
Sent: 4/07/2019 9:30:03 AM
Subject: Modification of Consent 2019/0303 OBJECTION: distorted text on website
Attachments: 3 Ogilvy Road CLONTARF REV 2019 .docx;

The General Manager

Northern Beaches Council

PO Box 882^[L]_[SEP] MONA VALE NSW 1660

Re:

3 Ogilvy Road CLONTARF NSW 2093

Modification of Consent 2019/0303

Modification of Land and Environment Court Consent 203/2013 Alterations and additions to an existing dwelling^[L]_[SEP]

The Objection on the NBC Website is showing distorted wording - I attach a word doc of the Objection that might be used to replace the text.

Regards

3 July 2019

The General Manager

Northern Beaches Council

PO Box 882 MONA VALE NSW 1660

Re:

3 Ogilvy Road CLONTARF NSW 2093

Modification of Consent 2019/0303

**Modification of Land and Environment Court Consent 203/2013
Alterations and additions to an existing dwelling**

Dear Sir,

We write to ask Council to impose on this Application, exactly the same Conditions imposed on the Modification Consent Mod 2018/0482, Section 455 [AA] of Court Consent, approved by NBLPP on 6 March 2019.

We ask for Council to fully support NBLPP's decision made on 6 March 2019.

We note the Applicant's remarks and contentions, Boston Blyth Fleming [BBF], in the Statement of Environmental Effects [SEE] Report, dated 2 May 2019.

The BBF's SEE does not take account of the very detailed considerations by NBLPP. The NBLPP panel was made up of the most senior members, including senior LEC Commissioners and very experienced Planners and Lawyers.

The Chair was Paul Vergotis a very senior and experienced Planning & Environmental Lawyer, and Annelise Tuor, a Planner, Architect, LEC Commissioner, and LLP Chair at other important Sydney Councils.

The process of the NBLPP is to thoroughly review all aspects of the application, not only the Planning Officers Report, but also Neighbours concerns, as well as a detailed site inspection and review of all relevant matters.

After a very thorough review of all matters, NBLPP considered that the conditions imposed were essential to arrive at a reasonable solution.

The Applicant is requesting an approval by 'creep'. It is totally relevant for NBLPP to consider the considerable increase in the area of decks, in their determination. The request is for a 400% increase in the scope of the decks, over the LEC Consent, and it is entirely reasonable for NBLPP to arrive at a massing envelope that resolves a significant increase over what was approved by the LEC.

It is also relevant for the NBLPP to consider that the deck proposed now extends further than the deck originally proposed in October 2013 [203/2013]. The LEC Consent significantly reduced the size of that deck in the original determination.

The NBLPP may well have considered that what is now proposed is a combined deck area more than double what was originally rejected by the LEC approval.

We turn to the Applicant's Contention made within BBF Report dated 2 May 2019, pages 2 & 3. We disagree with all of these contentions.

Applicant's Contention 1

The resultant deck geometry does not afford a 3 x 3 metre deck space to accommodate a standard sized outdoor dining table and associated seating consistent with that reasonable anticipated for a property in this location and as achieved by both immediately adjoining properties as depicted in Figure 2 over page. [L] [SEP]

Commentary: The deck geometry does accord with a 3m deep deck zone adjacent to the New Dining Extension by c.4m in length, and 3m deep deck adjacent the Kitchen by c.3m in length. This gives a total width of deck of c. 7m, with a depth of 3m, a total of c.21sqm on each level. This is more than adequate.

Applicant's Contention 2

The rear setbacks proposed to the ground floor deck extension were incorrectly identified in the assessment report as being 6.5 metres at its

western edge and 8.8 metres at its eastern edge whereas the actual setbacks as nominated on the plans were 9.035 metres at its western edge and 7.673 metres at its western edge representing a minor non-compliance along its western edge of 327mm ^[L]_[SEP]

Commentary: The western rear setback was non-compliant, and that was one of many considerations that NBLPP gave in reducing the southern extent of the approved decks. The non-compliant eastern side setback was another.

