



Presented to	Ordinary Meeting of Council 13 December 2022
Related to Item	C22/5940 – Petition Site Survey 18a and 18b Tweeddale Road, Applecross
Submitted by	Manager Statutory Planning
Attachments	Minutes OMC 17 August 2021 (page 12)

The response of the City to the matters raised by this petition are well documented, not least in the detailed technical consideration of the concerns raised regarding the raising of levels on the site in a report to the Ordinary Meeting of Council on [17 August 2021 \(page 12\)](#) and in the chronology of events outlined in this current subject report.

The purpose of this Advice Note is to provide commentary to Elected Members in response to the written submission received from Mr A Meshkin via email on 30 November 2022, and secondly to provide commentary in respect of the alternative recommendation with notice presented by Cr Sandford.

The concerns expressed by Mr Meshkin are noted as a response to a matter that has been afforded considerable Council and Officer time. The written submission from Mr. Meshkin is however refuted on the basis that:

- Material brought to the site in 2020 was the subject of formal compliance action by the City, the material being removed and the compliance matter subsequently closed. Detailed information in this respect was provided to Elected Members in the report to August OMC (see attached).
- A detailed summary of the relationship of the approved levels on this site with the proposed approved four storey apartment development on the site, together with an appraisal undertaken by officers as documented in the August 2021 report to OMC of the actual levels on the site, has been previously provided which contradicts the concerns expressed by the resident.
- The current DA for minor amendments to the approved apartment development does not raise the levels on the site, nor does it seek to increase the height of the proposed building. The amended DA seeks to increase the floor to ceiling height within the proposed basement car parking area to allow an access/egress ramp gradient to the car parking area to be provided to accord with the minimum standards for such a ramp as advocated by the Australian Standards. This represents an increase in the basement floor to ceiling height of 150mm. This 150mm will be absorbed by the overall building height via a modest reduction in the floor to ceiling height associated with the remainder of the proposed structure. The overall height of the building when measured from the approved associated natural ground levels will remain at 16m or less, as is required by the H4 building height provisions of the Canning Bridge Activity Centre Plan (CBACP). The changes proposed by the amended application are not a cause for any concern in respect of the levels associated with this site, nor the proposed building height.
- Mr Meshkin does not appear to appreciate the difference between natural ground level and finished floor level. The natural ground level in this case is the level across the site which were set after the subdivision of the lot in 2007. Finished floor level is the level at which the floor slabs associated with the various building storeys are set. Building height is measured from the natural ground level, independent of the proposed finished floor levels, noting that in this case no part of the proposed 4 storey development is above 16m in height.
- In order to achieve the necessary access/egress ramp gradient to the Carron Road side of the proposed development, the applicant for the development has confirmed an intention to re-survey the existing levels in the immediate vicinity of the proposed access/egress point, with a focus on the actual levels within the verge. The applicant has reiterated previous commentary provided that a full site re-survey will not be undertaken at this time.

- The applicant has stated that in pursuit of implementing the approved development, and prior to lodging an application for Building approval, two exploratory pits have been dug on the site, one in a central location to facilitate a geotechnical analysis, and one close to the boundary of the site with 16 Tweeddale Road to investigate the depth and form of the footings of the retaining wall between the application site and No 16. This work and these pits will inform the detailed engineering design for the building license application which is expected to be submitted in due course.
- The material from the excavated pits has been retained on site, spread in the vicinity of the pits rather than retained in one or two mounds. This is acceptable and is to be expected when a site such as this is being prepared for development. Separate or additional approvals are not required for this type of associated pre-construction activity.
- It is acknowledged that the activity associated with the excavation of these pits supports the view expressed by Mr Meshkin that works have continued to occur on the site. These works have not had any material impact on the levels on the site, except for the areas where excavated existing material from the two pits has been spread. This material will however be removed once the development takes place, the first stage of which will be the excavation and removal of a significant amount of existing material from the site to accommodate a basement car parking area.

In response to the alternative recommendation to the officer's report provided by Cr Sandford it is noted that:

- Part 1 of the alternative recommendation fails to consider the advice provided by Mr P Gillett of McLeod's at a workshop for Elected Members held 29 November 2022. The purpose of the workshop was to establish the legal permissibility of entering land under the provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Clause 79 Schedule 2 Part 10.
- Mr Gillett advised that in exercising the entry and inspection powers provided by this clause, there should be a justifiably held concern on the part of the local government that the local planning scheme is not being complied with.
- In this case, and notwithstanding the previous resolution of Council to appoint an independent surveyor to review the levels on the site, it has previously been accepted and acknowledged by Council that there are no outstanding planning compliance matters associated with the site. The minutes of the OMC 21 August 2021 state:

That the Council

1. *Acknowledges the response of the City to compliance matters raised in 2020 in respect of the importation of unauthorized fill onto the site at 18A and 18B Tweeddale Road was adequate and in accordance with the City's planning Compliance Procedures and finalized on 17 February 2021.*

- The advice of officers who have investigated the concerns raised regarding the levels associated with this site on multiple occasions, remains that:
 - i. The existing levels are consistent with the approved natural ground levels
 - ii. There is no evidence to suggest there has been any further importation of material to the site since the completion of the last compliance action
 - iii. The development of the site in accordance with the approved Development Application will result in the significant excavation of the site to accommodate a basement car parking area, and an overall development at no more than four storeys, 16m in height in accordance with the CBACP.
- In view of this, it is concluded that the Local Government is not empowered to enter and inspect the land under Clause 79 of the Regulations, and as such the terms of the alternative recommendation with notice cannot be met. It is recommended therefore that the alternative recommendation with notice be resisted in favour of the initial officer recommendation.