



Land and Environment Court
New South Wales

Case Name: King v Woollahra Municipal Council

Medium Neutral Citation: [2021] NSWLEC 1764

Hearing Date(s): Conciliation conference 1 and 2 December 2021

Date of Orders: 14 December 2021

Decision Date: 14 December 2021

Jurisdiction: Class 1

Before: Gray C

Decision: The Court orders that:
1) The appeal is upheld.
2) Modification Application DA86/2020/5 is approved subject to the conditions in Annexure A.
3) The consolidated conditions of consent for DA 86/2020 are set out at Annexure B.

Catchwords: APPEAL – modification application – alterations to dwelling house garage – conciliation conference – agreement reached

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.55, 8.9
Land and Environment Court Act 1979, ss 34, 34AA

Category: Principal judgment

Parties: Natalie King (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
T Poisel (Applicant)
S Patterson (Solicitor) (Respondent)

Solicitors:

File Number(s): 2021/229435

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** Ms King seeks to construct a triple garage at her home at 2 Drimalbyn Road, Bellevue Hill, by modifying a development consent for alterations and additions to the existing dwelling house. Although the modification was granted by Woollahra Council (the Council), it was granted with a condition that requires an increase in the western side boundary setback. These proceedings are an appeal against that determination. 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 [10] below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 2 The consent that is sought to be modified was granted on 19 August 2020 for alterations and additions to the dwelling house. There have been three subsequent modifications of that consent following the lodgement of modification applications with the Council, which did not concern any changes to the existing double carport located within the site's frontage (which has since been demolished). On 25 May 2021, Ms King lodged the modification application the subject of this appeal, which seeks to replace the double carport with a triple garage. The modification application (DA 86/2020/5) was approved by the Council on 4 August 2021, subject to the following condition imposed on the modified consent:

“C.1 Modification of Details of the Development (section 4.17(1)(g) of the Act)
The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the following amendments:

...

d) In order to adequately mitigate visual amenity impacts upon the adjoining property to the west (73 Victoria Road, Bellevue Hill) and the streetscape, the western side elevation to the proposed double width garage component shall be setback 570mm from the western side boundary instead of the proposed approximate 150mm setback. An internal unobstructed width of 5.4m shall be achieved via internal modifications as necessary. The section of the western side elevation to the proposed tandem car space to the rear of the western section of the garage shall be setback 917mm from the western side boundary instead of the proposed approximate 450mm setback. The proposed tandem car space shall not be utilised as a car parking space due to the resultant inadequate internal width and this will achieve compliance with Council's maximum number of 2 permitted offstreet car parking spaces."

- 3 The Court was required to arrange a conciliation conference between the parties, pursuant to s 34AA(2)(a) of the *Land and Environment Court Act 1979* ("LEC Act"). The conciliation conference commenced on 1 December 2021 and continued on 2 December 2021. I presided over the conciliation conference.
- 4 At 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 decision agreed upon is for the grant of the modification application subject to conditions, pursuant to s 4.55(2) of the EPA Act. The agreed conditions maintain the plans that were approved by the Council, and include a differently worded condition C1(d), which allows a third tandem car space within the garage whilst maintaining a setback of 570mm to the double width garage component and 917mm to the tandem garage component.
- 5 Although, in the course of the appeal proceedings, Ms King amended the modification application to further reduce the setback sought for the triple garage, those plans do not form part of the agreed modified consent.
- 6 As the presiding Commissioner, I am satisfied that the decision agreed upon 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, for the reason that it makes changes to the car parking arrangements without making any substantial changes to the remainder of the dwelling.

- 7 The modification application was notified by Council between 15 to 29 January 2021 in accordance with s 4.55(2)(c) of the EPA Act. In response to the notification of the application, two submissions were received. I have considered the issues raised in those submissions.
- 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 orders that:
- (1) The appeal is upheld.
 - (2) Modification Application DA86/2020/5 is approved subject to the conditions in **Annexure A**.
 - (3) The consolidated conditions of consent for DA 86/2020 are set out at **Annexure B**.

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Joanne Gray

Commissioner of the Court

[Annexure A \(273749, pdf\)](#)

[Annexure B \(542505, pdf\)](#)

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