

2nd May 2019

The General Manager
Northern Beaches Council
Po Box 882
MONA VALE NSW 1660

Attention: Maxwell Duncan – Town Planner

Dear Mr Duncan,

Request for review of determination - Section 8.2(1B) of the Act
Modification Application MOD2018/0482
Alterations and additions to an existing dwelling
3 Ogilvy Road, Clontarf

1.0 Introduction

On 6th March 2019, the Northern Beaches Local Planning Panel (NBLPP) granted consent to the above application proposing the modification of the Court approved development consent. In endorsing the Council officer recommendation, the panel imposed the following additional condition:

31C Deck amendments

- (a) *The proposed ground floor deck is to be amended so as to be setback from the eastern side boundary by 2.5m and to extend no further than 3.0m beyond the southern elevation wall towards the rear boundary.*
- (b) *The proposed roof extension on the ground floor deck shall be deleted.*
- (c) *The proposed lower ground floor deck is to be amended to align with the same side and rear boundary setback as the proposed ground floor deck as amended by (a).*

Reason: To protect the amenity of adjoining neighbours and to provide an increased setback from the watercourse and to increase the landscaped open space.

We confirm that these amendments were not raised during the assessment of the application with no opportunity afforded to the applicant to identify and discuss potential design/ amenity ramifications.

The required ground floor (upper level) deck amendments and resultant deck geometry is marked in green with the previously Court approved deck element at this level marked in red on the following plan extract:

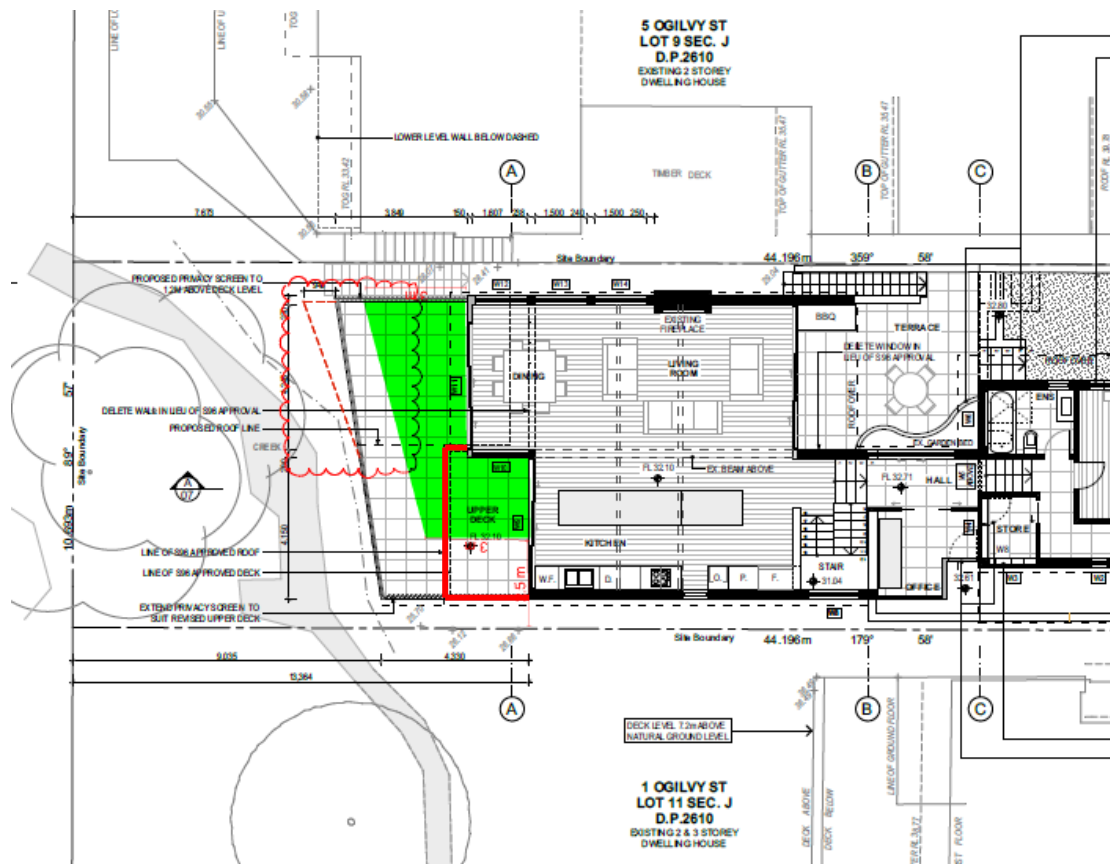


Figure 1 - Plan showing previously approved deck alignment in red, the proposed deck extension and conditioned deck extension/ geometry in green.

