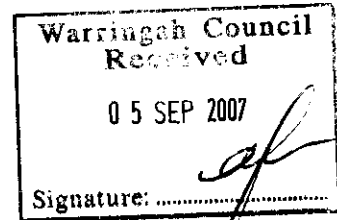


5 September 2007

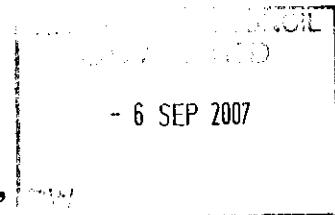
CONFIDENTIAL

Mr Raphael Gracia
DA Liaison Officer
Warringah Council
DX 9118
DEE WHY



Dear Sir

**DEVELOPMENT APPLICATION NO. 2007/783 FOR PROPOSED
ERECTION OF A NEW RETAINING WALL AT LOT 12, DP 736099,
73 LANTANA AVENUE, WHEELER HEIGHTS**



We are the owners of 75B Lantana Avenue, Wheeler Heights and the two proposed retaining walls are on the eastern boundary of our property and the subject property.

We strongly object to this DA as it will impact significantly on our property and the neighbouring properties who share right of carriageway of our driveway. We also object to the fact that we were not informed of Retaining Wall 1 until it was partially built.

We **enclose** a Fencing Notice which was issued by the applicant to the previous owners of our house for a 1.8m high treated pine fence on the boundary. The applicant made no mention of any retaining walls in the notice.

We are particularly concerned with the height of the retaining walls as the applicant has already attempted to build a 1.8m fence on top of Retaining Wall 1 without our knowledge or agreement. This brings the total height of the wall to 2.8m on our side which is totally unacceptable.

The applicant has also neglected to mention in his Statement of Environmental Effects the following points:

- The intended retaining walls would increase the natural level of the land on the subject property by 1m. This is of particular concern to us. We are aware that the applicant intends to build a two storey home on top of this built up land on the eastern side of our house and that would significantly affect our privacy, daylight and views and would overshadow our property.
- The retaining walls would create a considerable flooding, drainage and landslip risk to our property. The applicant intends to build a driveway on top of at least one of retaining walls and we are concerned about any collapse of the wall onto our property in heavy storms and rains. We have already

experienced flooding and drainage issues as a result of stormwater runoff from the applicant's property. There does not appear to be adequate provision in the plans for stormwater runoff into the public stormwater system.

The height and setback of the retaining walls do not comply with Warringah LEP Schedules guidelines. According to the Schedules the retaining walls contravene the following:

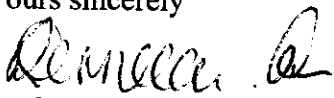
- **Retaining Walls:** Any retaining wall be no higher than 900mm above ground level and located at least 900mm from the boundary of our property on the applicant's side.
- **Fence:** Any boundary fence between our properties should be no higher than 1.8m above natural ground level.
- **Earthworks/Landfill:** should be no more than a maximum depth of 200mm from the natural ground level. The applicant is proposing 1000mm of landfill.
- **Driveways and Pathways:** may not be elevated or suspended above natural ground level. The applicant informed us that he intends to build a driveway on top of the retaining wall.

We enclose photographs which show partially built Retaining Wall 1 from our property as well as photos of the location of proposed Retaining Wall 2 from our courtyard and our house.

We do not agree to any retaining walls on or within 900mm of our boundary and ask that partially built Retaining Wall 1 be removed and replaced with a 1.8m fence as agreed in the Fencing Notice.

We also ask that any components of any retaining walls, including excavation and associated drainage be located wholly within the subject property.

Yours sincerely


Rachel and Lorenzo Cernecca

Background

We bought our house and moved in on 2 April 2007. On 4 and 5 March 2007, the previous owners of our house signed a Fencing Notice (**enclosed**) which was issued by the applicant for a 1.8m high treated timber fence on the boundary line of our properties.

We were aware of the notice when we bought our house and were happy for the fence to go ahead.

In July 2007, the applicant arranged for the fence to be built by his friend but did not advise us that Retaining Wall 1 would be build immediately beneath the fence. Once building of the fence began, we noticed that a portion of this fence contained a large retaining wall. We were never informed of this, nor did we agree to it being constructed.

We realised that the 1m high retaining wall, along with the 1.8m fence above it, would result in an unsightly 2.8m wall on one side of our driveway which would create overshadowing and a dark, shadowy driveway. We spoke to the applicant and told him that we were unhappy with the structure but he was unwilling to reduce the height of the structure. We, along with several other neighbours whose properties adjoin the driveway, complained to the Council and the Council advised that it was an illegal structure and would require a Development Application.

In early August, the applicant spoke to us and offered to reduce the combined height of the fence and Retaining Wall 1 from 2.8m to 1.8m by reducing the size of the fence erected immediately above the retaining wall from 1.8m to 0.8m. He said that the fence would be too low on his side and was concerned about his childrens' safety but that he would agree to do this. He did not offer to reduce the height of the retaining wall.

