



Land and Environment Court
New South Wales

Case Name: United Equity Group and Pindaro Pty Limited v Northern Beaches Council

Medium Neutral Citation: [2021] NSWLEC 1768

Hearing Date(s): Conciliation conference on 9 December 2021

Date of Orders: 17 December 2021

Decision Date: 17 December 2021

Jurisdiction: Class 1

Before: Chilcott C

Decision: Orders – see [23]

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

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 1.3, 4.15, 4.16, 8.7, 8.14, 8.15
Environmental Planning and Assessment Regulation 2000, cll 55, 77
Land and Environment Court Act 1979, ss 34, 39
State Environmental Planning Policy (Affordable Rental Housing) 2009, cll 26, 28, 29, 30, 30A
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Coastal Management) 2018, cll 14, 15
State Environmental Planning Policy (Housing) 2021, Sch 7
State Environmental Planning Policy (Infrastructure) 2007, cll 45, 101, 102
State Environmental Planning Policy No 55 - Remediation of Land, cl 7
Warringah Local Environmental Plan 2011, cll 2.3, 2.7,

4.3, 4.6, 5.10, 5.21, 6.1, 6.2, 6.4

Cases Cited: Betohuwisa Investments Pty Ltd v Kiama Municipal Council (2010) 177 LGERA 312; [2010] NSWLEC 223 North Sydney Council v Ligon 302 Pty Ltd (1996) 185 CLR 470; [1996] HCA 20 Woolworths Ltd & Kenlida Pty Ltd v Bathurst City Council (1987) 63 LGRA 55

Texts Cited: Land and Environment Court of New South Wales, COVID-19 Pandemic Arrangements Policy, (December 2021) Northern Beaches Community Participation Plan 2019 Warringah Development Control Plan 2011

Category: Principal judgment

Parties: United Equity Group and Pindaro Pty Limited (Applicants) Northern Beaches Council (Respondent)

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

Solicitors:
Sattler and Associates (Applicant)
Wilshire Webb Staunton Beattie (Respondent)

File Number(s): 2020/354766

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JUDGMENT

1 **COMMISSIONER:** United Equity Group and Pindaro Pty Limited (the Applicants) have appealed the refusal by Northern Beaches Council (the Respondent) of its development application seeking approval for demolition of the existing buildings and construction of a mixed-use development comprising commercial premises on the ground floor, two levels of boarding house accommodation with 22 rooms and a top level accommodating the boarding house manager's residence with basement car parking (the Proposed Development) at 1129 and 1131 Pittwater Road, Collaroy (the Subject Site).

- 2 The Applicants' development application seeking consent for the Proposed Development is made pursuant to the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH).
- 3 The Applicants' appeal is made pursuant to the provisions of s 8.7 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and falls within Class 1 of the Court's jurisdiction. It is determined pursuant to the provisions of s 4.16 of the EP&A Act.
- 4 The Subject Site is zoned B2 Local Centre under the provisions of Warringah Local Environmental Plan 2011 (WLEP). The objectives of the B2 Local Centre zone are:
 - To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
 - To encourage employment opportunities in accessible locations.
 - To maximise public transport patronage and encourage walking and cycling.
 - To provide an environment for pedestrians that is safe, comfortable and interesting.
 - To create urban form that relates favourably in scale and 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 any adjoining or nearby residential land uses.
- 5 The owner of the Subject Site is United Equity Group Pty Limited and Pindaro Pty Limited (the Owner). The development application was made by Boston Blyth Fleming Town Planners on behalf of the Owner.
- 6 On 20 May 2020, the Respondent received a referral response from Ausgrid confirming that the Proposed Development is acceptable subject to compliance with the relevant Ausgrid network standards and safe work NSW Codes of Practice.
- 7 On 25 May 2020, the Respondent received a referral response from NSW Roads and Maritime Services providing its comments in respect of the Proposed Development

