



Land and Environment Court
New South Wales

Case Name: Hughes v Woollahra Municipal Council

Medium Neutral Citation: [2025] NSWLEC 1431

Hearing Date(s): Conciliation conference on 16 June 2025

Date of Orders: 18 June 2025

Decision Date: 18 June 2025

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:
(1) The appeal is upheld.
(2) Development Consent No. 538/2016 is modified in the terms at Annexure A.
(3) Development Consent No. 538/2016/9 for alterations and additions to an existing dwelling at 57 Brown Street, Paddington, is subject to the consolidated conditions at Annexure B.

Catchwords: MODIFICATION APPLICATION – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.55, 8.9
Land and Environment Court Act 1979, s 34

Environmental Planning and Assessment Regulation 2021, s 113
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6
Woollahra Local Environmental Plan 2014, cl 5.10

Category: Principal judgment

Parties: Evan Hughes (First Applicant)

Kate Hughes (Second Applicant)
Woollahra Municipal Council (Respondent)

Representation:

Counsel:

A Gough (Solicitor) (Applicant)

R Bullmore (Solicitor) (Respondent)

Solicitors:

Storey & Gough (Applicant)

Woollahra Municipal Council (Respondent)

File Number(s):

2025/25824

Publication Restriction:

Nil

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.9 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Modification Application No. 538/2016/9, to modify Development Consent No. 538/2016, as previously modified, for alterations and additions to the existing two-storey Victoria terrace including new rear addition, a new garage with studio below, a new swimming pool and site works with landscaping (the approved development), to make changes to the rear lane structure including material changes (the proposal), at 57 Brown Street, Paddington (the site), by Woollahra Municipal Council (the Council).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 16 June 2025. I presided over the conciliation conference. At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. 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.
- 3 The parties' decision involves the Court exercising the function under s 4.55(2) of the EPA Act to modify Development Consent No. DA538/2016. There are preconditions to the exercise of power to modify a development consent.

Amended application

- 4 The Council, as the relevant consent authority, has agreed, under s 113 of the Environmental Planning and Assessment Regulation 2021, to the applicant amending Modification Application No. DA538/2016/9 in accordance with the documents listed below:

Reference	Description	Author/Drawn	Date(s)
Architectural Plans			
DA.101(I)	Site Plan	Architectural Projects	28 March 2025
DA.201(H)	Ground Floor Plan	Architectural Projects	24 May 2024
DA.202(H)	First Floor Plan	Architectural Projects	24 May 2024
DA.203(I)	Second Floor Plan	Architectural Projects	28 March 2025
DA.204(I)	Roof Plan	Architectural Projects	28 March 2025
DA.301(J)	Elevations	Architectural Projects	14 May 2025
DA.402(J)	Sections	Architectural Projects	14 May 2025
DA403(H)	Sections	Architectural Projects	24 May 2024
BASIX Certificate			

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Pre-conditions to the grant of consent

- 5 I accept the Council's assessment that the site is suitable for the development, having been historically used for a residential purpose, and that the matters under s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 have been addressed.
- 6 Pursuant to s 4.55(2)(a) of the EPA Act, consent authority must be satisfied that the modified development is substantially the same development as the development for which consent was originally granted. I am satisfied that the proposal is substantially the same development as the originally approved development in a quantitative sense. The originally approved development was for alterations and additions to the dwelling house, the construction of a rear lane structure consisting of a basement studio, a double car garage, and landscaping works including the construction of a pool. The proposed modification involves minor changes to the rear lane structure and proposes a minor increase in floor area with the introduction of a storage area to the rear of the garage. The resulting development proposed by this modification is not a radical transformation from that originally approved. In a qualitative sense, the proposal does not impact on the essence of the development, which will remain as a dwelling house for a single-family unit, with ancillary facilities including car parking for two vehicles, outdoor recreation space and a modest building on the rear lane.
- 7 The site is zoned R2 Low Density Residential pursuant to Woollahra Local Environmental Plan 2014 (LEP 2014) and dwelling houses are permissible with consent.
- 8 The site is located within the Paddington Heritage Conservation Area (Paddington HCA). The consent authority, or the court exercising the functions of the consent authority, must consider the effect of the proposal on the heritage significance of the Paddington HCA, pursuant to cl 5.10(4) of LEP 2014. I am satisfied that the proposal is a minor change to the approved

development and will not impact on the identified heritage significance of the Paddington HCA.

Conclusion

9 I have considered the submissions made by the Council in the Jurisdictional Statement filed with the Court on 13 June 2025 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

10 The orders of the Court are:

- (1) The appeal is upheld.
- (2) Development Consent No. 538/2016 is modified in the terms at Annexure A.
- (3) Development Consent No. 538/2016/9 for alterations and additions to an existing dwelling at 57 Brown Street, Paddington, is subject to the consolidated conditions at Annexure B.

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Susan O’Neill

Commissioner of the Court

Annexure A

Annexure B

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.