

13 August 2013

Honorable Mr. Brad Hazzard
The Minister for NSW Department of Planning and
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Cc Mr. Chris Wilson, Executive Director, Development Assessment Systems & Approvals
c.c. Ms. Heather Warton, Director, Metropolitan and Regional Projects North
c.c. Ms. Joanna Bakopanos, NSW Department of Planning and Infrastructure
c.c. Mr. Brent Devine, NSW Department of Planning and Infrastructure

Re: Modification to 06_0258 (MOD 5) (Casuarina Town Centre, Casuarina) – Retaining Wall

Dear Minister,

I write to you about the above matter. I wish to lodge a request that this retaining wall not proceed. I submitted a request on 4th July 2013 to the Tweed Shire Council and your office listing 24 concerns about the then proposed illegal retaining wall. The Tweed Council engineer Mr. Mick Denny, has I understand, assured your office and in particular Ms. Heather Wharton, on numerous occasions that they would respond to me in writing to me about my concerns – yet I have received nothing.

Your Minister, I understand, through your office, has requested that no work commence near my retaining wall until 'consultation' occur with me, yet they have continued to perform illegal fill and compact works adjoining my property with large dozers, dump trucks, rollers, water trucks etc which has now damaged my property with cracks appearing during this period in my window, house besser block walls, over 8 cracks in my boundary besser block fence / retaining wall and other structures (see Photos 1-6 attached herewith) and my adjoining neighbours properties reportedly cracking a pool, house walls, kitchen bench etc. This recent damage to my property is clear and was not identified or present during the dilapidation study/report commissioned last year by the developer.

This fill and compact works which has been ongoing adjoining my boundary property (see Photos 7&8 attached herewith with their water truck and rollers at 7.05am in breach of their 8am start time!!) was never approved in any application of subsequent modification to this development yet has continued unabated illegally and has damaged our properties.

I would ask that your Department issue an order immediately for corrective action to repair the damage that has occurred over the past month and half to our buildings prior to any approval or consideration for approval of this proposed modification.

I would also request that your Department commence a prosecution for this fill and compact work adjoining my property for some 6 weeks which was never approved on any master plan or subsequent modification. This illegal work has damaged our properties.

I would request that you issue an order that the developer allow me to engage a structural engineer of my choosing and at the developer's own cost to determine the recent damage done to my property to date, the costs of such rectification work to repair this recent damage and funds required to make the necessary rectifications. I request that this be a condition of any approval of this proposed modification if in fact it is approved.

I also request that the same be afforded to the other residents nearby at numbers 32 and 34 Eclipse Lane for the damage also done to their properties to date with this illegal fill and compact. This work was done according to the Hutchinson Builder's, Site Manager, Mr. Scott Vidler so that they could deploy the heavy drilling rig onto the pad to drill the piles. However, this retaining wall at that stage was never appropriately

approved and therefore this work should not have even have occurred as there has never been any proposal or approval for such fill and compact work adjoining my property on any plans or approvals – it was illegal.

My concerns about this work damaging my property, which I first expressed way back in February 2013, to your Mr. Brent Devine and Tweed Council's Mr. Brendan Schwartz and to many other people from your Department including Ms. Heather Wharton, Ms. Joana Bakopanos and Ms. Sara Roach and Mr. Mick Denny from Tweed Council never seemed to get much support. My concerns were always discounted by both agencies. Yet now my fears have been realised and my property IS now being damaged by this illegal work. This illegal fill and compact HAS now damaged my house. What orders will you issue to make the developer repair my property?

My concerns and fears have now been realised even after many many assurances by developer, builder, council, your department and the like that the work would be engineer certified, council approved, certified to Australian Standards etc etc etc yet the damage still happened even though I was assured my property would be protected and not damaged. My fears were and have now been realised. Now you want to drill many many holes and insert piling within 1.5m from my house!

The evidence is already apparent that this construction work easily damages our properties – has already damaged our properties. The vibration box they have been using to measure ground vibration is some 50-80m further away from the earthworks and on the other side of the road resting on soft grass – nowhere near the earthworks that has gone on for the past 6 weeks. The device should be immediately next to my retaining wall where glasses of water vibrate of it, my house windows crack, my walls part etc etc!!

