

27 August 2018

Maxwell Duncan  
Planner  
Development Assessment  
Northern Beaches Council  
725 Pittwater Road  
DEE WHY NSW 2099

RE: Mod2018/0398 – 10.2014.29.1  
Address: 5 Plant Street BALGOWLAH  
Modification of Development Consent DA 0029/2014

Dear Mr Duncan

I wish to lodge my objection to the above DA Consent Modification application.

The Statement of Modifications and Environmental Effects in support of this matter is as much about what has been omitted as what is being claimed. This application needs to be viewed and assessed in the context of the history of the original DA, particularly in relation to the colour of the northern facade of No.5 Plant Street.

The original application detailed external colouring on all but the northern facade. During a site inspection just under a week before that application was due to go before the Manly Independent Assessment Panel the Senior Assessor for the then Manly Council, Nancy Sample looked from inside No.3 Plant Street at the all-white northern facade of the cottage to be demolished and noted a white colour was necessary to reflect light into No.3 particularly in the winter months. It was also noted at the time that the then-existing cottage (painted white) allowed a view of the sky from No.3 Plant Street while the proposed two-storey development would block that access. MIAP chaired by former Environment and Supreme Court Judge Paul Stein AO subsequently also visited the site and immediately agreed to a white colour for the northern facade of No.5 as a Condition of Consent despite vigorous objections from the applicant's representatives.

Despite that and in contravention of this clear, unequivocal Consent Condition the applicant went ahead and installed dark grey metal cladding on the northern facade.

I now wish to respond to The Statement of Modifications and Environmental Effects which relies on perceived 'aesthetics' and legal options to support this application. Some responses address multiple claims.

Executive Summary – Page 2

- 1.4 ANS11 – Belated '*compliance*' fails to disguise the applicant's attempt to circumvent Council's and MIAP's Condition of Consent decision (and its reasoning) by installing dark grey metal cladding. '*Compliance*' orders from Council were finally met reluctantly and in the cheapest most temporary manner possible.
- 1.5 The '*opinion*' in relation to articulation and balance was weighed against the loss of light into living areas of No.3 Plant Street and the lack of streetscape impact by Council and MIAP before ANS11 was included in the Conditions of Consent. It is unacceptable that No.5 Plant Street be permitted to build to reduce dependency on electrical lighting while forcing the immediate neighbour into such dependency. The applicant knew **all** the Conditions of Consent well before demolition and re-building began but chose to ignore a number of requirements (including ANS11) until Council demands for compliance.

- 1.6 There is no direct sunlight to the public rooms of No.3 Plant Street hence the need for reflected light via all the northern facade of No.5. Council was well aware of the impact this development would have on No.3 and did its best to ensure some small compromise on the part of the applicant to ameliorate the profound loss of amenity for No.3 as a consequence of this Build.
- 1.7 The adequate provision of reflected light can NOT be achieved by reducing the amount of white on the northern facade of No.5. Claims this will enhance the streetscape and the character of the area are spurious at best and will be addressed later in this letter. If *'the finishing of some of the northern facade in a non-white colour will improve the appearance of the building'* logically, an all-white-colour facade would produce an even better appearance. More importantly, it also meets ANS11 as required by Council and should have been respectfully adhered to by the applicant from the time of the original DA approval.
- 1.8 This latest effort to put fashion and perceived aesthetics ahead of a most basic amenity need has already been addressed.
- 1.9 This proposed change to ANS11 is NOT *'substantially the same'*. The loss of yet more reflected light (already far less than available before the new development at No.5 Plant Street) would result in a substantial increase in electrical light dependency – an issue not faced by the applicant.
- 1.10 In a Statement of Modifications and Environmental Effects it is of course traditional for an applicant to state their proposal *'is considered to be suitable for approval'* but that does not make it so. This Letter of Objection demonstrates all too clearly the adverse impact upon the amenity of No.3 Plant Street with no gain to the applicant other than a currently ubiquitous *'aesthetic'* which would severely impact upon No.3 (neither the applicant nor passers-by).

Is the proposal permissible under Section 4.55 of the Act? (Page 5)

Council is well aware of its legislated powers. The applicant's quote by Stein J (also chairman of the Manly Independent Assessment Panel which assessed this facade colour matter resulting in the Condition of Consent ANS11 in 2014) identifies *'beneficial cost savings and/or improvements to amenity'* as possible reasons for modification of Consents. Neither is relevant in this matter except that any further loss of flat off-white colour and/or the exposure of that non-compliant metal cladding under the existing panels would ensure loss of what little light amenity remains in the public rooms of No.3 Plant Street – not exactly a *'beneficial cost saving and/or improvements to amenity'* for No.3.

*While each modification proposal must be viewed in terms of its own facts (5.3) and 'some modifications will be controversial' (5.2)* this proposal would devastate what little amenity remains to No.3 Plant Street in the use and enjoyment of the south-facing public rooms. A deep consideration of principle sits behind the decision to include Condition of Consent ANS11 in its existing form. It acknowledges the fundamental right of every person to the amenity of available natural light to the maximum possible extent especially when the only options are reflected light or electrical lighting. A reasonable person would not consider that *'controversial'*. Confusing *'controversy'* with *'fairness'* let alone *'justice'* is simply misleading.

The applicant asks that assessment of this proposed modification be based on the facts. The development as originally approved and as it is proposed to be modified. Facts are what this Letter of Objection highlight. The proposed modification would profoundly affect the amenity of No.3 Plant Street as already demonstrated.

The claims to *'qualitative assessment of the proposal'* (5.5), *'built form of the building is essentially unchanged'* (5.6) and *'in terms of quantitative measures etc. (5.7)* all conveniently ignore this proposal seeks to legitimise earlier attempts at non-compliance of the ANS11 Council ruling while claiming there would be no adverse impact of light loss to No.3 Plant Street – the only resident who would lose even more amenity than has been taken away already by this development.

## Streetscape and Public Interest

This proposal would make no difference to the streetscape or character of the area. Numbers 1,3 and 5 Plant Street are situated on the eastern side of the street which is curved inward from the northern boundary of No.1. Following that curve each dwelling is set back from its neighbour. In consequence each house is more exposed to the street on its southern side. It also explains why neighbours say variously that they have not seen or ever noticed the north-facing facade of No.5 Plant Street. They see the front (west-facing entrance) and the southern facade which both of which are clearly visible from the street. There is no Public Interest involved in claims supporting this proposal.

It is therefore incorrect to argue (8.3 Summary) that this proposal *'represents an improvement to the environmental quality of the site and surrounding area'*. It is also incorrect to claim *'the merits of this application have been identified in this assessment under ...etc. (8.1 Summary)*. This application is an **ambit claim** not an assessment. It fails to satisfy the need for all available reflected light by No.3 Plant Street, does not change the Streetscape and has no Public Interest factor.

As The Statement of Modifications and Environmental Effects includes an Appendix with details of the author it may be helpful to note that those MIAP members who considered the original DA for No.5 Plant Street and added its Conditions of Consent (with explanations) are not without their own achievements. For the sake of brevity I will simply refer to a very few of those of the Chairman Paul Stein QC. AO.

Judge in the District Court of New South Wales, the Land and Environment Court and an Appeal Judge in the New South Wales Supreme Court. He has had particular involvement in social justice, civil liberties and consumer advocacy matters and is Chair of the Law and Justice Foundation Board of Governors.

In order to best test and assess the issues raised in my Letter of Objection I would be grateful if you would visit No.3 Plant Street and see at first hand all those matters raised herein.

Yours sincerely

