
From: [REDACTED]
Sent: 27/07/2022 7:32:18 PM
To: Council Northernbeaches Mailbox
Subject: Submission Mod2021/0996 amended plans 14 Wyatt Ave Belrose
Attachments: Submission McElroy Mod2021-0996 amended plans July 2022.pdf;
Submission DA2018-0401 _McElroy.pdf;

ATT: Adam Susko

Attached please find my submission (s) for

Mod2021/0996

14 Wyatt Ave BELROSE

I am also re-submitting my response to a previous application for this property (DA2018/0401) as I feel it remains relevant.

Regards,

Clare McElroy

Clare McElroy
5 Wyatt Ave
Belrose NSW 2085

26 July 2022

Northern Beaches Council
Attention: Adam Susko
Principal Planner

**RE: NOTICE OF PROPOSED DEVELOPMENT - AMENDED PLANS
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**

I have received notice of further amendments to DA2018/0401 for a boarding house at 14 Wyatt Avenue. I received this notification on 15 July 2022, leaving only 12 days to write a submission for both this application and another for amendments to the adjacent boarding house proposal at 16 Wyatt Avenue. I consider this to be an inadequate amount of time to assess and respond to two complex and co-dependent proposals.

Like many others, I have previously written detailed submissions, addressed planning panels and the Land and Environment Court, stating my objections to this inappropriate development. I have attached my previous response to DA2021/0996 and have included my response (Jan 2022) to Mod 2021/0996 below. I ask that these submissions be included when assessing this latest amendment for 14 Wyatt Avenue.

I continue my strong objection to this boarding house development.

Re-notification

Council's re-notification map shows that only 16 (occupied) properties have been notified of this latest amendment, all of them in Wyatt Avenue. This small area is not consistent with previous notification areas, which included properties to the south of Wyatt Avenue, nor is it consistent with the recent notification area for 16 Wyatt Ave (amended plans).

Over 80 submissions (almost all objections) have been received by Council in response to the original DA2018/0401 and Mod2021/0996 for 14 Wyatt Ave. It seems that most of these objectors may not have been notified of this latest application, and other residents who live in surrounding streets (and would reasonably expect to be notified) have not been directly afforded the opportunity to comment this time. Given the level of public interest in this proposal, I would expect a much larger notification area, at least consistent with previous DAs.

It is reasonable to ask that Council extend the period for submissions and notify all previous responders and properties beyond Wyatt Ave.

It is also essential that Council include all previous submissions for DA2018/0401 and Mod2021/0996 when assessing this latest amendment.

Amended Plans – Mod2021/0996

The latest amendments do not address the overwhelmingly objectionable aspects of the proposed development, including its overbearing scale and intensity, its inappropriate location on non-urban land, the non-compliance with neighbourhood character and planning controls, and the unreasonable impacts it will have on the environment and neighbourhood amenity.

- The amended SEE, submitted by the applicant, makes no reference to the pending Land and Environment Court hearing, in September 2022, where the applicant is seeking to add kitchen facilities to individual rooms. This is contrary to the previous court approval, which was granted for rooms without kitchens, and far exceeds planning controls for the subject site. Adding cooking facilities to rooms is not a minor amendment; it would result in a development that is defined as 25 individual dwellings, which is substantially different to the one approved by the court. For this reason, it warrants an entirely new development application.

This issue is discussed in my previous submission below

It is confusing and disingenuous for the amended SEE to omit any reference to this intended change in cooking facilities when it will have a profound effect on the nature of this development and how it is assessed.

- In “Section 4.15 Assessment” in the amended SEE, the applicant continues to refer to *SEPP (Affordable Rental Housing) 2009* and *SEPP (Housing) 2021* as being relevant planning instruments for the proposal.

SEPP (Affordable Rental Housing) 2009 does not apply to this locality. *SEPP (Housing) 2021* does not apply to this application, which was originally lodged in 2018.

References to these SEPPS should be disregarded and should have no determining weight when assessing the merits of the application. Furthermore, the applicant does not get to cherry pick which aspect from each SEPP they'd like to apply for a favourable outcome.

