



## Land and Environment Court New South Wales

<b>Medium Neutral Citation:</b>	<b>Potter v Woollahra Municipal Council [2021] NSWLEC 1119</b>
<b>Hearing dates:</b>	Conciliation held on 22 February 2021
<b>Date of orders:</b>	09 March 2021
<b>Decision date:</b>	09 March 2021
<b>Jurisdiction:</b>	Class 1
<b>Before:</b>	Bish C
<b>Decision:</b>	<p>The Court orders that:</p> <ol style="list-style-type: none"><li>(1) The Applicant is given leave to amend its application to rely on amended drawing DA111, Revision F, dated 22 February 2021.</li><li>(2) The appeal is upheld.</li><li>(3) Development Application DA316/2019/1 for the demolition of the existing garage and front fence, excavation and construction of a new garage with mechanical system to accommodate four (4) cars, flood barrier and new front fence at 26-28 Wolseley Road, Point Piper NSW 2027 is approved, subject to the conditions of consent at "Annexure A".</li></ol>
<b>Catchwords:</b>	DEVELOPMENT APPLICATION – construction of a new garage with stacker – flood management – pedestrian safety – conciliation conference – agreement between the parties – orders
<b>Legislation Cited:</b>	<p>Environmental Planning and Assessment Act 1979 Environmental Planning and Assessment Regulation 2000 Land and Environment Court Act 1979 Woollahra Local Environmental Plan 2014 State Environmental Planning Policy No 55—Remediation of Land State Environmental Planning Policy (Coastal Management) 2018</p>

**Texts Cited:** Woollahra Development Control Plan 2015

**Category:** Principal judgment

**Parties:** Collette Potter (Applicant)  
Woollahra Municipal Council (Respondent)

**Representation:** Counsel:  
A Galasso SC (Applicant)  
P Rigg (Solicitor) (Respondent)

Solicitors:  
Dentons (Applicants)  
Peter R Rigg (Respondent)

**File Number(s):** 2020/213402

**Publication restriction:** No

---

## JUDGMENT

- 1 **COMMISSIONER:** This is an appeal against the refusal of Development Application (DA) 316/2019/1 by Woollahra Municipal Council (hereafter the Council) which seeks demolition of existing garage and construction of a new garage with turntable and car stacker on Lot 1 DP 68485, also known as 26-28 Wolseley Road, Point Piper (hereafter the site).
- 2 The proposed development as amended, includes the following works:
  - Demolition of existing garage, associated walkway, fence and stairs,
  - Construction of new detached garage with a car turntable and mechanical four car stacker,
  - excavation and removal of material for the garage and stacker,
  - new covered entry area and front fence, and
  - modification to existing driveway and pram ramp within road reserve.
- 3 The amended Class 1 appeal is made under s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act).
- 4 The Court agreed to the parties' request for a conciliation conference pursuant to s 34AA(2) of the *Land and Environment Court Act 1979* (LEC Act), which was held on 22 February 2021, starting with an onsite view, and then proceeding by Microsoft (MS) Teams in Court.
- 5

Based on the amended plans (described in Annexure A), together with the DA's supporting documents and agreed conditions of consent, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The parties agree that the contentions raised by Council have been considered and resolved. The decision of the parties is to uphold the appeal and grant consent to DA 316/2019/1 with conditions.

- 6 Pursuant to s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision, if it is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising its function under s 4.16 of the EPA Act and being satisfied, pursuant to be satisfied of the requirements in s 4.15(1) to grant consent to DA 316/2019/1, with conditions, as described in Annexure A.
- 7 The parties identified the jurisdictional prerequisites of particular relevance in these proceedings for the Court's consideration as consistency with the: Environmental Planning and Assessment Regulation 2000 (EPA Reg); State Environmental Planning Policy (Coastal Management) 2018 (SEPP Coast); State Environmental Planning Policy No 55—Remediation of Land (SEPP 55); Woollahra Local Environmental Plan 2014 (WLEP); and the Woollahra Development Control Plan 2015 (WDCP).
- 8 By the making of this agreement with conditions of consent (Annexure A), the Council accepts the works proposed in the road reserve which relate to the modification of the pram ramp and driveway, pursuant to cl 49 of the EPA Reg.
- 9 The parties agree that the proposed development complies with the provisions of the SEPP Coast. The proposed development is located outside of the foreshore building line as mapped in the SEPP Coast.
- 10 The parties agree that the proposed development complies with the provisions of SEPP 55. The respondent has assessed that the site as being used historically for residential purposes and the parties agree that the site is suitable for the proposed development, thereby satisfying the requirements of SEPP 55.
- 11 The proposed development on the site is located within the R3 Medium Density Residential zone, as identified in the WLEP. The proposed development is permissible and satisfies the objectives of this zone. The parties agree that the relevant provisions of the WLEP are addressed to their satisfaction. The relevant contentions are resolved by the DA's amended plans and supporting documents, and conditions of consent.
- 12 The parties agree that the site is not located on flood prone land, pursuant to cl 7.3 of the WLEP, however due to existing works (pram ramp) in the road reserve, the site is subject to directed floodwaters during high rainfall events. To address this issue, the

proposed development relies on a flood gate and a sump with a pump, as designed in the amended plans and provided for in the conditions of consent to ensure the garage and stacker remain flood free.

- 13 The parties agree that the DA was publicly notified in accordance with the WDCP. During the notification period for this DA under appeal, 14 submissions in objection were received by Council.
- 14 The parties advise the Court that the amended plans that support the DA have been considered in the context of the site and surrounding area, particularly the proximity to the pedestrian pathway/ramp, and the potential for flooding to the proposed garage. Based on the amended plans and supporting documents to the DA together with the conditions of consent, the contentions raised by Council, issues raised by residents and all jurisdictional requirements are resolved to the satisfaction of the parties.
- 15 The parties advise the Court that they have undertaken the appropriate merit assessment of the amended DA, and which they are satisfied resolves the contentions, as raised.
- 16 I am satisfied that there are no jurisdictional impediments to this agreement and that DA 316/2019/1 should be granted, as it satisfies the requirements of s 4.15(1) of the EPA Act.
- 17 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' decision.
- 18 The Court orders that:
- (1) The Applicant is given leave to amend its application to rely on amended drawing DA111, Revision F, dated 22 February 2021.
  - (2) The appeal is upheld.
  - (3) Development Application DA316/2019/1 for the demolition of the existing garage and front fence, excavation and construction of a new garage with mechanical system to accommodate four (4) cars, flood barrier and new front fence at 26-28 Wolseley Road, Point Piper NSW 2027 is approved, subject to the conditions of consent at "Annexure A".

.....

**Sarah Bish**

**Commissioner of the Court**

[Annexure A \(675263,.pdf\)](#)

Plan (219657,.pdf)

\*\*\*\*\*

---

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.

Decision last updated: 09 March 2021