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**Sent:** 11/02/2021 9:50:15 AM  
**Subject:** DA 20210006 (10 Jamieson Pde, Collaroy) - Submission  
**Attachments:** DA 20210006 SUBMISSION 10 Jamieson Pde.pdf;

Hello

Please find attached submission to DA2021/0006 for construction of a dwelling house at 10 Jamieson Pde, Collaroy.

Regards

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1/9 Narabang Way, Belrose NSW 2085

11 February 2021

The General Manager  
Northern Beaches Council  
725 Pittwater Road  
DEE WHY NSW 2099

Attention: Ms Anne-Marie Young

Dear Ms Young

**LETTER OF OBJECTION TO DA 2021/0006**

**Demolition works and construction of a dwelling house including swimming pool and spa  
10 Jamieson Parade, Collaroy.**

I refer to the above Development Application ('DA') for 10 Jamieson Parade, Collaroy ('the site').

I act on behalf of the owners of 31 Anzac Ave, Collaroy, located to the south-west of the site. The two properties share a 9.4m common boundary.

I have inspected the site from the surrounding streets and from 31 Anzac Avenue. I have also examined the relevant documents, plans and reports including the Statement of Environmental Effects (SEE) prepared in support of the DA.

In summary, we object to the proposed development for the following reasons:

- Excessive height, bulk and scale
- Unreasonable view impacts from non-complying building
- Potential view impacts from vegetation proposed along the rear boundary
- Unreasonable privacy impacts
- Design is uncharacteristic of the area
- Technical and legal deficiencies with the application

**Summary:**

The proposed development at 10 Jamieson Parade, Collaroy will have unacceptable view impacts on 31 Anzac Ave which arise directly from the excessive, height, bulk, scale and site coverage of the proposed development. The proposed dwelling fails to comply with the building height development standard. The proposed dwelling contains numerous departures from Council's built form controls. Regardless of the merits of the DA, the Council cannot legally approve the DA in its current form as the written request to vary the building height development standard is not supportable.

## MY CLIENTS' PROPERTY

Key aspects of my clients' property as they relate to their concerns are noted as follows and depicted in the figures below.

No 31 Anzac Ave contains a detached, 2 storey dwelling house fronting Anzac Avenue. It is located to the south-west of the subject site, as shown in Figure 1 below.



Figure 1: 31 Anzac Ave shown highlighted yellow and site identified by blue star (source: SIX Maps)

The principal area of private open space for 31 Anzac Ave is located off the living area toward the east of the dwelling.

