

## **Objections to DA18/1300 for a boarding house at 17 Best Crescent, Kirrawee**

Mrs Galvin lives at 15 Best Crescent, Kirrawee in a single storey dwelling. She has lived with her family in that house for the past 10 years.

It is acknowledged the proposed DA is to be assessed against the provisions of the EPA Act 1979, SEPP (ARH), SSCLEP 2015 and the SSCDCP 2015.

The proposed boarding house is to be located immediately adjacent to Mrs Galvin's property on the western side.

### **SSLEP 2015**

The proposal is located in a R2-Low Density Residential zone.

The proposed development does not meet the material objectives of the R2 zone. In particular, it does not, 'provide for the housing needs of the **community** (emphasis added) in that accommodation to be provided could and would probably sourced from beyond the community. The very nature of the SSCLEP is directed to the Sutherland Shire and its residents/community.

There is no compulsion in the housing needs of people beyond the community to have their needs catered for in a boarding house in the Sutherland Shire. It is suggested the aims and objectives of the LEP are directed towards the welfare of the community. In so saying it is suggested that the interests of the Sutherland community should be of paramount concern to the majority of land use decisions. In such instances the immediate community, residents and the local neighbourhood will have to cope with the increased demands, in all its forms, created by the introduction of a boarding house that relatively speaking, in this particular neighbourhood, is a gross intensification of the land use.

The proposal will, again, not provide facilities or services to meet the day to day needs of local residents as stated in the LEP. In reality, the increase number of occupants will place a greater demand on the lifestyle and well-being of local residents.

The final objective in the R2 zone is cause of greatest concern and is the product of the objectives referred to above. The proposal will not ensure the single dwelling and neighbourhood character of the zone are maintained over time and not diminished by the cumulative impact of developments of this nature and intensity.

Although it is acknowledged a boarding house is not a form of multi dwelling housing, nevertheless the cumulative impact of similar boarding house in the neighbourhood can and does change the fundamental characteristics of both the neighbourhood of the Zone 2.

In the instant case, the proposed boarding house can accommodate a maximum of twenty three (23) persons, including a manager, or twenty four (24) persons including the manager's partner, for what can effectively be described as a two-story single dwelling structure.

Not far from the subject site, at 168 Oak Road, Kirrawee a DA has been filed at council to construct a boarding house to accommodate up to 100 persons and in excess of 35 motorised vehicles. The applicant has suggested the development can be assessed as multi dwelling housing. This categorisation of the proposal for assessment purposes is legally incorrect as the proposed development as a boarding house does NOT fall within the definition of multi dwelling housing.

The intensification of use of a fifty (50) room boarding house with some 30 odd motorised vehicles parked at basement level is akin to a residential flat building for all intents and purposes. Furthermore, the PoM for this DA (and indeed the SEE) is absent any comment or explanation addressing the basic and fundamental rationale of the SEPP (ARH) for a boarding house to cater for low income occupants.

It is important in assessing the subject DA to take into account the proposed DA at Oak Road to draw to council's attention the significant cumulative impact these two boarding houses will have in the R2 Low Density residential zone.

The distance between these two boarding houses is approximately 250 m, a distance not considered far, in the same neighbourhood and located in R2 Low Density zone.

It is suggested the cumulative impact of at least 124 people, (akin to approximately 30 odd new dwelling houses), in the neighbourhood will not be conducive to what residents expect from buying houses and living in low density residential zone. It is posited, should both DA's be approved or even one it will set a most undesirable precedent for additional boarding houses to be founded in this particular neighbourhood of Kirrawee.

As mentioned above, the cumulative impact on local residents and the wider neighbourhood will have a deleterious effect on their well-being, the enjoyment of their properties and the value of their properties. The economic effect is a criteria to be accounted for pursuant to s1.3(a) of the EPA Act 1979.

