



Land and Environment Court
New South Wales

Case Name: Clutch 720 New South Pty Ltd v Council of the Municipality of Woollahra

Medium Neutral Citation: [2021] NSWLEC 1715

Hearing Date(s): Conciliation conference on 20 September 2021, final agreement filed 21 September 2021

Date of Orders: 23 November 2021

Decision Date: 23 November 2021

Jurisdiction: Class 1

Before: Pullinger AC

Decision: The Court orders that:
(1) Pursuant to Section 8.15(3) of the EPA Act, the Applicant is to pay the Respondent's costs thrown away as a result of amending the Development Application in the sum of \$500.00 within 28 days of the date of these orders.
(2) The appeal is upheld.
(3) Consent is granted to Development Application DA98/2021/1, for the change of use of two residential units to a commercial tenancy, associated alterations and additions, and stratum subdivision at 722-724 New South Head Road, Rose Bay (Lot 100 in DP 1256474), subject to the conditions set out in Annexure A.

Catchwords: DEVELOPMENT APPLICATION – change of use – alterations and additions – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 8.7, 8.15
Environmental Planning and Assessment Regulation 2000, cl 55
Land and Environment Court Act 1979, s 34

State Environmental Planning Policy No 55—
Remediation of Land, cl 7
State Environmental Planning Policy No 64—
Advertising and Signage, cl 3
State Environmental Planning Policy (Infrastructure)
2007, cl 101
Sydney Regional Environmental Plan (Sydney Harbour
Catchment) 2005
Woollahra Local Environmental Plan 2014, cll 1.2, 2.1,
4.3, 4.4, 5.21, 6.1, 6.2

Texts Cited: Land and Environment Court of New South Wales,
COVID-19 Pandemic Arrangements Policy (April 2021)

Category: Principal judgment

Parties: Clutch 720 New South Pty Ltd (Applicant)
Council of the Municipality of Woollahra (Respondent)

Representation: Counsel:
M Jaku (Solicitor) (Applicant)
J Hewitt (Solicitor) (Respondent)

Solicitors:
Jaku Legal (Applicant)
HWL Ebsworth Lawyers (Respondent)

File Number(s): 2021/148196

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the deemed refusal of Development Application DA98/2021/1 (DA) by Woollahra Municipal Council (the Respondent). The DA sought consent for the change of use of 2 residential units to a commercial tenancy, associated alterations and additions and stratum subdivision to the property at 722-724 New South Head Road, Rose Bay (the site).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 20 September 2021. I presided over the conciliation conference.

- 3 Consistent with the Court's COVID-19 Pandemic Arrangements Policy, published on 6 April 2021, the matter was conducted by Microsoft Teams.
- 4 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. The agreement involves the Court upholding the appeal and granting development consent to an amended Development Application, subject to conditions.
- 5 Whilst the amended Development Application remains substantially the same as the original DA, a series of changes cumulatively resolve the contentions raised by the Respondent, which in turn relate primarily to the provision of parking, the form of proposed signage and confirmation of privacy screening, amongst other contentions.
- 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' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the amended Development Application.
- 7 There are jurisdictional prerequisites that must be satisfied before this function can be exercised.
- 8 In that regard, I am satisfied the DA was made with the consent of the owner of the land. Further, owner's consent was provided by the Respondent for those aspects of the DA involving the Respondent's land, particularly the awning.
- 9 The parties agree, and I am satisfied, the Woollahra Local Environmental Plan 2014 (WLEP) is a relevant environmental planning instrument. The site is zoned B2 Local Centre and the proposed development, characterised as a shop top housing, is permissible with consent.
- 10 The parties agree, and I am satisfied, that the DA is consistent with the aims and objectives set out at cl 1.2 of the WLEP.
- 11 The parties agree, and I am satisfied, that the DA is consistent with the B2 zone objectives as required by cl 2.1 of the WLEP, in part because the proposal contributes to a range of retail and business uses serving the needs of people who live in, work in and visit the local area.

