

RESIDENTIAL DEVELOPMENT – S96 (1A) APPLICATION ASSESSMENT REPORT

Modification Application Number:	MOD2017/0162
Development Application Number:	DA2013/0587
Planner:	Alex Keller
Property Address:	Lot 2506 DP 752038, Lot 2506 Bundaleer Street BELROSE
Proposal Description:	Modification of Development Consent to DA2013/0587 granted for construction of a Boarding House
Recommendation:	REFUSAL
Clause 20 Variation:	Not supported
Proposal in Detail:	The application is made pursuant to Section 96(1A) of the Environmental Planning & Assessment Act 1979. In detail, the modification relates to the approved storage rooms (MOD2016/0302) within the basement carpark. The applicant is seeking to convert the storage rooms into four (4) additional accommodation rooms for the boarding house. The approved basement storeroom area was previously open basement level carparking spaces. However, in 2016 the applicant sought to in-fill this space due to the “fire compartment” of the basement being too large to satisfy the Building Code of Australia.
History and Background:	Development Application No.2013/0587 for “Construction of a boarding house” issued by Council (Deferred Commencement) on 11 December 2013. Currently the boarding house approved under DA2013/0587 (including subsequent modifications) is configured as follows: 31 self-contained accommodation bedrooms, including a Manager’s apartment, common dining / living rooms, at-grade and basement parking for 19 car spaces and 7 motorbike spaces. Basement storage and bicycle parking, outdoor open space, drainage, landscaping and service connections. - The original consent has been subject to a number of modifications to address BCA matters and other incidental changes to the boarding house. (MOD2015/160, MOD2016/0302, MOD2017/0028, MOD2017/0100) Development Application No.DA2014/1177 proposed a larger boarding house than what was approved under DA2013/0587. This

application was refused on 13 May 2015.

Development Application No. DA2009/1024 for a two storey dwelling house was approved by Council on 30 March 2010. A construction certificate was subsequently issued for this development by private certification.

Modification Plans Reference

Drawing Number	Title	Issue	Dated	Drawn By
M-200	Parking Floor Plan	D	16-6-2017	Vigor Master Pty Ltd
M-301	North and South Elevations	D	19-6-2017	Vigor Master Pty Ltd

Report Section	Applicable – Yes or No
Section 1 – Code Assessment	Yes
Section 2 – Issues Assessment	Yes
Section 3 – Site Inspection	Yes

Notification Required:	Yes	14 DAYS
Submissions Received:	Yes	Number of Submissions: 2
Cost of Works:	\$20,000 (modification fitout works)	
Section 94A Applicable:	No	TOTAL: N/A

Section 96(1A) EPA ACT 1979	
Section 96(1A) (a) – Is the Modification to consent of Minimal Environmental impact?	Yes
Section 96(1A) (b) – Would the consent as proposed to be modified be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was previously modified?	No
Section 96(1A) (c) & (d) – Has the application been on Public Exhibition?	Yes
Have you considered any submissions?	Yes

Section 96(1A) EPA ACT 1979	
Section 96 (3) – Have you considered such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application	Yes

SECTION 1 – CODE ASSESSMENT REPORT

ENVIRONMENTAL PLANNING INSTRUMENTS

Warringah Local Environmental Plan 2000

Locality: C8 Belrose North

Development Definition: Housing

Category of Development: Category 2

Desired Future Character Statement:

“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.”

Is the proposed modification consistent with the Locality’s Desired Future Character Statement?

The assessment of the application concludes that the modified proposal constitutes the addition of four “dwellings” within the basement level of the existing boarding house development, as opposed to the description provided in the application of “change of use of storage rooms to boarding house rooms”.

A “Boarding House” is a Category 2 land use within the locality, and was consented to as the development was considered to be consistent with the DFC, including it being a “low intensity, low impact use”.

“Housing” (with the exception of housing for aged or disabled persons adjoining urban land), is subject the housing density standards (1 dwelling per 20 hectares) and inter-alia, conforming to matters within the DFC, including maintaining “detached style”.

