individual boarding rooms to provide boarders with the option to prepare their meals within their own rooms
- widening of the driveway by up to 400mm in three (3) locations to facilitate access for emergency vehicles
- 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).

In addition, the application includes:

- a report from Holman Engineering on a Traffic Management System for boarding houses at 14 and 16 Wyatt Avenue, including traffic lights and shared vehicular access. There is no mention of this in the SEE or in the Traffic and Parking report supplied with the application.
- amended landscape plan

Addition of Kitchen facilities

The original boarding house proposal (DA2018/0401) included kitchen facilities and was refused by the Northern Beaches Local Planning Panel. The application was again refused by the NBLPP in a review of that decision.

The applicant then lodged an appeal with the NSW Land and Environment Court, using amended plans, and won that appeal. (*Platform Architects Pty Ltd v Northern Beaches Council [2020] NSWLEC 185* held on 10 and 11 Dec 2020).

The amended plans included removal of kitchen facilities from rooms to circumvent housing density controls. During the LEC hearing, the Judge stated in part:

“The concept of a dwelling has been the subject of considerable debate over many years. As a general proposition a dwelling must contain the essential components of a domicile for the exclusive use of the occupant, being: sleeping; bathroom and cooking facilities....

In this case, each of the boarding rooms contain sleeping and bathroom facilities for the exclusive use of the occupant. However, none of the boarding rooms, nor the manager’s room, provide facilities that would permit even the most basic cooking facilities required to permit the rooms to operate as a domicile or dwelling.”

“All food preparation and cooking is to be done in the communal kitchen or common areas which have cooking facilities. No food preparation or cooking is to be done in rooms.”

The Judge’s definition resulted in the application being assessed by the court as a single dwelling instead of 25 individual domiciles, which would greatly exceed the permitted housing density.

The standard housing density in the WLEP2000 for the C8 Belrose North locality is one dwelling per 20ha. The subject site measures 2,298m² (0.2ha). If each of the 25 rooms is assessed as a separate dwelling, this equates to 2,175 dwellings on 20ha.

This not a minor variation, it is a substantial departure from the LEC approval. This variation is not in accordance with provisions in Section 4.56 of the Environmental Planning and Assessment Act 1979, which specifies that, for a consent to be modified, a development must be “*substantially the same*” as the development for which consent was granted.

Before the LEC hearing, the applicant chose to remove kitchens in individual rooms to try and circumvent planning density controls for “dwellings”. The applicant’s SEE contains the following statement, which recognises that with the addition of cooktops, the development no longer qualifies as a single dwelling and housing density controls apply.

“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.”

There is no local, state or regional study or strategy that identifies the C8 locality for increased housing density and there is no justification for approving an application with such an extreme variation to housing density. The application does not meet planning controls and is contrary to the LEC approval.

Driveway Widening

The application proposes widening of the driveway by up to 400mm in three locations to facilitate access for emergency vehicles. There has been considerable confusion in the past, with inconsistencies between the landscape plans and architect’s plans submitted with the application, particularly in relation to the width and alignment of the driveway.

This issue was raised at hearings with both the NBLPP and LEC with conflicting plans showing different driveway widths and trees planted in drainage channels.

A report from Axiom Arbor is included with the application, which states:

“It is noted that the approved plans through the Land and Environment Court (LEC) are Revision M dated August 2020, with the initial Arborist report completed using drawings done under Revision L dated Feb 2020. Changes between the two revisions include increased fill along the length of the driveway to support finished driveway level. This required a small retaining wall on the eastern side of the driveway to support the driveway”.

It is unclear whether the current Master Plan and Landscape Plan are consistent with previous versions, but **it is essential that Council cross reference all driveway plans and revisions during assessment.**

In addition, the Axiom Arbor report states:

“The widening will occur within the Tree Protection Zones and Structural Root Zones of the following trees: 30, 31, and 32. Increased fill is required to level the gradient along the length of the driveway for emergency vehicle access.”

The report concludes that the incursion into tree and root protection zones will be a small percentage of the total incursion and is therefore acceptable. It is worth noting that the total incursions are substantial, ranging from 31% to 40%. The highest incursion (40%) occurs beneath a *Eucalyptus robusta* (tree #31) which was identified in previous reports as a specimen of high retention value. It is poor practice for these few remaining trees on site to be compromised by further incursions into protection zones. This demonstrates that the site is too small for the proposal. **It is essential that there is ongoing monitoring of tree health.**

Amendments for Essential Services

These amendments include a hydrant and booster along the driveway, and internal adjustments to ensure compliance with the National Construction Code (NCC).

In the Building Assessment Referral Response from Council, dated 17 Jan 2022, the assessing officer notes that:

“Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.”

It is essential that Council ensures these issues of non-compliance are resolved.

Driveway Access

The application contains a report from Holman Engineering on a Traffic Management System, purportedly to facilitate vehicular access to a proposed lower boarding house building at 16 Wyatt through the driveway at 14 Wyatt. There is no mention of this shared use in the SEE, nor in the Traffic and Parking report supplied with the application. There are no details on the expected increase in vehicular movements or other issues and impacts associated with the shared driveway and traffic lights.

There is no mention of how the shared driveway arrangement will be legally formalised.

It is essential that these details are supplied so that the amendments can be properly assessed.

It is worth noting that if the driveway becomes a Right of Way, the site area is reduced to approximately 1800m² (.18ha) resulting in an even greater variation from the standard housing density for the C8 locality.

Landscaping

A revised landscape plan has been submitted with the application, along with an arborist's report. The report from Axiom Arbor is discussed above.

The C8 locality statement specifies that 50% of the site must be retained as natural bushland or landscaped with native species of local provenance. This is to protect the biodiversity and habitat values of the locality.

The landscape plan is not compliant, using 70% local species with the remainder being non-local natives and exotic species. The landscape plan contains a table of species with the words *“Locally indigenous 70%, required minimum 50%”*. The landscape consultant appears to be confusing the specification for a minimum 50% **of the site** to be landscaped with natives, instead interpreting this to mean that a minimum 50% **of the chosen species** need to be native. The landscape plan must be amended so that 100% of the plant species are local natives. This is particularly important given the environmentally sensitive, bushland location of the property.

Thankyou for the opportunity to comment.

Yours Sincerely,

Clare McElroy