

Land and Environment Court

New South Wales

Medium Neutral Citation:	Charalambous v Waverley Council [2016] NSWLEC 1551
Hearing dates:	Conciliation conference on 20 September, 26 October 2016, 10 November 2016
Date of orders:	22 November 2016
Decision date:	22 November 2016
Jurisdiction:	Class 1
Before:	Brown C
Decision:	See (5) below
Catchwords:	DEVELOPMENT APPLICATION: demolition of existing dwelling and construction of a dual occupancy and strata subdivision; conciliation conference; agreement between the parties; orders
Legislation Cited:	Environmental Planning and Assessment Act 1979 , Land and Environment Court Act 1979
Category:	Principal judgment
Parties:	Costa Charalambous (Applicant) Waverley Council (Respondent)
Representation:	Mr V Conomos, Conomos Legal (Applicant) Mr S Patterson, Wilshire Webb Staunton Beattie (Respondent)
File Number(s):	2016/174571
Publication restriction:	No

Judgment

1. **COMMISSIONER:** This is an appeal against the refusal of DA-139/2016 : for the demolition of existing dwelling and construction of a dual occupancy and strata subdivision at 13 Murriverie Road North Bondi.

2. In this matter, at or after a conciliation conference, an agreement under s 34(3) of the Land and Environment Court Act 1979 (the Court Act) was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. As the presiding Commissioner, I was satisfied that the decision was one that the Court could have made in the proper exercise of its functions (this being the test applied by s 34(3) of the Court Act). As a consequence, s 34(3)(a) of the Act required me to “dispose of the proceedings in accordance with the decision”.
3. The Court Act also required me to “set out in writing the terms of the decision” (s 34(3)(b)). The orders made to give effect to the agreement constitute that document.
4. 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.
5. The final orders to give effect to the parties’ agreement under s 34(3) of the Land and Environment Court Act 1979 are:

1. The Applicant is given leave to amend the development application by substituting the following plans as the plans relied upon for the purposes of the development application:

Architectural Plans prepared by STUDIO [R] in association with Perumal Pedavoli Architects, as follows:

Drawing	Title	Issue	Date
A01	Site plan & Sediment Erosion Control Plan	B	23/09/2016
A02	Ground Floor Plan	B	23/09/2016
A03	First Floor Plan	B	23/09/2016
A04	First Floor Plan (<i>note: actually showing Roof Plan</i>)	B	23/09/2016
A05	Front Elevation	B	23/09/2016
A06	Eastern Elevation	B	23/09/2016
A07	Western Elevation	B	23/09/2016

A08	Back Elevation	B	23/09/2016
A09	Section	B	23/09/2016

2. The Applicant is to pay the costs thrown away as a result of amending the development application pursuant to section 97B of the Environmental Planning and Assessment Act 1979 in the sum of \$1,400.00 within 28 days.
3. The appeal is upheld.
4. Development Application No. DA-139/2016 for demolition of the existing dwelling and the construction of an attached dual occupancy and strata subdivision at 13 Murriverie Road, North Bondi is determined by approving the plans referred to in condition A1 of Annexure "A" and subject to the conditions of development consent set out in Annexure "A".

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Commissioner Brown

[174571.16 Brown \(C\) \(335 KB, pdf\)](#)

[174571.16 Brown - Plans - Murriverie Rd 2 \(418 KB, pdf\)](#)

[174571.16 Brown - Plans - Murriverie Rd 3 \(313 KB, pdf\)](#)

[174571.16 Brown - Plans - Murriverie Rd 4 \(257 KB, pdf\)](#)

[174571.16 Brown - Plans - Murriverie Rd 9 \(265 KB, pdf\)](#)

[174571.16 Brown - Plans - Murriverie Rd Plans 1 5-8 \(1.84 MB, pdf\)](#)

Decision last updated: 23 November 2016