



Land and Environment Court  
New South Wales

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Case Name: Koutsos v Northern Beaches Council

Medium Neutral Citation: [2025] NSWLEC 1110

Hearing Date(s): Conciliation Conference on 12 November 2024

Date of Orders: 26 February 2025

Decision Date: 26 February 2025

Jurisdiction: Class 1

Before: Byrne AC

Decision: The Court orders that:  
(1) The appeal is upheld;  
(2) Modification Application MOD2024/0346 for modification of DA220/2013 for extension of balconies and addition of roof terrace at 9-11 Victoria Parade, Manly, is approved and Development Consent No. DA220/2013 is modified subject to the conditions in Annexure A.  
(3) Development consent DA220/2013, as modified by the Court, is subject to the consolidated modified conditions set out in Annexure B.

Catchwords: APPEAL – MODIFICATION – extension of balconies and addition of roof terrace - conciliation conference – agreement reached – orders made

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.55, 8.9  
Land and Environment Court Act 1979, ss 34, 39  
  
Environmental Planning and Assessment Regulations 2021, ss 38, 113  
Manly Local Environmental Plan 2013, cl 5.10

Category: Principal judgment

Parties: Cecil Koutsos (First Applicant)  
Isabel Koutsos (Second applicant)  
Northern Beaches Council (Respondent)

Representation: Counsel:  
M Staunton (Applicant)  
J Simpson (solicitor) (Respondent)

Solicitors:  
T Sattler (Applicant)  
Northern Beaches Council (Respondent)

File Number(s): 2024/217649

Publication Restriction: No

## JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.9 of the *Environmental Planning and Assessment Act 1979* NSW (EPA Act) from the refusal by Northern Beaches Council (the Council) to modify development consent No DA220/2013 for “lower ground and ground floor alterations and additions to the existing dwelling and associated works” (approved development) on land identified as Lot 1 DP 1298672, at 9-11 Victoria Parade, Manly NSW (the Site). The modification application MOD No 2024/0346 seeks approval to amend the approved development with the extension of balconies and addition of a roof terrace (the MOD).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on-site and at Council Chambers.
- 3 At the conciliation conference the parties reached an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties and which addressed the Council’s contentions. Council accordingly approved the amendment to the Applicant’s modification application pursuant to s 113(1) of the *Environmental Planning and Assessment Regulation 2021*. The agreed position is for the Court to uphold the Class 1 appeal and amend the approved development consent No DA220/2013.

- 4 The MOD is to be finally amended with the consent of the Respondent to include the amended architectural plans, Revision B, amended landscape plans, Revision F and additional documents that arose out of the conciliation conference.
- 5 The Revision B architectural plans reduce the extent of the proposed increase in area and design of the balconies and add a landscaped planter box to the west edge of the roof terrace to aid protection of privacy to the residential flat building that adjoins to the west.
- 6 The landscape plans Revision F show landscape planter boxes at ground level, on terraces and on the roof terrace.

### *The Site*

- 7 The Site is zoned E1 Local Centre under the Manly Local Environmental Plan 2013 (MLEP) and the proposed works in the MOD are permissible with consent pursuant to the MLEP.
- 8 Development for the purpose of a residential flat building is permissible in the E1 zone and the proposed changes to the approved development are consistent with the objectives of the E1 zone.
- 9 On site is a listed heritage item being the old residential flat building at 11 Victoria Parade Manly. The provisions of cl 5.10 of the MLEP apply and the building is preserved under the existing consent and will become a part of the new residential flat building as a whole.
- 10 Under s 34(3) of the LEC Act, I must dispose of the Class 1 proceedings in accordance with the parties' decision if it is a decision that the Court could have made in the proper exercise of its functions.
- 11 The parties' decision involves the Court exercising the power under s 4.55(8) of the EPA Act to grant the modification to the approved development consent No DA220/2013.
- 12 There are jurisdictional pre-requisites which require my satisfaction before the power to grant consent under s 4.55(8) of the EPA Act can be exercised by the Court. The parties outlined jurisdictional matters of relevance in an agreed Jurisdictional Statement ("the Statement").

### *Satisfaction as to Jurisdiction*

- 13 Taking into account the parties' advice in the Statement, I am satisfied in regard to the following jurisdictional matters.

### *Section 4.55 – Environmental Planning and Assessment Act 1979*

- 14 The Modification Application and the Amended Modification Application were made pursuant to s 4.55(8) of the EPA Act. In this regard, the parties agreed that:

- The development to which the Consent as modified relates is substantially the same development as the development for which the Consent was originally granted;
- The Modification Application was appropriately notified;
- Submissions received in response to the notification of the Modification Application were considered.

