
Sent: 16/04/2020 5:20:44 PM
Subject: Director Response - DA2020/0171 - 68 Delmar Parade, Dee Why
Attachments: Director Response - DA2020 0171 - 68 Delmar Parade, Dee Why - Chris Mills.pdf;

Mr Peter Robinson
Executive Manager - Development Assessment
Northern Beaches Council

Dear Mr Robinson,

Thank you for Mrs Kerr's letter dated 7 April 2020 that was attached with the below email from Felicity.

The letter comments as to a few aspects of the assessment and pre-lodgement process and advises you as the contact. Accordingly I would respond to 2 aspects of the letter pertinent to the assessment going forward and request that the following comments be addressed by yourself and the assessing officer.

Numerical Controls – Landscape Open Space (D1)

Council's letter mentions numerical controls can be "applied with flexibility on merit" (to which I am aware). However, I would respond that such does not give licence for the carte blanche violation of such controls. To this end I would contend that the application has not demonstrated that the **objectives** of the relevant control are achieved. In relation to landscape open space:

1. Further reducing the landscape open space on this existing non-complying site does not “**conserve and enhance indigenous vegetation, topographical features and habitat for wildlife**” (D1, objective 2). Rock outcrops are an important habitat in maintaining biodiversity of native flora and fauna. The 200 million year old Triassic cliff/rock outcrop is also a topographical feature in its own right. However the rock outcrop is not being **conserved or enhanced** ... it's being obliterated by 5.5m of excavation! Similarly, the capacity for **indigenous vegetation** is not being enhanced. This overdevelopment removes habitat necessary for **native wildlife** such as possums, Blue Tongue lizards, Bandicoots, native birds and others to eke out an existence within the “urban forest” of the Northern Beaches.
2. The dimensions of landscape open space remaining does not provide capacity for the site to accommodate **canopy trees (D1, objective 3)**.
3. With so little landscape open space remaining the site will not effectively contribute to **water management** by allowing sufficient **infiltration of stormwater (D1, objective 7)**.
4. The proposed reduction in landscape open space does not “**enhance privacy between buildings**” (D1, objective 4). The proposed overdevelopment brings reduced acoustic and visual privacy to neighbouring properties ... elevated pools, more windows overlooking adjacent properties ...

Submitted Documentation - Geotechnical report

The third last paragraph of your letter advises that “[t]he risk assessment has been formulated in accordance with the guidelines published by the Australian Geomechanics Society (AGS) and is found to be within “Acceptable” levels” and refers to Appendix 3 of the Geotechnical report.

The AGS guidelines are just that ... a guideline by a professional society. The guidelines are not called up by an Australian Standard, the NCC, or any the EP&A Act.

I have looked at Appendix 3 of the Geotechnical report. It uses some boffin value judgement rating co-efficient numbers which equate to things such as “likely”, “possible”, “unlikely”. Inter alia, it says:

1. There is a “possible” likelihood of rock topple affecting our property.
2. In terms of the risk to our life, in the event of landslip impacting our property, evacuation is considered “possible (0.5)”. Not “likely (0.75)”, or “unlikely (0.25)” ...but possible! So does that mean it's not likely that we will get out, but it is possible? None of this is very reassuring!

The whole report reeks of flawed methodology, boffin jargon, client bias and is completely un-reassuring. Accordingly, can Council please quantify and qualify what Council regards as an “acceptable” landslide risk to my

property? What is the percentage likelihood of being impacted? What is the extent of “acceptable” damage? Our dwelling is built upon the same rock shelf (with horizontal defects) that is proposed to be obliterated by excavation within 2m on the adjacent property. Aside from landslide, what is the likelihood and possible extent of damage to our dwelling from resultant geological instability or vibration damage?

The geotechnical report accompanying the application is flawed in many respects, however even that report can only describe the proposed construction as “marginally acceptable” (page 7 of the Geotechnical report). The report provides no certification or guarantees! They are presenting a report for your acceptance or otherwise - responsibility and liability lies with the Council and its assessing officers.

The Crozier geotechnical report advises “the existing cliff comprises medium strength sandstone with dominant sub-horizontal bedding defects”(page 4). On page 6 the report describes how “poorly oriented defects within the excavation bedrock may result in rockslide/topple failure” with the potential to impact adjacent properties. On page 7, the report at section 4.2, advises that the landslip hazard is “Rockslide/topple failure in bedrock **due to defects**”. None of the aforementioned is acceptable as an adjacent property owner; nor should Council be granting consent on that basis, as it does not satisfy the DCP objective of geotechnical stability.

The methodology of the geotechnical report is flawed:

1. The investigation method of the proposed development site is inadequate. The report carries the disclaimer that it is based “on an investigation utilizing only ¹_{SEP} surface observations” and 2 “small isolated test points” (page 3). You should note from appendix 2, that the two test points were conveniently located to the rear of the yard upon the much more stable plateau, well away from the crucial rock outcrop being excavated. The report disclaims any responsibility by advising that “variation to the interpreted sub-surface conditions is possible” (page 7). That’s not very good when you’re excavating 5.5m of cliff and rock outcrop from the most precarious part of a landslip site.
2. The investigation methodology of adjacent sites is inadequate. No inspection from within my property has been carried out, or requested by the geotechnical consultants (or Council for that matter). The report states that “the neighbouring buildings and properties were only inspected from within the [proposed development] site or from the road reserve” (page 6). This is an inadequate means of assessing the landslip and excavation/vibration impacts to our property/dwelling! If anyone bothered to view the highly visible and significant rock shelf defect within the landslip zone from within our site they would be much better appraised as to the nature of the potential geological instability. In this regard, so parties can discharge their obligations professionally, **I invite Council and the geotechnical engineer to inspect - you will be obliged.**
3. A mandatory hydrological assessment has not accompanied the application and the geotechnical report. Whilst not concurring, I note from your letter that council does not believe this is warranted.