- 8 The Subject Site has the benefit of a right of carriageway ('ROW') over the adjoining property at 1-5 Collaroy Street, Collaroy ('Adjoining Property'). The Council had contended that the Applicants' development application required owners consent from the owners of the Adjoining Property because the Proposed Development would result in an intensification of the use of the ROW.
- 9 The Applicant submitted that it does not require owners consent from the owner of the Adjoining Property because its development application relates to the Subject Site and does not relate to the Adjoining Property as the application does not seek consent to carry out any development on the Adjoining Property (*North Sydney Council v Ligon 302 Pty Ltd* (1996) 185 CLR 470; [1996] HCA 20; and *Woolworths Ltd & Kenlida Pty Ltd v Bathurst City Council* (1987) 63 LGRA 55).
- 10 On 21 October 2021, leave was granted by the Court to the Applicants to rely upon their amended architectural plans and reports and to amend the name of the Applicant from Boston Blyth Fleming Pty Limited to United Equity Pty Limited and Pindaro Pty Limited being the owners of the Land. The Owners (as principal) have standing to maintain these proceedings under s 8.7(1) of the EPA Act (see *Betohuwisa Investments Pty Ltd v Kiama Municipal Council* (2010) 177 LGERA 312; [2010] NSWLEC 223 at [43]).
- 11 At the request of the Respondent, the Applicants have amended their development application to reduce the number of proposed carparking spaces within the Proposed Development from 21 spaces to 10 spaces. As a result of that amendment the Parties' advise, based on advice from their traffic engineering experts, and I am satisfied, that there will be no intensification in use of the ROW that would arise from the Proposed Development.
- 12 The Court had arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the Parties, which was held on 9 December 2021, and I presided over the conciliation conference.
- 13 The conciliation conference was convened in a manner consistent with the Court's COVID-19 Pandemic Arrangements Policy (the Policy). A site view

had been undertaken by the Court with the Parties and certain of their experts prior to the commencement of the conciliation conference.

- 14 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. This decision involved the Court upholding the appeal and granting consent to the Applicants' development application, subject to conditions.
- 15 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.
- 16 There are jurisdictional matters that must be satisfied before the Court can exercise its power to grant consent to the Proposed Development, and those requirements have been satisfied as follows:
 - (1) the Application was submitted with the consent, in writing, of the owners of the Subject Site;
 - (2) in relation to the requirements for notification of the Proposed Development under cl 77 of the Environmental Assessment and Planning Regulation 2000 (EP&A Reg) the Applicant's development application was notified and advertised from 6 May and 7 June 2020, and was further notified following amendments to the development application between 29 October and 12 November 2021, in accordance with the provisions of the Northern Beaches Community Participation Plan 2019 (as revised 2020);
 - (3) in relation to the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX), the Applicants' development application was accompanied by a BASIX certificate no. 1088157M_02 in satisfaction of the provisions of SEPP BASIX;
 - (4) in relation to the provisions of cl 7 of State Environmental Planning Policy No 55 - Remediation of Land (SEPP55), the Parties have confirmed, and I accept that:
 - (a) a preliminary site investigation (PSI) has been provided by the Applicants prepared by Martens & Associates, dated April 2020, in satisfaction of the provisions of cl 7(2) of SEPP55;
 - (b) the Applicants' PSI provides a history of the development of the Subject Site, and notes that a dry cleaning business operated to the west of the Subject Site between 1994 and 2004. The PSI recommended that, notwithstanding low risks associated with this business, groundwater screening should be undertaken. The PSI further noted that any potential contaminated material would

be removed from the Subject Site as a part of the Applicants' proposed excavation of the Subject Site and would be disposed of at a facility licensed to receive that waste.

- (c) the PSI confirmed, and I am satisfied, that the Subject Site is suitable (or will be made suitable) for the proposed boarding house use in fulfilment of the provisions of cl 7(1) of SEPP55;
- (5) in relation to the provisions of SEPP ARH:
- (a) pursuant to cll 26 and 28 of SEPP ARH, the Applicants' proposed boarding house is a permissible land use on the Subject Site;
 - (b) the Proposed Development is compliant with all but two of the so-called "do not refuse" standards in cl 29 of SEPP ARH, as follows:
 - (i) in relation to cl 29(1) concerning the floor space ratio (FSR) development standard for the Proposed Development, and nor do the provisions of WLEP prescribe any FSR standard for the Subject Site;
 - (ii) in relation to cl 29(2)(a) concerning the height of buildings (HoB), the Proposed Development contravenes the maximum HoB development standard of 11.0m under the provisions of cl 4.3 of WLEP, and this is considered further below (at [(9)(d)] and [(9)(e)]);
 - (iii) in relation to cl 29(2)(b) concerning landscaped area, the Applicants' proposed boarding house forms part of a mixed use development with commercial premises at ground floor with a zero setback addressing Pittwater Road, and the landscaped front setbacks of the Proposed Development are not part of the character of the Subject Site's B2 zoning;
 - (iv) in relation to cl 29(2)(c) concerning solar access, the Proposed Development provides communal living rooms on levels 2 and 3 and the Parties' have advised, and I accept, that their expert planners are satisfied that the communal living room will receive 3 hours of solar access per day between 9am and 3pm at mid-winter;
 - (v) in relation to cl 29(2)(d) concerning private open space, a communal private open space area of 7.4m² with a minimum dimension of 3m is provided on the first floor off the communal room and a communal private open space area of 19.1m² is provided off the communal room on the second floor. Further, a private open space with an area of 18.5m² with a minimum internal dimension of 3m is provided with the manager's dwelling on the top floor;
 - (vi) in relation to cl 29(2)(e) concerning carparking, the Proposed Development is not proposed to be carried out

