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**Sent:** 5/06/2020 11:31:51 AM  
**Subject:** Submission to DA 2020/0431 4 Storey Mixed Use Building at 1129-1131  
Pittwater Road Dee Why  
**Attachments:** Objection letter final 5 June 2020.pdf;

Please find attached a submission prepared by Ingham Planning Pty Ltd on behalf of the Owner's Corporation of Strata Plan 58961 (1-5 Collaroy Street, Collaroy) with respect to DA 2020/0431 proposing a 4 storey mixed-use development at 1129-1131 Pittwater Road, Collaroy. We would appreciate your confirmation of receipt of this submission.

Regards Nick Juradowitch Ingham Planning P/L 5/6/20 0412617560



Our Ref: 20082

5<sup>th</sup> June 2020

The Chief Executive Officer  
Northern Beaches Council  
PO Box 82  
MANLY NSW 1653

Dear Sir/Madam

**Re: Submission to DA 2020/0431 4 Storey Mixed Use Building (2 commercial units & a boarding house) at 1129-1131 Pittwater Road, Collaroy**

This submission relates to DA 2020/0431 proposing demolition of existing buildings at 1129-1131 Pittwater Road, Collaroy and construction of new 4 storey mixed use building comprising basement car parking for 23 vehicles, 2 ground floor commercial units, 23 boarding house rooms on levels 1 and 2 and a caretakers unit on Level 3.

Our submission is lodged on behalf of the Owners Corporation of SP 58961, which comprises a strata-titled apartment complex at 1-5 Collaroy Street, Collaroy. Our client's property adjoins the development site to the west and provides vehicular access to the development site via a right-of-way (ROW) which extends north from Collaroy Street, through our client's ground floor car park.

We have reviewed the plans, supporting documentation and reports relating to the DA 2020/0431 and the applicable planning and development controls. We consider that the proposed development will have an adverse impact on the amenity of our client's property with respect to intensification of the use of the ROW, reduced aural and visual privacy and access to morning sun and diminished easterly outlook and views.

The eastern elevation of our client's apartment building extends along the rear boundary of the development site and properties to the south. Unit 44 in the uppermost northeast corner of our client's building has 2 east facing windows, serving a living/dining room and master bedroom. These windows are orientated directly towards the development site and currently enjoy views over the development site towards Collaroy Beach. At a lower level, in the central portion of the building are private terraces, located close to the southwest corner of the development site.



**Photo 1**, below shows the northeast portion of our client's building, as viewed looking southwest from the development site. In this location our client's building is located along the rear western boundary of the development site. Unit 44 and the east facing windows of this Unit are shown at the top of the photo.

**Photo 1 View of 1-5 Collaroy Street Adjoining the Rear Boundary of the Development Site**



**Photo 2**, below shows the existing private terraces on the eastern side of our client's property, looking southwest from the development site. These private terraces are located adjacent to the southwest corner of the development site and currently receive morning sun. Our client's existing ground floor car park is shown in the lower portion of **Photo 2**. The ROW access point to and from the development site is located a short distance to the right (north) of this photo view.

**Photo 2 View of Central Eastern Private Terraces at 1-5 Collaroy Street**





The adverse impacts on the amenity of our client's property are detailed in the following assessment.

### **Intensification of Use of Right-Of-Way within 1-5 Collaroy Street**

The development site obtains access via a ROW that extends north from Collaroy Street, through our client's ground floor car park to the development site. At the northern end of the ROW the ROW width narrows to 3.5m, where it extends east to the western boundary of the development site. In this location the ROW turns east, where it enters the development site, between 2 existing car spaces in our client's car park. Currently this ROW only carries a low volume of vehicular traffic generated from the development site.

While the north-south portion of the driveway is of sufficient width to accommodate 2 way traffic, the narrowing of the ROW at the entry/exit point to the development site does not allow for 2 way traffic movement and creates a conflict point for vehicles entering and leaving the site and potential for vehicle queuing within the ROW. This potential conflict issue is also identified in the Transport for NSW (TfNSW) submission lodged with Council, with respect to the proposed development. TfNSW correctly notes that the proponent has not demonstrated how this conflict is to be managed.

