

SECTION 96 (1A) MODIFICATION OF CONSENT ASSESSMENT REPORT

Assessment Officer:	Alex Keller
Address / Property	Lot 2506 DP 752038 Bundaleer Street BELROSE
Description:	Section 96 (1A) Modification of consent to DA2013/0587 granted for construction of a boarding house
Development Application No:	MOD2016/0302 (DA2013/0587)
Application Lodged:	9/9/2016
Plans Reference:	DA001 to DA108 Rev 2, dated May 2016, drawn by <i>Vigor Master</i>
Amended Plans:	N/A
Applicant:	Ivy Wang – <i>Vigor Master Pty Ltd</i>
Owner:	Yiling Jin
Locality:	C8 Belrose North
Category:	Category 2
Variations to Controls (Cl.20/Cl.18(3)):	Yes – Housing density (concurrence of <i>Department of Planning</i> (DoP) required for approval)
Referred to ADP:	NO
Referred to WDAP:	YES – 1 submission
Land and Environment Court Action:	None pending
SUMMARY	
Submissions:	1 submission of objection
Submission Issues:	Basement modification, inadequate information, ground level changes, increase in habitable space, car parking.
Assessment Issues:	DFC, housing density, General Principles of Warringah Local Environmental Plan (LEP) 2000 and submission issues
Recommendation:	Approval
Attachments:	A4 Notification Plans

LOCALITY PLAN (not to scale)



Subject Site: Lot 2506, DP 752038, 2506 Bundaleer Street Belrose

Public Exhibition: The subject section 96 (1A) modification application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan (LEP) 2000 and Warringah Development Control Plan (DCP) 2000. As a result, the application was notified to fourteen (14) adjoining land owners and occupiers (including local community association) for a period of 14 calendar days commencing on 25/11/2016 and being finalised on 10/12/2016.

SITE DESCRIPTION

The subject site is identified as Lot 2506 in DP 752038 and is a corner allotment located on the western side of Linden Avenue and the southern side of an unmade section of Bundaleer Street. The subject site is an irregular shaped allotment having a total area of 1.64 hectares (Ha). The site has a frontage of 85.7 metres (m) to the Linden Avenue frontage and 84.09 m to the Bundaleer Street frontage. The site has a gentle cross fall of approximately 10m from the south east corner to the north western corner.

The site is currently vacant having previously accommodated a single dwelling house which has subsequently been demolished. The site comprises natural bushland to the rear (west) and a cleared section adjacent to the Linden Avenue and Bundaleer Street frontages.

SITE HISTORY

- DA2000/4415** Development Application for the construction of a Child Care Centre refused on 29 August 2000.
- DA2001/0308** Development Application for the construction of a dwelling refused on 5 November 2002.
- DA2001/0308** Consent granted on 4 June 2003 by the *NSW Land and Environment Court* for construction of a dwelling (NSW LEC 1097/2002).
- DA2004/0389** Consent granted on 11 October 2004 for construction of a dwelling and swimming pool.
- DA2007/0520** Development Application for the construction of a Self-Storage Facility refused on 11 December 2007.
- DA2008/1000** Consent granted on 18 December 2008 for construction of a two storey dwelling with a three car space garage located in the north-eastern corner of the site and a boundary fence.
- DA2009/1024** Application for construction of a new dwelling with a three car garage located in the south-eastern corner of the site and associated fencing approved on 8 April 2010.
- DA2013/0587** Application for construction of a two storey boarding house containing 31 rooms plus a manager's room was approved by Council on 11 December 2013, by-way-of a Deferred Commencement. The deferred commencement became operational on 28 August 2014. The building is currently nearing completion.
- MOD2015/0160** Application for modification, Section 96(2), of DA2013/0587 was approved on 4 November 2015. This modification included changes to the approved plans including carparking, stormwater, waste management, external walls, building footprint, bin enclosure and drainage.
- DA2014/1177** Development Application for a larger boarding house than the building approved under DA2013/0587. This application was refused on 13 May 2015.

APPROVED DEVELOPMENT

The approved development is for "construction of a two storey boarding house" configured as (and subject to previous modification MOD2015/0160):

- 31 rooms
- A manager's apartment
- Nineteen (19) parking spaces
- Seven (7) motorbike spaces

- Seven (7) bicycle spaces

The exterior scale, form and bulk of the building approved under DA2013/0587 was generally consistent with a two storey dwelling house approved by Council under DA2009/1024. In effect, the boarding house was fit within the general external form and scale of the previously approved two storey dwelling house design.

