



Land and Environment Court
New South Wales

Case Name: Isaksson v Council of the Municipality of Woollahra

Medium Neutral Citation: [2022] NSWLEC 1571

Hearing Date(s): Conciliation conference on 14 October 2022

Date of Orders: 20 October 2022

Decision Date: 20 October 2022

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:
(1) The appeal is upheld.
(2) Development Application No. 604/2021/1 for alterations and additions to the existing dwelling including a rear addition, at 14 The Crescent, Vaucluse, is determined by the grant of consent, subject to the conditions of consent at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – alterations and additions to an existing dwelling – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.16, 8.7
Land and Environment Court Act 1979, ss 34, 34AA
State Environmental Planning Policy (Biodiversity and Conservation) 2021, cl 10.2, 10.10
State Environmental Planning Policy (Resilience and Hazards) 2021, cl 2, 10, 4.6
Woollahra Local Environmental Plan 2014, cl 1.9A, 4.3

Category: Principal judgment

Parties: Thomas Isaksson (Applicant)
Council of the Municipality of Woollahra (Respondent)

Representation:

Counsel:

H Grace(Applicant)

S Patterson (Solicitor) (Respondent)

Solicitors:

Garland Hawthorn Brahe Solicitors (Applicant)

Wilshire Webb Staunton Beattie Lawyers (Respondent)

File Number(s):

2022/104870

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No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No. 604/2021/1 for alterations and additions to the existing dwelling including a rear addition (the proposal), at 14 The Crescent, Vaucluse (the site), by Woollahra Municipal Council (the Council).
- 2 The Court arranged a conciliation conference under s 34AA of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 14 October 2022. I presided over the conciliation conference. At the conciliation conference, the parties reached an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties.
- 3 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 4.16 of the EPA Act to grant consent to the development application.
- 4 There are preconditions to the exercise of power to grant development consent for the proposal under the Woollahra Local Environmental Plan 2014 (LEP 2014), State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP Biodiversity and Conservation), and State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards).

The site

- 5 The site is legally described as Lots 1 and 2 in DP 234373. The site has an area of 974.7m². Lot 1 is occupied by a two-storey dwelling house with an attached double garage.

Background

- 6 There was one contention raised by the Council in the Statement of Facts and Contentions filed 7 June 2022, which was the proposal's contravention of Restrictive Covenant K922573 to which the Council is a party, and which cannot be varied under the provisions of cl 1.9A of LEP 2014. Under the terms of the restrictive covenant, the Council has the power to release, vary or modify the restrictive covenant and is the only person with that power.
- 7 The parties entered into a Deed of Variation of the restrictive covenant on 27 September 2022. The Council submitted that the variation of the restrictive covenant addresses the contention raised by the Council in the Statement of Facts and Contentions.

Planning framework

- 8 The site is zoned R2 Low Density Residential pursuant to LEP 2014 and the proposal is permissible with consent. The objectives of the zone, to which regard must be had, are:
- To provide for the housing needs of the community within a low density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
 - To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.
- 9 The proposal complies with the height of buildings development standard under cl 4.3 of LEP 2014 of 9.5m.
- 10 SEPP Biodiversity and Conservation applies to the site at cl 10.2. I am satisfied that the proposal is consistent with the planning principles for land within the Sydney Harbour Catchment, pursuant to cl 10.10 of SEPP Biodiversity and Conservation, for the reasons set out in the Statement of Environmental Effects

at Section 4.3, including that the alterations and additions are minor and not likely to be readily visible from the waterways and foreshores of Sydney Harbour. The proposed Stormwater Management Plan addresses cl 10.10(h) of SEPP Biodiversity and Conservation.

- 11 I am satisfied that the proposal is designed, sited, and will be managed to avoid an adverse impact on the matters referred to under cl 2.10(1) of SEPP Resilience and Hazards.
- 12 I accept the Council's submission that the long-term use of the site has been residential and that the site is unlikely to be contaminated, pursuant to cl 4.6(1) of SEPP Resilience and Hazards.

Conclusion

- 13 I have considered the submissions made by the Council in the Statement of Jurisdictional Issues filed with the Court on 14 October 2022 and I am satisfied, on the basis of the evidence before me, that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.

Orders

- 14 The orders of the Court are:
 - (1) The appeal is upheld.
 - (2) Development Application No. 604/2021/1 for alterations and additions to the existing dwelling including a rear addition, at 14 The Crescent, Vacluse, is determined by the grant of consent, subject to the conditions of consent at Annexure A.

Susan O'Neill

Commissioner of the Court

Annexure A

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