



Land and Environment Court  
New South Wales

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Case Name: Platinum Property Advisors No 1 Pty ATF The Trustee for Platinum Property Advisors No 1 Trust v Northern Beaches Council

Medium Neutral Citation: [2025] NSWLEC 1124

Hearing Date(s): Conciliation conference on 18 February 2025

Date of Orders: 13 March 2025

Decision Date: 13 March 2025

Jurisdiction: Class 1

Before: Miller AC

Decision: The Court orders that:  
(1) Leave is granted to the applicant to rely on the Amended Application.  
(2) Pursuant to subss 4.55(2) and (8) of the Environmental Planning and Assessment Act 1979, Modification Application Mod2024/0473 for amendments to the internal layouts of various retail shops and residential units and reduction in the overall number of units from 49 to 47 at 28 Lockwood Avenue, Belrose is determined by way of approval.  
(3) Development Consent No DA/2020/0393 is modified in accordance with the terms in Annexure A.  
(4) Development Consent No DA/2020/0393 as modified by the Court is Annexure B.

Catchwords: APPEAL – modification application – modification of a development consent granted by the Court – conciliation conference – agreement reached – orders made

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.55  
Land and Environment Court Act 1979, ss 17, 34

Environmental Planning and Assessment Regulation  
2021 ss 100, 113

Cases Cited:	Platinum Property Advisors No 1 Pty Ltd ATF The Trustee for Platinum Property Advisors No 1 Trust v Northern Beaches Council (No 2) [2021] NSWLEC 1676
Category:	Principal judgment
Parties:	Platinum Property Advisors No 1 Pty ATF the Trustee for Platinum Property Advisors No 1 Trust (Applicant) Northern Beaches Council (Respondent)
Representation:	Counsel: M Sonter (Solicitor) (Applicant) S Patterson (Solicitor) (Respondent)  Solicitors: Mills Oakley (Applicant) Wilshire Webb Staunton Beattie (Respondent)
File Number(s):	2024/308932
Publication Restriction:	Nil

## JUDGMENT

- COMMISSIONER:** An application has been made to modify a consent issued by the Court for demolition works and construction of a shop top housing development comprising retail premises, 49 dwellings, basement car parking and landscaping at 28 Lockwood Avenue, Belrose (Lot 1 DP 1199795). The application was lodged with the Court on 21 August 2024 and sought to provide for alterations to the retail shops, piazza layout and basement levels, reduction in the size of the loading dock and changes to the lift, reconfiguration of the unit mix and reduction in apartment numbers to 47 units and deletion of Condition 93 in respect of plant equipment. The modification application was made under subss 4.55(2) and (8) of the *Environmental Planning and Assessment Act 1979* (EPA Act), as the original development consent was granted by the Court in *Platinum Property Advisors No 1 Pty Ltd ATF The*

*Trustee for Platinum Property Advisors No 1 Trust v Northern Beaches Council* (No 2) [2021] NSWLEC 1676.

- 2 The Court has the power to determine the modification application pursuant to s 17(d) of the *Land and Environment Court Act 1979* (LEC Act). The final orders in this appeal, outlined in [12] below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 3 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 18 February 2025. I presided over the conciliation conference.
- 4 At the conciliation conference, 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 was acceptable to the parties. The agreement reflects that which was signed on 18 February 2025, following the Council's approval of an application for an amendment to the modification application pursuant to s 113 of the Environmental Planning and Assessment Regulation 2021 (EPA Regulation 2021). The modification application, as amended, seeks the following changes to the development consent:
  - amendments to the internal layouts of retail shops;
  - reconfiguration of piazza layout including removal of ramps and stairs;
  - reduction in size of loading dock;
  - modifications to lift size;
  - reconfiguration of unit mix of apartments and reduction to the overall number of units from 49 to 47;
  - reconfiguration of basement levels, including reallocation of carparking spaces and revised service rooms layout; and
  - deletion of Condition No 93 - Plant Equipment.
- 5 The decision agreed upon is for the grant of the modification application subject to conditions, pursuant to subss 4.55(2) and (8) of the EPA Act. The signed agreement is supported by a Jurisdictional Statement, that sets out the jurisdictional pre-requisites that must be satisfied before the Court can exercise its functions under s 34(3). Based on the Jurisdictional Statement, the documents that accompany the Class 1 Application, and the documents

referred to in Annexure A, I have considered such of the matters referred to in s 4.15(1) of the EPA Act that are of relevance to the development the subject of the application, consistent with subss 4.55(2) and (8) 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 form this state of satisfaction on the basis that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted in accordance with s 4.55(2)(a). I reach this conclusion as the amendments concern only the layout of the development and the development remains of the same essence, being a shoptop housing development, with relatively few quantitative changes including a reduction in the number of units from 49 to 47 and minor internal and external changes to the development.
- 7 The modification application was notified by the respondent from 5 to 19 September 2024 in accordance with s 4.55(2)(c) of the EPA Act. In response to the notification of the application, four submissions were received. Consistent with s 4.55(2)(d) the parties have considered the matters raised in submissions, which included traffic and parking and retail vacancies, in reaching agreement on the amended proposal.
- 8 Section 100(3)(a) of the EPA Regulation 2021 requires a BASIX certificate if the modification application relates to BASIX development. A revised BASIX certificate (Certificate Number 106117M\_07) has been prepared by Ecoplus Consultants Pty Ltd dated 16 January 2025.
- 9 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)).
- 10 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 modification application against the discretionary matters that arise pursuant to an assessment under ss 4.55(3) and 4.15(1) of the EPA Act.

**The Court notes that:**

- 11 Northern Beaches Council, as the relevant consent authority, has agreed under s 113(1) of the Environmental Planning and Assessment Regulation 2021 to the applicant amending Modification Application No Mod2024/0473 in accordance with the plans listed in Annexure A (the Amended Application).
- 12 The Court orders that:
- (1) Leave is granted to the applicant to rely on the Amended Application.
  - (2) Pursuant to subss 4.55(2) and (8) of the *Environmental Planning and Assessment Act 1979*, Modification Application Mod2024/0473 for amendments to the internal layouts of various retail shops and residential units and reduction in the overall number of units from 49 to 47 at 28 Lockwood Avenue, Belrose is determined by way of approval.
  - (3) Development Consent No DA/2020/0393 is modified in accordance with the terms in Annexure A.
  - (4) Development Consent No DA/2020/0393 as modified by the Court is Annexure B.

**H Miller**

**Acting Commissioner of the Court**

**Annexure A**

**Annexure B**

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