



Land and Environment Court
New South Wales

Case Name:	Royal Sydney Golf Club Ltd v Woollahra Municipal Council
Medium Neutral Citation:	[2022] NSWLEC 1656
Hearing Date(s):	Conciliation Conference 22 July, 3 November 2022
Date of Orders:	01 December 2022
Decision Date:	1 December 2022
Jurisdiction:	Class 1
Before:	Dickson C
Decision:	<p>The Court orders that:</p> <p>(1) Pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 the Applicant is to pay those costs of the Respondent thrown away as a result of the amendment of the Development Application, as agreed or assessed.</p> <p>(2) The Appeal is upheld.</p> <p>(3) Development Application No. DA402/2019/1 for the renovation and landscape rehabilitation of the existing 18 hole championship golf course including site works, service upgrades, tree removal and replacement plantings at 701 – 703 New South Head Road, Rose Bay (Lot 1 DP630927; Lots 11, 12, 13, 14, 15 and 16 in Section B DP5592; Lot 4 DP224930) is approved subject to the conditions in Annexure "A".</p>
Catchwords:	DEVELOPMENT APPLICATION – renovation and rehabilitation of existing golf course – amended plans and further information provided during conciliation – agreement between the parties – orders made
Legislation Cited:	<p>Biodiversity Conservation Act 2016, ss 6.12, 7.13, 7.16, 7.7</p> <p>Biodiversity Conservation Regulation 2017, cl 7.1</p>

Environmental Planning and Assessment Act 1979, ss
4.15, 4.16, 8.15, 8.7
Environmental Planning and Assessment Regulation
2000, cl 55
Land and Environment Court Act 1979, s 34
National Parks and Wildlife Act 1974, s 90
Standard Instrument (Local Environmental Plans)
Amendment (Flood Planning) Order 2021
State Environmental Planning Policy (Biodiversity and
Conservation) 2021, s 10.10
State Environmental Planning Policy (Resilience and
Hazards) 2021, s 4.6
State Environmental Planning Policy Amendment
(Flood Planning) 2021
State Environmental Planning Policy No 55—
Remediation of Land
Woollahra Local Environmental Plan 2014, cll 5.10,
5.21, 6.1, 6.2

Texts Cited: NSW Department of Planning and Environment,
Biodiversity Assessment Method 2020
Woollahra Community Participation Plan 2019

Category: Principal judgment

Parties: Royal Sydney Golf Club Ltd (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
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File Number(s): 2022/00095777

Publication Restriction: Nil

JUDGMENT

1 **COMMISSIONER:** The Applicant, Royal Sydney Golf Club Ltd, appeals pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* against the actual refusal of their development application by Woollahra

Council. The development application seeks consent for the renovation and landscape rehabilitation of the existing 18 hole championship golf course including Site works, service upgrades, tree removal and replacement plantings. The development application is proposed at 701-703 New South Head Road, Rose Bay and comprises Lot 1 DP630927, Lots 11, 12, 13, 14, 15 and 16 in Section B DP5592 and Lot 4 DP224930. The Site is currently used as a golf course which is defined as a 'recreation facility (outdoor)' pursuant to the Woollahra Local Environmental Plan 2014 (LEP 2014).

2 In detail, the development application proposes:

- “(a) Renovation of the existing 18-hole Championship Course, comprising alterations and works to tees, greens, fairways, and bunkers.
- (b) Landscape works comprising 7.6 ha of new Heathland and Woodland planting, 5.9 ha of naturalised roughs (native grasses), reconstructed native vegetation communities
- (c) Removal of 595 existing trees and planting 1,888 new trees during the initial construction phase.
- (d) Upgrade of the irrigation system including construction of a new water storage dam.
- (e) Upgrade of stormwater drainage infrastructure.
- (f) Earthworks involving cut and fill to provide appropriate design levels for the proposed golf course, to create access paths and to facilitate the new water storage dam.
- (g) upgrades to internal roads and pathways.”

