



Land and Environment Court
New South Wales

Case Name: Sun v Woollahra Municipal Council

Medium Neutral Citation: [2023] NSWLEC 1612

Hearing Date(s): Conciliation conference on 16 October 2023

Date of Orders: 18 October 2023

Decision Date: 18 October 2023

Jurisdiction: Class 1

Before: Walsh C

Decision: The Court orders that:
(1) The appeal is upheld.
(2) Development Application No DA 501/2022, as amended, for demolition of the existing dwelling, pool and garage; and, construction of a new dwelling, pool and landscaping at 12 Rawson Road in Rose Bay, is approved subject to the conditions of consent in Annexure A.

Catchwords: DEVELOPMENT APPLICATION – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, s 8.7
Environmental Planning and Assessment Regulation 2021, s 38
Land and Environment Court Act 1979, ss 34, 34AA
State Environmental Planning Policy (Biodiversity and Conservation) 2021 ss 6.65, 10.10, 10.11, 10.12, Pt 10.3 Div 2
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6
Woollahra Local Environmental Plan 2014, cl 2.7

Category: Principal judgment

Parties: Yijun Sun (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
A Whealy (Solicitor) (Applicant)
S Patterson (Solicitor) (Respondent)

Solicitors:
Mills Oakley (Applicant)
Wilshire Webb Staunton Beattie (Respondent)

File Number(s): 2023/148842

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** These proceedings, brought under Class 1 of the Court's jurisdiction, are an appeal pursuant to s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the decision of the Council of the Municipality of Woollahra (Council) to refuse Development Application No DA 501/2022 (DA). The DA, as amended, seeks consent for the demolition of the existing dwelling, pool and garage; and, construction of a new dwelling, pool and landscaping on Lot 2 in DP 957378, with the street address of 12 Rawson Road, Rose Bay (site).
- 2 The Court arranged a conciliation conference between the parties under s 34AA of the *Land and Environment Court Act 1979* (LEC Act), which was held on 16 October 2023, at which I presided. Prior to the conciliation, the parties had filed an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal and granting development consent to the DA, as amended, subject to conditions.
- 3 With respect to amendments to the DA, certain advice was provided in an agreed jurisdictional statement provided to the Court on 10 October 2023. The Court notes that Council has agreed, pursuant to s 38(1) of the Environmental Planning and Assessment Regulation 2021, to the applicant's amendment of

the DA to rely on the amended plans and documents which have the following effect:

- Landing to steps in rear yard deleted to achieve compliance with rear setback deep soil control
 - Changes to window to address privacy concerns
 - Reduction of southern side setback to reduce excavation; and,
 - Reconfiguration of northern side setback, courtyard and basement layout to reduce excavation and floorplate.
- 4 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision, provided it is a decision that the Court could have made in the proper exercise of its functions.
- 5 There are certain jurisdictional pre-requisites which require attention before the function of upholding the appeal can be exercised. The parties' jurisdictional statement has been of assistance here. Regarding jurisdiction, and noting this advice from the parties, I am satisfied in regard to the matters listed below.

State Environmental Planning Policy (Resilience and Hazards) 2021

- 6 I accept the advice of the parties that the site has previously been used for residential purposes and that there is no likelihood of contamination. The requirements of s 4.6(1) of the State Environmental Planning Policy (Resilience and Hazards) 2021 are satisfied.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- 7 The parties advise that savings provisions at s 6.65 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 provide that the DA should be assessed against the now repealed 'Chapter 10 Sydney Harbour Catchment', which identifies planning principles for development in the Sydney Harbour Catchment (s 10.10) and Foreshores and Waterways Area (s 10.11); and, in relation to Heritage conservation (s 10.12). To the extent necessary I have taken into consideration the relevant matters at Pt 10.3 Div 2. I accept the advice of the parties that the proposed development would not adversely affect the environmental values of Sydney Harbour.

Woollahra Local Environmental Plan 2014

- 8 The site is zoned R2 Low Density Residential under the Woollahra Local Environmental Plan 2014 (WLEP) and development for the purposes of single dwelling house is permissible in the zone. I have considered the zone objectives. Demolition is permissible under cl 2.7.
- 9 I accept the advice of the parties that the proposed development would not contravene any development standards under WLEP, and that no further jurisdictional findings are required in relation to WLEP.

