Our Ref: TAN.KPE.2109833



19 November 2021

Louise St John Kennedy 9A Chester Road Claremont, WA 6010

By email: <u>louisekennedy@kennedyarchitects.com.au</u>

Dear Ms St John Kennedy

Development Application 436/2020 18 Olphert Avenue, Vaucluse NSW 2030

- 1. We act for the owners of 16 Olphert Avenue, Vaucluse and refer to development application 436/2020 which relates to 18 Olphert Avenue, Vaucluse (the **DA**).
- 2. You are recorded as the Applicant for the DA and we also understand you are the architect who has provided architectural plans to support the DA package.
- 3. As you may be aware, our clients object to the DA and are preparing a further submission which will be lodged with the Council shortly.
- 4. In the course of preparing the submission, it has become apparent to our clients that information that is false and misleading in a material particular has been submitted to Council in support of the DA.
- 5. Section 10.6 of the *Environmental Planning and Assessment Act 1979* (NSW) creates a criminal offence for persons who provide information in connection with a planning matter that is false or misleading in a material particular. Section 10.6 states:

""(1) A person must not provide information in connection with a planning matter that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Maximum penalty—Tier 3 monetary penalty."

6. The information provided to Council to support the DA that our client has identified is false and misleading in a material particular is set out in **Attachment A** to this letter. As a consequence of the identification of some of this false and misleading information, the Council has no power to grant development consent. Should any consent be granted, it will be liable to challenge, and likely invalidated.

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BRISBANE MELBOURNE SYDNEY

- 7. Consequently, we are instructed to request that you either:
 - (a) withdraw the development application; or
 - (b) urgently prepare a submission to Council within the next 3 business days that identifies false and misleading information has been provided in support of the DA.
- 8. Should your client not take the above steps, our client reserves all of its rights.

Yours faithfully

Todd Neal Partner Email: todd.neal@cbp.com.au

Katherine Pickerd Senior Associate Email: Katherine.pickerd@cbp.com.au

Attachment A | Schedule of false and or misleading information provided with DA436/2020

9. We are instructed of the following errors:

Excavation / cut and fill calculations

- 10. There is a significant discrepancy in the cut and fill figures provided in the order of 54% and 43% respectively.
- 11. **Table 1** below shows the evolution of the cut and fill figures through the various iterations of the development application.

Table 1			
Date	Drawing Set	Cut Figures (m3)	Fill Figures (m3)
14.9.2020	14.9.20 First Set	417.285	405.916
21.5.2021	Rev C	414.257	405.916
23.6.2021	Rev D	437.91	299.74

- 12. The DCP Clause B3.4 Control C1 and Figure 14A allow for a maximum of 240m³ to be excavated for a property of approximately 950m².
- Our client's commissioned Cantilever Engineering to peer review the cut and fill calculations. A copy of the report prepared by Cantilever Engineering dated 11 November 2021 is at Attachment B. That report concludes the following cut and fill volumes:
 - (a) $Cut = 675.79 \text{ m}^3$.
 - (b) Fill = 427.56 m^3 .
- 14. Consequently, the development application does not accurately report the proposed cut and fill volumes. The margin of error is:
 - (a) 54% for the cut; and
 - (b) 43% for the fill.

Height of building - clause 4.6

- 15. Architectural plan DA 1.5 4.6 Application Plan contains the following errors:
 - (a) The portion of the roof overhang breaching the height of buildings (**HOB**) limit is shown incorrectly.
 - (b) Interpolated ground levels (existing) between RL57.5 and RL57.0 suggests the roof sculpture breaches HOB limit.
 - (c) East planter (RL66.04) over RL55.5 contour line shown on ground. The overall height is 10.54m at this point which is a height breach in excess of 1m, i.e., a 10.9% overrun.
- 16. See **Attachment C** which is a drawing reviewed and prepared by Atelier SJB showing the above errors on the plan.
- 17. These height breaches have not been addressed in the clause 4.6 objection prepared by Daintry Associates Pty Ltd dated 8 October 2021.

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Solar orientation

18. Architectural plan DA 1.1 - Site Analysis Plan states:

"Proposed new house has ideal solar orientation to the north for passive solar sustainability, harbour views and to maintain the original and dominant orientation pattern of the crest of the landscape point."

- 19. The above statement is incorrect for the following reasons:
 - (a) The dominant orientation pattern (and in keeping with the character of the vicinity) is that of dwelling buildings sited in parallel to the subject site boundaries.
 - (b) The National Renewable Energy Laboratory (NREL's PVWatts[®] Calculator) estimates the energy production and cost of energy of grid-connected photovoltaic (PV) energy systems throughout the world. The Australian database concludes that for Sydney, the "ideal solar orientation" is 9 to 15 degrees, which is slightly to the east (see extracted figure below). The long sides of the boundary of the subject site have an 8.6 degree orientation, meaning that a dwelling orientation parallel to the boundaries would be nearly ideal and significantly better than the proposed 23 degree rotation out of alignment.



