

16 AUG 2019

NORTHERN
BEACHES
COUNCIL

14 AUG 2019

11 August 2019

RE Mod2019/0172 - DA2015/1258 dated 23/4/19 on Council's DA website
And amended submission dated 31/7/19

DEE WHY CUSTOMER SERVICE
RECEIVED
Signature *[Signature]*

Dear Mr Keller,

Thank you for the notification provided on 31 July 2019 regarding the amended plans to this modification. We apologise for the length of this submission but there are so many aspects of the development which need to be raised, including diagrams and photos and we hope you can see your way to getting through to the end of our submission.

While we believe a few of the amendments are in relation to changes to some of the actual construction aspects of the building, there are parts of this recent amended modification which seem to be an attempt by the applicant to justify matters raised by us when we expressed concerns about this development in our submission received by Council 17/7/2019.

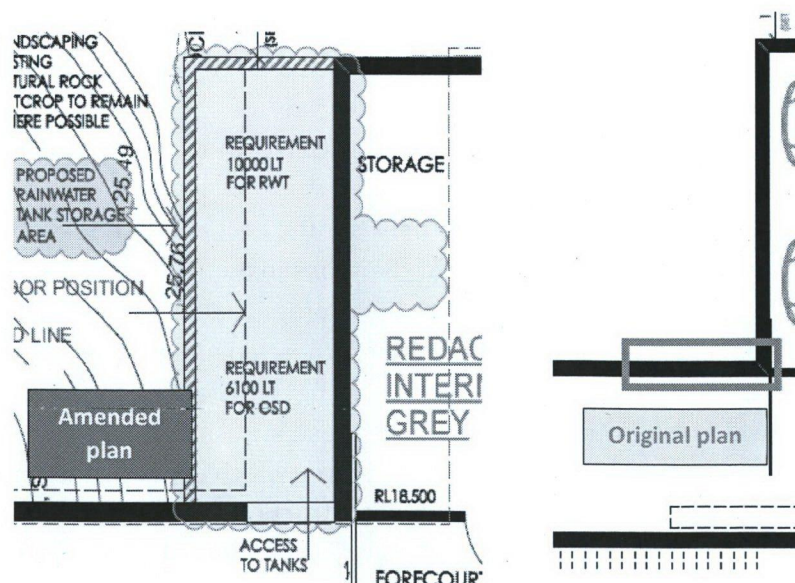
In that submission we did express concern about the number of storeys that are becoming available to the owners of this site as a result of the significant excavation which has been completed on their behalf. During the excavation phase of this development, which was relentless in its timeframe, spraying of rock refuse onto our home and the incessant noise, there seemed to be no time when problems might have occurred to slow down the excavation phase to allow for the necessary investigation as to what to do to resolve what the applicant is now alleging, namely that there were "poor ground conditions (which) required this zone to be cut back to solid rock hence the client utilization..."

If poor ground conditions were "discovered" during the excavation, then there would have been communication with people knowledgeable in these matters, such as the Geotechnical Engineer whose technical expertise has been gained for this very amendment. If this poor ground condition was actually discovered during the excavation stage, then their advice as to how to proceed should have been gained and kept for situations such as this where there are significant deviations from the DA passed plans. Documents such as these would confirm that this revelation of "poor ground conditions" did in fact actually occur.

We believe the sequence of plans submitted by the owner over the course of this development show that as a result of our objections to the amount of excavation of this site, the owners have developed a way of explaining the reason for the excessive excavation of this site. This can be seen in what will now be an entrance way through the concrete wall of the original plan to provide access to this proposed water storage tank area (green amended plan diagram). As this amendment is actually a **request** to undertake modifications to plans already lodged, the question of whether this doorway has already been cut

POOR GROUND CONDITIONS REQUIRED THIS ZONE TO CUT BACK TO SOLID ROCK
HENCE THE CLIENT UTILIZATION OF THIS AREA FOR STORMWATER TANK STORAGE

POOR GROUND CONDITIONS REQUIRED THESE ZONES TO CUT BACK TO SOLID ROCK
HENCE THE CLIENT UTILIZATION FOR THE PROPOSED STORAGE AREA



through the original concrete wall which showed no access doorway (red rectangle on original plan) must surely be asked.