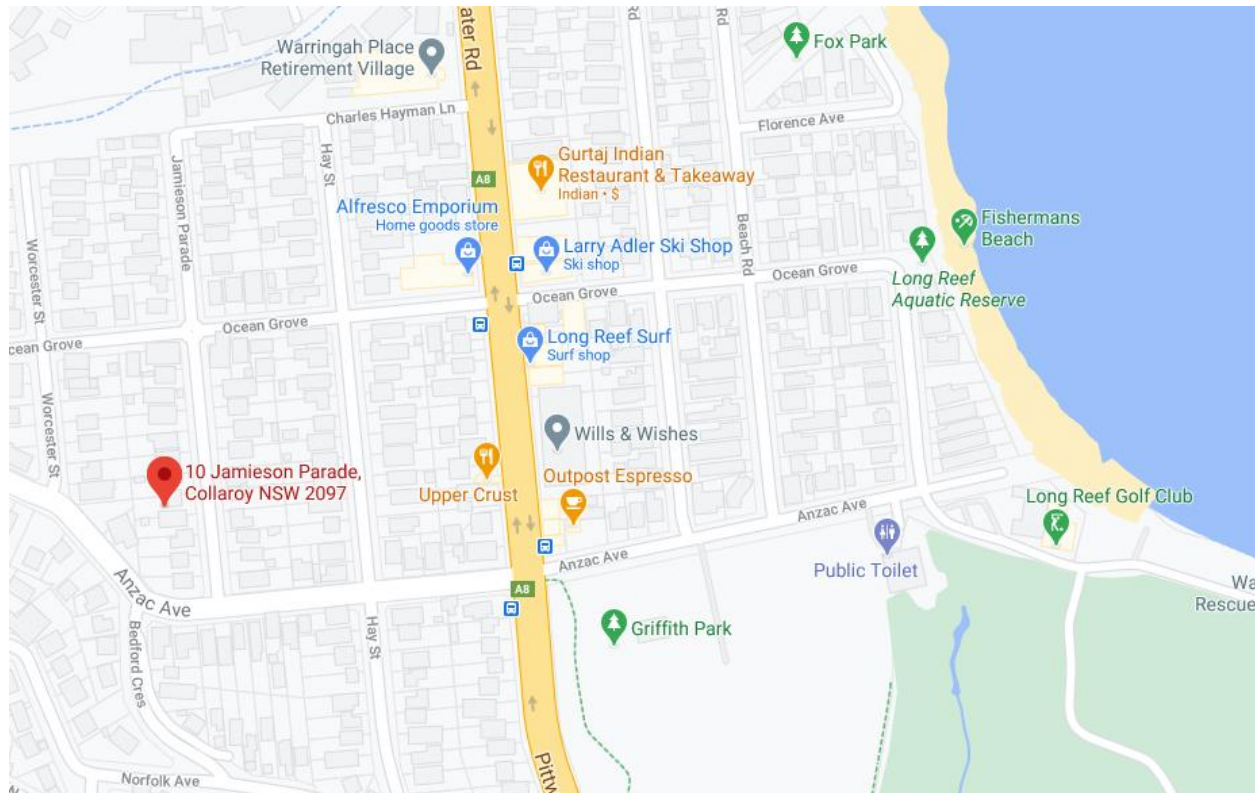


Figure 2. The site in its local context

Our client's main concerns with the proposed development are the overall height, bulk and scale of the proposal and the potential view impacts.

## EXCESSIVE BUILDING HEIGHT

Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP) controls height of buildings. A maximum building height of 8.5m applies to this site. The proposed development has a maximum building height of 10.06m and therefore exceeds the control by 1.56m or 18.3%.

The proposal also fails to satisfy the following objectives for building height, as addressed below:

*(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The building height, and non-complying building envelope results in a proposal that is excessively bulky and uncharacteristic of surrounding development. The proposal will be visually dominating in its prominent location. The proposal is inconsistent with this objective.

*(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment: The proposal is visually dominating and will result in unacceptable view loss. The proposal is inconsistent with this objective.

*(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

**Comment:** The proposal represents an overdevelopment of a the site which will result in unacceptable impacts on the scenic quality of Warringah. The proposal is inconsistent with this objective.

*(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

**Comment:** The proposal represents an overdevelopment of a visually prominent site which will result in an uncharacteristic development in the streetscape. The proposal is inconsistent with this objective.

As outlined above, the proposed development represents a numerical breach to building height and fails to satisfy the objectives of the development standard.

## EXCESSIVE BULK AND SCALE

The siting and scale of a building – its height, floor space, boundary setbacks and relationship in size to adjoining buildings – set the dominant character of any development.

Compliance with the built form controls (i.e. wall height, building envelope, building setbacks and landscaped area) of Warringah Local Environmental Plan 2011 ('the WLEP') Warringah Development Control Plan 2011 ('the WDCP') are important to facilitate an acceptable siting and scale of development that maintains a satisfactory relationship with neighbouring properties.

The proposed development fails to comply with most of Council's built form controls including building height, wall height, side boundary envelope, front boundary setback and landscaped area.

The non-compliances with the relevant built form controls are summarised in the table below:

WLEP control	Required	Proposed	Compliance
Building Height	8.5m	10.06m	No
WDCP control	Required	Proposed	Compliance
Wall height	7.2m	8.33m	No
Front setback	6.5m	4.05m	No
Side boundary envelope	4m & 45 degrees	Substantial breaches of the building envelope to both the northern and southern elevations	No
Landscaped area	40% or 279m <sup>2</sup>	36% or 255m <sup>2</sup>	No

Table 1. Summary of non-compliances with built form controls

These non-compliances are indicative of an overdevelopment of the site with the excessive bulk and scale of the proposal resulting in:

- detrimental visual impacts on the broader locality; and
- direct amenity impacts (view loss and privacy) on the adjoining property at 31 Anzac Ave.

These issues will be addressed further below:

## VIEW LOSS

WDCP addresses views in clause D7. The underlying objectives of the clause are as follows:

- *To allow for the reasonable sharing of views*
- *To encourage innovative design solutions to improve the urban environment*
- *To ensure existing canopy trees have priority over views*

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

### **1. Nature of views affected**

*“The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured”.*

#### Comment:

Presently 31 Anzac Ave enjoys filtered water views to the east, north-east and south-east. The views include water views of Collaroy beach and Long Reef headland.

### **2. What part of the affected property are the views obtained?**

*“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”.*

#### Comment:

The views from 31 Anzac Ave are obtained from east-facing windows and balconies on the ground and first floor levels of the dwelling. Views are available from standing and sitting positions. The quality of view varies according to the different vantage points within the dwelling. The water views and views of Long Reef headland available from the first floor will be largely unaffected by the proposed development. The first floor contains a bedroom and a study.

However, the water views currently enjoyed from the ground floor open plan living area and outdoor terrace, will be greatly affected as a result of the proposed development.

### 3. Extent of Impact

*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

#### Comment:

The most important area in my client's home is the ground level entertaining areas. The areas are both internal and external. This is where they spend time as family and is also is the primary entertaining area. The water view from this level is highly prized.

The proposed development will result in the loss of the majority of the water view from this level. The impact on views are indicated in the photographs below.



