

**RESIDENTIAL DEVELOPMENT – SECTION 4.55(1A) ASSESSMENT REPORT**

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| <b>Modification Application Number:</b> | MOD2019/0226                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Development Application Number:</b>  | DA2013/0587                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Planner:</b>                         | Nick Keeler                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Property Address:</b>                | Lot 2506 DP 752038, Lot 2506 Bundaleer Street BELROSE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Proposal Description:</b>            | Modification of Development Consent DA2013/0587 granted for construction of a boarding house                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Recommendation:</b>                  | <b>REFUSAL</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Clause 20 Variation:</b>             | Not supported                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Proposal in Detail:</b>              | <p>The application is made pursuant to Section 4.55(1A) of the Environmental Planning &amp; Assessment Act 1979.</p> <p>In detail, the modification relates to the approved accommodation rooms (MOD2017/0162) within the basement carpark. The applicant is seeking to install kitchens into four (4) additional accommodation rooms and provide each room a small area of private open space on the northern elevation of the boarding house.</p> <p>The approved accommodation rooms were previously basement level storage rooms. However, in 2017 the applicant sought to convert the storage rooms to self-contained accommodation rooms. This application was refused by Council, but, on appeal, was approved by the Land &amp; Environment Court through a Section 34 conciliation on the condition the kitchens were deleted from the proposal and access to the rooms were gained internally within the boarding house.</p>                                                                                                                                                                  |
| <b>History and Background:</b>          | <p><b>Development Application No.2013/0587</b> for “Construction of a boarding house” issued by Council (Deferred Commencement) on 11 December 2013.</p> <p>Currently the boarding house approved under DA2013/0587 (including subsequent modifications) is configured as follows:</p> <ul style="list-style-type: none"><li>• 31 self-contained accommodation bedrooms, including a Manager’s apartment, 4 accommodation bedrooms in the basement (not self-contained), common dining / living rooms, at-grade and basement parking for 19 car spaces and 7 motorbike spaces. Basement bicycle parking, outdoor open space, drainage, landscaping and service connections.</li><li>• The original consent has been subject to a number of modifications to address BCA matters and other incidental changes to the boarding house.</li></ul> <p>(MOD2015/160, MOD2016/0302, MOD2017/0028, MOD2017/0100, MOD2017/0162)</p> <p><b>Development Application No.DA2014/1177</b> proposed a larger boarding house than what was approved under DA2013/0587. This application was refused on 13 May 2015.</p> |

**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                    | Revision | Dated      | Drawn By             |
|----------------|--------------------------|----------|------------|----------------------|
| M-101          | Site Plan                | D        | 9 May 2019 | Vigor Master Pty Ltd |
| M-200          | Parking Floor Plan       | E        | 9 May 2019 | Vigor Master Pty Ltd |
| M-301          | South & North Elevations | E        | 9 May 2019 | Vigor Master Pty Ltd |
| M-302          | East & West Elevations   | E        | 9 May 2019 | 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 | 14DAYS                      |
| Submissions Received:    | YES | Number of Submissions:<br>2 |
| Cost of Works:           | Nil |                             |
| Section 7.12 Applicable: | No  | TOTAL: N/A                  |

| Section 4.55(1A) EPA ACT 1979                                                                                                                                                                                                                    |            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Section 4.55(1A) (a) – Is the Modification to consent of Minimal Environmental impact?                                                                                                                                                           | YES        |
| Section 4.55(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 4.55(1A) (c) & (d) – Has the application been on Public Exhibition?<br>Have you considered any submissions?                                                                                                                              | YES<br>YES |
| Section 4.55(3) – Have you considered such of the matters referred to in section 4.15(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 development consistent with the Locality's Desired Future Character Statement? **NO**

The assessment of the application concludes that the modified proposal, with the inclusion of the proposed kitchens, constitutes the addition of four “dwellings” within the basement level of the existing boarding house development.

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.

### Detailed Assessment Comments on DFC

The previous modification of the proposal (MOD2017/0162) sought to convert the existing basement storage rooms to self-contained accommodation rooms. This proposal was refused by Council on the basis that it did not conform with the DFC or the provisions of s4.55(1A) of the EP&A Act. The applicant appealed the determination, which led to a Section 34 conciliation. The outcome of this conciliation was that the new accommodation rooms could be approved, on the condition the kitchens were removed from the proposal. This had the effect of not classifying the rooms as “dwellings” (as defined by WLEP 2000), thus not increasing the housing density on the site. Access to each room was also required to be internally within the boarding house. No separate external access was permitted.

The current modification now seeks to re-install the kitchens required to be removed under the previous modification proposal into each of the four accommodation rooms and install external access doors to each room. The current modification also proposes to construct a small area of private open space for each room on the northern side of the building.

