



Land and Environment Court
New South Wales

Case Name: IDP 971 Richmond Pty Ltd v Blacktown City Council

Medium Neutral Citation: [2024] NSWLEC 1595

Hearing Date(s): Conciliation conference 23 August 2024

Date of Orders: 26 September 2024

Decision Date: 26 September 2024

Jurisdiction: Class 1

Before: Porter C

Decision: The Court orders:
(1) The modification application pursuant to s 4.55(8) of the Environmental Planning and Assessment Act 1979 is determined by way of approval.
(2) Development Consent No SPP-20-00002 is modified in the terms in Annexure A.
(3) Development Consent No SPP-20-00002 as modified by the Court is Annexure B.

Catchwords: MODIFICATION APPLICATION – application directly made to Court – civil works - conciliation conference – agreement between the parties – orders

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

Environmental Planning and Assessment Regulation 2021, ss 102, 113

Cases Cited: C & S Partners Mortgage and Insurance Pty Ltd v Blacktown City Council [2021] NSWLEC 1700

Category: Principal judgment

Parties: IDP 971 Richmond Pty Ltd (Applicant)
Blacktown City Council (Respondent)

Representation: Counsel:
M Sonter (Solicitor) (Applicant)
D Loether (Solicitor) (Respondent)

Solicitors:
Mills Oakley (Applicant)
Bartier Perry (Respondent)

File Number(s): 2023/263506

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). The modification application is to a Land and Environment Court development consent (*C & S Partners Mortgage and Insurance Pty Ltd v Blacktown City Council [2021] NSWLEC 1700*) ('C&S Partners'). The modification application was filed with the Court on 18 August 2023. The proposed modifications to the original consent SPP-20-00002 at 971 Richmond Road Marsden Park Lot 13 DP 1190560 are summarised as follows:

- Alterations to the access to Grange Avenue. An easement for access, construction and right of way is to be established to facilitate access to Grange Avenue until the adjoining property at 223 Grange Avenue is redeveloped, the road is constructed and dedicated to Council;
- Changes to physical works at the intersection of Roads 2 and 3 including adjustments to the battering treatment to this intersection; and
- Amendment to conditions of DA-15/02765 in relation to Road 3.

2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties on 23 August 2024. I presided over the conciliation conference.

3 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 determining the modification application and modifying the development

consent. The final agreement was submitted to the Court on 11 September 2024.

- 4 The Court notes that Blacktown City Council, as the relevant consent authority, has agreed pursuant to s 113 of the Environmental Planning and Assessment Regulation 2021 (EPA Reg), to the Applicant amending the subject modification application (amended application) to rely upon the documentation listed as follows:

No.	Drawing No	Drawing Title	Prepared By	Date
Amended Civil Plans				
1.	19-35-01-DA-000-L	Cover Sheet and Plan Index	Orion Consulting	17.05.2024
	19-35-01-DA-001-L	General Layout Plan, Notes & Legend	Orion Consulting	17.05.2024
	19-35-01-DA-001A-A	DA Application Plan	Orion Consulting	30.08.2024
	19-35-01-DA-002-L	Tree Removal & Demolition Plan Sheet 1	Orion Consulting	17.05.2024
	19-35-01-DA-003-J	Tree Removal & Demolition	Orion Consulting	07.08.2023

	Plan Sheet 2		
19-35-01-DA-004-L	Site Regrading Plan Sheet 1	Orion Consultin g	17.05.202 4
19-35-01-DA-005-J	Site Regrading Plan Sheet 2	Orion Consultin g	07.08.202 3
19-35-01-DA-006-J	Site Regrading Sections Sheet 1	Orion Consultin g	07.08.202 3
19-35-01-DA-007-J	Site Regrading Sections Sheet 2	Orion Consultin g	07.08.202 3
19-35-01-DA-100-L	Sediment and Erosion Control Concept Plan Sheet 1	Orion Consultin g	17.05.202 4
19-35-01-DA-101-K	Sediment and Erosion Control Concept Plan Sheet 2	Orion Consultin g	05.04.202 4
19-35-01-DA-	Sediment and Erosion Control	Orion Consultin	07.08.202 3

102-J	Notes and Details	g	
19-35-01-DA-200-L	Engineering Plan Sheet 1	Orion Consulting	17.05.2024
19-35-01-DA-201-K	Engineering Plan Sheet 2	Orion Consulting	05.04.2024
19-35-01-DA-210-J	Stormwater Management Plan – Basement 3	Orion Consulting	07.08.2023
19-35-01-DA-211-J	Stormwater Management Plan – Basement 2	Orion Consulting	07.08.2023
19-35-01-DA-212-J	Stormwater Management Plan – Basement 1	Orion Consulting	07.08.2023
19-35-01-DA-213-K	Stormwater Management Plan – Ground Floor	Orion Consulting	05.04.2024
19-35-01-DA-	Stormwater Management	Orion Consulting	07.08.2023

214-J	Plan – Roof	g	
19-35-01-DA-300-K	Typical Road Cross Sections	Orion Consulting	05.04.2024
19-35-01-DA-301-K	Road Longitudinal Sections Sheet 1	Orion Consulting	05.04.2024
19-35-01-DA-302-J	Road Longitudinal Sections Sheet 2	Orion Consulting	07.08.2023
19-35-01-DA-400-L	On Site Detention Catchment Plan	Orion Consulting	17.05.2024
19-35-01-DA-401-K	Interim Water Quality Catchment Plan	Orion Consulting	05.04.2024
19-35-01-DA-401B-B	Ultimate Post Development Catchment Plan	Orion Consulting	17.05.2024
19-35-01-DA-	Drainage Long	Orion Consulting	05.04.202

