
Sent: 17/07/2019 2:41:49 PM
Subject: Attention Alex Keller. Modification (Mod2019.0172 – DA 2015/1258)
Attachments: AdditionalConcerns62EvansStreet_July2019.pdf;

Good afternoon,
Could this email & attachment please be passed on to Alex Keller as he is the Senior Development Planner for development at this site.

Regards,
Joanne & Michael Palme

Monday 15 July, 2019

Dear Mr Keller,

Re. Development at 62 Evans Street Freshwater
(Mod2019.0172 – DA 2015/1258)

We would like to draw attention to the ways in which the requirements of the Development Application Assessment Report seem to have not been followed. Mr Ashley Roberts from the Compliance section of Council has advised us that you are the person to whom any matters pertaining this development need to be addressed, even though they seem to suggest non-compliance.

The western side of our property has an easement which was negotiated many years ago by previous landowners of 62 and 64 Evans Street. This is listed on the survey plan submitted by the applicant. The soil that used to be up against the western wall of our home was removed during the excavation phase of the work being carried out at this property. After the recent rains, we were concerned about the possible loss of soil from this part of our property.

While there has been some run-off, we are concerned about the exposure of the foundations of our home and what is supposed to happen within this easement as a result of the excavation done on behalf of the owner of 62 Evans Street. Mr Roberts has informed us that the Certifier has been provided with geotechnical advice which states there is no need for underpinning and while this might satisfy item 13 of your report, it does not address the matter of how the easement is to be left once the construction work has been completed. Nor does it explain how exposure to the elements of our home's foundations is to be managed.

Indeed Council has approved these plans which seem to have allowed for the removal of the soil within this easement. We have not had access to that section of our property since the security fencing was installed, approximately 18 months ago. We would like to paint that section of our home to complete our own recent renovations, but we do not know whether we will be able to gain access to that part of our property once the construction is finished. Nor do we know what type of access will be available now that the soil which we used to walk on to gain access to that section of our property has been removed. This is where our gas line runs from the street so we will need continual access to that area.

We are also concerned about the closeness of the new building to our home, especially given the original DA requirements.

Item B9 Rear Boundary Setbacks describes areas of non-compliance:

The proposal includes a rear setback of 3.64m to 3.05m which is a non-compliance of up to 49%

- *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.

Measurements of the distance that the newly constructed building has from the western wall of our home, (not even the boundary between our two properties). At the south-eastern corner of the new building, it is only 900mm from our western wall.



The space between these newly constructed retaining walls and our home is an easement for both support and access. As such, there is now no space for any of this landscaping which was a condition for approval of the consent of the original DA: "Privacy is also maintained by the use of side fencing, screen walls, landscaping, operable screens and highlight windows". Mr Roberts has explained that the only section of the plans for which there is a 2 metre requirement is the one listed on the Landscape Area Plan, DA15 (A). He measured it yesterday (16 July, 2019) and said that it complied with the plans submitted. But your document calls for the 2 metre distance to be made available "to enable sufficient space for planting" along the boundary. At the very section of our boundary where this planting is required for privacy (the northern end of the easement section where our kitchen and bathroom windows are and occupants from 62 Evans can look directly into those rooms), the plans do not require this 2 metre distance because there was no 2 metre length listed on the plans. The two documents seem to disagree with each other and it seems that the plans carry greater weight in regards to compliance.



Item B3 Side Boundary Envelope described area of non-compliance:

The proposal breaches the side boundary envelope by up to 1.5m at the upper forward corner of the east elevation and 2.7m at the upper forward corner of the west elevation.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*
- In order to allay this area of non-compliance, the modification statement has the following comment:

