

AUSTRALIA / JUDGMENT

Chen v Ku-ring-gai Council

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Land and Environment Court New South Wales Medium Neutral Citation: Chen v Ku-ring-gai Council [2026] NSWLEC 1067 Hearing dates: Conciliation conference on 2 February 2026 Date of orders: 18 February 2026 Decision date: 18 February 2026 Jurisdiction: Class 1 Before: Harding AC Decision: The Court Orders that:

- (1) The appeal is upheld.
- (2) Development Application eDA0194/25, for demolition of existing structures, construction of a dwelling house, swimming pool, cabana and associated works in relation to Lot 2 in Deposited Plan 581733, known as 3A Stuart Street, Wahroonga NSW 2076, is determined by the grant of consent subject to the conditions set out in Annexure 'A' to this agreement.
Catchwords: DEVELOPMENT APPLICATION — new dwelling — amended plans — conciliation conference — agreement between the parties — orders Legislation Cited: Environmental Planning and Assessment Act 1979 (NSW), ss 4.15, 8.7 Land and Environment Court Act 1979 (NSW), ss 34, 34AA Environmental Planning and Assessment Regulation 2021 (NSW), ss 27, 38 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6 State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6 State Environmental Planning Policy (Sustainable Buildings) 2022 Ku-ring-gai Local Environmental Plan 2015, cll 5.10, 6.1, 6.2, Pt 2, Sch 5 Category: Principal judgment Parties: Jiaying Chen (Applicant) Ku-ring-gai Council (Respondent) Representation: Counsel: T Poisel (Applicant) J Ede (Solicitor) (Respondent) Solicitors: Tyrrells Planning Law (Applicant) Wilshire Webb Staunton Beattie (Respondent) File Number(s): 2025/283197 Publication restriction: Nil

Judgment

COMMISSIONER: This is an appeal pursuant to s 8.7(1) of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) by Jiaying Chen (the Applicant) against the refusal of Development Application No. eDA0194/25, lodged with the Ku-ring-gai Council (the Respondent), on 1 May 2025. The respondent issued a notice of refusal on 2 July 2025. The Development Application seeks development consent for the demolition of existing structures and construction of a new dwelling, swimming pool, cabana and gatehouse together with associated landscaping and ancillary works. The proposed development is to take place at Lot 2 in Deposited Plan 581733 known as 3A Stuart Street Wahroonga NSW 2076. The Court arranged a conciliation conference between the parties pursuant to s 34AA of the of the Land and Environment Court Act 1979 (NSW) (LEC Act). The conciliation conference commenced on 2 February 2026. At the

conciliation conference the parties reached an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The proposed decision was to grant Development Consent to the development application subject to agreed outcomes and conditions. The agreement reached by the parties was based on amended plans and additional material that resolved the contentions before the Court. Pursuant to s 34(3) of the LEC 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. There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties have identified the jurisdictional prerequisites of relevance in these proceedings and how they are satisfied. The parties agree that there are no jurisdictional prerequisites in these proceedings which would prevent the Court from exercising its function under s 34(3) of the LEC Act. As the presiding Commissioner, I am satisfied that the decision to grant Development Consent is one that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). In reaching that state of satisfaction, I note the following: Pursuant to the Ku-ring-gai Local Environmental Plan 2015 (KLEP), the subject site is zoned R2 Low Density Residential. The proposed "dwelling house" is permissible in this zone. Regard has been given to the R2 zone objectives in determining the application. Clause 5.10 of the KLEP requires consideration of heritage matters. The site is located within the Wahroonga Heritage Conservation Area, a heritage conservation area of local significance identified as 'C1' at Pt 2 of Sch 5 of the KLEP. The Proposed Development is supported by a Statement of Heritage Impacts and Heritage Letter. The parties agree that the proposed development will not affect the heritage significance of surrounding development. I am satisfied that the required considerations have been undertaken. Pursuant to cl 6.1 of the KLEP, 'Acid Sulfate soils', the consent authority is required to consider any potential acid sulfate soils affectation that might disturb, expose or drain acid sulphate soils and cause environmental damage. The parties agree that the Site is located within a Class 5 area as specified in the KLEP - Acid Sulfate Soils Map. The parties agree, and I am satisfied, that the proposal meets the requirements of cl 6.1 of the KLEP 2015 as development consent is not required pursuant to this clause. Pursuant to cl 6.2 of the KLEP 'Earthworks', the consent authority is to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The earthworks relate to the construction of a basement which is generally contained within the dwelling footprint and the construction of a swimming pool. The parties do not consider that there will be any detrimental impact associated with the proposed earthworks. I am satisfied that the parties have undertaken the required considerations in respect to earthworks. State Environmental Planning Policy (Biodiversity and Conservation) 2021 The site is located within the Sydney Harbour Catchment pursuant to Ch 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BCSEPP). The parties have undertaken the required assessments in respect to the proposed development including assessing Engineering Plans prepared by Amuna dated 30 January 2026, sheet ES2 – Erosion and Sediment Control Notes & Details. The parties agree that the Proposed Development has been assessed against Ch 6 and has been found to be consistent with the requirements for developments within the catchment area and will not result in unsatisfactory impacts on the

