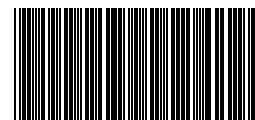




Filed: 17 August 2021 1:56 PM



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Form 20
UCPR 6.2

NOTICE OF MOTION

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2021/00142608

TITLE OF PROCEEDINGS

First Applicant	Christopher Needham
First Respondent	Mosman Municipal Council ABN 94414022939

FILING DETAILS

Filed for	Christopher Needham, Applicant 1
Legal representative	GRAHAM NEIL MCKEE
Legal representative reference	
Telephone	02 9635 1100
Your reference	GMC:DT:mm:30164

NOTICE OF LISTING

If this Notice of Motion has been listed, a Notice of Listing must be attached and served with the Notice of Motion.

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Notice of Motions (Chambers) (e-Services), along with any other documents listed below, were filed by the Court.

Notice of Motion (UCPR 20) (Court_-_NOM_-_signed.pdf)
Affidavit (Court_-_Affidavit_in_Support____Annexure_-_signed.pdf)

[attach.]

Form 20 (version 2)
UCPR 18.1 and 18.3

NOTICE OF MOTION

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2021/00142608

TITLE OF PROCEEDINGS

Applicant	Christopher Needham
Respondent	Mosman Municipal Council ABN 94414022939
Legal representative	Graham McKee McKees Legal Solutions
Legal representative reference	PCN: 21873 Ref: GMC:DT:mm:30164
Contact name and telephone	David Tyrrell Tel. (02) 9635 1100

FILING DETAILS

Person seeking orders	Christopher Needham, applicant
Legal representative	Graham McKee McKees Legal Solutions
Legal representative reference	Ref: GMC:DT:mm:30164
Contact name and telephone	David Tyrrell Tel. (02) 9635 1100
Contact email	david@mckees.com.au

PERSONS AFFECTED BY ORDERS SOUGHT

The Respondent, Mosman Municipal Council

HEARING DETAILS

This motion is listed at 9:00 am on _____ at Level 4, 225 Macquarie Street,
Windeyer Chambers, Sydney.

ORDERS SOUGHT

1. The Applicant be granted leave to rely on amended documentation as follows:-
 - (a) Architectural Plans prepared by Corben Architects dated 14 August 2021, Rev H as follows:-
 - (i) Cover Sheet, Drawing Number DA00;
 - (ii) Site Analysis, Drawing Number DA01;
 - (iii) Site & Roof Plan, Drawing Number DA02;
 - (iv) Level 1 Plan, Drawing Number DA03;
 - (v) Level 2 Plan, Drawing Number DA04;
 - (vi) Level 3 Plan, Drawing Number DA05;
 - (vii) Sections, Drawing Number DA06;
 - (viii) North Elevation, Drawing Number DA07;
 - (ix) South Elevation, Drawing Number DA08;
 - (x) East Elevation, Drawing Number DA09;
 - (xi) West Elevation, Drawing Number DA10;
 - (xii) External Views, Drawing Number DA11;
 - (xiii) External Views, Drawing Number DA12;
 - (xiv) Area Calculations, Drawing Number DA13;
 - (xv) 8.5m Height Plane Sheet 1, Drawing Number DA14;
 - (xvi) Shadow Diagrams 9am June 21st, Drawing Number DA15;
 - (xvii) Shadow Diagrams 10am June 21st, Drawing Number DA16;
 - (xviii) Shadow Diagrams 11am June 21st, Drawing Number DA17;
 - (xix) Shadow Diagrams 12pm June 21st, Drawing Number DA18;
 - (xx) Shadow Diagrams 1pm June 21st, Drawing Number DA19;
 - (xxi) Shadow Diagrams 2pm June 21st, Drawing Number DA20;
 - (xxii) Shadow Diagrams 3pm June 21st, Drawing Number DA21;
 - (xxiii) Shadow Diagrams Equinox March/September 9am, Drawing Number DA22;

- (xxiv) Shadow Diagrams Equinox March/September 10am, Drawing Number DA23;
- (xxv) Shadow Diagrams Equinox March/September 11am, Drawing Number DA24;
- (xxvi) Shadow Diagrams Equinox March/September 12pm, Drawing Number DA25;
- (xxvii) Shadow Diagrams Equinox March/September 1pm, Drawing Number DA26;
- (xxviii) Shadow Diagrams Equinox March/September 2pm, Drawing Number DA27;
- (xxix) Shadow Diagrams Equinox March/September 3pm, Drawing Number DA28;
- (xxx) Sun Study 21 June, Drawing Number DA29;
- (xxxi) Schedule of Finishes, Drawing Number DA30;
- (xxxii) 8.5m Height Plane Sheet 2, Drawing Number DA31;
- (xxxiii) Survey 1/ Site Plan Overlay, Drawing Number DA32;
- (xxxiv) Survey Overlay / Height Poles, Drawing Number DA33;
- (xxxv) Screen Details, Drawing Number DA34;
- (xxxvi) Street Views, Drawing Number DA35; and
- (xxxvii) External View, Drawing Number DA36.

