



Land and Environment Court
New South Wales

Case Name: Owners Strata Plan 74232 v Waverley Council

Medium Neutral Citation: [2021] NSWLEC 1275

Hearing Date(s): Conciliation conference on 6 May 2021, final agreement filed 6 May 2021

Date of Orders: 24 May 2021

Decision Date: 24 May 2021

Jurisdiction: Class 1

Before: Pullinger AC

Decision: The orders of the Court are:
(1) The appeal is upheld.
(2) Pursuant to s 8.18(4)(b) of the Environmental Planning and Assessment Act 1979, the Court modifies Fire Safety Order, being an Order No. 1 in Part 2 of Schedule 5, issued by the Respondent to the Applicant on 1 December 2020 in accordance with the modified Fire Safety Order at Annexure 'A'.

Catchwords: DEVELOPMENT CONTROL ORDER – fire safety orders – conciliation conference – agreement between the parties – modification of order

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 8.18, 9.34
Land and Environment Court Act 1979, s 34

Texts Cited: Land and Environment Court of New South Wales, COVID-19 Pandemic Arrangements Policy (April 2021)

Category: Principal judgment

Parties: Owners Strata Plan 74232 (Applicant)
Waverley Council (Respondent)

Representation: Counsel:
S Berveling (Applicant)
S Patterson (Solicitor) (Respondent)

Solicitors:
Kreisson Legal (Applicant)
Wilshire Webb Staunton Beattie (Respondent)

File Number(s): 2020/364201

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This is a Class 1 appeal pursuant to the provisions of section 8.18 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against a Development Control Order – Fire Safety Order (the Order) issued to the Applicant by the Respondent on 1 December 2020 in relation to property at 232-234 Campbell Parade, Bondi Beach (the site).
- 2 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 6 May 2021. I presided over the conciliation conference.
- 3 Consistent with the Court's *COVID-19 Pandemic Arrangements Policy*, published on 6 April 2021, the matter was conducted by Microsoft Teams.
- 4 At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The agreement involves the Court upholding the appeal and modifying the terms of the Order.
- 5 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. The parties' decision involves the Court exercising the function under s 8.18(4)(b) of the EPA Act to modify the Order.
- 6 At issue is a portion of the external cladding to an existing residential flat building, which has been assessed as "deemed combustible external cladding".

In its current configuration, the cladding presents a risk to the spread of flame and a risk to safe egress from the building in the event of a fire emergency.

- 7 Pursuant to s 9.34 of the EPA Act, the Respondent issued the original Order to the Applicant on 1 December 2020.
- 8 Term 1 of the Order required removal of the relevant existing cladding and its replacement with a non-combustible equivalent of similar appearance.
- 9 At the conciliation conference the parties agreed the Applicant would comply with a modified Order. The proposed modification is in a form that permits the Applicant to access a recently-announced NSW Government program called "Project Remediate".
- 10 The Court reviewed correspondence dated 1 April 2021 between the NSW Building Commissioner and the Respondent.
- 11 Project Remediate is described in this correspondence as the "NSW Government's program to provide no-interest loans and an assurance service to oversee the remediation of high-risk combustible cladding on eligible residential buildings". The correspondence confirms the eligibility of the building at 232-234 Campbell Parade, Bondi Beach.
- 12 Consequently, the parties agreed to modify the terms of the Order to allow for the necessary procedural steps to formally access Project Remediate.
- 13 Having considered any jurisdictional requirements and forming the necessary view required by s 34(3) of the LEC Act, I therefore find it is appropriate to make the orders agreed to by the parties and now dispose of the matter.

Orders

- 14 The orders of the Court are:
 - (1) The appeal is upheld.
 - (2) Pursuant to s 8.18(4)(b) of the Environmental Planning and Assessment Act 1979, the Court modifies Fire Safety Order, being an Order No. 1 in Part 2 of Schedule 5, issued by the Respondent to the Applicant on 1 December 2020 in accordance with the modified Fire Safety Order at Annexure 'A'.

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M Pullinger

Acting Commissioner of the Court

Annexure A (246391, pdf)

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