

Northern Beaches Council
1 Belgrave Street
Manly NSW 2095

20 July 2017

Dear Council,

SUBMISSION: BUILDING CERTIFICATE APPLICATION UBC 11/2017 IN RESPECT TO UNAUTHORISED WORKS at 21 Tutus Street, Balgowlah Heights, NSW, 2093

My wife and I are the owner-occupiers of 5 New Street, Balgowlah Heights, NSW, 2093 – which shares the entire western boundary with 21 Tutus Street, Balgowlah Heights, NSW, 2093.

This submission focuses on three specific issues:

1. The variation in the height of the cabana roof from the Development Consent 47/2015;
2. The variation in the height of the cabana floor from the DC, in the context of site disturbance and the associated drainage / water flow impacts on our property; and
3. The movement of the entire cabana 600 mm to the east – as shown in both the Construction Certificate and BCA – a variation from the DC (which had the cabana flush against the boundary line) which allows for the current planting of bamboo against our fence.

We have also included two general comments, which are relevant to this BCA and indeed the broader development:

1. There appears to have been little, if any, formal consideration of the impacts of the development (particularly the cabana) on our property – noting that our residence does not appear on any planning documents. This is surprising given that our regularly used in / out-door dining areas and second storey, glass-walled room are only 1000 mm from the boundary / 1600 mm from the re-located cabana. Our ground level is also 500 – 700 mm below that of 21 Tutus Street in the area where the cabana has been built, such that the cabana actually rises around 3500 mm over our out-door dining area.
2. Our concerns and subsequent objections with the development at 21 Tutus Street have solely arisen as a result of variations from the DC. We did not object to the original development application (DA 47/2015) and have been available to engage with the Applicant, builder and Principal Certifying Authority throughout the process.

Specific issues

1. Variation in height of the roof

We did not object to the original DA as our concerns about the shadow and amenity impacts of the cabana were raised with, and informally addressed by, the Applicant and builders who indicated the likely height of the cabana (not unreasonably, we hadn't undertaken our own survey, but rather relied on the Applicant and builder).

The actual height proved to be greater than that informal indication, however we acknowledge that we did not exercise our right of objection at the time of the DA. We did however exercise our right to enforce the DC when additional rows of bricks were added to the cabana on 14 July 2016 (a variation from the DC which provided for a gap to the roof – and which we requested the Applicant to not vary from by email on 4 July 2016, when he proposed the variation). We raised this matter with the Principal Certifying Authority during July – August 2016 and the unapproved brick work was replaced by Perspex.

For your information, we have **attached Photos A and B** dated 11 June 2016 (pre-construction) and then **Photo C** dated 12 July 2016 and **Photo D** dated 13 September 2016 (completed height, before being rendered) which show the shadow and amenity impact. We note the proximity to our residence and outdoor dining area, and also the higher ground level at 21 Tutus Street (marked by the bottom of the Colourbond fence in **Photos A and C**) which is 500 – 700 mm about our courtyard.

For the purposes of this BCA, while disappointed with the amenity and shadow impacts caused by the height of the cabana (as approved) – a fact that we have communicated to the Applicant, builder and Principal Certifying Authority – we will not object to this further unapproved variation to the originally approved cabana (recognising that it is only 20 mm).

2. Variation in height of the floor

We note that the cover letter (of Vaughan Milligan Development Consulting Pty Ltd dated 20 June 2017) to application UBC 11/2017 states:

“In order to minimise the extent of the site disturbance, the cabana floor was constructed at a level of RL 45.92 or 220 mm above the approved floor level of RL 45.70. The overall height of the cabana is at RL 48.55 or 20 mm above the approved roof level, of RL 48.53.”

We question the rationale that the variation in this case was “in order to minimise the extent of site disturbance” on account of the large amount of excavation that occurred on the site over a period of many months – not only at the cabana but also at the swimming pool, the artificial lawn and other sites.

We are concerned that the site disturbance (whether reduced or otherwise) has resulted in an altered water flow in and around the cabana – again noting the proximity to regularly used areas of our property. Again, we raised our concerns about drainage and flow of water onto our property with the Applicant, builder and Principal Certifying Authority, however were assured that appropriate drainage would be implemented.

