



Land and Environment Court
New South Wales

Case Name: Shaw v Woollahra Municipal Council

Medium Neutral Citation: [2021] NSWLEC 1169

Hearing Date(s): Conciliation conference on 25 March 2021

Date of Orders: 08 April 2021

Decision Date: 8 April 2021

Jurisdiction: Class 1

Before: Horton C

Decision: The Court orders that:
(1) The Applicant is granted leave to rely upon amended plans and documentation referred to in condition A.3 of the conditions of consent at annexure 'A'.
(2) The appeal is upheld.
(3) Development Application DA216/2020 for the alterations and additions to the existing dwelling at 62 Queen Street, Woollahra is approved subject to the conditions of consent at annexure 'A'.

Catchwords: DEVELOPMENT APPLICATION – heritage conservation area – alterations and additions to item of local heritage significance – conciliation conference – agreement between parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulation 2000
Land and Environment Court Act 1979
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Sydney Harbour Catchment) 2005
State Environmental Planning Policy No 55—

Remediation of Land
Woollahra Local Environmental Plan 2014

Category: Principal judgment

Parties: Graeme Shaw (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): 2020/292957

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This Class 1 appeal concerns a development application brought before the Court by Mr Graeme Shaw (the Applicant) under s 8.7 of the *Environmental Planning and Assessment Act 1979* against the refusal by Woollahra Municipal Council (the Respondent) of Development Application No 216/2020 seeking consent for alterations and additions to the existing dwelling at 62 Queen Street, Woollahra (the site).
- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 25 March 2021, at which I presided.
- 3 Prior to the conciliation conference, the parties reached 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 conditional development consent to the development application.
- 4 A signed agreement prepared in accordance with s 34(10) of the LEC Act was filed with the Court on 20 March 2021.
- 5 The parties ask me to approve their decision as set out in the s34 agreement before the Court. In general terms, the agreement approves the development

subject to amended plans that were prepared by the Applicant, and noting that the final detail of the works and plans are specified in the agreed conditions of development consent annexed to the s34 agreement.

6 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 explained to me during the conference as to how the requirements of the relevant environmental planning instruments have been satisfied in order to allow the Court to make the agreed orders at [10].

7 I formed an opinion of satisfaction that each of the pre-jurisdictional requirements identified by the parties have been met, for the following reasons:

- (1) The site is located within the R2 Low Density Residential zone as identified by the Woollahra Local Environmental Plan 2014 (WLEP). The provisions of the R2 zone permit residential dwelling development with consent that is consistent with the objectives of the zone, which are as follows:
 - 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.
- (2) The site is identified as an item of local heritage significance in Part 1, Schedule 5 of the WLEP, and it is located within the Woollahra Heritage Conservation Area identified in Part 2, Schedule 5 of the WLEP. It is on this basis that the provisions of cl 5.10(4) require the Court to consider the effect of the proposed development on the heritage significance of the area. On the basis of the conclusions and recommendations contained in the heritage impact assessment prepared by Mr Zoltan Kovacs dated May 2020, I am satisfied that the proposed development will not adversely impact the HCA.
- (3) Clause 7(1) of State Environmental Planning Policy No 55—Remediation of Land (SEPP 55) prohibits the grant of development unless the consent authority, or the Court on appeal, has considered certain matters. I am satisfied, on the basis of the explanation provided, supported by historical maps, at pp 4-6 of the heritage impact assessment, that there is no evidence of contaminating uses on the site.

- (4) The provisions of the State Environmental Planning Policy (Sydney Harbour Catchment) 2005 (Sydney Harbour SEPP) apply to the site, and I am satisfied that the site conforms to the planning principles set out at Part 2 of the Sydney Harbour SEPP.
- (5) The application is also accompanied by a BASIX Certificate (Certificate No. A377717_03, dated 3 March 2021) prepared in accordance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and the Environmental Planning and Assessment Regulation 2000.
- 8 As the jurisdictional prerequisites to the grant of consent have been addressed I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act. Accordingly, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 9 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.

Orders

- 10 The Court orders that:
- (1) The Applicant is granted leave to rely upon amended plans and documentation referred to in condition A.3 of the conditions of consent at annexure 'A'.
- (2) The appeal is upheld.
- (3) Development Application DA216/2020 for the alterations and additions to the existing dwelling at 62 Queen Street, Woollahra is approved subject to the conditions of consent at annexure 'A'.

.....

T Horton

Commissioner of the Court

[Annexure A \(595401, pdf\)](#)

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.