PROPOSED MODIFICATION

The modification seeks to make the following changes, listed below:

Basement

- Reduce the basement fire compartment floor area to less than 500 square metres (sqm), based on the BCA (Section E). This is achieved by creating storage rooms to in-fill part of the basement “fire compartment” floor area.
- The exit on the western side altered due to the change of layout of parking area.
- Additional windows in the basement area created for natural light / ventilation according to the Mechanical Engineer’s design.

External Layout & Addition

- Selected external walls to rooms 12 & 13 moved outwards to be flush the other part of the wall facing south, in order to create more internal room space.
- Selected terraces on the ground floor facing the northern side, and the balconies on ground floor & first floor facing south, added to increase the room space / amenity.
- Selected windows facing southern side wall replaced by sliding doors to increase the internal space amenity.
- The windows facing eastern & western side wall altered to facilitate internal fitout arrangements in room 22, 30 & 31.

Proposed Condition changes:

- Delete Condition 34- *Kitchen Design, construction and fit out of food premises*, since the requirements of AS4674 are not relevant to a boarding house use.
- Delete Condition 37A- *Positive Covenant for the Maintenance of Stormwater Pump-out Facilities*, since the design of stormwater disposal does not include the pump-out system for basement area.
- Amend details of the consent for DA2013/0587, including amendments to conditions to incorporate the revised plan set.

AMENDMENTS TO THE SUBJECT APPLICATION

There are no supplementary amendments to the modification application during the assessment period.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2000.
- c) State Environmental Planning Policy No.55 – Remediation of Land
- d) Warringah Local Environment Plan 2000
- e) Warringah Development Control Plan 2000
- f) Warringah Section 94A Development Contributions Plan

PUBLIC EXHIBITION

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A total of one (1) submission was received in response to the application. Submissions were received from the following:

Submission	Address
GLN Planning for Covenant Christian School	c/- 212 Forest Way BELROSE

The following issue was raised in each submission and has been addressed below:

Issue: *The modification of consent is seeking change the basement windows for storage room that appears as a residential space from the exterior, in order to extend the number of rooms to 45.*

Comment:

The conversion of part of the basement area to storage rooms is required to reduce the area of the “fire compartment” within the basement carpark. Conditions are included to ensure the storage rooms cannot be used as habitable space. Therefore, the number of rooms will remain unchanged, as approved for 31 accommodation rooms.

Therefore, this issue has been addressed by conditions and does not warrant refusal of the Section 96(1A) modification.

Issue: *The modification work creates the appearance of a three storey building that is out of context with the original development application approval.*

Comment:

In order to address this issue conditions are recommended to ensure the windows are screened with fixed louvres / grilles and landscaping used, including low earth mounding to maintain a two storey appearance to the building.

Therefore, this issue has been addressed by conditions and does not warrant refusal of the Section 96(1A) modification.

Issue: *The modification work will remove internal car parking spaces and this affects the provision of on-site parking within the site.*

Comment:

This issue has been addressed in detail under *General Principle 73 Carparking*, within this report. In summary, the boarding house has a surplus of parking spaces and will retain sufficient carparking to remain compliant with Warringah LEP 2000 requirements.

Therefore, this issue does not warrant refusal of the Section 96 modification.

Issue: *The modification contains inadequate information to enable an assessment of the work including finished ground levels, disabled persons access and the purpose for the window changes.*

Comment:

The modification has not proposed any re-instatement of natural ground level around the basement to disguise the three storey appearance created by the new basement windows. This is addressed by conditions to require low earth mounding (away from the walls) and screen planting to retain landscape setting that has been compromised by the ancillary changes made around the perimeter of the building.

Issues relating to disabled access are addressed by existing conditions and compliance required with the BCA under the Construction Certificate.

The purpose of the window changes have been detailed within the statement of environmental effects included with the modification. Conditions are included for screening louvres / grille to maintain the external appearance that the new basement rooms are not for residential use or a residential level, and are part of the lower service area (carpark and storage facilities) of the building.

This issue has been addressed by conditions and does not warrant refusal of the modification.

MEDIATION

Has mediation been requested by the objectors?	No
Has the applicant agreed to mediation?	No
Has mediation been conducted?	No

LAND AND ENVIRONMENT COURT ACTION

There is no current Land and Environment Court action relating to the subject modification application.

