



Land and Environment Court  
New South Wales

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Case Name:	Gartner Trovato Architects v Northern Beaches Council
Medium Neutral Citation:	[2023] NSWLEC 1461
Hearing Date(s):	Conciliation conference on 14 July 2023
Date of Orders:	17 August 2023
Decision Date:	17 August 2023
Jurisdiction:	Class 1
Before:	Dickson C
Decision:	<p>The Court orders that:</p> <p>(1) Modification Application No. 2023/0212 seeking consent to modify child place numbers from 71 to 88 is determined by the grant of consent subject to the conditions in Annexure A.</p> <p>(2) Development consent N0200/16 which granted consent for demolition of existing structures and construction of a part single and part two storey building for use as a child care centre with basement parking at 30 Queens Parade, Newport as modified by the Court is Annexure B.</p>
Catchwords:	MODIFICATION APPLICATION – modification of approved centre based child care centre by increase in child place numbers – conciliation conference – agreement reached – orders made
Legislation Cited:	<p>Education and Care Services National Regulations 2011, regs 107, 108</p> <p>Environmental Planning and Assessment Act 1979, s 4.55</p> <p>Environmental Planning and Assessment Regulation 2021, s 113</p> <p>Land and Environment Court Act 1979, s 34</p> <p>New South Wales Government Gazette, No 501, 1</p>

October 2021  
State Environmental Planning Policy (Transport and Infrastructure) 2021, s 3.23

Cases Cited: Feldkirchen Pty Ltd v Development Implementation Pty Ltd (2022) 254 LGERA 114; [2022] NSWCA 227

Category: Principal judgment

Parties: Gartner Trovato Architects (Applicant)  
Northern Beaches Council (Respondent)

Representation: Counsel:  
M Staunton (Applicant)  
C Gough (Solicitor) (Respondent)

Solicitors:  
Sattler & Associates (Applicant)  
Storey & Gough (Respondent)

File Number(s): 2023/109734

Publication Restriction: No

## JUDGMENT

- 1 **COMMISSIONER:** This judgment concerns an application to modify development consent N0200/16 issued by the Court. That development consent granted consent for demolition of existing structures and construction of a part single and part two storey building for use as a child care centre with basement parking at 30 Queens Parade, Newport. The Modification Application 2023/0212 was made by way of a Class 1 Application filed with the Land and Environment Court on 5 April 2023 pursuant to s 4.55(8) of the *Environmental Planning and Assessment Act 1979* (EPA Act). The modification application, as amended, seeks to increase the number of child care places at the centre from 71 to 88.
- 2 The Court arranged a conciliation conference between the parties, pursuant to s 34(1)(a) of the Land and Environment Court Act 1979 (LEC Act). The conciliation conference commenced on 14 July 2023. 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 final signed agreement was filed on 4 August 2023, following the approval by the Council of an amendment to the modification application, pursuant to s 113(4) of the Environmental Planning and Assessment Regulation 2021 (EPA Regulation 2021). The amended Modification Application was uploaded onto the NSW Planning Portal on 4 August 2023.
- 4 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:
  - (1) The modification was made by the owners of the land: BTNP Pty Limited.
  - (2) I am satisfied that the development, to which the consent as modified relates, is quantitatively and qualitatively substantially the same development as the development for which consent was originally granted, satisfying s 4.56(1)(a) of the EPA Act. The modification application maintains the approved use, undertakes no physical modifications to the development and I am satisfied that the increase in child place numbers does not so alter the development such as to render it not substantially the same.
  - (3) The Modification application, in its original form, was advertised and notified to adjoining and nearby landowners in accordance with Council's notification policy from 4 to 18 May 2023, satisfying s 4.56(1)(b) of the EPA Act. The notification covered the same scope as that undertaken for the original consent satisfying s 4.56(1)(c) of the EPA Act. Council received 38 submissions objecting to the proposal. The submissions raised matters to do with traffic and parking impacts, Acoustic impacts, emergency evacuation procedures and safety of children attending Newport Public School. In addition, oral submissions were provided by residents as part of the onsite view.
  - (4) I am satisfied that the matters raised in submissions have been considered as required by s 4.56(1)(d) of the EPA Act and, where appropriate, have resulted in amendments or the imposition of conditions.
  - (5) Under s 4.56(1A) of the EPA Act, the consent authority must also take into consideration:
    - (a) Such of the matters referred to in s 4.15(1) as are of relevance to the development the subject of the application; and

- (b) The reasons given by the consent authority for the grant of the consent that is sought to be modified.
- (6) Pursuant to s 4.56(1A) of the EPA Act in determining the development, I have taken into consideration the matters referred to in s 4.15(1) of the EPA Act that are of relevance to the development which preclude the approval of the Modification Application. For completeness I note:
  - (a) That the amendments proposed by the Modification Application do not generate unreasonable impacts which preclude approval.
  - (b) By reference to the Modification Application documents, I am satisfied that the provisions of s 3.23 of State Environmental Planning Policy (Transport & Infrastructure) 2021 (SEPP TI) are met. In determining the modification application, I have taken into consideration the applicable provisions of the Child Care Planning Guideline. Further, I am satisfied that despite the increase in place numbers, the requirements of regs 107 and 108 of the Education and Care Services National Regulations for indoor and outdoor space requirements are met and concurrence is not required.
  - (c) In determining the Modification Application, I have taken into consideration the suitability of the site for the development, the submissions received and the public interest.
- (7) Further, in determining the development, I have taken into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. No reasons were given for the grant of the consent that was sought to be modified: *Feldkirchen Pty Ltd v Development Implementation Pty Ltd* (2022) 254 LGERA 114; [2022] NSWCA 227 at [63]-[77].

5 The Court notes that:

- (1) Northern Beaches Council, as the relevant consent authority, has agreed, pursuant to cl 38 of the Environmental Planning and Assessment Regulation 2021 to the Applicant amending Modification Application 2023/0212 to rely upon the following plans and documents:

Drawing	Date	Prepared By
Site Analysis DA-02 D	7.6. 2023	Gartner Trovato Architects
Site Plan and Landscaped Space DA-03 E	7.6.2023	Gartner Trovato Architects

Basement Plan DA-04 E	7.6.2023	Gartner Trovato Architects
Driveway Plan & Section DA-05 E	6.3. 2023	Gartner Trovato Architects
Ground Floor Plan DA-06 G	7.6. 2023	Gartner Trovato Architects
Upper Floor Plan DA-07 C	6.3. 2023	Gartner Trovato Architects
Sections and Street Elevation DA-08 E	7.6. 2023	Gartner Trovato Architects
Elevations DA-09 D	7.6. 2023	Gartner Trovato Architects

Document	Date	Prepared By
Supplemental Statement of Environmental Effects	29 June 2023	Boston Blyth Fleming
Plan of Management	18 July 2023	Blueys Treehouse
Emergency Procedures report	undated	Beawear Solutions Pty Limited

6 The Court orders that:

- (1) Modification Application No. 2023/0212 seeking consent to modify child place numbers from 71 to 88 is determined by the grant of consent subject to the conditions in Annexure A.

- (2) Development consent N0200/16 which granted consent for demolition of existing structures and construction of a part single and part two storey building for use as a child care centre with basement parking at 30 Queens Parade, Newport as modified by the Court is Annexure B.

**D Dickson**

**Commissioner of the Court**

Annexure A

Annexure B

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