



CITY OF HOBART

MINUTES ATTACHMENTS

CITY PLANNING COMMITTEE MEETING

OPEN PORTION OF THE MEETING

MONDAY, 29 JULY 2019

AT 5:30 PM

VENUE: LADY OSBORNE ROOM, TOWN HALL

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Deputation: 7 Montrivale Rise PLN-18-878

This deputation is submitted on behalf of three land owners with properties adjacent to 7 Montrivale Rise (Lot 9). We are opposed to the proposed development of four dwellings. We present our consolidated views based on our individual representations. Each of us share the private right of way easement that provides access to eight properties:

- Lot 1
- Lot 12 (subsequently subdivided to 12A and a property for which the title has not yet been created)
- Lot 10
- Lot 9
- Lot 8 (subsequently subdivided to 5A and 5; 5 does not have access off the right of way)
- Lot 13

In summary, we have two main areas of concern being visual impact and access. I will summarise the issues briefly, then provide further commentary not provided in the representations.

Visual impact issues

1. The visual impact of the proposed development causes unreasonable loss of amenity due scale and bulk. The extent of fill is significant and unreasonable and contributes to this bulk. When viewed from most angles, it looks like one large development, and not four separate dwellings.
2. The scale therefore means the development cannot meet planning scheme requirements and is out of character with the hillslope landscape of the area.

Access

1. The only access to the site is from a private road on a right of way (there is no access off the northern boundary due to a cliff face).
2. The private right of way is not at public road standards and is not suitable for large volumes of traffic given the narrowness and steepness of the access. If each of the remaining eight lots with access off the private ^{road} right were approved to build four dwellings, this would equate to 80 cars having access (and likely 160+ traffic movements per day), where the covenant on the title only provides for 16 cars.

Further elaborationHistory of Montrivale Rise Subdivision

The Resource Management and Planning Appeal Tribunal¹ case *In-Site Management v Hobart City Council [2015] TASRMPAT 4* highlights the geotechnical and engineering issues associated with the site. Within the RMPAT case, it is noted that the area is steep. The tribunal noted that the Council neglected to focus proper attention on these matters when it considered the earlier development application for Montrivale Rise. The gradient of the hillside is such that it creates a landside risk. The RMPAT case notes that the engineer highlights serviceability and access issues to lots 11 and 12.

It is noted within the tribunal case that the expert engineer opinion is that there is potential for fill (on the downhill/north side of the right of way) to settle or slide causing potential safety issues. The author of the engineering report draws attention to compliance of high fill with recognised good hillside construction practices.

¹ <http://www.austlii.edu.au/au/cases/tas/TASRMPAT/2015/4.pdf>

The Tribunal ordered the Council and Developer to complete draft conditions to address the issues, which is when the Council requested that the Developer apply embankment easements and covenants to not permit more than one dwelling to have access to the right of way. Whilst we do not have access to the full history, reports, or meeting minutes, we believe that the background statement at item 4.2 that the vendor placed the covenant is incorrect.

Part 5 Agreement

The owners are subject to a Part 5 D128963 that requires them to comply with the Site Development plan and geotechnical recommendations to comply with good hillside engineering practices (page 14 and 15 of the agenda). The *Australian GeoGuides for Slope Management and Maintenance (2007e)*² shows that pole houses are used as an example of **good** hillside construction practice, whereas houses (like those proposed at 7 Montrivale Rise) built on fill are given as examples of **poor** hillside construction practices.

We wish to highlight that owners at 13 (lot 12A), 9, 5A (originally lot 8), and further subdivision of lot 12 (title yet to be created), have designed residential properties in keeping with the embankment easements and covenants and the recommendations of the Part 5 Agreement. These designs are built on poles which minimises the need for excavation and fill and in turn protects the safety and stability of the right of way.

Summary

1. The covenant was originally imposed by the council in response to a tribunal case that highlighted issues with the right of way. On this basis, it seems there sufficient evidence that the access covenant is to ensure the right of way stays serviceable into the future.
2. The required excavation and fill for the proposed development is unreasonable, taking into consideration covenants and the history of the subdivision approvals and conditions.
3. The proposed development is to the detriment of the current and future surrounding dwellings who share the Private Right of Way, and are/will be owner occupiers.