(b) Landscape Plans prepared by Growing Rooms as follows:-

- (i) Landscape Design Master Plan, dated 22 July 2021, Rev E, Drawing Number LP3-06;
- (ii) LD: Planting Plan – Front Garden, dated 22 July 2021, Rev E, Drawing Number PP-07;
- (iii) LD: Planting Plan – Rear Garden, dated 22 July 2021, Rev E, Drawing Number PP-08; and
- (iv) Retaining Wall & Levels Plan, dated 22 July 2021, Rev A, Drawing Number DA – RW & LP.

- (c) Clause 4.6 – Exceptions to Development Standards Variation to Clause 4.3A – Maximum Wall Height prepared by Minto Planning Services, dated 16 August 2021.
- (d) Solar Access Assessment prepared by Minto Planning Services dated 17 August 2021.

2. Any other directions or orders the Court may consider appropriate.

SIGNATURE

Signature of legal representative



Capacity

Solicitor

Date of signature

17 / August / 2021

NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

REGISTRY ADDRESS

Street address Level 4, 225 Macquarie Street, Windeyer Chambers, Sydney

Postal address GPO Box 3565, Sydney NSW 2001

Telephone (02) 9113 8200

Form 40 (version 2)
LECR 35.1

AFFIDAVIT OF GRAHAM MCKEE
SWORN 17 / AUGUST / 2021

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2021/00142608

TITLE OF PROCEEDINGS

Applicant	Christopher Needham
Respondent	Mosman Municipal Council ABN 94414022939

FILING DETAILS

Filed for	Christopher Needham, applicant
Legal representative	Graham McKee McKees Legal Solutions
Legal representative reference	PCN: 21873 Ref: GMC:DT:mm:30164
Contact name and telephone	David Tyrrell Tel. (02) 9635 1100
Contact email	david@mckees.com.au

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AFFIDAVIT

Name: Graham McKee
Address: Suite G.18/25 Solent Circuit, Baulkham Hills NSW 2153


Occupation: Solicitor
Date: 17 / August / 2021

I say on oath:

1. I am the legal representative for the applicant, Christopher Needham.
2. This affidavit is in support of a Notice of Motion seeking to rely on amended plans filed by the applicant in these proceedings.

Background

3. On 11 March 2021, the applicant lodged Development Application No. 8.2020.193.1 (the "DA"). The proposal seeks approval for the demolition of the existing dwelling house and single detached carport and the construction of a 3-storey dwelling house, double garage, swimming pool and landscaping works.
4. On 20 May 2021, the subject Class 1 application was filed against the deemed refusal of the DA.
5. On 3 June 2021, the applicant provided to the respondent amended architectural plans on which to prepare its Statement of Facts and Contentions.
6. On 10 June 2021 the parties appeared before the Court for the first directions hearing.
7. On 21 June 2021, the respondent filed and served its Statement of Facts and Contentions.
8. On 26 July 2021, the applicant filed and served its Statement of Facts and Contentions in Reply.
9. The parties agreed to meet on a without prejudice basis by 29 July 2021. Given the current lockdown the parties were unable to meet on-site to inspect the property as well as views from adjoining properties.
10. In lieu of the on-site without prejudice meeting, the parties' planners have had informal discussions.
11. The matter has been listed for a s34AA Conciliation Hearing on 21 & 22 September 2021.

DT 

Amended Plans

12. A detailed Schedule of Amendments prepared by Corben Architects, dated 13 August 2021 is provided as Annexure "A" to this Affidavit.
13. The amended package of documents responds to Council's contentions as follows:-
 - (a) Contentions 1 & 2 - The FSR, wall height and setbacks have been amended such that the overall height, bulk and scale of the proposed development has been reduced to avoid any unreasonable impacts on surrounding properties and the streetscape.
 - (b) Contention 3 - the proposed development complies with the FSR development standard: see drawing DA13. A clause 4.6 variation is therefore not required.
 - (c) Contention 4 - the applicant contends that a clause 4.6 variation is not required for the maximum wall height development standard. In any event a precautionary clause 4.6 variation has been prepared and is included in the Notice of Motion.
 - (d) Contention 5 - as a result of the reduction in FSR and height combined with increased setbacks to the upper level, the proposed development does not result in any unreasonable impacts on adjoining properties and fits comfortably within the context of the existing streetscape.
 - (e) Contention 6 - the applicant contends that the amendments to the application resulting compliance with the zone objectives.
 - (f) Contention 8 – 17 (insufficient information) - height poles have been erected on site. The architectural and landscape plans respond to the remaining requests for further information.