- **Shared driveway access.** The SEE has been amended to briefly mention that the access driveway is now intended to service the lower boarding house proposed for 16 Wyatt Avenue. This will result in the driveway servicing up to 55 rooms: an additional 32 rooms on top of the 25 rooms at 14 Wyatt, more than double the original capacity. This increase is not mentioned in the SEE and there are no documents or modelling supplied with the application to assess the operational impacts of the shared driveway, the proposed traffic lights, and the increased vehicular movements.

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.

- My previous comments (below) regarding the non-compliant landscape design are still

relevant.

I urge Council to stand firm when assessing these boarding house applications and to not back down in arguing both the details and the bigger picture.

Below is my previous submission from 31 January, 2022. I ask that this be included for consideration by Council when assessing the latest amended plans.

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

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

Clare McElroy
5 Wyatt Ave
Belrose NSW 2085

1 Feb 2019

General Manager
Northern Beaches Council
Attention: Claire Ryan

RE: REV2018/0035 (DA2018/0401)

Lot 2597 DP 752038 14 Wyatt Avenue BELROSE

Review of Determination of Application DA2018/0401 for Construction of a Boarding House with 27 rooms including a manager's residence.

I submit my objection to this inappropriate development application on non-urban land at 14 Wyatt Avenue, Belrose. I voiced my objection to the previous DA for this property, as did many others. My objection remains, as the amended plans remain substantially the same as the original DA in regard to scale, impact and non-compliance. I believe that all previous submissions objecting to this proposal should be brought forward, given that the issues that were the foundation for previous community opposition remain unchanged.

DA2018/0401 (the original proposal to which this review applies) was recommended for refusal by the Northern Beaches Local Planning Panel. I believe the applicant should have been refused a review of this determination as well. The applicant is only entitled to a review if changes are minor and the proposal remains substantially the same as the original application. That is not the case with this review. There are numerous amendments that are not minor, including: changes to the building footprint and external features; addition of a flood wall and stormwater management plans; changes to the underground parking; removal of kitchenettes from the individual units (in an attempt to have the building assessed as a single dwelling); reduction of units from 27 to 24; the appearance of a lift on the plans, and changes to the layout and function of other rooms.

This number of changes warrants a new DA instead of an appeal to council for reconsideration of a previous refusal.

None of these changes adequately address the inappropriate bulk, scale, intensity of land use and impact on surrounding residents in this quiet neighbourhood. These changes do nothing to address the over-development of the site, nor does the proposal come any closer to meeting the character statements or housing density for the locality. This development does not belong in Wyatt Avenue and is completely at odds with the surrounding rural and low density residential neighbourhood. It is a commercial development (and identified as such by the applicant's own acoustic consultant) that is trying to exploit a housing SEPP that does not apply to the locality.

14 Wyatt Avenue is on deferred land in the C8 locality (Belrose North) WLEP2000. This land is still under review by Council and the Department of Planning to determine future zoning, so that the land can be included in the WLEP2011. This is non urban land adjoining a low density residential area and this proposal does not comply with the General Principles of Development Control and Desired Future Character statements for the area.

Council's previous assessment of this DA concluded that each of the rooms qualified as a self contained apartment or "domicile", in other words, the original proposal was akin to a 27 unit apartment block. In an attempt to have the building classified as a single dwelling with (now) 24 bedrooms, the kitchenettes have been removed from the rooms and communal cooking facilities have been added. I would argue that these rooms will still function as individual "domiciles", presumably containing the occupant's belongings, separately locked and accessible only to the occupant and their visitors who will come and go each day as one would an individual apartment. There is nothing to stop tenants using their own appliances to prepare and serve food and no way of enforcing compliance with the communal cooking rule as stated in the management plan. These units will still essentially be individual domiciles, regardless of whether they have kitchenettes or not.

Regardless of whether the proposal is treated as one dwelling or 24, the development still far exceeds the maximum housing density of one dwelling per 20ha for the C8 locality The subject land measures 2,298m² (0.2ha) and when the driveway is excluded (as it functions as a Right of Way) the site becomes 1800m² (.18ha). If the boarding house is considered to be one dwelling on 0.18ha, this is equivalent to 110 dwellings on 20ha, which is a variation to the standard housing density in excess of 10,000%. If each of the 24 rooms is considered to be 24 separate dwellings on 0.18ha, this equates to 2,643 dwellings on 20ha, which is a variation in excess of 260,000%. This not a minor variation, it is well in excess of the standard housing density in the WLEP2000 for the C8 Belrose North locality.

