

1 May 2023

The Chief Executive Officer  
Northern Beaches Council  
725 Pittwater Road  
Dee Why NSW 2099

By e-mail: [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

FAO: Alex Keller

Dear Alex,

**Submission with regard to Amended Plans submitted on 12 April 2023 - DA2022/0596  
Construction of a mixed use development comprising retail and co-living housing over  
part basement parking  
29-37 Dobroyd Road, Balgowlah Heights, NSW**

I write regarding the above Development Application DA2022/0596 (subject DA) further to objection letters dated 8 June 2022, 7 July 2022 and oral representation at the S34 Conciliation Conference reference Class 1 Appeal to the Land & Environment Court 2022/00220377. Previous and current submissions have been prepared on behalf of my clients at Units 1-7, 31 Dobroyd Road, immediately to the west of the subject site.

This submission is prepared in response to Amended Plans dated 12 April 2023 on Council's DA tracker.

This submission is limited to the amended plans and does not supersede the stated concerns in previous objection letters dated 8 June and 7 July 2022. The amended plans do not overcome the stated objections and increase the impacts on my clients by virtue of the amendments for the reasons outlined in this submission. The amended plans do not overcome my client's concerns and objections.

It is also noted that the amended plans do not include the additional information required and this should be addressed prior to assessment.

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**Outstanding additional information required:**

- Amended Boundary Identification Survey to detail the fenestration and rooms to which the windows of 31 Dobroyd Road serve. Additional information is limited to annotation of bedroom and balcony locations but not the fenestration.
- A building separation plan is required clearly showing the measured distance between the outer face of the building envelope which includes balconies and the adjacent building envelopes, as shown in figure 2F.1 of the Apartment Design Guide (ADG). Information regarding building separation is required to assess compliance with Part 3 of the Housing SEPP.
- Survey and certified height poles need to be erected. Despite ongoing requests for certified height poles to be erected, it is still unclear whether the proposed development exceeds the Maximum Height of Buildings. Full assessment of the subject DA cannot be undertaken without confirmation of height via certified height poles or the submission of a Clause 4.6 Variation Request.
- Certification of the submitted shadow diagrams. Amended shadow diagrams have not been submitted with the amended plans.
- Details of the maintenance requirements of on-site treatment stormwater detention tanks (OSD).
- Location of air conditioning units and mechanical plant – it is unclear what plant is located on the rooftop services area.
- Confirmation of Co-Living on-site Management process and compliance requirements.

**Amended Plans**

Amended plans are limited to:

- Reduction from 12 co-living units to 10 units. Only 2 single units have been removed and none of the double units. The proposed 10 units still have the potential to accommodate 18 occupants. The overdevelopment of the site and associated impact on neighbouring amenity has not been overcome.
- Reduction of off-street parking from 7 car parking spaces to 3. The proposed amendment significantly increases the impact on neighbouring amenity and pressure on existing on street parking provision.

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- In regard to the above impacts, 18 occupiers and 1 retail unit would only have the use of 3 car parking spaces. The amended traffic report relies on the proposed development falling under Part 3 of the Housing SEPP. However, as detailed in the submission of 8 June 2022, the proposed separation distances and living accommodation at ground floor result in non-compliance with Part 3. Parking ratios should be as required under the Manly DCP and not the SEPP. 12.6 off-street car parking spaces would be required for 1 retail unit and 10 residential units under Schedule 3, Part A1 of the Manly DCP. There is a shortfall of 9.6 car parking spaces which would add considerable demand to on street parking.
- A 40.6 sqm common open space is now proposed to be located immediately adjacent to living accommodation at 31 Dobroyd Road. The separation distance off the boundary is only 50 mm. The privacy mitigation proposed is the retention of planter boxes outside of the applicant's control – see point below. The proposed amendment substantially increases the impact on neighbouring amenity.
- Terraces to serve units 6 and 10 would continue to impact the visual and acoustic privacy of my clients. The proposed amendment has not overcome previously cited concerns and the unreasonable impact on neighbouring amenity.
- The retention of planter boxes and proposed planting on neighbouring land continues to be proposed to mitigate privacy impacts. The applicant does not have any control over the retention or planting on neighbouring land. The planter boxes and planting should be removed from the plans as this is misleading.
- Additional solar panels have been proposed creating additional glare and associated impacts on neighbouring amenity.
- Amended plans include annotation that 5sqm of deep soil planting is located within Council land. Confirmation is required on Council's consent to works within the road reserve. This area needs to be excluded from the landscape calculations.

