

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0596
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot CP SP 35989, 29 - 37 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Construction of a mixed use development comprising retail and 'Co-living housing' over part basement parking
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre Manly LEP2013 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Proprietors of Strata Plan 35989
Applicant:	Enda Hughes

Application Lodged:	06/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	19/04/2023 to 03/05/2023
Advertised:	19/04/2023
Submissions Received:	65
Clause 4.6 Variation:	4.4 Floor space ratio: Complies. See report details for Minimum Site Area 41% variation as per SEPP (Housing) 2021 requirements Building Separation up to 100% variation for nil setback elements as per SEPP (Housing) 2021 requirements. See also wall average%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 2,098,258.80
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EXECUTIVE SUMMARY

This development application seeks consent for a mixed used development that includes 10 "Co-living" Units (pursuant to *State Environmental Planning Policy (Housing) 2021*). The proposal includes a lower ground level to the building for a retail / commercial shop and part basement area.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposal having received more than 10 objection submissions.

Concerns raised in the objections predominantly relate to traffic and parking, streetscape character, visual and acoustic privacy, residential intensity, setbacks, solar access, views, dilapidation, building bulk, height visual impact, landscaping and future occupancy management.

Critical assessment issues included amendments made during the course of the assessment period to address public submission issue and achieve consistency with the Manly DCP. Additional concerns included issues regarding *Desired Future Character* and non-compliance with the SEPP (Housing) 2021 for building separation and site minimum area, and addressing sufficient information concerns of potential site contamination. The proposal includes a new use of the land for residential as well as the commercial / retail component. However, due to insufficient information of any preliminary site investigation or detailed site investigation having been done to confirm potential land contamination risks as a result of former land uses, or potential risk from former use of the adjacent the site (former service station) insufficient information is available to be satisfied to support the application.

The mechanism of Clause 4.6 has been applied in the application seeking a merit assessment on the variation request for the non-compliance with SEPP (Housing) 2021 - *Standards for Co-living housing* which apply as minimum numerical requirements of "building separation" and "minimum lot size".

The Clause 4.6 variation request for the non-compliance with *building separation* arises from the narrow wedge shaped lot shape with the variation being most pronounce toward the south-west corner where adjacent mixed use residential building is also on nil or partly reduced setback. Along the length of the common boundary with No.31 Dobroyd Road the proposal has an average variation to the 6.0m building separation of 41.6%.

The Clause 4.6 variation request for the non-compliance with the *minimum lot size* arises from the SEPP (Housing) 2021 having been amended during the course of the assessment period in that no minimum site area within the B1 Neighbourhood Centre applied, however in mid-2022 a minimum site area of 800sqm was introduced. The subject site is 381.1sqm and not able to be consolidated and thus a variation of 51.5% is sought. During the course of the assessment period the proposal has been reduced in scale and various amendments made to respond to the constraints of (now) being an undersized lot.

Despite DCP design being considered satisfactory and 'Clause 4.6' being addressed, this report concludes with a recommendation that the NBLPP refuse to the development application due to insufficient DA (supporting) information, including matters to properly address *SEPP (Resilience & Hazards) 2021*.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the construction of a mixed-use development comprising retail and "Co-living" housing over part basement parking at No.29-37 Dobroyd Road Balgowlah Heights.

Specifically, the development application proposes (based on amended DA architectural drawing set with Council, updated inclusive to 27.2.2023):

- Demolition of all structures on site and site preparation work.
- Construction of a mixed-use building with part-basement area for carparking, ground floor

commercial floor space and “co-living” housing units above.

Ground Floor area RL64.6 to RL64.8

- Three (3) carparking spaces (including 1 disabled persons carparking space).
- Two (2) motorbike spaces and 10 bicycle rack spaces.
- Commercial ‘shop’ area with basin facility (shown as "not for Cafe or food cooking").
- Lift and stair access, Lobby and pedestrian ramp and vehicle ramp access.
- Storage room, toilet, services and bin rooms.
- Ground level landscaping, letterboxes, main entry area.

Upper Floor (residential) Level RL68.0

- Six (6) 'Co-living' residential units with kitchen, bathroom, storage, laundry and terrace space.
- Common open space area with secondary exit point to Commerce Lane.
- Lift and stair access with hall area.
- Landscape elements (Deep soil landscaping and planter box elements)

First Floor (residential) Level RL70.9

- Four (4) 'Co-living' residential units with kitchen, bathroom, storage, laundry and terrace space. (Unit '7' is an ‘adaptable’ room for disabled persons)
- Common room lounge (including kitchenette, toilet and manager workstation), common open space terrace.
- Lift and stair access, hall area and ‘void’ space.
- Landscape elements (planter box space).

Roof RL74.0

Flat roof form with void space, roof top services area, lift overrun and solar panel installations.
Lift overrun RL74.7

Ancillary works:

- Site preparation and demolition works (including removal of any hazardous materials if required).
- Excavation for part basement area.
- Drainage works and stormwater detention system.
- Landscaping (including planter box space that are part of the building), outdoor pathways, retaining walls and incidental site work.
- No street (advertising) signage is proposed as part of the proposal.
- Strata subdivision of the shop space is not proposed with the application.
- 'Co-living Units' cannot be individually separated by Strata pursuant to SEPP (Housing) 2021

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.1.3 Townscape (Local and Neighbourhood Centres)

Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.1 Dwelling Density, Dwelling Size and Subdivision

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.2.8 Neighbourhood Centres (LEP Zone B1)

Manly Development Control Plan - 4.2.8.2 Setbacks

Manly Development Control Plan - 4.2.8.3 Landscaping

Manly Development Control Plan - 4.2.8.4 Residential Density

Manly Development Control Plan - 4.2.8.8 Waste Management

Manly Development Control Plan - 4.2.8.10 Local Character provisions

Manly Development Control Plan - 4.4.9 Boarding Houses

Manly Development Control Plan - 4.4.9.1 Communal Rooms and Areas

Manly Development Control Plan - 4.4.9.2 Bedrooms

Manly Development Control Plan - 4.4.9.3 Open Space

Manly Development Control Plan - 4.4.9.4 Parking

SITE DESCRIPTION

Property Description:	Lot CP SP 35989 , 29 - 37 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The site is zoned 'B1 Neighbourhood Centre' under Manly Local Environmental Plan 2013 ("MLEP 2013"). The site is a corner lot and with a

frontage to the southern side of Dobroyd Road and side and rear frontages to Commerce Lane. The subject lot is irregular, 'wedge' shaped with a 7.01 metres (m) frontage to Dobroyd Road and a total site area of 381.7square metres (sqm). There is currently no vehicle parking on the site and the existing brick building is used for commercial purposes (4 small commercial/shop premises).

Land uses surrounding the subject site comprise of:

- A part 3 storey shop-top housing development (including 9 self-contained apartments) at No.31 Dobroyd Road to the immediate west.
- Kerbside perpendicular parking in front of No.31 Dobroyd Road.
- Urban low-density development (detached dwelling houses) borders the site to the South, East and North.
- Bareena Park recreation facilities at the corner of Dobroyd Road and Vista Avenue. (Including tennis courts and a Bowling club with houses adjacent).

The site is in proximity to bus stops located along a local bus route that uses Curban Street (to the north of Dobroyd Road). The adjoining land to the west was formerly used as a *vehicle repair station*, however in recent years has been re-developed for shop-top housing.



Image: View from Dobroyd Road. Subject site on left side of photo with adjacent shop-top redevelopment on the right hand side.

Map:



SITE HISTORY

The subject building on the land was subdivided by Stata Title (SP) into 4 lots (for local commercial / business uses), as per SP35989, registered 13 December 1989. Where majority ownership rests with one (or one 'group') of owners the development application cannot be withheld by Council on the basis of a 'minor party' not being agreeable to the development application. This is civil matter between the proprietary ownerships of the SP. The DA may still be processed / considered on its merits under the EP&A Act by the consent authority.

Development Application No.3393/89 for the use of Lot 1 within the existing building was approved by Council on 12 February 1990 for use as 'rental and retail of televisions, videos and whitegoods'.

The existing building is to be demolished and the site partly excavated for the proposed DA works. Contamination concerns (such as from off-site migration from the former the service station use adjacent or other site uses) are considered to be "low" risk by Council's Environmental Health (EH) Team based on known site conditions and available records, including information from adjacent site works. No further details are available on specific occupancy that predate Council property records. The adjacent site Remediation Action Plan has been reviewed by Council's EH Team in considering the environmental surroundings / land use history. (This issue is addressed under the heading "SEPP Resilience and Hazards" within this report and Internal Referrals - Environmental Health).

The applicant filed a "deemed refusal" Appeal with the NSW LEC on 27 July 2022 (Proceedings 2022/220377). Following on from this a "Section 34" conciliation was held on 8.12.2022. The 'Section 34' was subsequently terminated. The applicant is relying on plans amended (updated to 27.2.2023) for the current Development Application lodged with Council, including supporting documents.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted and the proposal has been reviewed by Council's <i>Design & Sustainability Advisory Panel</i> (DSAP).</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to design review comments provided by Council's DSAP and in relation to referral comments. The amended plans received on 24.6.2022 did not substantially change the building layout and were not re-notified. The applicant undertook a more comprehensive review to address Council's concerns and further amended plans were received on 27.2.2023. The revised design and documents received February 2023 were re-publicly advertised and re-notified. Some supporting documents were not updated to correspond with the amended plans and therefore insufficient information has been provided. This is identified in the reasons for refusal of the application.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is able to be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is able to be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is able to be addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
	<p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent and a BCA report has been provided with the DA to address this consideration. To align with the amended plans this report should be updated however a corresponding review has not been done. This warrants refusal of the application for insufficient information.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal as it serves the purposes of <i>SEPP (Housing) 2021</i> in providing housing options for the community.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the amended development in that the proposal respond to the Manly LEP objectives and Manly DCP planning controls, including streetscape and amenity consideration in an appropriate way for the site constraints and the surrounding environment. See comments and SEPP criteria under the heading "Clause 69 – Standards for Co-Living Housing" within this report.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>Issues raised by the public interest are addressed in detail under the heading "Notification and Submissions". The subject development application is made pursuant to State Environmental Planning Policy (Housing) 2021. The State policy encouraged housing diversity for the broader public interest to meet the demand for housing within local communities. However the proposal has not provided a full set of updated supporting documents that include matters of the public interest including PSI/DSI, acoustic, BCA, access, drainage, Basix.) Therefore the proposal is recommended for refusal due to insufficient information.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/04/2023 to 03/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 65 submission/s from:

Name:	Address:
Mr Graham James Rattue	22 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Enda Thomas Hughes	12 / 11 - 15 Spring Cove Avenue MANLY NSW 2095
Mrs Caroline Marion Cloke	7 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Christopher James Collins	17 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mrs Megan Diedre Rogers	9 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Philip Alan Wallis	44 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Ms Michele McKenzie	26 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Anthony Francis Williams	3 / 31 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Pascal Jean-Albert Gautheron	28 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Jenny Anderson	11 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Yvette Desme Sutton	4 Gordon Street CLONTARF NSW 2093
Mrs Louise Margaret Shanahan	28 Nolan Place BALGOWLAH HEIGHTS NSW 2093
Ms Jennifer Elizabeth Arkell	2 / 31 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mrs Lisa Jane Martin	21 Curban Street BALGOWLAH HEIGHTS NSW 2093
Mrs Emma Rachael Crichton-Browne	44 Lewis Street BALGOWLAH HEIGHTS NSW 2093
Mr Jonathan Christopher Massey Rogers	9 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Ian Walter Cambridge Mrs Aine Gabrielle Cambridge	30 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Lynnette Joan Mann	1134 Pittwater Road COLLAROY NSW 2097
Mrs Lynette Kim Mann	1 Concise Street BALGOWLAH HEIGHTS NSW 2093
Mrs Aleksandra Goceva-Grozdanova	25 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Ruijie Cui	1 Curban Street BALGOWLAH HEIGHTS NSW 2093
Mr Phillip David Heffernan	20 Nolan Place BALGOWLAH HEIGHTS NSW 2093
Mr Anthony Douglas Freckleton	PO Box 4138 BALGOWLAH HEIGHTS NSW 2093
Mr Edouard Francois Marius Kaiser	26 Nolan Place BALGOWLAH HEIGHTS NSW 2093
Mrs Peggy Roma Pool	24 Nolan Place BALGOWLAH HEIGHTS NSW 2093

Name:	Address:
GJ Rattue & Associates Pty Ltd	22 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Benjamin Julian Grimes	32 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Mark David Woolven	8 Curban Street BALGOWLAH HEIGHTS NSW 2093
Mary Winterton	2 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093
Mr Duncan John Taylor Mrs Antonia Helen Taylor	26 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Stephen Paul Lewcock Mrs Louise Katherine Lewcock	8 Nolan Place BALGOWLAH HEIGHTS NSW 2093
Mrs Victoria Jane Roberts	24 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Robert William Roland Kenn	32 Curban Street BALGOWLAH HEIGHTS NSW 2093
Mr Timothy David Pearce	3 Curban Street BALGOWLAH HEIGHTS NSW 2093
Mrs Erica Isobel Easton	33 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093
Janene Kennedy	13 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Evolution Planning Pty Ltd	Po Box 309 FRENCHS FOREST NSW 1640
Planning Progress	Po Box 213 AVALON BEACH NSW 2107
Mr Gregory Thomas O'Toole Ms Jessica Margaret O'Toole	27 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Gregory Norval Anderson Mrs Suellen Janet Anderson	21 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Ms Sophie Victoria Brown	14 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Tim Keeling	26 Nolan Place BALGOWLAH HEIGHTS NSW 2093
Withheld	BALGOWLAH HEIGHTS NSW 2093
Mr James Dominic Roberts	24 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Thomas Samuel Devereux	14 / 2 Birkley Road MANLY NSW 2095
Mr Barry Patrick O'Donnell	15 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mrs Carolyn Freckleton	19 Fisher Street BALGOWLAH HEIGHTS NSW 2093
Mrs Caroline Anne Charlton	29 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Ms Felicity Ann Meier	19 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Jonathan Pedley	3 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mr Shaun Daniel Austin Mrs Danielle Marie Austin	27 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Ross William Hutchison Mrs Anne Hutchison	18 Nolan Place BALGOWLAH HEIGHTS NSW 2093
Mr Colin Reginald Bennett	25 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mrs Kirsten Elizabeth Gautheron	28 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Anu Kaarina Pietilainen	20 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Gabriele Marie Goller	16 Alma Street CLONTARF NSW 2093
Ms Bree Louise Roberts	8 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093

Name:	Address:
Mr Gregory Douglas Watkins	13 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mrs Noreen Rattue	22 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mrs Ai Lin Clements	4 / 31 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Ms Jenny Beveridge Wilkinson	13 Curban Street BALGOWLAH HEIGHTS NSW 2093
Jessica Power	27 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Mrs Rebecca Jane Hollis- Patel	23 Vista Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Brian Anthony Casserly	13 Pickworth Avenue BALGOWLAH NSW 2093
Ms Alanna Margaret Valerio	23 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093

The following issues (in summary) were raised in the submissions (all original and subsequent submissions considered following public exhibition of amended application between 13 April and 3 May 2023):

(Note: multiple submissions from a single property are addressed (grouped) as a single submission, including any submission from a private consultant acting on behalf of a property owner/s. Any submissions of support are addressed objectively within the assessment report as merit considerations (e.g. SEPP provisions, employment market, housing diversity and the like)

1. Traffic and parking impacts
2. Privacy (noise and visual impact)
3. Overdevelopment
4. Excessive floor space
5. Inadequate setbacks
6. Streetscape impact
7. Limited access to public transport
8. Underestimated construction costs
9. Lack of public consultation / notification
10. Undesirable building precedent
11. Building bulk and scale
12. View impact
13. Hazardous materials
14. Odour
15. Construction impacts
16. Site suitability
17. "Clause 4.6" inadequacy
18. SEPP (Resilience and Hazards) 2021 (insufficient information)
19. SEPP (Biodiversity and Conservation) 2021 and Manly DCP – Trees (Insufficient information)
20. Public interest (including social, demographic, and tenure)
21. Overshadowing
22. Fire safety
23. Low density residential zone surroundings
24. Waste management
25. Building height
26. Inadequate landscaping
27. Loss of local commercial space
28. Road access safety / narrowness
29. Boarding house management
30. Inadequate lot size

31. Strata management
32. Insufficient information

The above issues are addressed as follows:

- *1. Concern that the proposal will create more difficult traffic conditions near the site, including more congested street parking situation nearby, with a lack of parking for the proposed building.*

Comment:

Consideration of the above issue includes likely parking demand created by occupants (such as 'essential workers') that may occupy the development and would own vehicles due to their work circumstances. This may include construction workers and other professional services which the development is capable of providing suitable accommodation, notwithstanding any other tenants within the building that may own a car and reside at the premises. It is a probable situation that the development will not have sufficient car parking for everyone living in the premises and they will need to park in the surrounding streets for overnight parking, or if customers are visiting the ground floor shop / retail premises. The surrounding streets are also used for kerb-side parking by nearby residents that may not have space in their own garage / driveway for 1 or more cars. Additionally, the nearby recreation (local park) facilities to the west attract kerb side parking in the vicinity of the site. The rear laneway (Commerce Lane) is too narrow to allow kerbside parking on both sides with two way traffic and therefore parking and thought traffic in the wider surrounding area will most regularly use Dobroyd Road, Vista Avenue and Nolan Place. The *SEPP Housing 2021* parking requirements take precedent over the Manly DCP, as outlined in the SEPP "*for the purposes of co-living housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*" The proposal complies with the prescribed parking standard for "Co-living" housing. The applicant has provided a detailed Traffic Impact assessment, by *APEX Engineers* to address traffic, parking and access for the development.

Traffic and parking considerations are addressed in further detail by Council's Traffic Engineer under the heading "Internal referrals" within this report. Council's Traffic Engineering section support the proposal, subject to conditions.

- *2. Concern that the proposal will create privacy impacts on adjacent land including Units within No.31 Dobroyd Road and low density housing adjacent and surrounding the site.*

Comment:

This issue has been considered in detail under the heading clause *3.4.2 Privacy and Security* within this report. In summary, the proposal has been substantially amended during the assessment period to align all balcony elements so that they face only northward or southwards. Fixed privacy screens has also been added to restrict side views for balconies and terrace areas. Additional (adjustable) screening is recommended for the southern upper private balconies so that occupants can regulate light and privacy within Units 7, 8, and 9. Side views are restricted (filtered) by landscaping, smaller window elements, translucent glazing and screens where appropriate. The ground level rear common area that connects to Commerce Lane includes a solid privacy screen wall to restrict overlooking and noise toward No.31 Dobroyd Road. Additionally, the implementation of a building Management Plan is recommended to ensure occupants (as appropriate to be supervised by the building manager) comply with "house rules" suitable for the use of the premises and to assist with managing any neighbour concerns / complaints received, such as noise or privacy disturbance, if they arise.

The applicant has provided a draft Management Plan to address day-to-day use / living concerns. Subject to conditions the proposal is consistent with the WDCP on this issue.

- *3. Concern that the proposal is an overdevelopment of the site.*

Comment:

The proposed building design has been amended during the assessment period and reduced the Co-living components from 12 Units to 10 Units. The single shop front remains facing Dobroyd Road at the lower level. Car parking capacity has also been reduced from 7 car spaces to 3 car spaces (however remains compliant with *SEPP (Housing) 2021*, at 0.2 car spaces per Unit. This has assisted to ensure more landscaping and reduced the intensity of the overall building capacity. The building height, setbacks and overall styling is commensurate with the adjacent building at No.31 Dobroyd Road. Co-living development, due to the smaller self-contained room sizes, enables more individual dwelling Units (however they can only be occupied by 1 or 2 persons subject to internal room size). The use of shop-top or mixed use development within a local neighbourhood centre is an expected form of redevelopment.

- *4. Concern that the proposal has excessive floor space.*

Comment:

The proposed building design has been amended to reduce the number of Co-living Units and consequently the FSR now complies with the allowable 1:1 FSR for the neighbourhood centre zone. The reduce building bulk and scale has also enabled redesign of the building external elements, including landscaping, balcony spaces, setback and wall treatment. The FSR is considered to be consistent with the Manly LEP.

- *5. Concern that the building has inadequate setbacks to adjacent buildings and its road frontages.*

Comment:

The site is situated on a wedge shaped allotment and the past redevelopment of No.31 Dobroyd Road creates limited setback area between the two properties that make up the local Neighbourhood Centre. In response to design concerns raised, the applicant has amended the building layout to increase setback areas where practicable and change external wall configuration / terraces and balconies to respond to the surrounding residential uses. The proposal does not strictly comply with the *Apartment Design Guide* for building separation, however the amended building layout provides screen walls, reduced building bulk and minimises residential impacts on adjacent land to overcome building separation issues.

