



Land and Environment Court  
New South Wales

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Case Name: Griffin v Woollahra Municipal Council

Medium Neutral Citation: [2021] NSWLEC 1359

Hearing Date(s): Conciliation conference on 5 March 2021

Date of Orders: 18 June 2021

Decision Date: 18 June 2021

Jurisdiction: Class 1

Before: Shiels AC

Decision: The Court orders:  
(1) The Applicant is granted leave to amend the application to rely upon the following plans and documents:  
(a) Architectural Plans prepared by Design . ia:  
(i) A00 Rev-02 - Site Location + Development Data - dated 08/03/2021  
(ii) A01 Rev-02 - Site + Survey - Pt. A  
(iii) A02 Rev-02 - Site + Survey - Pt. B  
(iv) A100 Rev-04 - Floor Plans - LEC  
(v) A300 Rev-04 - Elevations E-01 E-02 - LEC  
(vi) A301 Rev-04 - Elevations E-03 E-04 + Typical Building Section - LEC  
(vii) A302.1 Rev-03 - Sight Lines - LEC  
(viii) A5.1.1 Rev-04 - Perspectives + Photomontages - LEC  
(b) DVS Addendum - ADG Compliance Checklist Rev. 2;  
(c) Clause 4.6 Variation Request - Minimum Lot Size Ref. 1963, dated 15.02.2021; and  
(d) Schedule of Conservation Works prepared by Weir Phillips Heritage and Planning dated February 2021.  
(2) The Applicant is to pay the Respondent's costs that have been thrown away as a result of the amendment

of the application for development consent under section 8.15(3) of the Environmental Planning and Assessment Act 1979 as agreed or assessed.

(3) The Applicant's written request under clause 4.6 of the Woollahra Local Environmental Plan 2014 prepared by Avenue Studios and dated 15 February 2021 regarding the minimum lot size development standard under clause 1.4A of the Woollahra Local Environmental Plan 2014 is upheld.

(4) The appeal is upheld.

(5) Development Application DA193/2020 for alterations and additions to the existing residential flat building including a new level accommodating one additional unit at 3 Trelawney Street, Woollahra NSW 2025 is approved subject to the conditions of consent annexed hereto and marked "A".

Catchwords: APPEAL – development application – residential flat building – breach of minimum lot size development standard – cl 4.6 – conciliation conference – agreement reached – orders made

Legislation Cited: Environmental Planning and Assessment Act 1979  
Land and Environment Court Act 1979  
State Environmental Planning Policy No 55—  
Remediation of Land  
State Environmental Planning Policy No 65—Design  
Quality of Residential Apartment Development  
Sydney Regional Environmental Plan (Sydney Harbour  
Catchment) 2005

Texts Cited: Woollahra Development Control Plan 2015

Category: Principal judgment

Parties: Andrew Griffin (Applicant)  
Woollahra Municipal Council (Respondent)

Representation: Counsel:  
Stan Kondilios (Solicitor) (Applicant)  
Jane Hewitt (Solicitor) (Respondent)

Solicitors:  
Hall and Willcox (Applicant)  
HWL Ebsworth (Respondent)

File Number(s): 2020/359071

Publication Restriction: Nil

## JUDGMENT

- 1 **COMMISSIONER:** These proceedings are from an appeal against council's refusal to develop application DA193/2020 for alterations and additions to a residential flat building including a new level accommodating one additional unit on land identified as Lot 1 in DP 86213 also known as 3 Trelawney Street, Woollahra.
  - (a) the specific section under which the proceedings have been brought to the Court is s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act).
  - (b) the class of jurisdiction to which the proceedings is Class 1.
  - (c) the statutory power or function to be exercised in determining the proceedings is s 4.16 of the EPA Act.
- 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 has been held on 5 March, 2021. I presided over the conciliation conference.
- 3 After 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. There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings.
- 5 As the presiding acting commissioner, I am satisfied that the decision to grant development consent to the amended application subject to conditions of consent is a decision that the court can make in the proper exercise of its function ( this being the test applied by s 34(3) of the LEC Act.) I have formed this state of satisfaction as each of the judicial preconditions identified by the parties is met, for the following reasons:

- (1) The site is zoned R3 Medium Density Residential under the Woollahra Local Environmental Plan 2014 (WLEP). Residential flat buildings are permitted with consent.
- (2) Clause 2.3 of the WLEP 2014 requires consideration of the R3 zone objectives. The statement of environmental effects addresses the zoning objectives and they were considered at the section 34 conference. I am satisfied that the proposal is consistent with the relevant objectives.
- (3) The site is within the Woollahra Heritage Conservation Area (HCA) and the existing Inter-war residential flat building is identified as a contributory item to the Rosemont Precinct of the Woollahra HCA under clause C2.3.1 of the Woollahra Development Control Plan 2015 (WDCP). Clause 5.10 of the WLEP requires the proposal to be considered in light of the heritage conservation provisions. The plans were modified to respond to concerns identified by council and to be more sympathetic with the conservation area. I am satisfied that the proposal is now consistent with the provisions for the conservation area and will not have an adverse effect on the adjoining and surrounding heritage items. The proposal is also consistent with the WDCP provisions for the Heritage Conservation Area.
- (4) As the proposal does not comply with the development standard for minimum lot size in cl 4.1 of the WLEP, a clause 4.6 exception to development standards has been launched pursuant to WLEP 2014.
- (5) The written request lodged pursuant to clause 4.6 of the WLEP 2014 adequately establishes sufficient environmental planning grounds that justify they breach of the development standard.
- (6) The written request demonstrates that compliance with the standard is unreasonable and unnecessary given the proposal is consistent with the objectives of the standard. Notwithstanding the non-compliance, as there is no impact caused by the breach to the standard, based on the contents of the written request, the proposal is in the public interest because it is consistent with the objectives of the zone and the development standard.
- (7) An amended State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP-65) design verification statement has demonstrated how the objectives in Part 3 and Part 4 of the Apartment Design Guide have been achieved, and that the proposal as amended, satisfactorily demonstrates how the design quality principles are achieved.
- (8) State Environmental Planning Policy No 55—Remediation of Land (SEPP-55) applies to the land and cl 7(1)(a) states that the consent authority must not grant consent to the carrying out of development unless it's considered whether it may be contaminated. Given the history of the residential use of the land the site is not considered to be the subject of contamination and further investigation is not required at this stage.

- (9) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 applies to the land, however, the land is not located within the foreshore and waterways area. The relevant matters have been considered and the proposed scale, form design and siting of the development will not impact upon the scenic quality of the foreshore or the harbour.
- 6 Accordingly, 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.
- 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' decision.
- 8 The Court orders:
- (1) The Applicant is granted leave to amend its application to rely upon the following plans and documents:
- (a) Architectural Plans prepared by Design . ia:
    - (i) A00 Rev-02 - Site Location + Development Data - dated 08/03/2021
    - (ii) A01 Rev-02 - Site + Survey - Pt. A
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  - (d) Schedule of Conservation Works prepared by Weir Phillips Heritage and Planning dated February 2021.
- (2) The Applicant is to pay the Respondent's costs that have been thrown away as a result of the amendment of the application for development consent under section 8.15(3) of the Environmental Planning and Assessment Act 1979 as agreed or assessed.
- (3) The Applicant's written request under clause 4.6 of the *Woollahra Local Environmental Plan 2014* prepared by Avenue Studios and dated 15

February 2021 regarding the minimum lot size development standard under clause 1.4A of the *Woollahra Local Environmental Plan 2014* is upheld.

- (4) The appeal is upheld.
- (5) Development Application DA193/2020 for alterations and additions to the existing residential flat building including a new level accommodating one additional unit at 3 Trelawney Street, Woollahra NSW 2025 is approved subject to the conditions of consent annexed hereto and marked "A".

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**Gary A Shiels**

**Acting Commissioner of the Court**

[Annexure A \(393875, pdf\)](#)

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