



Land and Environment Court
New South Wales

Case Name: Hallak v Woollahra Municipal Council

Medium Neutral Citation: [2022] NSWLEC 1716

Hearing Date(s): Conciliation conference 14 October 2022

Date of Orders: 20 December 2022

Decision Date: 20 December 2022

Jurisdiction: Class 1

Before: Gray C

Decision: The Court orders that:
(1) The appeal is upheld;
(2) Modification Application 179/2017/2 is approved and development Consent No DA-179/2017 is modified in the terms in Annexure A.
(3) Development Consent No 179/2017, as modified by the Court, is Annexure B.

Catchwords: APPEAL – modification application – changes to materials and finishes on a consent for alterations and additions to a terrace – conciliation conference – agreement reached – orders made

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.55, 4.15, 8.9
Environmental Planning and Assessment Regulation 2021 ss 100, 113
Environmental Planning and Assessment Regulation 2000 cl 121B
Land and Environment Court Act 1979, s 34

Category: Principal judgment

Parties: Carl Hallak (Applicant)
Woollahra Municipal Council (Respondent)

Representation:	Counsel: A Boskovitz (Solicitor) (Applicant) P Rigg (Solicitor) (Respondent)
	Solicitors: Boskovitz Lawyers (Applicant) Peter R Rigg (Respondent)
File Number(s):	2022/219014
Publication Restriction:	No

JUDGMENT

- 1 **COMMISSIONER:** This appeal concerns an application to modify a development consent (DA 179/2017) for alterations and additions to an existing terrace at 2 Rush Street, Woollahra. The application seeks to modify condition A3 of that consent, to allow modifications to the colour scheme for portions of the development and to the materiality and finish of the approved venetian blinds and window louvres. The modification application was refused by Woollahra Council on 13 July 2022. The appeal is lodged pursuant to s 8.9 of the *Environmental Planning and Assessment Act 1979* (EPA Act). In exercising the functions of the consent authority on the appeal, the Court has the power to determine the modification application pursuant to s 4.55(2) of the EPA Act. The final orders in this appeal, outlined in [11] below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 14 October 2022 and continued on various dates by Online Court. I presided over the conciliation conference.
- 3 Following the conciliation conference, an agreement under s 34(3) of the LEC Act was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. The agreement was filed on 6 December 2022. The agreement followed both the amendment of the plans the subject of the modification application, and the grant of a building information certificate on 30 November 2022 for certain parts of the building, which had

been the subject of works which were not authorised by the development consent. The amended plan and the amended Statement of Environmental Effects were uploaded to the NSW Planning Portal on 1 December 2022, and, pursuant to cl 113 of the Environmental Planning and Assessment Regulation 2021 (EPA Regulation 2021) the Council has approved the amendment of the modification application in accordance with those documents. The amendment to the modification application changes the materials and finishes plan to make it clear what works were already undertaken and were the subject of the building information certificate, and what works form part of the modification application.

- 4 The decision agreed upon is for the grant of the modification application, as amended, subject to conditions, pursuant to s 4.55(2) of the EPA Act. The signed agreement is supported by a Jurisdictional Statement that outlines various applicable planning controls. I have considered the contents of the Jurisdictional Statement, together with the amended Statement of Environmental Effects and the documents referred to therein and the Class 1 Application and its attachments. Based on those documents, I have considered the matters required to be considered pursuant to ss 4.55(3) and 4.15(1) of the EPA Act.
- 5 As the presiding Commissioner, I am satisfied that the decision is one that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I form this state of satisfaction on the basis that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, on the basis that the modifications maintain the approved building envelope and simply relate to an amended colour scheme to portions of the building and to the materiality and finishes of the blinds, garage door and window louvres. As such, quantitatively, there is very little change to the finishes of the building, and qualitatively, the terrace remains in the form approved with changes only to minor aspects of its external appearance.

- 6 The modification application was notified by Council between 8 and 23 June 2022 in accordance with s 4.55(2)(c) of the EPA Act. In response to the notification of the application, no submissions were received.
- 7 Consistent with the requirements of cl 100(3)(a) of the EPA Regulation 2021, the modification application is accompanied by the BASIX certificate dated 27 April 2017.
- 8 Having reached the state of satisfaction that the decision is one that the Court could make in the exercise of its functions, s 34(3)(a) of the LEC Act requires me to “dispose of the proceedings in accordance with the decision”. The LEC Act also requires me to “set out in writing the terms of the decision” (s 34(3)(b)).
- 9 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any assessment of the merits of the modification application against the discretionary matters that arise pursuant to an assessment under ss 4.55(3) and 4.15(1) of the EPA Act.
- 10 The Court notes:
 - (1) Woollahra Municipal Council as the relevant consent authority for the purposes of cl 113 of the Environmental Planning and Assessment Regulation 2021 agrees to the Applicant amending Modification Application no. DA-179/2017/2 (“modification application”) by the provision of:
 - (a) a further Statement of Environmental Effects dated 25 October 2022; and
 - (b) an amended Schedule of Materials and Finishes Plan DA.01B dated November 2022.(Hereinafter called the ‘further documents’)
 - (2) The further documents were uploaded to the NSW Planning Portal on 1 December 2022 and an amended application filed in the Court on 6 December 2022.
- 11 The Court orders that:
 - (1) The appeal is upheld;
 - (2) Modification Application 179/2017/2 is approved and development Consent No. DA-179/2017 is modified in the terms in Annexure A.

- (3) Development Consent No. 179/2017 as modified by the Court is Annexure B.

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Joanne Gray

Commissioner of the Court

Annexure A (161802, pdf)

Annexure B (589251, pdf)

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