by or on behalf of a social housing provider but does comprise 22 boarding rooms and requires 11 car parking spaces at a rate on 0.5 spaces per room. The Proposed Development, as amended, now provides two car share spaces, one accessible space and one manager's car space in relation to the boarding house component of proposal. The Parties agree that this amount of parking is acceptable as the Proposed Development is located in the Collaroy town centre in close proximity to the B1 bus line which provides frequent service along the northern beaches to the City of Sydney 7 days per week. Although the do not refuse standard is not met, the Parties are satisfied that the quantum of parking provided is appropriate for its location;

- (vii) in relation to cl 29(2)(f) concerning accommodation sizes, all rooms are double rooms and have a minimum area of 16m², excluding kitchen and bathrooms;
 - (viii) all rooms have a kitchenette and bathroom as permitted by cl 29(3) of SEPP ARH;
- (c) the Proposed Development complies with the mandatory standards for boarding within cl 30 of SEPP ARH, other than in respect of cl 30(1)(b), as follows:
- (i) in relation to cl 30(1)(a) concerning communal rooms, the Proposed Development has more than five boarding rooms and two communal rooms are provided, with one being located on the first floor and one of the second floor;
 - (ii) in relation to cl 30(1)(b) concerning the maximum areas of boarding rooms, proposed rooms 1-5 exceed the maximum room area of 25m², and the Applicants have provided a written request pursuant to cl 4.6 of WLEP in relation to this exceedance (see below at [(d)]);
 - (iii) in relation to cl 30(1)(c) concerning restrictions on the number of room occupants, no boarding rooms will be occupied by more than two adult lodgers by operation of the Applicants' proposed Plan of Management and which is required to be implemented by an agreed condition of consent;
 - (iv) in relation to cl 30(1)(d) concerning bathroom and kitchen facilities, the Parties agree, and I accept, that adequate bathroom and kitchen facilities are proposed to be provided for each lodger in each boarding room;
 - (v) in relation to cl 30(1)(e) in relation to the boarding house manager, the Proposed Development is capable of accommodating 20 lodgers or more, and a manager's

- dwelling is to be provided on the top floor of the development along with its own private open space;
- (vi) in relation to cl 30(1)(f), this has been repealed;
 - (vii) in relation to cl 30(1)(g) concerning commercial zone requirements, the Proposed Development is located in a B2 zone, and the ground floor of the development that fronts the street comprises commercial tenancies so that no part of the ground floor is used for residential purposes;
 - (viii) in relation to cl 30(1)(h) concerning motorcycle and bicycle parking, the Proposed Development provides for 22 boarding rooms which requires 5 motorcycle spaces and 5 bicycle, and these are provided;
- (d) in relation to the maximum size of boarding house rooms required under cl 30(1)(b) the provisions of which the Proposed Development exceeds:
- (i) as previously noted, the Applicants have provided a written request under cl 4.6 of WLEP, prepared by Boston Blyth Fleming dated 6 December 2021, seeking to vary that standard;
 - (ii) the exceedance arises because the Proposed Development provides a capacity for future residents of some rooms facing Pittwater road to close their balconies and in doing so, the area of the balconies technically falls within the definition of gross floor area;
 - (iii) the Parties submit that the Applicants' cl 4.6 written request to vary the development standard in cl 30(1)(b) of SEPP ARH is well founded;
 - (iv) I agree that the Applicants' written request is well founded as the request demonstrates, to my satisfaction, that compliance with the development standard is unreasonable or unnecessary as the Proposed Development will achieve the objectives of the standard notwithstanding the departure from it, and there are satisfactory environmental planning grounds to justify the contravention in the standard including that the exceedance facilitates beneficial outcomes in relation to weather protection and acoustic privacy;
 - (v) in my assessment, approval of the Proposed Development is in the public interest because it achieves the objectives of the standard, there are sufficient environmental planning grounds to justify the contravention, and the Proposed Development is consistent with the objectives of the B2 zoning of the Subject Site;