I have video footage of the construction work next to my property to demonstrate the degree of illegal fill and compaction work being performed at 7.05am on Saturday mornings for hours and hours (weeks) with rollers rolling backwards and forwards, dozers, dump trucks etc compacting earth adjoining my property which was never approved in any plans or modifications.

Photos 1-6: Damage that has been done due to the recent illegal fill and compact work adjoining my property.





Photos 7 & 8: Example of heavy earthmoving plant compacting illegal fill adjoining my boundary.



I request that if any retaining wall is approved by your Department that it be placed on the north side of the proposed adjoining road no.6 or that the retaining wall be placed 4-5 m away from my boundary property to prevent damage to my property and safety to my family.

I do not accept the ugly concrete capping that this modification propose to place in between the retaining wall and my adjoining boundary fence. I also do not accept that they install ugly pool fencing on the top of the retaining wall. The end result is that the council will not be able to get in there to clean the weeds that will grow in the concrete cracks and that the fence will look ugly. They should use stainless steel wire fencing to 1.5m at least 3-4m away from my boundary fence and plant the area with attractive vegetation consistent with the rest of the town centre. Otherwise this would look like an industrial zone of ugly concrete and weeds.

I do not accept that the steps are so close to my property boundary gate at the end of Eclipse Lane. The steps down to road number 6 should be further away and on the other side of the courtyard. Given that they will be developing that side soon and putting in footpaths then the most of the pedestrian traffic will be coming from the West side of the road (where 99% of the suburb lives) and therefore the steps should be on the west side of the courtyard to accommodate the majority of the pedestrian traffic. Encouraging the majority of the pedestrian traffic to cross the road to access the steps is unsafe and silly.

I understand that there are radiation 'hotspots' on this development from radiation studies due to this development being over old sand mine workings with rutile, illumenite, zircon etc. It is well known that there is a proven scientific link to human cancers and exposure to these minerals. I would like assurances and copies of the previous studies and assurances that none of the 'hotspot' radiated fill has been located to my boundary property in the recent illegal fill and compact. I would like independently commissioned study which ensures that no resident habiting this development will be exposed to radiation levels which breach the internationally recognised safe exposure levels. I would like studies conducted now, 12 month, 2 year, 5 year, 10 year, 15 year and 25 years to ensure that levels are not breached and that future residents are protected from this development and old mine workings. I would also request that you mandate that the developer provide copies of any radiation studies to prospective purchasers of this land that they are suitably informed of the radiation risk should they intend to reside on this land. I would also like assurances that no radiated soil will be located adjoining my property with this development. Further I would like study by an independent organisation after this retaining wall has been constructed that there is no unsafe levels of radiated earth near my property as a result of this modification approval should it be granted.

I do not accept that the developer intends to divert the footpath from his road no. 6 backtracking in front of our properties (numbers 36, 34 and 32) to utilise the old and already deteriorating footbridge over the current swale immediately in front of our properties. The footpath should go direct to the beach over a new foot bridge. It is a lazy and a cheap option. It will effectively divert car park pedestrian traffic into an areas created for flooding overflow in front of our properties – which is what the current park is for (as advised to us by the Council themselves!!). We have concerns about noise, safety and security if this happens. It means that pedestrians would have to be diverted some 20m to the right first to cross the footbridge instead going directly to the beach immediately in front of the carpark. There should be a footbridge installed directly in front of the car park with a direct route to the beach. They should install another foot bridge over the swale, not have to walk 10-20m south to access the beach over our current old footbridge.

This retaining wall is not within the natural undulation of the sand dunes and is a sudden interruption of the dunes with this ugly vertical 2.5m face / retaining wall. It is not in keeping with the natural landscape of the Casuarina Beachfront. There is sufficient fill to provide appropriate contouring levels across the entire development yet they are proposing to put a sudden 2.5m interruption with this retaining wall with the very real prospects and already evidence of damage to the adjoining properties. There does not need to be any 2.5m retaining wall adjoining my property. There is plenty of fill to level out this development and provide natural contouring. It has been expressed to me by a person who is overseeing the current bulk works have expressed that they are at a loss to understand why they are even doing the rather strange bulk earthworks that are current going on!!

My complaint and rejection of this proposed modification should be read in conjunction with each and every letter I have submitted to your department this year about this illegal retaining wall.

Here below in italics is an extract of my 24 items I requested previously from both your department and the Tweed Shire Council – yet to date I have received no response to any of my concerns. I would request that each and every item be considered in the rejection of this modification.