Signed



Owners of 13 Montrivale Rise (lot 12A), 9 Montrivale Rise (lot 10), and 5A Montrivale Rise (lot 8)

² <https://australiangeomechanics.org/wp-content/uploads/2010/11/LRM2007-GeoGuides.pdf> (page 174 and 175)



SCHEDULE OF EASEMENTS

DEPUTY RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980



ANNEXURE TO SCHEDULE OF EASEMENTS PAGE 7 OF 11 PAGES	Registered Number SP167721
SUBDIVIDER: IN-SITE MANAGEMENT TASMANIA PTY LTD and ROSWITHA BERNHARDT FOLIO REFERENCE: VOLUME 19867 FOLIO 1 and VOLUME 22733 FOLIO 1	

8. The Vendor has the right to modify, vary, waiver or extinguish the covenants (or any of them set forth in relation to any Lots shown on the Plan).

LOTS 8, 9 and 10

The Owner of Lots 8, 9 and 10 on the Plan covenant with the Vendor (In-Site Management Tasmania Pty Ltd) and the Owners for the time being of every other Lot shown on the Plan to the intent that the burden of these covenants may run with and bind the Covenantors Lot and every part thereof and that the benefit thereof shall be annexed to and devolve with each and every other Lot shown on the Plan to observe the following stipulations:

1. Not to set up or carry on upon the said Lot any trade or manufacture business of any kind;
2. Not to erect or permit to stand erected on such Lot any building or structure, the outer walls of which are constructed of wooden logs;
3. Not to erect or permit to stand erected on the said Lot any transportable home;
4. Not to erect or permit to be erected any free standing carport or garages on Lots 8, 9 and 10 unless the same are in conformity with the design, colour and materials of the dwelling house or Unit constructed on the Lot;
5. Not to occupy or permit the occupation of the dwelling house or Unit constructed on the Lot before completion of the front landscaping to the said Lot;
6. Not to plant or allow existing trees or shrubs to grow that may limit the view or shadow any other dwelling in the Lot shown on the Plan;
7. Not to permit more than one (1) dwelling to have access to Right of Way (Private) and Service Easement 'A' Variable Width and Right of Way (Private) and Service Easement 'B' Variable Width.
8. Not to erect or permit to stand erected any corrugated iron fences on the said Lot; and
9. The Vendor has the right to modify, vary, waiver or extinguish the covenants (or any of them set forth in relation to any Lots shown on the Plan).

LOT 12

The Owner of Lot 13 on the Plan covenant with the Vendor (In-Site Management Tasmania Pty Ltd and Roswitha Bernhardt) and the Owners for the time being of every other Lot shown on the Plan to the intent that the burden of these covenants may run with and bind the Covenantors Lot and every part thereof and that the benefit thereof shall be annexed to and devolve with each and every other Lot shown on the Plan to observe the following stipulations:

1. Not to erect or permit to stand erected on such Lot any building or structure, the outer walls of which are constructed of wooden logs;
2. Not to erect or permit to stand erected on the said Lot any transportable home;
3. Not to erect or permit to stand erected any corrugated iron fences on the said Lot; and
4. The Vendor has the right to modify, vary, waiver or extinguish the covenants (or any of them set forth in relation to any Lots shown on the Plan).

LOT 13

The Owner of Lot 13 on the Plan covenant with the Vendor (In-Site Management Tasmania Pty Ltd) and the Owners for the time being of every other Lot shown on the Plan to the intent that the burden of these

NOTE: Every annexed page must be signed by the parties to the dealing or where the party is a corporate body be signed by the persons who have attested the affixing of the seal of that body to the dealing.

R. Bernhardt



SCHEDULE OF EASEMENTS

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covenants may run with and bind the Covenantors Lot and every part thereof and that the benefit thereof shall be annexed to and devolve with each and every other Lot shown on the Plan to observe the following stipulations:

1. Not to set up or carry on upon the said Lot any trade or manufacture business of any kind;
2. Not to erect or permit to stand erected on such Lot any building or structure, the outer walls of which are constructed of wooden logs;
3. Not to erect or permit to stand erected any corrugated iron fences on the said Lot; and
4. The Vendor has the right to modify, vary, waiver or extinguish the covenants (or any of them set forth in relation to any Lots shown on the Plan).