The proponent's Traffic Impact Assessment (TIA) estimates that the proposed development will generate 60 daily vehicle trips, which equates to more than a trebling of existing daily vehicle trips from the development site. Notwithstanding this, the TIA fails to consider the impacts of such traffic increase on the ROW, or the issue of a substantial intensification of use of the ROW.

The proposed intensification of the use of the existing ROW will adversely impact on our client's use of their own car park, reducing safety within the car park, creating potential for vehicular conflict at the northern end of the ROW, increasing traffic congestion within the car park and extending travel times into and out of the carpark for residents and visitors of our client's building.

Our client has sought legal advice with respect to the proposed intensification of the use of the ROW through our client's car park. This advice indicates that where the intensification materially interferes with the use of the ROW by others, such use of the ROW is unreasonable. Intensification of the use of a ROW arising from a development application (DA) also gives rise to the issue of whether such DA can be assessed and determined without the owner's consent to the use of the ROW as part of the DA.

In our opinion the proposed intensification of the use of the ROW would fall within the definition of development in the *Environmental Planning and Assessment Act* (EPA Act), which includes the use of land within the definition of development. Without the proposed use of the ROW for additional traffic from the development site, the proposed development could not proceed. Having regard to these circumstances, it is considered that the proponent's DA should include the ROW and the land occupied by the ROW, or alternatively a separate DA lodged for the proposed use of the ROW.



The issue of intensification of the use of a ROW has been addressed in the Land and Environment Court by Justice Paine in the proceedings *Huntington & Macgillivray v Hurstville City Council & Ors* [2004] NSWLEC 694. Justice Paine determined that intensification of the use of a ROW by the subject development site (Lot 32) burdening other land (in this case Lot A) requires development consent. Justice Paine further found that the Applicant needed to obtain the consent of the owner of the land burdened (Lot A) for a development application lodged for the development site (Lot 32).

Our client has not provided an owner's consent, nor been requested to provide an owner's consent for the DA that has been lodged for the development of 1129-1131 Pittwater Road, relating to the intensification of the use of the ROW. In such circumstances Council must either, reject the proponent's DA, or decline to assess and determine the DA until an owner's consent from our client is provided. It should be noted that the absence of an owner's consent cannot be dealt with by way of a deferred commencement condition (see *RVA Australia Pty Ltd v Sutherland Shire Council* [2017] NSWLEC 1161).

### **Building Height Encroachment**

The Warringah Local Environmental Plan (WLEP 2011) prescribes a maximum building height of 11m for the subject land. An 11m maximum building height provides for a 3 storey mixed use building. The envisaged 3 storey building height is further supported by the Warringah Development Control Plan (WDCP), which envisages a maximum of 3 storeys in areas with a prescribed height limit of 11m.

The proposed development provides for a 4<sup>th</sup> storey comprising a large caretaker's apartment. The 4<sup>th</sup> storey extends up to a height of 13.2m some 20% more than the prescribed height limit of 11m. Such an exceedance could not be described as minor. It is also accepted town planning law that where a development standard is breached, it should be demonstrated in the clause 4.6 submission to vary a development standard, to the consent authority's satisfaction that strict compliance is unnecessary and unreasonable and that the breach results in minimal adverse environmental impact.

The proposed 4<sup>th</sup> storey results in increased shadow and view impacts to our client's property and to the mixed-use building located on the adjoining property to the south of the development site at 1125-1127 Pittwater Road. It is also noted that the caretaker's apartment is large in size, with a floor area of some 158m<sup>2</sup>, with 3 bedrooms and large living area. In our experience caretaker's apartments are typically modest in size, generally less than 90m<sup>2</sup> and limited to 1 or 2 bedrooms.

The adverse shadow and view impacts arising from the proposed 4<sup>th</sup> storey could be mitigated to some extent by reducing the size of the caretaker's flat to a maximum of 90m<sup>2</sup>, within increased boundary setbacks. Acceptable solar access to our client's eastern private terraces and reduced view impact to the east facing windows of Unit 44 in our client's building could be achieved by increasing northern side setback of the proposed caretaker's flat from 4.8m to 8m.



