



Land and Environment Court
New South Wales

Case Name: Clermont Residences Pty Ltd v Woollahra Municipal Council

Medium Neutral Citation: [2023] NSWLEC 1293

Hearing Date(s): Conciliation conference on 2 June 2023

Date of Orders: 14 June 2023

Decision Date: 14 June 2023

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:
(1) The appeal is upheld.
(2) Development Consent No. 177/2020, as modified, is further modified by Modification Application No. 177/2020/3, subject to the consolidated conditions of consent at Annexure A.

Catchwords: MODIFICATION APPLICATION – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.55, 8.9
Environmental Planning and Assessment Regulation 2021, s 113
Land and Environment Court Act 1979, s 34
Woollahra Local Environmental Plan 2014

Category: Principal judgment

Parties: Clermont Residences Pty Ltd (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
A Boskovitz (Solicitor) (Applicant)
C Patterson (Solicitor) (Respondent)

Solicitors:

Boskovitz Lawyers (Applicant)

Wilshire Webb Staunton Beattie Lawyers (Respondent)

File Number(s): 2022/329099

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.9 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Modification Application No. 177/2020/3 to modify Development Consent No. 177/2020, as previously modified (the proposal), at 132 Bellevue Road, Bellevue Hill (the site) by Woollahra Municipal Council (the Council).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 2 June 2023. I presided over the conciliation conference. 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.
- 3 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision 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(2) of the EPA Act to modify the development consent.
- 4 There are preconditions to the exercise of power to modify the development consent.

Amended Plans

- 5 The Council, as the relevant consent authority, consented to the amendment of the application pursuant to s 113(1) of the *Environmental Planning and Assessment Regulation 2021*, including the deletion of the swimming pool, the reduction in the top storey terrace and provision of screening, the reduction in excavation and other resulting changes, as reflected in the following plans and documents:

- (1) Amended Architectural Plans prepared by Bureau SRH Architecture Pty Ltd:
 - S4.55-100, Ground Floor Level Plan, Revision A, dated 20 February 2023.
 - S4.55-101, Level 01 Plan, Revision A, dated 20 February 2023.
 - S4.55-102, Level 02 Plan, Revision A, dated 20 February 2023.
 - S4.55-103, Level 03 Plan, Revision A, dated 20 February 2023.
 - S4.55-104, Level 04 Plan, Revision A, dated 20 February 2023.
 - S4.55-105, Roof Plan, Revision A, dated 20 February 2023.
 - S4.55-200, West and East Elevations, Revision A, dated 20 February 2023.
 - S4.55-201, North and South Elevations, Revision A, dated 20 February 2023.
 - S4.55-300, Sections, Revision A, dated 20 February 2023.
 - (2) BASIX Certificate No. 1104118M_04 dated 20 February 2023.
 - (3) SEPP 65 Design Verification Statement prepared by Bureau SRH Architecture dated 20 February 2023.
 - (4) Apartment Design Guide Design Quality Principles prepared by Bureau SRH Architecture dated 20 February 2023.
 - (5) Apartment Design Guide Checklist prepared by Bureau SRH Architecture dated 20 February 2023.
 - (6) Building Services (Mechanical, Electrical, Fire and Hydraulics) Letter, N0220742-LTR.01E, prepared by JN Responsive Engineering dated 5 May 2023.
- 6 As a result of the amendment of the proposal, the parties reached an agreement.

Jurisdictional pre-requisites

- 7 The application is made pursuant to s 4.55(2) of the EPA Act. Section 4.55(2) is in the following terms:

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that

Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- 8 I am satisfied by the evidence before me, including the Statement of Environmental Effects prepared by GSA Planning dated 9 September 2022, that the proposal is substantially the same development as the development for which consent was originally granted and before it was modified. The proposal retains the part 4 and part 5 storey building envelope containing 4 units and the only height increase is as a result of an awning extending over the upper-level terrace.
- 9 The site is zoned R3 Medium Density Residential pursuant to the Woollahra Local Environmental Plan 2014 (LEP 2014). The objectives of the zone are:
- To provide for the housing needs of the community within a medium density residential environment.
 - To provide a variety of housing types within a medium density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.
- 10 I have considered the submissions made by the Council in the Statement of Jurisdictional Pre-requisites filed with the Court on 30 May 2023 and I am satisfied, on the basis of the evidence before me, that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.

Orders

- 11 The orders of the Court are:

- (1) The appeal is upheld.
- (2) Development Consent No. 177/2020, as modified, is further modified by Modification Application No. 177/2020/3, subject to the consolidated conditions of consent at Annexure A.

Susan O'Neill

Commissioner of the Court

329099.22 Annexure A

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