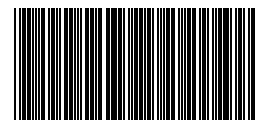




Filed: 9 March 2023 1:58 PM



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Form 20
UCPR 6.2

NOTICE OF MOTION

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2022/00140932

TITLE OF PROCEEDINGS

First Applicant	Darijo Dugandzic
First Respondent	RANDWICK CITY COUNCIL ABN 77362844121

FILING DETAILS

Filed for	Darijo Dugandzic, Applicant 1
Legal representative	ANTHONY JAMES WHEALY
Legal representative reference	
Telephone	02 8289 5872

NOTICE OF LISTING

If this Notice of Motion has been listed, a Notice of Listing must be attached and served with the Notice of Motion.

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Notice of Motions (Chambers) (e-Services), along with any other documents listed below, were filed by the Court.

Notice of Motion (UCPR 20) (NOM.pdf)
Affidavit (affidavit.pdf)

[attach.]

Form 20 (version 3)
UCPR 18.1 and 18.3

NOTICE OF MOTION

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2022/140932

TITLE OF PROCEEDINGS

Applicant	Darijo Dugandzic
Respondent	Randwick City Council

FILING DETAILS

Filed for	Darijo Dugandzic , Applicant
Legal representative	Anthony Whealy, Mills Oakley Level 7, 151 Clarence Street Sydney NSW 2000
Legal representative reference	AJWS/JZOS/3505082
Contact name and telephone	James Oldknow (02) 8035 7875
Contact email	joldknow@millsOakley.com.au

PERSON AFFECTED BY ORDERS SOUGHT

Randwick City Council, Respondent

HEARING DETAILS

This motion is listed at **9:30am on 15 March 2023**.

ORDERS SOUGHT

The Court notes that:

1. The Applicant has filed the proposed amendment to Development Application No. DA/172/2022, being the documents listed in Annexure 'A' (**'Further Amended Application (2)'**), as Exhibit JTO-02 to the affidavit filed in support of this Notice of Motion affirmed on 9 March 2023.

The Court directs that:

2. The Notice of Motion is granted.
3. The Applicant is granted leave to rely on the Further Amended Application.
4. The Court, in exercising the functions of Randwick City Council, as the relevant consent authority, under s.39(2) of the *Land and Environment Court Act 1979*, agrees, under clause 55(1) of the *Environmental Planning and Assessment Regulation 2000* (**'EPA Reg'**), to the Applicant amending Development Application No. DA/172/2022 in accordance with Further Amended Application (2), being the documents listed in Annexure 'A'.
5. Any other order the Court sees fit.

SIGNATURE

Signature of legal representative

Capacity

Date of signature



Solicitor on Record by his Employed Solicitor

9 March 2023

NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

REGISTRY ADDRESS

Street address

The Land and Environment Court of NSW
Level 4, 225 Macquarie Street
Windeyer Chambers
Sydney NSW 2000

Postal address

GPO Box 3565
SYDNEY NSW 2001

Telephone

02 9113 8200

ANNEXURE A

Darijo Dugandzic
v
Randwick City Council

Land and Environment Court of NSW Proceedings No. 2022/140932

Index to Further Amended Development Application (2)

TAB	DOCUMENT	DATE
1.	Revised Clause 4.6 written request in relation to building height and active street frontages prepared by Planning Ingenuity including: <ul style="list-style-type: none">- Clean version; and- Tracked change version.	8 March 2023
2.	Detail Section, Drawing no. DA311 (Issue B) prepared by PBD Architects	3 March 2023
3.	Solar Access Diagrams, Sun Eye View (for proposal and) 122 Todman Ave, including: <ul style="list-style-type: none">- Sheet 1 DA534 (Issue B)- Sheet 2 DA544 (Issue B)	6 March 2023
4.	Solar Access Diagrams, Sun Eye View DCP Blocks and 122 Todman Ave, including: <ul style="list-style-type: none">- Sheet 1 DA546 (Issue B)- Sheet 2 DA547 (Issue A)	6 March 2023
5.	Solar Access Diagrams, Sun Eye View (for proposal,) Future Potential Developments and 122 Todman Ave, including: <ul style="list-style-type: none">- Sheet 1 DA548 (Issue A)- Sheet 2 DA549 (Issue A)	6 March 2023
6.	Realestate.com floor plans, including: <ul style="list-style-type: none">- Unit 12, 122 Todman Ave- Unit 13, 122 Todman Ave	-
7.	Overlay - Future DCP Block Plan overlaid onto the DCP block control plan	-
8.	Revised BASIX Certificate, NatHERS Certificate, BASIX Assessment Report and stamped plans	7 March 2023

Form 40 (version 3)
UCPR 35.1

**AFFIDAVIT OF JAMES THOMAS OLDKNOW
9 MARCH 2023**

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2022/140932

TITLE OF PROCEEDINGS

Applicant	Darijo Dugandzic
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Respondent	Randwick City Council
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FILING DETAILS