### **View Impacts Arising from the 4<sup>th</sup> Storey**

Unit 44 on the top floor northeast corner of our client's apartment building enjoys easterly views towards Collaroy Beach and the Pacific Ocean across the rear boundary of the development site, above the existing buildings on the site. A building with a compliant height of up to 11m on the development site would allow retention of a reasonable proportion of this view.

The easterly views from Unit 44 are significant views and are not across a side boundary. A significant proportion of the view obstruction results from the breach of the maximum building height control. In such circumstances a height breach of the magnitude proposed should not be supported on the grounds of adverse view impact. Reasonable view sharing in accordance with the Tenacity view sharing principles could be achieved by either requiring the proposed building to comply with the 11m maximum building height control, or by amending the plans to provide for a substantial increase in northern side setback of the 4<sup>th</sup> storey to 8m.

### **Aural and Visual Privacy Impacts**

Council's planning controls in the WDCP at Control D8 aim to ensure reasonable neighbour aural and visual privacy to habitable rooms and adjoining private open space. The proposed development provides for 12 west facing boarding room balconies located as close as 5m to the eastern side of our client's apartment building. The northernmost balconies are proximate to the east facing windows and north facing balcony of Unit 44 on the top floor level northeast corner of our client's building. The southernmost balconies are proximate to and at a similar level to the eastern terraces in the central portion of our client's building.

Given the proximity of the proposed balconies to Unit 44 and the eastern private terraces, there will be material adverse aural and visual privacy impacts to those locations arising from the proposed balconies, due to inadequate separation distance. The SEPP 65 Apartment Design Guide (ADG) requires a minimum 12m separation distance between habitable rooms/balconies/terraces for residential flat buildings up to 4 storeys in height. The proposed separation distance is grossly inadequate and represents a poor design outcome in terms of privacy impacts. Accordingly, the proposed west facing balconies should be deleted. This would also enable a marginal increase in room size to provide a compliant internal area of 12m for all boarding house rooms, with a rear western setback of at least 7m achieved.

While the west facing glazing to the proposed boarding rooms also exhibits non-compliant separation distance, the potential for aural privacy impacts is significantly less than would be the case for the proposed balconies. Nevertheless, the limited separation distance still gives rise to visual privacy impacts. Visual privacy impacts from west facing glazing can be addressed by the provision of slatted privacy screens, where there are opportunities for more direct overlooking of the east facing windows of Unit 44 and the eastern private terraces. The 3 southernmost rooms on each level should have vertical slats angled to preclude views to the south west, while the 3 northernmost rooms on each level should have vertical slats angled to preclude views to the northeast.





## Conclusions

The proposed 4 storey mixed use development at 1129-1131 Pittwater Road will have an adverse impact on the amenity of our client's adjoining property at 1-5 Collaroy Street with respect to intensification of the use of the ROW, loss of aural and visual privacy, reduced morning sun and diminished outlook and views.

The significant intensification of use of the ROW over our client's property creates potential for vehicle conflict near the entry/exit to the development site. Further, such intensification of use of the ROW requires submission of a development application, including the owner's consent of our client. No such consent has been obtained and in such circumstances the Council is not empowered to approve the DA.

The design of the development, as currently proposed, with boarding room balconies and windows in close proximity to the eastern private terraces and top floor east facing windows in our client's building, results in unreasonable aural and visual privacy impacts upon our client's property. The Applicant's request to breach the 11m maximum building height development standard by up to 2.2m should not be supported as it results in adverse view and shadow impacts.

The Applicant should be directed to address the traffic and owner's consent issues associated with intensification of the use of the ROW. The Applicant should also be requested to amend the plans to delete the west facing balconies, provide privacy screening to west facing glazing and delete the proposed 4<sup>th</sup> storey, or significantly reduce the floor area of the 4<sup>th</sup> storey, including a substantial increase in northern side setback.

We trust that Council will give due consideration to the issues we have raised and require amendments to the plans, as recommended above, should the proponent not withdraw the DA. In the absence of owner's consent for the intensification of the ROW, the DA should be rejected. Should you require any further information, please contact the undersigned.

Yours faithfully

**Nick Juradowitch**  
**Director**  
**Ingham Planning Pty Ltd**