



Land and Environment Court New South Wales

Medium Neutral Citation:	VCross Development Management Pty Ltd v Liverpool City Council [2019] NSWLEC 1606
Hearing dates:	Conciliation conference on 13-14 November 2019
Date of orders:	10 December 2019
Decision date:	10 December 2019
Jurisdiction:	Class 1
Before:	Morris AC
Decision:	See orders at [9] below
Catchwords:	DEVELOPMENT APPLICATION – subdivision – multi-dwelling housing – neighbourhood shops – roads and parking – conciliation conference – agreement between the parties – orders
Legislation Cited:	Environmental Planning and Assessment Act 1979 State Environmental Planning Policy (Sydney Region Growth Centres) 2006 State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development
Texts Cited:	Liverpool Growth Centre Precincts Development Control Plan
Category:	Principal judgment
Parties:	VCross Development Management Pty Ltd (Applicant) Liverpool City Council (Respondent)
Representation:	Counsel: C McEwen SC (Applicant) S Nash (Respondent) Solicitors: Mills Oakley (Applicant) Liverpool City Council (Respondent)
File Number(s):	2018/223884
Publication restriction:	No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against Liverpool City Council's deemed refusal of Development Application No DA-1092/2017.
- 2 The parties have been working together to address the matters raised in the Council's Statement of Facts and Contentions with the applicant preparing revised plans.
- 3 The plans that are now the subject of the application propose demolition of existing structures, staged Torrens title subdivision, demolition of existing structures and construction of 33 townhouses, 5 studios and 3 x 4 storey residential flat building containing 113 apartments, public laneways, a neighbourhood shop, 1 internal and 2 external roads, associated car parking and landscaping at 250 and 260 Sixth Avenue, Liverpool.
- 4 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 13 and 14 November 2019. I presided over the conciliation conference. Through the conciliation process, the parties have agreed on an amended design for the development.
- 5 Following the conciliation, 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 would be acceptable to them. The decision agreed upon is to uphold the appeal and to grant development consent subject to conditions of consent, pursuant to s 4.16 of the EPA Act.
- 6 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 have formed this state of satisfaction for the following reasons:
- (1) The proposed development is permissible with consent pursuant to Appendix 8 to State Environmental Planning Policy (Sydney Region Growth Centres) 2006, the land being zoned R3 – Medium Density Residential.
 - (2) The proposed development complies with all of the applicable development standards pursuant to the provisions of State Environmental Planning Policy (Sydney Region Growth Centres) 2006.
 - (3) The relevant provisions of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and the Liverpool Growth Centre Precincts Development Control Plan have been considered in the assessment of the proposed development.
 - (4) Owner's consent has been provided for the proposed development and no works are authorised under the consent to be carried out on any adjoining land.
- 7 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.

In making the orders to give effect to the agreement between the parties, the parties have not raised and I am not aware of any jurisdictional impediment to the making of these orders. Further, I was not required to make, and have not made, any assessment of the merits of the development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.

9 The Court orders that:

- (1) The applicant is granted leave to rely upon the amended plans and documentation:

Plan Name	Drawing number	Revision	Date	Prepared by
Architectural plans				
Coversheet	TP00.00	G	22 November 2017	Rothelowman
Site plan	TP00.01	E	13 November 2019	Rothelowman
Site subdivision	TP00.02	G	19 November 2019	Rothelowman
Site demolition plan	TP00.03	B	6 September 2019	Rothelowman
Overall basement plan	TP01.01	C	28 October 2019	Rothelowman
Overall ground plan	TP01.02	G	22 November 2019	Rothelowman
Overall level 1 plan	TP01.03	D	13 November 2019	Rothelowman
Overall level 2 plan	TP01.04	D	13 November 2019	Rothelowman
Overall level 3 plan	TP01.05	D	13 November 2019	Rothelowman
Overall roof plan	TP01.06	E	13 November 2019	Rothelowman

