



Land and Environment Court
New South Wales

Case Name: Aplus Architecture Pty Limited v Council of the City of Ryde

Medium Neutral Citation: [2022] NSWLEC 1165

Hearing Date(s): Conciliation Conference on 11 March 2022

Date of Orders: 31 March 2022

Decision Date: 31 March 2022

Jurisdiction: Class 1

Before: Dickson C

Decision: The Court orders that:
(1) The appeal is upheld.
(2) Development Application no. LDA2021/0184 for the staged demolition of the existing buildings, and the construction in two stages, of two commercial towers with basement parking, the provision of a new road and associated works, at 63-71 Waterloo Road, Macquarie Park (comprising Lot 3 in DP 1043041) is granted consent, subject to the conditions set out in Annexure A.

Catchwords: DEVELOPMENT APPLICATION – demolition and construction to two commercial towers – Macquarie Park – amended plans – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 7.4, 8.7, 8.15
Environmental Planning and Assessment Regulation 2000, cl 55
Interpretation Act 1987, ss 5, 30
Land and Environment Court Act 1979, s 34
Ryde Local Environmental Plan 2014, cll 2.3, 2.7, 4.3, 4.4, 6.2, 6.4, 6.6, 6.9

State Environmental Planning Policy (Biodiversity and Conservation) 2021
State Environmental Planning Policy (Infrastructure) 2007, Sch 3, cl 88
State Environmental Planning Policy No. 55 Remediation of Land, 1998 cl 7
State Environmental Planning Policy State Environmental Planning Policy (Resourcing and Energy) 2021
State Environmental Planning Policy (State and Regional development) 2011, Sch 7
State Environmental Planning Policy (Transport and Infrastructure) 2021
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Category: Principal judgment

Parties: Aplus Architecture Pty Limited (Applicant)
Council of the City of Ryde (Respondent)

Representation: Counsel:
J Reid (Applicant)

Solicitors:
King & Wood Mallesons (Applicant)
Council of the City of Ryde (Respondent)

File Number(s): 2021/220838

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** The proceedings are an appeal pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (EPA Act) by the Applicant against the deemed refusal of Development Application No. LDA2021/84 by the Council of the City of Ryde (the Respondent). The development application seeks consent for the demolition of existing structures and staged development for the construction of two commercial towers (Buildings A & B), and the provision of a new road (Road 1). The commercial towers will accommodate retail and office premises with two levels of basement

car parking. The development also provides a pedestrian link with the adjoining eastern property, and an open space at the north-western corner of the site. The development is proposed at 63-71 Waterloo Road, Macquarie Park (Lot 3 in DP 1043041).

