



Land and Environment Court
New South Wales

Case Name:	Prominent Ventures Pty Ltd v Woollahra Municipal Council
Medium Neutral Citation:	[2021] NSWLEC 1745
Hearing Date(s):	Conciliation Conference on 22 November 2021
Date of Orders:	6 December 2021
Decision Date:	6 December 2021
Jurisdiction:	Class 1
Before:	Dickson C
Decision:	<p>The Court orders that:</p> <p>(1) The Appeal is upheld;</p> <p>(2) Development application number 143/2020, lodged on 15 May 2020 for demolition of the existing dwelling and construction of a new two storey multi-dwelling housing development with basement car parking, a swimming pool and associated landscaping works at 40 Glendon Road, Double Bay, is approved subject to the conditions in Annexure A.</p>
Catchwords:	DEVELOPMENT APPLICATION – Demolition, construction of new multi-dwelling housing – amended plans – further conciliation conference – agreement between the parties – orders
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979, ss 4.15, 4.46, 8.7</p> <p>Environmental Planning and Assessment Regulation 2000, cl 55</p> <p>Land and Environment Court Act 1979, s 34</p> <p>State Environmental Planning Policy No 55 – Remediation of Land, cl 7</p> <p>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p>

Water Management Act 2000
Woollahra Local Environmental Plan 2014, 2.7, 4.1A,
4.3, 4.4, 5.21, 6.1, 6.2

Category: Principal judgment

Parties: Prominent Ventures Pty Ltd (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
N Eastman (Applicant)
S Patterson (Solicitor)(Respondent)

Solicitors:
Hartley Solicitors (Applicant)
Wilshire Webb Staunton Beattie (Respondent)

File Number(s): 2020/326384

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (EPA Act) by Prominent Ventures Pty Limited (Applicant) against actual refusal of Development Application No. 143/2020 Woollahra Municipal Council (the Respondent) on 19 November 2020. The development application seeks consent for the demolition of the existing dwelling and construction of a new two storey multi-dwelling housing development with basement carparking, swimming pool and associated landscape works. The development is proposed at 40 Glendon Road Double Bay (Lot 8 DP 32788 and Lot 34 DP 792126).
- 2 The Court arranged a conciliation conference under s 34(1) of the Land and Environment Court Act 1979 (the LEC Act) between the parties, which was held on 7 May 2021. The parties failed to reach agreement and on 6 August 2021 the conciliation was terminated, and the matter was listed for hearing.
- 3 The Applicant filed a Notice of Motion, on 8 September 2021, to rely on amended plans. Woollahra Municipal Council, as the relevant consent authority, has agreed under cl 55 of the Environmental Planning and Assessment Regulation 2000 to the Applicant amending the application before

the Court. The motion was granted on 15 September 2021. The principle amendments to the application can be summarised as:

- Reduction in the proposed roof form and the overall building height.
- A revision to the proposed driveway.
- An increase in the deep soil landscaped area in the front setback to allow for planting of two canopy trees.
- Changes to the design features in the front building façade.
- Changes to boundary fencing to provide a consistent height of 1.8m.
- Amendments to the proposed balconies to minimise privacy impacts to surrounding properties.

4 Prior to the hearing, the parties continued to conference based on the amended application. A final package of material, as lodged on the Planning Portal, was filed with the Court on 16 November 2021.

5 Upon commencing the hearing, the parties advised the Court that an agreement under s 34(3) of the LEC Act was capable of being reached. On that basis, the matter was listed for a further s 34 conciliation conference on 22 November 2021. I presided over this conciliation conference. The decision agreed upon by the parties is that the appeal is upheld, and the development application is approved, subject to the conditions of consent annexed to this judgment.

6 As the presiding Commissioner, I am satisfied that the decision is one 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 have formed this state of satisfaction for the following reasons:

- (1) By reference to the development application form filed with the Class 1 Application, Owner's consent has been given to the Applicant for lodgement of the Development Application.
- (2) The land is within the Sydney Harbour catchment and is subject to the provision of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, however, there are no specific matters for consideration as the land is outside the Foreshores and Waterways Area.
- (3) Pursuant to the Woollahra Local Environmental Plan 2014 (LEP 2014), the subject site is zoned R3 High Density Residential. The proposed dwellings, which are accessible from the ground floor level, meet the

definition of multi-dwelling housing, a use which is permissible in the zone. Demolition is permissible pursuant to cl 2.7 of LEP 2014. In determining the development application, I have had regard to the objectives of the zone.

