NSW Land & Environment Court

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KATOOMBA GOSPEL TRUST v. BLUE MOUNTAINS CITY COUNCIL [1994] NSWLEC 108 (1 July 1994)

LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES

RECORD OF HEARING

Coram: Talbot J

Number: 40097 of 1994

Matter: KATOOMBA GOSPEL TRUST

v

BLUE MOUNTAINS CITY COUNCIL

Keywords: Building application - generally in accordance with approved plans. Development consent - construction and meaning.

Hearing Date: 24 JUNE 1994

Judgement: RESERVED

Judgement Date: 1 JULY 1994

Appearances: Applicant: Mr C McEwen (Barrister)

Respondent: Mr T Cork (Solicitor)

Solicitors: Applicant: Robilliard & Robilliard

Solicitors

Respondent: McPhee Kelshaw

Solicitors

IN THE LAND AND **MATTER No: 40097 of 1994**

ENVIRONMENT COURT **CORAM: TALBOT J**

OF NEW SOUTH WALES **DECISION DATE: 1 JULY 1994**

KATOOMBA GOSPEL TRUST

Applicant

v

BLUE MOUNTAINS CITY COUNCIL

Respondent

JUDGEMENT

These class 4 proceedings arise out of a dilemma created by the council following the lodgement of a building application consequent to the determination of a development application on appeal to this Court by granting of consent to the construction of a church building, associated car parking and drainage on Lot 18 DP 734867 Denison Road, Katoomba.

The council has deferred determination of the building application on the ground that the building plans lodged are not in accordance with the consent granted by this Court in Matter No. 10234 of 1993.

The alleged discrepancies can be summarised as follows:-

1. The original plans showed a double door opening in the western elevation of the building whereas the building plans propose only a single door in order to accommodate louvred ventilation grilles.

2. The orientation of a switch room, store room and a generator air conditioning room has been changed in the building plans and air conditioning units previously designated as being contained within the envelope of the building will protrude from the western facade partially below ground level behind a retaining wall.

3. A grassed "V" drain is to be built to the south of the church in an area within a 15 metre buffer zone required by condition 7 of the consent.

4. The approved lighting layout has been changed to accommodate amendments made to the car park plan necessitated by the conditions of consent.

Although the grassed "V" drain was not specifically shown on any plan approved by the Court, no inconsistency is raised by including it in the building plans. Condition 8 of the development consent required that details of drainage are to be as determined by engineering design and to the approval and satisfaction of council's engineer. The condition required that the plans and calculations should be submitted with the building application for council's consideration and approval. Condition 7 required the preparation of a landscaping plan for submission to and approval by council prior to the commencement of any work. It was in the context of the landscaping of the site that the condition referred to the provision of a 15 metre buffer zone adjacent to the boundaries of the site. A grassed "V" drain is not inconsistent with the provision of a landscaped buffer. Even if the construction of the drain necessitates the removal of existing trees and other vegetation any adverse impact can be addressed in the landscaping plan submitted in accordance with condition 7. The area to be disturbed is only one metre wide and is generally to be located at the outer edge of the zone of visual impact.

It was suggested by the council that because the site of the drain may not be in a Principal Development Area defined by cl 30 of the LEP, the carrying out of the work might be prohibited development unless the applicant makes a successful SEPP 1 objection. Development for the purpose of providing access or utility services is expressly excluded from the effect of cl 30. Utility services are not defined in the LEP although drainage is one of the aspects dealt with under the heading of Services in cl 10.8. A Principal Development Area is required to have a boundary set back of at least 15 metres in some cases and at least 10 metres in others. It is reasonable to expect that drainage lines will intrude into any area of set back. I accept that the proposed drain is a utility service within the meaning of cl 30 of the LEP.

Condition 13 of the consent requires that development be carried out in accordance with the report prepared by Mr Michael Taylor, on lighting. Mr Taylor's report was prepared on the basis that the car park would be constructed in accordance with the plans submitted in support of the development application. It is obvious that the purpose of the condition is to ensure that the lighting plan for the site does not conflict with what was proposed by Mr Taylor and that the impacts from the lighting do not exceed his predicted levels. There is no suggestion that the lighting now proposed will be inconsistent with the proposals and conclusions expressed by Mr Taylor notwithstanding the amended configuration to accommodate the changes necessitated by the conditions of consent.

The remaining question is whether the changes to be made to the facade along the western elevation of the church are such that before the building plans can be approved, the applicant is required to make application for an amendment to modify the consent pursuant to s 102 of the Environmental Planning and Assessment Act (the EPA Act).

The approval by the Court stated that the development application for the construction of the church building, car parking and drainage be generally in accordance with nominated plans. It is not appropriate to apply the strict rules of construction and interpretation to determine the meaning of a development consent. The words are to be read and understood in the context of the document in which they are found. They are not to be scrutinised in the same way as words used in a statute of the Parliament. An over technical approach is not necessary.

The reference to the development being "generally in accordance with" the plans recognises that some latitude will be tolerated. In the overall context of this development, the changes proposed are not, in my opinion, significant. The protrusion of the air conditioning units beyond the face of the wall will not be discernible except from within a few metres of the building and not at all from outside the site. Whether the proposed door is a single door or double door is immaterial. The vertical envelope of the wall will not be changed. The proposed changes are minor to the extent that they are minimal.

Having regard to the extent of controversy surrounding the development application, it is understandable that the council has been cautious in its approach to the consideration of the building plans. However its pedantic response is unwarranted even after having regard to the number of objections.

No other matters having been brought to my attention, I am satisfied that the plans lodged in support of the building application show development

generally in accordance with the plans approved by the Court on 26 November 1993 in proceedings 10234 of 1993.

The class 4 application claims relief only in the form of a declaration to the above effect. There is no application for an order for costs and neither party made submissions in that respect.

I grant leave to the parties to file draft minutes of orders, if formal orders are required.

I HEREBY CERTIFY THAT THIS AND THE PRECEDING 4 PAGES ARE A TRUE AND ACCURATE RECORD OF THE REASONS FOR JUDGEMENT HEREIN OF THE HONOURABLE MR JUSTICE TALBOT

ASSOCIATE