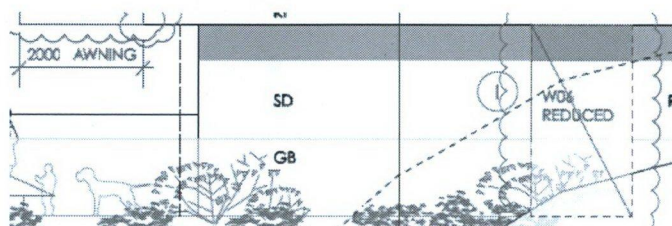
We also believe that given the speed and the incessant nature of the excavation, there was only ever one intention when the applicant began the excavation of the block. Namely to remove as much rock as possible which would provide the owners with as much space as possible to build whatever they could and that they would use “created” excuses in the future to justify what they were doing, regardless of their veracity.

Indeed, a local builder who is a friend of the owner and who offered to quote on our own renovations completed last year, mentioned as such in a recent casual conversation last week. He asked me, “How was it going?”, in reference to the work at 62 Evans Street, and in response I told him that “I have to live next door to it!”. He then replied that, “Yes, he was putting as much into the site as he can”.

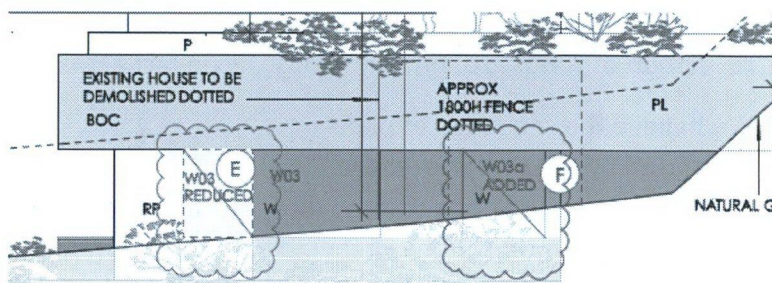
In responding to these amended plans for this modification, we would hope that Council does not forget the matters raised by us about the original modification which we emailed to Council on 19 May, 2019. Our original objections focused on loss of privacy and over-shadowing by the building. One might even consider that the lodgement of this additional amendment, so soon after its related modification might be an attempt by the owners to confuse the whole matter of this increasingly large development within what is supposed to be a low density residential area.

There were 4 items included in our response to that modification and in summary they were:

1. Windows modified with both an increase & decrease in size and 2 new windows. We objected to both the size and position of the windows on the eastern boundary, especially those in the south-eastern corner which are not windows but actually sliding doors (SD) with a glass balustrade (GB). They provide the occupants with the ability to look straight into our kitchen, back deck and bathroom and not even the approximately 1800 mm high fence (shown by the dotted line) will obstruct their view into our home.



2. Flipping around of internal layout of Granny flat. Given the number of modifications and amendments for this development, we are completely unsure of how this will affect us. We do feel that whatever windows are placed on the eastern wall of the building, only highlight windows should be allowed



- so that light can enter the room but the occupants should not be able to look into our home or onto us when we are using any of the space in our property.
3. Added columns. Allowing for the professional planning work allegedly involved in the design of this building, we question the need for these columns. Why are they needed now and what has happened for them to be required? Has there been extra unplanned work completed during the construction which forces the owner to make these inclusions?
4. Inclusion of an awning over the storey which contains the pool, which is really the second storey level. Is this new aspect of the construction the inclusion which is causing the need for the added columns? We do object to the awning as this will increase the space for the occupants to congregate and then overlook us.

There were also the questions we asked in our submission to Council dated 15 April 2019. In that submission we drew attention to what we considered were incorrect applications of Council requirements for the initial DA to proceed. Responses to **some** of these questions now seem to be the reason behind this recent amendment to their April modification.