General building separation afforded by Commerce Lane toward the south and east of the site are adequate for the part 3 storey building configuration given the amended design to enhance the landscaping and wall articulation and privacy treatment along the laneway frontages.

Toward the north the proposal overlooks the wider public road reserve area of Dobroyd Road and building separation is considered adequate and consistent with the adjacent shop top housing at No.31 Dobroyd Road for housing on the northern side of Dobroyd Road. The setbacks are considered to be consistent with the WDCP on this issue.

- *6. Concern that the building has an unacceptable streetscape impact by its visual appearance and architectural styling / form.*

Comment:

The applicant has sought to address this issue by amended plans and designing the building to more closely resemble the adjacent shop top development at No.31 Dobroyd Road. The Manly DCP seeks to ensure continuity in streetscape and townscape considerations of building design. In this regard the building elevations have been amended during the assessment period to "pair" the building with the No.31 Dobroyd Road. This is reflected in terms of use of curved elements,

pressed metal fascia boards, sandstone wall elements, landscaping and roof profile. Subject to conditions to ensure suitable colour matching and also for selected materiality / wall elements. The overall streetscape is considered to be consistent with the Manly DCP on this issue.

- 7. *The submissions raised concerns that the site has limited access to public transport and is therefore unsuitable for such development that relies on having accessible transport options.*

Comment:

Consideration of this issue also relates to circumstances that may arise whereby irregular or insufficient public transport may influence the need for private car ownership by occupants of the residential Units within the building. There are existing pathway links along Vista Avenue to Curban Street. Public transport services have been reviewed by the applicants Traffic Consultant (including revised report by *Apex Engineering* dated March 2023). Bus services are considered adequate to meet the *SEPP (Housing) 2021* provisions. The availability of street parking has been considered by Council's Traffic Engineer and in context with the proposed off-street parking arrangements for the building, including the provision for motorbike and bicycles as alternative options to car use. The number of Units within the building has also been reduced and availability of a disabled persons car space ensures appropriate options for an accessible parking space to serve the building. Subject to conditions, the proposal complies with access to public transport requirements and off-street parking as prescribed by the *SEPP (Housing) 2021*.

- 8. *Concern that the development application has been provided with an underestimated construction costs*

Comment:

A detailed building cost estimate has been provided by a Quantity Surveyor service (*Property & Building Assessments Pty Ltd*) and appropriate notes included to address material quantities, markups, preliminaries, exclusions and the like. The amended plans have not significantly enlarged or eliminated major cost elements such as fit-out materials, excavation or the buildings superstructure to such an extent that warrants a revised CIV as the DA relies on an overall estimate. This issue does not warrant refusal of the application.

- 9. *Concern that there has been a lack of public consultation and notification about the development application.*

Comment:

The development application has been notified in accordance with Council's *Community Participation Plan* (CPP) and all submission received during or after the notification closure date are equally considered in full (issues are however summarised / grouped for the purpose of canvassing all issues). During the assessment period the proposal has been amended and Council fully re-notified the application at the applicants expense. No submissions made in response to the original notification period have been dismissed by virtue of amendments or were withdrawn. Therefore submissions from the original notification period (whether or not such persons were notified in writing or otherwise made a submissions of their own accord) are also considered in context with the amended plans and documents where relevant to particular concerns, such as (but not limited) to traffic, parking, privacy, views, setbacks, overshadowing and the like.

- 10. *Concern that the proposal will create an undesirable building precedent in the form of 'boarding house' style development in the locality.*

Comment:

The format of the building is similar to a Boarding house, however with the introduction of *SEPP (Housing) 2021* the style of development that was commonly referred to as a "new generation boarding house" is now comparable to "Co-living" housing. The SEPP contains provision to

address streetscape and "character" so that development of this type is architecturally designed to provide a suitable 'fit' with other existing development. In this regard, the proposal has been amended to address streetscape character and appear as mixed-use in a shop-top style housing with similar height, shape and styling to suit the adjacent larger building at No.31 Dobroyd Road. The contemporary styling / character of this adjacent (new) building presently dominates the Dobroyd Road Neighbourhood Centre. It is noted that the SEPP has changed during the assessment period with regard to site area limitations and therefore what may have been a precedent for smaller sites, such as the subject land, is now limited by the SEPP to larger sites.

- 11. *Concern that the proposed development has excessive building bulk and the scale and is an unsuitable design for the site.*

Comment:

The subject building has been amended to reduce building bulk and scale. A detailed list of changes was received with the amended plans. In summary, these changes have reduced the FSR, increased the landscaping elements, reconfigured the entry and access areas, reduced the number of Co-living Units, reduced roof span elements, revised external colours and materials, revised window and wall design, as well as reconfigured basement area and the retail shop. Overall the building changes assist to provide a building appearance that is visually similar (but not wholly the same) as the adjacent building at No.31 Dobroyd Road. Council's Internal referral sections have reviewed the proposal with regard to suitable design requirements associated with landscaping, traffic access, stormwater and waste management and support the proposal. Suitable design considerations and conditions are detailed within this report under the heading "Internal Referrals" relevant to those particular referral responses.

The building has also been subject to a design review by Council's *Design and Sustainability Advisory Panel* and the amended design has sought to address design issues also raised by DSAP. Subject to conditions, the amended proposal is consistent with the site controls for a local Neighbourhood Centre as per the Manly DCP and responds to the *SEPP (Housing) 2021* provisions where any non-compliance is identified (such as building separation) to minimise any loss of amenity.

- 12. *Concern that the proposal will impact views for properties overlooking the site, in particular No.26 Nolan Place.*

Comment:

This issue has been addressed in detail under the heading *Clause 3.4.3 Maintenance of Views* within this report. In summary, the proposal complies with the 8.5m height controls and amendments to the design maintain a low profile flat roof area. The location of the site does not afford any coastal views or view of significant landmarks and the overall building bulk and visual appearance is consistent with the built form controls applicable to the Local Neighbourhood Centre for redevelopment of the site as a part 2 part 3 storey building given the land shape and site constraints. This issue does not warrant refusal of the application.

- 13. *Concern that the site may contain hazardous materials (such as asbestos) or contamination risk.*

Comment:

This issue is able to be addressed by conditions for any potential asbestos or lead based paint material. Standard conditions require demolition work to comply with *Australian Standards* and

WorkCover / OHS laws for the safe handling and disposal of any hazardous demolition material, if present. The application has been provided with a Waste Management Plan prepared by *Woodhouse Danks* and no asbestos material has been identified. Council's Environmental Services referral has addressed potential contamination on the basis that the site is regarded having a 'low' risk based on available information of prior land uses, known site characteristics and redevelopment completed on adjacent land (having been a potential adjacent source from its prior land use as a service station). However with insufficient information on the PSI / DSI the proposal is recommended for refusal on this issue.

- 14. *Concern that the site may cause odour impacts from cooking facilities in the shop or waste bin area.*

Comment:

This issue has been addressed by amended plans that now show the bin room to be an enclosed (ventilated room) and Council's Waste services have provided conditions to ensure the fit-out of the bin store rooms is appropriately constructed to maintain hygiene and safety considerations. The amended plans also show that the shop space will not be used for a "cafe or food cooking" as annotated on drawing No.CD-03h. Additionally, the building is proposed to be subject to a Management Plan that also includes odour related considerations such as smoking, garbage and use of outdoor areas. Subject to appropriate conditions this issue does not warrant refusal of the application.

- 15. *Concern that the proposal will create construction impacts on surrounding land such as noise, dust, vehicle parking, dilapidation and the like.*

Comment:

This issue is addressed by standard conditions, including the requirement for a construction traffic management plan, dilapidation report, waste management plan and 'Prescribed' and 'General Requirements' conditions that also address site works, excavation safety, work hours and the like. Subject to appropriate conditions this issue does not warrant refusal of the application.

- 16. *Concern that the site is not suitable for the proposed development.*

Comment:

The use of the site for Co-living housing is made permissible pursuant to *SEPP (Housing) 2021* and is compliant with the design requirements of the SEPP with the exception of site area and building separation. Concerns regarding consistency with the future character of the local Neighbourhood Centre in terms of streetscape and visual appearance have been addressed by architectural changes including materials, built form styling and colours to match more closely to the adjacent development on No.31 Dobroyd Road. Additionally the building bulk, residential capacity, access areas, private open space and common areas have been amended to minimise amenity impacts on surrounding land. The proposal has been provided with a Management Plan to address occupancy considerations including parking, waste, noise, complaints management, use of common areas and the like. The suitability of the site in terms of land area and non-compliance with building separation requirements is addressed pursuant to Clause 4.6 within this report. This issue does not warrant refusal of the application.

- 17. *Concern that the proposal has not been provided with an adequate "Clause 4.6" to justify the variation to FSR or other non-compliance with development standards.*

Comment:

The proposal has been reduced in scale to comply with the 1:1 FSR requirement and therefore 'Clause 4.6' no longer applies to this development standard as the variation sought has been eliminated. The applicant has provided a detailed 'Clause 4.6' consideration to address building separation and site area requirements of the *SEPP (Housing) 2021* based on merit. This issue has been addressed pursuant to Clause 4.6 of Manly LEP and does not warrant refusal of the application.

- 18. *Concern that the proposal has not been provided with sufficient information to comply with SEPP (Resilience and Hazards) 2021.*

Comment:

This issue is addressed in detail under the heading *SEPP (Resilience and Hazards) 2021* within this report. In summary, Council's Environmental Health section have considered the use of the land, 'low' risk site characteristics and development works proposed and provided conditions for appropriate site management during works and environmental safety. However a DSI/PSI has not been submitted to address the SEPP therefore the proposal is recommended for refusal.

- 19. *Concern that the proposal has not been provided with sufficient information to address SEPP (Biodiversity and Conservation) 2021 and Manly DCP for trees and wildlife protection. information)*

Comment:

The subject land is not identified as being within any core wildlife (flora or fauna) habitat and does not contain any significant trees or significant natural features of bushland. The conservation or habitat impact provisions of *SEPP (Biodiversity and Conservation) 2021* are therefore not triggered by the proposal. Council's Landscape Officer has reviewed the proposed landscaping plan and adjacent trees and is satisfied (subject to conditions) that the revised proposal is consistent with the Manly DCP. Subject to conditions, this issue does not warrant refusal of the application.

- 20. *Concern that the proposal is not in the public interest in terms of social impact, demographic considerations of transient (short term lease) tenure of residential occupants.*

Comment:

The rental use of the Co-living Units requires a minimum 3 month lease which is also subject to the Management Plan for residents within the building. The proposal includes rooms that are fully furnished and self contained with an appointed Manager for the building. The proposal is not a 'Boarding house' as per *SEPP (Housing) 2021* in that rental levels are not limited to a prescribed or particular 'low' or 'very low' income demographic, as per the SEPP. The provision of alternative styles of housing (grouped under the SEPP as "Diverse Housing") is in the public interest to allow choice within the local area for different circumstances or employment opportunities people may require at different times. Subject to conditions, this issue does not warrant refusal of the application.

- 21. *Concern that the proposal will create overshadowing, including reduced natural light to adjacent Units within No.31 Dobroyd Road and adjacent properties along Commerce Lane.*

Comment:

This issue has been addressed in detail under the heading *Clause 3.4 Amenity and Clause 3.4.1 Sunlight Access and Overshadowing* within this report. In summary, the proposal complies with the 8.5m height controls and amendments to the design to allow for natural light penetration to ground floor Units within No.31 Dobroyd Road. The shadow regime for the proposal is primarily cast across the roadway area and adjacent retaining walls along Commerce Lane between 9am and 1pm. Overall the proposal is consistent with the Manly DCP and does not warrant refusal of the application on this issue.

- 22. *Concern that the proposal does not comply with building fire safety requirements.*

Comment:

The proposal has been provided with a *Building Code of Australia* (BCA) assessment by a suitably qualified consultant to ensure appropriate fire safety and access requirements can be satisfied and will comply for the completed building (following detailed design requirements at Construction Certificate stage). Council's Environmental Health (Fire and Disability access) section have provided conditions to ensure appropriate fire safety requirements are met. Additionally, conditions are recommended to ensure compliance the BCA and relevant *Australian Standards*. During the assessment period the building design has been subject to changes (by way of amended plans) to respond to concerns regarding access and safety issues raised previously with the applicant. Subject to conditions, this issue does not warrant refusal of the application.

- 23. *Concern that the proposal is situated on a site surrounded by low density residential development and therefore too high an intensity of land use for the surrounding environmental amenity.*

Comment:

The proposal is situated within an established small *Neighbourhood Centre* and adjacent an existing shop-top style housing development (containing 7 apartments, with a total of 16 bedrooms, and 2 commercial premises). By comparison the proposal contains 10 Units (being also 10 bedrooms) with 1 commercial premises. Parking provisions for the proposed intensity of use for 'Co-Living' component comply with the *SEPP (Housing) 2021* and by virtue of Clause 68 of the SEPP *prevent the consent authority from requiring more onerous standards*. The proposal meets the FSR and the SEPP for minimum room areas and parking requirements applicable to Co-living. The building has been amended to address amenity concerns previously raised during the assessment period. This also includes design considerations responding to height, setbacks, site area, landscaping, privacy, views, overshadowing, visual appearance, parking waster and operational management of the building. Subject to conditions, where additionally responsive measures are warranted, this issue does not warrant refusal of the application.

- 24. *Concern that the proposal does not have satisfactory waste management area for bins.*

Comment:

The proposal has been amended to ensure the waste bin area complies with Council's requirements for bin servicing and storage of commercial and residential bins. This issue is addressed in detail under the heading "Internal Referrals - Waste Referral". In summary the amended design is satisfactory subject to conditions to ensure the bin room is properly constructed for hygiene, safety, access and waste / recycling requirements.

- 25. *Concern that the proposal has an unacceptable building height for the site.*

Comment:

The overall building height remains compliant with 8.5m height of building control under the Manly LEP. Overall the building uses a flat roof form with space allocated for lift overrun and equipment plant (including PV cells, air conditioner units and the like). The height profile of the building is consistent with the adjacent development at No.31 Dobroyd Road and the building height does not create any unreasonable impacts on views, overshadowing or streetscape amenity.

- 26. *Concern that the proposal has inadequate landscaping.*

Comment:

The proposal has been amended to incorporate landscaping elements along Commerce Lane as well as facing Dobroyd Road. Landscaping elements are also integrated with building along selected wall planes and common open space to soften the appearance of the building, assist privacy and improve amenity. The landscaping components have been assessed by Council's Landscape Officer as detailed under the heading "Internal Referrals - landscaping" within this report. In summary, this issue does not warrant refusal of the application, subject to conditions.

- 27. *Concern that the proposal will result in a loss of commercial floor space for the Local Neighbourhood Centre.*

Comment:

The site currently has 4 small commercial lease spaces and seeks to provide only 1 retail / shop component. There is no minimum requirement to provide the equivalent FSR of shop space with any redevelopment of land within Local Neighbourhood Centres. The applicant is not seeking to capitalise on the FSR 'bonus' provisions and the site is recognised as having constraints to redevelopment wholly for commercial floor space. The site a small neighbourhood centre and not located close to a major commercial centre or transport node (such as Seaforth or Fairlight shops). The provision of Co-living housing provides for leasable accommodation to meet the demand for housing in the local area and given the ancillary requirement for carparking, internal accessibility and new building service areas the shop area retained has been restricted to the lower ground level fronting Dobroyd Road. This issue does not warrant refusal of the application as there is no prescribed requirement for the equivalent or more leasable shop space to be constructed with any redevelopment of the subject land.

- 28. *Concern that the road access to the site is limited raises safety issues due to the*

narrowness of Commerce Lane that is also used for car traffic and parking.

Comment:

The proposal has been assessed by Council's Traffic Engineers and subject to conditions is satisfactory with the amended plans having addressed carparking access, sight distances, compliance with *Australian Standards* and traffic safety. Any changes to Commerce Lane in terms of parking restrictions, traffic flow or one-way access would require consideration by Council's Traffic Committee. In this regard, Council's Traffic Engineer is satisfied with the amended building design in terms of safety and access from Commerce Lane and has not recommended any changes to the surrounding road network associated with redevelopment of the site. Therefore, this issue does not warrant refusal of the application.

- *29. Concern that the proposal (being similar in operation to a boarding house) will create management issues with this type of residential occupancy and potential amenity disturbances (noise, waste, use of common areas and the like) for surrounding residences.*

Comment:

The proposal includes a detailed (draft) Management Plan for the building Manager and tenants to adhere to. The Management Plan seeks to ensure that when the building is occupied disturbance to neighbours is minimised, there are procedures for receiving and resolving complaints, the interior and exterior of the building appearance is well maintained, a contactable responsible Manager is appointed to assist with operational management issues and the Management Plan is enforceable. The Management Plan also includes 'Co-Living House Rules' for use of the premises and various areas / occupancy applicable to the future tenants. This issue is addressed is able to be addressed by conditions and the provisions of the Management Plan and does not warrant refusal of the application.

- *30. Concern that the subject land is of inadequate lot size to accommodate the building and minimise amenity impact to neighbours.*

Comment:

The consolidation of the subject land was not able to be achieved with the former redevelopment of No.31 Dobroyd Road (as per the Manly DCP). The available land area, dimensions and physical characteristic are a significant site constraint. The proposal has been amended to address site constraint concerns and design considerations to provide appropriate outcomes for landscaping, common open space, wall setbacks, services locations, privacy, accessibility, vehicle access, amenity and visual impacts. Issues such as light spill from basement access or balconies and windows has been addressed by the design in that at the lower level entry areas has security doors. grilles, side windows are small (slot style) or high sill with balconies having side screens and part solid balustrades. The building height does not site significantly above adjacent residential development. A construction management plan will also be required to address construction activity, including the co-ordination of trucks, building materials, safety and the like. Site criteria under SEPP (Housing) 2021 has been addressed in detail within this report under the heading *SEPP (Housing) 2021*. In summary, the reduction Co-Living Units and design recommendations made by DSAP have assisted in ensuring an appropriate 'fit' for the building on the site within the local Neighbourhood Centre.

- 31. *Concern that the strata management of the property is currently not wholly supportive of the redevelopment of the site for 'Co-living'.*

Comment:

The provisions of the Act allow for a development application to be granted consent if a minority of owners within the Strata Scheme are not agreeable to an application. This process is associated with "strata renewal" and is outlined in the *NSW Land & Environment Court* judgment of *Application by the Owners – Strata Plan No 61299 [2019] NSWLEC 111*. In summary, such circumstances may be subject to Part 10 of the *Strata Schemes Development Act 2015* in order to effect a development consent that redevelops an entire strata scheme even if a minority of owners are not agreeable to such a redevelopment. In this, case the present site has four (4) Strata lots, but with a majority single ownership over three (3) of the Lots. Arrangements between current Strata owners is a civil matter and does not warrant refusal of the application.

- 32. *Concern that the development application has insufficient information with the DA package to ensure a full and proper consideration.*

Comment:

The development application has been provided with detailed architectural plans, engineering plans and landscape plans as well as appropriate expert consultant reports for traffic, BCA, stormwater, waste, acoustics, geotechnical, Basix, arborist, accessibility, operational management and other supporting documentation. Sufficient drawn-to-scale information is available to consider fenestration, building separation, height, sections, overshadowing, engineering, plant/service locations and building management for the purpose of detailed overview of the proposal. Construction Certificate specification detail is not required at DA stage.

The applicant has been able to provide amended plans and additional information where requested in a timely manner during the assessment period. Council also relies on qualified staff expert experience of staff (Engineering, Landscaping, Traffic, Environmental Health, Urban Design and the like) and existing information from within Council's land use management records, studies and file data to assist in the assessment of development applications. The applicants expert consultants have supplied clarifying information or particular matters with development application details (e.g. OSD, landscaping, traffic and the like). The proposal is also supported by a detailed *Statement of Environmental Effects* to ensure a detailed overview of the proposal. The implementation of conditions allows for appropriate information to be submitted at different stages of the development works / process to ensure compliance or suitable management or acceptable outcomes. Such matters include works within the road reserve being subject to separate approval processes pursuant to the *Roads Act* and may be addressed by appropriate conditions.

Additional information has been provided where required to address Council's Internal Referral sections, however some documents have not been fully updated to reflect the amended plans (acoustic, BCA, access, site investigation, Basix, drainage). This relevant documents should have been amended with the amended plans and have not been updated to reflect the change. This issue warrants refusal of the application due to insufficient information.

