



Land and Environment Court
New South Wales

Case Name:	Mendes v Woollahra Municipal Council
Medium Neutral Citation:	[2023] NSWLEC 1150
Hearing Date(s):	Conciliation conference held on 20 March 2023
Date of Orders:	04 April 2023
Decision Date:	4 April 2023
Jurisdiction:	Class 1
Before:	O'Neill C
Decision:	<p>The orders of the Court are:</p> <p>(1) The appeal is upheld.</p> <p>(2) Development Application No 517/21 for alterations and additions to an existing terrace house and ancillary works, at 56 Hargrave Street, Paddington, is determined by the grant of consent, subject to the conditions of consent at Annexure A.</p>
Catchwords:	DEVELOPMENT APPLICATION – alterations and additions to an existing terrace house – conciliation conference – agreement between the parties – orders
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979, ss 4.16, 8.7</p> <p>Environmental Planning and Assessment Regulation 2000, cll 55, 55AA, 121B</p> <p>Environmental Planning and Assessment Regulation 2021, Sch 6, s 3</p> <p>Land and Environment Court Act 1979, s 34</p> <p>State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6</p> <p>Woollahra Local Environmental Plan 2014, cll 5.10, 6.2</p>
Category:	Principal judgment

Parties: Lawrence Mendes (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
A Boskovitz (Solicitor) (Applicant)
P Rigg (Solicitor) (Respondent)

Solicitors:
Boskovitz Lawyers (Applicant)
Peter R Rigg (Respondent)

File Number(s): 2022/307026

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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 517/21 for alterations and additions to an existing terrace house and ancillary works (the proposal), at 56 Hargrave Street, Paddington (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 20 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 Plans

- 5 The Environmental Planning and Assessment Regulation 2000 (2000 Regulation) continues to apply to the application, because the application was

lodged on 10 November 2021 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. The amended application amended the architectural plans the subject of the application. The amended architectural plans reduced the building bulk, provided additional articulation, reduced the car parking and excavation and other changes in order to resolve the matters in contention.
- 7 As a result of the amendment of the architectural plans, the parties reached agreement during the conciliation conference.

Planning framework

- 8 The site is zoned R2 Low Density Residential pursuant to Woollahra Local Environmental Plan 2014 (LEP 2014). The objectives of the zone, to which regard must be had, are:
 - To provide for the housing needs of the community within a low density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
 - To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.
- 9 The proposal involves ancillary earthworks, and so the consent authority, or the Court exercising the functions of the consent authority, must consider the matters listed at cl 6.2(3) of LEP 2014. I accept the Council's submission that the Geotechnical and Hydrological Report submitted with the application adequately addressed those matters.
- 10 The site is not identified as being within a flood planning area (Flood Planning Map Sheet FLD_003 of LEP 2014). I accept the Council's submission that the

Flood Management Plan submitted with the application adequately addressed any concerns the Council had regarding flooding.

- 11 The site is within the Paddington Heritage Conservation Area (Paddington HCA). The consent authority, or the Court exercising the functions of the consent authority, must consider the effect of the proposal on the heritage significance of the HCA, pursuant to cl 5.10(4) of LEP 2014. I accept the Council's submission that the Heritage Impact Statement submitted with the application adequately demonstrated that the proposal will not impact the identified heritage significance of the Paddington HCA.
- 12 I accept the Council's submission that the site has been used for residential purposes and the proposal is suitable for the land, pursuant to s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021.

Conclusion

- 13 I have considered the submissions made by the Council in the Statement of Jurisdictional Issues filed with the Court on 28 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 517/21 for alterations and additions to an existing terrace house and ancillary works, at 56 Hargrave Street, Paddington, 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

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