- Proximity of the walls on the eastern side of this building appear to be so close to the boundary that there does not seem to be the required space of “at least 2 metres” to allow for screen planting as listed in the plans. As these were the very requirements which allowed Council to believe the issue of privacy concerns had been adequately addressed, it is distressing that the owners of this new building are able to simply put a “green wall” in place to cover up their mistake of building too close to the boundary.
- Questions about the capacity of the concrete retaining wall built to hold back the soil between our two properties to perform its job, due to the lack of submission of engineering plans.
- Overlooking of our living areas through the extremely large glass opening in the south-eastern section of this new building.
- The total disregard for the initial amended plans which were provided to ensure that much of the rock outcrop within would have been retained, as far as practicable (being the eastern half of the middle terrace)”. Concern was also raised that the, “excavation of the natural sandstone rock face area is excessive and the building does not retain landscaping to the streetscape.
- The initial amended plans called for changes to include “reducing carparking from four garage spaces to two spaces to limit the extent of excavation lines for the basement area”.

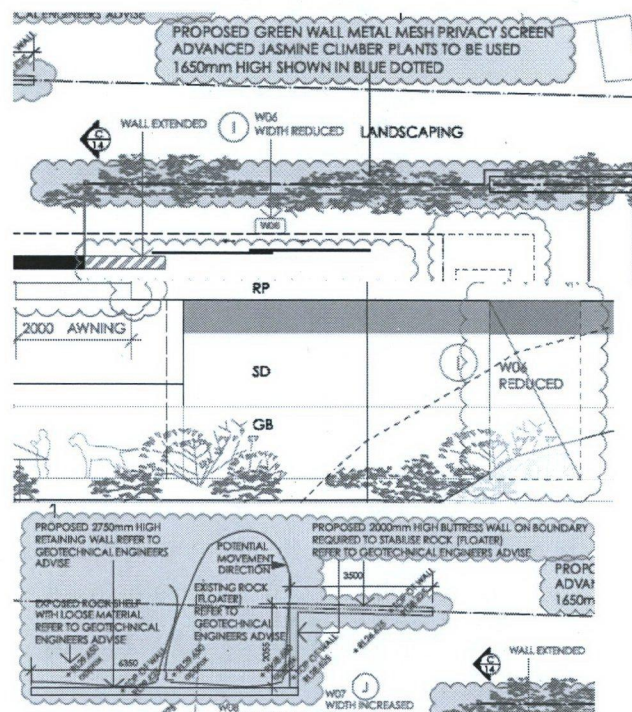
This new amendment raises four additional matters, following up on the April modification.

1. An explanation as to what the additional excavated sections of the site will be used for.

2. A proposed green wall

3. The large sliding door

4. The construction of a new retaining wall and boulder stability work



The last of these four items is the only one with which we are pleased, namely the construction of a **retaining wall and boulder stability work** being suggested in the north-eastern corner of the property. The engineer who has been advising the owner, Mr Troy Crozier has noted in his email to us,

“Provided sensible excavation techniques are utilised within No. 62 (for which we have provided methods that have been agreed to by Terry) then I consider it relatively unlikely that the boulder will move in the short term as a result of the proposed works in No. 62. However this cannot be guaranteed as there are natural variations and unknowns.”

Given the number of indiscretions which have occurred during the excavation and building of this development, we are completely unsure of whether these “sensible excavation techniques” have been employed by the owner. Although this rock seems to not have moved, there was always the possibility that it might move at some stage in the future. While it was something we knew might happen, it was not something we believed that we had to spend money on now. We would deal with it when and if it happened in the future. But once the rock was sawn through, despite being advised by the original builder that it, “most probably will not be touched”, we did believe there was an increased risk of the rock moving.

So this aspect of the amended modification is what we hope will be a good thing. We do hope that it is carried out carefully. Also, as the retaining wall is to be constructed to include “boulder stability” we would hope that we are fully informed about the work that is to be done to stabilise this very large boulder which now sits on our property. We would also hope that a geotechnical engineer such as Mr Crozier is involved in providing advice about the design and planning of this piece of work.