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p>DSAP Meeting Report – Date 26 May 2022</p> <p>PANEL CONCLUSION (based on 2022 original DA design) <i>The Panel does not support the proposal in its current form. A complete redesign is recommended, and this should include a more consolidated built form with a single-entry point and core with apartments setback from the street. Further consideration should be given to the relationship with the new building next door, as this provides the important context for this new development. The design decision that this building should demonstrably be different to this neighbour is not successful given the context, size of the site and the angled subdivision. A more compatible building with material that relate to the adjoining development should be considered.</i></p> <p><u>Comments on Panel Conclusion:</u> The applicant amended the application following advice from DSAP. In summary, the proposal has been amended to either fully include or incorporates as far as practicable all 14 recommendations of DSAP as described below. Suitable conditions may be recommended as discussed below in the comments.</p> <p><u>Recommendation</u> 1. <i>The applicant should consider greater setbacks and a more articulated form with more opportunities for planting around the perimeter. This is discussed further in the next section.</i></p> <p><u>Comments on DSAP Recommendations as per Amended Plans (dated Feb 2023):</u> Item 1 has been achieved in part toward Commerce Lane, but not to all boundaries to the extent recommended by DSAP.</p> <p>Scale, built form and articulation <i>The Panel notes the redesign of the building to include smaller single occupancy units. This approach is supported as it has the potential for a better built form in a difficult site with the splayed northern boundary.</i> <i>The Panel does not support the spatial planning of the building that includes two courtyards. This has the effect of pushing the building mass out to the perimeter of the site. It would be preferable to consolidate the floorspace towards the west with the aim of setting back from Commerce Lane and incorporating some planting and deep soil.</i> <i>Due to the confined nature of the site, the two courtyards are too small to provide any real amenity or benefit to the scheme. In particular, the central courtyard, with the communal space, will perform poorly in terms of acoustics and light.</i> <i>The double fire stairs contribute to the bulk and scale of the building and create a confused entrance sequence. A building of this size should be designed to only require a single fire stair. This will help reduce the size of the building and will enable the design of a more</i></p>

Internal Referral Body	Comments
	<p><i>successful 'front door' of the building. The perimeter façade of the building, including the glazed balconies is too open and creates privacy impacts for the residents of the building. Overall the planning is inefficient with an excessive amount of circulation that has low amenity.</i></p> <p><u>Recommendations.</u> <i>Redesign the building to create a more consolidated built form which removes the bulk from the perimeter of the site. This can be done by incorporating the following:</i></p> <ol style="list-style-type: none"> <i>2. Remove the central courtyard, that would allow the building to be setback from the boundaries.</i> <i>3. Reconsider the fire egress and circulation and investigate the provision of a single fire stair to further reduce the bulk of the building.</i> <i>4. Provide a single entrance to the building, potentially off Dobroyd Road only as Commerce Lane is narrow with insufficient amenity and footpaths to support a pedestrian entry.</i> <i>5. Create a more solid façade to increase the privacy for the units. Glass balconies are inadequate.</i> <p><u>Comments on DSAP Recommendations as per Amended Plans (dated Feb 2023):</u> Items 2 to 5 have been substantially achieved or redesigned. Site constraints and BCA provisions prevent some elements from being implemented to the extent recommended by DSAP. Council's Engineers have not sought a new full pathway connection to the rear lane. The rear entry to Commerce Lane serves as fire escape and a secondary entry. Balcony and glazed elements have been revised as well as circulation space to rationalise hallway space. Balustrade have been redesigned for solid and / or semi-solid screening.</p> <p>Aesthetics and materials <i>The adjoining residential flat building provides a very important context and framework for this new development. The applicant discussed his intention to make this building demonstrably different from this adjacent development. The Panel questions this approach and suggests that a building that is more complementary in its materials, articulation and form should be considered. The applicant's attention is drawn to the DCP which states that: "This plan requires consideration of local character and Paragraph 3.1.3 Townscape (Local and Neighbourhood Centres) provides a range of townscape design principles to be considered for development to maintain and enhance local character. All developments must be designed with regard to local site characteristics and in context with the locality". The DCP defines this as " A high level of townscape quality will result in an area being experienced, not as a number of disconnected parts, but as a whole, with one recognisable area leading into another. The determination of the townscape of a locality should examine this sense of place and the sense of unity. The drawings do not show the adjacent building in detail. The Panel does not consider that the interface between the building has been</i></p>

Internal Referral Body	Comments
	<p><i>adequately considered. The project is designed as if the northern façade is a party wall and although the indented courtyard serves to break up the blank wall the Panel considers the expanse of blank wall excessive in this location.</i></p> <p><u>Recommendations.</u> 6. <i>Consider changing the colour and materials of the building to be more 'recessive' and to relate to the adjacent residential flat building.</i></p> <p><u>Comments on DSAP Recommendations as per Amended Plans (dated Feb 2023):</u> Item 6 has been adopted. Conditions may be included to avoid 'mis-matching' at CC stage, however differences and similarities between No.31 are more consistent overall. The building does not present as 'jarring'.</p> <p>Access, vehicular movement, and car parking <i>The dimensions of the site and the level change impact on the carpark solution. The current design of the ramp, although an improvement on the previous entrance, still creates unacceptable impacts on the design of the ground floor.</i></p> <p><u>Recommendations.</u> 7. <i>Consider alternative options for carparking and carpark entrance to enable the design of a more successful retail shop and entrance to the building. The location of the lift adjacent to Commerce Lane is not successful and this lift should be located adjacent to the front door to the building off Dobroyd Road.</i> 8. <i>Investigate the use of a car elevator to minimise the impact of the ramp on the ground floor of the building. This will enable a better entry and the design of a better proportioned shop.</i></p> <p><u>Comments on DSAP Recommendations as per Amended Plans (dated Feb 2023):</u> Item 7. Has been adopted in part where practicable for site constraints. However, with a reduced number of Units car-stackers are not required. Basement has been revised to allow for 'back of house' services and the like. Lift element altered for access. Item 8. No car elevator to be used. Entry is at grade (complies with <i>Australian Standards</i>) from lower part of Commerce Lane. In the changes to the ramp and parking the shop has been refined in shape with better fit-out and services for the intended purpose (not for food cooking or cafe as annotated).</p> <p>Landscape <i>SEPP (Housing) 2021 states that the approval authority cannot require more than 20% of the site area as common open space. No common open space has been provided on site, but it is the Panel's view that in this location on such a constrained site, no on-ground open space is required or would be usable if it were provided. Conversely, in the Panel's view there should be deep soil around the perimeter of the site on Commerce Lane and Dobroyd Road, either as a continuous strip or</i></p>

Internal Referral Body	Comments
	<p><i>of sufficient size to allow number of medium sized trees to grow. The area identified as 'deep soil' is overshadowed, and the approach to landscaping is generally poor.</i></p> <p><i>Expanding the area of hard paving and allowing the small retail area to open to it may be of greater benefit and provide better amenity.</i></p> <p><u>Recommendations.</u></p> <p><i>9. Identify options to increase the quality and amount of planting throughout the proposal and around the perimeter in particular.</i></p> <p><i>10. Redistribute the areas of deep soil and open the retail space to the north.</i></p> <p><u>Comments on DSAP Recommendations as per Amended Plans (dated Feb 2023):</u></p> <p>Item 9 to 10. Changes have been adopted to the satisfaction of Council's Landscape Officer. Landscaping however not practicable for all frontages for all wall planes. Deep soil elements are concentrated along Commerce Lane and toward Dobroyd Road. Selected above ground wall sections also include minor landscape elements.</p> <p>Amenity</p> <p><i>The amenity of the dwellings is generally acceptable except where the perimeter of the apartments are truncated due to the geometry of the site. The privacy of the units is unacceptable due to the open nature of the façade design and the proximity of the balconies to the surrounding streets, in particular Commerce Lane.</i></p> <p><i>A generous common area is provided on the upper level with a generous outside terrace. This should be shaded.</i></p> <p><i>South facing rooms on the upper level would benefit from roof lights.</i></p> <p><u>Recommendation.</u></p> <p><i>11. Comprehensive re-planning is required. The redesign should aim to improve the amenity of the rooms and privacy from the public domain.</i></p> <p><i>12. Provide shade to the common terrace.</i></p> <p><i>13. Include roof lights or clerestory windows to provide direct sunlight for the south facing rooms on the topmost level.</i></p> <p><u>Comments on DSAP Recommendations as per Amended Plans (dated Feb 2023):</u></p> <p>Item 11 to 13. Have been adopted in redesign of the building. Units include better arranged kitchenette, bathroom and laundry areas. Shade element provided for upper common room terrace. Lower common area terraces is part shaded by No.31 Dobroyd Road. Roof lights not shown however 'solar tube' style skylights will provide effective light for south facing units at suitable positions (along supporting wall line near kitchen / bathroom areas. This may be addressed by conditions.</p> <p>Sustainability</p> <p><i>Additional Sustainability measures should be considered as per below:</i></p>

Internal Referral Body	Comments
	<p><u>Recommendations</u> 14. Consider the following:</p> <ul style="list-style-type: none"> • Provide more PV (only 4.5kW) and green roof • Reuse rainwater • induction cooking and hot water • Include a rainwater tank and reuse for irrigation and toilet flushing/laundries • Change the arrangement of the top floor to gain more northern light to the bedrooms • Target electrification by changing to heat pump hot water and induction cooktops <p><u>Comments on DSAP Recommendations as per Amended Plans (dated Feb 2023):</u> Item 14 has been addressed with amended plans. PV cells and other internal fit-out matters to included in revised room layouts. Water connection/ water saving and electrical appliance specifications with Construction Certificate.</p>
Building Assessment - Fire and Disability upgrades	<p>Supported with conditions.</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at <i>Construction Certificate</i> stage.</p>
Environmental Health (Contaminated Lands)	<p>Not supported - insufficient information</p> <p><u>General Comments</u> In reviewing amended plans now received we have become aware the site was previously part of a lager site 43 Dobroyd Road on which a service station previously operated. When the part of the site (immediately next door and on the same land contour) known as 31 Dobroyd Road was developed a site contamination report was carried out. Site testing involved bore holes and water monitoring but not on the current DA application site.</p> <p>Due to the immediate proximity to the previous service station site and infrastructure(UPSS) including 5 tanks (since removed) it is felt that a contamination review should be carried out on this site.</p> <p>As the perceived risk is considered overall "low" this can be a condition of any approval. Therefore, the proposal is supported with conditions.</p> <p><u>Planning comment:</u></p>

Internal Referral Body	Comments
	<p>The above comments are considered in context of the SEPP (Resilience and Hazards) 2021 within this report in greater detail. In summary, the proposal includes a new use of the land for residential as well as the commercial / retail component. However, due to insufficient information of any <i>preliminary site investigation</i> or <i>detailed site investigation</i> having been done on former land uses within the site, including potential risk of former use of the adjacent the site (former service station at No.31 Dobroyd Road) insufficient information is available to be satisfied to support the application. The proposal is therefore recommended for refusal.</p>
Environmental Health (Industrial)	<p>Supported with conditions.</p> <p>The proposal is for demolition works and construction of a Mixed-Use development consisting of three levels, with ground floor commercial and upper floors co-living housing at 29-37 Dobroyd Road, Balgowlah Heights</p> <p>Proposal supported subject to conditions.</p>
Landscape Officer	<p>Supported with conditions.</p> <p>The proposal is supported with regard to landscape issues.</p> <p><u>Additional Information Comment 18/04/2023:</u> The amended plans and reports are noted.</p> <p>The changes in the architectural form significantly improves the available deep soil and on slab landscaping. The landscape proposal is generally supported and all proposed planting and landscape works shall be installed in accordance with the requirements outlined in the conditions of consent. All on slab landscaping shall meet Council's minimum soil depth requirements.</p> <p>The recommendations in the Arboricultural Impact Assessment (AIA) are supported and all trees and vegetation shown to be retained shall be protected during works, subject to the imposed conditions. Any pruning works must be carried out in accordance with the Arborist's recommendations under section 4.1.4 and 4.1.5 of the AIA.</p> <p><u>Original Comment Summary:</u> Concern was raised with the following:</p> <ul style="list-style-type: none"> • tree planting under the terraces above, • insufficient soil depth and planting bed widths to support the proposed planting.
NECC (Development Engineering)	<p>Supported with conditions.</p> <p><u>Amended Plans Submitted 4/05/2023</u> The amended stormwater sketch plan and architectural plans satisfy</p>

Internal Referral Body	Comments
	<p>the issue relating to the OSD system.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p> <p><u>Original Engineering comments</u> The proposed on site stormwater detention system (OSD) is located within a locked garage. In accordance with Council's <i>Water Management For Development Policy</i>, the OSD shall be located externally to all structures and buildings, so it can be accessed freely. The applicant must relocate the OSD.</p> <p>In this regards, Development Engineering cannot support the application due to clause 3.7 of Council Manly DCP 2013.</p> <p><u>DA Assessments Comment:</u> The OSD tank is relatively small and was previously positioned near the Waste bin room. The volume of the cylinder shaped tank can be suitably accommodated in square concrete tank of similar volume (e.g. 2.1m x 2.05m x 2m) under the landscape area located across the south east corner of the basement. This space was previously to be excavated for a "store" room, that is not required there anymore. A condition is recommended that a 8600 Litre tank be positioned below the outside landscape planter box at the SW corner of the site (with appropriate soil cover areas) and a small external maintenance access grate / lid provided that openable from Commerce Lane.</p>
Traffic Engineer	<p>Supported with conditions.</p> <p><u>Amended plans and documents received Feb-March 2023</u> The amended plans have reduced the number of boarding units from 12 to 10 and reduced the offstreet parking spaces from 6 to 3 (including 1 disabled space). There are no longer any parking spaces in mechanical car stackers. 2 motorcycle parking spaces and 10 bicycle parking spaces are also provided. As the number of units has been reduced the quantum of parking required is now only 2 spaces for the boarding house use and one for the shop. The parking provision therefore meets requirements.</p> <p>The removal of the car stackers means the constrained parking area will tend to be less congested however will mean it is more likely that tenants may enter the carpark and find all spaces occupied. The requirement for parking space sensors and car park full signage detailed in the previous comments remains appropriate.</p> <p>The provision of 2 motorcycle spaces and 10 bicycle parking spaces is consistent with SEPP Housing requirements, however there is also a requirement for a bicycle parking space to support the shop use. As suggested by the applicants Traffic engineer this will be required as a condition of consent</p>

Internal Referral Body	Comments
	<p>As noted by the applicants traffic engineer the placement of columns within the basement carpark is inconsistent with AS2890.1 Fig 5.2 which requires that columns must be offset no less than 750mm from the parking aisle</p> <p>The application remains supported subject to conditions.</p> <p><u>Traffic engineering referral comments dated 19/9/2022 (previous)</u> The plans designed by Woodhouse and Danks Architects, dated March 2022 and <i>Traffic Impact Assessment</i> prepared by Apex Engineers dated February 2022 have been reviewed by the Traffic team.</p> <p>This proposal in a B1 zone in Balgowlah Heights seeks approval for a mixed use development comprised of 12 boarding house units and a shop of 30.5 m2 GFA, 7 basement car parking spaces are proposed including 1 disabled space and 6 spaces in 3 pairs of mechanical car stackers. In addition there are 3 motorcycle spaces and 12 bicycle parking spaces. The Manly DCP applies to the subject site.</p> <p>General Assessment</p> <p><u>Traffic Generation</u></p> <p>The development has been estimated to generate 62 daily trips and 7 peak hour trips using rates from the RMS Guide to Traffic Generating Development for medium density residential development. This is acceptable and the generated traffic will not make a significant impact on traffic conditions on the surrounding local road network.</p> <p><u>Car Parking</u></p> <ul style="list-style-type: none"> • In terms of the parking requirements in SEPP (Housing) 2021 and the Manly DCP 2013, the development requires 3 parking spaces to support the boarding use and a parking space for the shop i.e a total of 4 spaces. The applicant proposes to provide 7 parking spaces including one disabled parking space. These provisions are in excess of the relevant parking requirements however given the isolated nature of the development which will tend to result in a higher reliance upon private motor vehicle travel than might normally be the case for boarding house development, it is considered appropriate. • As the development is primarily a boarding house the use of car stackers would generally be considered inappropriate however as the stackers are of a "pit" style the use of car stackers is not opposed. This is because each space will be independently accessible not requiring the other space in the stacked pair to be vacated to facilitate access. In this way,

Internal Referral Body	Comments
	<p>subject to training in the use of the car stacker, boarding house tenants will be able to have access to any space within the car stackers at any time.</p> <ul style="list-style-type: none"> As there are twelve boarding house units and only 7 offstreet spaces there is potential for boarding house tenants to have more vehicles than there are spaces available off-street. As the carpark area is quite constrained a vehicle entering the carpark and finding all spaces occupied will find it difficult to turn around and exit the carpark in a forwards direction. Similarly, reversing up a single width curved ramp will be difficult and potentially unsafe. To minimise the chances of this happening parking space sensors will be required on all parking spaces and an electronic “carpark full” sign displayed at the entry point to the carpark. <p><u>Motorcycle and Bicycle parking</u></p> <p>SEPP (Housing) 2021 requires 1 motorcycle parking space for each 5 boarding rooms and 1 bicycle parking space for each boarding room. The plans indicate that there are 3 motorcycle parking spaces each of 2.5m in length and 1.2m width and 12 bicycle parking racks each allowing for a bay of 1200m length and 0.6m in width. The above satisfies the requirements of the SEPP and AS2890.1</p> <p><u>Carpark Access</u></p> <ul style="list-style-type: none"> It is noted that the width of the driveway has a limited width of 3.9 metres, which is insufficient for two way traffic but adequate for one way traffic. The driveway is also curved and graded at 16.5% over much of its length. Given the above, sight lines from one end of the driveway to the other will be poor and reversing along the driveway to allow an opposing vehicle to enter or exit will be difficult. Traffic signal control of the driveway is therefore required giving priority to vehicles entering the carpark. Swept path plots have been provided to demonstrate access to and from the carpark and to/from Commerce Lane. The plots demonstrate that the full width of Commerce Lane between Dobroyd Road and the driveway is required in order to enter and exit the carpark and parking will not therefore be able to be accommodated on either side of Commerce Lane north of the driveway. In addition, to ensure clear sightlines for traffic exiting the carpark parking will also not be permissible anywhere along the full frontage of The Commerce Lane frontage of the property. A plan for No Stopping restrictions shall be prepared and implemented subject to Traffic Committee approval

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li data-bbox="555 320 1431 909">It is noted that the requirement of AS2890.1 clause 3.3 (a) for a maximum grade of 5% in the first 6 metres of the carpark access ramp cannot be fully satisfied with grades on the southern edge of the driveway being 12.5% and at the centre of the driveway the gradient steepens to 16.5% within 6m of the boundary. Given sight constraints the minor departures from the standards requirements are acceptable however will result in poor sightlines to and from pedestrians when vehicles exit the carpark onto Commerce Lane. Given the above it is essential that pedestrian sight line triangles compliant with AS2890.1 section 3.2.4(b) and fig 3.3 are available on both sides of the driveway at the point where the carpark access ramp meets the property boundary. The sight line triangles on the architectural plans have not been correctly plotted to the south of the driveway and the plans do not allow for sufficient sight lines to pedestrians. The sight line triangle should be plotted along the driveway edge not from the drivers position. <p data-bbox="517 987 1299 1050">The matters requiring amendment as detailed above can be addressed by conditions of consent.</p> <p data-bbox="517 1093 775 1122"><u>Planning Comment:</u></p> <p data-bbox="517 1128 1431 1368">There do not appear to have been any adverse changes made to the original plans regarding gradients and access which negatively impact upon the previous traffic referral comments and the amended plans remain supported subject to conditions. Three (3) carparking spaces are retained (without car-stackers). Later amended plans are noted above in context with the Traffic Engineer numerical's, with conditions able to be adjusted as applicable.</p>
Waste Officer	<p data-bbox="517 1453 898 1482">Supported with conditions.</p> <p data-bbox="517 1525 987 1588">Waste Management Assessment Supported with conditions including:</p> <p data-bbox="517 1630 1422 1836"><i>"#.Residential bin room access The carpark security door (roller grille) must be relocated further inside the building driveway ramp to allow Council's waste collection staff free and direct access to the residential bin room. The external bin room door must open outwards, be able to be latched in the open position and unobstructed by any locks or security devices.</i></p> <p data-bbox="517 1879 1426 1977"><i>Details are to be shown on the Construction Certificate plans to the satisfaction of the Certifying Authority and must be in compliance with the Northern Beaches Waste Management Guidelines.</i></p> <p data-bbox="517 2056 1390 2119"><i>Reason: To ensure adequate and appropriate waste and recycling facilities are provided for Council's service requirements."</i></p>