*I have the following concerns which I require responses to from the Tweed Shire Council, NSW Department of Planning and Infrastructure and where applicable the developer, piling contractor, ADG engineers and Hutchinson Builders to respond. I think each and every question is a fair question which I believe I **and you** are owed an answer.*

- 1. I understand that ADG engineers state that this wall complies with the relevant Australian Standard construction standards however is it 'fit for purpose' (a key 'safe by design' consideration the designer now needs to consider as part of their statutory duties with now a 5 year jail term or \$600,000 individual fine or \$3m corporation maximum fine). Has this proposed retaining wall 'contiguous flight auger piling' structure method ever been used in this same situation against a residential building in this same environment on waterfront beach sand dunes where there is only air on the other side (i.e. no other form of support) and where there is no fixing in / reinforcing on either side stabilising the structure?*
- 2. Can you provide specific examples where the same installation in the same manner and environment has been installed?*
- 3. Can the engineer guarantee that there will be no ground movement or erosion due to this structure for the next 50 years minimum?*
- 4. Can the developer, engineer and tweed council guarantee that there will be no ground movement, cracking, slumping or any other damage to my property as a result of this structure?*
- 5. Will the developer/ engineer provide a guarantee to that effect and provide us with a prepaid insurance policy to the value of \$2m indexed to CPI for the next 50 years if this wall does cause harm to my property?*
- 6. Will the council provide similar assurances?*
- 7. Is it legal from a health and safety perspective to place a 2.5m vertical drop retaining wall so close to residential buildings?*
- 8. Has this structure ever been assessed over the long term as to its continuing effect? If so can you provide those studies?*
- 9. Are there any cases where there has been material damage to adjoining properties due to the installation of this structure? Can you provide examples of such? If not can the piling company and engineer provide statutory declarations to that effect stating that this has not occurred?*
- 10. Are there any cases where after installation of this structure there has been subsequent ground movement or erosion due to this structure? Can you provide specific examples of these? If not, is the engineer / piling company willing to sign statutory declarations to that effect?*
- 11. Will this structure cause damage to the roots of my foxtail palms?*
- 12. If my plants are damaged what compensation will I be offered?*
- 13. If my property is damaged due to this structure who will pay me to repair my property and will that be an automatic payment or will I have to mount a civil action and which agency would be the defendant?*
- 14. What insurance policies are provided for this development and am I an interested party on that policy and how long does this insurance policy last for the protection of my property?*
- 15. As I wish to put in a cellar under my property eventually or another carpark will this structure prevent that?*
- 16. Will it affect my pool?*
- 17. Am I able to refuse to allow this structure and the developer from putting any bracing / fastening under my property? What does the case law say about this?*
- 18. Is the council aware of any case law where residents have been successful in overturning similar matters / structures from proceeding?*
- 19. What validated scientific method will the council use to monitor whether there has been any movement / subsidence in my property due to this structure for the next 50 years?*
- 20. Who will be performing this monitoring and what qualifications do they hold?*
- 21. Will I be receiving a copy of each and every study report?*
- 22. Am I able to get a second expert opinion on this structure and who would pay for it?*
- 23. As it is clearly foreseeable that this wall could cause harm to my family, who would be responsible person who would be deemed criminally negligent if death or serious bodily harm occurred from falling from this structure? Would it be the executive officer in NSW Department of Planning and Infrastructure, Tweed Shire Council, ADG Engineers or the individual within those statutory or civil bodies who approved this wall?*

24. *What reasonably practicable measures are being proposed to prevent serious bodily harm or death to our community from falling off this retaining wall?*

I request that each and every matter raised in this submission be considered and natural justice be afforded to our community.

This development has already proceeded with illegal fill and compact works to push through this illegal retaining wall which has subsequently already damaged our properties.

This retaining wall will no doubt do further damage to our properties, even though everyone assured us this would not happen.

Our health may very well be being placed at risk by earth with radiated earth being located next to our properties.

Please ensure that our properties and the health and safety of our families and the community are protected.

A retaining wall so close to our house has already demonstrated in the works to date that they cannot adequately protect our properties even with during their illegal works. Please ensure that you issue appropriate prosecutions for this work and orders for corrective remedial action prior to consideration of any retaining wall modification of the master plan for this development.

I can be contacted on 0439 885 383 or simon@ohsa.com.au. Thank you.

Regards



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