

AUSTRALIA / JUDGMENT

TLB Trading Pty Ltd v Waverley Council

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Land and Environment Court New South Wales Medium Neutral Citation: TLB Trading Pty Ltd v Waverley Council [2026] NSWLEC 1579 Hearing dates: 20 August 2026 Date of orders: 08 September 2026 Decision date: 08 September 2026 Jurisdiction: Class 1 Before: Peatman AC
Decision: The Court orders that:

- (1) Modification Application DA-286/2018/B for various internal and external modifications to the approved residential flat building on Lot 22 in Deposited Plan 19254 known as 10 Marne Street Vaocluse is approved pursuant to s 4.55(8) of the Environmental Planning and Assessment Act 1979 (NSW) subject to Annexures A and B.
- (2) Development consent DA286/2018 granted by the Land and Environment Court of NSW on 28 November 2019 and as further modified by DA286/2018/A as approved on 30 November 2020, is modified in accordance with DA-286/2018/B and Annexure A.
- (3) Development consent DA2086/2018/A as modified by the Court is in DA2086/2018/B and Annexure B. Catchwords: MODIFICATION — Court judgment — residential unit block — visual impact and views — streetscape Legislation Cited: Environmental Planning and Assessment Act 1979 (NSW), ss 4.15, 4.17, 4.55, 4.56 Land and Environment Court Act 1979 (NSW), ss 17, 34 Environmental Planning and Assessment Regulation 2021 (NSW), ss 27, 113 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 2 State Environmental Planning Policy (Housing) 2021, Ch 4, ss 147, 148, Sch 9 State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 4 State Environmental Planning Policy (Sustainable Buildings) 2022, Ch 4 Waverley Local Environmental Plan 2012, cl 4.3 Cases Cited: TLB Trading Pty Ltd v Waverley Council [2019] NSWLEC 1557 Texts Cited: NSW Department of Planning and Environment, Apartment Design Guide (July 2015) Waverley Council, Community Engagement Strategy 2025 (21 August 2023 TBC) Category: Principal judgment Parties: TLB Trading Pty Ltd (ACN 145 889 747) (Applicant) Waverley Council (Respondent) Representation: Counsel: A Boskovitz (Solicitor) (Applicant) S Patterson (Solicitor) (Respondent) Solicitors: Boskovitz Lawyers (Applicant) Finn Roache (Respondent) File Number(s): 2026/19250 Publication restriction: Nil

Judgment

COMMISSIONER: Pursuant to proceedings by TLB Trading Pty Ltd v Waverley Council [2019] NSWLEC 1557 dated 28 November 2019 (Applicant), and pursuant to s 34(3) Agreement of the Land and Environment Court Act 1979 (NSW) (LEC Act), the Court granted Development Consent