catchments. State Environmental Planning Policy (Sustainable Buildings) 2022 The Development Application is accompanied by BASIX Certificate No. 1787354S _03 issued by Building Sustainability Assessments dated 12 January 2026. The parties are satisfied, as am I, that the requirements in s 27 of the Environmental Planning and Assessment Regulation 2021 (NSW) and the State Environmental Planning Policy (Sustainable Buildings) 2022 have been met. State Environmental Planning Policy (Resilience and Hazards) 2021 As required by s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP), consideration has been given to whether the site is contaminated. The parties agree that the site has been used for residential purposes for a number of years and is therefore unlikely to be contaminated. The proposed use of the land is to remain residential. The parties agree, and I am satisfied, that the required considerations have been undertaken. The proposal was notified from 19 May 2025 and 2 June 2025. Two submissions were received and have been considered in the preparation of the final plans and conditions of consent. 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, to dispose of the proceedings in accordance with the parties' agreement. I was not required to make, and have not made, an assessment of the merits of the DA against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act. The Court notes that: The Ku-ring-gai Council, as the relevant consent authority, has agreed, under s 38(1) and (4) of the Environmental Planning and Assessment Regulation 2021 (NSW), to the Applicant amending the Development Application eDA0194/25 and supporting documents, the subject of these proceedings, in accordance with the plans and documents listed below: Architectural Plans prepared by Playoust Churcher Plan No. Revision Title Dated 001 D Cut & Fill Plan 30 January 2026 100 D Demolition Plan 30 January 2026 101 D Site & Roof Plan 30 January 2026 102 D Ground, Site & Basement Floor Plan 30 January 2026 103 D First Floor Plan 30 January 2026 200 D Elevations 30 January 2026 201 D Elevations 30 January 2026 202 D Sections 30 January 2026 DA1000 D External Finishes 30 January 2026 Landscape Plans prepared by Landsberg Garden Design Plan No. Revision Title Dated L001 C Overview 10 January 2026 L100 C Landscape Plan 10 January 2026 L101 C Sections – Back Garden 10 January 2026 L102 C Landscape Plan – First Floor 10 January 2026 L200 C Planting Plan 10 January 2026 L201 C Tree Plan 10 January 2026 L202 C Planting Plan – First Floor 10 January 2026 L400 C Landscape Details 10 January 2026 L401 C Landscape Specifications 10 January 2026 Stormwater Management Plans prepared by AMUNA Civil Engineering Plan No. Revision Title Dated S1 5 Title Page & Notes 30 January 2026 S2 5 Management of Stormwater Plan – Basement Floor 30 January 2026 S3 5 Management of Stormwater Plan – Ground Floor Page 1 of 2 30 January 2026 S4 5 Management of Stormwater Plan – Ground Floor Page 2 of 2 30 January 2026 S5 5 Management of Stormwater Details Page 1 of 2 30 January 2026 S6 5 Management of Stormwater Details Page 2 of 2 30 January 2026 S7 5 Management of Stormwater Calculations Page 1 of 2 30 January 2026 S-S8 5 Management of Stormwater Calculations Page 2 of 2 30 January 2026 ES1 5 Erosion and Sediment Control Plan 30 January 2026 ES2 5 Erosion and Sediment Control Notes and Details 30 January 2026 Civil and Driveway Plans prepared by AMUNA Civil Engineering Plan No. Revision Title Date D1 5 Title Page & Notes 30 January 2026 D2 5 Driveway – Plan – Page 1 of 2 30 January 2026 D3 5 Driveway – Plan – Page 2 of 2 30 January 2026 D4 5 Driveway – Long Section – MC1 30 January 2026 D5 5

Driveway – Cross Sections – MC1 30 January 2026 D6 5 Driveway – Swept Paths – Entry 30 January 2026 D7 5 Driveway – Swept Paths – Exit 30 January 2026 D8 5 Driveway – Details 30 January 2026 Construction Traffic Management Plan prepared by PDC Consultants dated 28 October 2025 Statement of Design Compliance – Pool Fencing prepared by Buildcert dated 10 October 2025 Basix certificate No. 1787354S_03 dated 12 January 2026 NatHERS Summary Report and Certificate prepared by Energy Rating Group Ref: ERG1094 dated 1 October 2025

Orders

The Court Orders that: The appeal is upheld. Development Application eDA0194/25, for demolition of existing structures, construction of a dwelling house, swimming pool, cabana and associated works in relation to Lot 2 in Deposited Plan 581733, known as 3A Stuart Street, Wahroonga NSW 2076, is determined by the grant of consent subject to the conditions set out in Annexure 'A' to this agreement. S Harding Acting Commissioner of the Court

Annexure A (420 KB, pdf) DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated. Decision last updated: 18 February 2026

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