



Land and Environment Court New South Wales

Medium Neutral Citation:	Mellick v Woollahra Municipal Council [2024] NSWLEC 1427
Hearing dates:	Conciliation conference on 19 July 2024
Date of orders:	25 July 2024
Decision date:	25 July 2024
Jurisdiction:	Class 1
Before:	Washington C
Decision:	<p>The Court orders:</p> <ol style="list-style-type: none">(1) The appeal is upheld.(2) Development Consent No DA2019/252 is modified in the terms set out in Annexure A.(3) Development Consent No DA2019/252 as modified is set out in Annexure B.
Catchwords:	MODIFICATION APPLICATION – materials and finishes to dwelling house – conciliation conference – agreement between the parties – orders
Legislation Cited:	<p><i>Environmental Planning and Assessment Act 1979</i>, ss 4.55, 8.9</p> <p><i>Land and Environment Court Act 1979</i>, ss 34, 34AA</p> <p>Woollahra Local Environmental Plan 2014, cl 5.10</p>
Texts Cited:	Woollahra Community Participation Plan 2023
Category:	Principal judgment
Parties:	Charles Mellick (Applicant) Woollahra Municipal Council (Respondent)
Representation:	<p>Counsel:</p> <p>E Whitney (Solicitor) (Applicant) P Rigg (Solicitor) (Respondent)</p> <p>Solicitors:</p> <p>Mills Oakley (Applicant) Peter R Rigg (Respondent)</p>

File Number(s): 2024/151243

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JUDGMENT

- 1 **COMMISSIONER:** These Class 1 proceedings arise as a result of the actual refusal, by Woollahra Municipal Council, of the applicant's request to modify development consent DA252/2019. This consent relates to a dwelling house at 30 Wyuna Road, Point Piper, Lot 2 DP 567775.
- 2 This modification application, DA252/2019/10, requests the deletion of condition C.12(h) to amend the proposed materials and finishes of an approved residential dwelling, and has been brought to the Court pursuant to s 8.9 of the *Environmental Planning and Assessment Act 1979* (EPA Act).
- 3 The existing condition C.12(h) is as follows:
 - h) The proposed revised colour scheme to the timber joinery is not consistent with the existing and is not supported. In order to retain the character of the dwelling, the colour of existing and new timberwork (windows and doors) is to be consistent with the existing white colour.
- 4 The proposed modification requests the deletion of this condition to allow for the new timberwork to be painted Dulux black rather than the existing white colour.
- 5 The Court arranged a conciliation conference and hearing under s 34AA of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 19 July 2024. I presided over the conciliation conference.
- 6 At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal and modifying development consent DA252/2019 subject to conditions. Subsequently, the matter concluded in conciliation and did not proceed to a hearing.
- 7 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if that decision is one that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.55 of the EPA Act to grant consent to the modification application. There are jurisdictional prerequisites that must be satisfied before this function can be exercised.
- 8 The parties have provided a jurisdictional note which addresses relevant matters of jurisdiction engaged by s 4.55(1A) of the EPA Act, and from this I accept that:
 - (1) The proposed deletion of condition C.12(h) and resulting alterations to the external materials and finishes will have a minimal environmental impact.
 - (2) The modification will retain the approved use and built form, with no quantitative changes to the approved development. The only alteration will be to the paint colour of external timber framed windows and doors. From this, I am satisfied

that in both qualitative and quantitative terms the development, as modified, will be substantially the same as the development for which the consent was originally granted.

- (3) In accordance with the Woollahra Community Participation Plan June 2023, the Council deemed notification unnecessary for this modification application as the scope of works was not considered extensive.

- 9 The parties further noted that the Heritage Impact Statement and Addendum Heritage impact Statement prepared by the applicant's heritage consultant, Urbis, address matters of heritage arising from this application, pursuant to cl 5.10 of the Woollahra Local Environmental Plan 2014, of which the Council is now satisfied. The Council has now agreed that the proposed paint colour change is acceptable from a heritage perspective.
- 10 There are no other jurisdictional issues raised by the applicant and, based on my consideration of the parties' jurisdictional note and the information in the application before the Court, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act.
- 11 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 12 The Court orders:
- (1) The appeal is upheld.
- (2) Development Consent No DA2019/252 is modified in the terms set out in Annexure A.
- (3) Development Consent No DA2019/252 as modified is set out in Annexure B.

E Washington

Commissioner of the Court

151243.24 (Annexure A)

151243.24 (Annexure B)

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Decision last updated: 25 July 2024