### Outstanding key issues

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## **In principle objection to Co-living accommodation under Part 3, Section 69 of the Housing SEPP**

The Housing SEPP forms the entire justification for the proposed development, overdevelopment of the site and lack of off-street parking at 3 rather than 12.6 car parking spaces as required under the DCP.

The proposed development must not be granted for development for the purposes of co-living given that the 3-storey building will not comply with the minimum building separation distances (Part 3, Section 69, (2), (b) of the Housing SEPP). Please refer to objection letter from Planning Progress dated 8 June 2022, pages 6-13 and summary text below.

The proposed development is a 3-storey building as it presents to Dobroyd Road and at western elevation adjacent to my client's building. Figure 1 below shows the relationship and lack of building separation from my client's building.

### **Figure 1 – Proposed 3 storey development**



Source: Extract from Amended Plans – Northern Beaches Council DA tracker  
Building separation distances have not been annotated on the Amended Plans and a building separation plan has not been submitted. However, it is clear that the distances proposed are less

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than the required 3 metres specified for between non-habitable rooms and 6 metres between habitable.

Part 3, Section 69, (2), states that *‘Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether – ... (b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, ’...*

The proposed development does not comply with the minimum building separation distances specified in the ADG, as detailed in figure 2.

**Figure 2 – ADG Figure 3F2 – Building separation distances**

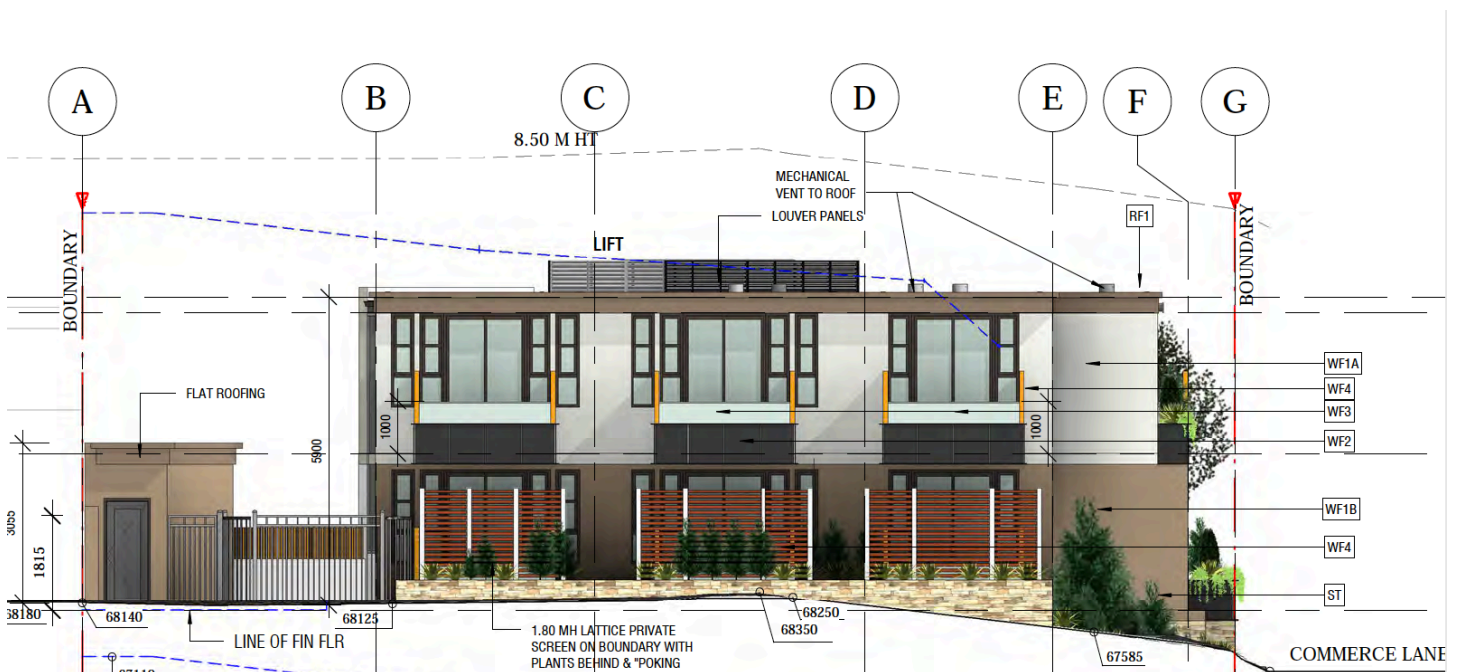
<b>Objective 3F-1</b>		
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy		
<b>Design criteria</b>		
1.	Separation between windows and balconies is provided to ensure visual privacy is achieved. 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