Internal Referral Body	Comments
	<p><u>Planning Comment:</u> This issue is addressed by appropriate condition to adjust the position of the carpark roller grille to be marginally further within the site clear of the bin room doorway to allow ease of residential waste bin removal. Commercial bins are wholly inside the basement area and will have minimal impact on neighbours (noise / odour / visual amenity) when collected by a commercial contractor. The residential bin room is to be built to comply with Council requirements as per conditions to ensure hygiene, ease of use, ventilation, service use, security and the like.</p> <p><u>Waste Management Assessment - Amended Plans dated Feb 2023</u> Specifically:</p> <ul style="list-style-type: none"> · Access to the bin room door is impeded by the underbuilding car park security door. <p>The carpark security door will need to be moved further inside the building to allow unimpeded access to the bin room door. Otherwise, the size and location of the bin room are acceptable.</p> <p><u>Waste Services Assessment (2022)</u> The waste facilities in the amended plans are identical to the original plans which were previously assessed, thus no waste issues have been resolved and the referral comments below are retained.</p> <p>As this is a multiple occupancy proposal, Council will be providing a “wheel out / wheel in” service for the residential bins from Dobroyd Road. The owners corporation / building occupants are not to place the bins at the kerbside for collection. The bin storage facility is to be provided in accordance with Councils design guidelines. Specifically:</p> <p><u>Access to Residential Bin Storage Room</u></p> <ul style="list-style-type: none"> • Council does not service Commercial Lane, as it is inaccessible to waste collection vehicles. Access to the bin storage room must be within 12 metres of the property boundary with Dobroyd Road. (Please note that the distance is normally 6.5m. Due to site constraints Waste Services will allow up to 12m). • The Waste Storage Area must have direct and convenient access for the residents from inside the property. Occupants must not have to leave the property and walk along the footpath to access the bin storage area. • Service access pathway for collection staff to be 1.2m wide, have a flat, smooth, non-slip surface with no steps or ramps steeper than a gradient of 1 in 8.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> ● Any doors fitted on the waste storage area, pathway and access to the street must be: <ul style="list-style-type: none"> ○ Able to be latched in an open position for servicing without obstructing access and manoeuvring of bins ○ Unobstructed by any locks and security devices ○ Minimum 1.2 metres wide ○ Openable in an outward direction. <p><u>Bin Storage and Bin allocation</u></p> <ul style="list-style-type: none"> ● The residential waste storage area must be able to accommodate 12 x 240 litre residential waste and recycling bin (for 12 residential units): 4 x garbage, 3 x paper recycling, 3 container recycling bins and 2 x vegetation bins. ● The dimensions for each bin are: · Depth: 750mm · Width: 600mm · Height: 1080m ● Any isles within the bin storage room must be a minimum of 1m wide. <p><u>Commercial Bin Storage Room</u> A separate bin store must be provided for the commercial premises. It is unclear from the plans if a separate commercial bin store has been provided.</p> <p>Not supported.</p> <p><u>Waste Services Assessment</u> As this is a multiple occupancy proposal, Council will be providing a “wheel out / wheel in” service for the residential bins from Dobroyd Road. The owners corporation / building occupants are not to place the bins at the kerbside for collection.</p> <p>The bin storage facility is to be provided in accordance with Councils design guidelines.</p> <p>Specifically:</p> <p><u>Access to Residential Bin Storage Room</u></p> <ul style="list-style-type: none"> ● Council does not service Commercial Lane, as it is inaccessible to waste collection vehicles. Access to the bin storage room must be within 12 metres of the property boundary with Dobroyd Road. (Please note that the distance is

Internal Referral Body	Comments
	<p>normally 6.5m. Due to site constraints Waste Services will allow up to 12m).</p> <ul style="list-style-type: none"> • The Waste Storage Area must have direct and convenient access for the residents from inside the property. Occupants must not have to leave the property and walk along the footpath to access the bin storage area. • Service access pathway for collection staff to be 1.2m wide, have a flat, smooth, non-slip surface with no steps or ramps steeper than a gradient of 1 in 8. • Any doors fitted on the waste storage area, pathway and access to the street must be: <ul style="list-style-type: none"> ○ Able to be latched in an open position for servicing without obstructing access and manoeuvring of bins ○ Unobstructed by any locks and security devices ○ Minimum 1.2 metres wide ○ Openable in an outward direction. <p><u>Bin Storage and Bin allocation</u></p> <ul style="list-style-type: none"> • The residential waste storage area must be able to accommodate 12 x 240 litre residential waste and recycling bin (for 12 residential units): 4 x garbage, 3 x paper recycling, 3 container recycling bins and 2 x vegetation bins. • The dimensions for each bin are: · Depth: 750mm · Width: 600mm · Height: 1080m • Any isles within the bin storage room must be a minimum of 1m wide. <p><u>Commercial Bin Storage Room</u></p> <p>A separate bin store must be provided for the commercial premises. It is unclear from the plans if a separate commercial bin store has been provided.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to <i>Ausgrid</i> who provided a response on 17.6.2022 stating that the proposal is acceptable subject to compliance with the relevant overhead powerline safe clearances. These recommendations may be included as a condition of consent, as applicable.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

DESIGN REVIEW PANEL

Northern Beaches Council has an appointed Design and Sustainability Advisory Panel (see DSAP referral comments within this report)

DESIGN QUALITY PRINCIPLES

The residential housing type of 'co-living' is not required to apply the design quality principles of a Residential Flat Building pursuant to SEPP Housing.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

This is the only part of the ADG relevant to "co-living" development pursuant to SEPP Housing Clause 69 - *if the co-living housing has at least 3 storeys - the building will comply with the minimum building separation distances specified in Clauses 2F & 3F of the Apartment Design Guide (ADG).*

Development Control	Criteria / Guideline	Comments
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Part 3 Siting the Development

Visual Privacy

Minimum required **separation distances from buildings** to the side and rear boundaries are as follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.

Does not comply.

The adjacent flat building (shop top style housing) at No.31 Dobroyd Road is within 6.0m for habitable rooms and balconies. (In the order of 3.1m to 7.3m due to angled boundary line and adjacent building shape / position and that building constructed close to the common boundary)

Does not comply for non-habitable room separation to No.31 Dobroyd Road (1.9m to 3.8m).

The proposal utilizes solid wall elements, recessed, landscaped courtyard and access areas (corridor / stairs / lift) along the common boundary with No.31 Dobroyd Road to address this issue.

The amended proposal is satisfactory in addressing the amenity impacts for close building separation in terms of noise and visual privacy to the adjacent private open space and likely noise impacts from common areas (balconies / courtyard) on adjacent land.

(As a strict merit approach consideration, see 'Clause 4.6' to address use of the prescribed building separation as a "defacto" development standard used by SEPP Housing.)

A BASIX certificate has been submitted with the application (see Certificate No.1266566M dated January 2022).

The BASIX Certificate indicates that the development as a whole will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	45

The applicant has indicated the proposal will be able to comply with BASIX as amended however, an updated BASIX certificate has not been supplied to correspond with the amended plans.

SEPP (Housing) 2021

Part 3 – Co-Living Housing

Clause 67 – Co-living housing may be carried out on certain land with consent	
Standard	Compliance/Comment
Development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing, residential flat buildings or shop top housing is permitted under another environmental planning instrument.	Complies (See Clause 69 for other restrictive criteria)

Clause 68 – Non-Discretionary Development Standards	
Standard	Compliance/Comment
Floor Space Ratio	
a) For development in a zone in which residential flat buildings are permitted - a floor space ratio not more than: <ul style="list-style-type: none"> i) the maximum permissible floor space ratio for residential accommodation on the land, and ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing. 	Complies. The SEPP provides an incentive for co-living housing development as additional permitted floor space over and above the local permitted FSR control. The proposal relies on this provision which prevails over the Manly LEP.

Communal Area(s)	
b) For co-living housing containing 6 private rooms: <ul style="list-style-type: none"> i) a total of at least 30m² of communal living area, and ii) minimum dimensions of 3m for each 	Not applicable

communal living area.	
c) For co-living housing containing more than 6 private rooms: i) a total of at least 30m ² of communal living area plus at least a further 2m ² for each private room in excess of 6 private rooms, and ii) minimum dimensions of 3m for each communal living area.	Complies. (10 lodger rooms - amended by a reduction of 2 rooms during the assessment period) Common room of 39.5sqm on the first floor. (minimum dimension exceed 3m)
d) communal open spaces: i) with a total area of at least 20% of the site area, and ii) each with minimum dimensions of 3m.	Complies Two communal open space terrace areas are available for lodgers. Open area terrace of 29sqm and a 'laneway' courtyard 40.6sqm. (Minimum dimensions exceed 3.0m) (Noted the rear common open space adjacent Unit 1 includes landscape elements, as per annotation on plans, to restrict close use of area along boundary line with No.31 Dobroyd Road.)
Car Parking	
e) Unless a relevant planning instrument specifies a lower number: i) for development on land in an accessible area - 0.2 parking spaces for each private room, or ii) otherwise - 0.5 parking space for each private room.	Complies. The site is within an accessible area: 2 car spaces (for 10 rooms) are required. One (1) disabled person car space is provided giving a total of 3 car spaces. (The mechanical car stackers have been deleted from the amended design during the assessment period).
Landscaping	
f) For development on land in R2 Low Density Residential or R3 Medium Density Residential - the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument.	Not applicable
g) For development on land in R4 High Density Residential - the minimum landscaping requirements for residential flat buildings under a relevant planning instrument.	Not applicable

Clause 69 – Standards for Co-Living Housing	
Standard	Compliance/Comment
1) A consent authority must not consent to development to which this Part applies unless it is satisfied that:	
a) Each private room has a floor area, (excluding an area used for the purposes of private kitchen or bathroom facilities), that is not more than 25m ²	Complies The amended design is: Unit 1 = 22sqm (2 person)

<p>and not less than:</p> <ul style="list-style-type: none"> i) for a private room intended to be used by a single occupant - 12m², or ii) otherwise - 16m². 	<p>Unit 2 = 18.5 sqm (2 person) Unit 3 = 19.5sqm (2 person) Unit 4 = 19.5sqm (2 person) Unit 5 = 18sqm (2 person) Unit 6 = 17sqm (1 person) Unit 7 = 25sqm (accessible unit) (2 person) Unit 8 = 19sqm (2 person) Unit 9 = 19sqm (2 person) Unit 10 = 17sqm. (1 person)</p> <p>(The main living area of each room is considered to be suitable, accounting for bathroom and kitchette space).</p>
<p>b) The minimum lot size for the co-living housing is not less than:</p> <ul style="list-style-type: none"> i) for development on land in R2 Low Density Residential – the lesser of the minimum lot size requirements for manor ii) houses under a relevant planning instrument, or 600m², iii) for development on land in R3 Medium Density Residential – the minimum lot size requirements for multi dwelling housing under a relevant planning instrument, <p>for development on other land - the minimum lot size requirements for residential flat buildings under a relevant planning instrument.</p>	<p>At the time of lodgement the application relied on the SEPP Housing relying on subclause b(iii) that states "<i>for development on other land - the minimum lot size requirements for residential flat buildings under a relevant planning instrument.</i>" In this case the B1 Neighbourhood Centre has no minimum lot area as per MLEP 2013. However, SEPP Housing changed on 1.7.2022 with the gazettal of revised Standards for co-living housing as follows:</p> <p><i>(b) the minimum lot size for the co-living housing is not less than—</i> <i>(i) for development on land in Zone R2 Low Density Residential—600m², or</i> <i>(ii) for development on other land—800m², and</i> <i>(iii) (Repealed)</i></p> <p>The SEPP Housing now requires 800sqm "on other land", in this case being B1 Neighbourhood Centre. Without the benefit of 'Savings and Transitional' the site does not comply with the new SEPP criteria. (Published LW 1 July 2022 (2022 No 349))</p> <p>Whether or not the proposal is benefitted by savings and transitional provisions the proposal has been substantially amended and re-notified after the SEPP was changed. The site area requirement of 800sqm is a development standard and therefore "Clause 4.6" may be applied as a merit consideration.</p> <p>(Note: The NSW Department of planning standard zones descriptor has changed from "B1 Neighbourhood Centre " to "E1 Local Centre", applying to new applications lodged after 26 April 2023)</p>
<p>c) For development on land in Zone R2 Low</p>	<p>Complies - Not within R2 Low Density zone</p>

<p>Density Residential or an equivalent land use zone, the co-living housing:</p> <ul style="list-style-type: none"> i) will not contain more than 12 private rooms, and ii) will be in an accessible area. 	<p>however building has 10 accommodation units.</p> <p>Site is within accessible area with footpath link to bus shelter with hourly bus services.</p>
<p>d) The co-living housing will contain an appropriate workspace for the manager, either within the communal living room area or in a separate space.</p>	<p>Complies - shown as workstation within common room.</p>
<p>e) For co-living housing on land in a business zone – no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use.</p>	<p>Manly LEP permits residential uses at ground level in mixed use development of Neighbourhood Centres. (The land use table permits residential uses in the form of boarding houses, home businesses, group homes, home based child-care that may be at ground level)</p>
<p>f) Adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant.</p>	<p>Complies (and may be subject to condition)</p>
<p>g) Each private room will be used by no more than 2 occupants.</p>	<p>Complies (and may be subject to condition)</p>
<p>2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether:</p>	
<p>a) the front, side and rear setbacks for the co-living housing are not less than:</p> <ul style="list-style-type: none"> i) for development on land in R2 Low Density Residential or R3 Medium Density Residential - the minimum setback requirements for multi dwelling housing under a relevant planning instrument, or ii) for development on land in R4 High Density Residential - the minimum setback requirements for residential flat buildings under a relevant planning instrument. 	<p>Not applicable - B1 Neighbourhood Centre</p>
<p>b) if the co-living housing has at least 3 storeys - the building will comply with the minimum building separation distances specified in Clauses 2F & 3F of the Apartment Design Guide (ADG).</p>	<p>Does not comply - variation See merit consideration under the heading "SEPP 65 - Apartment Design Guide"</p>
<p>c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area.</p>	<p>Complies (Solar access shown on plans DA-80 to DA-86)</p>

d) at least 1 bicycle parking space will be provided for each private room.	Complies (10 bicycle racks shown in basement)
e) at least 1 motorcycle parking space will be provided for every 5 private rooms.	Complies (2 motorbike spaces shown in basement)
f) the design of the building will be compatible with: i) the desirable elements of the character of the local area, or ii) for precincts undergoing transition - the desired future character of the precinct.	The building design has been substantially amended to create a more cohesive integration with the adjacent Neighbourhood Centre development at No.31 Dobroyd Road. The visual impact also better relates to the amenity of surrounding residents (by amended plans during the assessment period) and there is a visual continuity between the two developments as a result of materials, colours and shaping of external elements in sympathy to the adjacent contemporary shop top style housing to the west. (The DFC and local streetscape / townscape character are considered in further detail under Clause 3.1 and Clause 3.1.3 of the Manly DCP within this report.)

Clause 70 – No Subdivision	
Standard	Compliance/Comment
Development consent must not be granted for the subdivision of co-living housing into separate lots.	No subdivision is proposed.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who provided a response on 17.6.2022 stating that the proposal is acceptable subject to compliance with the relevant relevant overhead powerline safe clearances. These recommendations may be included as a condition of consent, as applicable.

Other Service Authority Infrastructure

The proposal was not required to be referred to *Transport for NSW* and no other service infrastructure authority issues are raised pursuant to the SEPP. *Sydney Water* asset requirements are addressed by separate processes administered directly through *Sydney Water*.

SEPP (Resilience and Hazards) 2021

“Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial / business purposes for a significant period of time with various changes of businesses having occurred since establishment of the building. The land is adjacent a former vehicle service station that adjoined the western boundary. Fuel tanks underground were positioned in the NE forecourt area. No.31 Dobroyd Road was remediated during demolition / site preparation phase.

The applicant has not provided a detailed site investigation on the subject land regarding any specific contamination (if any exists within the subject site) and direct consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter. (The submitted geotechnical report (by Greywacke) does not include any data on soil testing for contamination)

A detailed or preliminary Site Investigation to ascertain if there is a potential for contaminant (if they exist on the site (from past or adjacent use) is not available from the applicant. Regardless sub-section 4.6 (1)(b) and 7(1)(c) of this chapter must be considered.

Sub-section 4.6(1)(b) stipulates that "if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out".

Given there may be potential of contamination on the site, and such contamination, if present is "low" as per Council's Environmental Health (EH) Team Referral Response the response recommended by Council Environmental Health - Contaminated Land referral recommend conditions to address Clause 4.6 of the SEPP . Notwithstanding the EH referral a preliminary or detailed site investigation has not been supplied with the DA and the site is adjacent a property that was subject to contamination as a Schedule 1 use.

For the purpose of understanding the process to step through the SEPP states:

"4.6 Contamination and remediation to be considered in determining development application

(1) A consent authority must not consent to the carrying out of any development on land unless—

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is—

(a) land that is within an investigation area,

(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,

(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—

(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge)."

Planning Assessment Conclusion

Due to insufficient information of any preliminary site investigation or detailed site investigation having been done on former land uses on and adjacent the site insufficient information is available to be satisfied to support the application. The proposal is therefore recommended for refusal.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings: (Amended plans)	8.5 metres (m)	8.5m Existing Ground Level (EGL) 8.5m (natural / extrapolated ground level)	N/A N/A	Yes
Floor Space Ratio	FSR: 1:1 381.7sqm	FSR: 0.985:1 376.3sqm	N/A	Yes

Pursuant to the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* the existing ground level measured to the top of the new roof height gives an overall height of 8.5m.

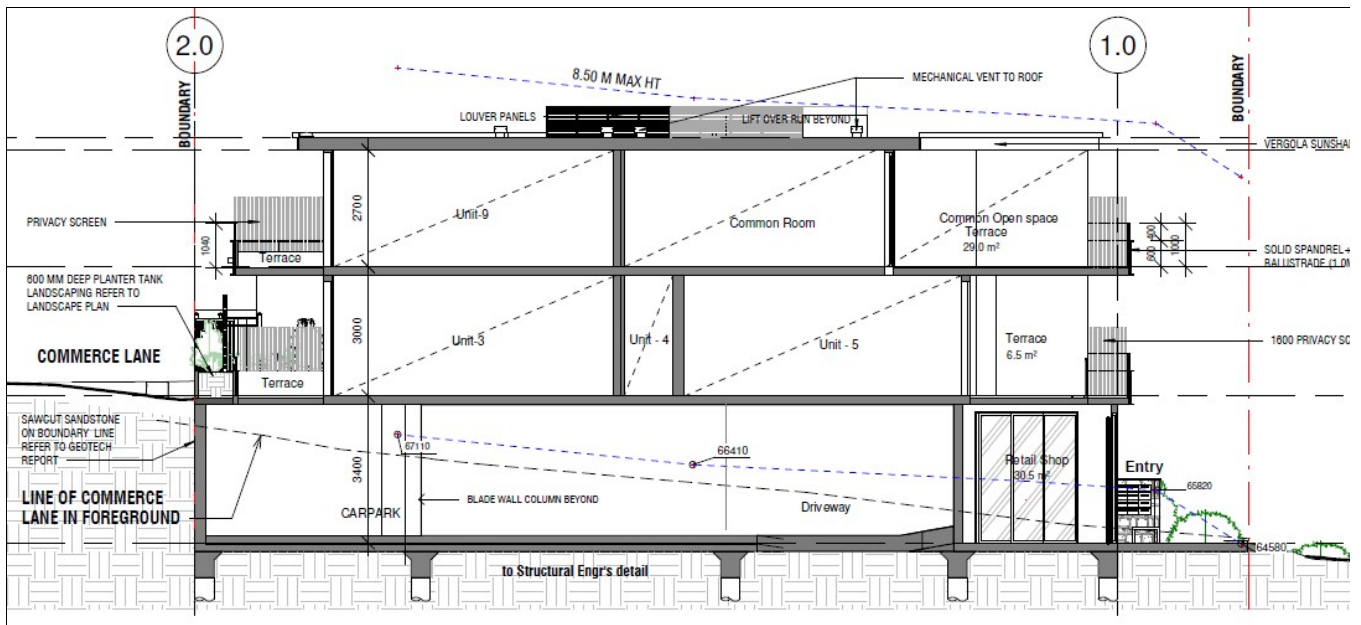


Image: General height plane & existing ground slope shown as a dotted blue line across the section drawing. (Note offset to unit interior from rear boundary to Unit 3 above carparking area.)
 (Note: The approach taken by *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* of extrapolated levels does not give a height variation either as the existing building was constructed over the natural slope of the site).