FENCING COVENANT PROVISION

In respect of each Lot shown on the Plan (except Lots 100 and 101) the Vendors, In-Site Management Tasmania Pty Ltd and Roswitha Bernhardt, shall not be required to fence.

INTERPRETATION

"Service Easement" means the full free right of every person who is entitled to an estate or interest in possession indicated as the dominant tenement or any part thereof with which said rights shall be capable of enjoyment in common with the owner of the servient tenement the Hobart City Council, Tasmanian Water and Sewerage Corporation (Southern Region) Pty Ltd Telstra Corporation Limited, Aurora Energy Pty Ltd, NBN Co. Limited and Her Majesty the Queen to lay use and maintain forever water mains, pipes, drains, mains, channels, gutters, sewers, wires, gas pipeline, cables and other conducting media of such size and number as shall from time to time be required in the strips of land shown on the plan and marked hereon and marked Right of Way (Private) and Service Easement 'A' Variable Width and Right of Way (Private) and Service Easement 'B' Variable Width and the right for their surveyors and workmen from time to time and at all times hereafter to enter into and upon the said strips of land or any part thereof bringing upon the Right of Way (Private) and Service Easement 'A' Variable Width and Right of Way (Private) and Service Easement 'B' Variable Width such material machinery and other things as it shall think fit and proper to inspect the condition thereof and to repair amend and cleanse PROVIDED HOWEVER that any damage occasioned thereby shall be made good.

"Type One Right of Carriageway" means the full and free right of every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment and every person authorised by him, to go, pass, and repass at all times and for all purposes with or without animals or vehicles or both to and from the said dominant tenement or any such part thereof subject to the obligation to contribute one-fifth (1/5) of the cost of keeping that section of the Road passing through Lot 12 on the Plan in a good and proper state of repair and condition.

"Type Two Right of Carriageway" means the full and free right of every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment and every person authorised by him, to go, pass, and repass at all times and for all purposes with or without animals or vehicles or both to and from the said dominant tenement or any such part thereof subject to the obligation to contribute one-fifth (1/5) of the cost of keeping that section of the Road passing through Lot 13 on the Plan in a good and proper state of repair and condition.

"Embankment Easement" means the full and free right and liberty for the dominant tenements for the time being having the benefit of the easement over the Lots shown on the Plan to enter upon the land to carry out

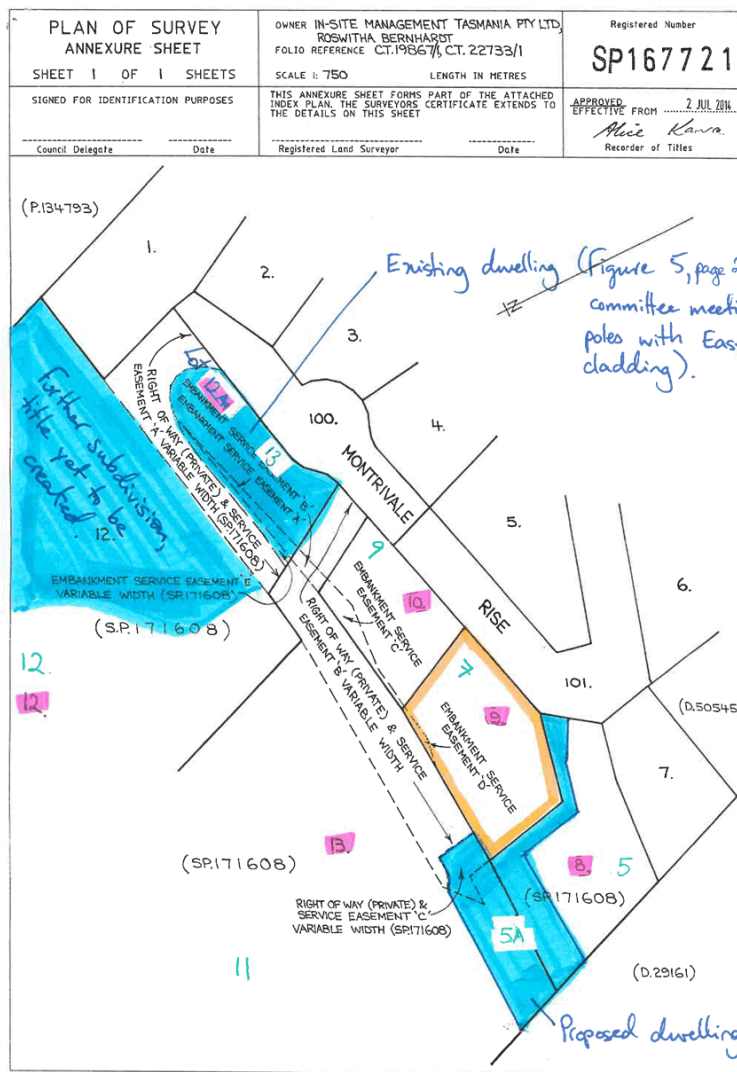
NOTE: Every annexed page must be signed by the parties to the dealing or where the party is a corporate body be signed by the persons who have attested the affixing of the seal of that body to the dealing.