**Source:** Extract from the Apartment Design Guide

For this reason, the proposed development should not progress under the Housing SEPP and should be refused on these grounds.

The proposed development, as also detailed in the objection letter dated 8<sup>th</sup> June 2022, does not comply with Part 3, Section 69 (1), (e) of the Housing SEPP as the ground floor level to Commerce Lane is proposed to be used for residential purposes.

**Figure 2 – Ground Floor residential units as it presents to Commerce Lane**



Source: Extract from Amended Plans

**Recommendation:** The proposed development should be refused as it does not comply with the Housing SEPP.

### **Inclusion of Common Area Open Space in close proximity to my client's bedroom**

The inclusion of a Common Area Open Space measuring some 40.6 sqm is proposed to be located immediately adjacent to my client's property. The open space would be utilised by up to 18 residents and is close proximity to one of my client's principle outdoor and indoor living space, and another client's bedroom and balcony.

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The only privacy mitigation measure proposed is the retention of existing planting outside of the site (see commentary below). The separation distance off the boundary is only 50mm (5 centimetres).

The proposed new addition to the development would result in a significantly greater impact on my client's amenity, in terms of visual and acoustic privacy, safety and security.

**Recommendation:** The proposed development should be refused given the clear and unreasonable impact on neighbouring amenity and lack of separation. Should the proposed development be approved, contrary to the clear objections cited, it is recommended that 1.8-metre-high privacy screens erected abutting the open space and conditioned accordingly (and to remain in perpetuity).

### **Impact of terraces serving units 6 and 10**

It is noted that terraces are still proposed to be located adjacent to the western boundary, contrary to the cited concerns detailed in objection letters dated 8 June and 7 July 2022 and as discussed on site (and via a site visit) at the S34 Conciliation Conference.

The only positive amendment is the relocation of the common area and common area balcony away from the western elevation. However, the terraces serving units 6 and 10 would still create unreasonable privacy impacts and should be removed to mitigate harm.

**Recommendation:** Remove the terraces serving units 6 and 7. Should the proposed development be approved, contrary to cited objections, it is recommended that a condition is attached to required 1.8 metres louvered, fixed shut, privacy screens be erected along the western side of the proposed terraces and to remain in perpetuity.

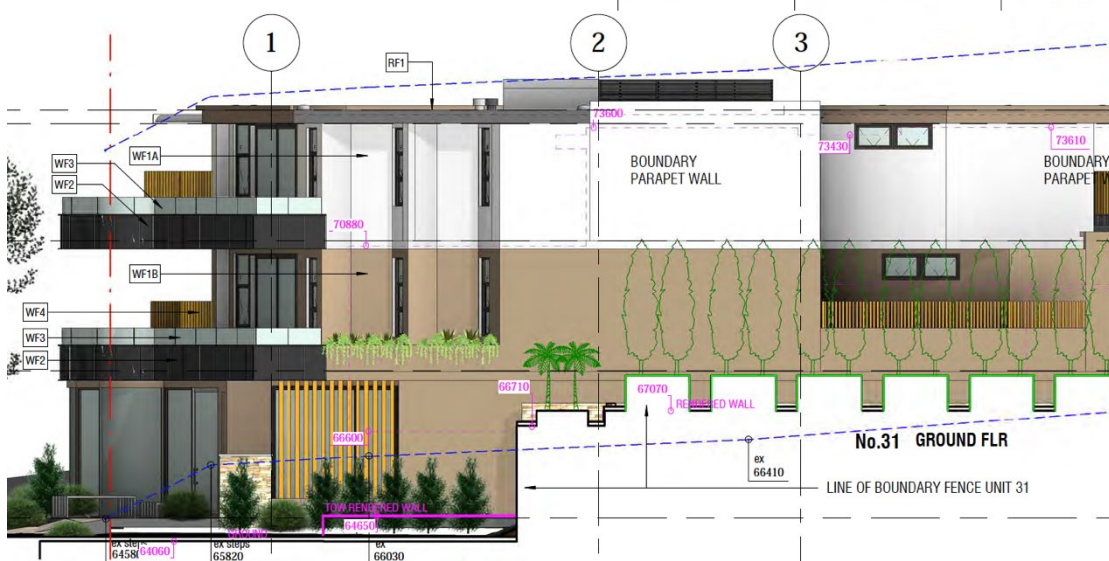
### **Retention of existing planter boxes on the boundary of my client's property**