Overall site elevations	TP02.01	E	13 November 2019	Rothelowman
Site facilities plans	TP04.01	C	28 October 2019	Rothelowman
Site coverage and deep soil plan	TP04.02	C	28 October 2019	Rothelowman
Communal open space plan and total landscape area	TP04.03	C	28 October 2019	Rothelowman
Development summary	TP05.01	F	13 November 2019	Rothelowman
Apartment / townhouse unit breakdown	TP05.02	C	28 October 2019	Rothelowman
Storage schedule – building A	TP05.03	C	28 October 2019	Rothelowman
Storage schedule – building B	TP05.04	D	28 October 2019	Rothelowman
Storage schedule – building C	TP05.05	B	28 October 2019	Rothelowman
Site A storage plan 1	TP05.06	A	28 October 2019	Rothelowman
Site A storage plan 2	TP05.07	A	28 October 2019	Rothelowman
Site B storage plan 1	TP05.08	A	28 October 2019	Rothelowman
Site B storage plan 2	TP05.09	A	28 October 2019	Rothelowman
Site B storage plan 3	TP05.10	A	28 October 2019	Rothelowman

Site B storage plan 4	TP05.11	A	28 October 2019	Rothelowman
Adaptable apartment layouts	TP08.03	D	1 November 2019	Rothelowman
Site A basement plan	TP11.01	B	6 September 2019	Rothelowman
Site A ground floor plan	TP11.02	L	22 November 2019	Rothelowman
Site A level 1 plan	TP11.03	H	22 November 2019	Rothelowman
Site A level 2 plan	TP11.04	G	22 November 2019	Rothelowman
Site A level 3 plan	TP11.05	E	14 November 2019	Rothelowman
Site A roof plan	TP11.06	E	14 November 2019	Rothelowman
Site A street elevations	TP12.01	E	1 November 2019	Rothelowman
Site A street elevations	TP12.02	E	1 November 2019	Rothelowman
Site A internal elevations	TP12.03	E	9 November 2019	Rothelowman
Site A internal elevations	TP12.04	D	28 October 2019	Rothelowman
Site A internal elevations	TP12.05	F	13 November 2019	Rothelowman

Site A sections	TP13.01	D	28 October 2019	Rothelowman
Site B basement plan	TP21.01	C	13 November 2019	Rothelowman
Site B ground floor plan	TP21.02	J	22 November 2019	Rothelowman
Site B level 1 plan	TP21.03	E	22 November 2019	Rothelowman
Site B level 2 plan	TP21.04	D	13 November 2019	Rothelowman
Site B level 3 plan	TP21.05	E	13 November 2019	Rothelowman
Site B roof plan	TP21.06	D	13 November 2019	Rothelowman
Site B street elevations	TP22.01	E	13 November 2019	Rothelowman
Site B street elevations	TP22.02	C	6 September 2019	Rothelowman
Site B internal elevations	TP22.03	E	22 November 2019	Rothelowman
Site B internal elevations	TP22.04	C	6 September 2019	Rothelowman
Site B internal elevations	TP22.05	C	6 September 2019	Rothelowman

Site B sections	TP23.01	C	6 September 2019	Rothelowman
Townhouse B section	TP28.02	-	28 October 2019	Rothelowman
Civil plans				
General arrangement plan	CI-060-01	G	25 November 2019	Wood & Grieve Engineers
Road layout and intersection plans	CI-400-01	E	13 November 2019	Wood & Grieve Engineers
Stormwater drainage plan sheet 1	CI-520-01	F	26 November 2019	Wood & Grieve Engineers
Stormwater drainage plan sheet 2	CI-520-02	F	26 November 2019	Wood & Grieve Engineers
Stormwater drainage plan sheet 3	CI-520-03	E	26 November 2019	Wood & Grieve Engineers
Stormwater drainage plan sheet 4	CI-520-04	E	26 November 2019	Wood & Grieve Engineers
Subdivision plans				
Stage 1	-	H	25 November 2019	Michael Trifiro
Stage 2	-	H	25 November 2019	Michael Trifiro