- (4) Clause 4.1A(2) of LEP 2014 specifies a minimum lot size of 700m² for multi dwelling housing. The subject site which comprises of two lots has a combined area of 779m² which meets the minimum lot size standard.
- (5) Pursuant to cl 4.3 of LEP 2014 the site has a maximum building height standard of 9.5m. The proposed development will have a building height maximum of 9.35m. I accept the agreement of the town planning experts that the development is compliant with the maximum height standard.
- (6) Clause 4.4: Floor Space Ratio (FSR) of LEP 2014 provides that there is a maximum floor space ratio control of 0.65:1 for the subject site. The proposed multi dwelling housing has a Gross Floor Area (GFA) of 494m² with a FSR of 0.63:1. I accept the agreement of the town planning experts that the development is compliant with the FSR standard.
- (7) Pursuant to cl 5.21: Flood Planning, I am required to be satisfied of the matters listed at subcl (2) and give consideration to the matters listed at subcl (3). The development application includes a Flood Study Assessment prepared by Greenarrow. Based on the contents of the development application documents, I have considered the matters in cl 5.21(3) of the LEP 2014 and I am satisfied of the matters in cl 5.21(2).
- (8) The subject site is classified as Class 3 Acid Sulfate Soil pursuant to LEP 2014 and cl 6.1(3) provides that development consent must not be granted unless an Acid Sulfate Management Plan, prepared in accordance with the Acid Sulfate Soil Manual has been provided to the consent Authority for the proposed excavation works on Class 3 land. Such an Acid Sulfate Soil Management Plan has been prepared by the Applicant and forms part of the development application, consistent with the requirements of cl 6.1 of LEP 2014.
- (9) Pursuant to cl 6.2: Earthworks of LEP 2014 in deciding whether to grant consent for earthworks I am required to consider the matters listed at subcl (3). Having regard to the 'Concept Basement Construction Methodology Plan' and the 'Joint Report of the Geotechnical Engineers' I have considered the matters in cl 6.2(3) of the LEP 2014.
- (10) State Environmental Planning Policy No 55—Remediation of Land (SEPP 55) applies to the site. Clause 7(1) of SEPP 55 requires the consent authority to consider whether the site is contaminated. The development application is accompanied by a Remediation Action Plan Report" prepared by JK Environments dated 19 May 2021 which concludes that "the site can be made suitable for the proposed development via remediation and the implementation of the RAP [Remediation Action Plan]". The annexed conditions require the

implementation of the RAP. As required by cl 7(1)(c) I am satisfied the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, and I am satisfied that the land will be remediated before the land is used for that purpose.

- (11) The proposed development is integrated development pursuant to cl 4.46 of the EPA Act as a Water Supply Work Approval is required under the *Water Management Act 2000*. The development application was referred to Water NSW who provided General Terms of Approval on 25 May 2021. These conditions are included in the annexed conditions of consent (Condition A.7).
- (12) The development application as lodged was notified in accordance with the relevant planning controls. The submissions received were considered by the parties. The amended development application was also renotified in August 2021. Further, the Court has heard from resident objectors on 22 November 2021. I am satisfied that the submissions have been considered in the determination of the development application: s 4.15(1)(d) of the EPA Act.

- 7 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)).
- 8 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.
- 9 The Court orders that:
 - (1) The Appeal is upheld;
 - (2) Development application number 143/2020, lodged on 15 May 2020 for demolition of the existing dwelling and construction of a new two storey multi-dwelling housing development with basement car parking, a swimming pool and associated landscaping works at 40 Glendon Road, Double Bay, is approved subject to the conditions in Annexure A.

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D M Dickson

Commissioner of the Court

[Annexure A \(871784, pdf\)](#)

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