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Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Hercules St Developments Pty Limited v Ashfield Council (NSWLEC) - planning law - modified development application not substantially the same as original

Chow v Chow (No 1) (NSWSC) - trustees for sale - disagreement who should be trustees – factors to be considered by the Court

Summaries With Link (Five Minute Read)

Hercules St Developments Pty Limited v Ashfield Council [2015] NSWLEC 1378

Land and Environment Court of New South Wales

Fakes C

Planning law - Ashfield Council granted consent to a development application for the construction of an eight level mixed use development - the applicant lodged a modification application to replace an area set aside for communal open space on residential level 7 with two apartments, and to move the communal open space and associated structures to the roof – deemed refusal – appeal to Land and Environment Court - s97AA *Environmental Planning and Assessment Act 1979* (NSW) - *Ashfield Local Environmental Plan 2013* - Council contended modification application should be refused as it was not substantially the same as the original development - would increase the number of apartments and the overall height of the building - held: the modified development was not substantially the same as the original development - the Court therefore had no jurisdiction to consider the proposal on its merits - s96(2) *Environmental Planning and Assessment Act 1979* (NSW) - appeal dismissed.

[Hercules](#)

Chow v Chow (No 1) [2015] NSWSC 1347

Supreme Court of New South Wales

Young AJA

Trustees for sale - sons became co-owners of real property after death of mother - agreement that trustees be appointed for sale - s66G *Conveyancing Act 1919* (NSW) - disagreement as to who should be trustees - held: when deciding identity of trustees for sale, where the parties do not agree, the Court considers four factors - the Court tends to prefer the preference of a party with a greater interest in the land - trustees should be independent and as free from conflict of interest as possible - trustees should have appropriate skill, expertise, and experience, particularly where they have more active duties than merely selling a piece of real estate - the Court should endeavour to get the best value for the parties' money, and, as between two otherwise equal proposals, the cheaper is to be preferred - *Arrow Custodians Pty Limited v Pine Forests of Australia Pty Limited*[2006] NSWSC 341 - considering these factors, the trustees favoured by the plaintiff and first defendant should be appointed.

[Chow](#)

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