Figure 3. Easterly water view above existing red roof of 10 Jamieson Parade



Figure 4. View from a seated position on the terrace of 31 Anzac Ave



Figure 5. View from kitchen standing position

Figures 3, 4 and 5 show the existing water view from the ground level terrace and kitchen of 31 Anzac Ave. The water view is available over the roof ridge (coloured red in the photographs) of the existing dwelling at 10 Jamison Pde. The proposed roof is approximately 2m higher than the existing roof ridge. Along with the increase in wall height and non-complying side boundary envelope, the proposal will potentially result in a total loss of the available water view.

Given the high usage of the ground level living areas and the importance of the entertaining level to the residents of 31 Anzac Ave, the proposed loss of views is assessed as severe.

A reduction in building height and compliance with wall height and the side boundary envelope controls would preserve the majority of the existing water view.

Concerns are also raised regarding the proposed vegetation along the rear boundary. The landscape plan is vague regarding species selection, stating '*plants to be populated with Heliconia - hot rio nights Colocasia - elephant ears or similar*'. Trees planted along the rear boundary should be carefully selected to maintain existing views. It is requested that Council impose a condition of consent on any redevelopment of the site that ensures that rear boundary planting not obstruct the views from 31 Anzac Avenue.

#### **4. Reasonableness of the proposal that is causing the impact**

*"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

#### **Comment:**

As outlined previously in this report, the proposal involves significant variations to building height, wall height and side boundary envelope controls. The proposed development exhibits excessive bulk and scale. In the context of step 4, the proposal is assessed as unreasonable and the view loss is intolerable.

As the proposed development breaches several planning controls any impact on views resulting from the non-compliances is unacceptable. As the view loss is severe and is a direct result of the proposed building non-compliances, the proposal can not be supported.

## **PRIVACY**

The west facing windows in the upper level of the proposed development will result in unacceptable privacy impacts to 31 Anzac Ave. In this regard, the removal of the Bottle Brush (tree 1) from the site is not supported as this tree currently provides screening between the properties. The Arborist's claim that this tree is less than 5m in height (and therefore exempt from tree protection in Northern Beaches LGA) should be checked for accuracy.

## UNACCEPTABLE CLAUSE 4.6 REQUEST

The proposal does not comply with the key WLEP development standard relating to building height. The extent of the proposed departure is:

- 10.06m (1.56m or 18.3%) (although height is incorrectly calculated as 9.345m in the application)

The above departure gives rise to material environmental impacts, an undesirable planning outcome not only for the subject site but for surrounding properties.

The setting of the development standard within the WLEP followed significant consultation with the community. Compliance with the development standard is therefore a realistic expectation among the community. The site is not so constrained that compliance with the building height development standard cannot be achieved.

Despite the submission of Clause 4.6 written request to vary the building height development standard, the proposal fails to satisfy the requirements of Clause 4.6 of WLEP or the planning tests established pursuant to or the most relevant NSW Land and Environment Court judgement (*Initial Action Pty Ltd v Woollahra Municipal Council NSW LEC 118*). Compliance with the standard is required and it has not been adequately demonstrated that compliance is unreasonable and unnecessary, nor has it been demonstrated that there are sufficient environmental planning grounds to justify contravening the standard.

Based on the departure from the building height standard in WLEP, and the resultant material environmental planning impacts (i.e. view loss, overshadowing and visual impact), the Clause 4.6 request, and therefore the proposed development itself, is unable to be supported for the following reasons:

- there are insufficient environmental planning grounds to justify the contravention of the standard;
- there is obvious public benefit in maintaining the standard;
- the departure from the standard hinders attainment of the objects of the Act (specifically (g) to promote good design and maintenance of the built environment);
- the proposed development is not in the public interest as it is inconsistent with the relevant objectives of the standard;
- it has not been adequately demonstrated that compliance with the standard is unreasonable and unnecessary; and

Under such circumstances the Clause 4.6 variation request is not well founded and therefore fails at law.

## OTHER ISSUES

### Details on the documentation:

The following points are noted regarding the documentation accompanying the application:

- The ground lines shown on the architectural plans should be cross-checked with the survey levels to check for accuracy
- It appears that incorrect levels have been used, resulting in underestimated height and building envelope non-compliances
- Incorrect building height and wall height planes shown on plans
- There is a shortfall in landscaped open space with the applicant's calculations incorrect – the proposed covered courtyard on a concrete slab can't be included in landscaped open space calculations. It is also questionable that the area surrounding the pool has been shown as landscaping. This is highly unlikely.

## CONCLUSION

For reasons outlined in this submission, the proposed development at 10 Jamieson Parade will have unacceptable impacts on my client's property. The residents of 31 Anzac Avenue will be unreasonably impacted by way of visual bulk, view loss and loss of privacy. The proposed development fails to comply with the development standard for building height and numerous other built form controls, resulting in a building of excessive height and bulk and an overdevelopment of the site. For these reasons, the proposed development cannot be supported and, it is respectfully requested, that the proposal its current form be refused by Council.

It is also requested that the assessing officer inspect the site from 31 Anzac Avenue, before determining the application, to gain a better understanding of the visual and view impacts.

Yours faithfully,



Danielle Deegan  
**Director**  
DM Planning Pty Ltd