- 12 The parties agree, and I am satisfied, that all principal development standards of the WLEP have been met by the DA. In particular, cl 4.3 - Height of buildings - limits development to a maximum height of 14.1m and the proposal complies with this standard. Further, cl 4.4 - Floor space ratio (FSR) - limits development to a maximum FSR of 2:1 and the proposal does not alter the earlier approved FSR.
- 13 The parties agree, and I am satisfied, that those matters set out in cl 5.21 - Flood planning - of the WLEP have been adequately considered. It is noted the DA does not involve any works, including excavation, which would alter or affect the existing approved development regarding flood planning.
- 14 The parties agree, and I am satisfied, that matters set out in cl 6.1 - Acid sulfate soils - of the WLEP have been adequately considered. It is noted the DA does not involve any works, including excavation, which would alter or affect the existing approved development regarding acid sulfate soils.
- 15 The parties agree, and I am satisfied, that matters set out in cl 6.2 - Earthworks - of the WLEP have been appropriately considered. It is noted the DA does not involve any works, including excavation, which would alter or affect the existing approved development regarding earthworks.
- 16 The parties agree, and I am satisfied, that State Environmental Planning Policy 55 – Remediation of Land (SEPP 55) is an additional relevant environmental planning instrument. The parties agree that potential contamination was considered when consent for Development Application DA2017/643/1 was granted for the demolition of existing structures and the construction of a shop top housing development (and subsequent modification applications). No further excavation works form part of the proposed DA the subject of this appeal. As such, I am satisfied cl 7(1) of SEPP 55 has been appropriately addressed.
- 17 The parties agree, and I am satisfied, that the amended DA is subject to the provisions of State Environmental Planning Policy 64 – Advertising and Signage (SEPP 64). I am satisfied the proposed signage, as amended, is consistent with the objectives of SEPP 64, as set out at cl 3(1)(a) and satisfies the relevant assessment criteria specified of the SEPP 64.

- 18 The parties agree, and I am satisfied, that State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) is an additional relevant environmental planning instrument. I am satisfied that pursuant to cl 101 of SEPP Infrastructure, the DA facilitates vehicular access to the site by a road other than a classified road (New South Head Road), and that the efficiency and operation of the classified road will not be adversely affected by the proposed development.
- 19 The parties agree, and I am satisfied, that the amended DA is subject to the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP). I am satisfied that appropriate consideration of the SREP has occurred. The parties agree the site is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area. Consequently, there are no specific matters for consideration.
- 20 Finally, in accordance with s 4.15(1) of the EPA Act, the parties agree, and I am satisfied, the DA has been publicly notified to nearby residents in accordance with the Respondent's community participation plan. No submissions were received, and the impacts of the proposed development have been appropriately considered. Accordingly, I am satisfied the amended Development Application is in the public interest and may be granted consent.
- 21 Having considered each of the preceding jurisdictional requirements, and having formed the necessary view required by s 34(3) of the LEC Act, I find it is appropriate to make the orders agreed to by the parties and now dispose of the matter.
- 22 Accordingly, the Court notes that:
 - (1) Pursuant to cl 55 of the Environmental Planning and Assessment Regulation 2000, the Applicant has amended the Development Application with the consent of the Respondent.
 - (2) The Respondent has uploaded the amended Development Application to the NSW Planning Portal on 21 September 2021, comprising the documents and plans set out in Condition A.3 of Annexure A.
 - (3) The Applicant has filed the amended Development Application with the Court on 21 September 2021.

Orders

23 The Court orders that:

- (1) Pursuant to Section 8.15(3) of the EPA Act, the Applicant is to pay the Respondent's costs thrown away as a result of amending the Development Application in the sum of \$500.00 within 28 days of the date of these orders.
- (2) The appeal is upheld.
- (3) Consent is granted to Development Application DA98/2021/1, for the change of use of two residential units to a commercial tenancy, associated alterations and additions, and stratum subdivision at 722-724 New South Head Road, Rose Bay (Lot 100 in DP 1256474), subject to the conditions set out in Annexure A.

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M Pullinger

Acting Commissioner of the Court

Annexure A (513116, pdf)

(architectural plans) pdf (1034081, pdf)

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