See heading SEPP (Housing) 2021 within this report regarding development standards for Building Separation and Minimum Lot Size discussed under "Clause 4.6" section below.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

BUILDING SEPARATION

Description of non-compliance:

Development standard:	Building Separation
Requirement:	6.0m

Proposed:	GL - 0.0m to boundary elements (stairs/terrace edge) UL- 1.8m to 2.6m Upper Level floor Units / terraces and circulation space. FF- 1.8m to 4.0m between First Floor walls.
Percentage variation to requirement:	Up to 100%. (Average building variation collectively across all floor elements 41.6% for setback to No.31 Dobroyd Rd. Other frontages comply due to road separation)

Assessment of request to vary a development standard:

The following assessment of the variation to Building Separation development standard given that may be regarded as development standard in being of numerical form and "called in" by reference under Clause 69 **"Standards for co-living housing"** within the relevant EPI *SEPP (Housing) 2021*. This assessment has taken into consideration the approach taken in judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Building separation distance as "Standards for co-living housing" is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by*

subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural*

heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *"The proposal has been designed with adequate building separation which achieves reasonable levels of external and internal visual privacy.*
- *The development is of a scale which supports the desired character of the locality and provides massing and spaces applicable to a neighbourhood zone. The proposal provides amenity with no adverse impacts to visual or acoustic privacy with access to natural ventilation, sunlight and outlooks. The proposal has also been designed with deep soil areas and communal areas as required under the Housing SEPP.*
- *The wedged shape of the site, slope and isolated neighbourhood centre zoning give rise to the building separation controls being less applicable to this site. The primary issue of building separation is between the site and neighbouring development to the west. The proposed development is of good design which is adequately separated, with measures to ameliorate impacts to amenity, such as privacy screens, planter beds and landscaped screening. Appropriate amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook are retained.*
- *The proposal has been designed with compliant sunlight access to both the proposed development and adjoining properties. Refer to the Shadow Diagrams prepared by Woodhouse & Danks Architects which show compliance. The non-compliance to the building separation controls do not hinder the development's ability to achieve these criteria. Sufficient solar access is also provided to the communal and public open spaces in the development, which will enjoy high levels of amenity through new landscape planting."*

Comment

- Part of the variation relates only to an enclosed stairwell (fire escape) from the carpark level and opens to Dobroyd Road.
- The side wall includes articulated elements, suitable fixed windows (highlight / slot windows).
- The rear common open space area acts as a secondary entry only and landscape planter boxes are included to keep movement away from the boundary edge, which is screened to No.31 Dobroyd Road.
- Balconies have on the Dobroyd Road side face north and the common open space upper balcony is on the opposite side of the building away from No.31 Dobroyd Road. Closer private balconies within the co-living units are small and not suitable for congregating or for gatherings.
- Colours and materials and the building design have been amended to give the appearance that the two buildings are a 'pair' of similar style uses (shop top style) and the building bulk, scale and floor arrangements have been amended address previous amenity concerns in an appropriate way.
- The different levels of the co-living spaces along the western side are arranged to minimise amenity disturbance to adjacent land and amenity considerations (privacy, noise, activity) are also manageable by the building Manager via the Management Plan for the Co-living units.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Building separation development standard and the objectives of the Neighbourhood Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying aims of the Apartment Design Guide (ADG) Building Separation requirements are:

(1) The Principles of the Policy are as follows:

(a) ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings.

Comment:

The character of the Neighbourhood centre is dominated by the contemporary styling and visual appearance of No.31 Dobroyd Road. The massing and scale of the building to provide an appropriate design response that "pairs" the building with the established character of the adjacent building to the west. The proposal has been reduced in building bulk with setback and massing changes along the interface with adjacent building to ensure no unreasonable bulk and scale.

(b) assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook.

Comment:

The site is a narrow wedge shape and the adjacent setbacks and massing of the building at No.31 Dobroyd Road in its shop-top style creates a number of amenity concerns and constraints for the subject site. The ADG allows for

(c) provide suitable areas of communal open spaces, deep soil zones and landscaping.

Comment:

the proposed Co-living building provides the main communal open space area on the first floor (FF) which is connected to the Common Room and this is located with an outlook toward the north and complies with principle building separations distances. A secondary common open space area is located toward the south-west corner of the site. This secondary space also acts as a circulation space for egress / entry to Commerce Lane. The main foyer and public approach to the building is however from Dobroyd Road adjacent the shop tenancy. Landscape planters have been included for the southwest communal open space and the edge treatment include fixed screening. There is limited opportunity for deep soil planting between No.31 Dobroyd Road and the proposed Co-living building, therefore window spaces, doorway openings and screening is provided. The communal open space, deep soil and landscaping are generally concentrated toward Commerce Lane and Dobroyd Road where there is a low density residential interface and streetscape considerations encourage landscape elements. The provision of a full 3m to 6m separation along the common boundary with No.31 Dobroyd Road for communal opens space, deep soil zones and wide landscape buffers is impracticable for the subject site area and shape. The re-development of No.31 Dobroyd Road has adopted a similar approach in using alternative design response in providing a lesser separation for apartments and other elements on that adjacent site. The image below provides a survey layout of the building space between the two sites and demonstrates that in the southern half of the site building separation is much less.

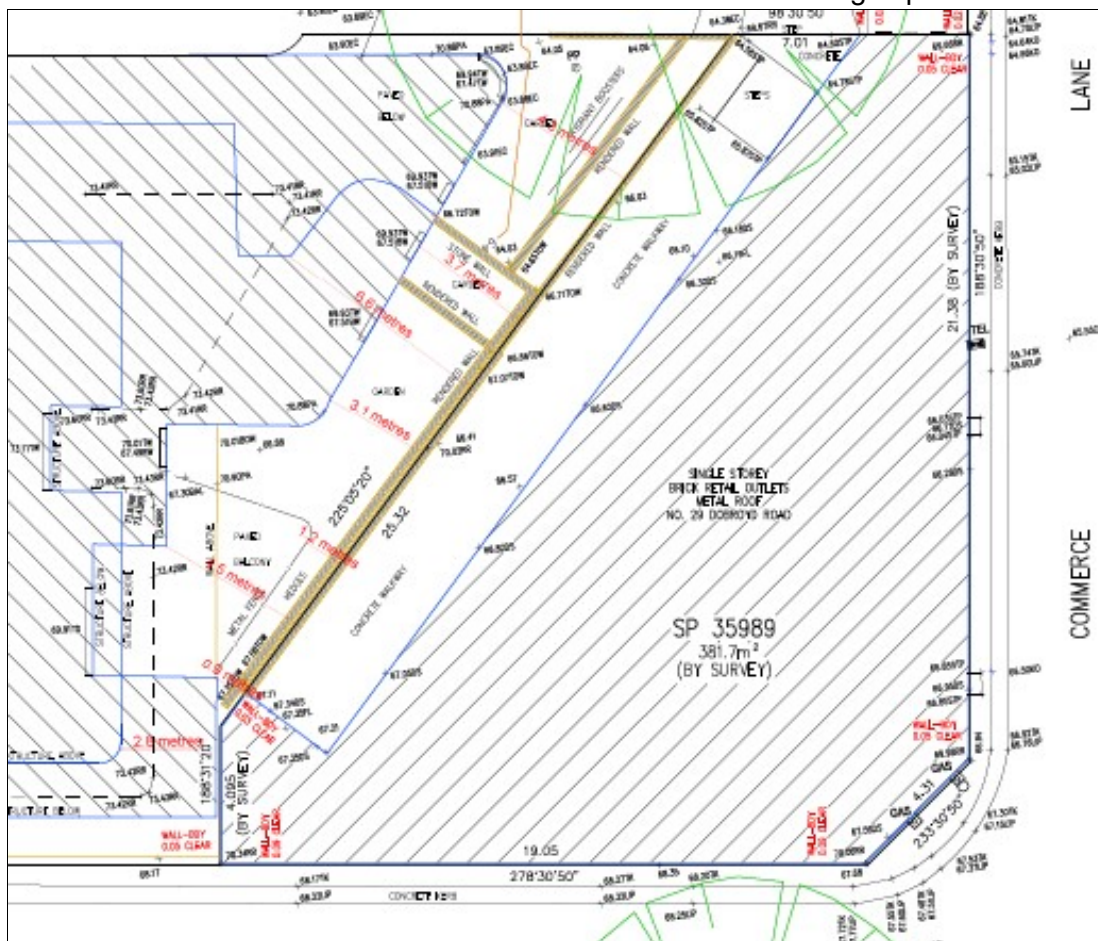


Image: Existing building setback zone along the boundary with No.31 Dobroyd Road.

Zone objectives

The underlying objective of the B1 Neighbourhood Centre zone is:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment:

The variation to the building separation requirements do not compromise the B1 Neighbourhood objective. In this regard, the proposal includes a small-scale retail/business component. The building operates as a single residential entity for the Co-Living units in that they operate under one title for rental (cannot be separately subdivided). The Co-living units will provide housing diversity within the area and the accommodation is suitable for people who may be in need of such accommodation. Commonly this applies to independent single persons who cannot afford, or do not require, a larger apartment or detached house to live in. The co-living units are intended to be supplied as a fully furnished rooms to serve the needs of people who live and work in the area.

(It is noted that the "B1" zone has been re-categorised as "E1 Local Centre", with a new list of objectives, however these apply to applications made after 26 April 2023. See *NSW Department of Planning Factsheet TMP-MC-FS-V1.2*)

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the building separation provisions of *SEPP Housing 2021* applied as "Standards for Co-living housing" is assumed by the Local Planning Panel.

MINIMUM LOT SIZE

Description of non-compliance:

Development standard:	Minimum lot size
Requirement:	800sqm
Proposed:	381.7m
Percentage variation to requirement:	51.5%

Assessment of request to vary a development standard:

The following assessment of the variation to Minimum Lot size development standard given that may be regarded as development standard in being of numerical form in the current Clause 69 "**Standards for co-living housing**" within the relevant EPI *SEPP (Housing) 2021*. This assessment has taken into consideration the approach taken in judgement contained within *Initial Action Pty Ltd v Woollahra*

Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

(Note: **SEPP Housing 2021 - Schedule 7A Savings and transitional provisions.**

The *SEPP (Housing) 2021* replaced the previous "Policy" of *SEPP Affordable Rental Housing* and 'savings and transitional' provisions intentionally make allowances to address situations where an undetermined DA may be prejudiced by the introduction of a replacement EPI, particularly if new controls are stricter or change assessment criteria during the course of a DA assessment. In this case, the change is an amendment within the applicable *SEPP (Housing) 2021*, as a progressive reform to the original Clause 69(b) (i) to (iii). In summary, a numerical standard criteria now applies where previously there was not one for the site at the time of DA lodgement. The SEPP is silent on whether the change to original subsections of Clause 69 (made during 2022) are incorporated into the original intent of the savings and transitional component of SEPP (Housing) 2021. Therefore, to avoid uncertainty, a merit approach with Clause 4.6 addresses this issue, since the DA (as amended) remains under consideration by Council.

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 69(b)(ii) "**for development on other land-800m²**" development standard is not expressly excluded from the operation of this clause as it applies to *B1 Neighbourhood Centre land*. (It is noted above that this has been a progressive reform introduced to the SEPP as an amendment during the assessment period that may prejudice the merits of the application whereby at the time of lodgement no minimum lot size applied. Therefore the mechanism of *Clause 4.6* is used to further consider matter on merit. This assists to address any uncertainty otherwise with *Savings and transitional provisions*.)

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

(b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of*

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *"The proposal meets the other relevant development standards within the Housing SEPP for co-living housing. The site accommodates a good design and compliant areas for common open space and communal living areas which proves the site is of sufficient size to meet the standards of the Housing SEPP.*
- *The use as co-living housing is determined by the land use shop top housing being a permissible land use within the zone. Therefore, the variation to the development standard for minimum lot size does not impact the bulk and scale of the development, noting no minimum lot size requirements to the land use for a shop top housing development and compliance with the building height and FSR standards which dictate bulk and scale.*
- *The proposal enables a diverse and affordable housing option in a strategic planning location within a business zone.*
- *The land use for co-living housing been affordable housing cannot be further subdivided and is retained as one lot, as existing.*
- *The site is an isolated lot with no amalgamation options. The site meets the parameters for the bulk and scale of the streetscape noting the adjoining development at 31 Dobroyd Road, Balgowlah Heights.*
- *The standard is inconsistent between the Housing SEPP and MLEP2013. It is noted that business zones within MLEP2013 do not have minimum lot sizes.*
- *The proposal promotes affordable rental housing and meets the intention of the Northern Beaches Affordable Housing Needs Analysis (December 2016)."*

Comment:

- The proposal has been subject to a critical design review by Council's DSAP that undertakes a role similar to a *Design Review Panel*. The applicant has undertaken a process to amend the building design to adopt or otherwise achieve appropriate changes that DSAP have recommended. These design issues are related to the difficulties of the small site area and its physical urban surroundings.
- The proposal has demonstrated that it can satisfy all other requirements of the SEPP (Housing) 2021 with the exception of building separation and the existing site area.
- The proposal has been amended to address building separation to minimise amenity issues that are associated with providing common open space, residential units, landscaping, parking, building accessibility, privacy, solar access as well as appropriate height and scale.
- The site has access to local public transport and cannot be feasibly consolidated with other land around, to enlarge the land, to achieve 800sqm.
- At the time of lodgement of the DA there was not minimum lot size requirement for "Co-living" that applied to the subject land and therefore the proposal relies on designing a building commensurate to the available land area and with appropriate design response for density, carparking, access, setback, building bulk, FSR, privacy, overshadowing including other relevant streetscape and environmental amenity concerns to ensure no unreasonable impact on surrounding land.

- There is no minimum lot size for subdivision within the B1 Neighbourhood Centre zone under Manly LEP for development.
- The Department of Planning introduced the 800sqm minimum lot size criteria for "all other land" after the DA had been lodged and was still being assessed by Council.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure (as amended) is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the minimum lot size as a development standard are not specified within SEPP (Housing) 2021, however the SEPP has overarching objectives that are applicable to achieve. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the SEPP in applying the standards contained within it (including minimum lot size) are:

(1) The Principles of the Policy (objectives) are as follows:

(a) enabling the development of diverse housing types, including purpose-built rental housing,

Comment:

The proposed variation to the site area requirements would preclude the site from being used for diverse housing, which in this case is purpose built rental housing in that it is intended to be supplied fully furnished to the housing sub-market of the area. The building density has been reduced to ensure the site still provides space for landscaping, carparking, a retail shop, waste services, common open space, accessible entry areas and appropriate internal layout to ensure no unreasonable impact on surrounding amenity.

(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,

Comment:

The proposal is not defined as a "boarding house" with a rental cap, however "Co-living housing" is suitable for single persons or couples that do not need larger residential premises or a house and land, but seek a location near major employment areas or lifestyle options available in the wider area.

(c) ensuring new housing development provides residents with a reasonable level of amenity,

Comment:

The variation does not preclude the building from being able to provide residents with reasonable level of amenity in that within the building each Unit has its own balcony space, ensuite, laundry cupboard, living area, storage and kitchenette. Each Unit has a street outlook and adequate windows glazing is provided for natural light (a condition is included for some extra skylights). Despite the undersized lot area space is also available for suitable sized common room and 2 common open space areas. Carparking and internal access (lift & stairs) are also provided. The design of the building has also been amended to respond to amenity concerns raised by surrounding neighbour's. In order to maintain a reasonable level of amenity to surrounding residents privacy screens, landscaping, circulation areas, setbacks, wall materials and fenestration have been re-designed. This also included a reduction in the number of Co-living units which facilitates a better "fit" for the building bulk and scale on the site and compliant FSR.

(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,.

Comment:

The use of the site will make use of existing infrastructure for the Dobroyd Road Neighbourhood Centre and follows the redevelopment of the adjacent site which delivered new housing (apartments) and retained a street level business / shops component. The small site area of the subject land makes the provision of larger multi-bedroom apartments less likely to be practically achievable (given just 4 apartments may require 8 car spaces plus visitor parking). The use of the land for Co-living is in a location that has access to public bus transport infrastructure and local public recreational space as per this objective.

(e) minimising adverse climate and environmental impacts of new housing development,

Comment:

The size of the site and comparative size of the building is still able to achieve environmental requirements for energy saving design elements such as use of PV, stormwater management, thermal performance and the like.

(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,

Comment:

The proposal has been amended to reflect the similarities in materials and built form of the existing adjacent building at No.31 Dobroyd Road. The Neighbourhood Centre is comprises 2 properties only and therefore priority has been given to the desired future character (DFC) and the two sites presenting as a "pair" to reflect and enhance the locality DFC. The building includes attention to detail for elements such as sandstone facing, pressed metal trim elements (roof / balcony), selected external wall colour matching, native landscaping and the like.

(g) supporting short-term rental accommodation as a home-sharing activity and contributor to

local economies, while managing the social and environmental impacts from this use,

Comment:

The proposal is capable of supplying 10 short-term rental Units (fully furnished) to the local market. Social activity within the building is managed with the assistance of a Management Plan that includes 'house-rules' for occupants. Environmental impacts have been addressed by design response and while numerical non-compliances have arisen the architectural design response and amenity considerations have been addressed to minimise any adverse environmental impacts. The use of the site for residential purposes (Units) with a ground level retail shop component is compatible with the permitted uses for a Neighbourhood Centre.

(g) mitigating the loss of existing affordable rental housing,

Comment:

The subject site does not presently contain any rental housing. The use of the site for Co-living housing assists to mitigate the loss of similar style housing elsewhere in the wider area and assists to meet the demand for rental housing that is more affordable than conventional larger apartments in the property sub-market.

Zone objectives

The underlying objective of the B1 Neighbourhood Centre zone is:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment:

The variation to a minimum 800sqm lot size requirement does not compromise the B1 Neighbourhood Centre objective. For the purpose of the available undersized land area the proposal includes a small-scale retail/business component. The Co-living Units will provide housing diversity within the area and the accommodation is suitable for people who may be in need of such accommodation and the site adjoins another site used for apartment units with retail/commercial shops at street level. Therefore the two developments with the zone are used for purposes similar in appearance to shop-top style housing. Housing of this style is commonly suited to independent single persons who cannot afford, or do not require, a larger apartment or detached house to live in due to their living circumstances. The co-living units proposed are intended to be supplied as a fully furnished rooms to serve the needs of people who live and work in the area.

(It is noted that the "B1" zone has been re-categorised as "E1 Local Centre", with a new list of objectives, however these apply to applications made after 26 April 2023. See *NSW Department of Planning Factsheet TMP-MC-FS-V1.2*)

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the *minimum lot size* Development Standard is assumed by the Local Planning Panel.

6.2 Earthworks

The proposal has been considered pursuant to the objectives of Clause 6.2 which are:

- *to ensure that earthworks and associated groundwater dewatering for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*
- *to allow earthworks of a minor nature without requiring a separate development consent.*

Sub sections (2) and (3) include provisions for earthworks which have been considered in context with the Preliminary Landslip risk Assessment and Preliminary Geotechnical Investigation as well as the plans provided for excavation and demolitions works in so far as they relate to landslip and geotechnical related matters.

In conclusion, Section 4 of the geotechnical report provides various recommendations for the development work which relate to general work, excavation and vibration, dilapidation, stability, excavation support, classification, further geotechnical investigation and groundwater.