DA-286/2018 for the demolition of the existing residential flat building and garage structure, and for construction of a three storey residential flat building (nine apartments) including basement and strata subdivision into eight lots and common property for Lot 22 in Deposited Plan 19254 known as 10 Marne Street, Vacluse NSW (Site) and (DA). On 30 November 2020, an amendment to “alter internal unit configuration and layout, addition of new windows, alterations to stormwater design, terraces and planter boxes” was approved via Modification Application D/286/2018/A pursuant to s 4.56 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) under the delegated authority of Waverley Council (Council) (First MA). On 15 January 2026 pursuant to s 4.55(8) of the EPA Act the Applicant filed a Class 1 Application with the Court seeking to modify the DA, being DA/286/2018/B (Second MA). The Second MA proposes the following: Enlargement of the volume of the building through forward, rear and side projections; An increase in height together with a new part fourth storey; Introduction of a structure in the front setback; Various internal and external changes to the building; Increased fill to the rear and side yard; and Reduction in the number of residential apartments. The proceedings fall within Class 1 of the Court’s jurisdiction pursuant to s 17(d) of the LEC Act. The statutory power or function to be exercised in determining the proceedings is s 4.55(8) and as relevant s 4.55(2) of the EPA Act. The Site is trapezoidal in shape with an eastern frontage of 14.3m to Marne Street, a northern length of 40.234m, a southern length of 40.33m and a width across the rear of 17.07m. The Site has a total area of 631.6m². The Site is located within the R2 Low Density Residential Zone pursuant to the Waverley Local Environmental Plan 2012 (WLEP 2012). A copy extracted from WLEP 2012’s Land Zoning Map (taken from [10] of Council’s Statement of Facts and Contentions filed 2 March 2026) (SOFAC) The Site is bordered in broken yellow within the circular red boundary. The Site is adjoined by part one and two storey detached dwellings to the south, and a mix of four storey residential flat buildings and one two-storey detached dwelling to the north. On the opposite side of Marne Street are single and double storey dwellings. The detached dwelling on the southern corner of this block is listed as a local heritage item pursuant to WLEP 2012. The existing residential flat building on the Site, and those adjoining to the north, are prohibited in the R2 Low Density Residential Zone and existing use rights attach to the Site (SOFAC par 13). Council, as the relevant consent authority, agreed under s 113 of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPAR), to the Applicant amending its Second MA as set out in [25] below. Plan of DA with Second MA amendments, taken from pbd Architects List of Amendments dated 22 July 2026 The amendments to the Second MA as accepted by Council are: Relocate the driveway from southern boundary to provide deep soil along southern boundary; Amended southern basement wall to maintain parking numbers and vehicular movements due to lowered building height and longer driveway; Amended basement to include one motorcycle parking space, and seven bicycle parking spaces together with bulk waste storage; Reduce the number of apartments from eight to five; Retain amended lobby to improve circulation and services allowance; Amend entry portico to reduce size and bulk; Amended eastern balcony to align with approved setback; Delete proposed upper level 3; Updated elevation and material to reflect amended floor plans; Amended floor plans to accommodate reduced front setbacks and compliance with Apartment Design Guidelines; Master bedrooms relocated to eastern façade to achieve minimum National Compliance Code natural sunlight and ventilation

requirements; Amended northern pillar and parapet all to match architectural expression to street front; Amended street planter height and scale to reduce visual bulk to streetscape; Amended roof plant and extent of screening; and Reduced balcony width as required by Council and rounded southern eastern façade corner to match balcony. The owner of the Site is the Applicant. The Court arranged a conciliation conference under s 34(1) of the LEC Act between the parties, which was held on 20 August 2026. I presided over the conciliation conference. 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. This decision involved the Court approving the Second MA. 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 4.55(8) of the EPA Act to determine the Second MA. There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings and explained how they have been satisfied as set out below. Section 4.55(2)(a) of the EPA Act requires the Court as the consent authority to be satisfied 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, and before the DA was modified. The parties agree that the Second MA is quantitatively, and qualitatively substantially the same development as the DA. The parties refer to the matters set out in the parties' jurisdictional statement together with the assessment in the Statement of Environmental Effects prepared by G Karavanas of GSA Planning dated 15 December 2025 (Class 1 Application, tab 3 pp 2-4). Section 4.55(2)(c) provides that the Second MA is to be notified. The Second MA was notified in accordance with Council's Waverley Community Engagement Strategy 2025 on 26 February 2026. Submissions were made by six landowners, which are summarised in Council's SOFAC pars 2 (a)-(d). Following negotiations between the parties, the Applicant amended its Second MA as set out in [24] below, and Council considers the objectors' concerns were satisfied. With the Applicant's consent, Council renotified the amended material on 7 August 2026. One landowner's lawyer wrote to Council to advise that his client now accepts the Second MA in its amended form. The objectors were invited to the commencement of the hearing on site on 20 August 2026, but none of the objectors advised Council they would appear. Subsequently the Court ordered the hearing be terminated, and the matter proceed pursuant to a conciliation conference under s 34(1) of the LEC Act. Section 4.55(3) of the EPA Act requires a consideration of relevant matters under s 4.15(1) of the EPA Act together with the reasons given for the DA. These matters are set out below: The Second MA contravenes the Height of Buildings development control standard in cl 4.3 of WLEP 2012. The parties are satisfied that the proposed height is acceptable as there will be no appreciable change to the approved height, bulk and scale, and that the amenity of adjoining dwellings and the public domain has been considered by the parties. Further, the parties agree that the additional height is required to facilitate the construction of the building. The parties have considered the jurisdictional prerequisites as set out in WLEP 2012, and agree that all jurisdictional prerequisites have been satisfied. This consideration includes the Stormwater Management Plans by Adams Structural and Civil Engineering referred to in [24] below. The parties are satisfied that the land is not contaminated,

