



Land and Environment Court
New South Wales

Case Name: Coptic Orthodox Church - Saint Mary, Saint Kosman and Saint Demian Church v The Hills Shire Council

Medium Neutral Citation: [2022] NSWLEC 1295

Hearing Date(s): Conciliation conference on 4 and 26 April 2022, 6 and 23 May 2022

Date of Orders: 7 June 2022

Decision Date: 7 June 2022

Jurisdiction: Class 1

Before: Espinosa C

Decision: The Court orders that:
(1) The appeal is upheld.
(2) Development consent is granted to Development Application No. 179/2021/JP, for the demolition of a temporary place of public worship and construction of a permanent place of public worship over basement parking on land legally described as Lot 2 and Lot 3 in DP 1200708 and known as 118-120 Arnold Avenue, Kellyville, subject to the conditions at Annexure A.

Catchwords: DEVELOPMENT APPEAL – place of public worship – conciliation conference – agreement between the parties – orders

Legislation Cited: Contaminated Land Management Act 1997
Environmental Planning and Assessment Act 1979, s 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 (Planning Systems) 2021, s 5 in Schedule 6
State Environmental Planning Policy (Resilience and

Hazards) 2021, s 4.6
The Hills Local Environmental Plan 2019, cl 4.3, 4.6,
6.3

Category: Principal judgment

Parties: Coptic Orthodox Church - Saint Mary, Saint Kosman
and Saint Demian Church (Applicant)
The Hills Shire Council (Respondent)

Representation: Counsel:
J Reid (Applicant)
J Corradini–Bird (Solicitor) (Respondent)

Solicitors:
Swaab (Applicant)
Marsdens Law Group (Respondent)

File Number(s): 2021/356499

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is a Class 1 Development Appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) being an appeal against the deemed refusal of a development application No 179/2021/JP seeking consent to replace a temporary place of public worship with a permanent place of public worship (the Proposed Development) at 8 Raymond Court and 118-120 Arnold Avenue, Kellyville legally described as Lot 3 DP 1200708 and Lot 2 DP 1200708 (the Site).
- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which has been held on 4 and 26 April 2022, 6 and 23 May 2022. I have presided over the conciliation conference.
- 3 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. This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions.

- 4 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 development application.
- 5 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings to be the terms of The Hills Local Environmental Plan 2019 (THLEP), the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards) and the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP).
- 6 The parties explained how the jurisdictional prerequisites have been satisfied in an agreed written jurisdictional statement which I summarise below.
- 7 The Site is zoned R2 Low Density Residential under the THLEP. Development for the purposes of '*a place of public worship*' is permissible with consent in the R2 zone.
- 8 The maximum building height for any building on the Site is mapped at 10 m pursuant to cl 4.3 of THLEP. Most of the built form is located under the building height limit of 10 m. The additional building feature that is above 10 m is the Coptic Church Minaret. Clause 5.6 of THLEP permits development that includes an architectural roof feature that exceeds the maximum building height to be carried out. The Coptic Church Minaret is a fundamental element of the church and is an architectural roof feature and the parties rely on the Architectural Roof Feature Justification by Andrew Martin Planning dated April 2022 and I am satisfied that a written request made pursuant to cl 4.6 of THLEP is not required in order to vary the development standard in cl 4.3 of THLEP.
- 9 Clause 6.3 of THLEP provides that Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to

make that infrastructure available when it is required. Essential services and access are available to the proposed development

- 10 The SEPP Resilience and Hazards contains s 4.6 which requires a consent authority to consider the contamination and remediation of land when determining a development application. Subsection 4.6(1) requires that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

- 11 Subsection 4.6(2) further requires that:

- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

- 12 The Site is currently used as a place of public worship, and site contamination was addressed during the construction of the temporary premises on the site. Hence, there is no change of use to the Site proposed by the Proposed Development and s 4.6(2) does not apply. There is no immediate evidence to suggest that the site has in the past had an industrial use which might result in the contamination of land requiring remediation.

- 13 The Site and the surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines under s 4.14 of the SEPP Resilience and Hazards.

- 14 The Site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the *Contaminated Land Management Act 1997*.

- 15 For the above reasons, no further investigation of land contamination is warranted at this time. The Site is suitable in its present state for the proposed

dwelling house. Therefore, pursuant to the SEPP Resilience and Hazards, the Court can consent to the carrying out of development on the land.