Conditions are recommended to ensure the proposal is consistent with the objectives of this clause.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Clause 4.2.8 Neighbourhood Centres	Requirement	Proposed	% Variation*	Complies
<p>4.2.8.1 Height <i>Considerations of exceptions to the LEP development standards for building height under LEP clause 4.6 may be given where:</i></p> <p><i>a) a lesser or greater height will lead to a demonstrated improvement in townscape; and</i> <i>b) no unreasonable adverse impact is caused to neighbouring properties in terms of loss of sunlight, views or privacy.</i></p>	8.5m	8.5m	N/A	Yes
<p>4.2.8.2 Setbacks <i>a) The setback from the front boundary must conform to the</i></p>	<p>Front <i>Must conform to the predominantly</i></p>	<p>Dobroyd Road North frontage 2.0m to 3.0m -</p>	N/A	Yes

<p><i>predominantly established building alignments in the Centre (LEP Zone B1). Buildings will be constructed with a nil setback to the side boundary except where:</i></p> <p><i>(i) it adjoins land zoned residential in the LEP (including E3 & E4), in which case consideration must be given to residential setback controls at paragraph 4.1.4 of this plan; or where</i></p> <p><i>(ii) a nil setback would be undesirable in terms of the amenity of any residential uses existing on adjoining land or proposed for inclusion in the development in which case consideration must be given to provisions of this plan in relation to amenity at paragraph 3.4 Amenity of this plan.</i></p>	<p><i>established building alignments in the Centre (LEP Zone B1)</i></p> <p>Side setbacks <i>Nil setback to the side boundary except where it adjoins land zoned residential .</i></p> <p><i>(Note: Commerce Laneway is Zone B1 and ADG applies for building separation)</i></p>	<p>Shop front (Ground Level) GL</p> <p>1.8m to 2.6m - Upper Floor (UF) Terrace</p> <p>4.0m to 8.5m - UF Unit wall</p> <p>1.8m to 2.6m - First Floor (FF) Terrace</p> <p>4.0m to 8.2m - FF Unit wall</p> <p>Commerce Lane East - secondary</p> <p>0.0m to 3.5m - Carpark / bin room</p> <p>0.9m to 3.5m - UF Unit wall and terrace</p> <p>0.9m to 3.5m - FF Unit wall and terrace</p> <p>Commerce Lane South - secondary</p> <p>0.0m - Carpark wall</p> <p>3.8m - Stair access</p> <p>0.0m - UL Open space</p> <p>0.9m Terrace Units 1-3.</p> <p>3.0m - UL Unit wall</p> <p>0.785 - FF Stair room</p> <p>0.9m - FF Terrace</p> <p>3.0m - wall Units 7-9</p> <p>Side Setback West - side</p>		<p>Yes</p> <p>(See assessment SEPP Housing CL69(2)(g))</p> <p>Yes</p> <p>Yes</p>
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		0.0m GF Main entry path and Carpark 0.0m to 3.6m - UL Unit 6 wall, stairs, open space to Unit 1 side wall 0.0m to 2.6m - FF Unit 10 wall, stairs, open space to Unit 7 side wall		
4.2.8.3 Landscaping <i>LEP Zone B1 Neighbourhood Centres is not subject to the Minimum Residential Total Open Space and Landscaped Area requirements</i>	<i>Minimum Private Open Space is 20sqm for each dwelling within a mixed use development or shop top housing.</i> <i>Minimum dimension of 3m</i> <i>Receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter.</i> <i>All side and rear setbacks to boundaries adjoining land zoned Residential in the LEP (excluding laneways) are to be developed for deep soil planting.</i> <i>Communal open space for development in the Neighbourhood Centres Zone are to consider guidelines contained in the NSW Residential Flat Design Code.</i>	Units 4.5sqm to 7.0sqm (no Units comply) Units 1-10 1.3m to 2.8m <2 hours or nil Units 1-3 Commerce Lane Zone B1. A 0.9 to 3.0m landscape planter areas provided. 1 x common rooms 2 x common outdoor space (UL terrace 29sqm)	100% 100% 42% N/A N/A	No No No Yes Yes

<p>4.2.8.4 Residential Density</p> <p><i>Council will consider exceptions to the Residential Density Provisions in this plan (see paragraph 4.1.1.1) in relation to major redevelopments proposed in LEP Zone B1 Neighbourhood Centres where the development conforms to a site amalgamation parcel identified at Schedule 2 Townscape Principles Maps.</i></p>	<p>Schedule 2 - No density limitation. Amalgamation not undertaken with the recent redevelopment at No.31 Dobroyd Road.</p>	<p>10 living Units (each with kitchen, bathroom and laundry)</p>	<p>N/A</p>	<p>Yes</p>
<p>Schedule 3 Parking and Access Cars</p> <ul style="list-style-type: none"> • <p><i>2 parking spaces for every 5 boarding rooms</i></p> <p><i>1 parking space for on site manager and/or any other employee residing on the premises.</i></p> <p><i>At least 1 space for a motorcycle for every 5 boarding rooms.</i></p> <p><i>Commercial / Retail 1 parking space for every 40sqm of gross floor area.</i></p> <p><i>All calculations of required parking rates are to be rounded up to the next whole number.</i></p> <p>Bicycles</p> <p><i>At least 1 space for a bike for every 5 boarding rooms; and</i></p> <p><i>At least 1 space for a motorcycle for every 5 boarding rooms.</i></p>	<p>Living Units</p> <ul style="list-style-type: none"> • 3 x car spaces for 10 Units No allocated manager space <p>2x motorbike spaces</p> <p>Shop 30.5sqm</p> <ul style="list-style-type: none"> • Bicycles <p>3 bike spaces for 12 living Units</p>	<p>10 living Units 3 x car spaces (included DDA space) Not allocated 2 x motorbike spaces No allocated 10 x bicycle rack</p>	<p>N/A N/A N/A N/A</p>	<p>Yes Yes Yes Yes</p>

4.4.9 Boarding Houses

(The proposal is for ground floor business use with a *Co-Living* development above; in a "shop-top" housing style arrangement. The Co-living component being generally akin to that previously categorised as "boarding house" style accommodation. The following analysis is intended to provide a comparison only as to how the DA presents in relation to the *Manly DCP* which applied prior to the re-naming of certain affordable housing styles to "Co-living" under the replacement *SEPP Housing 2021*.

Schedule 7	Requirements	Comment	Numerical	Complies
A1 Boarding Rooms	12sqm for a single room; and	2 x single rooms of 17sqm	N/A	Yes
	16 sqm for a double room.	8 x double rooms of 18sqm to 25sqm	N/A	Yes
	Natural light 10% area of room	Glazing >10% of wall area for all living Units	N/A	Yes (Skylights recommended)
	Basin-toilet area 2.1sqm Shower 0.8sqm	Bathroom incl. shower 2.5m to 6.0sqm	N/A	Yes
	Laundry 1.1sqm Kitchenette 2.0sqm (Each room will be supplied fully furnished for occupants with lease)	Separate or combined Ldy / Kitchens. Kitchens 1.0sqm to 5.0sqm		Yes (Unit 1 change recommended)
A2 Communal Living Areas <i>Adequate communal living areas will be available within the boarding house for the use of each lodger.</i>	Kitchen - 6.5sqm or 1.2sqm for each resident Double sink - 1 per 12 pers Stove - 1 per 6 pers Fridge and communal storage	UF common room 39.5sqm LF common area terrace 40.6sqm UF common area terrace 29sqm	N/A N/A N/A	Yes Yes Yes
A3 Communal Kitchen Areas <i>Adequate communal kitchen facilities will be available within the boarding house for the use of each lodger where such facilities are not provided in the room.</i>	Facilities are provided in each room	Room kitchens and common kitchen	N/A	Yes
A4 Communal Bathroom and Laundry Areas <i>Adequate communal bathroom and laundry facilities will be</i>	Facilities are provided in each room	Room ensuite and Laundry cupboards	N/A	Yes

<i>available within the boarding house for the use of each lodger where such facilities are not provided in the room.</i>		Common area toilet		
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Note: In the event of any inconsistency with LEP/DCP provisions and numerical requirements of **State Environmental Planning Policy (Housing) 2021** prevail.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	N/A	N/A
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Facilities)		
4.1.8 Development on Sloping Sites	Yes	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.1 Height	Yes	Yes
4.2.8.2 Setbacks	Yes	Yes
4.2.8.3 Landscaping	No	Yes
4.2.8.4 Residential Density	Yes	Yes
4.2.8.5 Carparking, Vehicular Access and Loading Controls	Yes	Yes
4.2.8.6 Hours of Operation	Yes	Yes
4.2.8.8 Waste Management	No	No
4.2.8.10 Local Character provisions	No	No
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.9 Boarding Houses	No	No
4.4.9.1 Communal Rooms and Areas	Yes	Yes
4.4.9.2 Bedrooms	Yes	Yes
4.4.9.3 Open Space	Yes	Yes
4.4.9.4 Parking	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes
Schedule 7 – Part A – Boarding Houses	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Merit consideration of the requirements and objectives, pursuant to *Clause 3.1 Streetscapes and Townscapes*, are addressed as follows:

Streetscape

- *To minimise any negative visual impact of walls, fences and carparking on the street frontage.*
- *To ensure development generally viewed from the street complements the identified streetscape.*
- *To encourage soft landscape alternatives when front fences and walls may not be appropriate.*

Townscape

- *To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*
- *To assist in maintaining the character of the locality.*
- *To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*
- *To minimise negative visual impact, in particular at the arterial road entry points into the Council*

area and the former Manly Council area, so as to promote townscape qualities.

Comment:

Streetscape

The subject site has three (3) street frontages to address and the building design has been substantially amended to address the visual impact of wall planes, boundary lines (e.g. retaining walls or fences / screen devices) and use of landscaping elements. The carparking facilities are fully concealed and accessed from the side lane into the basement floor area at the rear of the shopfront.

The building design has been substantially amended during the assessment period to give a close visual similarity to the existing adjacent building at No.31 Dobroyd Road. The buildings together appear more as a "pair" rather than totally different buildings within the same neighbourhood centre. While there are some visual differences the principal visual appearances match (sandstone, facia, balcony shape, windows, colours and the like) to create future continuity and complement the established streetscape of redevelopment within the neighbourhood centre.

The building design has been amended to revise the use of appropriate landscaping as an integrated element along the side and rear lane frontages as well as with selected spaces such as the common area terraces, western side boundary and presentation to Dobroyd Road.

Townscape

The provision of parking has been located within a part basement area and is accessed from the side laneway. Carparking is limited by the narrow / wedge shape of the site. The present site currently has no off-street parking and the new use will increase carparking demand, subject to future occupancy (this may fluctuate with retail use / customer frequency and the residential tenants individual car ownership. By comparison conventional apartments of 2 or 3 bedrooms commonly require demand for 1 to 2 parking spaces however SEPP (Housing) 2021 envisages lower parking requirements in lieu of other forms of transport including bicycle, motorbike and access to bus services (or other public transport).

The site is within a small neighbourhood centre with a new shop top housing building adjacent. The character of the building has been changed in its design and aesthetics to be similar in appearance to that of No.30 Dobroyd Road. Therefore, providing an identifiable character of a "pair" of mixed use buildings, similar in appearance with a shop-top configuration. The surrounding area is dominated by residential housing and the recreational club and sportsfields to the west do not adversely compare to the proposal.

The site currently has 4 small commercial shop spaces only with limited future economic potential. The proposal provides a single ground level shop space that is more versatile and of a contemporary appearance. The future retail space is more accessible to the street. The proposed building will have improved internal access by way of a lift, stairs, car parking, bicycle and motorbike space. Existing pedestrian links will be subject to minor changes and will maintain landscape setting to the street along the Dobroyd Road frontage and active shop front area for pedestrian access. Suitable disability / pram access will be provided to the street.

Vehicular access to the basement is from the side lane and the amended design plans allow for bin removal, waste storage and car / bike access via the basement driveway. Minor planting, use of sandstone feature work, materials and shaping of building elements assist to minimise the visual impact of the road entry area and promote townscape qualities that provide visual continuity with the adjacent building of No.31 Dobroyd Road as part of a small neighbourhood centre.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed

development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.1.3 Townscape (Local and Neighbourhood Centres)

Merit consideration of the requirements and objectives, pursuant to *Clause 3.1.3 Townscape (Local and Neighbourhood Centres)*, are addressed as follows:

Many areas of the former Manly Council area have a particularly important townscape character with an essentially unified townscape, giving rise to a particular individual character which should be maintained. This townscape character is derived as a result of the general scale and interest of the buildings and surrounds. This scale and interest exists even in areas with a limited number of heritage listed buildings with individual importance.

Design Principles

- maintain and enhance the townscape of the former Manly Council area’s LEP Business Zones
- achieve the townscape objectives of this plan; and
- consider that the development exhibits design excellence in accordance with considerations of LEP clause 6.13(4) (as a statutory consideration for land in Zone B2 Local Centre and as a DCP consideration in other zones)

Comment:

The land is within a B1 Local Neighbourhood Centre and has been substantially amended to achieve the townscape objectives. (Clause 6.13(4) does not apply). The site is identified within Map 2E of the *Townscape Principles Map* and therefore consideration of the guidelines is provided as follows:

The building is on a corner site by virtue of the rear and side laneway (Commerce Lane) and the height proposed is consistent with the adjacent development at No.31 Dobroyd Road. Façade elements have been changed during the assessment period to more closely match the adjacent building at No.31 Dobroyd Road as demonstrated in the image below.



Image: Corner view from Dobroyd Road. Proposed building (as amended) on left with No.31 Dobroyd Road adjacent.

Pedestrian links into the building have been arranged to allow safe access from Dobroyd Road and the main entry is in a similar position to the existing ground floor access to the site. A secondary exit is also available to the rear laneway for the new proposal via the rear common open space. The site is not

located in an important vista site (near a major attraction, transport corridor, headland, CBD approach or the like) and is constructed to the boundary.

Design Details

The amended design is has reduced the number of Units within the building that has assisted in improvements to internal amenity, incorporating articulated wall facades with landscape elements. The external materials and architectural details have been amended during the assessment process to provide a more complementary design to the adjacent building at No.31 Dobroyd Road. This includes changes to elements of scale, proportion and façade lines, pattern and treatment of openings (including voids and windows), maintaining a flat roof design with pressed metal edging, use of sandstone and colours to visually "pair" the buildings together. Suitable conditions may be recommended to ensure cosmetic architectural styling is not adversely changed for the construction certificate phase.

The proposal was provided with solar access diagrams which demonstrate that No.31 Dobroyd Road is not overshadowed by the proposed co-living development between 9am and 3pm. (See section 3.4.1 with in this report). The overshadowing cast across Commerce Lane does not create an unreasonable loss of direct sunlight to adjacent residential properties.

The proposal has been amended to address privacy considerations to surrounding residential land and the adjacent shop-top housing by the re-configuration of the room outlooks, use of privacy screens (including translucent glass), and landscape treatment. Communal open space areas are also screened and amenity considerations will be subject to an operational management plan for the building.

The lettable retail space has been amended and includes restriction shown as "not cafe or food cooking". The shop area has an open aspect toward Dobroyd Road appropriate to the local neighbourhood centre.

The property address and street numbering is not changing (such as by consolidation or subdivision) and the entry point from Dobroyd Road is at a publicly visible point for identification.

Roof structures are shown to be limited to the lift overrun that protrudes above the main flat roof line. Photovoltaic (PV) cells are shown for the roof to assist with sustainable design and energy use. The positions of PV cells may be recommended to site a low angle to reduce impact on the visual outlook from No.26 Nolan Street (see view image montage for drawing CD.09 dated Feb 2023 drawn by *Woodhouse Danks*).

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Merit consideration of the requirements and objectives, pursuant to *Clause 3.4 Amenity (Views, Overshadowing, Overlooking / Privacy, Noise)*, are addressed as follows:

- *To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.*
- *To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

The proposal has been substantially amended during the assessment period to address privacy and amenity concerns for surrounding land. Generally the eastern and western elevations provide screening, limited window openings (highlight, bathroom or smaller style windows) and has therefore adequately limited opportunities for overlooking created toward No.31 Dobroyd Road or No.27 Dobroyd Road. Balconies for private rooms are small and either face northwards to Dobroyd Road, or at the "rear" toward the laneway. The rear of No.26 Nolan Place is screened by fencing and landscape planting at present however additional screening is recommended for the upper storey of the proposed co-living development for rooms 7, 8 and 9 since these rooms are above ground level and similar in height to the rear private open space area of No.26 Nolan Place.

With respect to view considerations the outlook from No.26 Nolan Place has been inspected and the applicant has provided a photomontage of the proposed (amended) building superimposed to assist in considering the visual impact of the co-living development and how it "sits" in relation to the existing building at No.31 Dobroyd Road. In summary the view impact is a district outlook and does not contain any coastal water elements or iconic local features. The view across the site is across a road frontage (being the rear laneway of Commerce Lane) and forms an outlook from living areas and POS of No.26 Nolan Place. A detailed view consideration is provided under clause 3.4.3 within this report.

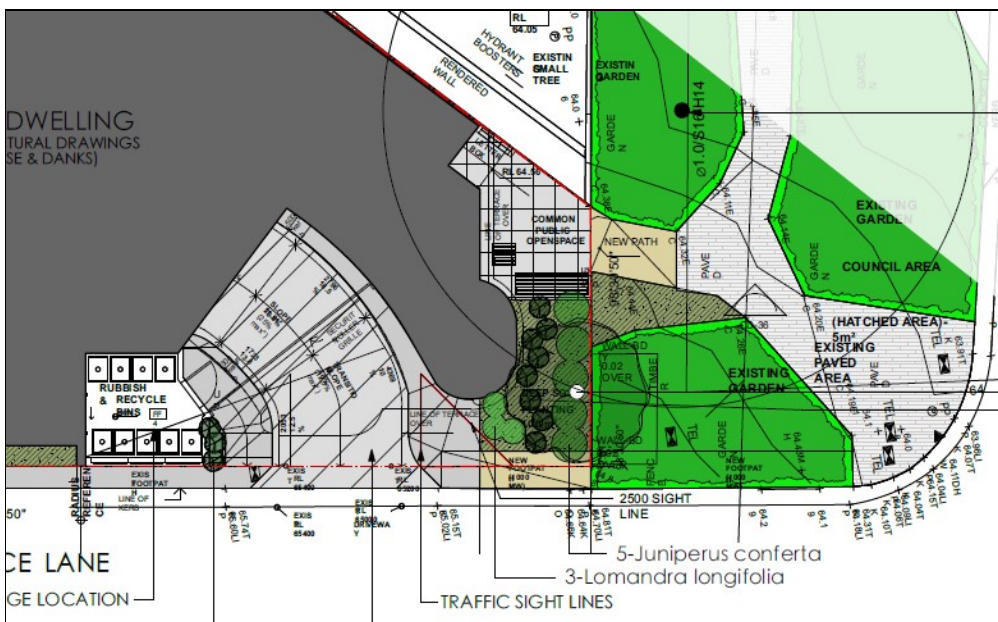
Considerations of solar access and overshadowing have been addressed in detail under *clause 3.4.1* within this report.

Consideration of reflectivity by the use of material and finishes to protect amenity for neighbours as per the MDCP includes the use of appropriate colours. The amended proposal seeks to provide elements of continuity and similar built form character the existing shop-top housing at No.31 Dobroyd Road. As a small neighbourhood centre the "pairing" of the two buildings is consistent with the associated streetscape objectives of the Manly DCP. In order to minimise reflectivity an "off white or cream colour" rather than "vivid white" for the external walls as shown on the elevations





Image: Front and rear of adjacent building at No.31 Dobroyd Road with less reflective colours and materials of metallic brown / cream.



Noise and activity impact for the basement parking area and bin room have been addressed by changes to the building design including, setbacks (wall design / landscaping) and ensuring suitable vehicle access with safe sight distances facing Commerce Lane as demonstrated in the image above. The basement area will have security access and the bin room allow for Council's residential waste bin service to access the site from Dobroyd Road, as per regular domestic bin services. The bin room is a fully surrounding roofed space with door access and therefore can be accessed internally by residents from the basement in the same manner that the commercial bins are fully contained within the basement. Acoustic impacts have been addressed within the Acoustic Report prepared by *West & Associates*. Council's Environmental Health section has considered the assessment report in context with the amended plans and are satisfied that the proposed changes to the building do not create any unreasonable environmental acoustic impact and retain reasonable amenity to surrounding residential receivers. New balcony spaces for the 10 Units are only suitable for 1 or 2 persons and therefore are unlikely to contribute to any unreasonable acoustic impact. The use of amplified music in building is suitably controllable by the "House Rules" within the building Management Plan. The report provides considerations with regard to mechanical services, parking, ventilation fans, as well as residential and commercial noise. (It is noted that the use has a cafe / restaurant has now been excluded by the applicant with the amended design). Subject to the implementation of an appropriate operational

management plan for the building the noise amenity impacts will not create unreasonable noise levels on surrounding land.

The amended design for the co-living building has reduced the number of rooms and therefore allowed improved internal amenity for common open space areas for occupants. The two communal open space areas allow for access to direct sunlight for all occupants within the building. At the upper level an outdoor terrace (RL71.0) with vergola structure and at the rear of the building a shaded courtyard area at RL68.0. Minor landscape elements are also included in front of the shop area for amenity with landscaping and outdoor seating.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, subject to conditions in this particular circumstance.