REFERRALS

External Referrals

Rural Fire Service

The existing consent includes NSW Rural Fire Service (RFS) requirements and the modification does not affect previous RFS referral advice. The modification was referred to the NSW RFS and the updated *Bushfire Assessment Report* is required to be referenced for the modification.

Ausgrid

Ausgrid provided a referral response, dated 6 June 2013 with original development application referral. The current modification has not raised any change to *Ausgrid* requirements in the existing consent.

Aboriginal Heritage Office

The existing consent includes *Aboriginal Heritage Office* (AHO) requirements and the modification does not affect previous AHO referral advice.

NSW Police – Local Area Command

No special conditions were recommended by *NSW Police* under the original application. The modification did not require further *NSW Police* advice.

NSW Department of Planning

The modification is required be referred to the *NSW Department of Planning* (DoP) for concurrence only if a further variation to the housing density is recommended for approval. Detailed comments are provided later in this report under the heading “Other Matters for Consideration”.

Internal Referrals

Building Assessment – Fire and Disability

The modification has been reviewed by Council’s Building Assessment section. No comment and no change to existing conditions are required.

Traffic Engineer

The modification application was referred to Council’s Traffic Engineering section. Previous conditions of consent were recommended to ensure compliance with Australian Standard 2890.1 for cars, motorbikes and bicycle parking areas, driveway widths, ramps and pedestrian safety. No change to conditions is recommended.

Development Engineer

The application was referred to Council's Development Engineering section. No objection is raised to the deletion of condition 37A, subject to a new engineering condition ("Application for stormwater drainage") as recommended.

Landscape Officer

The modification was referred to Council's Landscape Officer. No change to existing conditions is recommended.

Waste Officer

The modification was referred to Council's Waste Officer. No change to existing conditions is recommended.

Environmental Health and Protection – Food Premises

The modification was referred to Council's Environmental Health and Protection section regarding deletion of the requirement for a "commercial standard" kitchen fit-out. This condition is applied to minimise health and safety risks for communal food preparation areas and deletion of the condition is not recommended.

Environmental Health and Protection – Unsewered Lands

The modification was referred to Council's Environmental Health and Protection section for unsewered lands. No change to existing conditions is recommended. (Note: the applicant is in the process of establishing a low pressure sewer connection with Sydney Water that will trigger another separate modification to remove conditions for on-site wastewater disposal).

Environmental Health and Protection – Industrial Uses (Noise / Contaminated lands)

The modification was referred to Council's Environmental Health and Protection section for industrial / contaminated lands. The modification conditions recommended in the referral response have already been addressed with the existing conditions in place that relate to an ongoing "plan of management" and noise management.

Natural Environment Unit - Biodiversity

The property contains remnant bushland and natural areas. No referral to NEU (Biodiversity) was required for the modification and no change to the existing NEU conditions is recommended.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2013/0587, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The proposed modification to amend conditions to address the revised plans is consistent with Desired Future Character and the housing density control of the <i>Locality B2 Oxford Falls Valley</i> of the Warringah LEP 2000.
(b) 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	Yes The development, as proposed, has been found to be such that Council is satisfied that the proposed modification is consistent with DA2013/0587
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the <i>Environmental Planning</i>

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Section 96(1A) - Other Modifications	Comments
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	<i>and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan.</i>
(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.	See discussion on “Public Exhibition” in this report.

Section 79C Assessment

In accordance with Section 96(3) of the *Environmental Planning and Assessment Act 1979*, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

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Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via conditions in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, where additional information is required Council will consider the number of days taken in accordance with this clause of the Regulations. No additional information was requested. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is addressed by existing conditions. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the <i>Home Building Act 1989</i>. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Environmental Plan, including the “General Principles” section in this report. (ii) The existing consent was determined to not have a detrimental social impact in the locality considering the character of the proposal, and subject to conditions. (iii) The existing consent was determined to not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use, subject to conditions.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed modification of development, subject to conditions.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regulations.	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	The modification has been considered pursuant to the Warringah Local Environmental Plan 2000 and <i>Desired Future Character</i>, including the housing density standards for <i>Locality C8 Belrose North</i> and General Principles of Development Control. The modification does not create an undesirable precedent, subject to conditions, such that it would undermine the DFC of the area and be contrary to the expectations of the community. In this regard, the proposal is not considered to be contrary to the public interest.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No 55 – Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been vacant land for a significant period of time with no substantial prior development having been

undertaken. The requirements of SEPP No.55 have been addressed with the original development consent conditions.