The Council or the Panel should not seek or assume concurrence from the Minister for this variation to the standard housing density and it is not in the public interest to pre-empt any decisions on the future zoning of this land by approving this non-compliant development. Any approval made by Council will set a precedent for other unsuitable intensive urban development in rural and low density residential areas. This is not "NIMBYISM", it is the local community making a reasonable request for orderly, thoughtful urban planning that does not allow opportunistic, ad hoc development proposals to undermine this process..

SEPP (Affordable Rental Housing) 2009 does not apply to the C8 locality (nor the equivalent E3 locality in the WLEP2011). The applicant recognises that the proposal is "*not within the ambit of SEPP (Affordable Rental Housing) 2009*" yet continues to use this SEPP as a smokescreen to bypass local planning controls. Because SEPP ARH2009 is not relevant to this review, it should be assessed as a Category Two development using the relevant planning controls for the C8 locality.

Besides some waffly motherhood statements about the client being “*particularly motivated by providing affordable accommodation for essential services staff*”, there will be no controls over the rental of these units, including no obligation to make them “affordable”. There will be no control over whether these units continue to operate as a boarding house. The management plan provided with the application is basically an unenforceable set of “house rules” for tenants, not a commitment to provide affordable accommodation.

With this review, the number of units has been reduced from 27 to 24. This is a negligible change with regard to the impact and activity generated by the occupants. The building will still accommodate up to 48 tenants, plus a manager and any visitors, vehicles and service personnel associated with the site. The occupants are free to come and go at all hours of the day and night (a high possibility if they are the proposed essential services or shift workers) and they will need to park on the street due to the inadequate on-site parking provision. There is a communal deck at the rear of the building that is available to tenants until 10pm on week nights and midnight on weekends. The acoustic study provided with the original DA, only provides guidelines for potential noise from mechanical plant and equipment and does not recognise potential noise generated by resident activity. No noise mitigation measures, other than compliance with a curfew, have been proposed by the applicant. There are no plans to mitigate light spill to surrounding properties. None of the above is commensurate with the average intensity of activity generated by other residential properties in Wyatt Avenue. **In light of the above, the proposal cannot be considered “low impact, low intensity”** as per the Desired Future Character statement for the C8 locality. On these grounds, the proposal should be refused.

The building bulk and scale is inconsistent with the single, detached style residences in the locality. The site is only 28.5m wide and, despite some tweaking of the boundary setbacks, the building occupies almost the entire width of the site and extends north in a series of multi-storey pavilions that in no way reflect the character of residences in the surrounding neighbourhood. Council’s Urban Design and Environmental Health officers have indicated design flaws in the structure, including poor ventilation, unusable balconies, monolithic expanses on the western facade, the large basement car park slab and other issues such as ramp design. The building is inconsistent with the Desired Future Character statement for the C8 locality and on these grounds the application should be refused.

There is no attempt to integrate this development and its occupants into the surrounding community. Because of the narrowness of the site, and the need to camouflage the inappropriate bulk and scale of the building, the development is isolated and linear with the buildings oriented in such a way as to close them off from the street which minimises opportunities for social inclusion and interaction with neighbours.

The development does not “protect or enhance the natural environment” but proposes a substantial excavation and the removal of 80% of the site’s vegetation, including 51 trees. The flood study indicates that flows will still travel overland in a largely uncontrolled manner from the subject site down to the local bushland creek and riparian zone.

This proposal will remove 51 trees, estimated in the arborist’s report to be between 15- 40+ years of age. None of the trees have been classed as dangerous; removing them is for the developer’s convenience and landscape amenity because the building occupies almost the entire width of the site.

The driveway on the eastern boundary was amended and widened after submission of the original landscape plan and an open drain and flood wall have been incorporated along the eastern boundary. In an area that appears to be only 2m wide along the driveway, there is now no scope for “dense screen plantings”, as required under the DFC statement, despite the landscape plans and elevations erroneously showing green swathes of trees and shrubs along the boundaries in locations that cannot possibly accommodate them (the drain, driveway and retaining wall for example).

In addition, this driveway appears to exit the rear boundary and provide access to the adjacent property at 16 Wyatt Avenue for reasons that have not been explained. At the hearing with the NBLPP, the applicant indicated that a Right of Way would be sought for this driveway but this has not been submitted with the review application.

