



New South Wales

Medium Neutral Citation:	BFD Pymble Pty Ltd v Ku-ring-gai Council [2016] NSWLEC 1315
Hearing dates:	Conciliation conference on 04 March, 07 April, 20 April, 04 May, 30 June and 21 July 2016
Date of orders:	25 July 2016
Decision date:	25 July 2016
Jurisdiction:	Class 1
Before:	Brown C
Decision:	See (5) below
Catchwords:	DEVELOPMENT APPLICATION: conciliation conference; agreement between the parties; orders
Legislation Cited:	Environmental Planning and Assessment act 1979 Land and Environment Court Act 1979
Category:	Principal judgment
Parties:	BFD Pymble Pty Ltd (Applicant) Ku-ring-gai Council (Respondent)
Representation:	Mr M Jaukovic, Lin Tang & Co Lawyers (Applicant) Mr C Shaw, Swaab Attorneys (Respondent)
File Number(s):	2016/00159352
Publication restriction:	No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal against the refusal of Da No: 0145/15 for the demolition of all existing structures and the construction of three residential flat buildings, a neighbourhood shop and basement car parking at 2-8 Pymble Avenue and 2-4 Everton Street Pymble.
- 2 In this matter, at or after a conciliation conference, an agreement under s 34(3) of the *Land and Environment Court Act 1979* (the Court Act) was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. As the presiding Commissioner, I was satisfied that the decision was one that the Court could have made in the proper exercise of its functions (this being the test applied by s 34(3) of the Court Act). As a consequence, s 34(3)(a) of the Act required me to "dispose of the proceedings in accordance with the decision".
- 3 The Court Act also required me to "set out in writing the terms of the decision" (s 34(3)(b)). The orders made to give effect to the agreement constitute that document.

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In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.

5 The final orders to give effect to the parties' agreement under s34(3) of the Land and Environment Court Act 1979 are:

- (1) The Applicant is given leave to amend the development application by substituting the following plans prepared as the plans relied upon for the purpose of the development application:

Plan Reference	Drawn By	Dated
S34-000 Cover Sheet (V)	SHED	31/05/16
S34-005 Site Analysis (J)		
S34-010 Existing / Demolition Site Plan (G)		
S34-011 Proposed Site Plan (S)		
S34-100 Proposed Floor Plan – Basement 03 (Z)		
S34-101 Proposed Floor Plan – Basement 02 (Z)		
S34-102 Proposed Floor Plan – Basement 01 (Y)		
S34-103 Proposed Floor Plan – Lower Ground 02 (Y)		
S34-104 Proposed Floor Plan – Lower Ground 01 (Y)		
S34-105 Proposed Floor Plan – Ground (Z)		
S34-106 Proposed Floor Plan – Level 01 (Y)		
S34-107 Proposed Floor Plan – Level 02 (Y)		
S34-108 Proposed Floor Plan – Level 03 (Y)		
S34-109 Proposed Floor Plan – Level 04 (Y)		
S34-110 Proposed Floor Plan – Roof (Y)		
S34-400 Proposed Building Elevations (M)		
S34-401 Proposed Building Elevations (L)		
S34-402 Proposed Building Elevations (L)		
S34-403 Proposed Building Elevations (N)		
S34-404 Proposed Building Elevations / Sections (M)		
S34-420 Proposed Building Sections (L)		
S34-517 Diagrams – Waste Allocation (E)		
S34-524 Diagrams - Storage (E)		
S34-927 External Finishes Sample Board (D)		
S34-930 Photo Montage 1 (D)		
S34-931 Photo Montage 2 (D)		

Plan Reference	Drawn By	Dated
LA-201 B – Landscape Concept Plan	Turf	1/6/2016
LA-202 B – Landscape General Arrangement Plan		
LA-203 A – Deep Soils Plan		
LA-204 A – Placemaking Diagram		
LA-301 B – Landscape Levels Plan		
LA-401 A – Tree Plan		
LA-402 A – Planting Plan		
LA-403 A – Planting Schedule		
LA-501 B – Basix Compliance Diagram	Turf	2/6/2016
LA-701 B – Sections		
LA-702 B - Sections		
C.01, C.02, C.03, C.04, C.10, C.11, C.12, C.13, C.14, C.15, C.16 (All Issue F)	James Taylor and Associates	01.06.15
SW.01, SW.02, SW.03, SW.04, SW.05, SW.06, SW.07, SW.08, SW.09, SW.10, SW.11, SW.12, SW.13, SW.14, SW.15, SW.101		
S34-528 Rev A, S34-528.1 Rev A, S34-528.2 Rev A, S34-528.3 Rev A	SHED	01/07/2016

- (2) The Applicant is to pay those costs of the Respondent thrown away as a result of amending the development application pursuant to section 97B(2) of the Environmental Planning and Assessment Act 1979 as agreed or assessed.
- (3) The appeal is upheld.
- (4) Development consent is granted to Development Application No. 0145/15 for demolition of existing structures and the erection of three residential flat buildings containing 98 units, a neighbourhood shop, basement car parking and associated landscaping at 2-8 Pymble Avenue and 2-4 Everton Street, Pymble subject to the conditions of consent annexed hereto and marked "A".

G T Brown

Commissioner

159352.16 - Annexure A (180 KB, pdf)

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Decision last updated: 02 August 2016