State Environmental Planning Policy - BASIX

As the proposed development is classified as a "Class 3 Building" in accordance with the Building Code of Australia (BCA), SEPP BASIX does not apply. Compliance with Section J - Energy Efficiency of Volume One of the BCA is addressed under the original development consent conditions.

State Environmental Planning Policy - Infrastructure

Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
- immediately adjacent to an electricity substation,
- within 5m of an overhead power line
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line

The original development application was referred to *Ausgrid* and referral requirements are including in the original conditions of consent. No modification of *Ausgrid* requirements is recommended.

Clause 101 of *SEPP Infrastructure* requires the Consent Authority to consider requirements of the RMS for any development with frontage to a classified road. Linden Avenue and Bundaleer Street are not listed as classified roads for the purposes of the SEPP.

SEPP (Affordable Rental Housing) 2009

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or	Inconsistent The site is located within the (rural) C8 <i>Belrose North Locality</i> of Warringah LEP 2000 and as such, is not located within an 'equivalent zone' to those listed in the SEPP.

(g) Zone B4 Mixed Use.	
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Whilst the original proposal would not be permissible under SEPP (ARH), since it does not fall into an “equivalent zone”, it was lodged pursuant to WLEP 2000 under which it is permissible as a “Category 2” land use.

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

- Desired Future Character (DFC)

The subject site is located in the *C8 Belrose North* Locality under Warringah Local Environmental Plan 2000.

The Desired Future Character Statement for this locality is 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 development is defined as a “Boarding House” under the WLEP 2000 dictionary. “Boarding houses” are identified as Category 2 development in this locality as it is a form of development which is not prohibited or listed in Category 1 or 3.

Clause 12(3) (a) of WLEP 2000 requires the consent authority to be satisfied that the development is consistent with the Locality’s DFC statement. The original development application was considered in detail against the DFC statement and deemed to be consistent, subject to conditions. (Refer to DA2013/0587, including Minutes of WDAP meeting dated 11/12/2013).

An assessment of consistency of the proposed modifications to the development against the locality’s DFC is provided hereunder:

Requirement 1: The present character of Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

Requirement 2: 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.

Comment: The modifications are mainly within the existing building footprint. The deletion of some of the internal parking spaces will not create any need for expanded parking area outside the building. Therefore, the balance of landscaped areas of the site will remain as approved. Some additional screen planting to obscure the basement windows is recommended to soften the visual appearance of these new window spaces.

Conditions placed on the original consent requiring the provision of new landscaping and the protection of existing vegetation will be retained. No change is proposed to the approved colour scheme.

The development will continue to meet this requirement, subject to conditions.

Requirement 3: Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

▪ Comment: As the development is not a detached style dwelling, the development is required to maintain conformity with a low intensity, low impact use as described in the Land and Environment judgement “*Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128*”. The following definition was provided in the judgement:

▪ ***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.

▪ Low Intensity assessment

The proposed boarding house is to accommodate up to a lodgers in 31 individual rooms (plus a manager’s room) and manage the accommodation activity in accordance with the approved “plan of management”. A full assessment of the original proposal as a low intensity, low impact use as described in the Land and Environment judgement “*Vigor Master Pty Ltd v Warringah Shire Council [2008] NSW LEC 1128*” was undertaken in the report for DA2013/0587.

That assessment continues to apply to the proposal as modified by this application since there are no changes to the numbers of residential rooms. The internal changes to basement do not require additional car parking

In terms of density, the requirement for the *C8 Belrose North Locality* is 1 dwelling per 20ha. The site has a total area of 1.64ha. While the proposed development is not a traditional dwelling, it remains a form of housing principally within the approved building footprint.

Accordingly, the modification does not alter the low intensity assessment made under the original approval.

Low Impact assessment

The relevant potential impacts of the proposed development are addressed as follows:

Visual Impact: The proposed boarding house is to be accommodated presenting as a large two storey building used for housing. The modification does not propose any inconsistencies with respect to building height, colours and materials, external carparking areas and the like. However, it is recommended that additional landscaping and window treatment (louvres) be used for the modified basement element in order to screen the exposed new windows and retain the exterior appearance of a two storey building.

Noise: The boarding house is subject to a “plan of management” to ensure residential activities remain consistent with the DFC and do not have an adverse amenity impact on neighbours.

