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Subject: Online Submission

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RE: DA2020/0585 - 10 Courtley Road BEACON HILL NSW 2100

Dear Mr England

Re: DA2020/0585 - 10 Courtley Road, Beacon Hill

I wish to object to the above Development Application for the following reasons:

1. Council would not have approved the building platform without a dwelling, yet that is what is being asked to be done retrospectively. Accordingly, the process amounts to an abuse of the CDC provisions as once the ground levels are regularised by a consent, there will be nothing to prevent a new CDC being issued - one that would not have been capable of being issued and so it circumvents the intentions of WLEP and WDCP. Where there are retaining walls required, a DA is necessary to not only address stability of the land, and that drainage and construction of the retaining walls are adequate and safe, but also the relationship of development on adjoining land. Approval of the current DA for retaining walls only would fail to consider the resultant impact of the future development of the site.
2. The plans and SEE are factually incorrect. Both documents do not refer to significant and illegal amounts of excavation and fill that currently exists on site. This makes the submitted documents not only deceptive but make it confusing for neighbours and Council to make an informed assessment on what is existing and what is proposed.
3. The DA fails to provide a history of the site and the reason for the submission of the DA. Some neighbours are not aware of the circumstances leading up to the submission of the DA - the illegal excavation and fill performed on the site leading up to a Stop Work order being issued by Council. Neighbours need to put this DA into context in relation to the proposed dwelling that was approved by the Private Certification process, in which they were not allowed to participate. This DA should provide all relevant background and history to be complete and to correctly state that this DA seeks to gain retrospective approval for works already undertaken.
4. Privacy - the DA introduces even more fill than currently exists in the north-eastern corner of the site. Again, in relation to Point 2 above, assessing what is existing and proposed is difficult enough given the false claims made in the DA, but the Notification Plan appears to add even more fill to the NE corner. As can be seen in Elevation 3 on the Notification Plan, the proposed ground level (for example where the figure is placed and further north) allows for even more overlooking from this portion of 10 Courtley Road into our property, directly over our swimming pool and primary private open space and verandah. The Ground Floor line in this elevation demonstrates even further the extent of overlooking.

5. The SEE in section 5.0 relates to, initially, setbacks. The SEE only refers to setbacks of a dwelling and appears to ignore the fact that the retaining walls and earthworks are in themselves significant elements of construction, that have practically no setback from the boundary. Therefore the elements proposed in this DA do not meet setback requirements.

6. The SEE in section 5 in 5.5 also refers to Design and Street Scape (sic). To state that 'The design of the proposed retaining walls is considered to be compliment (sic) and enhance (sic) to this development suburb (sic)' is utter nonsense. There are literally no houses in the surrounding streets (Courtley or Kadigal) that display such a wholesale disrespect for the natural landscape. No other houses have been built on sites where practically the whole site has been excavated and filled to provide a flat platform. Other houses in the neighbourhood have incorporated the natural fall of the block and stepped houses down the site, where appropriate. The SEE itself states in section 2.3 that the site exhibits a "slight gradient" so that slight gradient should be able to be worked within to site a new dwelling without having to excavate the whole site.

7. The SEE in section 5 in 5.6 also refers to Privacy. It is stated, poorly, that "The privacy & solar amenity will not be affecting this development." It is assumed that sentence means there will be no privacy impacts. Nonetheless, section 5.6 goes on to say that "The property owner will provide landscaping and fencing which will assist with privacy." So that is somewhat contradictory and admits that there will be privacy concerns - which in reality there will be!

8. The SEE in section 5.16 also refers to Sediment Control Measures. Again, there is the confusion of what is proposed and what has already been undertaken. The SEE states that there will be suitable sediment control however the sediment control is of course already in place as the excavation has already taken place and it has to be said that the existing sediment control is wholly inadequate and it is not maintained. Every time it rains, a river of sediment pours out into the street and down the gutter, around the corner and eventually flowing into the stormwater network. It is a river of brown! Photos can be provided if required.

9. The Notification Plan proposes that the retaining wall on the western boundary continue out onto public land, i.e. Council's 'nature strip'. The earthworks and building of a retaining wall almost all the way to the kerb will set a precedent and alienate some pedestrian use.

Over and above those points of objection, it should be noted that this DA cannot be logically 'uncoupled' from Complying Development Certificate No. 1805/19 (CDC2020/0112) issued by abc Building Certifiers. That CDC was issued based on the plans provided by Allura Homes. Both the Certifiers and Allura Homes were clearly compliant in approving a development that did not meet Complying Development standards. The house could not have been built on that block of land without breaching the cut and fill standards appropriate for a development on this site.

As such the current CDC has to be declared invalid, because it does not reflect the ground conditions as proposed when issued. The retaining walls are not shown on the approved CDC plans. A CDC is a hybrid of a development consent and a construction certificate. Division 4.5 of the EPA Act provides the statutory framework for CDCs. Within that framework, s. 4.57 allows for the revocation or modification of development consent including a CDC (s. 4.57(2)). I would urge that Council obtain some legal advice on this application to avoid further issues down the track and request that Council revoke the CDC when making the decision on this DA. An amendment of the CDC would be to permit a development under the CDC that could not have been the subject of a CDC.

Also, both the Certifier and Allura Homes have breached the appropriate legislative requirements and should be reported, by Council, to the Building Professionals Board and NSW Fair Trading. If the building platform is 'illegal' then it would most definitely have flow-on effects on other aspects of the development e.g. height, building envelope and so on. In any event, given the demonstrated disregard for the legislative requirements shown to date, Council should do its own assessment of CDC2020/0112 to ascertain whether any other elements of the design breach the necessary standards.

In summary, it is hoped that the owners of no. 10 Courtley Road can proceed with a new dwelling that satisfies all the legislative requirements and that all neighbours can have some input into any proposed development in the future.

Regards

Ken Smith