

Griffith/Narrabundah Community Association Inc.

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Mr Gary Rake
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Dear Mr Rake

16 LANDSBOROUGH ST GRIFFITH ACT

I write to convey the Griffith Narrabundah Community Association's (GNCA's) deep concerns at the knock-down rebuild currently underway at 16 Landsborough St Griffith. The GNCA, and a number of local residents, have lodged complaints via Access Canberra about a number of problems with the development, of which the most obvious is the garage wall on the boundary with 18 Landsborough St. We understand that Matthew Bond, Senior Building Inspector, Construction, Environment and Workplace Protection at Access Canberra has inspected the site, measured the height of the wall, and asked the builder/developer to lodge a new DA seeking approval for the wall.

The wall is the side wall of a garage and runs, as is permitted, along or very close to the boundary between 16 Landsborough St and its neighbour to the south, 18 Landsborough St. However, the wall is excessively high for a garage wall. The wall is 49 brick courses higher than the concrete floor of the garage, which is itself slightly higher than natural ground level. At 90mm per laid course (including mortar) this wall must be in the order of 4.4m high (a stack of bricks 49 bricks high would be over 3.8m high). It may be that our estimate of the wall's height is conservative, as one of the complainants, Dr George Wilson, has estimated its height at 4.8m. I attach a photo of the wall taken from 18 Landsborough St to give you an idea of the problem.

As you will no doubt recall from the several lengthy solar access consultation meetings earlier this year, Rule 7 of the Single Dwelling Housing Development Code (SDHDC) defines a solar envelope beyond which a building should not encroach, and such a garage wall on the boundary should be no more than 2.4m high. A wall that is 4.4m high encroaches through the envelope by 2.0m or 83.3%. Alternatively if Dr Wilson is correct in his estimate of the height the encroachment would be 2.4m, or 100%.

In addition the wall also breaches the Building Envelope rule (Rule 6) of the SDHDC. This provides that the dwelling must not penetrate the plane drawn at 45° from a line 3.5m above the boundary. As the wall is on the boundary the wall should not be higher than 3.5m. A wall 4.4m high would exceed this height by 0.9m or 25.7%. Although not as egregious excess as the penetration of the solar envelope the infringement beyond the building envelope is also significant.

We are unsure whether this development is a DA Exempt knockdown rebuild, or whether the development has been through the DA approval process, because the required notice giving this information about the development is not visible at the site. The GNCA is aware that, if the development is DA Exempt, Schedule 1, section 1.100A of the Planning and Development Regulation 2008 provides that upon application the Environment, Planning and Sustainable Development Directorate (EPSDD) may issue an Exemption Declaration indicating that the exempt development “does not stop being an exempt development because of a non-compliance with the defined rules”. However EPSDD may not make such a declaration unless it is satisfied that the non-compliance is minor, will not adversely affect someone other than the applicant and will only minimally increase the environmental impact of the development. It would be unusual if an excession through the solar envelope of 2m or 83.3% were to be regarded as minor, the Valenzisis at 18 Landsborough St would clearly be adversely affected, and a doubling or close to doubling to the shadow cast by the infringing wall would be a more than minimal environmental impact. Consequently the GNCA would be most surprised if EPSDD were to issue an Exemption Declaration in relation to the garage wall at 16 Landsborough St.

If the development has received DA approval, and this approval included a garage wall of the height that has been built, then it would seem that just about anything would be regarded as permissible under SDHDC Criterion 7. However, this appears to not be the case because Mr Bond apparently feels that action needs to be taken to regularise the status of the wall within the planning system. It is not clear to us what happens under these circumstances. If the development has been approved then the wall either complies with the DA approval or it does not. If the wall does not comply, then it would seem that work on the development should cease and the elements of the wall that are in breach of the DA approval should be removed. If EPSDD chooses to reopen the DA approval process for the wall, then the GNCA expects this to follow the full procedure of public notification and the seeking of representations from neighbours and other interested parties. The GNCA feels that if a DA process is to be set in train to consider the wall it should also consider the various other apparent breaches of the SDHDC identified by at least some of the complainants, as discussed below.

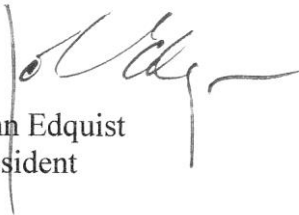
Needless to say the GNCA’s view would be that the wall so exceeds the permitted height under Rule 7 that it should not be permitted. We are very conscious of the time and effort you put into finding an acceptable agreement in relation to solar access earlier this year. The agreed outcome was that the solar access rights of residents in existing suburbs (ie blocks created before 5 July 2013) were to be maintained as provided for in Variation 306. Were this development to be allowed to proceed it would be in breach of the spirit, if not the actual wording of that agreement. The GNCA (and I suspect many other community groups) would be most disappointed if that were the outcome.

There are other difficulties with the development at 18 Landsborough St. The building appears to pierce the building envelope at several places in the rear zone. The structure at the front appears to be built forward of the building line. As mentioned above, there is no notice stating the DA number of the redevelopment, or whether the development is DA Exempt, and indicating the name of the builder and the certifier. While the verge has been fenced off, the builder appears to have done this so that he can use the verge as a works depot rather than as a result of any concern for the verge itself or the tree on the verge. I attach a photo showing the treatment of the verge, and how the development looms over the street.

The GNCA is not against development. We do believe, however, that the existing planning rules should be applied appropriately and fairly to all parties. Some might see this case as an example of where a builder has sought to take advantage of the DA Exempt rules, which to be effective rely on builders and certifiers being reasonable in interpretation of the rules and criteria.

We look forward to your early advice on what action EPSDD plans to take on this issue.

Yours sincerely



John Edquist
President

15 January 2016

Attachments:

Photo: Rosina Valenzisi and the 4.8m wall on her boundary

Photo: 16 Landsborough verge and development