



Land and Environment Court
New South Wales

Case Name: 117 O'Sullivan Pty Ltd v Woollahra Municipal Council

Medium Neutral Citation: [2022] NSWLEC 1348

Hearing Date(s): Conciliation conference on 2 and 23 June 2022

Date of Orders: 8 July 2022

Decision Date: 8 July 2022

Jurisdiction: Class 1

Before: Walsh C

Decision: The Court orders that:
(1) The appeal is upheld.
(2) Modification Application 416/2020-3 is approved and development Consent No. DA-416/2020 is modified in the terms in Annexure A.
(3) Development Consent No. 416/2020 as modified by the Court is Annexure B.

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

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.56, 8.9
Environmental Planning and Assessment Regulation 2000, cl 121B
Land and Environment Court Act 1979, s 34

Category: Principal judgment

Parties: 117 O'Sullivan Pty Ltd (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
A Boskovitz (Solicitor) (Applicant)
J Hewitt (Solicitor) (Respondent)

Solicitors:
Boskovitz Lawyers (Applicant)
HWL Ebsworth (Respondent)

File Number(s): 2022/88151

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** These proceedings, brought under Class 1 of the Court's jurisdiction, are an appeal pursuant to s 8.9 of the *Environmental Planning and Assessment Act 1979* (EPA Act), and are concerned with the applicant's dissatisfaction with the determination by Woollahra Municipal Council (Council) of Modification Application 416/2020/3 (MA).
- 2 The MA seeks to modify development consent 416/2020 (Development Consent) granted by the Court on 27 July 2021, which approved the demolition of the existing dwelling and construction of a seniors housing development on land legally described as Lot 9 in Section 1 in Deposited Plan 5932 and also known as 117 O'Sullivan Road, Bellevue Hill (site). The MA sought the removal of Condition C.1(c).
- 3 According to the parties, on or about 10 May 2022, the Woollahra Local Planning Panel approved the MA. The appeal concerns the applicant's dissatisfaction with certain conditions to the approval.
- 4 The Court arranged a conciliation conference between the parties under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act), which was held on 20 June 2022, at which I presided. Following the conciliation, the parties filed an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties.
- 5 The Applicant has provided a letter from Jacksons Nature Works dated 25 May 2022 (Arborist Report) which the Council has considered. On the basis of the Arborist Report, the Council is satisfied that the proceedings can be resolved by the approval of the modification application as per the conditions contained in Annexure A.

- 6 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision, provided it is a decision that the Court could have made in the proper exercise of its functions.
- 7 This decision involved the Court upholding the appeal and granting consent to the modification application in accordance with agreed conditions.
- 8 There are certain jurisdictional pre-requisites which require attention before this function can be exercised. The parties outlined jurisdictional matters of relevance in these proceedings in an agreed statement of jurisdictional requirements on 30 June 2022.
- 9 Regarding jurisdiction, and noting this advice, I am satisfied in regard to the matters listed below.
- 10 Having regard to s 4.56(1)(a) of the EPA Act, I am satisfied that the development to which the consent as modified would relate is substantially the same development as the development for which the consent was originally granted. The matter at hand is a matter of detail in regard to the whole of the application, and I agree with the advice of the parties that the proposed development would be quantitatively and qualitatively the same.
- 11 Having regard to s 4.56(1)(b)-(c) of the EPA Act, I accept the advice of the parties that the application has been notified in accordance with requirements.
- 12 Having regard to s 4.56(1)(d) of the EPA Act, I have considered the submissions made, as evidenced in the Council assessment report (Woollahra Local Planning Panel Agenda 5 May 2022 – Item D1 p 15 et seq) and oral submissions made to me during my site inspection on 2 June 2022.
- 13 Having regard to s 4.56(1A) of the EPA Act, I have taken into consideration:
 - (1) the matters referred to in s 4.15(1) of the EPA Act as are of relevance to the development the subject of the application (assisting me here were the matters outlined in Council assessment report and the parties' jurisdictional statement), and
 - (2) the reasons given by the Court for the grant of the consent that is sought to be modified.

Conclusion

- 14 With the above findings, I am satisfied that the jurisdictional pre-requisites have been met and the parties' decision is one that the Court could have made in the proper exercise of its functions. In turn, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 15 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the parties. The LEC Act also required me to "set out in writing the terms of the decision" (s 34(3)(b)). The final orders have this effect.
- 16 The Court notes:
- (1) Woollahra Municipal Council as the relevant consent authority for the purposes of cl 121B of the Environmental Planning and Assessment Regulation 2000 agreed to the Applicant amending Modification Application no. DA-416/2020/3 by the provision of the report from Jacksons Nature Works dated 25 May 2022.
 - (2) The Applicant report from Jacksons Nature Works dated 25 May 2022 was uploaded to the NSW Planning Portal on 23 June 2022 and was filed with the Court on 14 June 2022.

Orders

- 17 The Court orders that:
- (1) The appeal is upheld.
 - (2) Modification Application 416/2020-3 is approved and development Consent No. DA-416/2020 is modified in the terms in Annexure A.
 - (3) Development Consent No. 416/2020 as modified by the Court is Annexure B.

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P Walsh

Commissioner of the Court

(Annexure A) (142353, pdf)

(Annexure B) (970103, pdf)

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