Traffic: The submitted Traffic and Parking Assessment for the modification demonstrates that adequate parking will be retained to service the boarding house occupants.

Vegetation: As mentioned above, the proposal does not seek any further vegetation removal. The site provides an Asset Protection Zone for bushfire protection purposes approved by the NSW Rural Fire Service. The site will retain vegetation located in the western half of the property. Overall, the density of planting on the site is considered acceptable in context with RFS requirements and rural character of the area.

Amenity: The modified development would not result in any significant loss of privacy, outlook or result in overshadowing of adjoining residential properties. The modification work does not pose any unreasonable amenity impacts on the Covenant Christian School adjacent the site or surrounding residences.

Existing conditions are to remain in place that include requirements for screen planting along Linden Avenue to ensure a setting that compliments the rural environment.

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

Comment: The subject site does not adjoin Forest Way. The modifications do not change the approved fencing and landscaping requirements for the development.

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

Comment: Relevant conditions in relation to erosion and sediment control are to remain in place. The modification does not increase siltation or pollution risks to Middle Harbour.

DFC Conclusion: As detailed above, the proposed modification is consistent with the original approved plans (as modified) and the Locality's DFC statement, subject to conditions, and does not warrant refusal.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Control	Required	Proposed	Compliance / Comment
Housing Density	1 dwelling per 20ha	1.64 Hectares – Lot 2506 NOTE: 1 dwelling per 5.5 Hectares for the “existing holding” which includes Lot 807 with an area of 2.61 Hectares (approximate areas). A boarding house is a form of housing. In this case the boarding house sits within the footprint and external envelope of the original (large) dwelling approval under DA2009/1024. The boarding house is capable of a higher occupancy than a dwelling house, but is reliant on shared facilities including hallways, services, parking, laundry, living room and the like. The Locality Statement states, “Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses”.	Yes – No change to existing

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Built Form Control	Required	Proposed	Compliance / Comment
		As such limiting housing density pursuant to the DFC and “low impact, low intensity” requirement is pertinent to the development approval. (As approved)	
Building Height (NGL 58.7m) (Ridge RL67.42)	8.5m	7.8m (As approved)	Yes. No change
	7.2m	6.9m (As approved)	Yes. No change
Front Building Setback	20m	Bundaleer Street 34.5m to carpark 51.0m to building (As approved) Linden Avenue 20.0m (As approved)	Yes. No change
Rear Building Setback	10m	N/A – Corner allotment	Yes. No change
Side Setback	10m	14.5m (South) (As approved) 63.22m (West) (As approved)	Yes. No change Yes. No change
Landscape Open Space	50% of site to be natural bushland or landscaped with local species (8,204sqm)	59% (9,682.5sqm) – not including the curtilage of building or hard surface areas. (As approved) Note: The above calculation includes all areas of the site to the north and west which are outside of the APZ.	Yes. No change

The proposed modification remains consistent with the Locality’s Built Form Controls, relating to height, setbacks and landscaping and accordingly no further assessment other than relevant considerations under the heading “General Principles” is required.

In *Locality C9 Belrose North* the minimum area per dwelling, required by the housing density standard is, 1 dwelling per 20 hectares. However, this is subject to “existing holding” provisions of the land. An existing holding is defined as “*adjacent or adjoining lots held in the same ownership on 8 March 1974*” and having a combined area of not less than 2 hectares. In addition to this, variation to the housing density standard cannot be varied by more than 10% without concurrence of the *Department of Planning*.

In summary, the housing entitlement is restricted by a housing density of ‘1 dwelling

per 20 hectares' with further limitations for 'existing holdings'. This issue has been previously addressed under the original consent and no change is proposed with the modification that will affect the approved housing density on the site.

State Policies: Consistency with the applicable State environmental planning policies has been addressed by existing conditions of consent.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of *Warringah Local Environmental Plan 2000* are applicable to the proposed development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	This General Principle seeks to ensure that development does not result in excessive glare and solar reflections. Existing conditions of consent will ensure that the roof finish be within the medium to dark colour range to blend with the bushland setting for the roof.	Yes, subject to DA2013/0587 conditions. No change required.
CL42 Construction Sites	Yes	The site provides adequate area for the handling and storage of building materials, and will not unreasonably impact on the amenity of the locality subject to construction management.	Yes, subject to DA2013/0587 conditions. No change required.
CL43 Noise		Clause 43 of Warringah LEP 2000 provides "<i>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</i>". Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required.
CL44 Pollutants	Yes	Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required.