Site survey

- 20. DA 1 Site survey does not identify the Right of Way for Drainage Reserve (6ft / 1.83 m wide along the north boundary) which is recorded on the deposited plan registered for the land.
- 21. Section 49(3) and (4) of the *Local Government Act 1993* (NSW) (**LG Act**) states:
 - " (3) On the registration by the Registrar-General of a plan on which land is marked with the words "drainage reserve", or of a transfer or conveyance to a council of land identified in the transfer or conveyance as being for use as a drainage reserve, the land vests in the council for an estate in fee simple and is held by the council for drainage purposes.
 - (4) This section does not apply to a subdivision of land the plan of which was approved by the council before 15 June 1964."
- 22. If the subdivision plan was approved by the Council before 15 June 1964, the Council could direct that the reserve be transferred or conveyed to it or, alternatively, the Council may publish a notice in the Government Gazette notifying that the land is vested in it pursuant to section 50(3) and (4) LG Act.
- 23. The overhanging portion above pool equipment, a stairway, metal trellis and a considerable amount of fill is to be placed over the drainage reserve identified on the deposited plan. The Council should be made aware if it is being asked to approve structures over land it either already owns or has the right to own. We note DCP E2.2.7 control 1 states:

"Generally, new buildings, structures and overhanging structures are not permitted over existing or proposed drainage lines and easements."

No land owners consent

- 24. Architectural plan DA 4, sections X, Y and Z show a proposed "new retaining wall" that is wholly located on No. 77 Hopetoun Avenue. However, the DA is not supported with land owners consent from the owners of No. 77 Hopetoun Avenue.
- 25. Any development consent granted without land owners consent would be liable to be set aside.

Attachment B



11 November 2021

Misha De Moyer

18 Olphert Avenue, Vaucluse

Cut & Fill Volume Calculation

Dear Misha,

Introduction

Further to your request, Marley Meemeduma, an Associate of Cantilever Consulting Engineers Pty Limited, structural consulting engineers, carried out a volume calculation of the proposed cut & fills for the proposed new build at 18 Olphert Avenue, Vaucluse.

We were asked to determine the volumes of the cut and fill associated with the proposed works shown on the drawings *"18 Olphert Avenue, Vaucluse Sydney – DA2020 436 1 – Prepared by Louise St John Kennedy – Rev D dated 23.06.2021"*

This report includes:

- General description
- Calculations
- Conclusion

General description

The proposed new build is a multistorey building on a sloped site. Excavation works would be expected as part of the proposed works.

A survey plan of the existing building at 18 Olphert Avenue, Vaucluse shown in the drawings *"18 Olphert Avenue, Vaucluse Sydney – DA2020 436 1 – Prepared by Louise St John Kennedy – Rev D dated 23.06.2021"* was used to confirm the existing site topography.





Calculations

Using the survey plan, a 3D topography model was produced. The proposed structure was then modelled in 3D and positioned relative to the 3D topography model. The intersecting volumes were then calculated in order to determine the cut volumes. The void volumes between ground and proposed structure were then calculated in order to determine the fill volumes.

Using this approach, we calculated the cut and fill volumes as shown on the attached document *"03739.18 Olphert Avenue Cut and Fill Calculations"*

Conclusion

We were asked to determine a volume calculation of the proposed cut & fills for the proposed new build at 18 Olphert Avenue, Vaucluse. We determined the cut and fill volumes as shown in the attached document *"03739.18 Olphert Avenue Cut and Fill Calculations".*

We hope that this report is adequate for you purposes. Please contact me if you require anything further.

Sincerely,

Marley Meemeduma, BE (Hons), BDesArch Cantilever Consulting Engineers Pty Ltd

NOVEMBER 2021



CLIENT: J. MCMILLAN MODELLED CALCULATIONS OF CUT AND FILL TO SITE AT 18 OLPHERT 18 OLPHERT AVENUE, VAUCLUSE. BASED ON DOCUMENTATION PROVIDED TO COUNCIL IN DA436/2020 REVISION D, DATED 2021 03739.E0C001

STRUCTURAL ELEMENTS CUT VOLUMES

NOTES: * APPROX. MAXIMUM SLOPE = 14.2° APPROX. MINMUM SLOPE = 5° ^ NEW RETAINING WALLS TO NORTHERN, EASTERN AND WESTERN BOUNDARIES AS REFERENCED IN THE GEOTECHNICAL REPORT (PAGE 5) PREPARED BY JK GEOTECHNICS - DATED 7 FEB 2020 - HAVE NOT BEEN ACCOUNTED FOR IN THESE CALCULATIONS AS THEY ARE NOT SHOWN IN THE ARCHITECTURAL DOCUMENTATION

CLIENT: J. MCMILLAN MODELLED CALCULATIONS OF CUT AND FILL TO SITE AT 18 OLPHERT 18 OLPHERT AVENUE, VAUCLUSE. BASED ON DOCUMENTATION PROVIDED TO COUNCIL IN DA436/2020 REVISION D, DATED 2021 03739.E0C001

TOTAL - $427.56 \text{ m}^{3} \text{ }^{1}$

FRONT SETBACK - 54,66 m³ EAST SETBACK - 6.21 m³ POOL - 37.10 m³ POOL SURROUNDS - 265.41 m³ GARDEN - 25.25 m^3 ORCHARD - 38.93 m^3



STRUCTURAL ELEMENTS FILL VOLUMES

-ORCHARD

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CANTILEVER

Attachment C



ATELIER SJB ARCHITECTURE I URBAN I INTERIORS

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