Roswitha Bernhardt

the **List****FOLIO PLAN**

DEPUTY RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980



- 7 Montrivale Rise PLN-13-878 Four dwellings.
- Subdivisions of original development of Montrivale Rise.
- Original lot number.
- Street address



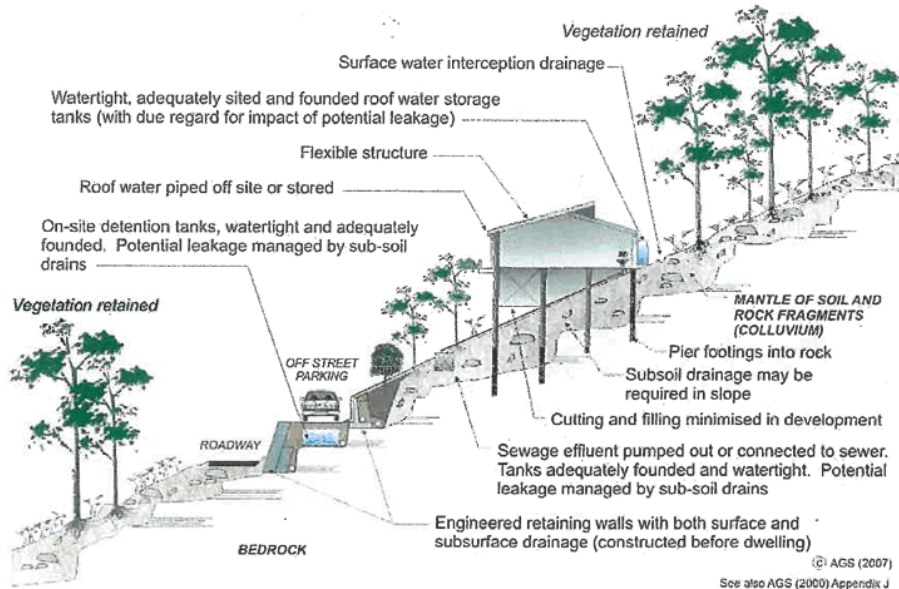
Proposed dwelling at 5A Montrivale Rise.

AUSTRALIAN GEOGUIDE LR8 (CONSTRUCTION PRACTICE)

HILLSIDE CONSTRUCTION PRACTICE

Sensible development practices are required when building on hillsides, particularly if the hillside has more than a low risk of instability (GeoGuide LR7). Only building techniques intended to maintain, or reduce, the overall level of landslide risk should be considered. Examples of good hillside construction practice are illustrated below.

EXAMPLES OF GOOD HILLSIDE CONSTRUCTION PRACTICE



WHY ARE THESE PRACTICES GOOD?