3 The appeal was initially listed for a conciliation conference on 17 May 2022 in accordance with s 34 of the *Land and Environment Court Act 1979* (LEC Act). No agreement was reached at the conciliation, however following the conciliation, discussions continued between the parties. These discussions led to the production of amended plans and documentation which assisted an agreement in principle being reached between the parties. The amended plans have been 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). By reference to the revised Statement of Environmental Effects, the following broad amendments have been made to the development application:

- “- Redefinition of the description of the proposed development to, ‘*the proposed renovation and landscape rehabilitation of the existing 18-hole golf*

Championship Golf Course located at RSGC. The introduction of the words 'landscape rehabilitation' reflects the refinements made to provide a more comprehensive and holistic approach to landscape, environmental and biodiversity issues.

- Mapping and detailed technical assessment of all 'prescribed' trees on site.
- Refinement of the proposed course renovations to minimise tree removal and environmental impacts.
- Reduction in the total number of trees proposed to be removed as well as a significant increase in proposed new trees to be planted.
- Reduction in the number of 'high value' trees proposed to be removed.
- Comprehensive mapping of existing tree canopy over and modelling of future canopy.
- Refinement of the quantum and nature of planting proposed in various ecological areas across the site.
- Adoption of the new Biodiversity Assessment Method (BAM) 2020 for the assessment of Biodiversity Impact.
- Preparation of new and updated plans, reports and documents detailing these changes and associated impacts."

4 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 below, are made as a result of an agreement between the parties that was reached following a conciliation conference. That decision is that the appeal is upheld, and the development application is approved, subject to the conditions annexed to this judgment, pursuant to s 4.16(1) of the EPA Act.

5 As the presiding Commissioner, I am satisfied that the decision is one 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 have formed this state of satisfaction for the following reasons:

- (1) The development application has been lodged with the consent of the owner of the land;
- (2) The development application was placed on public exhibition between 6 November and 5 December 2019 in accordance with the Woollahra Community Participation Plan 2019. The notification resulted in 284 submissions, including five submissions in support. The amended development application was notified to surrounding residents and previous objectors between 26 May and 25 June 2021. Further, at the commencement of the conciliation conference, a number of residents and representatives of community organisations addressed the Court. I am satisfied that the submissions have been considered in the

determination of the development application by either amendment to the application or in the imposition of conditions of consent: s 4.15(1)(d) of the EPA Act.

- (3) As required by the *Biodiversity Conservation Act 2016* (BC Act), a Biodiversity Assessment Report (BDAR) has been provided as part of the development application as the proposed development exceeds the biodiversity offset scheme threshold as a result of the proposed clearing: s 7.7(2) of the BC Act. It is agreed between the parties, and I accept that the relevant clearing threshold at cl 7.1 of the Biodiversity Conservation Regulation 2017 (BC Reg) is exceeded. I am satisfied the BDAR has been prepared in a manner consistent with s 6.12 of the BC Act.
- (4) Section 7.13(2) of the BC Act requires a consent authority, when determining a development application that is required to be accompanied by a BDAR, to take into consideration under the EPA Act the likely impact of the proposed development on biodiversity values as assessed in the BDAR that relates to that application. In determining the development application, I have taken the likely impacts, as detailed in the BDAR, into consideration. I note that the BDAR, after completing an assessment of serious and irreversible impacts, concludes that the threatened ecological community and two threatened species identified are not predicted to be impacted. Further, I note that the remaining impacts on native vegetation and habitat are assessed and the BDAR nominates means of avoidance, minimisation and mitigation. As such the precondition at s 7.16(2) which requires the consent authority to refuse consent if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values is not triggered.
- (5) The Aboriginal Heritage Information details there is one recorded Aboriginal site on the subject site. An Archaeological Assessment (AA) has been prepared as part of the development application. That report concludes that an Aboriginal Heritage Impact permit will be required under s 90 of the *National Parks and Wildlife Act 1974*. Such a requirement is included in the annexed conditions of consent: B 10 – B13 in Annexure A. Further, the recommendations of the AA, including the management strategies to minimise impacts and respond to any finds during works, form part of the approved documents.
- (6) State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BC) applies. The site is within the Sydney Harbour catchment, but not within the area mapped as Foreshores and Waterways Area. In determining the development application, I have taken into consideration the planning principles at s 10.10 of SEPP BC.
- (7) State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards) came into force on 1 March 2022. SEPP Resilience and Hazards transfers the provisions of State Environmental Planning Policy No 55—Remediation of Land to the new instrument. Consideration has been given as to whether the subject site

is contaminated as required by s 4.6 of SEPP Resilience and Hazards. The development application is accompanied by a detailed site investigation and a Remedial Action Plan (RAP). The RAP details the remedial requirements and identifies the preferred remediation option to address site contamination. The RAP concludes that, subject to testing and reporting following remediation works confirming remediation criteria are met, the site will be suitable for ongoing use as a golf course. The requirements identified in the RAP are incorporated in the annexed conditions of consent: E22-E26, and F9- F10.

