



Land and Environment Court
New South Wales

Case Name: Hunt v Northern Beaches Council

Medium Neutral Citation: [2020] NSWLEC 1561

Hearing Date(s): Conciliation conference 2 November 2020

Date of Orders: 16 November 2020

Decision Date: 16 November 2020

Jurisdiction: Class 1

Before: Clay AC

Decision: The Court orders:
(1) The Applicant is granted leave to amend the development application and rely on the following amended plans:
(a) Drawing No. 1S – Plan View dated 2 November 2020;
(b) Drawing No. 2S – Northern Elevation dated 2 November 2020;
(c) Drawing No. 3S – Elevations dated 2 November 2020;
(d) Drawing No. 4S – Site Analysis Plan dated 2 November 2020;
(e) Drawing No. 5S – Landscape Calculations dated 2 November 2020;
(f) Drawing No 6S – Spot Levels and Sectional View dated 2 November 2020.; and
(g) Landscape plan (Plan D) prepared by Selena Hannan Landscape Design dated 13 October 2020.
(2) The appeal is upheld.
(3) Development Application DA 2019/0616 for the use of an existing building as a secondary dwelling, the construction of carparking, front fence and landscaping at Lot 3 Deposited Plan 9667 known as 5 Birdwood Avenue, Collaroy is granted subject to the conditions in

Annexure A.

Catchwords:	DEVELOPMENT APPLICATION – use of existing building as secondary dwelling – construction of carparking and landscaping – conciliation conference – agreement between the parties – orders
Legislation Cited:	Environmental Planning and Assessment Act 1979 Environmental Planning and Assessment Regulation 2000 Land and Environment Court Act 1979 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Coastal Management) 2018 State Environmental Planning Policy No 55— Remediation of Land Warringah Local Environmental Plan 2011
Category:	Principal judgment
Parties:	Christopher Douglas Hunt (Applicant) Northern Beaches Council (Respondent)
Representation:	Counsel: J Smith (Applicant) A Gough (Solicitor) (Respondent) Solicitors: Hones Lawyers (Applicant) Storey & Gough (Respondent)
File Number(s):	2020/174830
Publication Restriction:	No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) against the refusal by the Respondent of Development Application DA 2019/0616 (development application) for the use of an existing building as a secondary dwelling, the construction of carparking, front fence and landscaping at Lot 3 Deposited Plan 9667 known as 5 Birdwood Avenue, Collaroy (the site).

- 2 On 2 November 2020, I presided over a conciliation conference between the parties pursuant to s 34(1) of the *Land and Environment Court Act 1979* (Court Act).
- 3 At the conciliation conference, the parties reached an agreement in principle as to the terms of a decision in the proceedings that would be acceptable to the parties. The proposed decision was to grant leave to amend the modification application and to modify the development consent to permit the rearrangement of the lot layout.
- 4 On 3 November 2020, the parties lodged an agreement pursuant to s 34 of the Court Act giving effect to the agreement in principle.
- 5 Pursuant to s 34(3) of the Court Act, I must dispose of the proceedings in accordance with the parties' agreement if the proposed decision the subject of the agreement is a decision that the Court could have made in the proper exercise of its functions.
- 6 The parties' agreement involves the Court exercising the function under s 4.16 of the EP&A Act to grant the application to grant development consent. The following matters are the matters of relevance to the exercise of that power.
- 7 The development application was made with the consent of the owners of the site, Christopher and Kristine Hunt and the proposed works and use relate only to the site.
- 8 The development application was notified in accordance with the requirements of the EP&A Act, and the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). Submissions were received and considered by Council.

Warringah Local Environmental Plan 2011

- 9 Pursuant to the Warringah Local Environmental Plan 2011 (WLEP), the site is located within the R2 Low Density Residential Zone. The development is permissible in the R2 Low Density Residential Zone.
- 10 Clause 6.1 of the WLEP is not applicable as the development application does not propose any works below the natural ground surface, or any works by

which the water table is likely to be lowered such to impact on Acid Sulfate Soils.

- 11 Clause 6.2 of the WLEP is not applicable as the development application does not propose any extent of earthworks for which development consent would be required under cl 6.2(2).
- 12 The parties are satisfied that consent can be granted to the development application in consideration of the matters at cl 6.3(3) of the WLEP relating to flood planning.
- 13 The parties are satisfied that consent can be granted to the development application in consideration of the matters at cl 6.4(3) of the WLEP relating to development on sloping land.
- 14 Clause 6.5 of the WLEP is not applicable as the site is not land shown on the Coastline Hazard Map.
- 15 Clause 6.10 of the WLEP in relation to “Development for the purposes of secondary dwellings in Zones R2 and R3” is not applicable to the Development Application as the total floor area of the secondary dwelling complies with cl 5.4(9)(a).

State Environmental Planning Policy No 55—Remediation of Land

- 16 Clause 7(1)(a) of State Environmental Planning Policy No 55—Remediation of Land (SEPP 55) requires the consent authority to consider whether land is contaminated. Council records indicate that the site has been used for residential purposes for a significant period of time with no prior land uses. Accordingly, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under cl 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for residential land use.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

- 17 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the development application. An updated BASIX Certificate No. 1053989S has been filed. A condition is included in the conditions of

consent requiring compliance with the commitments indicated in the BASIX Certificate as required by cl 97A of the EP&A Regulation.

State Environmental Planning Policy (Coastal Management) 2018

- 18 The parties agree that consent can be granted to the development application in consideration of the matters at cl 14(1)(a) of the State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP) and in satisfaction that there are no adverse impacts caused by the development application in accordance with cl 14(1)(b) of the Coastal Management SEPP.

Conclusion

- 19 Having considered the material provided to the Court 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 Court Act.
- 20 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 Court Act to dispose of the proceedings in accordance with the parties' decision.
- 21 The parties have not raised, and I am not aware of any jurisdictional impediment to the making of these orders. Further, 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 EP&A Act.
- 22 The Court orders:
- (1) The Applicant is granted leave to amend the development application and rely on the following amended plans:
 - (a) Drawing No. 1S – Plan View dated 2 November 2020;
 - (b) Drawing No. 2S – Northern Elevation dated 2 November 2020;
 - (c) Drawing No. 3S – Elevations dated 2 November 2020;
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- (2) The appeal is upheld.
- (3) Development Application DA 2019/0616 for the use of an existing building as a secondary dwelling, the construction of carparking, front fence and landscaping at Lot 3 Deposited Plan 9667 known as 5 Birdwood Avenue, Collaroy is granted subject to the conditions in Annexure A.

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P Clay

Acting Commissioner of the Court

Annexure A (170791,

pdf)<http://www.caselaw.nsw.gov.au/asset/175ce691bbc58fc76ff8725b.pdf>

Plans (3589529,

pdf)<http://www.caselaw.nsw.gov.au/asset/175ce90f0dabd874688856e8.pdf>

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