



Land and Environment Court  
New South Wales

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Case Name: Casey v Woollahra Municipal Council

Medium Neutral Citation: [2021] NSWLEC 1337

Hearing Date(s): Conciliation conference on 12 April 2021 and 24 May 2021

Date of Orders: 9 June 2021

Decision Date: 9 June 2021

Jurisdiction: Class 1

Before: O'Neill C

Decision: The Orders of the Court are:  
(1) The applicant is granted leave to amend the application to rely on amended plans and documents listed under condition A.3 of the conditions of consent at Annexure A.  
(2) The appeal is upheld.  
(3) Development Application No. 107/2020/1 for landscaping and associated excavation and the construction of:  
(i) an outdoor terrace on the lower ground floor to the rear of the dwelling;  
(ii) stairs along the eastern boundary;  
(iii) plant room;  
(iv) a garden level podium;  
at 8A Cooper Street, Paddington, is approved, subject to the conditions of consent at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – addition of a rear terrace – heritage item – conciliation conference – agreement between the parties

Legislation Cited: Environmental Planning and Assessment Act 1979  
Land and Environment Court Act 1979

Category: Principal judgment

Parties: Tim Casey (Applicant)  
Woollahra Municipal Council (Respondent)

Representation: Counsel:  
J McKelvey (Applicant)  
S Puckeridge (Solicitor) (Respondent)

Solicitors:  
Gadens (Applicant)  
Lindsay Taylor Lawyers (Respondent)

File Number(s): 2020/313933

Publication Restriction: Nil

## JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No. 107/2020 for the construction of an outdoor terrace at the rear of the dwelling and plant room beneath the terrace (the proposal) at 8A Cooper Street, Paddington (the site) by Woollahra Municipal Council (the Council).
- 2 The Court arranged a conciliation conference under s 34AA of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 12 April 2021 and 24 May 2021. I presided over the conciliation conference.
- 3 At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties.
- 4 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' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.

- 5 There are preconditions to the exercise of power to grant development consent for the proposal under the Woollahra Local Environmental Plan 2014 (LEP 2014).

### **Planning framework**

- 6 The site is zoned R2 Low Density Residential pursuant to LEP 2014 (Land Zoning Map - Sheet). The objectives of the zone, to which regard must be had, are:
- 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.
- 7 The site is listed as a local heritage item (Sch 5 to LEP 2014, item 255, “House, interior and grounds”). The original house, known as the “Woolley residence”, was designed by the architect Ken Woolley for his own use and was awarded the Wilkinson Award for Residential Architecture by the NSW Chapter of the Australian Institute of Architects in 1983. The site is within the Paddington Heritage Conservation Area (Sch 5 to LEP 2014, item C8 and Heritage Map Sheet HER\_001 of LEP 2014). The consent authority, or the Court exercising the functions of the consent authority, must consider the effect of the proposal on the heritage significance of the item or area concerned, before granting consent under cl 5.10 of LEP 2014 in respect of a heritage item or a heritage conservation area.

### **Expert evidence**

- 8 The applicant relied on the expert evidence of Stephen Davies (heritage) and George Karavanas (planning). The Council relied on the expert evidence of Brian McDonald (heritage and planning). The experts prepared a joint report, filed 29 March 2021.

## **Consideration**

- 9 I am satisfied by the agreement of the experts that the proposal, as amended during the conciliation conference, does not affect the identified heritage significance of the original house and grounds, because the proposal does not interfere with the legibility of Ken Woolley's intention for the house to rise directly from the site when viewed from the rear.
- 10 I am satisfied that the proposal, as amended, is compatible with the character and amenity of the surrounding neighbourhood, because the proposal incorporates substantial planters on a lower level and around the terrace to provide landscaping that will provide some visual privacy between the terrace and neighbouring properties.

## **Orders**

- 11 The orders of the Court are:
- (1) The applicant is granted leave to amend the application to rely on amended plans and documents listed under condition A.3 of the conditions of consent at Annexure A.
  - (2) The appeal is upheld.
  - (3) Development Application No. 107/2020 for landscaping and associated excavation and the construction of:
    - (i) an outdoor terrace on the lower ground floor to the rear of the dwelling;
    - (ii) stairs along the eastern boundary;
    - (iii) plant room;
    - (iv) a garden level podium;at 8A Cooper Street, Paddington, is approved, subject to the conditions of consent at Annexure A.

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**Susan O'Neill**

**Commissioner of the Court**

**Annexure A (613005, pdf)**

**Plans (8789923, pdf)**

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