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| Case Name:  | Tang v Council of the Municipality of Woollahra |
| Medium Neutral Citation:  | [2022] NSWLEC 1099 |
| Hearing Date(s):  | 11 February 2022 |
| Date of Orders: | 24 February 2022 |
| Decision Date:  | 24 February 2022 |
| Jurisdiction:  | Class 1 |
| Before:  | Dickson C |
| Decision:  | The Court orders that:(1)   The appeal is upheld.(2)   Development Application No DA/144/2021 for the erection of a privacy screen to the existing dwelling at 9 Gilliver Avenue, Vaucluse is approved subject to the conditions in Annexure A to this agreement. |
| Catchwords:  | DEVELOPMENT APPLICATION – privacy screen – amended plans – conciliation conference – agreement reached. |
| Legislation Cited:  | Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 8.7Environmental Planning and Assessment Regulation 2000, cll 49, 55, Land and Environment Court Act 1979, ss 34, 34AAState Environmental Planning Policy No 55—Remediation of Land, cl 7Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005Woollahra Local Environmental Plan 2014, cl 2.3, |
| Category:  | Principal judgment |
| Parties:  | Qianzhen Tang (Applicant)Council of the Municipality of Woollahra (Respondent) |
| Representation:  | Counsel:M Staunton (Applicant)S Patterson, Solicitor (Respondent)Solicitors:Baker McKenzie (Applicant)Wilshire Webb Staunton Beattie (Respondent) |
| File Number(s):  | 2021/292442 |
| Publication Restriction:  | No |

Judgment

1. **COMMISSIONER**: The proceedings are an appeal pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (EPA Act) by the Applicants against the actual refusal of Development Application No. DA144/2021 by Woollahra Municipal Council (the Respondent). The development application, as amended, seeks consent for a new privacy screen along the common boundary of the site and 11 Gilliver Avenue. The development is proposed at 9 Gilliver Avenue, Vaucluse (Lot 1 in DP 946284).
2. In exercising the functions of the consent authority on the appeal, the Court has the power to determine the development application pursuant to ss 4.15 and 4.16 of the EPA Act. The final orders in this appeal, outlined in [[10](#_Ref94621521)] below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
3. The Court was required to arrange a conciliation conference between the parties, pursuant to s 34AA of the Land and Environment Court Act 1979 (LEC Act). The conciliation conference commenced onsite on 11 February 2021. I presided over the conciliation conference.
4. At the conciliation conference, an agreement under s 34(3) of the LEC Act was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. The basis of the agreement was an amended privacy screen with a reduced height and extent when compared with that which was refused by the Council. The agreement was filed on 14 February 2021. The amended plans were also lodged on the NSW Planning Portal with the agreement of the Council, as required by cl 55(1) of the Environmental Planning and Assessment Regulation 2000 (EPA Regulation).
5. The decision agreed upon is for the grant of development consent subject to conditions of consent pursuant to s 4.16(1) of the EPA Act.
6. As the presiding Commissioner, I am satisfied that the decision to grant development consent to the amended application subject to conditions of consent is a decision that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I formed this state of satisfaction as each of the jurisdictional preconditions identified by the parties are met, for the following reasons:
7. The Applicant has declared they have the consent of the owners of the site and, therefore, were able to lodge the DA pursuant to cl 49 of the EPA Regulation.
8. The DA was notified and publicly exhibited between 5 and 20 May 2021 in accordance with the EPA Act. I am satisfied that the submissions made by the public have been considered in the determination of the development application.
9. Woollahra Local Environmental Plan 2014 (LEP 2014) applies to the site. Pursuant to LEP 2014, the site is zoned R2 Low Density Residential. Development for the purposes of residential dwelling houses is permitted in the R2 Zone. In determining the development application, I have had regard to the objectives of the zone: cl 2.3(2) of LEP 2014.
10. The proposed development complies with the development standards in LEP 2014.
11. Consideration has been given as to whether the subject site is contaminated as required by cl 7(1) of State Environmental Planning Policy No 55—Remediation of Land. No change of use is proposed by the development application. The Statement of Environmental Effects filed with the development application notes that the current and previous use of the land is for a residential purpose. I accept that the site will be suitable for the proposed development.
12. Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP SHC) applies to the site. The subject site is outside the Foreshores and Waterways Area and there are no specific matters for consideration.
13. Having reached the state of satisfaction that the decision is one that the Court could make in the exercise of its functions, s 34(3)(a) of the LEC Act requires me to “dispose of the proceedings in accordance with the decision”. The LEC Act also requires me to “set out in writing the terms of the decision” (s 34(3)(b)).
14. In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any assessment of the merits of the development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.
15. The Court notes that:
16. Woollahra Municipal Council as the relevant consent authority has agreed, under cl 55(1) of the Regulation, to the Applicant amending the development application DA/144/2021 to incorporate the following amended plans:
17. the Applicant has amended Development Application No DA/144/2021 with the agreement of Council of the Municipality of Woollahra (pursuant to clause 55(1) of the Environmental Planning and Assessment Regulation 2000) as the relevant consent authority to incorporate the following amended plans and documents:
18. Architectural Plans 2006-02-00-01 C, Site Plan proposed prepared by Ian Moore Architects dated 11 February 2022;
19. Architectural Plans 2006-02-01-02 D, Level 02 Plan prepare by Ian Moore Architects dated 7 February 2022;
20. Architectural Plans 2006-02-03-01 C, Section 01 prepared by Ian Moore Architects dated 11 February 2022;
21. Architectural Plans 2006-02-03-02 D, Section 02 prepared by Ian Moore Architects dated 11 February 2022; and
22. Architectural Plans 2006-02-03-03 C, Sections 03 and 04, prepared by Ian Moore Architects dated 11 February 2022.
23. That the Respondent has uploaded the amended development application on the NSW planning portal.
24. The Court orders that:
25. The appeal is upheld.
26. Development Application No DA/144/2021 for the erection of a privacy screen to the existing dwelling at 9 Gilliver Avenue, Vaucluse is approved subject to the conditions in **Annexure A** to this agreement.

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D M Dickson

Commissioner of the Court

[Annexure A (615643, pdf)](http://www.caselaw.nsw.gov.au/asset/17f29ce58e85f33056044d71.pdf)

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