Progression of the Matter

14. The matter is listed for a s34AA Conciliation Hearing on 21 & 22 September 2021 and the applicant proposes the following orders moving forward:-
 - (a) The applicant is granted leave to rely on the amended and additional documentation with its Notice of Motion.
 - (b) The respondent is to file and serve any Amended Statement of Facts and Contentions by 31 August 2021.
 - (c) The joint expert report of Andrew Minto and Peter Wells is to be filed by 10 September 2021.



(d) The remaining orders made by the Court on 10 June 2021 stand.

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

SWORN at North Avoca

Signature of deponent 

Name of witness David Tyrrell

Address of witness 26 Tramway Road, North Avoca, NSW 2260

Capacity of witness Solicitor
Justice of the peace / Solicitor / Barrister / Commissioner for affidavits / Notary public

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent
- 2 I have known the deponent for at least 12 months.

Signature of witness 

D. Tyrrell

Christopher Needham v Mosman Municipal Council
LEC Proceedings No. 2021/00142608

SCHEDULE OF AMENDMENTS

25 Cabban Street Mosman
13 August 2021

Drawing No. & Name	Issue	Amendment
DA00 Cover Page	H	<ul style="list-style-type: none"> No change
DA01 Site Analysis	H	<ul style="list-style-type: none"> No change
DA02 Roof/Site Plan	H	<ul style="list-style-type: none"> Roof revised, setback from southern boundary increased Highlight roof over stair void decreased
DA03 Level 1 Plan	H	<ul style="list-style-type: none"> Garbage room revised – revised to external access only Lift and lift lobby added Plantroom, gym revised Floor level lowered to FFL 40.900. (300mm lower than issue A)
DA04 Level 2 Plan	H	<ul style="list-style-type: none"> Lift added Stair, laundry revised Floor levels lowered FFL 43.900 & FFL 45.200 (300mm and 500mm lower than issue A)
DA05 Level 3 Plan	H	<ul style="list-style-type: none"> Lift added Floor levels lowered to FFL 47.000 & FFL 48.500. (200mm and 500mm lower than issue A) Bed 3 / Ensuite 2 southern wall setback increased by 1520mm from issue A setback to overall setback of 4.0m Bed 4 decreased Childrens Study revised Minor replanning to bedrooms and bathrooms
DA06 Sections	H	<ul style="list-style-type: none"> Floor levels, roof levels lowered
DA07 North Elevation	H	<ul style="list-style-type: none"> Floor levels, roof levels revised
DA08 South Elevation	H	<ul style="list-style-type: none"> Floor levels, roof levels revised
DA09 East Elevation	H	<ul style="list-style-type: none"> Floor levels, roof levels revised Level 3 southern wall setback increased to 4.0m (1520mm overall)
DA10 West Elevation	H	<ul style="list-style-type: none"> Floor levels, roof levels revised
DA11 External Views	H	<ul style="list-style-type: none"> Floor levels, roof levels revised
DA12 External Views	H	<ul style="list-style-type: none"> Floor levels, roof levels revised
DA13 Area Calculations	H	<ul style="list-style-type: none"> Gross Floor and Landscape areas adjusted
DA14 8.5 & 7.2m Height Planes	H	<ul style="list-style-type: none"> Overall building lowered
DA15 Shadow Diagrams 21 June 9am	H	<ul style="list-style-type: none"> Shadows adjusted
DA16 Shadow Diagrams 21 June 10am	H	<ul style="list-style-type: none"> Shadows adjusted

CORBEN ARCHITECTS

DA17 Shadow Diagrams 21 June 11am	H	• Shadows adjusted
DA18 Shadow Diagrams 21 June 12pm	H	• Shadows adjusted
DA19 Shadow Diagrams 21 June 1pm	H	• Drawing added
DA20 Shadow Diagrams 21 June 2pm	H	• Drawing added
DA21 Shadow Diagrams 21 June 3pm	H	• Drawing re numbered
DA22 Shadow Diagrams Equinox 9am	H	• Drawing re numbered
DA23 Shadow Diagrams Equinox 10am	H	• Drawing added
DA24 Shadow Diagrams Equinox 11am	H	• Drawing added
DA25 Shadow Diagrams Equinox 12pm	H	• Drawing re numbered
DA26 Shadow Diagrams Equinox 1pm	H	• Drawing added
DA27 Shadow Diagrams Equinox 2pm	H	• Drawing added
DA28 Shadow Diagrams Equinox 3pm	H	• Drawing added
DA29 Sun Study 21 June	H	• Drawing added
DA30 Schedule of Finishes	H	• Drawing re numbered • No Change
DA31 8.5&7.2m Height Planes	H	• Drawing re numbered • No Change
DA32 Survey 1 / Site Plan Overlay	H	• Drawing added
DA33 Survey Overlay / Height Poles	H	• Drawing added, setback dimensions added
DA34 Screen Details	H	• Drawing added
DA35 Street Views	H	• Drawing added
DA36 External View	H	• Drawing added