



## Land and Environment Court New South Wales

<b>Medium Neutral Citation:</b>	<b>MHN Design Union Pty Ltd v Woollahra Municipal Council [2023] NSWLEC 1529</b>
<b>Hearing dates:</b>	Conciliation Conference commencing 17 July 2023
<b>Date of orders:</b>	26 September 2023
<b>Decision date:</b>	26 September 2023
<b>Jurisdiction:</b>	Class 1
<b>Before:</b>	Harding AC
<b>Decision:</b>	<p>The Court Orders that:</p> <p>(1) The Applicant is to pay the Respondents costs thrown away, pursuant to s 8.15(3) of the <i>Environmental Planning and Assessment Act 1979</i>, in the sum of \$6,000 within 28 days.</p> <p>(2) The appeal is upheld.</p> <p>(3) Development Application DA324/2022/1, for a residential flat building at 74 Bellevue Road, Bellevue Hill, (otherwise known as Lot 1 DP 532849), is determined by way of granting development consent, subject to the conditions set out in Annexure A.</p>
<b>Catchwords:</b>	DEVELOPMENT APPLICATION – residential flat building – agreement.
<b>Legislation Cited:</b>	<p>Environmental Planning and Assessment Act 1979, ss 8.7, 8.15</p> <p>Land and Environment Court Act 1979, s 34</p> <p>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</p> <p>State Environmental Planning Policy (Biodiversity and Conservation) 2021</p> <p>State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6</p> <p>Woollahra Local Environmental Plan 2014, cl 6.2</p>
<b>Category:</b>	Principal judgment
<b>Parties:</b>	<p>MHN Design Union Pty Ltd (Applicant)</p> <p>Woollahra Municipal Council (Respondent)</p>
<b>Representation:</b>	<p>Counsel:</p> <p>L Sims (Applicant)</p> <p>S Patterson (Solicitor) (Respondent)</p> <p>Solicitors:</p> <p>Reid and Vesely (Applicant)</p> <p>Wilshire Webb Staunton Beattie Lawyers (Respondent)</p>
<b>File Number(s):</b>	2023/61738
<b>Publication restriction:</b>	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 MHN Design Union Pty Ltd (the Applicant) which was filed on the basis of a deemed refusal, by Woollahra Council (the Respondent), of DA324/2022/1.
- 2 The Development Application seeks development consent for demolition of existing dwelling and construction of a residential flat building, swimming pool and landscaping at 74 Bellevue Road, Bellevue Hill, otherwise known as Lot 1 DP 532849.
- 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 17 July 2023.
- 4 At the conciliation conference, 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 finalise agreements. The agreed decision was to grant Development Consent, to the Development Application, subject to agreed outcomes and conditions.
- 5 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.
- 6 After reviewing the applicable material, 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 R3 Medium Density Residential. In determining the Development Application, I have had regard to the objectives of the zone.
  - (2) The application was placed on public notification from 24 August to 23 September 2022. At the site view, prior to the commencement of the conciliation process, the parties and the Court were taken to various surrounding properties where oral submissions were made and observations about the development were undertaken. View loss and privacy were key issues raised at the site view.
  - (3) The requirements of cl 6.2 Earthworks have been considered by the parties. A report on the geotechnical and hydrogeological aspects of the development was prepared by JKGeotechnics and considered by the parties along with a report on Aboriginal Heritage (by Eco Logical Australia).
  - (4) A BASIX Certificate accompanies the development application to satisfy the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
  - (5) 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 the site contains an existing residential dwelling and has been continuously used for residential purposes. As such, the parties consider that the site is unlikely to be contaminated.
  - (6) As required by State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP) the parties have considered the relationship of the development to Sydney Harbour. The visual relationship between the development and Sydney Harbour, as well as urban run-off issues, have been considered. The parties have also agreed conditions to be included in the development consent.
- 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. 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. The following orders give effect to the agreement reached by the parties.
- 8 The Court notes that the Respondent, as the relevant consent authority has approved, under section 38(1) of the Environmental Planning and Assessment Regulation 2021, the Applicant amending Development Application No DA324/2022/1 relying upon the amended plans and documents (Amended Development Application) set out in Annexure A.

**Orders**

9 The Court orders that:

- (1) The Applicant is to pay the Respondents costs thrown away, pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, in the sum of \$6,000 within 28 days.
- (2) The appeal is upheld.
- (3) Development Application DA324/2022/1, for a residential flat building at 74 Bellevue Road, Bellevue Hill, (otherwise known as Lot 1 DP 532849), is determined by way of granting development consent, subject to the conditions set out in Annexure A.

**S Harding**

**Acting Commissioner of the Court**

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[Annexure A \(785321..pdf\)](#)

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Decision last updated: 26 September 2023