Stage 3	-	H	25 November 2019	Michael Trifiro
Stage 4	-	H	25 November 2019	Michael Trifiro
Stage 5	-	H	25 November 2019	Michael Trifiro
Stage 6	-	H	25 November 2019	Michael Trifiro
Stage 7	-	H	25 November 2019	Michael Trifiro

- (2) The applicant is to pay the respondent's costs thrown away as a result of the amendment of the application under s 8.15(3) of the *Environmental Planning and Assessment Act 1979* in the agreed sum of \$2,500.
- (3) The appeal is upheld.
- (4) Development Application DA 1092/2017 (as amended) for the staged Torrens title subdivision, demolition of existing structures and construction of 33 townhouses, 5 studios and 3 x 4 storey residential flat buildings containing 113 apartments, public laneways, a neighbourhood shop, 1 internal and 2 external roads, associated car parking and landscaping at 250 and 260 Sixth Avenue, Austral, is approved subject to the conditions at annexure "A". The subdivision is to be staged as follows:

Stage	Development works
1	Demolition of existing structures, partial road construction with associated engineering works and subdivision to create 6 residue lots (numbered 1 to 6 in the approved subdivision plan). Half road width reconstruction of the section of Sixth Avenue fronting the development site.
2	Subdivision of residue lot 1 in the approved subdivision plan into 5 residential lots (numbered 12 to 16 in the approved subdivision plan) and 1 residue lot (numbered 11 in the approved subdivision plan) for the provision of temporary access arrangements and On-Site Detention Basin. Construction of dwelling houses on residential lots.
3	Subdivision of residue lot 2 in the approved subdivision plan into 6 residential lots (numbered 21 to 26 in the approved subdivision plan) and 1 residue lot (numbered 27 in the approved subdivision plan) for the provision of On-Site Detention Basin. Construction of dwelling houses on residential lots.
4	Subdivision of residue lot 3 in the approved subdivision plan into 9 residential lots (numbered 31 to 39 in the approved subdivision plan) and construction of dwelling houses on residential lots as well as secondary dwellings on 3 residential lots numbered 35, 36 and 39 in the approved subdivision plan.
5	Subdivision of residue lot 4 in the approved subdivision plan into 8 residential lots (numbered 41 to 48 in the approved subdivision plan) and construction of dwelling houses on residential lots as well as secondary dwellings on 2 residential lots numbered 41 and 48 in the approved subdivision plan.
6	Demolition of existing structures, partial road construction with associated engineering works and subdivision of residue lots 5 and 6 in the approved subdivision plan to create two residential lots (numbered 50 and 51 in the approved subdivision plan).
7	Demolition of existing structures and construction of RFB known as Building A on Lot 50 (as per the approved subdivision plan) created in Stage 6. Building A is proposed to contain 35 apartments (3 x 1 bedroom, 6 x 2 bedroom, 24 x 3 bedroom and 2 x 4 bedroom).

8	Demolition of existing houses and construction of Building B on Lot 51 (as per the approved subdivision plan) created in Stage 6. Building B is proposed to contain 40 apartments (4 x 1 bedroom, 23 x 2 bedroom, 13 x 3 bedroom).
9	Construction of Building C on Lot 51 (as per the approved subdivision plan) created in Stage 6. Building C is proposed to contain 37 apartments (13 x 2 bedroom, 22 x 3 bedroom and 2 x 4 four bedroom). Building C also provides for one neighbourhood shop with a maximum floor area of 100 square metres.
10	Decommissioning of the On-site Detention Basin and Subdivision of residue lot 27 in the approved subdivision plan into 2 residential lots (numbered 201 and 202 in the approved subdivision plan). Construction of dwelling houses on residential lots.
11	Decommissioning of On-Site Detention Basin and Subdivision of residue lot 11 into 3 residential lots (numbered 102 to 104 in the approved subdivision plan) and 1 residue lot (numbered 101 in the approved subdivision plan) for public access arrangements. Construction of dwelling houses on residential lots.

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S Morris

Acting Commissioner of the Court

[Annexure A \(1.28 MB, .pdf\)](#)

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Decision last updated: 11 December 2019