402-K	Sections Sheet 1	g	4
19-35- 01-DA- 403-K	Drainage Long Sections Sheet 2	Orion Consultin g	05.04.202 4
19-35- 01-DA- 404-K	Drainage Long Sections Sheet 3	Orion Consultin g	05.04.202 4
19-35- 01-DA- 405-K	Drainage Long Sections Sheet 4	Orion Consultin g	05.04.202 4
19-35- 01-DA- 406-K	Drainage Long Sections Sheet 5	Orion Consultin g	05.04.202 4
19-35- 01-DA- 407-L	Temporary Basin No.01 Plan, Sections and Details Sheet 1	Orion Consultin g	17.05.202 4
19-35- 01-DA- 408-K	Temporary Basin No.01 Plan, Sections and Details	Orion Consultin g	05.04.202 4

	Sheet 2		
19-35-01-DA-410-J	Pump Well Details and Calculations	Orion Consulting	07.08.2023
19-35-01-DA-420-B	Drainage Calculations Sheet 1	Orion Consulting	05.04.2024
19-35-01-DA-421-B	Drainage Calculations Sheet 2	Orion Consulting	05.04.2024
19-35-01-DA-422-B	Drainage Calculations Sheet 3	Orion Consulting	05.04.2024
19-35-01-DA-423-B	Drainage Calculations Sheet 4	Orion Consulting	05.04.2024
19-35-01-DA-430-B	Rainwater Tank Details	Orion Consulting	05.04.2024
19-35-01-DA-450-K	Water Quality Device Details	Orion Consulting	05.04.2024
19-35-01-DA-900-A	Road No.01 and Road No.02 Signage and	Orion Consulting	05.04.2024

		Line Marking Plan		
Supporting Documentation				
No	Document	Date		
2.	Amended Stormwater Management Report [Rev G] prepared by Orion Consulting	11 April 2024		
3.	Owners' consent in relation to Modification Application from Lot 11 in Section J DP 193074, Lot 12 DP 1190560 and Lot 110 DP 1200460	2 July 2024		

- 5 The amended modification application seeks the following changes:
- Amendments to the civil works on roads 1, 2 and 3 and associated amendments to conditions of consent (including other relevant consents that have been granted).
- 6 Accompanying the submitted s 34 agreement, the parties have provided a jurisdictional statement setting out how the proposal has satisfied the jurisdictional requirements and other matters.
- 7 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.
- 8 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

- 9 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.

- 10 I am satisfied that owners consent accompanied the modification application (as shown on the civil design plans, DA Application Plan prepared by Orion Consulting dated 30 August 2024). Paragraphs 12-15 of the jurisdictional statement sets out that owners consent has been provided for the relevant properties at 971 Richmond Road, Marsden Park (Tab 1, Class 1 Application) and the adjoining property 999 Richmond Road, 223-225 Grange Avenue Marsden Park (Tab 6, s 34 agreement bundle).
- 11 I have considered the documentation within the amended application and the parties' agreed detailed jurisdictional statement at pars 16 – 34. I accept that the proposed minor modifications to the civil engineering works will be substantially the same as the original development (s 4.55(2)(a) of the EPA Act).
- 12 With respect to subss 4.55(2)(b), (c) and (d) of the EPA Act, the modification application was notified between 4 September 2023 to 2 October 2023. One objection was received. The parties have advised the Court that the issues raised from the objection have been considered and addressed through owners consent for the easement as set out at pars 32-34 of the jurisdictional statement.
- 13 The relevant approval bodies for concurrence have been notified. Water NSW granted concurrence on 2 November 2023 and Transport for NSW granted concurrence on 3 November 2023.
- 14 I accept the parties' agreement that these provisions have been met.
- 15 With respect to s 4.55(3) of the EPA Act and the reasons for granting consent, in reviewing the parties' jurisdictional statement and *C&S Partners*, the amended application does not offend the reasons for the grant of consent, noting that the judgment reflected the s 34 agreement of the parties.
- 16 Further, I accept that the parties have adequately considered s 4.15(1) of the EPA Act as set out in the agreed jurisdictional statement, Statement of Environmental Effects prepared by Thanks Planners dated 17 August 2023 (as

filed), and documentation accompanying the modification application (including the amended application). The modification application primarily relates to civil works that do not materially alter the matters for consideration under s 4.15.

- 17 The parties agree and I accept that the provisions required to be addressed by ss 4.55(2) and 4.15 of the EPA Act have been met as evidenced in the documentation accompanying the Class 1 appeal, amended application, and supported by the jurisdictional statement.

Conclusion

- 18 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.
- 19 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.
- 20 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

- 21 The Court orders:
- (1) The modification application pursuant to s 4.55(8) of the *Environmental Planning and Assessment Act 1979* is determined by way of approval.
 - (2) Development Consent No SPP-20-00002 is modified in the terms in Annexure A.
 - (3) Development Consent No SPP-20-00002 as modified by the Court is Annexure B.

S Porter

Commissioner of the Court

Annexure A

Annexure B

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.