



Land and Environment Court  
New South Wales

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Case Name: Retire Australia (Lane Cove) Pty Ltd v Lane Cove Municipal Council No.2

Medium Neutral Citation: [2025] NSWLEC 1112

Hearing Date(s): 11-15 November 2024

Date of Orders: 26 February 2025

Decision Date: 26 February 2025

Jurisdiction: Class 1

Before: Horton C

Decision: The Court orders that:  
(1) The Applicant is to pay the Respondent's costs thrown away as agreed or assessed, in accordance with s 8.15(3) of the Environmental Planning and Assessment Act 1979.  
(2) The appeal is upheld.  
(3) Development Application No DA134/2022 for demolition of existing buildings; construction of 42 independent living units in two buildings, joined by ground level and podium level communal open space; with reception area drop off and pick up area and entry to the basement directly from Caroline Chisholm Lane; basement amenities; and associated landscaping works at 40A Cope Street, Lane Cove is determined by the grant of consent, subject to conditions of consent at Annexure A.  
(4) All Exhibits are returned, except for Exhibits A, F, K, L, N and 2

Catchwords: DEVELOPMENT APPLICATION: seniors living development in R4 High Density Residential zone – conditions of consent amended

Legislation Cited:                   Conveyancing Act 1919, s 88E  
  Environmental Planning and Assessment Act 1979, ss  
  4.16, 8.15  
  
  State Environmental Planning Policy (Housing) 2021, s  
  88  
  State Environmental Planning Policy (Biodiversity and  
  Conservation) 2021

Category:                               Principal judgment

Parties:                                 Retire Australia (Lane Cove) Pty Ltd (Applicant)  
  Lane Cove Municipal Council (Respondent)

Representation:                   Counsel:  
  M Astill (Applicant)  
  T To (Respondent)  
  
  Solicitors:  
  Norton Rose Fulbright (Applicant)  
  Lane Cove Municipal Council (Respondent)

File Number(s):                   2023/307136

Publication Restriction:         Nil

## JUDGMENT

- 1     **COMMISSIONER:** On 21 January 2025 the Court delivered preliminary judgment in *Retire Australia (Lane Cove) Pty Ltd v Lane Cove Municipal Council* [2025] NSWLEC 1020, with directions for the parties to confer in the preparation of final conditions of consent, consistent with the Court's preliminary determination.
- 2     On 3 February 2025, the parties filed conditions of consent consistent with the Court's directions in respect of two issues.
- 3     Firstly, in respect of the proposed accommodation being restricted to those persons identified at s 88 of State Environmental Planning Policy (Housing) 2021, the conditions of consent now filed requires a restriction for the user to be registered against the title of the property on which development is to be carried out, in accordance with s 88E of the *Conveyancing Act 1919*, limiting the use of any accommodation to which the application relates to the kinds of

people referred to in s 88(1) of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) prior to any Occupation Certificate.

- 4 As such, I am satisfied that the accommodation proposed will only be occupied by seniors or people who have a disability, people who live in the same household with seniors or people who have a disability, or staff employed to assist in the administration and provision of services, in accordance with s 88 of the Housing SEPP.
- 5 Secondly, in respect of stormwater drainage, I note conditions dealing with drainage plan amendments and with on-site stormwater detention requirements have been amended in accordance with the Court's direction and consistent with advice provided by Northrop Consulting Engineers dated 14 November 2024 (Northrop Statement). The conditions incorporate the advice contained in the Northrop Statement, and so satisfy me that the development will have a neutral or beneficial effect on the water quality entering a waterway in accordance with State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- 6 On the basis of the conditions of consent filed by the parties on 3 February 2025, I find the proposed development deserving of the grant of consent, subject to conditions of consent, in accordance with s 4.16 of the *Environmental Planning and Assessment Act 1979*.

## Orders

- 7 The Court orders that:
  - (1) The Applicant is to pay the Respondent's costs thrown away as agreed or assessed, in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979*.
  - (2) The appeal is upheld.
  - (3) Development Application No DA134/2022 for demolition of existing buildings; construction of 42 independent living units in two buildings, joined by ground level and podium level communal open space; with reception area drop off and pick up area and entry to the basement directly from Caroline Chisholm Lane; basement amenities; and associated landscaping works at 40A Cope Street, Lane Cove is determined by the grant of consent, subject to conditions of consent at Annexure A.
  - (4) All Exhibits are returned, except for Exhibits A, F, K, L, N and 2

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**T Horton**

**Commissioner of the Court**

Annexure A

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