3.4.1 Sunlight Access and Overshadowing

Merit consideration of the requirements and objectives, pursuant to *Clause 3.4.1 Sunlight Access and Overshadowing*, are addressed as follows:

- *To provide equitable access to light and sunshine.*
- *To allow adequate sunlight to penetrate private open spaces within the development site and private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*
- *To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties and maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The shape and height of the building allows does not unreasonably reduce access to sunshine for adjacent land in midwinter as demonstrated by the solar access diagrams below. The adjacent building of No.31 Dobroyd Road is primarily in self shadow with the overshadowing produced by the propose Co-living housing projected across Commerce Lane. To the south of the site the land is higher and therefore overshadowing does not adversely affect No's 24 to No.28 Nolan Place.



Image: Rear of site along Commerce Lane showing adjacent land height, landscaping and fencing along No.26 Nolan Place and No.27 Dobroyd Road.(Source: Google streetview)

The proposal does not create unreasonable loss of sunlight on adjacent land and as demonstrated by the shadow diagrams overshadowing is not cast across No.27 Dobroyd road until after 1:30pm. (Note that the shadow diagrams are modelled on the previous design, however the roof height, and building shape is substantially the same, with no significant change in the overall shadow regime for the current (amended) plans.)

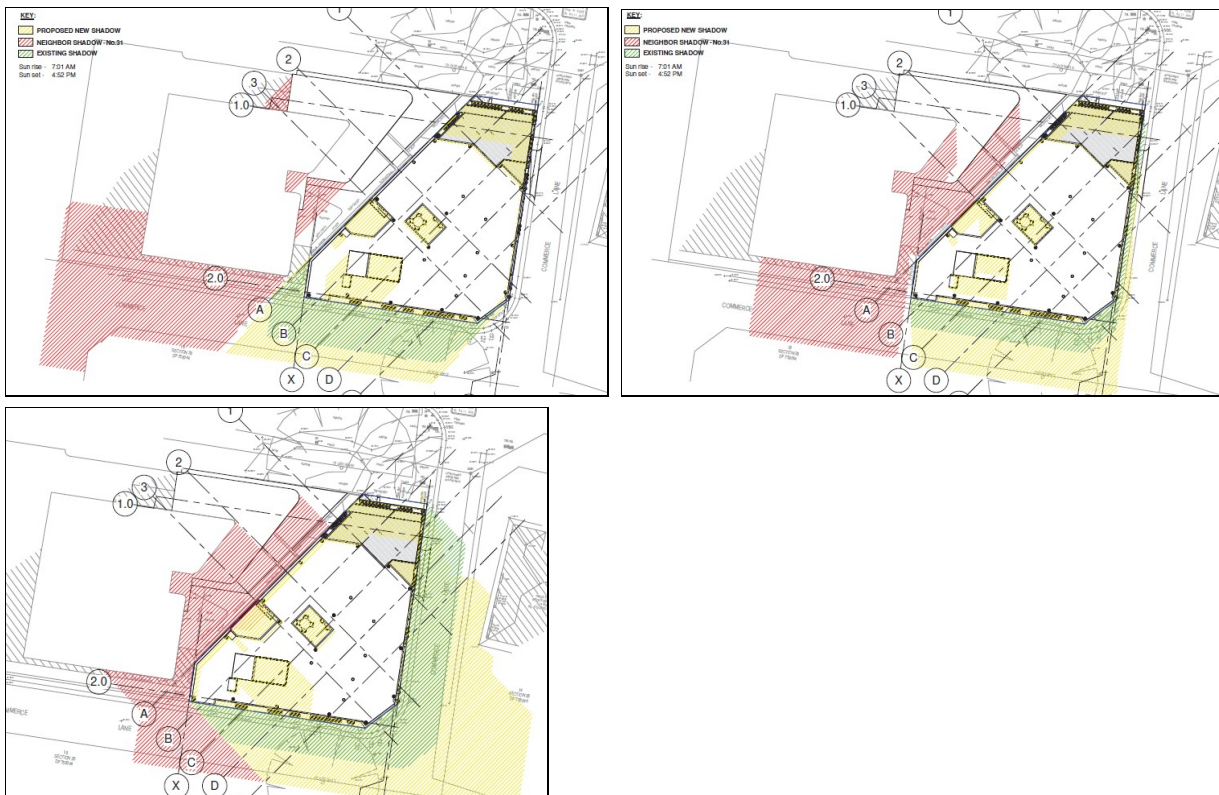


Image: Self-shadow (red) within No.31 Dobroyd Road in the morning and afternoon shadow toward south and east.

The proposal has been substantially amended during the assessment period to address improve solar access and reduce amenity impact on adjacent dwellings. The common open space and common room areas within the Co-living building ensure access to direct sunlight since the main common room and balcony is north facing and on the upper storey. The building does not create direct overshadowing of between 9am and 3pm on No.31 Dobroyd Road, and does not eliminate more than one third of the existing sunlight to the private open space of any adjacent properties from 9am to 3pm at the winter solstice (as per Clause 3.4.1.1.). In relation to sunlight to the windows or glazed doors and living rooms of adjacent properties (being on a north-south orientation) the level of solar access presently enjoyed will be maintained as per Clause 3.4.1.2. From the above diagrams it can be seen that the 3pm shadow toward No.27 Dobroyd Road is cast toward the brick side fence, rear garage and pool structure at 3pm on 21 June.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.2 Privacy and Security

Merit consideration of the requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are addressed as follows:

- *To minimise loss of privacy to adjacent and nearby development by appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings as well as mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*
- *To increase privacy without compromising access to light and air.*
- *To balance outlook and views from habitable rooms and private open space.*
- *To encourage awareness of neighbourhood security.*

Comment:

For the adjacent building at No.31 Dobroyd Road, Units 3,4 and 6 have private open space that is in close proximity to the western side of the proposed building. In this regard, the proposal has been amended to mitigate direct viewing from outdoor areas, windows and living space. Changes include privacy wall and planter boxes for the rear common open space that is adjacent No.31 Dobroyd Road. Planter boxes adjacent the screen wall assist to reduce the opportunity for occupants within the proposed co-living building from congregating close to adjacent private open space.

At the upper level privacy screens are included to assist privacy between Co-living Unit No.10 and the units to the east. Generally the window along the common boundary area between No.31 Dobroyd Road and the subject Co-Living building area small or highlight windows for privacy. The balcony for the common open space at the upper level is separated by a small narrow terrace for Unit 10 which provides visual and acoustic separation associated with the upper level common room and its common open space.

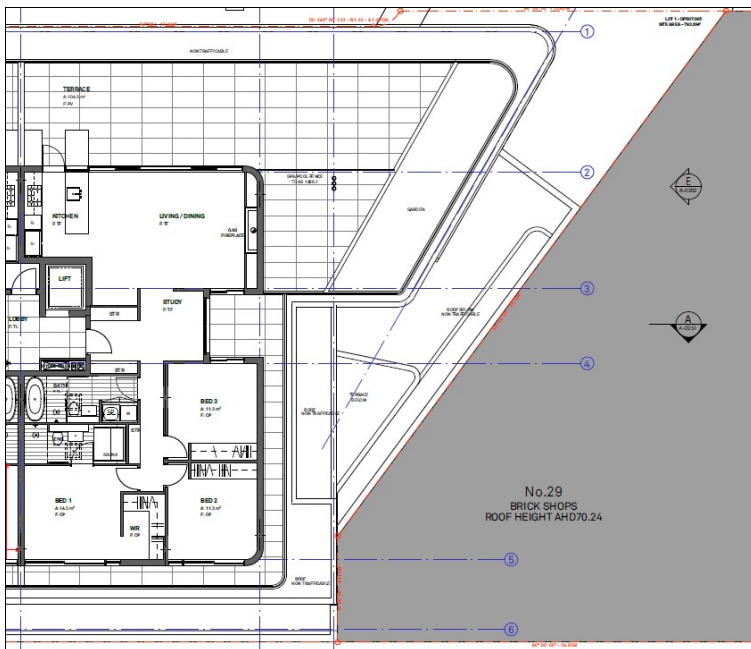
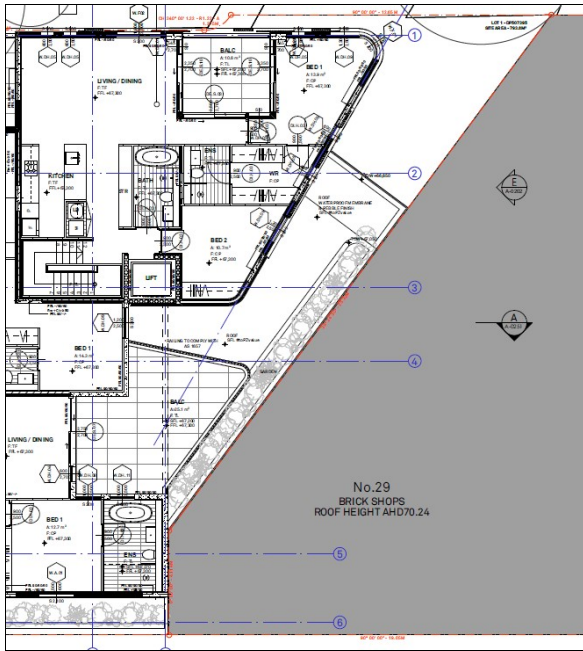


Image: Unit 3 (front) & Unit 4 (rear L2) layout and open space area and Unit 6 (right-side image) with large POS balcony on L3.

To the east the site is separated from No 27 Dobroyd Road by Commerce Lane. During the DA assessment period the eastern façade has been substantially changes to minimise privacy impacts toward the rear yard of No.27 Dobroyd Road and the internal living areas of that house.

It is recommended that the awning windows for the Common room and Unit 4 (that face east toward No.27 Dobroyd Road), use translucent glazing on the hinged panels (lower window frame). Privacy screening for balconies and the use of landscaping elements to assist with visual separation and amenity are demonstrated in the image below for the eastern setback along Commerce Lane.



Image: Eastern setback to Commerce Lane as per amended design to assist privacy and streetscape facing No.27 Dobroyd Road.

For the southern setback to Commerce Lane the rear units No.1,2, and 3 have been provided with privacy screens and landscaping. The changes also assist with security along the laneway frontage. At the upper level Units No.7, 8 and 9 have part solid balustrades with a glazed horizontal section. The rear of No.26 Nolan Place has an outlook toward the site and therefore use of adjustable screens (to allow light, air and privacy to be regulated) are recommended for each balcony. Visual privacy for No.26 Nolan Place is also assisted by existing dense hedge planting along the northern (Commerce Lane) boundary.



Image: Southern setback to Commerce Lane as per amended design to assist privacy and streetscape facing No.26 Nolan Place.

The proposal provides adequate areas to ensure passive surveillance of the public domain and manage security of entry areas as well as along the rear laneway and Dobroyd Road frontage for the neighbourhood centre. In terms, of the occupants an operational management plan and tenancy agreements will be required to ensure occupants / tenants comply with by-laws for the building. The building will also have a manager to supervise security or day to day management such as resident noise, occupancy, maintenance, complaints and the like.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.3 Maintenance of Views

Merit consideration of the requirements and objectives, pursuant to *Clause 3.4.3 Maintenance of Views*, are addressed as follows:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*
- *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*
- *To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

Comment:

The proposal is situated within a local neighbourhood centre comprising with an 8.5m height limit. The amended design involves a similar building height and flat roof structure to the adjacent building at No.31 Dobroyd Road. The shape of the site is much wider across the southern frontage and due to the angled shape of the common boundary between No.31 Dobroyd Road and the subject land limited opportunity to create a view corridor between the two site exists. The space above the southern common open space entry area (Commerce Lane) has been left open which assists to provide a small gap but this is of limited value in terms of any district view. Maintaining a low (flat) roof profile with minimal other structures on the roof maintains consistency with the adjacent development with any district outlook across the site. (satellite dishes, raised solar panels and the like is able to be addressed by conditions to ensure view sharing.



Image: Photomontage of the proposed building (superimposed) in view outlook from No.26 Nolan Place.

The site is not situated in a location that is prominent to public reserve areas such as scenic foreshore, local landmark or the like where views from a public place will be impacted. The views from private property across the site are generally a district outlook and given the building is part of a local neighbourhood centre and maintains similar height level and building alignments that are consistent with the zone the view impact is minor.

An overall view assessment is summarized as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land

views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

- There are no water views or iconic views across the site. The outlook is a district / urban area interspersed with buildings and tree canopies.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic

- Views from No. 26 Nolan Place are gained from living areas and outdoor open space. The views are toward the north and across the rear laneway of Commerce Lane. The view is from the rear part of the house (area used as the rear yard) that is positioned higher than Commerce Lane road level as demonstrated in the image below

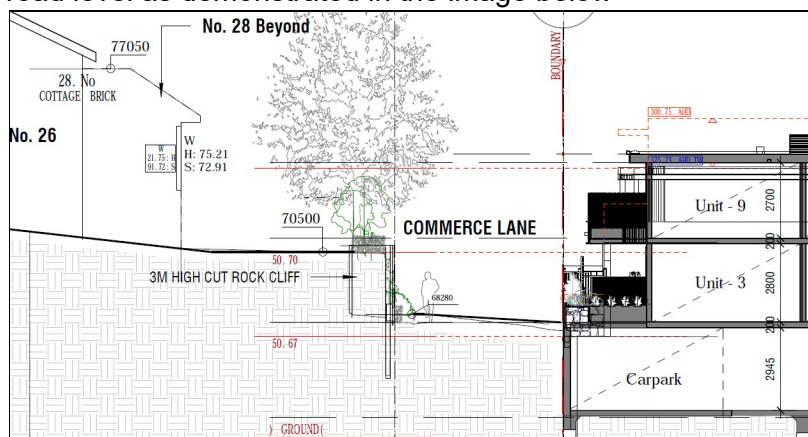


Image: Amended design in section showing adjacent land to south at No.26 and No.28 Nolan Place.

- The position and width of the upper storey for the proposed Co-living development will obscure most of the northerly outlook in association with the existing building at No.37 Dobroyd Road. The internal living area floor level of No.26 Nolan Place is at RL72.47 with the rear terrace and rear yard lower than this. At standing position within the internal living / dining / kitchen area a view across the roof (except for roof-top equipment obstructions) the distant outlook will be maintained. Overall the upper level of the Co-living building creates a moderate impact given the urban surroundings and 8.5m height compliance.
- The reasonableness of the view impact is considered in terms of the building profile, adjacent building and design considerations such as floor to floor heights, roof level and the like. A flat roof style has been proposed with minimal parapet / gutter edge features and roof top plant is concentrated near the lift overrun. Solar panels and vents are shown on the elevations to create minimal protrusions above roof level. The residential floor to floor levels are consistent with being 3.1m or less and therefore are not internally excessive. The amended architectural plans have also reduced the overall building bulk and maintain compliance with the 8.5m maximum building height.
In summary, the proposal is considered to have an acceptable view impact.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.1 Dwelling Density, Dwelling Size and Subdivision

Merit consideration of the requirements and objectives, pursuant to *4.1.1 Dwelling Density, Dwelling Size and Subdivision*, are addressed as follows:

- *To promote a variety of dwelling types, allotment sizes and residential environments in Manly.*
- *To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*
- *To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*
- *To maintain the character of the locality and streetscape.*
- *To maximise the use of existing infrastructure.*

Comment:

The proposal relies on the provisions of *SEPP (Housing) 2021* to promote the use of the site for "co-living" development that also includes a lower ground level shop space. There is no subdivision or dwelling house associated with the proposal but the proposal is distinct in its redevelopment of the land (within a Neighbourhood Centre) for 10 Units configured as co-living housing and retains a small local shop at the lower level with a basement parking area.

The proposal is not situated close to riparian land or waterways and does not impact any significant local bushland open space, or require the removal of natural rock outcrops.

The proposal adds to the housing diversity of the area and with the revised design has addressed internal amenity considerations as well as the existing character of the neighbourhood centre (in context with the adjacent shop top housing).

The character of site in terms of its streetscape setting is relevant to recent redevelopment at No.31 Dobroyd Road as a "pair" of only 2 lots that form part of the neighbourhood centre. Recreational facilities nearby and a Bowling club are in proximity to the site and therefore add to the variety of land uses in the suburb. The suburb is dominated by detached style housing in landscaped settings. The revised design includes similar characteristics as No.31 Dobroyd Road in terms of external building shape, landscaping, height and materials.

The redevelopment of the site for co-living with a shop element maintains the use of existing infrastructure in terms of water supply, sewer, public transport, stormwater drainage, road access and the like.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

Merit consideration of the requirements and objectives, pursuant to *4.1.3 Floor Space Ratio (FSR)*,

are addressed as follows:

- *To ensure the scale of development does not obscure important landscape features.*
- *To minimise disruption to views to adjacent and nearby development.*
- *To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

Comment:

The proposal has been amended to reduce the FSR so that it now complies (is less than) the applicable (1:1) FSR for the site. There are no significant local landscape features within the site and adjacent mature trees (which form part of the streetscape) will be retained.

The site is not in a foreshore location where coastal views may be impacted. The local district outlook from No.26 Nolan Place has been considered in terms of visual impact, including privacy and the distribution of floor space and building height (see photomontage analysis on diagrams CD-08 to CD-09 which assist to demonstrate how the building design (including bulk and scale) fits in context with the adjacent building, property separation and surrounding landscape elements.

The top floor terraces for co-living Units 7, 8 and 9 have only a minor eave extension above to allow solar access however this will be less than 3 hours between 9am and 3pm mid winter. The lower south facing Units No.1,2, and 3 are overshadowed by the upper storey. All north facing Units (4,5,6 and 10) as well as the upper outdoor common area terrace will receive adequate sunlight to penetrate the open space areas as well as window areas to allow natural light within the north facing rooms. Units 9, 7, 6, 4, 3 and 1 have side wall windows to also allow direct natural light for internal Unit amenity. For adjacent land sunlight access and overshadowing is considered in detail under clause 3.4.1 within this report.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.4 Setbacks (front, side and rear) and Building Separation

Merit consideration of the requirements and objectives, pursuant to *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are addressed as follows:

- *To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*
- *To ensure and enhance local amenity by privacy, access to light, sunshine, air movement, adding character to the streetscape and facilitating safe and adequate traffic conditions.*
- *To promote flexibility in the siting of buildings.*
- *To enhance and maintain natural features by landscape planting, including in context with public open space.*
- *To assist in appropriate bush fire asset protection zones.*

Comment:

The building design has been amended during the assessment period to improve visual consistency

with the adjacent shop top housing development at No.31 Dobroyd Road. In this regard, spatial proportions, use of curved facade elements, pressed metal, sandstone, external wall finishes, landscaping and the like assist to address the streetscape. Conditions are recommended to ensure the design fits closely with the adjacent development "paired" together as a local Neighbourhood Centre. Street edge and landscape considerations are also addressed by Council's Development Engineer and Landscape Referral responses.

Initially the proposed development created unsatisfactory impacts on privacy and streetscape for surrounding land. Design changes made during the assessment period has substantially reconfigured interior elements of the building to minimise privacy impact on adjacent land as well as ensure the building provides a more appropriate "fit" with the adjacent shop top housing adjoining the western side of the property. In this regard, balcony elements have been redesigned and include screening, window size and placement include high sill levels or screens. Additional landscaping is also included along the street frontages. Generally the proposal cannot achieve full compliance for private open space within the site for all 'co-living' rooms due to one side of the property facing south. Additionally, the lower common open space area does not achieve 3 hours of sunlight midwinter, however the upper common open space terrace is north facing and achieves more than 3 hours direct sunlight on 21 June.

The siting of the building is consistent with the shape and small site area available and the provision of wide setbacks for the road frontages or western side setback is not practicable. The present building is constructed to or close to all boundaries and the subject proposal maintains this precedent, including excavated zones. Additional landscaping elements have been included along the secondary road frontages.

The site does not have any significant natural features within the property boundaries however two large native trees close to the site may required future trimming or root protection from works including canopy branch trimming. Council's landscape assessment officer has reviewed the landscape planting regime (as per the amended design) including potential tree impact in relation to building setbacks and is satisfied that, subject to conditions the proposal meets this objective.

The site is not within a bushfire prone location and does not require setbacks for bushfire asset protection

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Merit consideration of the requirements and objectives, pursuant to *Clause 4.1.5 Open Space and Landscaping*, are addressed as follows:

- *To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*
- *To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*
- *To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*
- *To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise*

stormwater runoff.