We consider the imposition of condition 31C to be unreasonable and unnecessary for the following reasons:

- The condition deletes a large area of the ground floor (upper level) deck previously approved by the Court and which was not sought to be modified by the applicant in the subject application or by the consent authority in its assessment/ determination of 2 subsequent modification applications. Works pursuant to the original Court consent have been substantially completed including installation of the sliding doors which lead out onto this previously approved portion of deck.
- 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.



Figure 2 – Aerial photograph showing large decks directly accessible from the principal living areas of both adjoining properties

- 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.
- 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.

- 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.
- 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.

In this regard, the orientation of the site and juxtaposition of adjoining development ensures no adverse shadowing impacts to the south facing principal living room and adjacent private open space balconies of any adjoining property. The deck extension will have no view impact on No. 5 Ogilvy Road with a view sharing outcome, maintained to No. 1 Ogilvy Road. The deck extension will have no privacy impact to No. 1 Ogilvy Road with a combination of a complimentary and compatible deck alignment and integrated privacy screening ensuring the maintenance of appropriate privacy to No. 5 Ogilvy Road.

Notwithstanding, and in the spirit of conciliation, this request is accompanied by amended plans 00(K) to 07(K) prepared Gartner Trovato Architects which seek to address the concerns expressed by the NBLPP through the adoption of the following amendments:

- The western end of the ground floor (upper level) deck has been pulled back and squared off to comply with the 8 metre rear setback control;
- The eastern end of the deck has been splayed to meet the previous Court approved section of deck in terms of alignment and setback relative to the eastern boundary. This setback will ensure that the view sharing outcome obtained past the south eastern edge of the Court approved deck element as viewed from No. 1 Ogilvy Road is maintained;
- The 1.6 metre high privacy screen located along the eastern edge of the Court approved section of deck has been deleted as it is considered unnecessary given the juxtaposition and spatial relationship of this approved deck element relative to the living areas of No.1 Ogilvy Road;

The deletion of this privacy screen will reduce building bulk and enhance the views/ outlook afforded across the south eastern corner of the subject development compared to that previously considered acceptable by the Court;

- The ground floor level (upper level) Vergola structure has been deleted in totality resulting in a reduction in the previously approved southern roof projection at this level. This Vergola deletion and roof reduction further reduce potential view impacts, compared to those previously approved, as viewed from No. 1 Ogilvy Road;
- The lower level deck has been amended to generally accord with the ground floor deck above although an increased minimum setback of 8.302 metres is proposed from the rear boundary at this level. These setbacks are greater than those previously deemed acceptable in Council's landscape, bushland and biodiversity and riparian lands and creeks referral responses.

We have formed the considered opinion that these amendments collectively and appropriately respond to the reasons stated by the NBLPP for the imposition of condition 31C being *to protect the amenity of adjoining neighbours and to provide an increased setback from the watercourse and to increase the landscaped open space.*

These amendments achieve such outcome whilst not unreasonably compromising the amenity and utility of the upper and lower deck elements or the upper level deck element previously approved by the Court and as endorsed through the granting of a number of subsequent modifications.

Given the nature of the amendments sought, which go directly to responding to the stated reasons for the imposition of condition 31C, Council can be satisfied that the request for review is appropriately made pursuant to section 8.2(1B) of the Act.

Having given due consideration to the relevant matters pursuant to section 4.15(1) of the Act it has been demonstrated that the proposed development, as amended, succeeds on merit and is appropriate for the granting of consent. As such, we request the deletion of condition 31C and the adoption of the amended plans as outlined.

Please do not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming Pty Limited

A handwritten signature in black ink, appearing to read 'Greg Boston', with a stylized flourish at the end.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director