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## Further objections in respect of the Development Application for 23 Hay Street Collaroy (DA2021/1824)

Submitted on behalf of Simon and Emilie Burns [REDACTED].

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### 1 Overview

We have reviewed the updated architectural plans and associated documents for the proposed Development Application for 23 Hay Street, Collaroy and all of our points of concern and objections previously raised on 23 November 2021, and associated correspondence on 28 January 2022, and on 4 April 2022 remain unaddressed, or not addressed in a material or satisfactory many. Consequently, we repeat each of our prior objections. Our prior objections are attached to this document for convenience.

There are a number of basic facts associated with the proposed development:

1. When properly considered, it is a new build – not an alteration or addition.
2. It breaches the height controls.
3. It breaches the side envelop controls to northern boundary.
4. It proposes to remove all existing landscaping and canopy trees, in addition to significant canopy trees that have already been removed by the applicants in circumstances where they have breached the conditions imposed with respect to the removal of those earlier trees – refer to Attachment A.
5. It reduces landscaped area by over 110m<sup>2</sup>.
6. It is excessively and unnecessarily large – with a floor space of approximately 800m<sup>2</sup>, and the floor space ratio of approximately 1.15:1 is substantially higher the planning principle for retention of open suburban character in low density residential areas of 0.5:1 expressed in *Salanitro-Chafei v Ashfield Council [2005] NSWLEC 366*.
7. There are extremely large windows on the middle and top level, as well as open balcony and stairs that dramatically overlook the private open space of 25 Hay Street.
8. The breaches of the above development controls and planning principles materially contribute to the privacy issues referred to in paragraph 7 above.
9. The objectives of the development controls and the planning principles are not otherwise met by the proposed development.

Pursuant to 4.6 council **cannot** approve a development that contravenes a development standard unless all of the following limbs are satisfied:

1. compliance with the development standard is unreasonable or unnecessary; and
2. there are sufficient environmental planning grounds to justify the contravention; and
3. the proposed develop is in the public interest because it is consistent with objectives of the particular standard and the objectives for the development within the relevant zone.

In our view, whilst compliance with all of the above limbs is required, **none** have been satisfied.

To the contrary:

1. As the proposed development is a new build that materially impacts on retention of mature tree canopy and privacy of private open space and adjacent bedroom windows of 25 Hay

Street, **it cannot be said that compliance with the development standard is unreasonable or unnecessary.**

In particular, an express objective of the standard is:

1. to ensure buildings are compatible with height and scale of surrounding development. However, the height breach will dramatically dwarf the single storey neighbouring beach cottage at 25 Hay Street.
2. to minimise visual impact, disruption of views and loss of privacy. However, the height breach has a material negative visual impact when viewed from 25 Hay Street, as well as a very substantial loss of privacy. Further, the height disrupts views from public pathways on Hay Street, which reduces amenity for the entire neighbourhood.
3. To minimise adverse impacts of development on scenic quality of Warringah's coastal and bush environments. As noted above, the height breach means there will no preservation of views enjoyed from public pathways at Hay Street and adversely impacts on the scenic quality of the street.

There is also no valid basis to suggest that compliance with the standard is unreasonable. Whilst there is a gentle slope to the block, smart design can easily achieve a compliant development.

2. **There are no environmental planning grounds to justify the contravention.** The Statement of Effects suggests that the proposal is constrained by the existing dwelling. This is not correct, as it is a new build. To the extent the southern wall is retained, then the only constraint would be non-compliance by that southern wall. However the surface (ie floor) area of the dwelling that is in breach of the height controls is far greater than the existing dwelling. So this limb is not made out.

The statement in the Statement of Effects that there are no unreasonable impacts on the visual or acoustic privacy of surrounding buildings is manifestly untrue (as referred to above in our prior objections, each of which we reiterate), as are statements that the site is constrained by the existing dwelling.

The applications proposes to retain the south wall for the sole purpose of justifying an exemption to the height controls. It will cost more to retain that wall – which engineers have suggested is unsafe to retain- than to demolish it. So to say that the proposed development is constrained by the existing dwelling is also manifestly untrue. To the extent there is a constraint, it is an artificial / manufactured constraint., and should not be relied upon.

3. **The proposed development is not in the public interest, nor consistent with the objectives of the development standard nor the objectives for development within the zone.**

As referred to in section 1, the development does not achieve the objectives associated with limits on heights, nor does it achieve the objectives associated with any of the other development controls that have been breached.