and have considered the relevant parts of Ch 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021. The requirements of the State Environmental Planning Policy (Sustainable Buildings) 2022 have been satisfied by an updated BASIX Certificate No 1823152M_2 dated 22 July 2026. A condition of consent in Annexure B requires the Applicant to comply with the commitments indicated in the BASIX Certificate as required by s 27 of the EPAR. Nothing arises in the amended Second MA in relation to Ch 2 – Vegetation in non-rural areas under the State Environmental Planning Policy (Biodiversity and Conservation) 2021. The parties have taken into consideration Ch 4 of the State Environmental Planning Policy (Housing) 2021 including – Section 147: The design principles for residential apartment development set out in Sch 9; and the Apartment Design Guide. Section 148(2)(a): The amended Second MA satisfies the car parking requirements; Section 148(2)(b): The amended Second MA satisfies the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide. Section 148(2)(c): Requires that the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide. The parties agree that the ceiling height complies with s 148(2)(c). The conditions of consent in Annexure A are agreed by the parties, and are lawful having regard to s 4.17(1) of the EPA Act and the relevant legal principles. As set out above, I am satisfied that the parties’ decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act. As the parties’ decision is a decision 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. The Court notes that Waverley Council, as the relevant consent authority, has agreed, under s 113 of the Environmental Planning and Assessment Regulation 2021 (NSW), to the Applicant amending its Modification Application No DA/286/2018/B in accordance with the documents below:

Architectural Plans prepared by pbd Architects job: 2523 Drawing No. Rev. Title Dated Received by Council
DA100 8 Basement Plan 8/7/26 9/7/26 DA101 8 Ground Floor Plan 8/7/26 9/7/26 DA102 8 Level 1 Plan 8/7/26 9/7/26 DA103 8 Level 2 Plan 8/7/26 9/7/26 DA105 7 Roof Plan 8/7/26 9/7/26 DA200 6 Elevation Sheet 1 8/7/26 9/7/26 DA201 6 Elevation Sheet 2 8/7/26 9/7/26 DA300 8 Section Sheet 1 8/7/26 9/7/26 DA400 3 Finishes Sheet 1 8/7/26 9/7/26 BASIX Certificate #180754_3 prepared by JHA Consulting Engineers dated 12 August 2026. Stormwater Management Plans prepared by Adams Structural and Civil Engineering, Project No. 250661, Drawing No. C000 Rev. 2 dated 29/06/2026, Drawing No. C001 Rev. 2 dated 29/06/2026, Drawing No. C005 Rev. 4 dated 08/07/2026, Drawing No. C006 Rev. 4 dated 08/07/2026, Drawing No. C010 Rev. 2 dated 29/06/2026, Drawing No. C012 Rev. 2 dated 29/06/2026, Drawing No. C020 Rev. 2 dated 29/06/2026. Report on Geotechnical Desktop Investigation 242743.00 prepared by Douglas Partners and dated 9/7/26 and received by Council on 9/7/26. Design Verification Statement prepared by pbd Architects dated 22 July 2026.

Orders

The Court orders that: Modification Application DA-286/2018/B for various internal and external modifications to the approved residential flat building on Lot 22 in Deposited Plan 19254 known as 10 Marne Street Vacluse is approved pursuant to s 4.55(8) of the Environmental Planning and Assessment Act 1979 (NSW) subject to Annexures A and B. Development Consent DA286/2018 granted by the Land and Environment Court of NSW on 28 November 2019 and as further modified by DA286/2018/A as approved on 30 November 2020, is modified in accordance with DA-286/2018/B and Annexure A. Development consent DA2086/2018/A as modified by the Court is in DA2086/2018/B and Annexure B. M Peatman Acting Commissioner of the Court

Annexure A (384 KB, pdf) Annexure B (477 KB, pdf) DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated. Decision last updated: 08 September 2026

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Prepared on 30 October 2026 · Esheria