We agreed to this compromise in good faith (see **enclosed** letter), believing that Retaining Wall 1 was the only retaining wall the applicant was intending to build.

During this discussion, the applicant failed to mention that he was also intending to build Retaining Wall 2. It was not until we saw the DA application that we noticed Retaining Wall 2. We are concerned that the applicant may again try to put a fence on top of the retaining wall, resulting in another 2.8m high wall, which again, would be unacceptable.

We are disappointed that the applicant withheld this information from us. Had we known this, we would have never agreed to the compromise regarding Retaining Wall 1 and as a result, we now withdraw our agreement as we are concerned that the applicant will then go ahead and build a higher fence behind the existing fence effectively creating a 2.8m wall on our side.

Received 24-2-07 *CM*

FENCING NOTICE
(Dividing Fences Act 1991)

To: GRAHAM HUSPE 75B LANTANA AVE - COLLAROY PLATEAU
(Name) (Address) (Name and address of adjoining land owner)

By CATHERINE DICKSON
The fencing work described below is required between our adjoining properties. I would be pleased if you would share the cost as shown.

From: John Peters 73 LANTANA AVE COLLAROY PLATEAU
(Name) (Address)

John Peters 1/2/07
(Signed) (Date)

Proposal:

1. Properties affected (street address):

- a. A 73 LANTANA AVE owned by John Peters
b. B 75B LANTANA AVE owned by GRAHAM
c. C owned by

2. Position of fencing work (on boundary line, or as shown on attached plan)

ON BOUNDARY LINE

3. Fencing work proposed to be carried out (include length, height and type of materials)

112m Long x 1.8m high & with Treated PINE TIMBER

4. Estimated cost: \$ 5400 - 6000

5. Sharing of cost

- a. 50% will pay for the fencing work and will be paid half the estimated cost by on completion. ~~OR~~

b. (insert other option) as owner of 75B is part way through selling their property - they will allow for \$2,750 as part of settlement
If you agree to this proposal, please complete the form of agreement hereunder and return a copy to me.

Section 12 of the Dividing Fences Act 1991 provides that if adjoining owners do not agree as to the fencing work to be carried out within 1 month after the service of this notice, either owner may apply to a Local Court or a Local Land Board for an order determining the manner in which fencing work (if any) is to be carried out.

AGREEMENT TO FENCING

Property A

I agree to the above proposal

John Peters 1/2/07
(signed) (dated)

Property B

I agree to the above proposal

Catherine Dickson
(signed) (dated) 4 March 2007
Anna Hill 5-3-07

Lorenzo & Rachel Cernecca
75B Lantana Avenue
COLLARROY PLATEAU NSW 2097

4 August 2007

John Peters
73 Lantana Avenue
COLLARROY PLATEAU NSW 2097

Dear John

**RE: FENCE AND RETAINING WALL ON BOUNDARY OF 73 & 75B
LANTANA AVENUE, COLLARROY PLATEAU**

We refer to our recent discussion and confirm that we have no issue with the part of the fence containing the retaining wall on the following conditions:

- The combined height of the fence and the retaining wall is no greater than 1.8 metres from the ground on our side of the boundary and that it corresponds with the rest of the fence on our side.
- Our costs towards half of the fence are made for the fence only and that we not bear any of the costs of the retaining wall.
- Both the fence and retaining wall are approved by Warringah Council.

We enclose a cheque for \$2095.00 for our half payment of the fencing completed so far. Could we please have a receipt for this payment.

We have also received a quote of \$350.00 from Darren Farrow to complete the remainder of the fencing. This means our payment for our half of the remaining fence is \$175.00 which we will pay on completion.

Regards

Lorenzo and Rachel



03/09/2007

photo 1 of 4

photo taken from battleaxe driveway of 75B
Lantana Avenue. towards Lantana Road entrance.
photo contains existing 1.8 metre fence
towards ~~road~~ entrance. Nearest in picture
is the partially built 1.0 metre retaining wall 1
with a combine partially built fence (1.8 metre)
The combined height of the fence and
retaining wall 1 is 2.8 metres from
ground level



03/09/2007

Photo taken from battleaxe driveway of
75B Lantana Avenue towards Lantana Road
entrance. Photo contains existing 1.8 metre
fence near road entrance and nearest in
picture is the partially built 1.0 metre retaining
wall 1 with a combined partially built fence.
that brings the total height from the ground
to 2.8 metres.



03/09/2007

photo 3 of 4

photo taken from driveway ~~backyard~~ of
75B Lantana Avenue towards location of
existing 1.8 metre fence and ^{proposed} Retaining Wall 2.



03/09/2007

photo 9 of 4

photo taken from inside house of 75B
Lantana Avenue towards location of
existing 1.8 metre fence and proposed
retaining wall 2