- 16 Places of public worship with a capital investment value over \$5 million are classified as regionally significant development pursuant to s 5 in Schedule 6 of the Planning Systems SEPP. As the proposed development has a capital investment value of \$5,561,56.00, the proceedings are subject to the control and direction of the Sydney Central City Planning Panel (pursuant to section 8.15(4) of the EPA Act). On 18 January 2022, the Panel provided the following directions to the Respondent:

“The Panel is content for Council to conduct the appeal as it sees fit. Council is not required to provide any updates to the Panel, except at monthly meetings with the Panel Chair. In addition, at the conclusion of the matter the Council is to inform the Panel of the outcome and provide a copy of all relevant court documents.”

- 17 The DA the subject of these proceedings was placed on a second notification from 16 December 2020 to 29 January 2021. Fourteen (14) submissions were received in response to the second notification. The Amended DA was notified from 27 April 2022 until 4 May 2022. Four (4) submissions were received in response to notification of the amended DA.
- 18 I am satisfied that the parties’ decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act. I adopt the reasons given by the parties as I have summarised above in this judgment.
- 19 As the parties’ decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties’ decision.
- 20 The Court notes that the Council, as the relevant consent authority, has agreed pursuant to cl 55 of the Environment Planning and Assessment Regulation 2000, to amend Development Application No. 179/2021/JP, with the amended plans and documents uploaded on the NSW Planning Portal on 19 May 2022 and 24 May 2022 and filed with the Court on 25 May 2022 as listed below:

Drawing No. and	Title	Prepared	Date
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Revision/Issue		by	
1. Architectural plans			
Drawing No DA02 Revision F	Staging Plans	Tiba Architecture Group	12 April 2022
Drawing No DA03 Revision F	Basement Floor Plan		12 April 2022
Drawing No DA04 Revision F	Ground Floor Plan		12 April 2022
Drawing No DA05 Revision E	First Floor Plan		30 March 2022
Drawing No DA06 Revision F	Site/ Roof Plan		12 April 2022
Drawing No DA07 Revision F	Elevations Sheet 1		12 April 2022
Drawing No DA08 Revision F	Elevations Sheet 2		12 April 2022
Drawing No DA09 Revision F	Sections + Cut & Fill		12 April 2022
Drawing No DA13A Revision E	Evacuation Plan Car Park		30 March 2022
Drawing No DA13B Revision	Evacuation Plan Ground Floor		30 March

E			2022
Drawing No DA13C Revision E	Evacuation Plan Ground Floor		30 March 2022
Photomontages			Undated
2. Landscape Plans			
Drawing No L01 Revision 6	Landscape Plan	Botanique Design	14 April 2022
3. Stormwater Management Plans			
Drawing No D1 Issue D	Details, Notes & Legend	NY Civil Engineering	13 April 2022
Drawing No D2 Issue D	Stormwater Management Plan Basement		13 April 2022
Drawing No D3 Issue D	Stormwater Management Plan Roof and Site Plan		13 April 2022
Drawing No D4 Issue D	Stormwater and Water Quality Details		13 April 2022
Drawing No D5 Issue D	Sediment Control Plan and Details		13 April 2022
Drawing No D6	Driveway		13 April

Issue D	Longsections	2022
Drawing No D7 Issue D	Driveway Longsections	13 April 2022
Drawing No D8 Issue D	Flood Level Plan	13 April 2022
Title	Prepared by	Date
Environmental noise Assessment Report	Day Design Pty Ltd	1 April 2022
Clause 4.6 to Height - Architectural Roof Feature Justification	Andrew Martin Planners	April 2022
Letter of Advice regarding Traffic	McLaren Traffic Engineering	22 April 2022
Operational Plan of Management		11 May 2022

Orders

21 The Court orders that:

- (1) The appeal is upheld.
- (2) Development consent is granted to Development Application No. 179/2021/JP, for the demolition of a temporary place of public worship and construction of a permanent place of public worship over basement parking on land legally described as Lot 2 and Lot 3 in DP 1200708 and known as 118-120 Arnold Avenue, Kellyville, subject to the conditions at **Annexure A**.

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E Espinosa

Commissioner of the Court

Annexure A (414957, pdf)

Architectural Plans (6708046, PDF)

Plan of Management (175984, PDF)

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