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General Principles	Applies	Comments	Complies
CL48 Potentially Contaminated Land	Yes	Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required.
CL50 Safety & Security	Yes	The Boarding House will maintain an acceptable level of safety and security through the design and layout and a Boarding House PoM. Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required.
CL51 Front Fences and Walls	Yes	Requirements of this clause have been addressed under the original consent. This is to be addressed with the construction certificate.	Yes, subject to DA2013/0587 conditions. No change required.
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	Yes	National Park land is within 50m of the site. Requirements of this clause have been addressed under the NEU referral and exsisting conditions.	Yes, subject to DA2013/0587 conditions. No change required.
CL54 Provision and Location of Utility Services	Yes	The site has access to electrical and water services with connections ato be managed by the relevant service provider. Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required.
CL56 Retaining Unique Environmental Features on Site	Yes	This General Principle seeks to ensure that development is responsive to the existing environmental features on the site and on adjoining land, including remnant trees, water courses and rock outcrops. The subject site contains some natural bushland, including isolated large trees, surface outcrops	Yes, subject to DA2013/0587 conditions. No change required.

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General Principles	Applies	Comments	Complies
		scattered over the site but is generally free of significant natural features. Vegetation management pursuant to <i>Planning for Bushfire Protection</i> is addressed by conditions under the original consent.	
CL57 Development on Sloping Land	Yes	This General Principle seeks to reduce the impact of development on sloping land by minimising the visual impact of development and the extent of excavation.	Yes. No change required.
CL58 Protection of Existing Flora	Yes	This general principle requires that development be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation and any remnant native ground cover species. No change is proposed. Requirements of this clause have been addressed under the original consent	Yes, subject to DA2013/0587 conditions. No change required.
CL62 Access to sunlight	Yes	This General Principle seeks to ensure that development does not unreasonably reduce sunlight to surrounding properties. The proposed boarding house retains a reasonable level of sunlight to both the subject site and the adjoining properties with no less than 2 hours of sunlight between 9am and 3pm on 21st June, pursuant to this clause.	Yes. No change
CL63 Landscaped Open Space	Yes	This General Principle seeks to ensure that development provides landscaped open space that contributes to the amenity of the area. The majority of the site will be retained as open land, including lawn areas and semi-cleared bushland. Supplementary landscape work	Yes. Subject to conditions to require mounding and screen planting to retain a two storey appearance and enhanced

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General Principles	Applies	Comments	Complies
		around the perimeter of the exposed basement area is recommended to maintain a landscape setting.	landscape setting.
CL63A Rear Building Setback	Yes	Natural bushland areas at the rear setback extend between 40m-70m along the western boundary. Requirements of this clause have been addressed under the original consent, including bushland management.	Yes, subject to DA2013/0587 conditions. No change required.
CL64 Private open space	Yes	This General Principle seeks to ensure that housing is provided with an area of private open space that can be used as an extension of the living area for dining or the outdoor enjoyment of occupants. While the proposed boarding house is not a dwelling, the intent of this control is considered relevant. Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required.
CL65 Privacy	Yes	Consideration is given to the potential impacts from loss of privacy and amenity resulting from the intensity of the use proposed on the site. Existing conditions are satisfactory to manage this issue including the implementation of an ongoing “plan of management” (PoM). The changes to the window spaces provided on the residential floors do not create any unreasonable overlooking to adjacent land.	Yes, subject to DA2013/0587 conditions. No change required.
CL66 Building bulk	Yes	The size and appearance of the proposed development reflects the structure approved by DA2013/0587 with ancillary changes to accommodate the modification work. Modification conditions are	Yes, subject to DA2013/0587 conditions and modified conditions to screen the three storey

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General Principles	Applies	Comments	Complies
		recommended to screen the three storey appearance created by the new exposed basement windows.	appearance created by the basement windows.
CL67 Roofs	Yes	This General Principle seeks to ensure that development provides a roof form that complements the local skyline and integrates with the built form of the development. Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required.
CL68 Conservation of Energy and Water	Yes	As the proposed development is classified as a "Class 3" building in accordance with the Building Code of Australia (BCA), SEPP BASIX does not apply. Energy efficiency related provisions contained within Section J - Energy Efficiency of Volume One of the BCA. Requirements of this clause have been addressed under the original consent and are managed in detail under the construction certificate.	Yes, subject to DA2013/0587 conditions. No change required.
CL69 Accessibility – Public and Semi-Public Buildings	Yes	The building is not a public building. However, accessibility to the main entry is required, including compliance with current standards under AS1428 and satisfy the <i>Disability Discrimination Act 1992</i>. Requirements of this clause have been addressed under the original consent. This is to be addressed with the construction certificate.	Yes, subject to DA2013/0587 conditions. No change required.
CL70 Site facilities	Yes	Requirements of this clause have been addressed under the original consent. This is to be addressed with the construction certificate. This includes details for the kitchen, laundry, clothes drying and garbage	Yes, subject to DA2013/0587 conditions. No change required.