- 15 Pursuant to s 4.55(3) of the EPA Act, the Council considered the amended Modification Application against:

- Such of the matters referred to in s 4.15(1) of the EPA Act as are of relevance to the proposal, as amended;
- The reasons given by the consent authority for the grant of the Consent.

### *State and Local Environmental Planning Instruments*

- 16 Statutory planning controls applicable to the Site and the proposed development were considered by the Respondent in the previous assessment undertaken for the grant of consent. The modification proposed by this application does not raise any new jurisdictional issues which would alter previous conclusions at the development assessment stage such that I am required to re-consider each of the relevant EPIs and planning controls. I refer to the analysis undertaken in the Statement at paragraphs [14] to [34] and accept the agreed position of the parties.

### *Public Participation*

- 17 The Mod in its original form was advertised and notified to adjoining and nearby landowners in accordance with Council's notification policy from 3 July to 17 July 2024. Council received 2 submissions. The submissions raised matters to do with bulk and scale, visual impact on streetscape, building height variation, parking, roof terrace, solar access, privacy, view sharing and noise.

- 18 One objector made submissions at the conciliation conference.
- 19 The objectors' submissions were considered by the Council and where appropriate have been incorporated into the SOFAC. These concerns have also been considered by the parties in the resolution of the proceedings.
- 20 I am satisfied that the objectors have been accorded procedural fairness.
- 21 In deciding whether to enter into a s 34 Agreement which will give rise to the grant of a modified development consent, the parties have had regard to the public interest, as required by s 4.15(1)(e) EPA Act and s 39(4) of the LEC Act.

### Conclusion

- 22 Based on the evidence before me, my observations on site and oral submissions made to me on site, I am satisfied that there is no jurisdictional impediment to the making of the proposed orders, the decision is one 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. 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.

### Notations

- 23 The Court notes that:

The Respondent has agreed, as the relevant consent authority, under s 38(1) of the Environmental Planning and Assessment Regulation 2021, to the Applicant amending Modification Application MOD2024/0346 to rely upon the amended plans and documents set out as follows:

Documents				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan

A1.0 1a	A	Second Basement Plan	Platform Architects	20 December 2023
A1.0 1b	A	First Basement Plan	Platform Architects	20 December 2023
A1.0 2	B	Ground Floor Plan	Platform Architects	13 November 2024
A1.0 3	A	First Floor Plan	Platform Architects	20 December 2023
A1.0 4	A	Second Floor Plan	Platform Architects	20 December 2023
A1.0 5	B	Third Floor Plan	Platform Architects	13 November 2024
A1.0 6	B	Fourth Floor Plan	Platform Architects	13 November 2024

A1.0 7	B	Fifth Floor Plan	Platform Architects	13 November 2024
A1.0 8	A	Sixth Floor Plan	Platform Architects	20 December 2023
A1.0 9	B	Roof Plan Terrace	Platform Architects	13 November 2024
A2.0 1	B	South East Elevation	Platform Architects	13 November 2024
A2.0 2	B	South West Elevation	Platform Architects	13 November 2024
A2.0 3	A	North West Elevation	Platform Architects	20 December 2023
A2.0 4	B	North East Elevation	Platform Architects	13 November 2024

A3.0 1	B	Section B	Platform Architects	13 November 2024
A3.0 3	B	Section C	Platform Architects	13 November 2024
-	B	External Finishes	Platform Architects	18 November 2024
1 of 3	F	Landscape Plan - Ground Floor and Level 1	Paul Scrivner	19 November 2024
2 of 3	F	Landscape Plan - Level 4 and 5	Paul Scrivner	19 November 2024
3 of 3	F	Detail Plan - Ground Floor, level 1,4 and 5.	Paul Scrivner	19 November 2024
Document Title		Version Number	Prepared By	Date of Document



Section J	4.0	AGA Consulta nts	12 February 2024
Nathers Certificate No. 009322835	-	Platform Architect s	20 December 2023

## Orders

24 The Court orders that:

- (1) The appeal is upheld.
- (2) Modification Application MOD2024/0346 for modification of DA220/2013 for extension of balconies and addition of roof terrace at 9-11 Victoria Parade, Manly, is approved and Development Consent No. DA220/2013 is modified subject to the conditions in Annexure A.
- (3) Development consent DA220/2013, as modified by the Court, is subject to the consolidated modified conditions set out in Annexure B.

**L Byrne**

**Acting Commissioner of the Court**

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Annexure A

Annexure B

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