On the basis that the new elements within the basement level constitute “dwellings”, they must be deemed to be consistent with being “detached style” and must satisfy the density standard. However, the form and configuration of the dwellings as proposed are best described as “attached style housing” and the density is significantly exceeded. Therefore, this form of housing is inconsistent with the DFC. The WLEP 2000 defines housing development as:

“housing means development involving the creation of one or more dwellings whether or not used as a group home.”

Furthermore, multiple attached style dwellings cannot be considered as a “low intensity, low impact use” as this is a form of higher density residential living and is inconsistent with maintaining the low density rural character. In this regard, any proposal involving “housing” must be consistent with “detached style” and the General Principles of Development Control under WLEP 2000.

More Detailed Assessment Comments on DFC

The previous modification of the proposal (MOD2016/0302) sought to reduce the volume of the basement fire compartment by providing new storage rooms in place of the existing car spaces located in the north-western corner of the basement. The applicant had already created basement window openings for light to the storage rooms. This gave the impression that the building had become 3 storeys of residential rooms with, an effective appearance of a residential flat building.

Conditions for the modification included requirement for the windows to have fixed horizontal louvers to enable ventilation and weather protection. This also retained the appearance of a genuine basement level. In addition to this, landscaping and low soil mounding was to be provided (by-way-of conditions) in front of the openings to maintain a two storey appearance for the building, since the previous building footprint excavation had increased the exposure of the basement area.

The current modification now seeks to provide four (4) doorway openings and four (4) self-contained lodger rooms, in lieu of the approved storage rooms. These basement rooms are also effectively “attached dwellings” (having independent access and internal cooking & living facilities).

Therefore, the modification also triggers the housing density controls of WLEP 2000 and would require the concurrence of the Director of Planning to enable any approval. The proposal is not supported and the inconsistency with the DFC and housing density controls warrant refusal of the application.

In summary, the modification fails the DFC in that it is inconsistent with the original approval for low intensity, low impact use, being a two storey boarding house within the similar appearance and setting of a previous two storey dwelling house approval (DA2009/1024). In addition to this, the proposal now creates significant breach of the housing density standards, contrary to the specific statement within the DFC.

Clause 12 What matters are considered before consent is granted?

- (1) *Before granting consent for development the consent authority must be satisfied that the development is consistent with:*
 - (a) *any relevant general principles of development control in Part 4, and*

(b) any relevant State environmental planning policy described in Schedule 5 (State policies).

(2) Before granting consent for development, the consent authority must be satisfied that the development will comply with:

(a) the relevant requirements made by Parts 2 and 3, and

(b) development standards for the development set out in the Locality Statement for the locality in which the development will be carried out.

(3) In addition, before granting consent for development classified as:

(a) Category One, the consent authority must consider the desired future character described in the relevant Locality Statement, or

(b) Category Two or Three, the consent authority must be satisfied that the development is consistent with the desired future character described in the relevant Locality Statement, but nothing in a description of desired future character creates a prohibition on the carrying out of development.

The modification proposal is inconsistent with clause 12 of the WLEP and is in breach of the housing density standards by more than 10% due to the creation of additional self-contained dwellings for the land.

BUILT FORM CONTROLS

The Built Form Controls of front and rear setbacks, building height and bushland setting are not considered relevant to the proposed modification, as all proposed works are not related to any expansion of the building footprint and walls or roofline.

The addition of new self-contained rooms however triggers the housing density standard which cannot be varied by more than 10% without the Concurrence of the Director of Planning. In addressing this concurrence the Director.

The matters which shall be taken into consideration in deciding whether concurrence should be granted are:

(a) whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the planning controls adopted by this plan.

Assessment Comment:

The proposal is not supported for approval and therefore may be refused by Council without further referral to the Director. The applicant has not addressed the considerations of this clause and the concurrence of the Director of Planning has not been otherwise gained by independent referral advice with or without the information provided by the applicant for the modification.