Therefore, the modification 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 kitchens within the four accommodation rooms. This means each room is capable of being occupied or adapted as to be self-contained domiciles. 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."*

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**

| General Principles                                                                   | Applies | Comments                                                                                                                     | Complies |
|--------------------------------------------------------------------------------------|---------|------------------------------------------------------------------------------------------------------------------------------|----------|
| <b>CL42 Construction Sites</b>                                                       | YES     | Existing conditions of consent are adequate to manage the likely impacts of any construction works.                          | YES      |
| <b>CL48 Potentially Contaminated Land</b>                                            | YES     | Requirements of this clause have been addressed under the original consent.                                                  | YES      |
| <b>CL52 Development Near Parks, Bushland Reserves &amp; other public Open Spaces</b> | YES     | National Park land is within 50m of the site. Requirements of this clause have been addressed under the existing conditions. | YES      |
| <b>CL54 Provision and Location of Utility Services</b>                               | YES     | No change is proposed. Applicant has sought site connection to Sydney Water infrastructure, by private line.                 | YES      |
| <b>CL58 Protection of Existing Flora</b>                                             | YES     | Requirements of this clause have been addressed under the original consent.                                                  | YES      |
| <b>CL62 Access to sunlight</b>                                                       | YES     | The modification works does not create additional overshadowing to adjacent land / dwellings.                                | YES      |

| General Principles                                                                                     | Applies | Comments                                                                                                                                                                                                                                                                                                                                                                                                                        | Complies |
|--------------------------------------------------------------------------------------------------------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| <b>CL63 Landscaped Open Space</b>                                                                      | YES     | The modification works will compromise existing conditions of the consent to 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.                                                                                                                                                    | NO       |
| <b>CL64 Private open space</b>                                                                         | YES     | Each room is proposed to have its own area of private open space.<br><br>The minimum private open space dimensions for dwellings with 1 bedroom located at ground level is a total of 35m <sup>2</sup> with minimum dimensions of 3 metres.<br><br>The proposed private open space does not meet this requirement in terms of minimum dimensions and area. No variation to this requirement has been sought by the application. | NO       |
| <b>CL66 Building bulk</b>                                                                              | 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       |
| <b>CL70 Site facilities</b>                                                                            | YES     | Space for storage and other site facilities of bins, clothes drying and the like may be addressed by conditions.                                                                                                                                                                                                                                                                                                                | YES      |
| <b>CL71 Parking facilities (visual impact)</b>                                                         | YES     | The site has external (hardstand) parking and basement parking areas to accommodate cars.                                                                                                                                                                                                                                                                                                                                       | YES      |
| <b>CL78 Erosion &amp; Sedimentation</b>                                                                | YES     | Requirements of this clause have been addressed under the original consent.                                                                                                                                                                                                                                                                                                                                                     | YES      |
| <b>CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service</b> | YES     | Requirements of this clause have been addressed under the original consent.                                                                                                                                                                                                                                                                                                                                                     | YES      |
| <b>CL83 Development of Known or Potential Archaeological Sites</b>                                     | 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<br>INFRASTRUCTURE                                              | Is the proposal for a swimming pool, or<br>Within 30m of an overhead line support<br>structure?<br><br>Within 5m of an overhead power line? | NO           | N/A      |

**EPA REGULATION CONSIDERATIONS:**

| Regulation Clause                                     | Applicable | Conditioned |
|-------------------------------------------------------|------------|-------------|
| 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<br>Internal | Comments                                                                                          | Consent<br>Recommended |
|---------------------------|---------------------------------------------------------------------------------------------------|------------------------|
| Building<br>Assessment    | Council's Building Assessment has advised of no additional or<br>modified conditions recommended. | YES                    |

| Referral Body<br>External | Comments                                                                                                                                                                                                                   | Consent<br>Recommended |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Ausgrid                   | The modification proposal was referred to Ausgrid. No response has<br>been received within the 21 day statutory period and therefore, it is<br>assumed that no objections are raised and no conditions are<br>recommended. | YES                    |

| <b>APPLICABLE LEGISLATION/ EPI'S /POLICIES:</b> |     |
|-------------------------------------------------|-----|
| EPA Act 1979                                    | YES |
| EPA Regulations 2000                            | YES |
| Local Government Act 1993                       | YES |
| SEPP Infrastructure                             | YES |
| WLEP 2000                                       | YES |
| WDCP 2000                                       | YES |

| <b>Section 4.15 "Matters for Consideration"</b>                                                                                                                                                    |     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Section 4.15 (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?                                                                           | YES |
| Section 4.15 (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument                                                            | N/A |
| Section 4.15 (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan                                                                          | YES |
| Section 4.15 (1) (a)(iia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement                                                                      | N/A |
| Section 4.15 (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?                                                                                                         | YES |
| Section 4.15 (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 4.15 (1) (c) – Is the site suitable for the development?                                                                                                                                   | YES |
| Section 4.15 (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regs?                                                                                        | YES |
| Section 4.15 (1) (e) – Is the proposal in the public interest?                                                                                                                                     | YES |

#### **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:**

There are no draft environmental planning instruments applicable to the proposed development.