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General Principles	Applies	Comments	Complies
		facilities. The fitout of the kitchen to a commercial standard is required to minimise health risks within the communal food preparation area.	
CL71 Parking facilities (visual impact)	Yes	This General Principle seeks to ensure that parking facilities are sited and designed so as to not dominate the street frontage. Requirements of this clause have been addressed under the original consent and modified conditions for landscape work to screen the changes shown to the basement area.	Yes, subject to conditions.
CL72 Traffic, access & safety	Yes	This General Principle also seeks to ensure that vehicle movements to and from a development do not interfere with the flow of traffic or compromise pedestrian safety. Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required
CL73 On-site Loading and Unloading	Yes	The site provides adequate space to enable vehicles to enter and leave in a forward direction. Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required
CL74 Provision of Carparking	Yes	Schedule 17 does not provide a parking rate specifically for “boarding house” uses. Therefore, an appropriate analysis is made within the traffic consultant’s report. In summary, the boarding house will retain an appropriate number of parking spaces, considering the limitations for convenient access to public transport. Requirements of this clause have been addressed under the original	Yes, subject to DA2013/0587 conditions. No change required.

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General Principles	Applies	Comments	Complies
		consent including changes to be incorporated with any re-issued construction certificate.	
CL75 Design of Carparking Areas	Yes	This General Principal seeks to ensure that carparking is designed to minimise visual impact and provide a safe and efficient environment for both vehicles and pedestrians within the site. Car parking, motorcycle spaces, and bicycle parking is satisfactory to service the development. Requirements of this clause have been addressed under the original consent, including changes to be incorporated with any re-issued construction certificate.	Yes, subject to DA2013/0587 conditions. No change required.
CL76 Management of Stormwater	Yes	This General Principal seeks to ensure that adequate provision is made for the management of stormwater. Requirements of this clause have been addressed under the original consent including changes to be incorporated with the construction certificate for the modified stormwater system.	Yes, subject to modification of conditions recommended.
CL77 Landfill	Yes	Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required.
CL78 Erosion & Sedimentation	Yes	Requirements of this clause have been addressed under the original consent including changes to be incorporated with the modified erosion and sediment plan submitted.	Yes, subject to modification of conditions.
CL80 Notice to Metropolitan Aboriginal	Yes	Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No

General Principles	Applies	Comments	Complies
Land Council and the National Parks and Wildlife Service			change required
CL83 Development of Known or Potential Archaeological Sites	Yes	Requirements of this clause have been addressed under the original consent.	Yes, subject to DA2013/0587 conditions. No change required.

SCHEDULES

Schedule 8 - Site analysis

A site analysis plan was submitted as part of this modification application and is considered satisfactory in addressing the requirements of this Schedule.

Schedule 17 - Carparking Provision

The applicant has provided a traffic and parking report to address the modification to the off-street parking.

Off-street car parking is proposed for a total of 19 cars, including 7 outdoor spaces and 12 spaces in the basement car park. Carparking will remain appropriate to service the expected traffic generation for the boarding house and existing conditions are satisfactory to ensure compliance with Australian Standard 2890.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

No change to the existing Section 94A Development Contributions condition is proposed.

OTHER MATTERS FOR CONSIDERATION

Department of Planning Concurrence

The Warringah LEP 2000 states that for a housing density of 1 dwelling per 20 hectares (but not less than 2 hectares): *“Consent may be granted for development that will contravene these housing density standards but, if by more than 10 per cent, only with the concurrence of the Director.”*

The modification does not require further concurrence from the Director of the *NSW Department of Planning*, since it does not affect the housing density circumstances justifying the original concurrence.

CONCLUSION

The site has been inspected and the modification application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 96(1A) and Section 79C of the *EP&A Act 1979*. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the modification application and public submissions. In conclusion, the proposal does not result in any unreasonable impacts on surrounding and nearby properties, subject to the conditions contained within the recommendation.