Roadways and parking areas - are paved and incorporate kerbs which prevent water discharging straight into the hillside (GeoGuide LR5).

Cuttings - are supported by retaining walls (GeoGuide LR6).

Retaining walls - are engineer designed to withstand the lateral earth pressures and surcharges expected, and include drains to prevent water pressures developing in the backfill. Where the ground slopes steeply down towards the high side of a retaining wall, the disturbing force (see GeoGuide LR6) can be two or more times that in level ground. Retaining walls must be designed taking these forces into account.

Sewage - whether treated or not is either taken away in pipes or contained in properly founded tanks so it cannot soak into the ground.

Surface water - from roofs and other hard surfaces is piped away to a suitable discharge point rather than being allowed to infiltrate into the ground. Preferably, the discharge point will be in a natural creek where ground water exits, rather than enters, the ground. Shallow, lined, drains on the surface can fulfil the same purpose (GeoGuide LR5).

Surface loads - are minimised. No fill embankments have been built. The house is a lightweight structure. Foundation loads have been taken down below the level at which a landslide is likely to occur and, preferably, to rock. This sort of construction is probably not applicable to soil slopes (GeoGuide LR3). If you are uncertain whether your site has rock near the surface, or is essentially a soil slope, you should engage a geotechnical practitioner to find out.

Flexible structures - have been used because they can tolerate a certain amount of movement with minimal signs of distress and maintain their functionality.

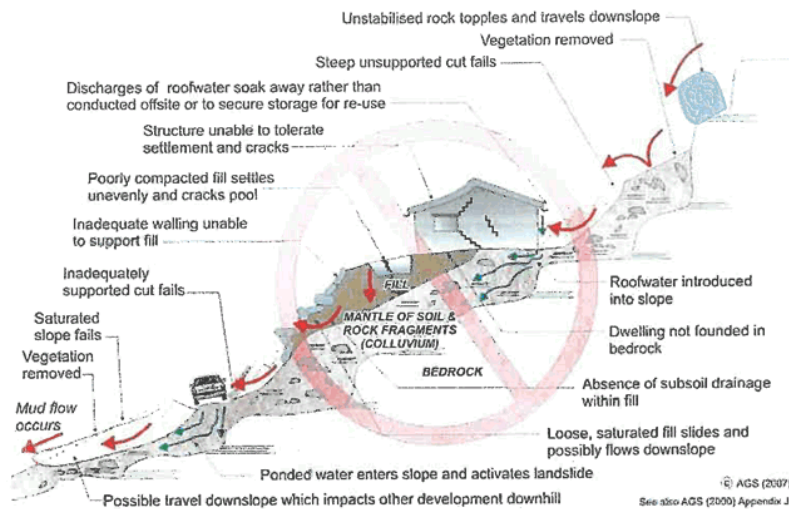
Vegetation clearance - on soil slopes has been kept to a reasonable minimum. Trees, and to a lesser extent smaller vegetation, take large quantities of water out of the ground every day. This lowers the ground water table, which in turn helps to maintain the stability of the slope. Large scale clearing can result in a rise in water table with a consequent increase in the likelihood of a landslide (GeoGuide LR5). An exception may have to be made to this rule on steep rock slopes where trees have little effect on the water table, but their roots pose a landslide hazard by dislodging boulders.

Possible effects of ignoring good construction practices are illustrated on page 2. Unfortunately, these poor construction practices are not as unusual as you might think and are often chosen because, on the face of it, they will save the developer, or owner, money. You should not lose sight of the fact that the cost and anguish associated with any one of the disasters illustrated, is likely to more than wipe out any apparent savings at the outset.

ADOPT GOOD PRACTICE ON HILLSIDE SITES

AUSTRALIAN GEOGUIDE LR8 (CONSTRUCTION PRACTICE)

EXAMPLES OF **POOR** HILLSIDE CONSTRUCTION PRACTICE



WHY ARE THESE PRACTICES POOR?

Roadways and parking areas - are unsurfaced and lack proper table drains (gutters) causing surface water to pond and soak into the ground.