## **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 Association           |

**Issue:** *The physical state of the road 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.

**Issue:** *The proposal does not provide any details of ventilation for the bathroom for the proposed kitchenettes.*

**Response:** Compliance with the BCA is a standard requirement that is capable of being addressed at Construction Certificate stage.

**Issue:** *There are no details of any proposed air conditioning for these rooms; therefore there are no means of assessing any noise from any air- conditioning units that will affect the other boarders or the adjoining residents*

**Response:** Due to the distance between dwellings in this locality, it is unlikely any air conditioning plant equipment would result in an impact to the amenity of surrounding properties.

**Issue:** *There is no landscaping proposed for the private open space. The proposed fencing for the proposed private open space for each of the 4 units is near the entrance to the building and is out of character with the building and is out of character with the locality.*

**Response:** The proposed private open space does not comply with the minimum size requirements and is not supported as no variation request has been submitted. The proposed fencing of the private open space is considered unacceptable and will be detrimental to the visual quality of the locality. The proposed fencing is not supported.

This issue warrants refusal of the application.

**Issue:** *The provision of a separate external openings for each of these 4 units will result in these rooms becoming separate units. The planning controls in this locality do not provide for separate units. The existing development already exceeds the housing density standard in Locality C8 North Belrose.*

**Response:** As discussed in this assessment report, the inclusion of kitchens and external access to the units means each room is capable of being occupied or adapted as to be self-contained domiciles. This is unacceptable in terms of the exceedance of the housing density control. No variation to this control has been submitted by the application.

This issue warrants refusal of the application.

**Issue:** *An internal corridor has been included on the new plans. Council's required aisle width requirements seems to be compromised by this intrusion into the car parking area, this corridor seems to be the only access for these apartments. As this development sits within a fire prone area this is a risk to the occupants of the rooms.*

**Response:** This corridor was proposed and approved under the previous modification application.

**Issue:** *We note that the only external opening to the units is to be an unprotected sliding door. By unprotected we mean that when it is raining or windy the door may need to be closed, this is excluding natural ventilation.*

**Response:** Due to the concern regarding external access to the rooms, the external doors are not supported. These opening are required to be consistent with past approvals.

**Issue:** *In 2018 new onsite carparking requirements came into force. The assessment of this modification should include as assessment of the carparking requirements in accordance with the new requirements.*

**Response:** Updated car parking requirements under SEPP (Affordable Rental Housing) 2009 does not apply to the site. WLEP 2000 does not provide a specific parking provision for boarding house developments. As such, parking requirements are based on merit. Using SEPP (Affordable Rental Housing) 2009 parking requirements as a guide, the development, including the 4 basement rooms, exceeds the minimum parking requirement.

**Issue:** *There are no details in regard to external lighting for these 4 rooms. There has been some work already completed with the provision of electrical wiring protruding through the external wall adjoining the areas of the proposed private yards. The control of external courtyard light spillage is essential and full details should be provided for this modification.*

**Response:** This issue is capable of being addressed through consent conditions.

**Issue:** *With the addition of these 4 rooms and now the proposed modifications we are not aware of any changes to the Management Plan to show how these extra units will be managed. No details are provided in this Modification application.*

**Response:** No amendments to the approved technical reports and Plan of Management have been submitted. It is unclear whether the 4 rooms will result in a substantial change to the assessment results of these reports. As such, the modification proposal cannot be supported.

### 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 |
| Flood Prone?                              | NO  |
| Affected by Acid Sulphate Soils           | NO  |

| Site constraints and other considerations                                                                                                                                                      |     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 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? | YES |
| Are there any existing unauthorised works on site?                                                                                         | YES |
| If YES, has the application been referred to compliance section for comments?                                                              | YES |



Signed

Date 26/07/2019

**Nick Keeler, Planner**

## SECTION 4 – APPLICATION DETERMINATION

### Conclusion:

The proposal has been assessed against the relevant matters for consideration under Section 4.15 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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

### RECOMMENDATION – REFUSAL

**That Council as the consent authority:**

**REFUSE MODIFICATION APPLICATION No. MOD2019/0226 TO MODIFY DEVELOPMENT CONSENT No. DA2013/0587** for the following reasons:

1. Pursuant to Section 4.15 (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 4.55 (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 4.15 (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 1.3 (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 26/07/2019

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**Nick Keeler, Planner**

The application is determined under the delegated authority of:



Signed

Date 31/07/2019

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**Anna Williams, Planning Assessment Manager**