Clause 20 Variation

The proposal will trigger further variation to the housing density standard due to the inclusion of 4 new rooms capable of being occupied or adapted as to be self-contained domiciles within the basement area. The conclusion that the change of use involves the creation of new “dwellings” is based on the definition of a “dwelling” under the WLEP 2000, which is as follows:

“dwelling means a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.”

A review of the form, configuration and access arrangements of the 4 new rooms reveals the following:

- they have independent external access (front doors),
- they are physically separated from the remainder of the boarding house,
- they are not interconnected in any way with the common areas, corridors or other parts of the boarding house via a staircase and/or lift.

In fact the new rooms are so located and configured that they are capable of being occupied or used as separate domiciles to the boarding house proper.

In this regard, the applicant has not provided any submission to address the Clause 20 variation to demonstrate that consent may be granted to the proposed development, even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

A consideration of the following relevant General Principles of Development Control is provided below:

General Principles	Applies	Comments	Complies
CL42 Construction Sites	Yes	Existing conditions of consent are adequate to manage the likely impacts of any construction works.	Yes
CL48 Potentially Contaminated Land	Yes	Requirements of this clause have been addressed under the original consent.	Yes
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 existing conditions.	Yes
CL54 Provision and Location of Utility Services	Yes	No change is proposed. Applicant has sought site connection to Sydney Water infrastructure, by private line.	Yes
CL58 Protection of Existing Flora	Yes	Requirements of this clause have been addressed under the original consent	Yes
CL62 Access to sunlight	Yes	The modification works does not create additional overshadowing to adjacent land / dwellings.	Yes
CL63 Landscaped open space	Yes	The modification works will compromise existing conditions of the consent to	No

General Principles	Applies	Comments	Complies
		ensure appropriate landscaping to maintain and enhance the streetscape and DFC. The loss of landscaping along the front of the building will expose the basement and contribute to visual bulk.	
CL64 Private open space	Yes	Open space areas are provided for the building within the rural setting.	Yes
CL66 Building bulk	Yes	The modification does not proposal any change to the building footprint. However the works increase the exposure and visibility of the basement level by works that will conflict with the landscaped setting and screen planting around the base of the building to address building bulk.	No
CL70 Site facilities	Yes	Space for storage and other site facilities of bins, clothes drying and the like may be addressed by conditions.	
CL71 Parking facilities	Yes	The site has external (hard stand) parking and basement parking areas to accommodate cars.	Yes
CL78 Erosion & Sedimentation	Yes	Requirements of this clause have been addressed under the original consent.	Yes
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	Requirements of this clause have been addressed under the original consent.	Yes
CL83 Development of Known or Potential Archaeological Sites	Yes	Requirements of this clause have been addressed under the original consent.	Yes

SCHEDULES

Schedule	Applicable	Compliant
Schedule 8 Site analysis	Yes	Yes

OTHER RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS:

STATE ENVIRONMENTAL PLANNING POLICIES, REGIONAL ENVIRONMENTAL PLANS

POLICY	ASSESSMENT	YES / NO / N/A	COMPLIES
SEPP INFRASTRUCTURE	Is the proposal for a swimming pool, or Within 30m of an overhead line support structure? Within 5m of an overhead power line?	No	N/A

EPA REGULATION CONSIDERATIONS:

Regulation Clause	Applicable	Manageable by conditions
Clause 54 & 109 (Stop the Clock)	N/A	N/A
Clause 92 (Demolition of Structures)	Yes	Yes
Clause 92 (Government Coastal Policy)	N/A	N/A
Clause 93 & 94 (Fire Safety)	Yes	Yes
Clause 94 (Upgrade of Building for Disability Access)	Yes	Yes
Clause 98 (BCA)	Yes	Yes

REFERRALS

Referral Body Internal	Comments	Consent Recommended
Development Engineers	Council's Development Engineer has advised of no additional or modified conditions recommended.	Yes
Health and Protection (Unsewered Lands)	Council's Health and Protection (Unsewered Lands) Officer has advised of no additional or modified conditions recommended.	Yes

Referral Body External	Comments	Consent Recommended
Ausgrid	The modification proposal was referred to Ausgrid. No	Yes

Referral Body External	Comments	Consent Recommended
	response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.	

