



Land and Environment Court
New South Wales

Case Name: Melwood Pty Ltd v Northern Beaches Council

Medium Neutral Citation: [2025] NSWLEC 1590

Hearing Date(s): Conciliation Conference 16 July 2025

Date of Orders: 21 August 2025

Decision Date: 21 August 2025

Jurisdiction: Class 1

Before: Gray C

Decision: The Court orders that:
(1) Pursuant to s 4.55(8) of the Environmental Planning and Assessment Act 1979 (NSW) Modification Application No. Mod2025/0002, as amended, for changes to incorporate four 3-bedroom and three 2-bedroom in-fill, self-care housing units and carparking for 11 cars at 69 Melwood Avenue, Forestville, is approved.
(2) Development consent DA2022/2181 is modified in the terms in Annexure A.
(3) Development consent DA2022/2181 as modified by the Court is Annexure B.

Catchwords: APPLICATION — modification application — application to modify court-granted consent — seniors living — conciliation conference — agreement reached — orders made

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

Environmental Planning and Assessment Regulation 2021 ss 100, 102, 113

Cases Cited: Melwood Avenue Pty Ltd v Northern Beaches Council
[2024] NSWLEC 1771

Category: Principal judgment

Parties: Melwood Pty Ltd (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
G McKee (Solicitor) (Applicant)
S Patterson (Solicitor) (Respondent)

Solicitors:
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Wilshire Webb Staunton Beattie (Respondent)

File Number(s): 2024/475567

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This is an application to modify a Court granted consent for demolition works, tree removal and construction of a seniors housing development at 69 Melwood Avenue, Forestville. The original consent was granted by the Court (in proceedings 2023/253129) on 29 November 2024, following a hearing: see *Melwood Avenue Pty Ltd v Northern Beaches Council* [2024] NSWLEC 1771. The application is lodged pursuant to s 4.55(8) of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act). The Court has the power to determine the modification application pursuant to s 4.55(2) of the EPA Act. The final orders on the application, outlined in [12] below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (NSW) (LEC Act) between the parties, which was held on 16 July 2025. I presided over the conciliation conference.
- 3 Following the conciliation conference, an agreement was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. The agreement was subsequently filed on 5 August 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 amendments include a redesign of two ground floor and two first floor units, increased setbacks to constrain the changes to an envelope that is more consistent with the originally approved envelope, a reduction in the depth of unit 301, and the addition of privacy measures through privacy screens and frosted window elements. The modification application, as amended, adds a bedroom to unit 301, provides an additional 2 carparking spaces and makes other changes to improve the internal layout.

- 4 The decision agreed upon is for the grant of the modification application subject to conditions, pursuant to s 4.55(2) of the EPA Act. The signed agreement is supported by a Jurisdictional Statement. Based on the Jurisdictional Statement, the Design Verification Statement dated 11 August 2025 and the Statement of Environmental Effects dated 20 December 2024, 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 s 4.55(3) of the EPA Act.
- 5 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, for the reasons that the development remains for the purpose of seniors housing, with no change to the number of storeys or dwellings and only minor changes to the layout and floor plans.
- 6 The modification application was notified by the respondent between 14 and 28 January 2025 in accordance with s 4.55(2)(c) of the EPA Act. In response to the notification of the application, two submissions were received. I have considered the issues raised in those submissions.
- 7 Consistent with the requirements of s 100(3)(a) of the EPA Regulation 2021, the modification application is accompanied by the BASIX certificate dated 16 July 2025.

- 8 As required by s 102(2) of the EPA Regulation 2021, the amended modification application is accompanied by a design verification statement dated 11 August 2025, which verifies that the modification does not diminish or detract from the design quality of the original development, or compromise the design intent of the original development.
- 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.
- 11 The Court notes:
- (1) Northern Beaches Council as the relevant consent authority has agreed, under s 113 of the Environmental Planning and Assessment Regulations 2021 (NSW), to the Applicant amending the Modification Application No. Mod2025/0002 in accordance with the plans listed below:

Plan Name	Revision	Date	Prepared By
Architectural Plans			
GFA Calculation	D	10/07/2025	Texco Design
Landscape Calculation	D	10/07/2025	Texco Design
Deep Soil Calculation	D	10/07/2025	Texco Design

Communal Open Space Calculation	D	10/07/2025	Texco Design
Building Height Limit Diagram	D	10/07/2025	Texco Design
Shadow Diagrams 21 June	D	10/07/2025	Texco Design
Sun Eye Diagram 21 June 9AM	D	10/07/2025	Texco Design
Sun Eye Diagram 21 June 10AM	D	10/07/2025	Texco Design
Sun Eye Diagram 21 June 11AM	D	10/07/2025	Texco Design
Sun Eye Diagram 21 June 12PM	D	10/07/2025	Texco Design
Sun Eye Diagram 21 June 1PM	D	10/07/2025	Texco Design
Sun Eye Diagram 21 June 2PM	D	10/07/2025	Texco Design
Sun Eye Diagram 21 June 3PM	D	10/07/2025	Texco Design

Building Envelope Diagram – North East	D	10/07/2025	Texco Design
Building Envelope Diagram – North West	D	10/07/2025	Texco Design
Building Envelope Diagram – South East	D	10/07/2025	Texco Design
Building Envelope Diagram – South West	D	10/07/2025	Texco Design
Ground Floor Plan	D	10/07/2025	Texco Design
Level 1 Plan	D	10/07/2025	Texco Design
Level 2 Plan	D	10/07/2025	Texco Design
Level 3 Plan	D	10/07/2025	Texco Design
Roof Plan	D	10/07/2025	Texco Design
North & South Elevations	D	10/07/2025	Texco Design

East & West Elevations	D	10/07/2025	Texco Design
Sections A & B	D	10/07/2025	Texco Design
Sections C & D	D	10/07/2025	Texco Design
Detail Section 01 – Driveway Detail	D	10/07/2025	Texco Design
Door Schedule	D	10/07/2025	Texco Design
Window Schedule	D	10/07/2025	Texco Design
Material Schedule	D	10/07/2025	Texco Design
Reports			
Name	Prepared By		Date
BASIX Certificate No. 1804403M	Eco Certificates Pty Ltd		16.07.2025
Design Verification Statement	Texco Design		15.07.2025

12 The Court orders that:

- (1) Pursuant to s 4.55(8) of the *Environmental Planning and Assessment Act 1979* (NSW) Modification Application No. Mod2025/0002, as amended, for changes to incorporate four 3-bedroom and three 2-

bedroom in-fill, self-care housing units and carparking for 11 cars at 69 Melwood Avenue, Forestville, is approved.

- (2) Development consent DA2022/2181 is modified in the terms in Annexure A.
- (3) Development consent DA2022/2181 as modified by the Court is Annexure B.

J Gray

Commissioner of the Court

Annexure A

Annexure B

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