Inadequate modelling for potentially dangerous stormwater flow was one of the grounds for refusal of this DA by the Northern Beaches Local Planning Panel. The site is on a steep slope and receives runoff from both Wyatt Avenue and an open drain originating on vacant land to the east, all of which is channelled along the eastern boundary of 14 Wyatt Avenue. The applicant made much of the flooding issues at 14 Wyatt Avenue when responding negatively to a neighbour’s DA for the adjacent property at 12 Wyatt. A 500mm high flood wall and other infrastructure has now been proposed to mitigate flooding , however the Flood Risk Management Report submitted with this review (NB Consulting Engineers) states in Conclusion 3.3 Flood Velocity Hazard:

“The high velocity results at this section are likely due to the constricted flows confined between the site boundary and the proposed flood wall directly upstream. This is considered a High Hazard area as outlined in the “Floodplain Management Manual: the management of flood liable land – January 2005 NSW Government”. Therefore, it is recommended that caution be taken in the vicinity of this area during storm events. Signage should be erected in the vicinity of the flood wall, advising all persons of the risk of flooding during rainfall events.”

This is not a satisfactory solution to a serious hazard. **The need for a flood danger sign during rain events indicates that the site is unsuitable for this proposal and the application should be refused.**

There is no recognition of bushfire risk, despite surrounding lands being zoned as Fire Prone. This parcel of land appears to have been excluded as “fire prone” from the Draft Bushfire Prone Land mapping because the RFS apply a generic mapping technique to create bushfire buffer zones of fixed width adjacent to Category 1 vegetation. This mapping does not always recognise anomalies such as a parcel of land with identical risk factors to adjacent fire-prone land (slope, aspect, vegetation type, connectivity) being illogically excluded from a fire prone classification by a matter of metres. The land on the northern side of Wyatt Avenue was burned by wildfires in 1994 resulting in evacuation of the street and property losses. The Draft Bushfire Prone Land mapping is up for review and submissions are being considered (including my own). In this case, I believe the fire prone classification should be reconsidered in light of the very real fire risk to any new developments.

There is no flora/fauna study included with the application, despite this having been required for other DAs on the northern side of Wyatt Avenue. There is no reference to the natural environment at all yet the land forms part of a vegetation corridor connecting to Garigal National Park and is adjacent to high conservation bushland known to provide habitat for threatened flora and fauna species.

The parking provision is inadequate, with only 12 on-site spaces (up from the previous 10) for up to 48 tenants, plus the manager and any visitors. The applicant states that this satisfies the parking requirement in SEPP (ARH) 2009, which has a much lower standard for on-site parking than would be required if this proposal was being assessed under the WLEP2000 as Apartment Style Housing. The on-site parking provision in that instance would be one car space for each single bedroom unit and one visitor space for every 5 units – this equates to at least 29 car spaces that should be provided on site, a significant shortfall.

The traffic report accompanying the application suggests that the nearby car parks and streets can be used for the tenants’ needs, but this is an unsatisfactory solution for several reasons. Sports field car parks are for users of the facilities, not private resident parking. There are limited parking opportunities along the northern side of Wyatt Avenue as there is no curb and gutter, the road shoulder is collapsing in places where it has been impacted by ongoing vehicle movements (mostly from queued school traffic), the verge is vegetated and cannot easily accommodate off road parking, and the western section of Wyatt near the development is narrow and cannot accommodate two lanes of traffic with parked cars on both sides of the road.

When assessing the impact of traffic on residents, Council’s assessing officer remarked that there could be residents coming and going “at all hours of the day and night”. If these

residents are parking on this quiet section of residential street because they cannot be accommodated on site, this will result in ongoing disruption to residents.

In light of the above considerations, I do not support this proposal. It is inappropriate for the location, it is an overdevelopment of a small site, and it does not satisfy the planning controls or desired future character for this locality. It will also result in adverse impacts on the local environment and the residents of Wyatt Avenue from the addition of up to 48 tenants and the high intensity of land use. This proposal does not fall within the affordable housing SEPP and for the applicant to allude to this is disingenuous.

I urge Council to reject this application.

Thank you for the opportunity to comment.

Yours sincerely,

Clare McElroy