The Statement of Effects quotes the objectives for low density residential zone as:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

The Statement of Effects only seeks to address the first objectives and disregards the others as irrelevant. This is erroneous. They, and in particular the third, **must** be considered.

Further, we do not agree that development is not consistent with the objective of low density residential environment. In particular:

- as referred to above, the default FSR for low density residential is 0.5:1 and this is in excess of double that;
- it is difficult to say that 800m<sup>2</sup> floor space is necessary to achieve the “*housing needs*” in a low density residential environment.

Further, with respect to the third objective, the proposed development reduces landscaping by 110m<sup>2</sup> and removes all canopy trees, and blocks public views from the street, and so clearly is not a design nor development that is “*characterised by landscaped settings that are in harmony with the natural environment of Warringah.*”

Consequently, we submit that council is not able to approve the proposed development.

We also note the following planning principles:

**In *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 – the court held that:**

*“Where canopy trees define the character, new developments **must** provide opportunities for planting canopy trees.”*

The character of 23 Hay Street was of canopy trees, both to the frontage to Hay Street, and to the rear. The two trees to the front were removed by the current owners and, in breach of the consent conditions, never replaced (as further detailed in our prior objections). The trees to the rear are now also proposed to be removed, and the landscaping plan makes no provision for the replacement of either the newly removed trees nor the replacement of the two trees previously removed and not replaced in breach of council’s conditions. We also query whether the new frontage properly provides the opportunity to the required planting of these trees.

Refer below to photo depicting 23 Hay Street and canopy trees defining the character of the existing dwelling:

**In *Meriton v Sydney City Council* [2004] NSWLEC 313 the court held that:**

*“Overlooking of neighbours that arises out of poor **design** is not acceptable.”* Further the court articulated that a poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.

It is self-evident that a better design that doesn't breach height restrictions nor side envelope restrictions and focuses the windows and views to the east, as opposed to positioning extremely large windows and balconies directly overlooking private open space in 25 Hay Street would be an available alternative that provides the same amenity to the applicant at no additional cost. Indeed, the existing situation of the existing dwelling that provides for a void between the northern boundary is in fact a better alternative design than the proposed dwelling.

Further to our comments above with respect to clause 4.6, in **Super Studio v Waverley [2004] NSWLEC 91** the court articulated the planning principle that the acceptability of an impact [or breach of a development control] depends not only on the extent of the impact but also on reasonableness of, and necessity for, the development that causes it.

Given the new build and completely new structure and design, there is no necessity to breach any development controls – in particular the side envelope controls, and these breaches are not reasonable given they give rise to significant impacts the privacy of 25 Hay Street.

Further, applying this to the proposed development, the size is excessive and completely out of step with the surrounding properties with a FSR ratio of approximately 1.15:1. As the Statement of Effects also states, the view is to the east. This leads to two conclusions:

- there is no justification nor need to breach at all any side envelope controls to the northern boundaries;
- the very significant windows to the north which directly overlook the private open space are also excessive and should be reduced in size.

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## 2 Further comments on characterisation as a new build.

As previously stated, the proposed development should not be characterised as an alteration / addition to the existing dwelling. **It is a new build;**

We respect to the planning principles in *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*, analysis of both the qualitative and quantitative issues only leaves a conclusion that it is a new build.

For example, with respect to qualitative issues:

- not one external wall or surface visible to the public road on Hay Street is retained – even the driveway is moved;
- all existing landscaping is removed;
- given the above, the streetscape is changed, and access to the view from the street, over the garage is removed;
- as noted above, the access arrangements to the building are moved – eg new driveway position and pathways to the building; and
- ultimately, the demolition is so extensive that no characteristics of the form of the existing structure are retained.

With respect to the quantitative issues:

- The site coverage is dramatically increased by approximately 110m<sup>2</sup>;
- The existing non-compliances with numerical controls are increased – as the extent and impact of breach of height controls is exasperated;

- Numerical degree of landscaping is materially reduced by approximately 30%.
- The existing floor space ratio is dramatically increased by almost double.
- The overall proportions of the building are not retained. The existing dwelling is in essence a long 2 storey building set to the southern boundary. The proposed dwelling is a three storey building which stretches the full width of the block, with all new features and characteristics.