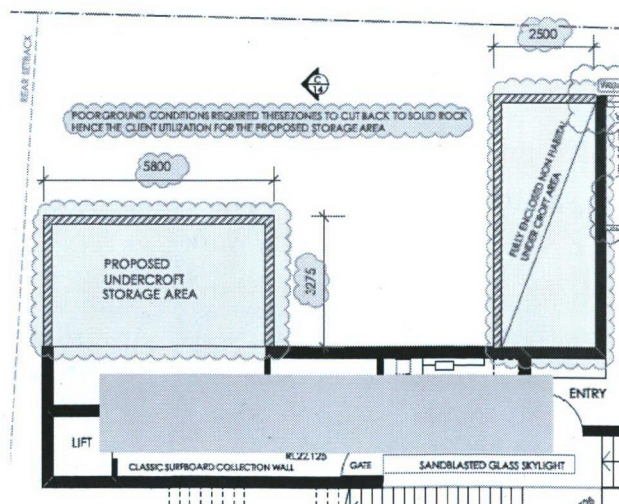
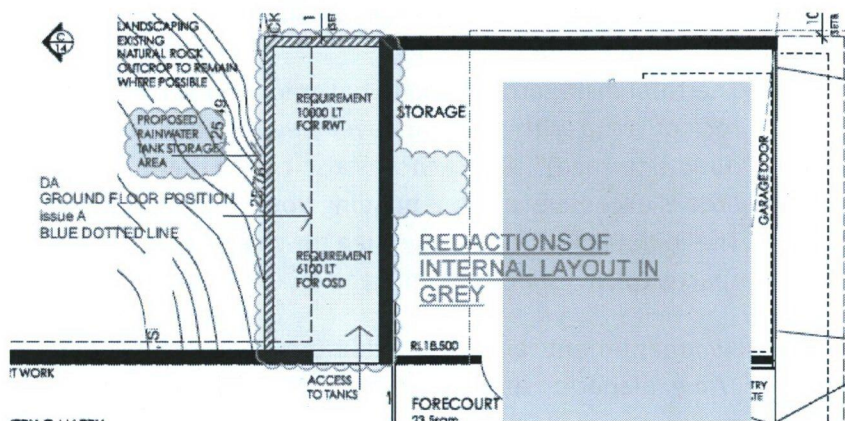
The explanations being provided through the plans attached to this amendment, as to the uses of the larger-than-planned-for excavation ask more questions than they answer. We consider that the information being provided in the amended modification might be incorrect.

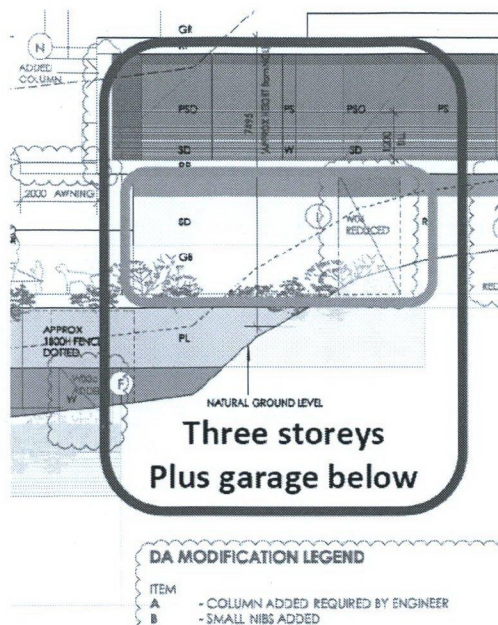
Page 1 of the amended plans shows the ground floor level of the building, with the garage entrance, as well as giving information about the positioning of the proposed rainwater storage tank, with its new access doorway. Immediately to the north of this tank, there is a section of the rock escarpment which was retained, although it is now covered up by the main section of the upstairs building. Further to the north of the block, we believe there was additional excavation carried out which is not shown on the plans, with a further concrete slab poured in this position, although this is difficult to ascertain due to the blue mesh material placed on the security fencing to hide the construction work being carried out.

The second page of the amended modification shows an additional “Proposed undercroft storage area”. If, as we believe there was a concrete floor poured in this position below, then this proposed undercroft storage area is being constructed so that it sits on top of the concrete floor below with nothing in between. Either that or it is sitting in mid-air with nothing below it!

Or it is such a space that comprises two storeys.

The points we are raising here are a continuation of our questions about the amount of rock which has been excavated from the site.