The retention of planter boxes is not within the control of the applicants to retain as they are within the boundary of 31 Dobroyd Road. This was address in the previous submission to Amended Plans and discussed at the S34 Conciliation Conference. It is not an appropriate or an

enforceable mitigation measure to overcome the privacy impacts proposed which would arise due to inappropriate building separation distances.

Importantly, the proposed planting of 2 trees per planter to grow up to 3 metres in height would substantially increase the already detrimental impact on my clients in terms of loss of sunlight, overbearing impacts and loss of outlook brought about by the inadequate separation distances proposed.

**Figure 3 – Proposed retention and planting in existing planter boxes on the boundary of 31 Dobroyd Road (outside of the subject site area).**



Source: Extract from Amended Plans with own annotation in text box

- Planter boxes are existing
- Planter boxes are on neighbouring land – outside of applicant’s control
- 3 metre high evergreen trees within 0.8 -4m max of my client’s property would exacerbate the impacts to arise
- Minor 50mm setback is proposed to the western boundary. A 5-centimetre setback is unacceptable.
- Separation distances have not been annotated on the amended plans.

**Recommendation:** Should the subject DA not be refused, despite the outstanding objections cited, the proposed development should be setback significantly, in accordance with DCP Control 4.2.8.2 (ii) given that a nil setback [or 5cm which is tantamount to a nil setback] is undesirable in terms of amenity of adjoining land or as specified under the building separation distances in the ADG, should the proposed development commence under the Housing SEPP.



It is also recommended that planting or adequate privacy mitigation measures be proposed within the site and not rely on planting outside of the site, which can't be conditioned.

## Potential non-compliance with the 8.5 metre max height of buildings



Image demonstrates:

- The likely breach of the 8.5 metre height limit
- 31 Dobroyd Road breached C1.4.3 – topography at Dobroyd Road / western boundary of the site, the levels are not significantly different
- Certified height poles have not been erected to truth proof the submitted plans
- Amended plans detail that the proposed height abuts and includes some breach – again height poles are required to demonstrate actual height increase

**Source:** Extract from Amended Plans

**Recommendation:** Certified Height Poles need to be erect prior to any assessment of the Amended Plans. My clients request the opportunity to review any additional information or amended plans. Should a breach be confirmed, a Clause 4.6 Variation Request needs to be submitted.

- **Additional solar panels on roofscape**

Additional solar panels are proposed to be erected on the roof. The additional solar panels on the roofscape, in close proximity to my client's balconies and principal indoor and outdoor living areas would create an unacceptable level of glare.

**Recommendation:** It is requested that the solar panels be removed from the amended plans (photomontage).

Should the subject DA be approved, contrary to the clear objections raised, it is requested that a condition be attached ensure that solar panels are not erected on the roofscape.