- *To minimise the spread of weeds and the degradation of private and public open space.*
- *To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:

The site currently has some notable landscape feature trees adjacent the site being a medium sized eucalypt tree along the frontage of Dobroyd Road and a large melaleuca tree opposite the southern boundary of the site in Commerce Lane. Both trees are to be retained but may be impacted by branch trimming or works in the road reserve. Council's Landscape Officer has assessed the revised plans and subject to conditions the proposal seeks to retain and manage impacts on those trees.

New soft landscaping elements are proposed along the Commerce Lane frontage and Dobroyd Road frontage. The planting regime includes native species and appropriate size planting for the planter box spaces and ground level areas. The site is not suitable for any additional large canopy trees.

Landscape elements are also integrated into the building design to provide ground floor Unit amenity and for common open space areas and soften wall plane (side elevation) elements. Screen planting is included Commerce Lane frontage to enhance the amenity of the building and assist with privacy / outlook from properties that overlook the site from the east and south. The adjacent building of No.31 Dobroyd Road has Units that have been constructed with close overlooking balconies / private open space along the common boundary with the subject site. The proposed design has therefore positioned open space areas adjacent (with screen walls) and balcony space with side screens. Minor landscaping and window elements have been designed to ensure no unreasonable privacy. The proposed landscaping will not create an unreasonable impact on solar access to adjacent land or obstruct views from adjacent land.

The site will include on-site detention capacity and being within a Neighbourhood Centre is not expected to retain large areas of landscaped open space proportionate the requirements under clause *4.1.5.1 Minimum Residential Total Open Space Requirements*.

The proposal is not envisaged to create impacts relating to the spread of weeds or degradation of bushland area.

The site is not within a wildlife corridor, or have areas of natural bushland habitat within / adjacent the land area.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Merit consideration of the requirements and objectives, pursuant to *4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)*, are addressed as follows:

- *To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*
- *To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*
- *To ensure that the location and design of driveways, parking spaces and other vehicular access*

areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

- *To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*
- *To ensure the width and number of footpath crossings is minimised.*
- *To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*
- *To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

Comment:

The proposal includes one accessible Unit and one accessible carparking space. Lift access is also provided between the carpark and the residential floors of the co-living Units. The shop front area is at grade to Dobroyd Road. Within the carparking area motorbike spaces and bicycle racks are also proposed to be available for residents of the building.

The proposal is likely to maintain demand for on-street parking if the lodgers within the building own cars that than the carparking available. At present the site has 4 small commercial tenancies without any on-site parking. Exceptions to on-site parking have been considered by Council's Traffic Engineer and in context with *SEPP (Housing) 2021* requirements. Given the circumstances of the redevelopment of the existing building to a single commercial shop and 10 co-living units within a local neighbourhood centre Council's traffic and parking assessment supports the proposal subject to conditions.

The proposal has been amended during the assessment period to address compliance with *Australian Standards 2890* and associated considerations for efficient, safe and convenient vehicle access, including driveways, service vehicles and resident / visitor / customer parking. The location of carpark entry is from Commerce Lane and does not visually dominate the primary Dobroyd Road frontage. Subject to conditions the proposal satisfies this objective.

The carparking area is partly excavated and requires minimal excavation to achieve appropriate access and subject to adherence with geotechnical and engineering conditions (including Geotechnical recommendations) site instability (such as road edge support along Commerce Lane) and ground water seepage can be appropriately managed.

The proposal requires one new crossing for the driveway entry however due to the narrowness of Commerce Lane there is no normal width verge (similar to Dobroyd Road). Council's Development Engineers are satisfied with the vehicle entry point and pedestrian access, subject to conditions (including kerb reconstruction in Dobroyd Road).

Landscaping elements for the building have been redesigned and increased to ensure more areas of landscaping along the road frontages and / or more appropriate planting. The site does not have a large external carpark and therefore no landscaping is required for the carpark.

The site is within convenient walking distance to local public bus services that have connecting services to other parts of the Northern Beaches and the city. Dobroyd Road and Vista Street have footpath links to the bus stop shelter in Curban Street (approximately 170m walk NW of the site), however there is no footpath along Bareena Park. The proposal include bicycle racks to encourage the use bicycling and (pursuant to *SEPP (Housing) 2021*) meets the minimum residential carparking requirements.



Image: Streetview of site (centre of photo), Commerce Lane on left with shop top style housing on adjacent site at No.31 Dobroyd Road.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.2.8 Neighbourhood Centres (LEP Zone B1)

Merit consideration of the requirements and objectives, pursuant to *Clause 4.2.8 Neighbourhood Centres (LEP Zone B1)*, are addressed as follows:

- *To accommodate a range of small scale development permitted by the LEP within established residential neighbourhoods where such development is compatible with the amenity of the surrounding area.*
- *To provide side and rear setbacks which ensure the building height and distance of the building from its boundaries at various storeys, maintain the amenity of neighbouring residential sites and contributes to the amenity of the building and surrounds through landscape design.*

Comment:

The Manly LEP defines **Co-living housing** as :

a building or place that—

- (a) has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and*
- (b) provides occupants with a principal place of residence for at least 3 months, and*
- (c) has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day,*

The principal distinguishing factor now for a "boarding house" includes that a boarding house must also be used to provide "affordable housing", being for very low income, low income or moderate income households as prescribed by the Regulations or in an EPI.

"Co-living" development is not a permitted use in the "B1" Zone under the MLEP, however is made permissible by *SEPP (Housing) 2021*.

The subject site has one side boundary due to having an eastern and southern frontage to Commerce Lane and a principal (narrow) northern frontage Dobroyd Road. The narrow and irregular shape of the site required building works to along or close to all boundaries of the site. In order to maintain amenity to adjacent land (both low density residential and the adjacent shop top housing) the building has been subject to redesign work during the assessment period. Principally this involves reducing the number of accommodation rooms from 12 to 10, increasing the use of landscaping around the periphery areas of the building, re-configuring rooms layouts, private open space and common areas to limit overlooking / maintain privacy and changes to the visual appearance of the building by way of materials and external colours.

Overall the revised proposal provides a more consistent "fit" with the urban appearance of building in context with No.31 Dobroyd Road. Building height and bulk has been addressed by maintaining a flat roof design with revised window layout and wall plane treatment that includes articulation and variation to address bulk. The building does create an unreasonable overshadowing toward adjacent land between 9am and 3pm on 21 June.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.2.8.2 Setbacks

Merit consideration of the requirements and objectives, pursuant to *Clause 4.2.8.2 Setbacks*, are addressed as follows:

- *The setback from the front boundary must conform to the predominantly established building alignments in the Centre (LEP Zone B1). Buildings will be constructed with a nil setback to the side boundary.*

Comment:

The proposal has been amended during the development assessment period and achieved the objective of this clause. In this case, the building maintains a similar setback the existing building, and is consistent with the adjacent site of No.31 Dobroyd Road. Carparking visible in front of this is within the public road reserve.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.2.8.3 Landscaping

Merit consideration of the requirements and objectives, pursuant to *4.2.8.3 Landscaping*, are addressed as follows:

- *The Manly LEP Zone B1 Neighbourhood Centres is not subject to the Minimum Residential Total Open Space and Landscaped Area requirements, however this clause seeks that landscaping elements are used along side and rear setbacks with residential land, private open space achieves 3 hours of direct sunlight between 9am and 3pm midwinter and communal open space in Neighbourhood centres give consideration to landscaping guidelines with the NSW*

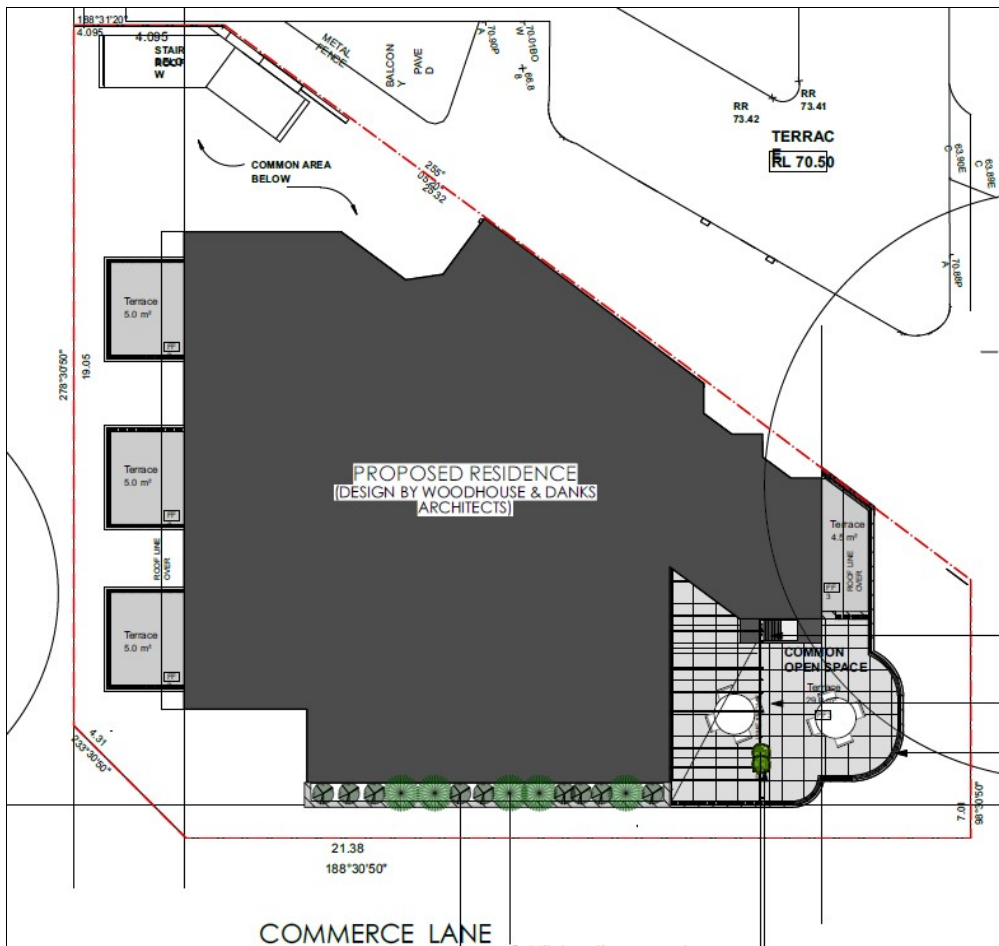


Image: Common opens space (north facing at upper level) and upper private terrace areas.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.2.8.4 Residential Density

Merit consideration of the requirements and objectives, pursuant to *Clause 4.2.8.4 Residential Density*, are addressed as follows:

- Council will consider exceptions to the Residential Density Provisions in this plan (see paragraph 4.1.1.1) in relation to major redevelopments proposed in LEP Zone B1 Neighbourhood Centres where the development conforms to a site amalgamation parcel identified at Schedule 2 Townscape Principles Maps.*

Comment:

The site is not able to be consolidated with No.31 Dobroyd Road. This considerations was made with the previous redevelopment of No.31 Dobroyd Road however was not able to be achieved at the time as per Schedule 2 (Map 2E).

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the Manly DCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the

proposal is supported, in this particular circumstance.

4.2.8.8 Waste Management

The requirements and objectives, pursuant to Clause 4.2.8.8 Waste Management, are considered as follows:

- *Consideration will be given to the management of waste for development in the Neighbourhood Centres zone to ensure the objectives of this zone are satisfied with particular regard to the protection of neighbourhood amenity.*
- *Requirements for waste and recycling storage areas for development require particular attention in relation to mixed use development which may involve a combination of residential waste collections with commercial waste service.*

Comment

The bin storage and waste handling facilities are not satisfactory for Council's Service staff including access requirements. Details of the design issues are outlined in under the heading "Internal Referrals - Waste" within this report. A condition is recommended to address this issue that will ensure ease of bin access.

The proposal is a mixed use development and therefore the management of waste from commercial and residential uses requires detailed design consideration for long term operational needs, hygiene and safety. The waste facilities comply with Council's requirements and therefore satisfy this objective, subject to conditions.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is not consistent with the MDCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, subject to conditions in this particular circumstance.

4.2.8.10 Local Character provisions

Merit consideration of the requirements and objectives, pursuant to *Clause 4.2.8.10 Local Character provisions*, are considered as follows:

- *Considerations of context and site analysis are an important element in the design and assessment of development in the Neighbourhood Centres to ensure the local character of the neighborhood within which the Centres are located is protected. This plan requires consideration of local character and Paragraph 3.1.3 Townscape (Local and Neighbourhood Centres) provides a range of townscape design principles to be considered for development to maintain and enhance local character. All development must be designed with regard to local site characteristics and in context with the locality.*

Comment

The proposal relies on SEPP Housing provisions for 'co-living' development and includes a basement carpark area and commercial / retail shop and the front lower ground level (facing Dobroyd Road). The site slopes toward the north and is has a narrow frontage to Dobroyd Road due to the diagonal subdivision line between the site and No.31 Dobroyd Road. The adjacent property at Dobroyd Road has been redeveloped for a contemporary styled shop top housing (residential apartments) with a cafe

at ground floor and basement parking. This large new building has established the future character of the Neighbourhood Centre. Elements of landscaping and use of external materials (sandstone, built form and styling such as roof, window and wall treatment / materials) do not provide a suitably integrated visual relationship for the proposed building in accordance with the intent of this DCP clause.

The proposal is inconsistent with the townscape design principles to maintain and enhance the local character, in context with the adjacent existing building. The general suitability of the site for 'Co-living' is addressed under the heading 'SEPP Housing' within this report.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is not consistent with the MDCP and the objectives specified in section 1.3(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is supported, subject to conditions in this particular circumstance.

4.4.9 Boarding Houses

The following merit assessment under Pursuant to 4.4.9 and subsections is made for the purpose of evaluating the similarities in the proposal, on a without prejudice basis, given the terminology / definition changes made following the introduction of *SEPP (Housing) 2021* and the provisions within Manly DCP that previously applied to this style of housing.

- *To support high quality affordable rental housing in the form of boarding houses with an acceptable level of amenity to meet the needs of residents and to minimise adverse impacts on adjoining properties and in the vicinity.*
- *To provide controls for boarding houses that are compatible with, and enhance local character and the desired future character and provide a high level of resident amenity, safety and privacy for boarders and neighbours.*

Comment:

- Due to changes in *SEPP Housing* and associated terminology the building now fits the definition of "co-living" accommodation however this was previously representative of a "boarding house" as a form of affordable housing options. The proposal has been subject to substantial design changes to improve the internal amenity of occupants and minimise internal impacts on adjoining properties. Substantial changes include privacy considerations for screening, window and balcony changes. A reduction in the number of accommodation rooms with revised layouts and providing fully furnished rooms that have laundry and kitchenette space with communal areas. Screening and design of common areas to allow natural light and amenity. Changes to external materials and colours to provided visual continuity with the adjacent shop-top housing of No.31 Dobroyd Road.
- Controls for boarding house style development are principally subject to the new requirements under *SEPP Housing 2021*. The revised plans however demonstrate consistency with clause 4.4.9, including sub-clauses 1 to 4 in addressing communal space, bedrooms, open space and parking.

4.4.9.1 Communal Rooms and Areas

- *Communal Living areas are for dining and recreational purposes and are not to include other uses referred to in this paragraph and must comprise at least an area in accordance with the design standards at Schedule 7 of this plan.*
- *Adequate kitchen facilities will be available within the boarding house for the use of each lodger.*

Comment:

The dining and common areas have been suitably designed to ensure a minimum area of 12.5sqm or 1.25sqm per resident. There are 10 rooms in total with a capacity of 28 persons (requiring 35sqm). The common area at the upper floor is a self contained space with balcony. The space includes a desk for the boarding house manager, however this not a formal reception office and does not unreasonably compromise the common room. Common area space is provided on each living level in compliance with Schedule 7. The communal areas have been revised to include protection with side screens / side wall to neighbours within No.31 Dobroyd Road.

Adequate kitchen facilities are available within each room and within the main common roof for lodgers. The inclusion of sink / fridge space is indicative as shown on the plans and adequate space is available for compliance.

4.4.9.2 Bedrooms

- *Adequate boarding rooms are required within the boarding house for the use of each lodger in accordance with the design standards at Schedule 7 of this plan.*

Comment:

Bedrooms range from 17sqm (single) to 25sqm (double) with each including a (shower) ensuite, laundry space, sink, kitchenette space (sink / stove) and terrace / balcony space. The versatility of the living / laundry kitchen spaces is assisted by condition (recommended) for fitted / hinged lids to laundry tubs shown. Each bedroom has at least one main glazed sliding door / window to natural light. Secondary windows or highlight windows are also used where lodger rooms have and external side wall.

4.4.9.3 Open Space

- *In relation to boarding houses in LEP Zones B1 and B2 the minimum private open space is 20sqm with a minimum width of 3m. The landscape treatment must enhance the streetscape on which the building is located and provide both the minimum requirement for private open space (see paragraph 4.1.5.3) but also provide for communal areas (indoors) in accordance with this plan.*

Common:

The above requirement relates to open space and not regarded as private open space per room but practically as common open space that is available for the private use of lodgers and their guests (similar to the common room). The communal outdoor open space areas have a minimum dimension of 5m width/ depth. All private balconies / terraces for the Units range from 4.5sqm to 7sqm. The building has common open space terrace at the upper floor, which is 29sqm, and a second common open space at the ground floor of 40.6sqm. The open space areas have privacy screening (wall or side screen) to maintain acoustic / visual amenity to neighbours. Landscaping is provided at ground level /

street level and with planter box elements to soften the building appearance when viewed from the streetscape.

4.4.9.4 Parking

Boarding houses less than 800m walking distance of Manly Wharf or 400m walking distance of a bus stop used by a regular bus service:

- 1 space for every 5 boarding rooms
- 1 space for on site manager and/or any other employee residing on the premises.

The proposal is within 400m of a regular bus services to Balgowlah Heights and the building has 10 lodger rooms. Three parking spaces are provided which includes an accessible space. The requirements of *SEPP Housing* prevail over the DCP, however the proposal complies with the SEPP for carparking.

(Note: The retail shop at the lower level is not allocated a parking space and is annotated on the plans as being "*not cafe or food cooking*" therefore implications of takeaway or such similar use on carparking have been given consideration by the revised building design in so far as it may impact on traffic access to the carpark.)

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$20,983 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,098,259.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention to vary *Minimum Lot Size* and *Building Separation* provision of *SEPP (Housing) 2021* for the subject "Co-Living" development has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard (as may be appropriately relevant) and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal, for construction of a mixed use development comprising retail and 'Co-living housing' over part basement parking has been referred to the *Northern Beaches Local Planning Panel* (NBLPP) due to having received more than 10 submission of objection and variation to development standards relating to *building separation* and *minimum lot size* requirements. To avoid doubt with 'saving and transitional provisions' the mechanism of Clause 4.6 is applied to provide a consistent merit assessment approach, with regard to the numerical variations sought pursuant to *SEPP (Housing) 2021* - "Standards for co-living housing". The numerical variations sought exceed 10% whether or not they trigger "Clause 4.6" a merit consideration has been applied in this instance for reasons provided within this report.

The concerns raised in the objections have been addressed and resolved by the applicant having undertaken substantial design revisions of the building layout and external appearance. Conditions are recommended to overcome or address any remaining amenity concerns.

The critical assessment issues included reducing FSR to comply with the *Manly LEP*, altering the exterior shape, bulk, scale, materials and colours to "pair" the building with the adjacent premises at No.31 Dobroyd Road and addressing technical design issues of access, waste management, traffic, landscaping and environmental health. Conditions are suitable to be recommended to ensure minor design issues or appropriate details are incorporated with the Construction Certificate phase.

Overall, the development is a satisfactory design quality that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural

environment. However, the proposal includes a new use of the land for residential as well as the commercial / retail component. However, due to insufficient information of any *preliminary site investigation* or *detailed site investigation* having been done on former land uses on and potential risk of former use of the adjacent the site (service station) insufficient information is available to be satisfied to support the application.

While the 4.6 variation and DCP design changes re supported, the proposal is recommended for refusal due to insufficient information (including "jurisdictional" matters).

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2022/0596 for the Construction of a mixed use development comprising retail and 'Co-living housing' over part basement parking on land at Lot CP SP 35989,29 - 37 Dobroyd Road, BALGOWLAH HEIGHTS, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, due to insufficient information.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 due to insufficient information to address section clause 4.6(1)(b) of the SEPP.
4. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to enable the assessment of the application. This includes necessary updated information to accord with the submitted Architectural plans for the BCA Report, Access Report, Drainage Report and Acoustic Report.
5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest, due to insufficient information.