- (8) The LEP 2014 applies to the site. The site is zoned RE2 Private Recreation. The existing golf course is categorised as 'recreation facility outdoor' which is a permissible use in the zone. In determining the development, I have had regard to the objectives of the RE2 zone.
- (9) The Royal Sydney Golf Club is identified as a local heritage item. As such cl 5.10(4) of LEP 2014 applies and requires the consent authority to consider the effect of the proposed development on the significance of the item. The development application is accompanied by a Heritage Impact Assessment which assesses the potential heritage impacts of the proposed works on the heritage item, it concludes that there is no adverse heritage impact. In determining the development application, I have considered the effect of the proposed development on the heritage significance of these items. I am satisfied the development will not have a detrimental impact sufficient to warrant refusal.
- (10) The subject site is identified as having class 3, 4, and 5 Acid Sulphate soils on the LEP 2014 maps. An Acid Sulphate Soil Management Plan has been prepared as part of the development application, meeting the requirements of cl 6.1 of LEP 2014. Compliance with the Acid Sulphate Soil Management Plan is required by the annexed conditions of consent: E21.
- (11) The development application proposes earthworks which require development consent: cl 6.2(2) of LEP 2014. In considering the matters listed at cl 6.2(3) of LEP 2014, I have made reference to the Geotechnical and Hydrogeological Report which forms part of the development application and the cut and fill plan. In determining the development application, I have given consideration to the matters at cl 6.2(3) of LEP 2014 and conclude that they have been appropriately addressed by the development application and the annexed conditions and conclude that none warrant refusal of the development application.
- (12) When the development application was lodged, the subject site was identified as being a Flood Planning Area under LEP 2014. That provision was subsequently been repealed on 14 July 2021: State Environmental Planning Policy Amendment (Flood Planning) 2021. Also, on 14 July 2021 the Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021 (Order 2021) commenced. Order 2021 inserted a new clause into LEP 2013, s 5.21: Flood Planning. Subsection (2) requires the consent authority to be satisfied that the development:

- (a) is compatible with the flood function and behaviour on the land, and
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and

...

- (13) Further, subs (3) requires the consent authority to consider the listed matters in determining the development application. The development application is accompanied by a Civil Engineering Assessment Report which includes a flooding assessment. By reference to that assessment I am satisfied of the matters listed at subcl (2).

6 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.

7 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.

8 The Court notes:

- (1) That the Applicant has amended development application No DA402/2019/1 (the development application) with the agreement of Woollahra Municipal Council pursuant to cl 55(1) of the Environmental Planning and Assessment Regulation 2000 to incorporate the plans and documents at Annexure B.
- (2) That the plans and documents comprising the amendment, and which are listed at Annexure B, were lodged on the NSW Planning Portal on 16 November 2022.
- (3) That the Applicant subsequently filed the plans and documents in Annexure B with the Court on 17 November 2022.

9 The Court orders that:

- (1) Pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* the Applicant is to pay those costs of the Respondent thrown away as a result of the amendment of the Development Application, as agreed or assessed.
- (2) The Appeal is upheld.
- (3) Development Application No. DA402/2019/1 for the renovation and landscape rehabilitation of the existing 18 hole championship golf course including site works, service upgrades, tree removal and

replacement plantings at 701 – 703 New South Head Road, Rose Bay
(Lot 1 DP630927; Lots 11, 12, 13, 14, 15 and 16 in Section B DP5592;
Lot 4 DP224930) is approved subject to the conditions in Annexure "A".

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D Dickson

Commissioner of the Court

[Annexure A \(679549, pdf\)](#)

[Annexure B \(99119, pdf\)](#)

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