Cut and fill - has been used to balance earthworks quantities and level the site leaving unstable cut faces and added large surface loads to the ground. Failure to compact the fill properly has led to settlement, which will probably continue for several years after completion. The house and pool have been built on the fill and have settled with it and cracked. Leakage from the cracked pool and the applied surface loads from the fill have combined to cause landslides.

Retaining walls - have been avoided, to minimise cost, and hand placed rock walls used instead. Without applying engineering design principles, the walls have failed to provide the required support to the ground and have failed, creating a very dangerous situation.

A heavy, rigid, house - has been built on shallow, conventional, footings. Not only has the brickwork cracked because of the resulting ground movements, but it has also become involved in a man-made landslide.

Soak-away drainage - has been used for sewage and surface water run-off from roofs and pavements. This water soaks into the ground and raises the water table (GeoGuide LR5). Subsoil drains that run along the contours should be avoided for the same reason. If felt necessary, subsoil drains should run steeply downhill in a chevron, or herring bone, pattern. This may conflict with the requirements for effluent and surface water disposal (GeoGuide LR9) and if so, you will need to seek professional advice.

Rock debris - from landslides higher up on the slope seems likely to pass through the site. Such locations are often referred to by geotechnical practitioners as "debris flow paths". Rock is normally even denser than ordinary fill, so even quite modest boulders are likely to weigh many tonnes and do a lot of damage once they start to roll. Boulders have been known to travel hundreds of metres downhill leaving behind a trail of destruction.

Vegetation - has been completely cleared, leading to a possible rise in the water table and increased landslide risk (GeoGuide LR5).

DON'T CUT CORNERS ON HILLSIDE SITES - OBTAIN ADVICE FROM A GEOTECHNICAL PRACTITIONER

More information relevant to your particular situation may be found in other Australian GeoGuides:

- | | |
|-------------------------------------|--|
| • GeoGuide LR1 - Introduction | • GeoGuide LR6 - Retaining Walls |
| • GeoGuide LR2 - Landslides | • GeoGuide LR7 - Landslide Risk |
| • GeoGuide LR3 - Landslides in Soil | • GeoGuide LR9 - Effluent & Surface Water Disposal |
| • GeoGuide LR4 - Landslides in Rock | • GeoGuide LR10 - Coastal Landslides |
| • GeoGuide LR5 - Water & Drainage | • GeoGuide LR11 - Record Keeping |

The Australian GeoGuides (LR series) are a set of publications intended for property owners; local councils; planning authorities; developers; insurers; lawyers and, in fact, anyone who lives with, or has an interest in, a natural or engineered slope, a cutting, or an excavation. They are intended to help you understand why slopes and retaining structures can be a hazard and what can be done with appropriate professional advice and local council approval (if required) to remove, reduce, or minimise the risk they represent. The GeoGuides have been prepared by the [Australian Geomechanics Society](#), a specialist technical society within Engineers Australia, the national peak body for all engineering disciplines in Australia, whose members are professional geotechnical engineers and engineering geologists with a particular interest in ground engineering. The GeoGuides have been funded under the Australian governments' National Disaster Mitigation Program.

29 July 2019

City of Hobart
GPO Box 503
HOBART TAS 7001

Dear Sir/Madam

Proposed four (4) dwelling development – 7 Montrivale Rise, Dynnyrne

We understand that the owner of 7 Montrivale Rise, Dynnyrne (**Property**) intends to lodge, or has lodged, an application with Council for a four (4) dwelling development at the Property.

We advise Council that we have conditionally agreed with the owner to modify the restrictive covenant in Sealed Plan 167721 to the effect that the Property will no longer be burdened by the covenant not to permit more than one (1) dwelling to have access to Right of Way (Private) and Service Easement 'A' Variable Width and Right of Way (Private) and Service Easement 'B' Variable Width. We note that the Sealed Plan provides us with the right to extinguish this restrictive covenant.

Should you wish to discuss the above further, please do not hesitate to contact us.

Yours faithfully,

MURDOCH CLARKE LAWYERS
For
IN-SITE MANAGEMENT TASMANIA PTY LTD (ACN 058 417 682)

Signed:

Mark Crosswell