



Land and Environment Court New South Wales

Medium Neutral Citation:

**Place Studio Au Pty Ltd v The Hills Shire Council
[2023] NSWLEC 1458**

Hearing dates:

Conciliation conference on 4 August 2023

Date of orders:

17 August 2023

Decision date:

17 August 2023

Jurisdiction:

Class 1

Before:

Gray C

Decision:

The Court orders that:

- (1) The applicant is granted leave to amend Development Application DA 672/2023/JP and rely upon the Amended Plans and documents referred to in condition 1 of Annexure A.
- (2) The applicant is to pay the respondent's costs thrown away as a result of the amendment pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* as agreed in the sum of \$12,000.
- (3) The appeal is upheld.
- (4) Development Consent is granted to Development Application DA 672/2023/JP for the demolition of existing structures and construction of 280 apartments in 8 residential flat buildings 6 storeys in height, subject to conditions contained at Annexure A.

Catchwords:

APPEAL – development application – residential flat building – conciliation conference – agreement reached – orders made

Legislation Cited:

Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 8.7

Environmental Planning and Assessment Regulation 2021, ss 27, 29, 37, 38

Land and Environment Court Act 1979, s 34

State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6, ss 6.6, 6.7

State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, cl 28, 30
The Hills Local Environmental Plan 2019 cl 4.3, 7.2, 7.7, 9.7

Texts Cited:	NSW Department of Planning and Environment Apartment Design Guide 2015
Category:	Principal judgment
Parties:	Place Studio Au Pty Ltd (Applicant) The Hills Shire Council (Respondent)
Representation:	Counsel: V Conomos (Solicitor) (Applicant) K Redenbach (Solicitor) (Respondent) Solicitors: Conomos Legal (Applicant) Redenbach Legal (Respondent)
File Number(s):	2022/376862
Publication restriction:	No

JUDGMENT

- COMMISSIONER:** This appeal concerns a development application for the demolition of existing structures and the construction of a six-storey residential flat building development across eight buildings. Following the expiry of the period after which a development application is deemed to be refused, the applicant lodged an appeal pursuant to s 8.7 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 development application pursuant to ss 4.15 and 4.16 of the EPA Act. The final orders in this appeal, outlined in [9] below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 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 4 August 2023. I presided over the conciliation conference.
- At the conciliation conference, an agreement was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. The agreement is recorded in a signed agreement, the final version of which was filed on 10 August 2023, and follows the Council's approval of an application for an amendment to a development application pursuant to ss 37 and 38 of the *Environmental Planning and Assessment Regulation 2021* (EPA Regulation 2021). The amendments made to the

development application include the reduction in the number of apartments to 280, the reduction in height and floor space ratio to achieve compliance with the applicable development standards, as well as an increase in the separation between the built form on the site to achieve improved cross-ventilation and access to sunlight, and changes to the design and materiality to achieve better vertical and horizontal articulation. There was also change that consolidated the onsite detention system, and changes to allow for additional tree retention.

4 The decision agreed upon is for the grant of development consent subject to conditions of consent pursuant to s 4.16(1) of the EPA Act. The signed agreement is supported by an Agreed Statement of Jurisdictional Prerequisites that sets out the matters that the Court, in exercising the functions of consent authority, must consider before the grant of development consent. I have considered the contents of the Agreed Statement, together with the documents referred to therein, the Class 1 Application and its attachments, and the documents that are referred to in condition 1. Based on those documents, I have considered the matters required to be considered pursuant to s 4.15(1) of the EPA Act.

5 As the presiding Commissioner, I am satisfied that the decision to grant development consent to the amended application subject to conditions of consent is a decision 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 formed this state of satisfaction as each of the jurisdictional preconditions identified by the parties is met, for the following reasons:

- The proposed development is for the purpose of a residential flat building, which is permissible with consent in the R4 High Density Residential zone in which the site is located, pursuant to the The Hills Local Environmental Plan 2019 (THLEP).
- The proposed development complies with the development standard for height, consistent with cl 4.3 of the THLEP.
- The proposed development is permitted to have a floor space ratio (FSR) of 2.3:1 if it meets the criteria in cl 9.7 of the THLEP. Based on the Agreed Statement and on the architectural plans, I am satisfied that the site meets the requirements of cl 9.7(1) and the proposed development meets the requirements of cl 9.7(2). Accordingly, the applicable FSR permitted on the site is 2.3:1, with which the proposed development complies.
- The development application includes earthworks for the provision of the basement level for car parking. Based on the geotechnical desktop assessment dated 29 August 2022, I have considered the matters set out in cl 7.2(3) of the THLEP.
- Based on the Design Statement prepared by Peter Smith dated 2 June 2023 I am satisfied that the development exhibits design excellence, consistent with cl 7.7 of the THLEP.

- As required by cl 30(2) of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65), I am satisfied that adequate regard has been given to the design quality principles and to the objectives specified in the Apartment Design Guide for the relevant design criteria. Based on the compliance table prepared by James Alexander-Hatziplis dated 1 June 2023, I have considered the Apartment Design Guide and the design quality of the development when evaluated in accordance with the design quality principles, as required by cl 28(2) of the SEPP 65.
- The amended development application is accompanied by a statement of a qualified designer that verifies the design of the development, as required by s 29 of the EPA Regulation 2021.
- Consistent with the requirements of s 27 of the EPA Regulation 2021, the development application is accompanied by the BASIX certificate dated 2 June 2023.
- Consideration has been given as to whether the subject site is contaminated as required by s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021. Based on the Preliminary Site Investigation report dated 3 April 2023, the site is suitable for the proposed development.
- The site is located in the Hawkesbury-Nepean Catchment, and therefore Ch 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP B&C) applies. Based on the stormwater concept plans and the comments made by Mr Rashad Abboud at the conciliation conference, I am satisfied of the matters in ss 6.6(2) and 6.7(2) of the SEPP B&C.
- The development application was notified between 19 October 2022 and 9 November 2022, and I have considered the issues raised in the submission received during the notification period, which have largely been dealt with in the amendment to the development application.

6 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)).

7 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 development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.

8 The Court notes that:

- (1) The Hills Shire Council, the respondent, as the relevant consent authority has agreed, under s 38 of the Environmental Planning and Assessment Regulation

2021, to the applicant amending Development Application. DA 672/2023/JP.

(2) The applicant filed the updated plans and BASIX with the Court on 28 July 2023.

9 The Court orders that:

- (1) The Applicant is granted leave to amend Development Application DA 672/2023/JP and rely upon the Amended Plans and documents referred to in condition 1 of Annexure A.
- (2) The applicant is to pay the respondent's costs thrown away as a result of the amendment pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* as agreed in the sum of \$12,000.
- (3) The appeal is upheld.
- (4) Development Consent is granted to Development Application DA 672/2023/JP for the demolition of existing structures and construction of 280 apartments in 8 residential flat buildings 6 storeys in height, subject to conditions contained at Annexure A.

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J Gray

Commissioner of the Court

[Annexure A \(362054, .pdf\)](#)

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Decision last updated: 17 August 2023