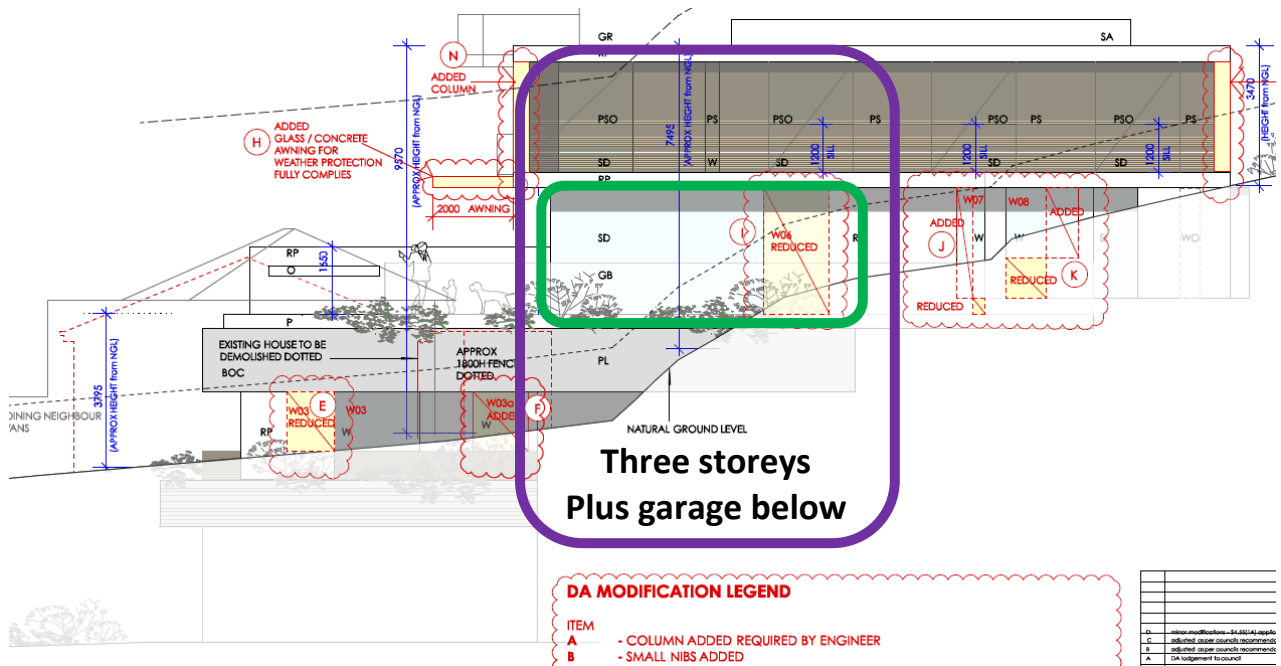
Comment:

The non-compliance with the building envelope **does not cause an unreasonable loss of sunlight to adjacent land**. The upper storeys are set back from the side boundaries to minimise the non-compliance on either side of the building. The building will maintain adequate light and solar access to adjacent land due to the northerly aspect of the rear setback area. Highlight windows, screen walls and operable screens are used for privacy for the side elevations and no unreasonable overlooking is created from forward balcony areas that overlook roof areas and the street.

Due to the construction in its present state, the western side of our home is now continually in shade. While I understand that we are presently in the winter season, there is no sunlight in that part of our property and this lack of sunlight questions the accuracy of this statement. We have lived in this house for the last 26 years and even in the winter months, we used to have some sunlight on that part of our home. Now we have none!

This comment also mentions that "highlight windows, screen walls, and operable screens" will be used for privacy. While there are some highlight windows in the middle section of the new building, the windows

proposed in the recent modification (Mod2019.0172 – DA 2015/1258) are definitely not highlight windows in the south-eastern wall of the development. On page DA09 (D) there is a sliding door as well as very large floor to ceiling window (**green rectangle**). These will allow any occupants to look directly into our kitchen, deck and yard. They can even now see straight into our bathroom. We objected to these in the original DA and have again objected to them in this most recent modification. There is also no mention of any “operable screens”, whatever they are on any of the plans. So even if these things are identified as being able to “ensure adequate privacy”, as they are not listed on the plans, there will be no requirement for them to be put in place. The upper storey has Privacy Screen opening (PSO) but there is no such requirement on the windows in this section of the building.



This lack of privacy and loss of sunlight are our major concerns when you are considering this recent modification. They are the matters for your consideration which are now having a major negative impact on our family life. Whenever we are in the bathroom, we need to keep our window closed to stop anyone looking in!

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. Why is it that windows which allow the occupants to look into our home have been allowed in this application?

Item B7 Front Boundary Setbacks describes areas of non-compliance:

The garage building is located within the front boundary setback area at a distance of 0.83m to 4.76m from the front boundary.

- To create a sense of openness.

