



Land and Environment Court
New South Wales

Case Name: Gallon v Woollahra Municipal Council

Medium Neutral Citation: [2024] NSWLEC 1002

Hearing Date(s): Conciliation conference on 8, 14 and 20 December 2023

Date of Orders: 10 January 2024

Decision Date: 10 January 2024

Jurisdiction: Class 1

Before: Porter C

Decision: The Court orders:
(1) The appeal is granted.
(2) Development consent No DA/237/2022 at 144 Bellevue Road, Bellevue Hill is modified in the terms in Annexure A.
(3) Development consent No DA/237/2022 as modified by the Court is Annexure B.

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

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.55
Environmental Planning and Assessment Regulation 2021, s 102
Land and Environment Court Act 1979, s 34
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
Woollahra Local Environmental Plan 2014, cl 4.4

Cases Cited: Gallon v Woollahra Municipal Council [2023] NSWLEC 1002

Category: Principal judgment

Parties: Nathan Gallon (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
V Conomos (Solicitor) (Applicant)
S Patterson (Solicitor) (Respondent)

Solicitors:
Conomos Legal (Applicant)
Wilshire Webb Staunton Beattie (Respondent)

File Number(s): 2023/192603

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This is a modification application made to the Court pursuant to s 4.55(8) of the *Environmental Planning and Assessment Act 1979* (EPA Act), being a modification application to a Land and Environment Court development consent (*Gallon v Woollahra Municipal Council* [2023] NSWLEC 1002). The modification application was filed with the Court on 16 June 2023.
- 2 The applicant seeks to modify DA-237/2022, primarily to accommodate services (such as fire) and structural requirements. These changes necessitate internal and external reconfiguration and additional areas to the approved development at 144 Bellevue Road, Bellevue Hill.
- 3 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties on 8 December 2023. I presided over the conciliation conference and subsequent conferences on 14 and 20 December 2023.
- 4 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 for the modification application and modifying the development consent.

- 5 Accompanying the submitted s 34 agreement, the parties have submitted a jurisdictional statement setting out how the proposal has satisfied the jurisdictional requirements and other matters.
- 6 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.
- 7 The parties' decision involves the Court exercising the function under s 4.55(2) of the EPA Act to modify the development consent.

Jurisdictional Prerequisites

- 8 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings and explained how the jurisdictional prerequisites have been satisfied. With consideration of the agreed jurisdictional note and documentation within the Class 1 Application, 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. This is set out below.
- 9 I am satisfied that owner's consent accompanied the modification application.
- 10 I am satisfied that the development as proposed to be modified will be substantially the same as the original development, with consideration of the further Statement of Environmental Effects prepared by GSA Planning dated 8 December 2023. The proposed modifications seek minor works to primarily accommodate building services. I am satisfied that the development as sought to be modified will be substantially the same as the original development for a residential flat building. The works do not radically alter the approved original development and building envelope.
- 11 With respect to 4.55(2)(c) and (d) of the EPA Act, the modification application was notified from 12 July 2023 to 27 July 2023. In reaching agreement, Council as the consent authority has considered the concerns raised by the one submission received.

- 12 With respect to 4.55(3) of the EPA Act, in reviewing *Gallon v Woollahra Municipal Council* [2023] NSWLEC 1002 and noting that the parties had reached agreement in that decision, the proposed modification does not offend the reasons for the grant of consent.
- 13 The parties agree and I accept that the modification application is accompanied by a BASIX Certificate that satisfies the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- 14 The parties agree and I accept that the modification application is accompanied by an amended Design Statement by the nominated qualified architect (Emil Kucevic, Registration number 9308) as required by s 102 of Environmental Planning and Assessment Regulation 2021.
- 15 The parties agree and I accept that the provisions required to be considered by ss 4.55(2), 4.55(3) and 4.15(1) of the EPA Act have been met as evidenced in the documentation accompanying the Class 1 appeal and supported by the jurisdictional submission.
- 16 It is noted that cl 4.4 Floor Space Ratio (FSR) of the Woollahra Local Environmental Plan 2014 provides a maximum FSR of 0.65:1. The parties agree that despite the proposed increase in FSR to 0.731:1, the proposed modified development will be consistent with the objectives of the standard, the building envelope in terms of footprint and scale is similar and impacts to the neighbours are predominantly maintained as per the original approval.

Conclusion

- 17 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.
- 18 I have considered the jurisdictional prerequisites 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.
- 19 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.

Orders:

20 The Court orders:

- (1) The appeal is granted.
- (2) Development consent No DA/237/2022 at 144 Bellevue Road, Bellevue Hill is modified in the terms in Annexure A.
- (3) Development consent No DA/237/2022 as modified by the Court is Annexure B.

.....

S Porter

Commissioner of the Court

[Annexure A \(226399, pdf\)](#)

[Annexure B \(1037912, pdf\)](#)

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.