As the assessing authority, you are charged with critically appraising the material put before you. The report does not certify anything - it is limited care with no responsibility accepted. The geotechnical report is flawed and full of disclaimers, nothing is certified and methodology has no legislative support - it’s presented for Council’s consideration. If Council adopts the views of the report and something goes wrong, the finger (and the lawyers/ombudsman) will be pointed at Council and its officers for accepting the commentary of the report.

So I ask you:

1. As Crozier are not providing any certification or guarantees, what guarantee can Council provide that our property will not be subject to damage from landslide, geological instability or construction vibration due to the proposed wanton excavation of unstable rock shelf within a known landslip zone?
2. Is Council or Crozier’s Engineering Geologists going to inspect the rock shelf that supports our dwelling from within my property?

My concerns and ongoing input stem from disappointment with the pre-lodgement process as a precursor to the assessment process. Hoping due diligence can prevail and the structural stability and amenity of my property (and other adjacent properties) will be protected.

Wishing you good health.

Regards,

Chris Mills
62A Delmar Parade
Dee Why NSW 2099

0418 413 580

----- Forwarded message -----

From: Felicity Schmidt <felicity.schmidt@northernbeaches.nsw.gov.au>

To: cjpmills@yahoo.com.au <cjpmills@yahoo.com.au>

Sent: Wednesday, 8 April 2020, 01:45:25 pm AEST

Subject: Director Response - DA2020/0171 - 68 Delmar Parade, Dee Why - Chris Mills

Dear Mr Mills

Please find enclosed response from Louise Kerr, Director Planning and Place, in relation to the above matter.

Kind regards

Felicity Schmidt

Executive Assistant to Director

Planning & Place

t 02 8495 6414 m 0435 573 318

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Northern Beaches Council

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7 April 2020

Mr Chris Mills
62A Delmar Parade
DEE WHY NSW 2099

Our Ref: 2020/174215

Email: cjpmills@yahoo.com.au

Dear Mr Mills

DA2020/0171 - 68 Delmar Parade, Dee Why

Thank you for your emails dated 23 and 29 March 2020 to the Mayor and Peter Robinson, Executive Manager Development Assessment. The Mayor has asked that I respond to you on his behalf.

The assessment of this development application is in its early stages with a determination decision yet to be finalised. The assessing officer conducted an inspection of the subject site on 27 March 2020. Please find below some information in relation to the key issues that you have raised in your emails:

Pre-lodgement Meeting Advice

A pre-lodgement meeting was held on 30 May 2019 in relation to a proposed development involving alterations and additions to a dwelling house including a swimming pool at 68 Delmar Parade. I have been advised that discussions at this meeting primarily related to compliance with the built form controls of Warringah LEP 2011 and Warringah DCP 2011.

A number of areas of non-compliance were discussed at this meeting, including inconsistencies with the requirements of Parts B3, B7 and D1 of WDCP. Amended plans were submitted, which addressed some of these inconsistencies. The meeting notes outlined that some remaining inconsistencies may be supported.

No formal planning comment was made in relation to the proposed development's consistency with Parts C or E of WDCP. Council's Landscape Officer expressed concern about the potential impact of development on existing rock outcrops and the potential for Aboriginal heritage.

While the notes of the pre-lodgement meeting suggest the proposed development demonstrates merit and may be supported, that advice does not form the basis for Council's merit consideration of the development application.

Assessment of Development Application

The current officer involved in the assessment and determination of the development application is qualified and experienced to assess this type of application. They were not involved in the prior pre-lodgement meeting. The officer's assessment report and their recommendation will be reviewed by a senior manager who will ultimately

determine the application (under delegated authority). There is no valid reason for this planner not to continue with the assessment of the application.

As previously mentioned, the assessment of this application is ongoing and will include consideration of the issues that have been raised in your emails.

In particular, consideration will be given to the geotechnical issues, existing site conditions, the proximity to your home, and other issues including natural environmental features, amenity and privacy impacts.

It must be noted that numerical controls in the DCP are a policy guiding development, and are can be applied with flexibility and on merit, as required by the planning regime. A numerical non-compliance with a DCP control may not necessarily result in refusal of a development application, where the application demonstrates that the objectives of the relevant control are achieved and relevant matters for consideration are addressed.

Submitted documentation

Council acknowledges your concerns regarding the submitted documentation, in particular the geotechnical report and your concerns regarding the absence of a hydrological assessment report.

Whilst the application is still under consideration, the assessment to date has indicated the submitted geotechnical report has been prepared in accordance with Part E10.4.iv of the WDCP as a risk assessment of landslip in relation to both life and property is included at Appendix 3. The risk assessment has been formulated in accordance with the guidelines published by the Australian Geomechanics Society and is found to be within "Acceptable" levels.

The geotechnical report, at Page 11, states the proposed works will have a negligible impact upon drainage and hydrogeology of the site. As such, in accordance with Part E10.4.ii of the WDCP, no hydrological assessment report is required to be submitted for this development application.

I trust this information will be of some assistance to you. Should you require any further information or assistance in this matter, please contact Peter Robinson, Executive Manager Development Assessment on 8495 6435.

Yours faithfully



Louise Kerr
Director, Planning & Place