APPLICABLE LEGISLATION/ EPI'S /POLICIES:	
EPA Act 1979	Yes
EPA Regulations 2000	Yes
Local Government Act 1993	Yes
SEPP Infrastructure	Yes
WLEP 2000	Yes
WDGP 2000	Yes

Section 79C "Matters for Consideration"	
Section 79C (1) (a) (i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 79C (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	N/A
Section 79C (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 79C (1) (a)(iiia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	N/A
Section 79C (1) (a) (iv) - Have you considered all relevant provisions of any Regulations?	Yes
Section 79C (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	Yes
Section 79C (1) (c) – Is the site suitable for the development?	Yes
Section 79C (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regs?	Yes
Section 79C (1) (e) – Is the proposal in the public interest?	Yes

SECTION 2 – ISSUES

PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the EPA Regulation 2000 and the applicable Development Control Plan.

As a result of the public exhibition of the application Council received two (2) submissions from the following.

Name	Address
Andrew Lowry	Covenant Christian School, 212 Forest Way Belrose
C Harris	c/- Belrose Rural Community

The issues raised in the submission have been summarized and considered as follows

Issue: *The proposed modification creates a third habitable storey and the new rooms are apartments that are separately accessible from the other boarding house rooms and facilities.*

Response: It is concurred that the modification will create a third habitable level and also create additional dwelling style apartments for the building, since the rooms have self-contained facilities and are isolated from the other ground and first floor boarding rooms. This issue is further addressed under the heading Desired Future Character within this report.

Issue: *The previous use of the basement section for storage was appropriate.*

Response: Council supported the conversion of the car spaces to storage rooms on the basis that this was consistent with the approved use of the basement for a garage (car parking storage). The change to habitable rooms is not consistent with the original approval or prior modification (and reasons for approval). Therefore, the proposed changes are not substantially the same in maintaining the integrity of conditions and ensure consistency with the WLEP 2000.

Issue: *The plans do not show pathways or sections for the new accommodation areas.*

Response: The external pathway areas may be addressed by conditions (BCA compliance with the Construction Certificate) and section plans are not required since the proposal is not changing the internal levels or exterior wall locations.

Issue: *The stair does not have adequate fire separation and plumbing / waste lines were placed in the slab during construction.*

Response: Compliance with the BCA is a standard requirement that is capable of being addressed at Construction Certificate stage. Fire separation, water supply, drainage and waste manage can be appropriately addressed through the construction certificate process to ensure compliance with Australian Standards. This issue may be addressed by existing or modified conditions and does not carry determining weight.

Issue: *The application does not address the relevant legislative provisions as it is no longer a boarding house and is being advertised as “apartment accommodation”.*

Response: The basement level boarding rooms effectively change the building into an apartment style building having a basement level of four units with two levels above containing 31 accommodation rooms, including a manager’s room. The proposed modification jeopardises the original consent, being specifically for a “boarding house” and not a generic development that is a manifestation of a residential flat building containing multiple dwellings within 3 storeys.

Issue: *There are discrepancies on the other plans, including the Statement of Environmental Effects submitted with the application showing floor layouts for ground level and first floor level.*

Response: The Section 96 does not rely on the other plans submitted with the modification documents. The relevant changes only apply to the basement plans and north elevation. Descriptive anomalies / errors in the statement of environmental effects have been identified and do not have determinative weight. Sufficient detailed information is provided to enable an assessment of the works proposed in the context of the existing approved development.