- 2 A voluntary planning agreement (VPA) has been agreed between the Respondent and the owner of the subject site to provide land dedication for part of proposed Road , construction of the part of Road 1 and a monetary contribution.
- 3 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 15 October 2021. At that time, agreement was not able to be reached and the matter was listed for hearing on the 10, 11 March 2022. Subsequent to the matter being listed for hearing, the Applicant amended their development application with the consent of the Respondent and uploaded the amended development application to the NSW Planning Portal on 23 December 2021.
- 4 At the commencement of the hearing the parties advised the Court that the matter was capable of being disposed of by agreement, and requested the matter be listed for a further conciliation conference pursuant to s 34(1) of the LEC Act. I presided over the further conciliation conference. At the conciliation, agreement was reached between the parties. That decision is that the appeal is upheld, and the development application is approved, subject to the conditions of consent annexed to this judgment: pursuant to s 4.16(1) of the EPA Act.
- 5 In exercising the functions of the consent authority on the appeal, the Court has the power to determine the development application pursuant to ss 4.15 and 4.16 of the EPA Act. The final orders in this appeal, outlined below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 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) The owner of the site is UT 65 Pty Ltd. Owners consent to lodge the DA has been provided.
- (2) The development application was initially notified from 8 June – 9 July 2021 in accordance with Council's notification policy. The amended development application was further notified. 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.
- (3) The cost of the proposed development is nominated as \$182,243,206 and as such, the development was designated as 'regional development' pursuant to sch 7 of State Environmental Planning Policy (State and Regional Development) 2011 which applied at the time. Accordingly, the original consent authority was the Sydney North Planning Panel. Pursuant to s 8.15(4) of the EPA Act the Respondent enters into agreement with the Applicant under the direction of the Sydney North Planning Panel.
- (4) The Ryde Local Environmental Plan 2014 (LEP 2014) applies. The site is zoned B3- Commercial Core and commercial uses are permitted with consent 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; cl 2.3(2) of LEP 2014.
- (5) Clause 4.3 of LEP 2014 nominates a maximum building height of part 30m and part 37m for the subject site. The development application relies upon the incentive provisions of cl 6.9 – Development in Macquarie Park Corridor in LEP 2014 which enables a maximum height of 65 metres. The development is under the maximum height limit of 65m and complies with cl 4.3 of LEP 2014.
- (6) Clause 4.4 nominates a maximum floor space ratio (FSR) for the subject site of 1:1. The development application relies upon the incentive provisions of cl 6.9 – Development in Macquarie Park Corridor in LEP 2014 which enables a maximum FSR of 3:1. The development is under the maximum FSR limit of 3:1 and complies with cl 4.4 of LEP 2014.
- (7) Pursuant to cl 6.2 'Earthworks' in LEP 2014, the parties submit that the basement excavation and earthworks proposed as part of the development application will not result in any adverse impacts on environmental functions and processes, or neighbouring uses. Further, they make an agreed submission that the proposed cut and fill will not adversely impact the amenity of neighbouring properties. They conclude, and I agree, that I can be satisfied of the matters in clause 6.2(3) of LEP 2014. The clause is satisfied.
- (8) Pursuant to cl 6.4 of LEP 2014 I accept the agreed submission of the parties that the proposed development satisfies cl 6.4 as the development:
 - (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to main water, groundwater, or river water, and
 - (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises, and mitigates the impact.
- (9) Clause 6.6 'Environmental Sustainability' applies to the Site. The development application includes an ecologically sustainable development (ESD) report prepared by Credwell dated 6 May 2021 which identifies the ESD measures incorporated into the development application. I am satisfied that the development has had regard to the matters which are required to be considered in clause 6.6(2) of LEP 2014.
- (10) Clause 6.9 in LEP 2014 applies to development in the Macquarie Park Corridor and permits development which exceeds the height and FSR development standards to the extent shown on the incentive maps, if the consent authority is satisfied that matters in clause 6.9(3). Those matters include that:
 - (a) there will be adequate provision for recreation areas and an access network, and
 - (b) the configuration and location of the recreation areas will be appropriate for the recreational purposes of the precinct, and
 - (c) the configuration and location of the access network will allow a suitable level of connectivity within the precinct.
- (11) A VPA was entered into by the Applicant and the Respondent under s7.4 of the EPA Act on 24 November 2020 to provide for monetary contributions, and works in kind to contribute to public infrastructure, to enable the developer to utilise the additional building height incentive of 65m and additional FSR incentive of up to 3:1. The parties agree that the allocation of funds and works in kind meet the requirements of clause 6.9(3) of LEP 2014. I accept their agreement.
- (12) State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP (TAI)) came into force on 1 March 2022. Whilst SEPP (TAI) transfers the provisions of State Environmental Planning Policy (Infrastructure) 2007 ('SEPP Infrastructure'), the provisions of SEPP Infrastructure continue to have effect to the application by dint of sections 5(6) and 30(2)(d) of the Interpretation Act 1987.
- (13) The development application was referred to Transport for NSW in accordance with Sch 3 of SEPP Infrastructure due to the provision of more than 10,000m² of commercial floor space, and more than 200 car parking spaces where access was proposed off an arterial (classified) road. Transport for NSW provided a response to the Respondent and their requirements are included in the annexed conditions of consent.
- (14) The development application was lodged as integrated development as dewatering is required. General Terms of Approval (GTA) were provided

by Water NSW on 8 March 2022 for a water supply work. Conditions are incorporated in the annexed conditions which are consistent with the GTAs.

- (15) Pursuant to cl 86 of SEPP Infrastructure, the development application was referred to Sydney Metro for concurrence as the development involves the penetration of ground, to a depth of at least 2m below existing ground level on land within 25m of the rail corridor. Sydney Metro has granted concurrence on 4 March 2022 subject to conditions. Further, agreement was provided by Sydney Metro for the conditions annexed to the concurrence to be staged. The final conditions are incorporated in the annexed conditions of consent.
 - (16) State Environmental Planning Policy (Resources and Energy) 2021 (SEPP RAE) came into force on 1 March 2022. Whilst the SEPP RAE transfers the provisions of State Environmental Planning Policy No 55—Remediation of Land (SEPP 55) to the new SEPP RAE, the provisions of SEPP 55 continue to have effect for the development application by dint of sections 5(6) and 30(2)(d) of the Interpretation Act 1987. Consideration has been given as to whether the subject site is contaminated as required by cl 7(1) of SEPP 55. The development application is accompanied by a Preliminary Site Investigation Report by Martens & Associates dated April 2020. Based on that report and the annexed conditions (in particular conditions 81, 82 and 83), I accept that the site will be suitable for the proposed development.
 - (17) State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BAC) came into force on 1 March 2022. Whilst SEPP BAC transfers the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP), the provisions of the SREP continue to have effect to the DA by dint of sections 5(6) and 30(2)(d) of the Interpretation Act 1987.
 - (18) SREP is a deemed SEPP and applies to the whole of the Ryde Local Government Area. Given the nature of the project and location of the site there are no specific controls which apply to the development application.
- 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 notes that:

- (1) Council of the City of Ryde as the relevant consent authority has agreed, under cl 55(1) of the EPA Regulation, to the applicant amending the development application LDA 2021/0184.
- (2) That the amended development application has been uploaded on the NSW planning portal.
- (3) That the applicant filed the amended development application with the Court on 10 December 2021.

10 The Court orders that:

- (1) The appeal is upheld.
- (2) Development Application no. LDA2021/0184 for the staged demolition of the existing buildings, and the construction in two stages, of two commercial towers with basement parking, the provision of a new road and associated works, at 63-71 Waterloo Road, Macquarie Park (comprising Lot 3 in DP 1043041) is granted consent, subject to the conditions set out in Annexure A.

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D M Dickson

Commissioner of the Court

(Annexure A)(629793, pdf)

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