Filed for	Darijo Dugandzic , Applicant
Legal representative	Anthony Whealy, Mills Oakley Level 7, 151 Clarence Street Sydney NSW 2000
Legal representative reference	AJWS/JZOS/3505082
Contact name and telephone	James Oldknow (02) 8035 7875
Contact email	joldknow@millsoakley.com.au

AFFIDAVIT DETAILS


Name	James Thomas Oldknow
Address	Level 7, 151 Clarence Street, Sydney NSW 2000
Occupation	Solicitor
Date	9 March 2023

I, James Thomas Oldknow, affirm:

1. I am a solicitor employed by the solicitor on the record for the Applicant, Anthony Whealy, and have day to day carriage of this matter under the supervision of Mr Whealy.
2. I make this affidavit in support of the Notice of Motion filed on 9 March 2023.
3. In preparing this affidavit, I have had discussions with the Applicant and his consultants, and to the best of my knowledge, information and belief, the contents of this affidavit are true and correct.
4. Exhibited before me at the time of swearing this affidavit is a bundle of documents titled "JTO-02" ('**Exhibit**'). Each document in the Exhibit is behind a sequentially numbered tab.

Background

5. The background facts contained within the Affidavit of Amelia Galina Adams affirmed and filed on 21 October 2022 and within the Affidavits of James Thomas Oldknow affirmed and filed on 9 and 10 February 2023 are not repeated.
6. A summary of the further background facts that have occurred since that time are set out below.
7. On 9 February 2023, the Applicant filed a Notice of Motion and supporting Affidavit seeking leave to further amend the Development Application in accordance with the amended material contained with Exhibit JTO-01.
8. On 10 February 2023, the Applicant filed a supplementary Affidavit of James Thomas Oldknow annexing further amended material to be added to Exhibit JTO-01.
9. On 15 February 2023, Commissioner O'Neill granted the Applicant leave to rely on the amended material contained with Exhibit JTO-01, including the additional annexures to the supplementary Affidavit filed on 10 February 2023.
10. On 24 February 2023, a supplementary landscaping joint expert report, prepared by Ross Shepherd (for the Applicant) and David Meredith (for the Respondent) was filed with the Court ('**Supplementary Landscaping JER**').



11. On 27 February 2023, a supplementary town planning and urban design joint expert report, prepared by Jeff Mead (for the Applicant), Rohan Dickson (for the Applicant), Tegan Ward (for the Respondent) and Gabrielle Morrish (for the Respondent) was filed with the Court (**'Supplementary Town Planning and Urban Design JER'**).

Respondent's Amended Statement of Facts and Contentions

12. In summary, the Respondent's ASOFAC raises the following contentions in these proceedings:

- a. Contention 1: Community Infrastructure – there is no community infrastructure as required under clause 6.17(2) of *RLEP 2012*.
- b. Contention 2: Permissibility – the proposal not permissible within the B2 zone.
- c. Contention 3: Zone Objectives - the proposal is not compatible with the existing or desired future character of the local area.
- d. Contention 4: Height of Buildings – the proposal does not comply with the development standard for height of buildings pursuant to clause 4.3 of, *RLEP 2012*, nor is the Clause 4.6 request adequate to support the contravention.
- e. Contention 5: Design Excellence – the proposal fails to exhibit design excellence as required under Clause 6.11 of *RLEP 2012*.
- f. Contention 6: Desired Future Character – the proposal is not compatible with the desired character of local area due to the bulk, scale and poor physical design elements.
- g. Contention 7: Block and Lot Layout – the bulk and scale of the proposed development has an unacceptable impact on the public domain and surrounding developments.
- h. Contention 8: Floor to Ceiling Heights – the proposed floor to ceiling heights are inadequate to provide the required amenity for the future occupants.
- i. Contention 9: Active Street Frontages – the proposal does not contribute to retail activation of the commercial core and the future Bowral Street Plaza.
- j. Contention 10: Laneway/Shared Way Zone – the location of the shared way link is inconsistent with the Block Diagrams 28 B and 28C in Part 8 of *RDCP 2013*.
- k. Contention 11: Western Building Façade – the western building façade is excessive in its bulk and scaled as viewed from the streetscape.
- l. Contention 12: Amenity – the proposal does not comply with the provisions of *SEPP 65* and *ADG* in relation to acoustic privacy, landscaping, communal open space, cross ventilation and solar access.



- m. Contention 13: Landscaping – insufficient landscaping details provided.
- ~~n. Contention 14: Waste Management – the waste management plan does not comply with the relevant controls in Section 22 of RDCP 2013.~~
- o. Contention 15: Heritage – insufficient information in relation to the detrimental impact upon the neighbouring heritage item, pursuant to objectives in Clause 5.10 RLEP.
- p. Contention 16: Public Interest – the proposal is not in the public interest.
- q. Contention 17 – Sustainability Measures – insufficient information.
- ~~r. Contention 18 – External Referrals – insufficient information.~~
- ~~s. Contention 19 – Public Art – insufficient information.~~

Circumstances prompting the proposed amendments

13. I am instructed and I verily believe, that the Applicant seeks to further amend the Development Application in response to the Respondent's Amended SOFAC and the Supplementary Town Planning and Urban Design Joint Expert Report.

