



Land and Environment Court
New South Wales

Case Name: Westaway v Northern Beaches Council

Medium Neutral Citation: [2020] NSWLEC 1326

Hearing Date(s): Conciliation conference on 15 June 2020

Date of Orders: 28 July 2020

Decision Date: 28 July 2020

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:
(1) The Applicant is granted leave to amend the application to rely on the amended plans referred to in Condition 1 of the conditions of consent at Annexure A.
(2) The Applicant is to pay the Respondent's costs thrown away in the sum of \$17,500.00 within 28 days of the date of these orders, pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979.
(3) The appeal is upheld.
(4) Development Application No. 2019/0154 for demolition of existing structures and construction of a multi-dwelling development for Seniors Living, at 1955 Pittwater Road, Bayview, is approved, subject to the conditions of consent at Annexure A.

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

Legislation Cited: Environmental Planning and Assessment Act 1979
Land and Environment Court Act 1979
Pittwater Local Environmental Plan 2014
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Category: Principal judgment

Parties: Ian Westaway (Applicant)
Jan Westaway (Second Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
M Staunton (Applicant)
A Gough (Solicitor) (Respondent)

Solicitors:
Sattler & Associates Pty Ltd (Applicant)
Storey & Gough (Respondent)

File Number(s): 2019/199786

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. 2019/0154 for demolition of existing structures and construction of a multi-dwelling development of four units and parking for housing for seniors or people with a disability (the proposal) at 1955 Pittwater Road, Bayview (the site) by Northern Beaches Council (the Council). The application is made pursuant to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which has been held on 15 June 2020. I 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.
- 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, pursuant to cll 29(2) and 40 of the SEPP Seniors.
- 6 The site is zoned R2 Low Density Residential pursuant to Pittwater Local Environmental Plan 2014. The objectives of the zone, to which regard must be had, are:
- To provide for the housing needs of the community within a low density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.
- 7 I am satisfied that the amended proposed development is compatible with the surrounding land uses, having regard to the natural environment; the services and infrastructure that are available to meet the demands arising from the proposed development; and the bulk and scale, built form and character of the proposed development.
- 8 The amended proposed development retains most existing trees on the site and includes a commitment to clear noxious and undesirable environmental weeds from the site and from within the council reserve. There are bus stops accessed via footpaths within 400m of the site and the bus stops provide access to buses travelling north and south. The scale of the amended proposed development is commensurate and compatible with the low density residential character established in the locality.
- 9 Clause 40 of the SEPP Seniors includes the following development standards:

40 Development standards—minimum sizes and building height

- (1) **General** A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.
- (2) **Site size** The size of the site must be at least 1,000 square metres.
- (3) **Site frontage** The site frontage must be at least 20 metres wide measured at the building line.
- (4) **Height in zones where residential flat buildings are not permitted** If the development is proposed in a residential zone where residential flat buildings are not permitted—
- (a) the height of all buildings in the proposed development must be 8 metres or less, and

Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

- 10 The site has an area of 1296.5sqm and a frontage of 32.64m. Residential flat buildings are not permitted in the R2 zone and the proposal has a maximum height of 8m above existing ground level. The proposal is no more than two storeys above existing ground level adjacent to boundaries and is a single storey above existing ground level within the rear 25% setback of the site.
- 11 The proposal has a floor space ratio of 0.469:1, a landscaped area of 53%; a deep soil zone exceeding 15% with a minimum dimensions of 3 min the rear setback; all dwellings will receive a minimum of 3 hours direct sunlight; each dwelling has a balcony area exceeding 10sqm accessible from the living area and which is more than 2 m in length and depth; and more than 0.75 car spaces have been provided for each bedroom.

Orders

- 12 The orders of the Court are:
 - (1) The Applicant is granted leave to amend the application to rely on the amended plans referred to in Condition 1 of the conditions of consent at Annexure A.
 - (2) The Applicant is to pay the Respondent's costs thrown away in the sum of \$17,500.00 within 28 days of the date of these orders, pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*.
 - (3) The appeal is upheld.
 - (4) Development Application No. 2019/0154 for demolition of existing structures and construction of a multi-dwelling development for Seniors Living, at 1955 Pittwater Road, Bayview, is approved, subject to the conditions of consent at Annexure A.

Susan O'Neill

Commissioner of the Court

Annexure A (285841, pdf)

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