This extraordinary amount of excavation is significantly more than was suggested in the original DA and is allowing the owner to finish up with a building which will have three storeys and in some parts, possibly a four storey construction in the northern section of the property. Council does have guidelines as to what types and sizes of development are allowed in different parts of the land for which Council is responsible. This development is in a low density residential area with houses restricted to two storey dwellings.

For our own recent renovations we were limited by Council as to the amount of excavation we could do. We were not allowed to excavate under our home any further than what we now have because we would have finished up with a three storey home. These were the guidelines to which we adhered so it only seems fair that the owner of this adjoining property be required to follow the same guidelines.

As an overall statement in regards to the excavation of the rock at this site, the Development Application Assessment Report, created by Council in allowing this development to proceed listed the following acceptance statement of the objection to the amount of excavation:

Concern that the excavation of the natural sandstone rock face area is excessive and the building does not retain landscaping to the streetscape.

Comment:

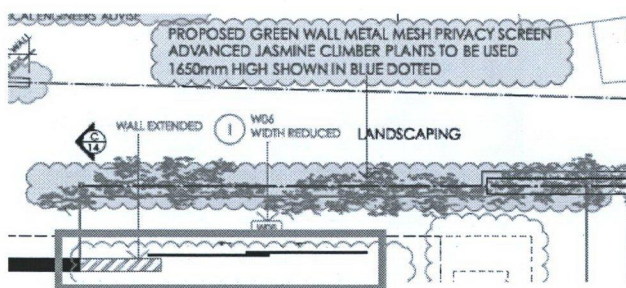
The proposal includes the demolition of the existing dwelling and construction of a new contemporary dwelling house with a garage, secondary dwelling, pool and landscaping works. Re-development of the site requires some deep excavation work for the garage, stair and lift access. Concerns at the amount of excavation and impact on the natural rock face were raised with the applicant and amended plans were provided to ensure that **much of the rock outcrop will now be retained**, as far as practicable (being the eastern half of the middle terrace). The rock face at the front will also be retained where it is not needed to be excavated for the driveway access. Changes also include reducing carparking from four garage spaces to two spaces to limit the extent of excavation lines for the basement area. Landscaping will be provided to enhance the areas of natural rock face along the street frontage that will be conserved in-situ. The net landscaped area has also been increased as part of the amended plans (dated 8/4/16) to improve the visual setting of the building in the surrounding environment and reduce any unreasonable impacts on the excavation of the natural rock face and improve the landscape setting.

It is staggering that none of the rock outcrop has been retained! Unfortunately, now that the rock has been excavated, it cannot be put back as it really should be.

This statement in the DAAR also mentions that the four car garage space should be reduced to two, but the plans continue to show four cars in their parked position.

The proposed green wall in the south-eastern section of the build, nearest to our main living areas, is a significant concern for us.

While a section of the eastern wall has been extended to minimise the intrusion on our privacy, there is still a large floor-to-ceiling glass sliding door (red rectangle) in that section of the building which will allow the occupants to look directly into our bathroom, back verandah and kitchen.



The applicants' proposal is that a 1650mm high "green wall metal mesh privacy screen (with) advanced jasmine climber plants" which will allegedly provide privacy but the eastern elevation diagram provided by Council does not give an idea of how much of the view through those sliding doors will be blocked. If the "green" screen does provide some privacy, it will depend upon the maintenance skills of the owner to keep the jasmine alive. A screen of 1650mm is not high enough to stop the occupants looking over the screen into our home. There is no need to have such a large opening in that section of the building, unless the reason for that opening is to look into our home. There are very few windows on the western wall of this development, so that the occupants cannot overlook one of the owner's parents and we really must ask, why there is such a need on the eastern side of the building.

It seems strange that floor to ceiling windows have been allowed on the eastern side of this dwelling. We do not have any windows on either the eastern nor western sides of the first floor of our home (two on the ground floor look straight into the side fence), firstly because we don't want to look in on other people but secondly because we know that Council would not give us permission to install a window which would allow us to look in on someone. When our recent renovations were considered by Council, there was an instruction that privacy screens be installed on our upper storey back deck to stop us overlooking our neighbours. Why is it that windows which allow the occupants to look into our home have been allowed in this application?

