



Land and Environment Court
New South Wales

Case Name: Bereveskos v Sutherland Shire Council

Medium Neutral Citation: [2021] NSWLEC 1276

Hearing Date(s): Conciliation conference on 30 April 2021, final agreement filed 28 April 2021

Date of Orders: 24 May 2021

Decision Date: 24 May 2021

Jurisdiction: Class 1

Before: Pullinger AC

Decision: The orders of the Court are:
(1) The appeal is upheld.
(2) The development application DA20/0540 to strata subdivide the existing dual occupancy on the property known as 18 Redgum Avenue, Cronulla which is Lot 4 in DP 24335 is approved, subject to the conditions at Annexure 'A'.

Catchwords: DEVELOPMENT APPLICATION – conciliation conference – strata subdivision of dual occupancy – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.16, 8.7
Land and Environment Court Act 1979, ss 34, 34AA
Sutherland Shire Local Environmental Plan 2015, cl 4.1B, 4.6

Texts Cited: Land and Environment Court of New South Wales, COVID-19 Pandemic Arrangements Policy (July 2020)

Category: Principal judgment

Parties: Peter Jim Bereveskos (Applicant)

Sutherland Shire Council (Respondent)

Representation:

Counsel:

C Rose (Solicitor) (Applicant)

J Amy (Solicitor) (Respondent)

Solicitors:

Wilshire Webb Staunton Beattie (Applicant)

Sutherland Shire Council (Respondent)

File Number(s):

2020/327537

Publication Restriction:

No

JUDGMENT

- 1 **COMMISSIONER:** This is a Class 1 appeal pursuant to the provisions of s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the actual refusal of Development Application DA20/0540 (DA). The DA sought consent for strata subdivision of an existing dual occupancy (the proposal) at 18 Redgum Avenue, Cronulla (the site) by Sutherland Shire Council (the Respondent).
- 2 The Court arranged a conciliation conference and hearing under s 34AA(2) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 30 April 2021. I presided over the matter.
- 3 Consistent with the Court's *COVID-19 Pandemic Arrangements Policy*, published on 8 July 2020, the matter was conducted by Microsoft Teams.
- 4 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. The agreement involves the Court upholding the appeal and granting development consent to the proposal subject to conditions.
- 5 The proposal, being for strata subdivision, will create no physical change to the existing dual occupancy development, and accordingly brings with it no environmental planning impacts. Issues such as privacy, overshadowing landscaping and building separation remain as they exist today and were considered when development consent was originally granted in 2017.

- 6 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.
- 7 There are jurisdictional prerequisites that must be satisfied before this function can be exercised.
- 8 In that regard, the parties agree, and I am satisfied, the Sutherland Shire Local Environmental Plan 2015 (SSLEP) is the relevant environmental planning instrument. The site is zoned E4 Environmental Living, and strata subdivision is permissible with consent.
- 9 The proposal is consistent with all relevant development standards set out within the SSLEP, with the exception of cl 4.1B, which relates to minimum lot sizes for strata subdivision of dual occupancies within certain environment protection zones, including Zone E4.
- 10 The relevant lot size map within the SSLEP establishes a 700 square metre minimum lot size for strata subdivision. The existing dual occupancy is situated on a site with an area of 600.7 square metres and the proposal therefore seeks to vary this development standard.
- 11 Clause 4.6(3) of the SSLEP requires consideration of a written request from the Applicant demonstrating compliance with a development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.
- 12 Clause 4.6(4) of the SSLEP requires the consent authority to be satisfied the Applicant's written request has adequately addressed the matters required by cl 4.6(3), and the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.

- 13 Additionally, cl 4.6(4)(b) of the SSLEP requires the concurrence of the Planning Secretary be obtained, while cl 4.6(5) requires the Planning Secretary to consider whether, in granting this concurrence, the proposed contravention of the development standard raises any matters of significance for State environmental planning, the public benefits of maintaining the standard, and any other matters required to be considered by the Planning Secretary.
- 14 The Applicant has provided a cl 4.6 written request, prepared by Wynne Planning dated June 2020, seeking to justify non-compliance with the development standard set out in cl 4.1B of the SSLEP and to demonstrate the Zone E4 objectives have been met despite the non-compliance.
- 15 The parties agree, and I am satisfied, that compliance with the minimum lot size for strata subdivision is unreasonable and unnecessary in the circumstance of this matter because the proposal meets each of the objectives of cl 4.1B of the SSLEP. These objectives seek to limit impacts associated with increased residential density, the maintenance of amenity and character and to prevent fragmentation of land.
- 16 The parties agree, and I am satisfied, the variation to the development standard is supportable because there are no amenity impacts that arise as a consequence of the strata subdivision of the existing dual occupancy proposal. This is a consequence of there being no change to the use or physical form of the development.
- 17 As I am satisfied the matters in cl 4.6(4) of the SSLEP have been adequately addressed, and similarly, satisfied the matters required in cl 4.6(5) have been adequately considered, by reason of s 39(6) of the LEC Act, I determine to uphold the proposed variation to the relevant SSLEP development standard.
- 18 Additionally, I am satisfied the Respondent placed the proposal on public notification between 29 July 2020 and 20 August 2020 and received no submissions in response.
- 19 Consequently, I am satisfied the variation is in the public interest because it facilitates an equitable environmental planning outcome, while satisfying the objectives of cl 4.1B of the SSLEP and causes no physical or amenity impacts.

20 Having considered each of the preceding jurisdictional requirements, and having formed the necessary view required by s 34(3) of the LEC Act, I find it is appropriate to make the orders agreed to by the parties and now dispose of the matter.

Orders

21 The Court orders that:

- (1) The appeal is upheld.
- (2) The development application DA20/0540 to strata subdivide the existing dual occupancy on the property known as 18 Redgum Avenue, Cronulla which is Lot 4 in DP 24335 is approved subject to the conditions at Annexure 'A'.

M Pullinger

Acting Commissioner of the Court

[Annexure A \(197677, pdf\)](#)

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