



Land and Environment Court
New South Wales

Case Name: Curtis v Woollahra Municipal Council

Medium Neutral Citation: [2021] NSWLEC 1524

Hearing Date(s): Conciliation conference on 17-18 August 2021

Date of Orders: 08 September 2021

Decision Date: 8 September 2021

Jurisdiction: Class 1

Before: Gray C

Decision: The Court Notes that:
(1) The Applicant has amended the application with the consent of the Woollahra Municipal Council.
(2) The Applicant relies upon the amended plans and documents listed in condition A3 of the Conditions of Consent which are contained in Annexure A.
(3) The Applicant has filed the amended plans and documents with the Court on 27 August 2021.
(4) The Woollahra Municipal Council has uploaded the amended application on the NSW Planning Portal on 26 August 2021.

The Court orders that:
(1) The appeal is upheld.
(2) Development Application No DA 76/2020/1 seeking consent for alterations and additions including a new basement level, is approved subject to conditions in Annexure A.

Catchwords: APPEAL – development application – alterations and additions to a dwelling in a heritage conservation area – change to roof form – conciliation conference – agreement reached

Legislation Cited: Environmental Planning and Assessment Act 1979 s 4.15, 4.16, 8.7
Environmental Planning and Assessment Regulation 2000 cl 55, Sch 1
Land and Environment Court Act 1979 s 34AA
State Environmental Planning Policy No 55—
Remediation of Land
Woollahra Local Environmental Plan 2014 cl 5.10

Category: Principal judgment

Parties: Mary E Curtis (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
N Eastman (Applicant)
P Rigg (Solicitor) (Respondent)

Solicitors:
Clyde & Co (Applicant)
Peter R Rigg (Respondent)

File Number(s): 2021/63792

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This appeal concerns a development application lodged by the applicant for alterations and additions, including a new basement level, to a dwelling at 68E Caledonia Street Paddington, which was refused by Woollahra Municipal Council on 3 November 2020. The appeal is lodged pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act). In exercising the functions of the consent authority on the appeal, the Court has the power to determine the development application pursuant to ss 4.15 and 4.16 of the EPA Act. The final orders in this appeal, outlined in [9] below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 2 The Court was required to arrange a conciliation conference between the parties, pursuant to s 34AA of the *Land and Environment Court Act 1979* (LEC

Act). The conciliation conference commenced on 17 August 2021. I presided over the conciliation conference.

- 3 At the conciliation conference, an agreement under s 34(3) of the LEC Act was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. The agreement was subsequently filed on 27 August 2021, following the lodging of amended plans on the NSW Planning Portal with the agreement of the Council, as required by cl 55(1) of the Environmental Planning and Assessment Regulation 2000.
- 4 The decision agreed upon is for the grant of development consent subject to conditions of consent pursuant to s 4.16(1) of the EPA Act. The amended development application makes a change to the roof form so that it better fits within the context of the street. A document accompanying the amended application also confirms that no underpinning will be required that is on, or negatively affects, the adjacent property at 70 Caledonia Street.
- 5 As the presiding 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 functions (this being the test applied by s 34(3) of the LEC Act). I formed this state of satisfaction as each of the jurisdictional preconditions identified by the parties is met, for the following reasons:
 - The development works are for the purposes of a dwelling house, which is a permissible use in the R2 Low Density Residential zone pursuant to the Woollahra Local Environmental Plan 2014 (WLEP 2014).
 - The proposed development complies with the applicable development standards in the WLEP 2014, and I have considered the effect of the proposed development on the heritage significance of the heritage conservation area, as required by cl 5.10(4) of the WLEP 2014.
 - The development application was accompanied by a BASIX Certificate in accordance with the requirements of Schedule 1 of the Environmental Planning and Assessment Regulation 2000.
 - Consideration has been given as to whether the subject site is contaminated as required by cl 7(1) of State Environmental Planning Policy No 55—Remediation of Land. As the site has a history of use for the purposes of a residential dwelling, it is unlikely to be contaminated.

- 6 Having reached the state of satisfaction that the decision is one that the Court could make in the exercise of its functions, s 34(3)(a) of the LEC Act requires me to “dispose of the proceedings in accordance with the decision”. The LEC Act also requires me to “set out in writing the terms of the decision” (s 34(3)(b)).
- 7 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any assessment of the merits of the development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.
- 8 The Court notes that:
- (1) The Applicant has amended the application with the consent of the Woollahra Municipal Council.
 - (2) The Applicant relies upon the amended plans and documents listed in condition A3 of the Conditions of Consent which are contained in Annexure A.
 - (3) The Applicant has filed the amended plans and documents with the Court on 27 August 2021.
 - (4) The Woollahra Municipal Council has uploaded the amended application on the NSW Planning Portal on 26 August 2021.
- 9 The Court orders that:
- (1) The appeal is upheld.
 - (2) Development Application No DA 76/2020/1 seeking consent for alterations and additions including a new basement level, is approved subject to conditions in Annexure A.

.....

J Gray

Commissioner of the Court

[Annexure A \(545878, pdf\)](#)

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