



Land and Environment Court
New South Wales

Case Name:	MacKenzie v Woollahra Municipal Council
Medium Neutral Citation:	[2022] NSWLEC 1253
Hearing Date(s):	Conciliation conference on 10 and 11 May 2022
Date of Orders:	16 May 2022
Decision Date:	16 May 2022
Jurisdiction:	Class 1
Before:	Espinosa C
Decision:	<p>The Court orders that:</p> <p>(1) The appeal is upheld.</p> <p>(2) Development application DA 350/2020 for extension to existing garage with new garage entry and lift to ground floor and minor associated landscaping works at 5-7 Trahlee Road, Bellevue Hill is determined by the grant of consent subject to the condition set out in annexure "A".</p>
Catchwords:	DEVELOPMENT APPEAL – alterations and additions to residential development – conciliation conference – agreement between the parties - orders
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979, s 4.16, 8.7</p> <p>Environmental Planning and Assessment Regulation 2000, cl 55</p> <p>Land and Environment Court Act 1979, s 34</p> <p>State Environmental Planning Policy (Resilience and Hazards) 2021, cl 4.6</p> <p>Statement Environmental Planning Policy No. 55 – Remediation of Land</p> <p>Woollahra Local Environmental Plan, cl 5.10, 6.2, Sch 5</p>

Category: Principal judgment

Parties: Charlotte MacKenzie (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
A Knox (Solicitor) (Applicant)
J Fan (Solicitor) (Respondent)

Solicitors:
Pikes & Verekers Lawyers (Applicant)
Lindsay Taylor Lawyers (Respondent)

File Number(s): 2022/32109

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is a Class 1 Development Appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) being an appeal against the refusal of Development Application DA 350/2021/1 seeking development consent for alterations and additions to residential development including extension to existing garage, with new garage entry and lift to ground floor, and associated landscaping works (the Proposed Development) at 5-7 Trahlee Road, Bellevue Hill legally described as Lots 1 and 2 in Deposited Plan 622090 (the Site).
- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which has been held on 10 and 11 May 2022. I have presided over the conciliation conference.
- 3 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. This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions.
- 4 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.

- 5 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings to be the terms of cl 5.10 and 6.2 of the Woollahra Local Environmental Plan 2014 (WLEP) relating to heritage and earthworks respectively, and cl 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP (Resilience and Hazards)) regarding contamination. The parties explained how the jurisdictional prerequisites have been satisfied in an agreed Jurisdictional Note from which I summarise as follows:

- (1) The proposed development is a local heritage item (item 60 Sch 5 to WLEP 2014). The description of the item includes house and interiors. Pursuant to cl 5.10(4) of the WLEP, the Court as consent authority must consider the effect of the proposed development on the heritage significance of the item. A Heritage Impact Statement was prepared by Weir Phillips dated August 2020 (Tab 7 to Class 1 Application filed 3 February 2022). The report concludes that:

“The proposed works fulfil the requirements for alterations to a heritage listed dwelling and within the vicinity of a heritage listed dwelling set out by the *Woollahra LEP 2015* and the *Woollahra DCP 2015*.”

- (2) The Court must be satisfied in relation to the relevant considerations pursuant to cl 6.2(3) of WLEP 2014. These considerations are addressed by the Geotechnical Report prepared by JK Geotechnics dated 14 July 2020 (Tab 6 to Class 1 Application filed 3 February 2022) and various conditions of consent in Annexure A (e.g. A.3, C9 & E12).

- (3) Consideration has been given to whether the Site is contaminated as required by cl 4.6 of SEPP (Resilience and Hazards). Filed with the Class 1 Application, under Tab 3, is the Statement of Environmental Effects dated 31 August 2020 prepared by PCN Urban Planning Consultants, and par 4.2.1 refers to the Statement Environmental Planning Policy No. 55 – Remediation of Land which concludes as follows:

“Given the historical use of the Site for residential purposes, there is no reason to believe that the Site may be contaminated.”

- (4) Condition E3 of Annexure A has been imposed in any event which reads as follows:

“E.3 Requirement to Notify about New Evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter

previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifier.”

- 6 I am satisfied that the parties’ decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act and I adopt the reasons given by the parties.
- 7 As the parties’ decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties’ decision.

Notations:

- 8 The Court notes that:

Woollahra Municipal Council as the relevant consent authority has agreed, under clause 55(1) of the Environmental Planning and Assessment Regulation 2000, to the Applicant amending the development application DA 350/2020, in accordance with the below documentation:

Reference	Description	Author/Drawn	Date(s)
DWG NO.	Architectural Plans	All prepared by Weir Phillips Architects	All dated 27/4/2022
DA101 Rev I	Garage		
DA102 Rev F	Ground Floor		
DA103 Rev E	Roof Plan		
DA201 Rev E	Elevation (North & West)		
DA202 Rev E	Elevation (East & South)		

DA301 Rev D	Section A & B		
DA302 Rev D	Section C & D		
DA303 Rev D	Section E		
DA401 Rev D	Excavation and Deep-soil area		
DA500 Rev D	Driveway - details		
DA501 Rev G	Longitudinal driveway section		
LP01- D5720, LP02- D5720, LP03-D5720	Landscape Plan	Dangar Barin Smith	28/8/2020
	Arboricultural Method Statement	Tree IQ	6th of April 2022

- (1) The Council has lodged the amended application on the NSW Planning Portal on 10 May 2022.
- (2) The Applicant filed the amended application with the Court on 10 May 2022.

Orders

9 The Court orders that:

- (1) The appeal is upheld.
- (2) Development application DA 350/2020 for extension to existing garage with new garage entry and lift to ground floor and minor associated landscaping works at 5-7 Trahlee Road, Bellevue Hill is determined by the grant of consent subject to the condition set out in annexure "A".

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E Espinosa

Commissioner of the Court

(Annexure A) (755666, pdf)

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