The proposed amendments

14. I am instructed by the Applicant's town planning expert, Mr Jeff Mead, that in response to paragraphs 16 to 18 of the Supplementary Town Planning and Urban Design Joint Expert Report, a revised clause 4.6 written request has been prepared to reflect the maximum building height and active street frontage of the revised architectural scheme dated 8 February 2023, behind Tab 2 of Exhibit JTO-01.
15. I have been instructed by the Applicant to seek leave from the Court to rely on the Revised Clause 4.6 written request in relation to building height and active street frontages, prepared by Planning Ingenuity dated 8 March 2023, located at **Tab 1** of the Exhibit.

Additional Information

16. I am further instructed by Mr Mead and the Applicant's urban design expert, Mr Rohan Dickson, that a range of additional information has been prepared in response to the Supplementary Town Planning and Urban Design Joint Expert Report, which can be summarised as follows:
- a. in response to paragraph 26, an additional detailed floor to floor section has been prepared with additional dimensions;
 - b. in response to paragraphs 36 to 38, additional solar access diagrams have been prepared showing a comparison between the overshadowing impacts of the proposed



development, development envisaged by the K2K DCP Block Controls and development envisaged with respect to realistic land amalgamation patterns;

- c. additionally, in response to paragraphs 36 to 38, floor plans of 2 of the overshadowed units in 122 Todman, Avenue have been obtained; and
 - d. in response to paragraph 45 and the comments contained within the table listing the objectives of clause 6.11 of the *Randwick Local Environmental Plan 2012*, an overlay of the approved 'Scape Todman' development scheme/laneway design at (development consent no. DA/414/2020) at 172-180 Anzac Parade & 116R Todman Avenue, Kensington and the applicable K2K block control laneway design has been prepared.
17. Accordingly, I have also been instructed by the Applicant to seek leave from the Court to rely on the following additional information in support of the proposed amended development:
- a. Detail Section, Drawing no. DA311 (Issue B) prepared by PBD Architects dated 3 March 2023, located at **Tab 2** of the Exhibit;
 - b. Solar Access Diagrams, Sun Eye View (for proposal and) 122 Todman Ave, including Sheet 1 DA534 and Sheet 2 DA544 (Issue B) dated 6 March 2023, located at **Tab 3** of the Exhibit;
 - c. Solar Access Diagrams, Sun Eye View DCP Blocks and 122 Todman Ave, including Sheet 1 DA546 (Issue B) and Sheet 2 DA547 (Issue A) dated 6 March 2023, located at **Tab 4** of the Exhibit;
 - d. Solar Access Diagrams, Sun Eye View (for proposal,) Future Potential Developments and 122 Todman Ave, including Sheet 1 DA548 and Sheet 2 DA549 (Issue A) dated 6 March 2023, located at **Tab 5** of the Exhibit;
 - e. Real Estate.com floor plans for Unit 12 and Unit 13, 122 Todman Ave, Kensington, located at **Tab 6** of the Exhibit;
 - f. Overlay - Future DCP Block Plan overlaid onto the DCP block control plan, located at **Tab 7** of the Exhibit;
 - g. Revised BASIX Certificate, NatHERS Certificate, BASIX Assessment Report and stamped plans dated 7 March 2023, located at **Tab 8** of the Exhibit.

Reduction in environmental impact and improved community outcome

18. I am informed by the Applicant's consultants and verily believe, that the proposed amendments to the further amended development application will result in a reduced environmental impact and an improved community outcome generally for the following reasons:



a. Provision of additional information in relation to:

- i. Overshadowing;
- ii. Floor to floor ceiling heights;
- iii. Height; and
- iv. Sustainability commitments,

to enable a proper assessment of the Development Application.

Hearing Dates and Timetable

19. I have reviewed Court timetable and am of the view that the final date for the part heard hearing on 15 March 2023 will not be impacted and any amendments/provision of additional information at this stage of the proceedings can be accommodated.

Just, quick and cheap resolution of the proceedings

20. If leave is granted to the Applicant to amend the proposal, the number and scope of contentions in dispute between the parties will likely be reduced.

21. A reduction in the scope of contentions which the parties are required to litigate at the hearing ought to promote the just, quick and cheap resolution of the proceedings.

AFFIRMED at

SYDNEY

Signature of deponent

Name of witness

Amelia Adams

Address of witness

Level 7
151 Clarence Street
SYDNEY NSW 2000

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1. I saw the face of the deponent.
- 2. I have known the deponent for at least 12 months.

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.