Applicant's Contention 3

A stated reason for the imposition of the condition was to increase the setback from the watercourse although no objection was raised to the setbacks proposed in Council's landscape, bushland and biodiversity or riparian lands and creeks referral responses. ^[L]_[SEP]

Commentary: This is incorrect. NBC's Natural Environment Referral Response – Riparian stated in their recommendations for refusal, that they had advised 'the modifications proposed are not consistent with the development in the riparian zone and do not meet Section [3][d]', and advised that development should be curtailed "due to negative impacts on vegetation, erosion, stability, and siltation of downstream receiving waters." NBLPP made their own detailed inspection and may have considered that this was a valid consideration, considering neighbours concerns and objections, and after a detailed inspection of the site with Council Officers.

Council will note that NBC NERR-Coastal Referral of 27 June 2019 and NBC NERR-Riparian Referral of 1 July 2019 recommends a refusal. The Referral states: "*Deck Encroachment is not in keeping with best practice for development in riparian lands.*" *The referral concludes "it has been determined that while the previous design did not have significant impact to the watercourse and riparian zone, the proposed design will."*

Council will also note that NBC NERR-Flood Referral of 26 June 2019 states that the application is satisfactory "*provided it complies with the existing conditions*".

Applicant's Contention 4

A stated reason for the imposition of the condition was to increase landscaped open space. The proposal provided compliant landscaped open space as detailed in the Council assessment report with no objection raised to the

landscaped open space outcome proposed in Council's landscape, bushland and biodiversity or riparian lands and creeks referral responses. [L]
[SEP]

Commentary: The open space provision from the edge of the proposed decks to the rear boundary represented a poor provision, and NBC's Natural Environment Referral Response – Riparian raised their concerns. In general terms, NBLPP may have come to the view that the encroachment next to the Riparian land was not acceptable, and that decision was made by senior environmental lawyers, planners and architects. LEC made a very similar decision in significantly reducing the deck.

As mentioned previously, Council will note that NBC NERR-Coastal Referral of 27 June 2019 and NBC NERR-Riparian Referral of 1 July 2019 recommends a refusal. Council will also note that NBC NERR-Flood Referral of 26 June 2019 states that the application is satisfactory “*provided it complies with the existing conditions*”.

Applicant's Contention 5

A stated reason for the imposition of the condition was to protect the amenity of adjoining neighbours although the NBLPP minutes were silent in terms of what amenity the condition sought to protect. The Council assessment report contained a detailed analysis of potential privacy, views and shadowing impacts and found the proposal to be acceptable. [L]
[SEP]

Commentary: NBLPP considered neighbours amenity concerns of visual bulk, privacy, overshadowing, view loss and obviously disagreed with the Planners Report. The role of NBLPP is to do exactly that. The cumulative effect of these amenity matters led NBLPP to a conclusion to impose the conditions that they set. Council will also note that the lower ground floor deck has only ever been approved with anything other than a 2.5m side setback.

We also bring Councils attention to DCP 4.1.4, 4.1.4.2, and 3.4.2.2.

NBC DCP states:

4.1.4 Setbacks (front, side and rear) and Building Separation

Relevant DCP objectives to be met in relation to this part include:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*

- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks;*

We are of the view that the relevant DCP objectives have not been met in relation to this part in relation to side setback including adverse privacy, additional overshadowing of private open space and the sensitive riparian land, view sharing of the creek to the south west from our private open space, planting to screen the proposed decks, and the context of the riparian lands.

NBC DCP states:

4.1.4.2 Side setbacks and secondary street frontages

- a) *Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.*
- e) *Side setbacks must provide sufficient access to the side of properties to allow for property maintenance, planting of vegetation and sufficient separation from neighbouring properties.*

We are of the view that the relevant DCP objectives have not been met in relation to this part including non-compliance with the 'one third' rule in relation to the 8m high deck and screens, and insufficient separation to allow for planting of vegetation.

NBC DCP states:

3.4.2.2 Balconies and Terraces

- a) *Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) *Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

We believe that the proposed Balconies are not properly screened for privacy contrary to this clause, and the Balconies should be recessed with a compliant side setback as previously conditioned by NBLPP.

Council will note that in a recent approval in 2018 on a nearby property at 11 Barrabooka Street Clontarf, after conciliation, the LEC [2017/00230709] conditioned compliant side setback control to decks for very similar reasons.