- (vi) finally, the Parties advise and I agree that, notwithstanding the provisions of cl 4.6(5) of WLEP, consent can be granted without the concurrence of the planning secretary pursuant to the provisions of s 8.14(3) of the EP&A Act, although the Court should take into account the matters identified in cl 4.6(5). In relation to this, the Proposed Development is a local development located on a main road on the coast. The contravention provides an ability for future boarding house residents to enclose balconies within certain rooms for weather protection and acoustic privacy. In the circumstances of this case, the contravention of clause 30(1)(b) of SEPP ARH does not give rise to any matter of significance for state or regional planning and there is no public benefit in maintaining the standard in the circumstances of this case;
 - (e) concerning the provisions of cl 30A of SEPP ARH, a consent authority, or the Court on appeal, must not consent to a boarding house development unless it has taken into consideration whether the design of the development is compatible with the character of the local area, and the Applicants' Proposed Development is, in my estimation, compatible with the character of the local area noting that its four storey built form is consistent with the built form of buildings to both its north and south on Pittwater Road;
- (6) in relation to the provisions of State Environmental Planning Policy (Coastal Management) 2018 (SEPP CM), the Subject Site is located within the coastal zone and therefore SEPP CM is also applicable to the Development, and in relation to this:
 - (a) the Subject Site has been included on the 'Coastal Use Area' map but has not been included on the Coastal Vulnerability Area Map under the SEPP CM, hence cll 14 and 15 of SEPP CM apply to the Proposed Development;
 - (b) the Parties agree, and I accept, that the Proposed Development satisfies the relevant provisions of SEPP CM being cll 14 and 15;
- (7) in relation to the provisions of State Environmental Planning Policy (Infrastructure) 2007 (SEPP-I):
 - (a) clause 45 of SEPP-I requires the consent authority, or the Court on appeal, to consider any development application (or an application for modification of consent) for any development carried out:
 - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
 - (ii) immediately adjacent to an electricity substation.

- (iii) within 5.0m of an overhead power line.
 - (iv) that includes installation of a swimming pool any part of which is within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line;
 - (b) the proposed Development was referred to Ausgrid which provided a response stating that the development is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice, and these recommendations are included as a condition of consent within the Parties' agreed conditions.
 - (c) clauses 101 & 102 are also relevant to the Proposed Development as Pittwater Road is a classified Road, and in relation to this:
 - (i) vehicular access to the Proposed Development is not from Pittwater Road but via the ROW, and a traffic impact assessment and a road noise assessment have been submitted as part of the Applicants' development application and which, in my assessment, satisfies the relevant matters in cl 101 and 102 of SEPP-I;
- (8) in relation to the provisions of State Environmental Planning Policy (Housing) 2021 (SEPP Housing):
 - (a) SEPP Housing 2021 has been gazetted but has not yet been published on the NSW legislation website;
 - (b) Schedule 7 of SEPP Housing contains a savings provision which saves the Proposed Development from the operation of the SEPP; and
 - (c) the Parties have considered the relevant provisions of SEPP Housing and note that boarding houses continue to be a permissible use in the B2 zone applicable to the Subject Site;
- (9) in relation to the provisions of WLEP, the Parties advise, and I accept that:
 - (a) in relation to permissibility, the Applicants seek consent for a mixed use development for the purposes of commercial and boarding house uses which are permissible with consent in the B2 Local Centre Zone which is the zoning of the Subject Site;
 - (b) clause 2.3(3) of WLEP requires the Court to have regard to the objectives of the B2 zone (see above at [4]) when determining the Applicant's development application, and I have considered these objectives in determining this appeal;
 - (c) pursuant to the provisions of cl 2.7 of WLEP the demolition of the existing structures on the Subject Site is permissible with consent;