Since the cabana was built and associated earthworks were undertaken, there has been increased flow of water into our property. I have **attached Photos E, F, G and H** from 26 September 2016 when water flowed into our courtyard / out-side dining area – something that had not happened previously (or at least since October 2014 when we purchased 5 New Street).

Therefore, while we do not object to the unapproved variation to the cabana floor height *per se*, we do however ask that Council consider whether the associated reduced site disturbance has caused / contributed to drainage issues. In any event, we ask that Council consider these drainage issues – whether related to the unapproved variation or otherwise.

3. Variation to make space for bamboo

While we did not originally object to the relocation of the entire cabana 600 mm to the east of the originally approved location (as it moves a structure that is approx. 3500 mm above our courtyard 600 mm away from our fence), we do so now - if the unapproved space is to continue to be filled with bamboo. Our objections are on account of the potential for bamboo to spread into our property and also block / detract from our limited harbour view from our second storey. **Photo I**, taken today (20 July 2017) shows our second storey, east-facing room with floor-to-ceiling glass and the initial bamboo growth.

Relevantly, on 4 July 2016, we emailed the Applicant as follows:

" ... while we support your [then] proposal to cover the pergola with jasmine to the height of its roof, we remain opposed to any planting that grows above the height of the roofline of the pergola."

We appreciate that a landowner is entitled to plant vegetation on their property as they see fit. However, we note that in this case any plantings that grow above the height of the cabana will have significant impacts on us – particularly with the floor-to-ceiling view from our second storey.

To the extent that the Applicant has concerns about privacy in his newly installed pool, there are less intrusive, much lower screening options that could be erected more effectively nearer the pool side, rather than having 4000 – 6000 mm (plus) of bamboo on his fence line impeding our limited water view.

We would suggest that from the Applicant's perspective, the removal of the bamboo and replacement of it with a less invasive and shorter plant is a preferable course of action than the consequences of us maintaining an objection to the relocation of the entire cabana.

As a compromise, we seek an assurance from the Applicant that the bamboo is a type that will not spread into our property and that it will be maintained at or below the roof height of the cabana.

General comments

We note in the context of the entire development, that had the following issues been addressed satisfactorily from the outset, that there may have been little or no need for the continued disputes relating to the Applicant's development:

1. Absence of recognition of impacts on 5 New Street

None of the relevant documents (DA, DC, CC nor this BCA) show our residence, which is only 1000 mm from the common fence and now only 1600 mm from the (relocated) cabana. In contrast, the residences at 23 and 19 Tutus Street are both marked on the various plans, despite being further away from, and therefore less impacted by, the alterations.

The south eastern corner of the ground floor of our house is the family / lounge / dining room – with an adjacent courtyard, so is continually in use (refer **Photos A, B, C, D and I**). The south eastern corner of the second storey of our house is comprised entirely of floor to ceiling windows, is a

frequently used room and at various times has been a child's nursery and now study – with glimpses of the harbour.

Furthermore, the exclusion of our residence from the plans and presumably the impact assessment, results in the failure to show that the ground level of our court yard / out-side dining area (again 1600 mm to the west of the relocated cabana) is 500-700 mm below the ground level of the cabana. As a result the cabana rises to a height of approx. 3400 – 3600 mm above our ground level. (Again, refer **Photos A, B, C, D and I**).

I refer to the photos and note that no impact assessment (view or shadow) appears to have been undertaken on our property. We can confirm that no assessor has attended our property since October 2014 (when we moved in) to consider the impacts 'on-site'.

2. We have only objected to variations from the DC

Our concerns and subsequent objections with the development at 21 Tutus Street have solely arisen as a result of variations from the DC. These were not limited to the increased heights of the cabana floor and roof (which are the subject of this BCA), but to the extent that they related to other aspects of the development, they appear to have been rectified by the Principal Certifying Authority.

Following extensive consultation with the Applicant, we eventually contacted Council on 14 July 2016 when additional brickwork was undertaken, to highlight the variation to the DC and the disregard for our stated position.

Next steps

Thank you for providing us with the opportunity to make a submission on this BCA, we hope that this matter can be brought to a close soon.

We would welcome the opportunity to discuss this submission further at your convenience.

Regards,

Wilfred Finn

















