

12th June 2025 MPS Ref: 102/2025

NSW Department of Planning, Housing & Infrastructure Locked Bag 5022 PARRAMATTA 2124

Attention: Delia Galao

Dear Delia

SUBMISSION IN RESPONSE TO SSD-82395459 PROPOSED RESIDENTIAL DEVELOPMENT 3A, 3B, 5A & 7 BURGOYNE STREET AND 4 BURGOYNE LANE, GORDON

This submission has been prepared on behalf of the owners of the adjoining property located at 9 Burgoyne Street, Gordon.

On behalf of the owners of land located at 9 Burgoyne Street, Gordon, objection is raised to the proposed development. This objection primarily relates to the failure by the proposal to comply with the building separation requirements of both the Apartment Design Guide and the Ku-ring-gai Development Control Plan.

It is submitted that as a result of the proposals failure to comply with the applicable building separation distances that both the amenity of the existing residents and the heritage significance of the property at 9 Burgoyne Street will be unreasonably impacted.

9 Burgoyne Street, Gordon

The property located at 9 Burgoyne Street is identified as a heritage item of local significance under the Ku-ring-gai Local Environmental Plan 2015 (Item No. 1 – "Eudesmia" – dwelling house).

As a result of the above listing, the provisions of Chapter 5 – Transport Oriented Development of SEPP (Housing) 2021 do not apply to the site.

The site therefore remains zoned R2 - Low Density Residential under the Ku-ring-gai LEP and is subject to a 9.5m height of building control (2 storey) and given the heritage listing requires the retention of the existing dwelling.

No. 9 Burgoyne Street is adjoined to its west by the proposed development and to its east by land also identified as being subject to Chapter 5 – Transport Oriented Development of SEPP (Housing) 2021.

It is therefore my opinion, based upon the current controls, that it would not be unreasonable to expect that in time 9 Burgoyne Street will be adjoined by a TOD development of 22m in height (28.6m if the affordable housing provisions are enacted) to both its east and west.

Given that 9 Burgoyne Street supports a heritage listed dwelling subject to a 9.5m height of building control, it is in my opinion critical that any adjoining TOD development is provided with compliant building separation distances. Compliant separation distances are necessary to ensure:

- 1. That the heritage item is not dominated by the adjoining TOD developments and to prevent a sense of enclosure.
- 2. That appropriate visual and acoustic amenity is provided to the residents of 9 Burgoyne Street.
- 3. That an appropriate transition is provided between the proposed development and 9 Burgoyne Street.

It is my opinion, that the circumstances applicable in this instance are akin to development at a zone boundary, given that the TOD provisions essentially rezone those sites to R4 – High Density Residential whilst 9 Burgoyne Street remains zoned R2 – Low Density Residential.

Reference is made to the Planning Principle of the NSW Land & Environment Court of NSW established in *Seaside Property Developments P/L v Wyong Shire Council [2004] NSWLEC 117.* In particular reference is made to Paragraph 25 which states that:

25. As a matter of principle, at a zone interface as exists here, any development proposal in one zone needs to recognise and take into account the form of existing development and/or development likely to occur in an adjoining different zone. In this case residents living in the 2(b) zone must accept that a higher density and larger scale residential development can happen in the adjoining 2(c) or 2(d) zones and whilst impacts must be within reason they can nevertheless occur. Such impacts may well be greater than might be the case if adjacent development were in and complied with the requirements of the same zone. Conversely any development of this site must take into account its relationship to the 2(b) zoned lands to the east, south-east, south and south-west and the likely future character of those lands must be taken into account.

Also in considering the likely future character of development on the other side of the interface it may be that the development of sites such as this may not be able to achieve the full potential otherwise indicated by applicable development standards and the like. (bold added)

It is my opinion, that this Planning Principle is relevant in this instance.

I accept that an argument may exist in relation to compliance with the Planning Principle and the application of the non-discretionary development standards contained within the SEPP. In this regard, it is my view that the non-discretionary development standards do not remove the requirement to assess the proposal under Section 4.15(1) of the Act.

It is also my opinion, that the issue is not about the amount of FSR or the height of the proposed buildings, but rather the location and distribution of that FSR upon the development site and the proposals failure to comply with the building separation provisions of the Apartment Design Guide and the Ku-ring-gai Development Control Plan.

The Controls

It is my opinion that the following minimum requirements apply in relation to the issue of building separation.

Apartment Design Guide

Part 2F - Building Separation

Minimum separation distances for buildings are:

Up to four storeys (approximately 12m):

- 12m between habitable rooms/balconies
- 9m between habitable and non-habitable rooms
- 6m between non-habitable rooms

Five to eight storeys (approximately 25m):

- 18m between habitable rooms/balconies
- 12m between habitable and non-habitable rooms
- 9m between non-habitable rooms

It is noted that the normal practice would be to halve these distances between adjoining development sites. In this instance 9 Burgoyne street cannot be developed for the purpose of a residential flat building and as such all separation distances should be taken from the walls of the existing dwelling currently erected upon 9 Burgoyne Street.

Ku-ring-gai Development Control Plan 2015

Part 19 - Heritage Items and Heritage Conservation Areas

Figure 19D.2 -1.

For development adjoining a heritage item, Clause 19D.2 – Setbacks and Building Separation and in particular Control 1(iii) is applicable. This Clause states that:

iii) where new adjacent development has a façade height above 8m high from existing ground level, the façade is to be stepped back to provide additional building separation in accordance with Figure 19D.2 -1.

Figure 19D.2 - 1 is replicated below:



Building separation requirements for development greater than 8m high (2 levels within a Heritage Item site.

The Proposal

The proposal is provided with setbacks at all levels relative to 9 Burgoyne Street which do not comply with the requirements of both the Apartment Design Guide and the Ku-ring-gai Development Control Plan.

It is our opinion that as a result of these non-compliances there will be significant unreasonable impacts upon the amenity and heritage value of 9 Burgoyne Street. The proposal will also result in unreasonable streetscape impacts as a result of the significant disparity in height between development upon the development site and 9 Burgoyne Street and the failure to provide an appropriate transition between the proposal and 9 Burgoyne Street. The proposed disparity in height of building and the reasoning behind why compliant setback are critical is best demonstrated by the Applicant's View from the Sun Diagrams and in particular the 9am diagram reproduced below:



1. VIEW FROM SUN - JUN 21st - 9:00 AM - PROPOSED

Conclusion

In conclusion, it is submitted that:

- 1. The proposed development is not provided with compliant building separation with the heritage item located at 9 Burgoyne Street, Gordon.
- 2. The proposed development as a result of the non-compliant building separation will result in:
 - a. Unreasonable amenity impacts.
 - b. Unreasonable heritage impacts.
 - c. Unreasonable streetscape impacts.
- 3. The proposed development does not appropriately respond to the Planning Principle of the NSW Land & Environment Court of NSW established in *Seaside Property Developments P/L v Wyong Shire Council [2004] NSWLEC 117.*

It is therefore in my opinion critical, having regard to the circumstances of this case (9 Burgoyne street being an identified heritage item excluded from the TOD), that the proposed development as a minimum achieve strict compliance with the building separation requirements of the Apartment Design Guide and the Ku-ring-gai Development Control Plan and have regard to the Planning Principle of the NSW Land & Environment Court of NSW established in *Seaside Property Developments P/L v Wyong Shire Council* [2004] NSWLEC 117. We look forward to your favourable consideration of this submission and would welcome an opportunity to meet with you to discuss in detail.

Yours Sincerely

Andrew Minto

Andrew Minto DIRECTOR