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### 3 Side envelope breach

We note that the amended plans have included minor increases to the set back of some parts of the building to the northern boundary. We consider these to be insufficient, and note that there is still an unnecessary and unjustified breach of the side envelope controls.

This should be rectified so that it is 100% compliant with the side envelope controls.

Without limiting the above:

- The kitchen set back should be increased so that it is compliant. This kitchen area is going to be the most commonly used part of the house, so set back of this area is necessary to create better privacy and reduce the bulk and scale currently presented.
- The top level should be further set back. This is necessary not only to comply with side envelope but to reduce the extent of the breach of the height non-compliance and create an appropriate void for privacy protection.

We also note that the drawings used to represent the side envelope are manifestly incorrect (as previously outlined in our objections).

Refer to Attachment A.

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### 4 Privacy

We note that the amended plans remove the “shelf” in previous plans which operated to block some (but not all) viewing into the private open space, and replaces it with Bahama shutters.

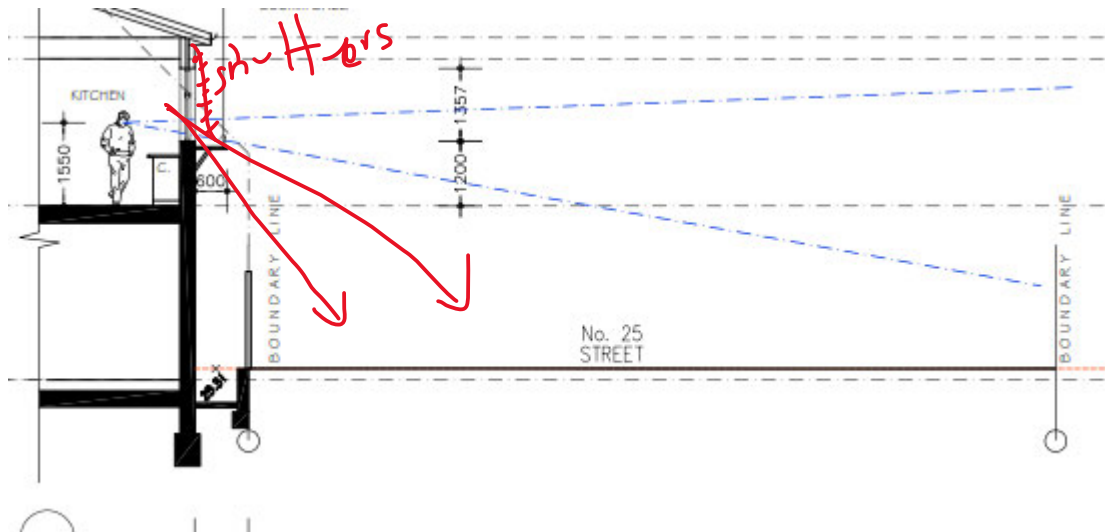
The previous plan included the below diagram – which was proposed by the applicant to indicate that the view into 25 Hay Street’s private open space was through a low angle which would be blocked by the shelf. We agreed that the shelf would block the view at certain angles, but by itself was insufficient.

The irony of the current revised proposal, is that the shelf is removed, and instead that angle of view is completely open to our private outdoor space, instead the shutters block the different angle. So again, it is only half a solution. We also note that if the shutters angle 45% down, that angle will completely enable viewing into our private open space, and will not provide any privacy protection.

Consequently, we request that:

- The shelf be reinstated in addition to the shutters;
- The Shutters have deep blades (at least 10cm long), that are angled 60% up – so, including when the shutters are closed, they do not permit viewing down into our property (but let light into 23 Hay).

- The shutters should not be able to be opened so that the opening is more than 30cm across the bottom.



