



Land and Environment Court
New South Wales

Case Name: Platino Properties Pty Ltd v Northern Beaches Council

Medium Neutral Citation: [2023] NSWLEC 1186

Hearing Date(s): Conciliation conference on 7 March 2023

Date of Orders: 20 April 2023

Decision Date: 20 April 2023

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:
(1) The appeal is upheld.
(2) Development Application No 2021/0212 for demolition of the existing structures, construction of two buildings ranging in height from 3 storeys to 7 storeys and containing 98 independent living units including 10 units for disability housing to be operated by Project Independence, and 4 affordable units for seniors, at 5 Skyline Road, Frenchs Forest, is determined by the grant of consent, subject to the conditions of consent at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – conciliation conference – agreement between the parties - orders

Legislation Cited: Environmental Planning and Assessment Act 1979 s 4.16, 8.7
Environmental Planning and Assessment Regulation 2000, cl 55, 55AA, 121B
Environmental Planning and Assessment Regulation 2021, Sch 6 s 3
Land and Environment Court Act 1979 s 34
Rural Fires Act 1997 s 100B
State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 cl 10, 14,

16, 25, 40

State Environmental Planning Policy (Housing) 2021
Sch 7A s 2

State Environmental Planning Policy (Resilience and
Hazards) 2021 s 4.6

Warringah Local Environmental Plan 2011

Category: Principal judgment

Parties: Platino Properties Pty Ltd (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
M Staunton (Applicant)
S Patterson (Solicitor) (Respondent)

Solicitors:
Pikes & Verekers Lawyers (Applicant)
Wiltshire Webb Staunton Beattie Lawyers (Respondent)

File Number(s): 2022/161509

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No 2021/0212 for demolition of the existing structures, construction of two buildings ranging in height from 3 storeys to 7 storeys and containing 98 independent living units including 10 units for disability housing to be operated by Project Independence, and 4 affordable units for seniors, (the proposal) at 5 Skyline Road, Frenchs Forest (the site), by Northern Beaches Council (the Council).
- 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 7 March 2023. I presided over the conciliation conference. 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. 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.

- 3 The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.
- 4 There are preconditions to the exercise of power to grant development consent for the proposal.

Amended Plans

- 5 The Environmental Planning and Assessment Regulation 2000 (2000 Regulation) continues to apply to the application, because the application was lodged on 17 March 2021 and not yet determined on 1 March 2022 (s 3 of Sch 6 to the Environmental Planning and Assessment Regulation 2021). Pursuant to subs 3(2) of Sch 6 to the Environmental Planning and Assessment Regulation 2021, a requirement to use the NSW Planning Portal under the 2000 Regulation, clause 55(1), 55AA(2)(d) or 121B(1) does not apply if the development application is subject to proceedings in the Court.
- 6 The Council, as the consent authority, consented to the amendment of the application to rely on the documents listed under condition 1 of the conditions of consent at Annexure A. The amended application was filed with the Court on 7 March 2023. As a result of the amendment of the application, the parties reached agreement during the conciliation conference.

The site and the proposal

- 7 At the date the development application was lodged, the land the subject of the application comprised Lot 101 in DP 1209504. The parcel was subsequently subdivided into Lots 10 and 11 in DP 1258355.
- 8 The proposal comprises the following development:
 - Demolition of the existing office/warehouse building and at grade parking on the site;
 - Construction of two separate buildings, ranging in height from 3 to 7 storeys, containing:
 - 98 independent living units, including 10 units for disability housing to be operated by Project Independence and 4 affordable units for seniors

- A mix of studio, 1, 2, 2 bed + study, and 3 bed dwellings
- 2,458m² of employment generating uses
- Approximately 15,110m² overall gross floor area
- Stratum subdivision into 3 lots for disability and affordable housing, other seniors housing and employment generating uses
- Height range of 3 (approximately 12m) to 7 storeys (approximately 26.8m, 28.2m to lift overrun)
- Common facilities including a pool provided within a centrally located position between the buildings
- Central community gardens
- Basement car parking for 202 spaces, with access from the access ramp to the approved car park via Lot 2.
- Vehicular access is to be shared with the seniors living development approved and under construction on Lot 10 DP 1258355 and development for parking and driveway purposes is proposed on that lot.

Planning framework

- 9 The application is made in reliance on the provisions of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (SEPP Seniors). The operation of SEPP Seniors is saved with respect to the application by s 2 of Sch 7A to State Environmental Planning Policy (Housing) 2021.
- 10 The site is zoned B7 Business Park pursuant to Warringah Local Environmental Plan 2011 (LEP 2011). The objectives of the zone, to which regard must be had, are:
 - To provide a range of office and light industrial uses.
 - To encourage employment opportunities.
 - To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
 - To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.

- To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.

- 11 The proposal is seniors housing within the meaning of cl 10 of SEPP Seniors. The land, being zoned for business park purposes under WLEP, is land zoned primarily for urban purposes within the meaning of cl 14 of SEPP Seniors, and as hospitals are permissible in the B7 zone, the land is land to which SEPP Seniors applies. The proposal is permissible with consent pursuant to cl 16 of SEPP Seniors.
- 12 The site is identified as Bushfire Prone Land – Vegetation Buffer. The NSW Rural Fire Service has issued a Bush Fire Safety Authority pursuant to s 100B of the *Rural Fires Act 1997* and General Terms of Approval.
- 13 I accept the agreement of the parties that the proposal is not incompatible with the surrounding land uses, having regard to the natural environment, existing and approved uses, services and infrastructure, and the bulk, scale, built form and character of the proposed development, pursuant to cl 25(5) of SEPP Seniors.
- 14 I accept the agreement of the parties that the proposal complies with the standards set by cl 40 of SEPP Seniors.
- 15 I accept the agreement of the parties that the site can be made suitable for the proposal, pursuant to s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021.

Conclusion

- 16 I have considered the submissions made by the Council in the Statement of Jurisdictional Issues filed with the Court on 28 March 2023 and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.

Orders

- 17 The orders of the Court are:
 - (1) The appeal is upheld.
 - (2) Development Application No 2021/0212 for demolition of the existing structures, construction of two buildings ranging in height from 3 storeys to 7 storeys and containing 98 independent living units including 10

units for disability housing to be operated by Project Independence, and 4 affordable units for seniors, at 5 Skyline Road, Frenchs Forest, is determined by the grant of consent, subject to the conditions of consent at Annexure A.

Susan O'Neill

Commissioner of the Court

161509.22 Annexure A (425019, pdf)

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