We would respectfully request that the sliding door be removed and changed to a highlight window as per the lower storey with the granny flat. If this sliding door is to be allowed to stay, despite us being directly overlooked, we respectfully request that the privacy screen be made so that it is floor to ceiling. This would ensure that no occupant could look over the screen into our home.

Given the manner in which Council's DA requirements have been pushed to the limit by the owner/builder and in some cases, potentially flouted, we would like to also request that the opening privacy screens along the length of the upper-most (fourth) storey, be made so that they cannot be slid open to provide an open view looking onto 64 Evans Street. These privacy screens are listed on the plans as PSO (privacy screen opening) but this could cause the owner/builder to put screens such as louvered screens which can be installed so that they can be pushed to one side. We would hope that this would not be allowed.

While we have already raised the issue of a lack of space between the new building and our home, it is pertinent to raise this matter again, at this stage of this submission as this newly devised "green" privacy screen seems to be the owners' method of hiding the way the building has been constructed so that it seems to not comply with Council's requirements.

Item B9 of the DAAR speaks about the need,

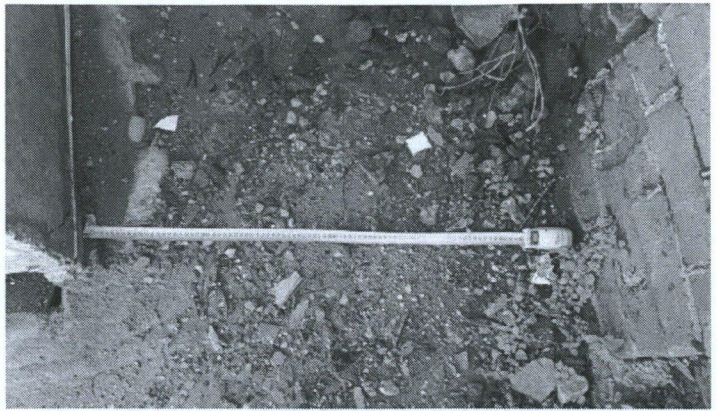
- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

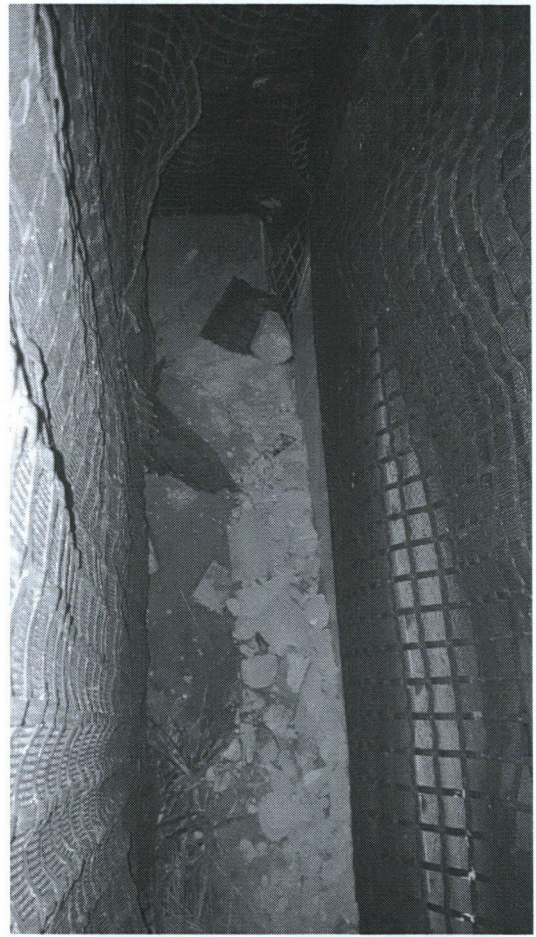
The site will maintain 34.1% of deep soil areas however these areas include natural exposed rock, and the rear setback contains some exposed rock areas. Therefore, the site has limited areas for deep soil planting due to the extent of bedrock. Notwithstanding this landscaped areas around the rear and side setbacks are 2.0m or more in width to enable sufficient space for planting where those opportunities exist in the remaining parts of the site with deeper soil.