Comment

The site currently has a double garage on a 0.0m setback in the south east corner of the site with an "L" shape driveway entry. This existing garage and driveway currently covers most of the front setback with hard surface / building. The new garage will enable more than 50% of the front setback to remain open with pedestrian access, new grass / garden area and provide for a new more direct driveway alignment. The forward position of the garage is necessary to **protect the large rock outcrop behind the front setback that is a prominent feature of the street.**

The front half of the property contains a steep rock outcrop that is prominent in the streetscape. **The majority of this rock outcrop will be retained by ensuring minimal excavation at the front of the site** and locating the new access hallway / lift on the western side of the land where the existing access steps has been cut into the rock. Given the site has an existing garage in the front setback and the replacement garage will restore / retain landscape elements in order to assist in retaining the existing visual continuity of the street the proposal is consistent with this objective.

While the creation of a larger setback has modified the space between the footpath and the front of the new building, the majority of the rock outcrop has now been removed so that the “existing continuity of the street” definitely does not exist. The newly positioned garage has also caused the total removal of the large rock outcrop which was once a prominent feature of the site, which I have mentioned in Item E6 below.

Item E6 Retaining unique environmental features describes an area of non-compliance:

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To conserve those parts of land which distinguish it from its surroundings.*

Comment:

The site contains a rock ledge formation across the central area of the site which is distinct to the surrounding topography. At various locations the rock formation is visible from Evans Street depending on where surrounding development has been able to conserve those parts of the rock feature. In this case the existing house is constructed forward of the rock feature and the new garage, access stairs/hall and secondary dwelling will impact on that rock feature by excavation. The proposal has been amended to reduce the impact on the rock feature to conserve over 50% of the rock escarpment and construct around (forward) and above it in order to retain the natural rock face as much as practicable.

The entire block at this site was comprised completely of rock with the previous dwelling simply sitting on top of the rock at the front of the site. There used to be a section of the rock escarpment which had a ‘wave’ in it with a small cave within the rock. It was able to be seen from both the street and the other side of the Freshwater valley. The excavation that has been completed to allow the construction of the new dwelling has seen nearly a total removal of all rock from the site.

The newly built construction is not allowing any aspect of the small remaining section of the rock escarpment to be seen from the street. There is some rock retained at street level, but all of the rock escarpment has been removed.

We made enquiries about putting a secondary dwelling at the rear of my own property where this is a large rock feature in the north-western section of our block and sections of that rock crossed the boundary line. We were told the rock feature on our property would have to be retained as it is a feature of the locality.

The excavation work which has been carried out at 62 Evans Street has totally demolished all of the rock feature on that site so that there are no remaining “parts of the land which distinguish it from its surroundings”. Prior to the excavation work being done, I was concerned about the very large and notable rock which crossed our boundary line. I was told by the builder at the time (before the owner-builder took control of the construction) that “it might not even get cut”. Yet when I came home one afternoon, it had been sawed in half! The owner of 62 Evans Street has been able to remove all sections of the rock escarpment but I am not allowed to do the same thing on my property. This seems to be an inconsistent application of Council’s requirements.

We believe there is a similar inconsistency in applying Council’s construction requirements in regards to the number of storeys which will form the new dwelling when it is completed on this site. Prior to our own recent renovations we had intended to put an additional storey at the rear of our current home. We were told that because of the excavation already completed for our garage below, part of the possible future storey would sit above the garage and that would create a three-storey dwelling which Council would not allow.

The elevation diagram included on page 3 above, [page DA09 (D)] (Mod2019.0172 – DA 2015/1258) identifies that there are three storeys at the middle section of the building (**purple rectangle**). However, it does not show that after the actual excavation which has been undertaken, there may be four storeys at some sections of the block. This is because of the removal of rock at the northerly end of the block where the owner insists there is only one storey and where a concrete slab was laid at the same level as the slab for the garage.

It seems that in written communications with the Council in regards to all development at this site, the owner has lodged statements for any plans or modifications that would allow the construction of the building to proceed in the way the owner wants. 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.

We have spent an inordinate amount of time preparing these objections, which have been receipted by Council. But there seems to have been limited communication from Council with us as to the progress of this situation. This is our home and decisions made by Council representatives directly influence our quality of life. We have made offers to Council to come and view how Council's decisions are affecting us at this very moment and into the future. It is disappointing that these offers have not been taken up and that we are receiving very limited feedback as to the progress of our objections.

Kind Regards,
Joanne & Michael Palme