



Land and Environment Court  
New South Wales

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Case Name: The Scots College v Woollahra Municipal Council

Medium Neutral Citation: [2023] NSWLEC 1167

Hearing Date(s): Conciliation conference on 24 March 2023

Date of Orders: 12 April 2023

Decision Date: 12 April 2023

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:  
(1) The appeal is upheld.  
(2) Development Application No. 390/2019/1 for the demolition of the tennis courts, excavation to create an underground carpark and associated facilities with new tennis courts above and new relocated entry from Cranbrook Lane, at 29-53 Victoria Road, Bellevue Hill, is determined by the grant of consent subject to the conditions of consent at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – existing school – new carpark and new tennis courts over – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.16, 8.7  
Environmental Planning and Assessment Regulation 2000, cll 55, 55AA, 121B  
Environmental Planning and Assessment Regulation 2021, Sch 6, s 3  
Land and Environment Court Act 1979, s 34  
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6  
State Environmental Planning Policy (Transport and Infrastructure) 2021, s 3.36

Category: Principal judgment

Parties: The Scots College (Applicant)  
Woollahra Municipal Council (Respondent)

Representation: Counsel:  
S Peters (Solicitor) (Applicant)  
S Simington (Solicitor) (Respondent)

Solicitors:  
Colin Biggers & Paisley Pty Limited (Applicant)  
Lindsay Taylor Lawyers (Respondent)

File Number(s): 2021/197166

Publication Restriction: No

## JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No. 390/2019/1 for the demolition of the tennis courts, excavation to create an underground carpark and associated facilities with new tennis courts above and new relocated entry from Cranbrook Lane (the proposal), at 29-53 Victoria Road, Bellevue Hill (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 24 March 2023. 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.
- 3 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.

- 4 There are preconditions to the exercise of power to grant development consent for the proposal.

### **Amended application**

- 5 The Environmental Planning and Assessment Regulation 2000 (2000 Regulation) continues to apply to the application, because the application was lodged on 11 October 2019 and not yet determined on 1 March 2022 (s 3 of Sch 6 to the Environmental Planning and Assessment Regulation 2021). Pursuant to subs 3(2) of Sch 6 to the Environmental Planning and Assessment Regulation 2021, a requirement to use the NSW Planning Portal under the 2000 Regulation, cl 55(1), 55AA(2)(d) or 121B(1) does not apply if the development application is subject to proceedings in the Court.
- 6 The Council, as the consent authority, consented to the amendment of the application to remove the reference to an increase in student numbers. As a result of the amendment of the application, the parties reached agreement during the conciliation conference.

### **Planning framework**

- 7 The site is zoned SP2 pursuant to Woollahra Local Environmental Plan 2014 (LEP 2014) and the construction of an underground carpark and tennis courts is ancillary to an 'education establishment' as defined in LEP 2014. Development for the purpose of a school may be carried out by any person with development consent on land in a prescribed zone which includes the SP2 zone, pursuant to s 3.36(1) of State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP (Transport and Infrastructure) 2021). The objectives of the zone, to which regard must be had, are:
- To provide for infrastructure and related uses.
  - To prevent development that is not compatible with or that may detract from the provision of infrastructure.
- 8 Section 3.36(6) of SEPP (Transport and Infrastructure) 2021 is in the following terms:
- (6) Before determining a development application for development of a kind referred to in subsection (1), (3) or (5), the consent authority must take into consideration—

(a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 8, and

(b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.

- 9 I have considered the design quality of the proposal evaluated in accordance with the design quality principles and I am satisfied, for the reasons set out by the Council in the jurisdictional statement, that it is appropriate to grant development consent to the proposal.
- 10 I accept the Council's submission that the site can be made suitable for the proposal, pursuant to s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021.
- 11 The site is a local heritage item (Item No. 67, Sch 5 to LEP 2014). I accept the Council's submission, based on the Heritage Impact Statement provided with the application, that the proposal will have no impact on the identified heritage significance of the site.
- 12 I accept the Council's submission that the earthworks proposed do not pose a risk to the amenity or structural integrity of neighbouring properties, having considered the matters under cl 6.2(3) of LEP 2014.

## **Conclusion**

- 13 I have considered the submissions made by the Council in the Statement of Jurisdictional Issues filed with the Court on 17 March 2023 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**

- 14 The orders of the Court are:
- (1) The appeal is upheld.
  - (2) Development Application No. 390/2019/1 for the demolition of the tennis courts, excavation to create an underground carpark and associated facilities with new tennis courts above and new relocated entry from Cranbrook Lane, at 29-53 Victoria Road, Bellevue Hill, is determined by the grant of consent subject to the conditions of consent at Annexure A.

**Susan O'Neill**

## **Commissioner of the Court**

### **Annexure A (684177, pdf)**

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