A consolidated list of conditions has been prepared for convenience in reading the full list of conditions of the modified consent.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects specified in S.5 (a) (i) and (ii) of the Environmental Planning and Assessment Act 1979.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION -

THAT Council as the consent authority grant modification of consent MOD2016/0302 to DA2013/0587 for the construction of a boarding house on land at Lot 2506 DP 752038 Bundaleer Street BELROSE, subject to the modified conditions printed below:

A. Insert Condition No. 5B – Modification of Consent – Approved Plans and Supporting Documentation, to read as follows:

“5B. Modification of Consent – Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Drawing Number	Dated	Prepared By
M-101 Revision B	8.11.2016	Vigor Master
M-200 Revision B	8.11.2016	Vigor Master
M-201 Revision B	8.11.2016	Vigor Master
M-202 Revision B	8.11.2016	Vigor Master
M-203 Revision B	8.11.2016	Vigor Master
M-301 Revision B	8.11.2016	Vigor Master
M-302 Revision B	8.11.2016	Vigor Master
M-303 Revision B	8.11.2016	Vigor Master
Stormwater Drainage Layout Plan	29.4.2016	A & G Consulting Engineers
Stormwater Drainage Details	19.3.2016	A & G Consulting Engineers
Site Erosion and Sediment Control Layout	19.3.2016	A & G Consulting Engineers
Site Erosion and Sediment Control Details	19.3.2016	A & G Consulting Engineers

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

B. Insert Condition No.39A Supplementary Landscape Screening, to read as follows:

“39A. Supplementary Landscape Screening

Low earth mounding is to be placed between 2.0m to 5.0m from the new basement level windows around the perimeter of the building (excluding any access, pathway ancillary building structures and the like) up to RL67.00. The earth mounding is to be landscaped with a suitable mix of native ground cover plants and low screen tree planting as per the following schedule:

No. of Trees Required.	Species	Location	Pot Size
10 plants per square metre	Native ground covers and native grasses. Selected from Council's "Tree Planting Guide".	To cover the earth mounding between 2.0m and 5.0m around the perimeter of the building.	Tube stock
1 plant per	Native "small"	Evenly spaced and within	Minimum 2

2 square metres	trees selected from Council's tree planting guide.	the earth mounding area between 2.0m and 5.0m around the perimeter of the building.	litre pot size.
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Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim Occupation Certificate.

Reason: To maintain a rural landscape setting and screen the ground floor and basement level."

C. Insert Condition No.39B Basement Level Louvres, to read as follows

"39B. Basement Level Louvres

Horizontal louvres / grilles (maximum 100mm spacing) are to be fixed to the exterior of the basement level storeroom windows.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim Occupation Certificate.

Reason: To reduce visual impact of the basement service area."

D. Delete Condition No. 37A Positive Covenant for the Maintenance of Stormwater Pump-out Facilities, as follows:

"37A. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

[Deleted]"

E. Insert Condition No.12A Application for Stormwater Drainage Approval, to read as follows

"12A. Application for Stormwater Drainage Approval

An application for stormwater drainage approval under Section 68 of the *Local Government Act 1993* is to be submitted with Council for the connection of the stormwater drainage system from the site to the existing Council drainage pit in Bundaleer Street which is to be generally in accordance with the hydraulic plan by A & G Consulting Engineers Pty Ltd, drawing number 16005-C01a Rev 1, dated 19.03.2016 and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Specification.

The submission is to include four (4) copies of Civil Engineering plans for the design and construction of the drainage connection which is to be generally in accordance with the hydraulic plan by A & G Consulting Engineers Pty Ltd, drawing number 16005-C01a Rev 1, dated 19.03.2016 and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Specification. The plan is to be amended to include the following:

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- i) A hydraulic grade line (HGL) analysis of the connection to indicate the system has sufficient capacity up to and including the 1 in 100 year ARI storm event.
- ii) The connection pipe into the existing Council pipe is to be a minimum of 225mm diameter.

Detailed drainage plans addressing the above requirements are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The fee associated with the assessment and approval of the Section 68 of the *Local Government Act 1993* application is to be in accordance with Council's fees and charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the relevant Construction Certificate.

Reason: Ensure stormwater works are designed in accordance with Council's standards. (DACENCPCC3)"

Signed



Alex Keller, Senior Planner

The application is determined under the delegated authority of:



Steven Findlay, Manager Development Assessments