This photo is one I have previously provided Council and shows that there is only 900mm between the eastern wall of the new building and our western wall. This indicates how much the owner has not adhered to the 2.0m guideline, "to enable sufficient space for planting".

While the whole site might have limited areas for deep soil planting, this is one part where that is possible but the positioning of the new building has not allowed enough horizontal space for that planting to grow. So in its place, the owner is suggesting a "green" privacy screen, which we believe will sit on top of the edge of the eastern wall of the new building.



These photos show what we believe was the lack of commitment by the owner to adhere to these DA requirements for "deep-soil planting". Behind the retaining wall (on the LHS of the first photo), built to hold back the soil on the 64 Evans Street side of the boundary, the owner/builder has filled the void with building rubble, such as concrete and building waste. The first photo

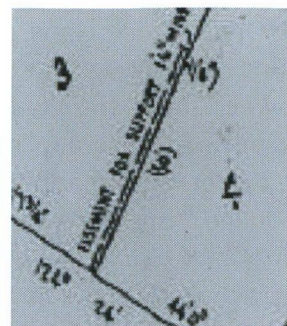


was taken in the early stages of the rubbish disposal and the second photo was taken at night (12/8/19) and shows the space completely filled with building rubbish. This area is actually on the 62 Evans Street side of the boundary and following the DA requirements for "deep soil planting", it should have been filled with soil, to allow for that planting. But instead, the owner/builder just wants to install a metal privacy screen, covered in jasmine, and not have to worry about deep-soil planting.

This lack of horizontal space between the two buildings in question raises the issue of the management of the easement of support which exists between the two buildings at the southern point of the boundary between 62 & 64 Evans Street.

On 1 October, 1971, the then owners of 62 Evans Street, Mr & Mrs Cashman sold the rights to an easement of 1 foot 6 inches wide along the boundary line extending 50 feet from the southern corner of that boundary line to the then owners of 64 Evans Street, Mr & Mrs Timewell. This was to allow for the accommodation of a building intrusion which occurred at that time.

The memorandum of transfer mentioned that,



The persons having the right to release vary or modify the within easement are the Transferees their successors and assigns.

The documents which identify this easement have been provided to Council this afternoon (13/8/19).

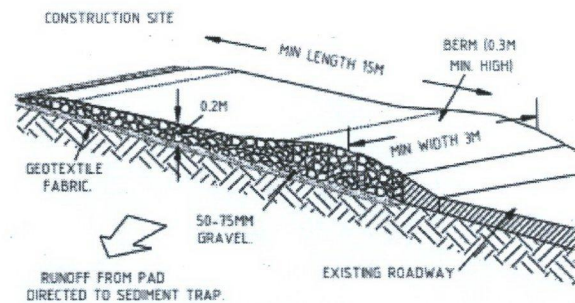
As the work being carried out by the applicant of this amendment along the eastern boundary line includes the retaining wall at the northern end and the "green" privacy screen in the middle of that boundary, we believe it is relevant at this stage of this submission to request that advice be given to the applicant as to what should happen with this section of land that now exists between the two buildings.

Discussion with the owner about any matters pertaining to the building seem to have become a real problem ever since we lodged our objection in the consultation phase to the initial proposal. Once we objected, any attempt to speak with them on any matter has been difficult. My last communication with the owner was on July 15 this year by text when I attempted to commence a discussion with the applicant about what might be "happening in the easement space". He texted me that he would find out what day he was free and he would let me know, but I am still waiting. In that text, he did mention that he did "not want to step the fence into my property (62 Evans St.) so we will have to come up with a solution". In a normal situation, a boundary fence would be constructed along the boundary line but with the easement, we believe the fence should be positioned along the length of the easement line and then step in at the point where the 50 feet finish so that the fence can then be constructed on the boundary line. This will allow us to have access to our western wall to finish our renovations along that wall, to continue to have access to the gas line which runs along that wall and to deal with the exposed foundations that have been caused by the excavation of the previously positioned soil.