NBC Referrals

Council will note that NBC NERR-Coastal Referral of 27 June 2019 recommends a refusal. The Referral states: *“Deck Encroachment is not in keeping with best practice for development in riparian lands.” The referral concludes “it has been determined that while the previous design did not have significant impact to the watercourse and riparian zone, the proposed design will.”*

Council will note that NBC NERR-Riparian Referral of 1 July 2019 recommends a refusal. Riparian refers to Coastal recommendations for refusal.

Council will also note that NBC NERR-Flood Referral of 26 June 2019 states that the application is satisfactory *“provided it complies with the existing conditions”*.

Conclusion

What has been considered important in respect to an enlarged deck on the subject site has been previously considered by the LEC and NBLPP, considering all the environmental issues.

This DA is effectively a re-run of the previous application: Modification Consent Mod 2018/0482, Section 455 [AA] of Court Consent, approved by NBLPP on 6 March 2019 with precise conditions.

The expert NBLPP panel completed a very considered analysis and they found what was proposed was unacceptable.

We totally agree with the NBLPP's decision.

We are of the view that the proposed decks in this application will not follow the decisions of the NBLPP decision on 6 March 2019, especially relating to our amenity loss.

Our main concerns are:

1. Visual Bulk, caused by non-complaint side setback
2. Additional Overshadowing of the Creek and the afternoon sun to the south of our property, caused by non-complaint side setback
3. Additional Privacy Impacts to our Private Open Space, caused by non-complaint side setback
4. Loss of View from our Private Open Space along the Creek, caused by non-complaint side setback

5. Encroachment over limited soft landscape zones, caused by non-complaint side setback
6. Natural Environment Referral Response – Coastal & Riparian recommendations for refusal, restricting development within 10m of top of bank of a watercourse due to negative impacts on vegetation, erosion, stability, and siltation
7. Threats to the habitat of the protected Eastern Water Dragon, Red Crowned Toadlet, Common Eastern Toadlet, Eastern Blue-Tongue, Southern Gecko and Skink that call the Creek 'home'. Building closer to the creek will potentially disturb these amphibia and reptilia from using the water.
8. As the only fresh water stream in the area, the native birds use the stream constantly: the protected Kookaburra, Cockatoo, Raven, Butcherbird, Robin, Whipbird, Currawong, Lorikeet, and Turkey. Building closer to the creek will potentially disturb these birds from using the water.
9. Mammals also use the fresh water, including Bandicoots, Possums, Wallabies, and Bats. Building closer to the creek will potentially disturb these mammals from using the water.
10. Development by 'creep': by simply trying to increase by over 400% the quantity of deck space over the LEC approval, adding by 'creep'.

It is the cumulative effect of all these issues that arrives at a need to have a more compliant side setback to the eastern boundary, and to reduce the roof that was proposed.

The height of the privacy screen is 8m above natural ground level. A compliant side setback would require a 2.66m side setback. NBLPP conditioned a 2.50m side setback.

We fully support Condition 31C [a] and [b] in this respect.

In this proposal it is the absence of the 2.5m side setback, Condition 31C [a] that has the most impact on our property, and any decision must fully respect the NBLPP's decision on this matter. The lack of a complaint side setback will considerably increase the visual bulk, increase overshadowing, decrease privacy, and obscure our view of the riparian lands and watercourse to the south-west.

The Applicant is trying to add by 'creep' a significantly larger deck that has already been substantially reduced by the LEC and NBLPP decisions. It would be totally unacceptable for proper NBLPP decisions made by senior professionals to be overturned.

The arguments presented by the Applicant are not based upon merit, and the NBLPP judged on merit that the conditions imposed were required.

We ask that the Applicant be required to fully dimension the plans, so all dimensions of the proposed decks are clearly annotated. There are no figured

dimensions on the east to define the scope of the decks from the face of the southern elevation. The dimension should be 3m from the southern wall.

We ask Council for this Application to be determined by the same NBLPP members, particularly the Chair Paul Vergotis and Annelise Tuor.

We ask Council to impose exactly the same Conditions imposed on the Modification Consent Mod 2018/0482, Section 455 [AA] of Court Consent, approved by NBLPP on 6 March 2019.

We ask for Council to fully support NBLPP's decision made on 6 March 2019.

Yours faithfully,

Mr & Mrs Pike
1 Ogilvy Road
Clontarf