## 5 Front set-back

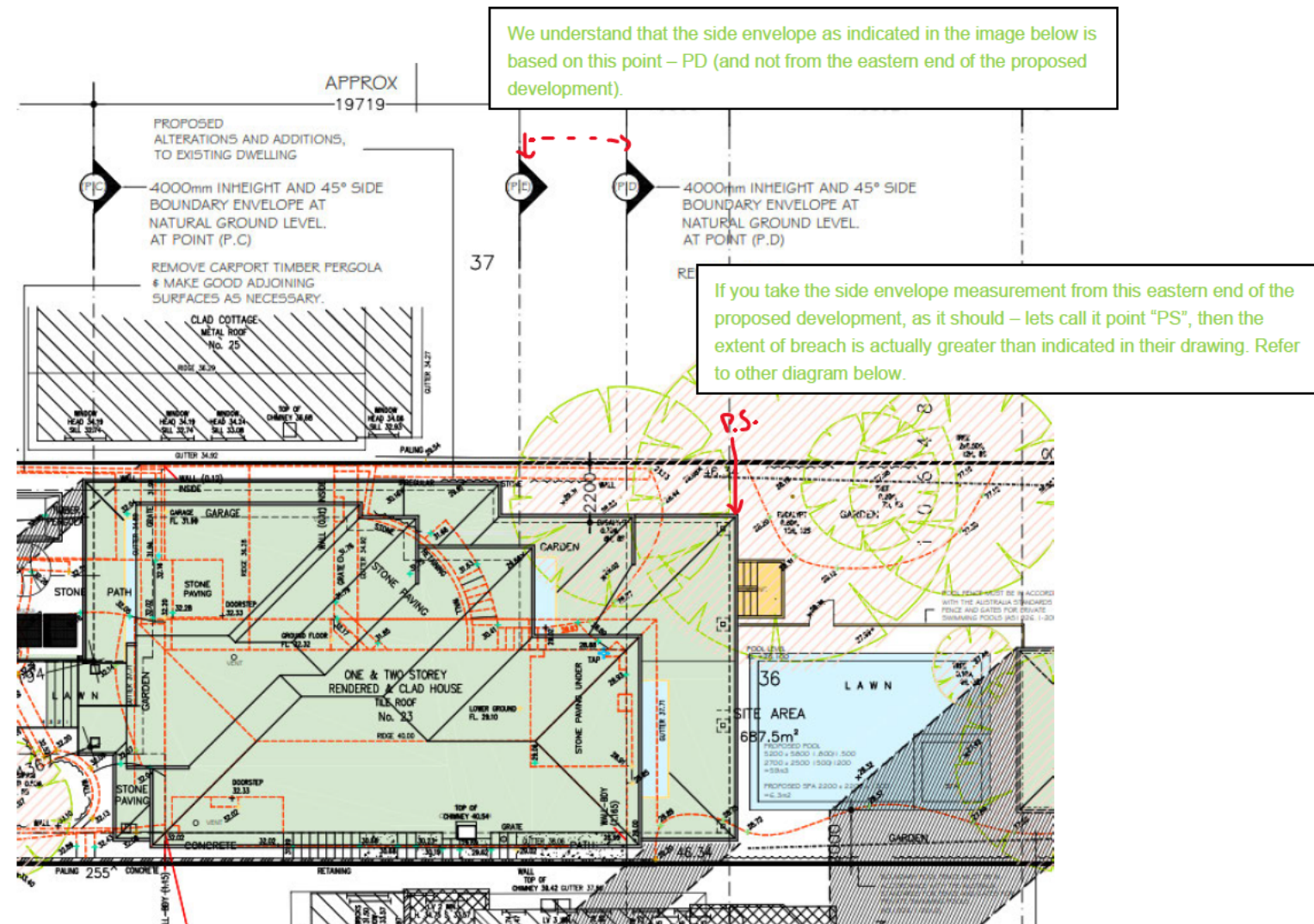
In addition to our prior objections with respect to the front garage and its positioning on top of our children's bedroom, we note that the proposed development encourages on the front setback established by 27 Hay Street, 25 Hay Street to the north, and 21 Hay Street to the South. This encroaching of the property forward is not necessary or justified, and together with the excess bulk and scale, and reduction of landscaping and trees, creates and out of character and imposing development that is inconsistent with its surrounds.

