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**Sent:** 31/12/2018 8:21:04 AM  
**Subject:** Re: MOD2018/0245 - 11 Farnell Street Curl Curl

Hi Phil,  
The normal lodgement through the Council Website is disabled.

We refer to the amended application by the owners of 11 Farnell Street. Unfortunately the owners have a history of non compliance with their DA consent and have falsified documents to Council to achieve approval of their intentional non compliance with their DA consent. It is noted on their original DA consent 2014/1321 that there was a specific condition that **“No approval is given to any works on number 9A Gardere Avenue”** (Our property). The owners of No. 11 intentionally and deliberately, as found by Justice Moore in the Land and Environment Court, excavated the land of No 9A, anchored fixings into that property, and built a wall on the land of No. 9A and failed to provide drainage behind a 5 metre high retaining wall in breach of DA consent and EP&A Act with these works not being constructed in accordance with the Building Code of Australia. This has caused significant damage to our property. Warringah Council (Now Northern Beaches Council) were advised of the breaches at the time when the works were being undertaken and failed to take any action whatsoever. This forced us to take legal action against the owners of No 11. An outcome of this legal action was a specific Penal Orders being imposed on David and Maria Quinn to ensure further illegal building works were not conducted. They have ignored these Court Orders and now seek approval of these illegal building works.

Additionally DA Consent required **“No works are permitted on the Council Road reserve other than the approved driveway works.”** Look at the garden bed retaining structures built on Council land on Farnell Street as excavation was not in accordance with Council or engineering requirements.

Court Order 15 clearly states “The First and Second Respondent (Quinn’s), in carrying out development upon No.11 pursuant to the consent (including any modification of it), must comply and strictly abide with the terms of the consent...” other than remedial works ordered by the Court to prevent further damage to our property due to the illegal building works.

The Quinn’s have failed to comply with this Court Order and have conducted further illegal building works on their property in breach of DA Consent that they seek to regularise with this MOD2018/0245. Original plans for this MOD were required to be amended to reflect what has actually been built as initial plans were falsified. The works were not approved and never went through an approval process that stated as being completed in November 2017 by the certifier. A certifier cannot approve works already built that are inconsistent with the construction certificate. Furthermore additional illegal excavation of the sub floor area occurred in January 2018 to lower the floor level for these “new sub floor rooms”. The Council certifier wrote the the Quinn’s stating that works were in breach of consent on 28 April 2018 clearly stating: **“Columns supporting the Eastern facing decks at sub floor and ground level.**

### **The excavated areas to the sub-floor level and services partly installed to same”**

are clear breaches of DA consent and breaches of the EP&A Act and Court Orders. It is clear the intent of the creation of these additional sub floor rooms with a large non approved door and sidelight to these rooms and terrace directly off this room are not for “storage”.

The sub floor room level has been significantly lowered as depicted on the amended plans from the previous approved plans. This results in wall heights now exceeding 11.6 meters at 900mm from the Southern Boundary (as a single wall) with no setback and gross exceedance of side boundary envelope. Additionally the bulk and scale of what is now a 4 storey house, that was never approved, clearly offends the requirements of DCP specifically:

B1 - Wall Heights - further gross exceedance which ignores the requirement to minimise bulk and scale; and has a **major** visual impact when viewed from the downslope sides of the land and adjacent premises.

B3 - Side Boundary Envelope - Total non compliance and inconsistent with all nearby development with height lines on plans being falsified.

The terrace located outside the “new rooms” on the sub floor lower level is located where there was supposed to be deep landscaped space. We note that this has now become a terrace thoroughfare and the removal of the landscaped space. This significantly affects our property to the South in privacy and amenity and the visual impact of the building. At this location the pathway of No. 9A is setback from the boundary for privacy reasons contrary to the false information provided in the most recent EIS dated 3 December 2018. The No.11 non approved terrace and stairs are located to and over the boundary. Previous MOD2016/0017 prohibited a terrace in this exact area “Ensuring development minimises unreasonable impacts in accordance with WLEP2011 and WDCP and current legal proceedings. ”. The owners built it illegally anyway in breach of DA consent and Court Orders and now seek approval from Council.

Along with this we note that the landscaped open space above the garage does not meet the requirements of DCP as it is filled with black plastic covered polystyrene blocks covered in shallow dirt filling the deep landscaped area. I would suggest this is due to structural inadequacy of the construction which is now connected to our property. Removal of the landscape area where the terrace now has been built and failure to comply with landscape depth result in significant reduction of landscaped open space below requirements of approved DA Consent.

The balconies and their supporting posts, the post were never on any plans or construction certificate, were not build to set back requirements. Council officers advised Mr Quinn in March 2018 when the balconies were not being built to specification that the balconies must be built in accordance with the plans. The illegally constructed poles affects amenity to adjacent neighbours who have been built out in both setback and height and now have illegally built and unapproved terrace and poles at less than the **minimum setback from the front boundary on the Southern side.**

A previous DA submission from another neighbour claimed preferential treatment being given to this development by Council officers when it became obvious that previous plans and EIS had been inconsistently approved. This has continued throughout this development whereby Council officers have failed to act in accordance with compliance, reasonable planning principles, and specific Court Orders, with falsified claims made by the owners of No.11 that **NO** surrounding neighbours are affected by their illegal building works. The NSW Ombudsmen has been notified.

The Quinn's fail to comply with DA consent by failing to obscure a window looking into neighbouring bathroom and bedroom of children while at the same time building non approved illegal works.

Our previous submission remains valid in respect of the illegal building works and on-compliance with DA Consent and if Council approve these illegal modifications they are condoning illegal building works in breach of specific Court Orders to prevent this exact situation.

Regards  
John Hopkins

On Fri, Dec 21, 2018 at 2:13 PM Phillip Lane  
<[Phillip.Lane@northernbeaches.nsw.gov.au](mailto:Phillip.Lane@northernbeaches.nsw.gov.au)> wrote:

Hi John,

Amended plans and a Statement of Environmental Effects have been lodged with Council for the above application and can be viewed on Council Systems.

<https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Public/XC.Track/SearchApplication.aspx?id=1522747>

Council will assess the application in the New Year and will consider your submission.

Regards,

**Phil Lane**

Principal Planner

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Northern Beaches Council

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