In *Arxidis Pty Ltd v Randwick City Council: Arthur Wong Pty Ltd – v – Randwick City Council (2017) LEC 1463* the court refused a boarding house on the grounds of the DA not having regard to the objectives of the zone. Other matters contributing to the refusal were the compelling nature for parking by existing residents, intensification of noise impacts in the low-density zone, generation of waste and the parking demands over existing residents.

It is submitted similar impacts will be experienced by the residents of Kirrawee were the 2 boarding houses approved. A boarding house containing up to 24 persons with eight (8) cars, 4 motorcycles and 4 bicycles in what is effectively a single dwelling structure is not similar to the land use of a single dwelling house with R2 Low Density zone. It is posited no single dwelling would accommodate 24 persons with 8 vehicles let alone the motor cycles and cycles. If such a development is not considered an intensification of use of land it beggars the imagination what form of lawful development would constitute such an intensification in a Low-Density residential zone? In the subject case, with the addition of the Oak Road development, the effect would be the beginnings of a transformation of the Low-Density zone to a medium density zone.

It would not be an exaggeration to suggest the local environment, restricting it to the R2 zone would not contain a single dwelling house providing accommodation for 24 persons, 8 motor vehicles, 4 motor cycles and 2 bicycles.

#### Clause 4.4 – FSR

Clause (1) of the fsr objectives is directed to controlling development density and the intensity of land use by taking account of the amenity of adjoining land and the capacity of road networks to accommodate vehicles and pedestrian traffic. The applicant has failed to address this objective in its DA. Currently, Best Crescent is used by commuters as a convenient locality for on-street parking. The town house development, virtually opposite the subject site, although having off-street parking frequently use Best Crescent and adjoining roads to park occupant's cars. Visitors to the town houses and, indeed, local

residents also park in the Crescent and neighbouring streets. It is not uncommon for occupants of the townhouses to park on the street as a matter of convenience, rather than use their basement parking spaces. There is nothing to stop or prevent occupants who find it more convenient to park on the street rather than use the parking provisions at the rear of the proposed boarding house.

My client is regularly faced with congested parking on local streets with the attendant noise of constant vehicular movements in the early and late hours of the day.

It should also be noted, the configuration of the Best Crescent and manner of landscaping on public land has reduced on street parking facilities. This has been achieved by council planting 3 trees in front of the proposed development, thereby reducing the on street parking. All of which accounts for increased parking opposite and adjacent to my client's property. This problem also extends to local residents who do not have the luxury of off street parking resulting in not being able to park within close proximity to the home.

Should the Oak Road boarding house also be approved such approval will inevitably lead to additional accumulative vehicular traffic in the neighbourhood with the attendant on street parking problems identified above.

Under SEPP-(ARH), conspicuous by its absence, the applicant's SEE and other documents, is there any discussion addressing the fundamental and determining factor of the SEPP being affordable low cost housing.

In Gray-v-Sutherland Shire Council the very question of the eligibility of occupants was the determinative factor in the applicant's appeal of the Commissioners decision to refuse the DA.

In the Class 4 proceedings the court recognised the need to address the question of income and occupation of boarding rooms.

In the subject DA the applicant simply states in its Plan of Management that boarders will be selected and priority will be given to potential boarders on very low to moderate incomes. Unfortunately, the issue of 'priority' is not advanced or clarified. In my client's submission, there is nothing to prevent letting rooms to higher income earners after the "selection" process which, incidentally, is not discussed or elaborated upon in the PoM, and where the

question of priority can be over looked on a multiplicity of reasons. There is no guarantee low income earners, as defined in clause 6 of the SEPP, will occupy the rooms. By all accounts, the boarding house will rent rooms to those willing to pay the rent.

The proposal is by all accounts a commercial enterprise and should not be approved. The applicant should seek alternative premises where the proposed use will not introduce the form and manner of problems alluded to above.

### **SSCDCP-2015**

The provisions of the DCP do not extend to boarding houses.