Other considerations

- 10 I note the advice of Council that the development application was notified in accordance with requirements. There were no submissions received.
- 11 I accept the advice of the parties that no further jurisdictional findings are required in relation to this matter.

Conclusion

- 12 With the above findings, I am satisfied that the jurisdictional pre-requisites have been met and the parties' decision is one that the Court could have made in the proper exercise of its functions. In turn, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 13 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the parties. The LEC Act also required me to "set out in writing the terms of the decision" (s 34(3)(b)). The final orders have this effect.

Notation

- 14 The Court notes that:
- (1) The Council of the Municipality of Woollahra, as the relevant consent authority, has agreed under s 38(1) of the Environmental Planning and Assessment Regulation 2021 to the Applicant amending Development Application No 501/2022 to rely upon the following amended plans and documents, which were filed with the Court on 10 October 2023:
- (a) Architectural Plans prepared by MCK Architecture:
- DA 10: Basement Floor Plan (Rev C), 11 August 2023

- DA 11: Ground Floor Plan (Rev D), 1 September 2023
- DA 12: First Floor Plan (Rev C), 11 August 2023
- DA 13: Site / Roof Plan (Rev D), 1 September 2023
- DA 20: North Elevation (Rev C), 11 August 2023
- DA 21: East Elevation (Rev D), 1 September 2023
- DA 22: South Elevation (Rev C), 11 August 2023
- DA 23: West Elevation (Rev C), 11 August 2023
- DA 24: Front Fence West Elevation (Rev B), 11 August 2023
- DA 30: Section A (Rev C), 11 August 2023
- DA 31: Section B (Rev C), 11 August 2023
- DA 32: Section C (Rev C), 11 August 2023
- DA 33: Section D (Rev C), 11 August 2023
- DA 34: Section E (Rev C), 11 August 2023
- DA 35: Section F (Rev C), 11 August 2023
- DA 37: Section G (Rev C), 11 August 2023
- DA 38: Section H (Rev C), 11 August 2023
- DA 70: Shadow Diagram June 21 9AM (Rev C), 11 August 2023
- DA 71: Shadow Diagram June 21 12PM (Rev C), 1 September 2023
- DA 72: Shadow Diagram June 21 3PM (Rev C), 1 September 2023
- DA 73: View from the Sun June 21 9AM (Rev C), 1 September 2023
- DA 74: View from the Sun June 21 10AM (Rev C), 1 September 2023
- DA 75: View from the Sun June 21 11AM (Rev C), 1 September 2023
- DA 76: View from the Sun June 21 12PM (Rev C), 1 September 2023
- DA 77: View from the Sun June 21 1PM (Rev C), 1 September 2023
- DA 78: View from the Sun June 21 2PM (Rev C), 1 September 2023
- DA 79: View from the Sun June 21 3PM (Rev C), 1 September 2023
- DA 81: Floor Plate Calculation Plans (Rev C), 11 August 2023
- DA 82: Landscape Calculation Plan (Rev D), 1 September 2023
- DA 83: Excavation Calcs (Rev C), 11 August 2023
- DA 84: Building Envelope Axonometric View from SW (Rev C), 11 August 2023
- DA 85: Building Envelope Axonometric View from NE (Rev C), 11 August 2023
- DA 87: GFA Calculation (Rev B), 1 September 2023

- DA 88: Shadow Diagrams, June 21 - 14 Rawson Road, N elevation (Rev B), 1 September 2023

(b) BASIX Certificate No 1352368S_02 issued on 19 September 2023

Orders

15 The Court orders that:

- (1) The appeal is upheld.
- (2) Development Application No DA 501/2022, as amended, for demolition of the existing dwelling, pool and garage; and, construction of a new dwelling, pool and landscaping at 12 Rawson Road in Rose Bay, is approved subject to the conditions of consent in Annexure A.

P Walsh

Commissioner of the Court

Annexure A

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