Issue: *The physical state of the roadworks along the frontage of the site are in a poor condition and continue to deteriorate without proper kerb and gutter due to erosion and the intensity of residential development work on the site.*

Response: This issue may be addressed by existing or modified conditions and does not carry determining weight. Council undertakes routine road engineering work and inspections in the area to ensure road conditions are appropriately maintained.

SECTION 3 – SITE INSPECTION ANALYSIS



SITE AREA: 1.64 hectares

Detail existing onsite structures: The land is currently occupied by a building erected for the purposes of a “boarding house”, with associated car parking and landscaping.

“boarding house:

(a) means any premises that:

- (i) are wholly or partly let as a lodging for the purposes of providing the occupants with a principal place of residence, and
- (ii) are used and occupied by at least 4 long term unrelated residents, and
- (iii) include a communal living space used for eating and recreation, and
- (iv) are not licensed to sell liquor, and
- (b) does not include premises that have been subdivided or in which there is separate ownership of parts of the premises.”

Site Features: Vegetation on west and south boundaries; rock outcrops

Site constraints and other considerations

Bushfire Prone?	Yes
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Site constraints and other considerations

Flood Prone?	No
Affected by Acid Sulphate Soils	No
Located within 40m of any natural watercourse?	No
Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW Coastal Policy?	No
Located within 100m of the mean high watermark?	No
Located within an area identified as a Wave Impact Zone?	No
Any items of heritage significance located upon it?	No
Located within the vicinity of any items of heritage significance?	No
Located within an area identified as potential land slip?	No
Is the development Integrated?	No
Does the development require concurrence?	No
Is the site owned or is the DA made by the "Crown"?	No
Have you reviewed the DP and s88B instrument?	Yes
Does the proposal impact upon any easements / Rights of Way?	No

SITE INSPECTION / DESKTOP ASSESSMENT UNDERTAKEN BY:

Does the site inspection confirm the assessment undertaken against the relevant EPI's?

Yes

Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?

No

Are there any existing unauthorized works on site?

No

If YES has the application been referred to compliance section for comments?

N/A

A. Keller.



Signed

Date 12.2.2018

Alex Keller, Principal Planner

SECTION 4 – APPLICATION DETERMINATION

Conclusion:

The proposal has been assessed against the relevant matters for consideration under Section 79C and 96(1A) of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions. The proposal is inconsistent with the Warringah LEP 2000 and is not supported pursuant to Section 96(1A) of the EP&A Act 1979.

RECOMMENDATION - REFUSAL

That Council as the consent authority:

REFUSE MODIFICATION APPLICATION No. MOD2017/0162 TO MODIFY DEVELOPMENT CONSENT No. DA2013/0587 for the following reasons:

1. Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are inconsistent with the provisions of the *Warringah Local Environmental Plan 2000*, namely Clause 12(3)(b) and Clause 20. In this regard, the proposal is inconsistent with the Desired Future Character (DFC) Statement of the C8 Belrose North Locality in that the modifications involve the creation of “dwellings” (as defined) which constitute “housing” (as defined), which does not satisfy the requirement under the DFC to be detached style housing and conforming to the housing density standard.
2. Pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act 1979*, the modifications involve the creation of “dwellings”, which will result in a form of development that is not “substantially the same development” as the boarding house development that was originally approved under Development Consent No. DA2013/0587.
3. Pursuant to Section 79C (1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest in that the proposed modifications are inconsistent with the DFC and the housing density standards applying to the C8 Belrose North Locality and is thereby inconsistent with Clause 12(3)(b) and Clause 20 of the *Warringah Local Environmental Plan 2000*.
4. Pursuant to Section 5(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal is inconsistent with the Clause 5 Objects of the Act in relation to the orderly development of land.

“I am aware of Council’s Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest”



Signed

Date: 12 February 2018



Alex Keller, Principal Planner

The application is determined under the delegated authority of:

A handwritten signature in blue ink, appearing to read "Steve Findlay", written over a light blue grid background.

Signed

Date: 12 February 2018

Steve Findlay, Planning Assessment Manager