

Joe Davidson Town Planning v Byron Shire Council - [2018] NSWLEC 1651

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Land and Environment Court

New South Wales

Medium Neutral Citation: **Joe Davidson Town Planning v Byron Shire Council [2018] NSWLEC 1651**

Hearing dates: Conciliation conference on 24 October 2018

Date of orders: 11 December 2018

Decision date: 11 December 2018

Jurisdiction: Class 1

Before: Bish C

Decision: See [13] below

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

Legislation Cited: Byron Local Environmental Plan 1988
[Environmental Planning and Assessment Act 1979](#),
[Land and Environment Court Act 1979](#),
State Environmental Planning Policy No 71 - Coastal Protection 2018
[Strata Schemes \(Freehold Development\) Act 1973](#),
[Strata Schemes Development Act 2015](#),

Category: Principal judgment

Parties: Joe Davidson Town Planning (Applicant)
Byron Shire Council (Respondent)

Representation: Solicitors:
M Young, McCartney Young Lawyers (Applicant)
P Vergotis, McCabe Curwood (Respondent)

File Number(s): 2018/116820

Judgment

1. **COMMISSIONER:** This is an appeal against the deemed refusal by Byron Shire Council of Development Application (DA) 10.2017.712.1, which seeks: alterations, additions and repositioning of an existing dwelling; and strata subdivision into two (2) lots on Lot 2 DP 536175, also known as 25 Strand Avenue, New Brighton.
2. This Class 1 appeal is made under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act 1979). The Court is required to make a determination pursuant to s 4.16 of the EPA Act 1979.
3. The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act 1979) between the parties, which was held on 24 October 2018. I have presided over the conciliation conference. There were no objections raised by third parties at the conciliation for this appeal.
4. Following 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 is to uphold the appeal and grant consent to DA 10.2017.712.1 with conditions.
5. Under s 34(3) of the LEC Act 1979, I must dispose of the proceedings in accordance with the parties' decision, if it is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising its function under s 4.16(1) of the EPA Act 1979 to grant consent to the DA with conditions.
6. The parties identified the jurisdictional prerequisites of particular relevance in these proceedings, pursuant to s 4.15(1) of the EPA Act 1979, as consistency with the State Environmental Planning Policy No 71 - Coastal Protection 2018 (SEPP 71) and the Byron Local Environmental Plan 1988 (BLEP 1988). Further to this, the strata subdivision is made pursuant to s 6.2 of the EPA Act 1979, consistent with s 9(1)(a) of the *Strata Schemes Development Act 2015*.
7. According to cl 32(5)(a) of the BLEP 1988, the site is located within Urban Coastal Land zoned 7(f2), whereby strata subdivision under the *Strata Schemes (Freehold Development) Act 1973* is permitted.
8. The parties explained that the development will result in (2) strata lots of sufficient size and dimension to allow services and location of dwellings that would not result in adverse amenity impacts either internally or to the neighbouring properties, consistent with the relevant provisions of the BLEP 1998. Further to this, development on the proposed strata lots will be compliant, by way of conditions of consent, with the requirements as set out in cl 32(3) of the BLEP 1988.

9. To accommodate the 'immediate impact zone' as mapped in the Byron Shire Coastal Hazards Assessment Update (September 2013), and specifically address the potential hazard as a result of flooding due to sea level rise from climate change through sufficient (rear) setback of the realigned existing and proposed dwellings, together with a dwelling design that allows relocation of structures should it be deemed necessary due to adverse coastal processes. This satisfies cl 8, 14 and 19 of the SEPP 71.
10. The parties explained that mitigation of local terrestrial flooding, pursuant to the requirements of BLEP 1988 can be achieved through appropriate dwelling design with services that respond to potential flood levels.
11. I am therefore 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 1979.
12. 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 LEC Act 1979 to dispose of the proceedings in accordance with the parties' decision.
13. The Court orders:
 1. The Applicant is granted leave to rely upon the amended plans and documents set out in condition no. 1 contained in **Annexure 'A'**.
 2. The appeal is upheld.
 3. Conditional development consent is granted pursuant to s 4.16(a) of the *Environmental Planning and Assessment Act 1979 (NSW)* to development application no. IO.2017.712.1 for alterations and additions to the existing dwelling; the repositioning of the existing dwelling and the strata subdivision of one (1) lot to create two (2) lots at Lot 2, DP 536175 (No. 25) Strand Avenue, New Brighton subject to the conditions contained in **Annexure 'A'**.

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Sarah Bish

Commissioner of the Court

[Annexure A \(341 KB, pdf\)](#)

[Plans \(973 KB, pdf\)](#)

Decision last updated: 17 December 2018