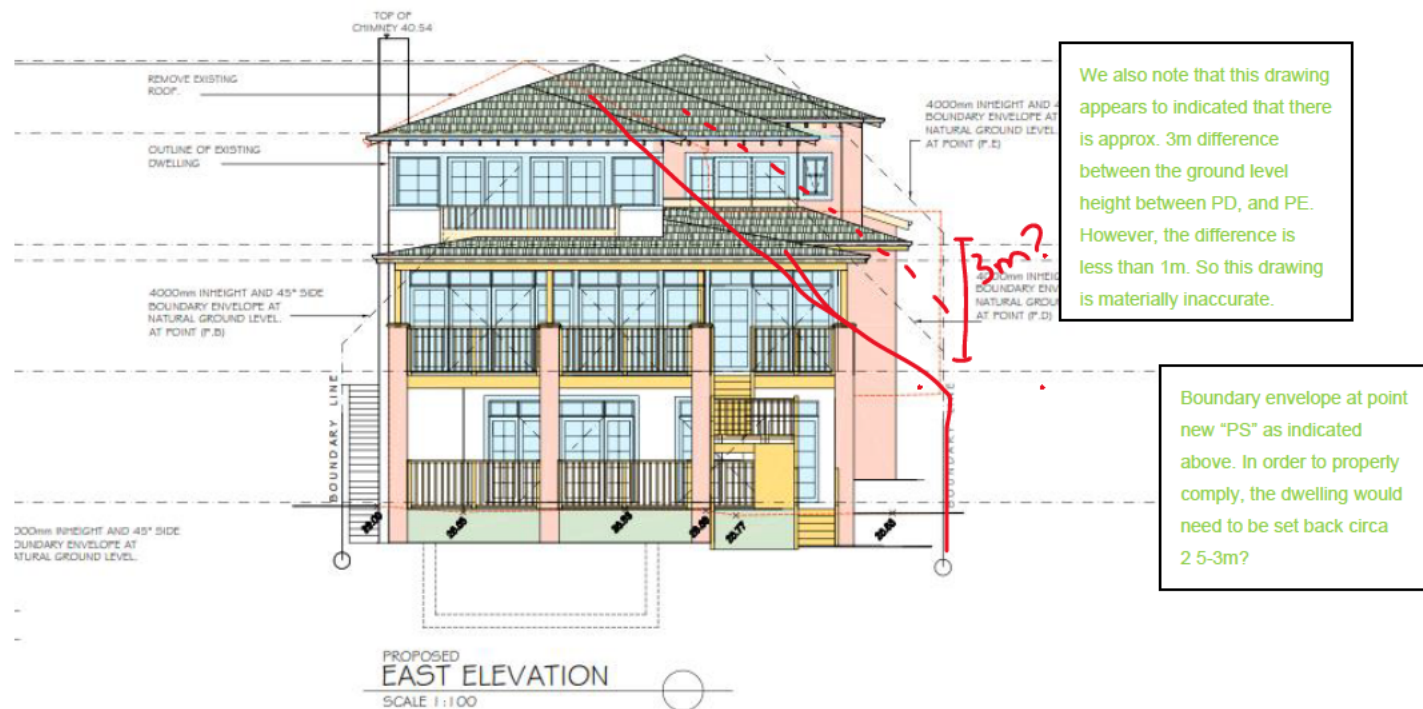
## 6 Survey and ground levels

Finally, as previously submitted, we do not consider that the ground levels are appropriately drawn. The northern boundary does not include any incremental 1.3m step up in height as is clearly event from photos of that boundary. This should be corrected.



## Attachment A





Consistent with Development control D9 – the side setbacks should be increased as wall height increases. This is done to a minor degree with the top level, but should be done with the ground and middle level too, noting the wall height of this ground and middle level (not including the top level) is itself 7.5m at the eastern end. We have a 7.5m high building (+ roof above that) just 1m back from the fence with respect to the kitchen. As mentioned, to comply, they would need to shift the building back circa 2.5-3m. Doing so would enable planning of landscaping to protect privacy (plus perhaps compliance with the 40% landscaping control) and also enable better articulating their windows east, rather than directly over our property.

We also note that the lines indicating the side envelope are not correctly drawn – the drawings appear to indicate that point PE is circa 3m above point PD. This is manifestly incorrect.

The survey plan submitted is also inadequate and does not meet Northern Beaches Council's requirements as it does not indicate "levels at perimeter of sit, inside and outside of the boundary". We request that a complying survey be submitted and all associated drawing be updated based on the same.



Absent the above, we note that the nearest height markers downhill to point PD is 28.23 and uphill to point PE is 29.54. Given these markers are respectively further downhill and (approx. 4m laterally further uphill than required, yet still only 1.3m in vertical height difference, it is manifestly incorrect to indicate a height differential of close to 3m in the measured drawings. In reality it will be well less than 1m. This must be corrected before the plan is further considered by council.

We request that these be redrawn, based on a revised survey which actually takes levels at the boundary.

I also forgot to mention that their proposed kitchen window faces directly opposite the window in our master bedroom – which is clearly a privacy concern.

