



Land and Environment Court
New South Wales

Case Name: Hawkins v Woollahra Municipal Council

Medium Neutral Citation: [2023] NSWLEC 1209

Hearing Date(s): Conciliation conference on 12 April 2023

Date of Orders: 04 May 2023

Decision Date: 4 May 2023

Jurisdiction: Class 1

Before: Harding AC

Decision: The Court orders that:
(1) The Applicant is granted leave to amend Development Application No. 521/2021/1 in accordance with the amended plans and documents set out in Annexure 'A'.
(2) The Applicant is to pay the Respondent's costs that have been thrown away as a result of the amendment of the application for development consent, as agreed or assessed, in accordance with s 8.15(3) of the Environmental Planning and Assessment Act 1979.
(3) The Appeal is upheld.
(4) Development consent is granted to Development Application No. 521/2021/1, as amended, for the alterations and additions to an existing two storey semi-attached terrace dwelling, including new studio outbuilding, new attic level with rear dormer, swimming pool, and associated landscaping works on land legally described as Lot 1 in DP445249 and known as 5A Hargrave Street, Paddington, subject to the conditions at Annexure 'A'.

Catchwords: DEVELOPMENT APPLICATION – dwelling – alterations and additions – heritage – conciliation conference – agreement between the parties – orders.

Legislation Cited: Environmental Planning and Assessment Act 1979, s 8.7
Land and Environment Court Act 1979, s 34
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6
Woollahra Local Environmental Plan 2014, cll 5.10, 6.2

Category: Principal judgment

Parties: Kate Hawkins (First Applicant)
Tate Hawkins (Second Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
M Staunton (Applicant)
S Hill (Solicitor) (Respondent)

Solicitors:
Macpherson Kelley (Applicants)
HWL Ebsworth Lawyers (Respondent)

File Number(s): 2022/335932

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) by Kate and Tate Hawkins (the Applicants) against Woollahra Municipal Council (the Respondent). The Applicant filed this appeal against the refusal of the Development Application DA521/21.
- 2 The Development Application, as amended, seeks consent for alterations and additions to an existing two storey semi-attached terrace dwelling, including new studio outbuilding, new attic level with rear dormer and associated landscaping works on land legally described as Lot 1 in DP445249 and known as 5A Hargrave Street, Paddington, NSW, 2021.
- 3 The Court arranged a conciliation conference between the parties pursuant to s 34 of the *Land and Environment Court Act 1979* (the LEC Act). This

commenced on 12 April 2023. The parties reached an in-principle agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The conciliation process was adjourned to allow the parties to undertake amendments in line with that agreement. Based on these amendments, the agreement between the parties was to grant Development Consent to the Development Application, subject to the agreed outcomes and agreed conditions.

- 4 Pursuant to s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' agreement if the proposed decision, the subject to the agreement, is a decision that the Court could have made in the proper exercise of its functions.
- 5 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties have identified the jurisdictional prerequisites of relevance in these proceedings and how they are satisfied. The parties agree that there are no jurisdictional prerequisites in these proceedings which would prevent the Court from exercising its function under s 34(3) of the LEC Act.
- 6 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). In reaching that state of satisfaction, I note the following:
 - (1) Pursuant to the Woollahra Local Environmental Plan 2014 (WLEP 2014), the Subject Site is zoned R2 Low Density Residential. In determining the Development Application, consideration has been given to the objectives of the zone.
 - (2) The application was placed on public notification a period of 15 days from 1 December 2021 to 16 December 2021. The Council received two submissions raising a number of issues which have been considered by the parties. The notification requirements under the EPA Act have been satisfied.
 - (3) A BASIX Certificate No. A494157 was issued to satisfy the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
 - (4) As required by s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021, consideration has been given to whether the Site is contaminated. The parties agree that there are no immediate site conditions which would require remediation of the Site. A review of

historical records and an assessment of soil profiles for the region has been undertaken and there is no suggestion that the land would have been contaminated. There are no known industrial uses which may have contaminated the land. Accordingly, the Site is considered suitable for its continued residential use.

- (5) Clause 5.10 of the WLEP 2014 requires the consent authority to consider the effect of the proposed development on the relevant heritage conservation area. The Site is located within the Paddington Conservation Area and is a contributory item but is not a heritage item. The Amended DA was accompanied by a Heritage Impact Assessment. The parties agree that the Site is being developed in a manner consistent with the cultural significance of the Paddington Conservation Area to ensure that the cultural heritage of the area remains undiminished.
- (6) Clause 6.2 (3) of the WLEP 2014 requires the consent authority to consider various matters relating to earthworks, where relevant. The parties agree that these matters have been considered as a result of the Geotechnical Investigation and Hydrogeological Assessment, and the addendum geotechnical response which accompanies the amended application and the structural engineering plans.

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' agreement.

8 I was not required to make, and have not made, any assessment of the merits of the Development Application against the discretionary matters that arise pursuant to the EPA Act.

Orders

9 The final orders to give effect to the parties' agreement under s 34(3) of the Land and Environment Court Act 1979 are:

10 The Court orders that:

- (1) The Applicant is granted leave to amend Development Application No. 521/2021/1 in accordance with the amended plans and documents set out in Annexure 'A'.
- (2) The Applicant is to pay the Respondent's costs that have been thrown away as a result of the amendment of the application for development consent, as agreed or assessed, in accordance with s 8.15(3) of the Environmental Planning and Assessment Act 1979.
- (3) The Appeal is upheld.

- (4) Development consent is granted to Development Application No. 521/2021/1, as amended, for the alterations and additions to an existing two storey semi-attached terrace dwelling, including new studio outbuilding, new attic level with rear dormer, swimming pool, and associated landscaping works on land legally described as Lot 1 in DP445249 and known as 5A Hargrave Street, Paddington, subject to the conditions at Annexure 'A'.

Stuart Harding

Acting Commissioner of the Court

Annexure A

Amendments

09 May 2023 - Pursuant to the slip rule, Rule 36.17, of the Uniform Civil Procedure Rules 2005, the Orders are corrected.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.