- (d) in relation to the provisions of cl 4.3 concerning the HoB development standard applicable to the Subject Site, the Proposed Development:
 - (i) does not comply with the HoB development standard in cl 4.3 of WLEP; and
 - (ii) the Proposed Development contravenes the HoB development standard of 11m by between 1.24m and up to 3m at the proposed building's lift overrun;
- (e) the Applicants rely on a written request to vary the HoB development standard in cl 4.3 of WLEP and this has been prepared by Boston Blyth Fleming pursuant to the provisions of cl 4.6 of WLEP. The Respondent has advised, and I agree, that for reasons provided within the Applicants' written request, which I adopt, the request should be upheld because:
 - (i) compliance with the HoB development standard in cl 4.3 of WLEP is unreasonable or unnecessary in the circumstances of the case because the objectives of the development standard are achieved; and
 - (ii) there are sufficient environmental planning grounds to justify the HoB non-compliance, including for reasons concerning consistency of character with surrounding developments, the provision of view lines to adjacent developments for the purpose of view sharing, and to facilitate the achievement of the objective at s 1.3(c) of the EP&A Act; and
 - (iii) the Proposed Development will be in the public interest because it is consistent with the objectives the B2 zone applicable to the Subject Site and with the objectives of the HoB development standard;
 - (iv) finally, the Parties advise and I agree that, notwithstanding the provisions of cl 4.6(5) of WLEP, consent can be granted without the concurrence of the planning secretary pursuant to the provisions of s 8.14(3) of the EP&A Act, although the Court should take into account the matters identified in cl 4.6(5). In relation to this, the Proposed Development is a local development and the circumstances of its contravention of cl 4.3 of WLEP does not raise any matter of significance for state or regional planning, and there is no public benefit in maintaining the standard in the circumstances of this appeal;
- (f) in relation to the provisions of cl 5.21 of WLEP concerning flood planning which applies to the Subject Site, the Applicants' development application was accompanied by a Flood Assessment and Preliminary Flood Emergency Response Plan prepared by Martens & Associates dated April 2020, which

confirms that consideration has been given to the matters required under the provisions of cl 5.21. I am satisfied that the Proposed Development is acceptable in relation to the provisions of cl 5.21 of WLEP;

- (g) in relation to the provisions of cl 5.10 of WLEP concerning heritage matters and which is relevant to the Proposed Development because it is within the vicinity of three heritage items:
 - (i) the Subject Site is not heritage listed and is not within a heritage conservation area;
 - (ii) the Applicants have provided a heritage impact assessment within their statement of environmental effects that accompanied their development application and which facilitates consideration of potential impacts of the Proposed Development in relation to the three heritage items within its vicinity; and
 - (iii) I am satisfied that the Applicants have satisfied the provisions of cl 5.10 of WLEP, and there are no matters arising in relation to heritage conservation that would preclude the grant of consent to the Applicants' development application;
- (h) in relation to the provisions of cl 6.1 of WLEP concerning acid sulfate soils – the Subject Site is identified as Class 4 land on the Acid Sulfate Soils Map within WLEP. The Applicants' have provided a geotechnical report by Martens & Associates dated March 2020 that addresses acid sulfate soils in relation to the Proposed Development, and which concludes that none of the tested soil samples exceed the action criteria for the acid trail and sulphur trail. Consequently, the fill and marine deposits on the Subject Site are not considered acid sulfate soils and the preparation of an acid sulfate soils management plan is not required;
- (i) in relation to the provisions of cl 6.2 concerning earthworks:
 - (i) the Proposed Development includes excavation works;
 - (ii) the Applicants have provided a Geotechnical Report prepared by Martens and Associates and dated March 2020 which includes recommendations for construction monitoring and inspections, including in relation to excavation retention, monitoring groundwater, plant induced ground vibrations, settlement and lateral deflection of retaining structures and potential excavation impacts on neighbouring properties, inspection of exposed material at foundations, and monitor sedimentation downslope of excavated areas.