We would also respectfully hope that Council would see that as the applicant has removed the soil and bricks that had been positioned on our property to allow for access to that section of our block, then Council would expect that the applicant should make a significant contribution to rectifying that area of land. Our land and the side of our home have been used as a dumping ground with building material and rubbish being left there at various stages of the construction. The positioning of the security fence makes it impossible to access that area of our property to complete our renovations in that section of the house. This photo taken 11/8/19 shows an improved area from the previous week as the amount of rubbish which had been placed there at that time was significant. But it still shows the restricted access we have to that part of our block.



We would like to follow up on a response which was given over the phone by a Council officer in regards to one aspect of our April submission. A council officer gave us advice about the reply from the certifier in regards to the requirements in the external plans for the entrance to the site to be a raised section in the entrance way to stop run-off from the site. When we mentioned that the temporary entry/exit had not been installed to the design shown in the information submitted by the applicant, the Council officer said that the certifier had said that to him that nothing had "escaped onto the roadway and so it was not a problem". The waste concrete which has been placed in the entrance way looks nothing like the specific design included in the plans on page 12 of the 18 page document submitted by the applicant and more importantly, accepted by Council. If Council accepted that this was going to be the way in which the work was to be carried out by the applicant, then we would hope that Council does not see that this is an adequate response from the certifier and that the situation be rectified.



TYPICAL TEMPORARY CONSTRUCTION ENTRY/EXIT DETAIL

CONSTRUCTION NOTES:

1. STRIP TOPSOIL AND LEVEL SITE.
2. COMPACT SUBGRADE.
3. COVER AREA WITH NEEDLE-PUNCHED GEOTEXTILE.
4. CONSTRUCT 200mm THICK PAD OVER GEOTEXTILE USING ROADBASE or 30mm AGGREGATE. MINIMUM LENGTH 15 METRES OR TO BUILDING ALIGNMENT. MINIMUM WIDTH 3 METRES.
5. CONSTRUCT HUMP IMMEDIATELY WITHIN BOUNDARY TO DIVERT WATER TO A SEDIMENT FENCE or OTHER SEDIMENT TRAP.

We would like to finish this submission with our observations of this whole development process which we also included in an earlier submission.

It seems that in written communications with the Council by the applicant in regards to all development at this site, statements have been lodged with plans or modifications that would allow the construction of the building to proceed in the way that satisfies Council's requirements. And then having received consent, the owner seems to have disregarded the requirements of the DA Assessment Report and proceeded to do whatever they want to achieve their new building, regardless of how it might go against the agreed upon consents.

There have been numerous indiscretions by the builder during the construction phase. Work has continued after the allowed work time; the owner has blocked street parking for the general public by setting up cones to stop anyone parking to allow him or his workers to have parking. When we have contacted the council ranger they have rarely been able to catch the owner in the process of doing the wrong thing and the indiscretions have continued. These things have actually happened during this development and we have had to deal with them as we live in the same vicinity. But now that the building is becoming a reality we are worried that the Council approved requirements which have allowed the building to go ahead are not being adhered to.

Three and four storey buildings should not be accepted in low density residential areas, yet this is what the applicant is suggesting should be allowed.

If "soft rock" has caused a void which now provides space for an additional storey and the owner has not confirmed with Council on how to proceed in such an unimagined situation, then we would hope there might be directions from Council to fill in this void. Otherwise, in the future, owners and developers will see the value in discovering "created" soft rock and do the same thing to achieve an additional storey. This will cause the floodgates to open and more sections of the Northern Beaches Council area will lose

their low density residential rating. We would hope that this is something Council does not want to happen.

If any aspects of this development are contrary to what was supposed to be built and do not meet the Council's requirements, then we would hope that Council will tell them to pull it down and start over. We would also again respectfully hope that Council would apply their building guidelines consistently and to the letter of the law, so that builders and developers would get the message that there are guidelines which have to be met. People who live in a residential area should not be allowed to go ahead and disregard Council building requirements simply because they want to.

It does not seem fair that those who follow the guidelines are unfairly disadvantaged compared to those who choose to complete a development which seems to break a large number of those guidelines.

64 Evans Street is our family home and this development has significantly and very negatively impacted on the quality of our living space, in particular, our loss of privacy due to being overlooked, especially though large glass doors and windows as well as the loss of sunlight which the shadow diagrams said would not be a problem.

Regards,

Joanne and Michael Palme