### Summary of outstanding objection and non-compliance

- Proposed development is a non-compliant development contrary to the Housing SEPP; SEPP 65 and the associated ADG; Manly LEP 2013, Objectives of the zone and potentially Clause 4.3 Height of Buildings; and Manly DCP 2013, Controls 3.1.3 – Townscape Neighbourhood Centres, 3.4 – Amenity, 3.4.1 – Sunlight Access and Overshadowing, 3.4.2 – Privacy and Security, 3.4.2.2 – Balconies and Terraces, 3.4.2.3 – Acoustical Privacy, 3.7 – Stormwater Management, 3.9 – Mechanical Plant Equipment, 3.10 – Safety and security, 4.2 – Development in Business Centres, 4.2.3 – Setbacks, 4.2.4 – Car Parking and vehicular access, 4.2.8 Neighbourhood Centres (LEP B1), 4.2.8.2 – Setbacks in neighbourhood centres, and 4.2.8.10 – Local Character provision.
- Failure to comply with the required standards of the Housing SEPP, Part 3, Section 69 and Part 3F of the ADG.
- Overshadowing and loss of sunlight impacts, particularly affecting units 2, 3, 4 and 7 by virtue of the height of the proposed development, inadequate building separation distance and setbacks.
- Significant loss of visual privacy by virtue of the inadequate building separation distances, setbacks and close proximity of the proposed communal balconies directly overlooking private open space and living rooms of units 2, 3, 4 and 7, contrary to DCP Control 3.4.2 – Visual Privacy.
- Significant loss of acoustical privacy to arise from the increase in vehicle movements, communal opens space and private terraces in close proximity and mechanical plant equipment, including garage vents, lifts and potentially air conditioning units, affecting all the units detailed in this objection contrary to DCP Control 3.4.2.3 – Acoustic Privacy.

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- Overbearing / oppressive impact and overdevelopment of a 381.7sqm site for a 3-storey building with basement car parking in close proximity, with inadequate building separation and setbacks.
- Potential impact on significant tree canopy – *Eucalyptus gomphocephala* – which is located to the west of the subject site. The tree is visible from both the streetscape and from my client’s building. The loss or damage to this tree would have a significantly detrimental impact on the surrounding environment.
- Impacts of solar panels on the roofscape to include glare into the principal indoor and outdoor living areas of neighbouring occupiers.
- Safety impacts resulting from the location of the proposed car park access onto a narrow laneway, close to Dobroyd Road junction and conflicts with pedestrians.
- Insufficient and impractical parking provision of 3 rather than the required 12.6 car parking spaces given reliance on the Housing SEPP – note that the subject DA fails to meet the provisions of the Housing SEPP and should therefore be refused on these grounds.

### **Summary of Recommendations:**

On the information submitted it is recommended that the subject DA be refused for the reasons summarised above and as provided in objection letters dated 8 June and 7 July 2022 and as presented at the S34 Conciliation Conference.

Additional information, as detailed on page 2 of this submission, should be submitted prior to any formal assessment of the subject DA or associated Class 1 Appeal. Should additional information or amended plans be submitted, my clients request the opportunity to provide further comments.

Should Council be minded approving the proposed development, contrary to the clear reasons for refusal and impacts on amenity cited in the associated objection letters, it is recommended that the following amendments be made to the plans or conditioned accordingly.

- Relocate Communal Open Space away from the western elevation of the site given the lack of building separation and associated impact on neighbouring amenity to occupiers of 31 Dobroyd Road.

- Should the Communal Open Space remain in the proposed location, condition that 1.8-metre-high privacy screens be erected abutting the open space and along the western boundary to remain in perpetuity.
- Remove the terraces serving units 6 and 10.
- Should the terraces not be removed, condition that a 1.8 metre high, fixed shut privacy screen be erected along the western elevation of the terraces and remain in perpetuity.
- Increase side setbacks by at least 3 metres to the western boundary of the site in accordance with DCP Control 4.2.8.2 (ii) and building separation distances required under the ADG, in accordance with Section 69 of the Housing SEPP.
- Remove solar panels to the roofscape to limit glare.
- Increase off street parking provision in accordance with Schedule 3, Part A1 of the Manly DCP.

## Conclusion

This submission is written in response to amended plans to DA2022/0596. Amended plans do not overcome the clear and unreasonable impacts to arise from the proposed development and with regard to the location of the communal open space and reduction in car parking, increase the harm to arise to neighbouring occupiers.

The subject DA should not be granted consent given the reasons outlined and does not supersede the objection letters dated 8 June and 7 July 2022.

If the amendments proposed under DA2022/0596 form part of Class 1 Appeal 2022/00220377, it is requested that this submission be used as evidence.

Kind regards,

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**Planning Progress**

*On behalf of Units 1-7, 31 Dobroyd Road, Balgowlah Heights*

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