It is totally inappropriate for the applicant to suggest in its SEE that the boarding house should be assessed against the controls and standards of a single dwelling house. The definition of the two entities are quite dissimilar in terms of their use and purpose. Therefore, the commentary in the SEE to the DCP should be disregarded for all intents and purposes.

### **SEPP (ARH)**

As mentioned above a single building on a standard residential block, housing 24 persons with parking for 8 cars, 4 motorcycles and 4 bicycles will have a deleterious effect on my client.

It is conceded the proposal meets the various standards of the SEPP including those where compliance dictates council cannot refuse consent.

Although clause 29 addresses the standards that cannot be the subject of refusal of a boarding house council can refuse the DA if it does not comply with or is in conflict with cl 3 of the policy.

It is submitted the DA does not, in this particular case support local business centres by providing ARH for workers close to places of work cl 3(f). There are no local business centres in the vicinity of 17 Best Crescent. As such, the boarding house is not required in the area. Similarly, the DA does not provide housing for the homeless and other disadvantaged people (cl 3 (g) (2.51).

The question of where the occupants of AHR accommodation are to be drawn from is restricted in the policy to clause 6, the definition of “affordable housing”.

The applicant in this DA has not unequivocally stated all occupants WILL be drawn from the income thresholds of the SEPP.

The same can be said for the Oak Road DA. The PoM for that DA conveniently ignores the definitional categorisation of affordable housing which must be considered bearing in mind the cumulative impact of the two proposed boarding houses.

### **EP&A Act 1979**

Based on the above arguments, the proposal fails to satisfy the material aims and objectives of the SEPP (ARH), Council's LEP 2015, the material objects of the EPA Act.

Section 1(3)(a),(b),(c) and (d) have not been met by the proposal.

The social impact on local and neighbouring dwellings is not in the better interests of the occupants and the applicant has failed to take into consideration the social impact. Rather there is constant assurance the proposal will not impact unduly, or at all, on neighbours and the locality.

The boarding house located in the low density residential zone catering for at least 18 persons, together with the large number of means of transport, is unconventional in the context and whose tenure is for a minimum 3 months will also impact on my client and neighbours from the uncertainty of unknown persons living in the boarding house. The proposal is not is not considered to be the orderly use and development of land in a low density residential zone.

The DA to erect a boarding house at 17 Best Street, Kirrawee should be refused on the basis of its large occupancy and traffic generation on what is a standard size but low density zone. The cumulative effect of this boarding house and the proposal at Oak Road is not conducive in a low residential zone and presents as an undesirable precedent in a low residential density zone.

The subject proposal will affect the well-being and the enjoyment of the benefits of Mrs Galvin's home. She has lived in Best Crescent 10 years.

Mrs Galvin will be exposed to unacceptable motor vehicular traffic during all hours of the day and night, on the basis of the boarding house driveway being located adjacent to her northern boundary. These features will place undue stress and anxiety on her well-being, to the benefit of the landlord generating income from the boarding house.

In Luxe Manly Pty Ltd v Northern Beaches Council (2016) LEC 156 the court referred to the judgment of Biscoe J in Maxnox Pty Ltd v Hurstville City Council (2006) 145 LGERA 373. His Honour stated ".....the Court must have regard to,

among other things, the public interest” and said “.... One of the objects of the EP&A Act which governs development applications, is to encourage proper development for the *“purpose of promoting the social and economic welfare of the community and a better environment”* (EP&A Act, s5). In my view the legislature is less concerned in a merits review such as this with winners and losers, than with achieving the best community outcome with as little formality and technicality as possible” (at 17).

The proposed development is also unacceptable pursuant to s4.15(1)(e) of the EP&A Act in that the application is not in the public interest, on the basis it will set an undesirable precedent.

For all the above reasons, the subject proposal should be refused on the grounds that the proposed boarding house is not in the interests of the community and a better environment.

Brian Phillips

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