



Planning & Development Law: Amended Plans affixed to Joint Expert Reports

Date : July 21, 2017

Joint Conferencing

A recent trend occurring in Land and Environment Court Class 1 Development Appeals is where an Applicant's expert presents at a joint expert report conference with a set of amended plans that the Respondent's expert is expected to consider for the purpose of the joint report. Often, this occurs where a hearing is listed within a very short time period from the joint conference creating confusion for the Respondent's expert in relation to whether they are required to consider the amended plans for the purposes of the joint conference. This trend also creates difficulties for Local Council Respondents in relation to notification of amended plans to objectors, preparation of draft conditions of consent and assessment of the plans prior to the hearing due to the tight time constraints.

Directions in relation to amended plans

Recently, in [Landco \(NSW\) v Camden Council \[2017\] NSWLEC 86](#) Robson J made directions as duty Judge in a Class 1 Development Appeal for a similar situation.

The directions sought were in relation to the delay in filing a joint town planning expert report where the hearing was to be listed within seven days. During the joint conferencing process a dispute arose between the experts because the Applicant's expert annexed a full set of architectural plans to his version of the draft joint expert report. The Respondent's expert was not prepared to consider the amended plans and removed the plans and a portion of the report. After multiple drafts of the report neither expert was prepared to complete or sign a final report.

His Honour was tasked with determining whether the joint expert reporting process had been thrown off course by the inclusion of the Applicant's amended plans.

The court was not provided with a set of the plans subject to the joint expert conferencing process, as such his Honour was unable to determine:

- whether the plans contained significant amendments to the plans that were otherwise subject to the Class 1 appeal,
- whether the amendments were appropriate amendments, or
- whether the plans amounted to a new development application (at [16]).

His Honour noted at [27] that any attempt by the Applicant, or its expert, to rely on amended plans would require an application to be made to the court in line with its practice note ([see para 90 and 91 of the Class 1 Development Appeal Practice Note](#)).



His Honour further noted that whilst experts should bring to the conference their notes, background materials, surveys, studies, photographs, montages etc and that does not allow carte blanche for an expert to seek to raise matters that would otherwise require a formal amendment. His Honour also highlighted that experts are free to express any matters of disagreement within the joint expert report. Sketches providing alternative solutions are a legitimate part of joint conferencing, as provided by [26] [Land & Environment Court's Conference of Expert Witnesses Policy](#), however whether amended plans can be considered sketches is a questions yet to be determined by the Court.

In making the directions His Honour provided two relevant notes at [2]:

Notes:

(a) To the extent that any expert engaged by a party is seeking to rely on amended plans for the purposes of an expert report, this is not indicative that that party will be able to rely on amended plans in the hearing.

(b) The experts are to be informed that the joint report is not a vehicle to provide significant changes to plans that are presently before the Court, and that have previously been the subject of amendments.

Takeaways

Whilst the case did not determine whether it is appropriate for Applicant's experts to present at the joint conference with a full set of amended plans, it is clear that where this does occur, the Respondent's expert should articulate within the joint report areas of disagreement, including in relation to the amended plans.

Further, the Applicant is still required to take the necessary steps required by the Practice Note to rely on the amended plans.

Contact our expert team of planning lawyers, local government lawyers and environmental lawyers in Parramatta on 1800 300 308 or info@matthewsfolbigg.com.au