- (iii) the report by Martens & Associates concludes that the geotechnical conditions on the Subject Site are suitable for the Proposed Development, and engineering plans have been provided with the Applicants' development application which are referred to within the Parties' agreed conditions to be imposed to ensure that stormwater and drainage will not have an adverse impact on the environment in relation to the matters identified in cl 6.2(3), and which confirms to my satisfaction that those matters have been considered prior to any grant of consent;
- (j) in relation to the provisions of cl 6.4 of WLEP concerning development on sloping land, and which applies to the Subject Site;
 - (i) the Subject Site is mapped as Zone A with a slope less than 5%;
 - (ii) a Geotechnical, Hydrogeological and Acid Sulphate Assessment Report prepared by Martens & Associates and dated March 2020, includes a landslip assessment in relation to the Proposed Development and concludes that the risk of landslip, in relation to potential impacts on both property and life, is very low;
 - (iii) the report by Martens & Associates also provides an assessment of the Proposed Development on groundwater, and concludes that the Proposed Development will not impact on or affect the existing subsurface flow conditions; and
 - (iv) the Applicants have provided a concept stormwater management plan prepared by Martens & Associates dated April 2020, which demonstrates that the Proposed Development will not give rise to significant detrimental impacts because of stormwater discharge from the Subject Site;
 - (v) as a consequence of the above considerations, I am satisfied that the matters requiring satisfaction in cl 6.4(3) of WLEP have been so satisfied;
- (10) the Parties have advised, and I agree, that regard has been had to the relevant provisions of Warringah Development Control Plan 2011 (WDCP) applicable to the Subject Site, most relevantly through the provision of the Applicants' statement of environmental effects accompanying its development application. I am satisfied that the Proposed Development can be approved having regard to the provisions of the WDCP and those of ss 4.15(1)(a)(iii) and 4.15(3A) of the EP&A Act.
- (11) The Parties have acknowledged that the submissions of objectors to the Applicants' development application are a relevant consideration under

s 4.15(1)(d) of the EP&A Act. I am satisfied that the submissions of objectors have been taken into account by the Parties, and the Applicants' development application seeking approval for the Proposed Development can be approved including for the reasons that consideration has been given to the public interest, as required by s 4.15(1)(e) of the EP&A Act and s 39(4) of the LEC Act.

- 17 There are no other jurisdictional prerequisites that must be satisfied before the Court can exercise the power to determine the appeal under s 4.16 of the EP&A Act.
- 18 Having considered the advice of the Parties, provided above at [16], I agree that the jurisdictional prerequisites on which I must be satisfied before I can exercise the power under s 4.16 of the EP&A Act have been so satisfied.
- 19 I am further 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 LEC 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 to dispose of the proceedings in accordance with the Parties' decision.
- 21 In making the orders to give effect to the agreement between the Parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the Parties.
- 22 The Court notes that:
 - (1) the Applicants have amended Development Application 2020/0431 with the agreement of Northern Beaches Council (pursuant to cl 55(1) of the EP&A Reg) as the relevant consent authority to incorporate the amended plans and documents referred to in the list of amended plans and documents in Annexure 'A' ("Amended Development Application");
 - (2) the Amended Development Application has been lodged on the NSW planning portal on 9 December 2021; and
 - (3) the Applicants have subsequently filed the Amended Development Application with the Court on 9 December 2021.

Orders

- 23 The Court orders:
 - (1) pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* the Applicants are to pay those costs of the Respondent

thrown away as a result of the Court allowing the Applicants to file the Amended Development Application, as agreed of assessed.

- (2) the updated written request made pursuant to clause 4.6 of *Warringah Local Environmental Plan 2011* seeking to vary the height of buildings development standard in clause 4.3 of WLEP prepared by Boston Blyth Fleming dated December 2021 is upheld;
- (3) the written request made pursuant to clause 4.6 of *Warringah Local Environmental Plan 2011* seeking to vary the maximum boarding room size development standard in clause 30(1)(b) of *State Environmental Planning Policy (Affordable Rental Housing) 2009* prepared by Boston Blyth Fleming dated 6 December 2021 is upheld;
- (4) the Appeal is upheld;
- (5) Development Application DA2020/0431 for demolition of existing buildings and construction of a mixed-use development incorporating two ground floor commercial tenancies with a 22 boarding room house and caretaker's apartment above and car parking for 10 vehicles pursuant to the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009* at 1129 to 1131 Pittwater Road, Collaroy is approved subject to the conditions in Annexure 'B'.

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M Chilcott

Commissioner of the Court

(Annexure A) (110581, pdf)

(Annexure B) (610055, pdf)

(Architectural Drawings) (6416812, pdf)

(Landscape Plans) (2543191, pdf)

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