

AUSTRALIA / JUDGMENT

McCourt v Mosman Municipal Council

[2026] NSWLEC 1564**COURT**

Land and Environment Court

DECIDED

31 August 2026

BEFORE

Froh R

CASE / FILE NUMBER

2026/59964

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Land and Environment Court

New South Wales

Medium Neutral Citation: McCourt v Mosman Municipal Council [2026] NSWLEC 1564**Hearing dates:** 26 August 2026**Date of orders:** 31 August 2026**Decision date:** 31 August 2026**Jurisdiction:** Class 1**Before:** Froh R**Decision:****The Court orders that:** (1) The motion is dismissed.
(2) The applicants for joinder are to pay the applicant's costs of the motion.**Catchwords:** JOINDER — application for joinder — statutory tests — issues proposed to be raised by applicant for joinder — costs**Legislation Cited:** Environmental Planning and Assessment Act 1979 (NSW), s 8.15
Land and Environment Court Act 1979 (NSW), s 34
Land and Environment Court Rules 2007 (NSW), r 3.7
Uniform Civil Procedure Rules 2005 (NSW), r 6.24**Cases Cited:** Quakers Hill SPV Pty Ltd v Blacktown City Council (No 2) [2012] NSWLEC 243**Category:** Procedural rulings**Parties:** Ken McCourt (Applicant)
Mosman Municipal Council (Respondent)
Stephen Clyde Albert Ingate (First Applicant for joinder)
Gabrielle Ingate (Second Applicant for joinder)

Representation:

Counsel:	L Nurpuri (Applicant)
	A Foley (Solicitor) (Respondent)
	F Sinclair (Applicants for joinder)
Solicitors:	Sattler & Associates Pty Ltd (Applicant)
	Marsdens Law Group (Respondent)
	Ingate & Associates (Applicant for joinder)
File Number(s):	2026/59964
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JUDGMENT

REGISTRAR: This is an application for joinder by objectors, Stephen and Gabrielle Ingate, to the substantive proceedings. The substantive proceedings seek development consent for the demolition of existing structures, construction of a 4-storey residential flat building containing 3 x 3-bedroom apartments over basement car parking and associated landscaping works (the proposal) on the land at 34 Redan Street, Mosman (the site). The application for joinder is supported by an affidavit of Mr Ingate sworn on 19 August 2026 and written submissions.

The applicants for joinder own a neighbouring property and seek joinder under s 8.15(2)(a) of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) or r 6.24 of the Uniform Civil Procedure Rules 2005 (NSW) (UCPR) on the basis that there is an issue that should be considered in relation to the appeal but which would not be likely to be sufficiently addressed if they are not joined as parties.

The applicant in the substantive proceedings opposes the joinder and relies on the affidavit of his solicitor affirmed on 25 August 2026. The respondent to the substantive proceedings, Mosman Municipal Council (the Council), neither opposes, nor consents to the application, but has made submissions in reply to the application for joinder.

In order to be joined to the proceedings, the applicants for joinder must first satisfy the test for joinder and if the test is satisfied the Court must determine that it is appropriate to exercise its discretion and allow the joinder: *Quakers Hill SPV Pty Ltd v Blacktown City Council* (No 2) [2012] NSWLEC 243 at [42]-[44]. The applicants for joinder only apply for joinder under s 8.15(2)(a) of the EPA Act which states:

8.15 Miscellaneous provisions relating to appeals under this Division

...

- (2) On an appeal under this Division, the Court may, at any time on the application of a person or of its own motion, order the joinder of a person as a party to the appeal if the Court is of the opinion-

- (a) that the person is able to raise an issue that should be considered in relation to the appeal but would not be likely to be sufficiently addressed if the person were not joined as a party...

Therefore, the first question for the Court is whether the Applicants for joinder raise an issue which would not likely be sufficiently addressed in the appeal but for their joinder.

In the first applicant for joinder's affidavit, he states that a Visual Impact Assessment (VIA) "has not been prepared, as required, by an independent consultant", further stating that the Council "does not intend to engage a separate view loss or visual impact consultant". The applicants for joinder submit on this basis that the visual impact of the proposal is not able to be sufficiently addressed without their joinder to the substantive proceedings.

The applicants for joinder further submit that the proposal will have a significant impact on their property and the views they enjoy of Sydney Harbour. They are concerned that this issue will not be adequately addressed in these proceedings. With their joinder they seek to engage their own visual impact expert to conduct a VIA and conduct a peer review of the current VIA and cross examine experts on this issue.

In reply, the Council submits that the assessment of the visual impact of the proposal and the potential view loss impacts falls within the experience and expertise of its town planning and urban design experts and will be carried out by them.

The applicant's evidence is that a visual impact assessment along with amended plans and reports has been prepared and provided to the Council as part of the conciliation process. That documentation is prepared on a without prejudice basis as required by s 34(11) of the Land and Environment Court Act 1979 (NSW) (Court Act) and although the applicant is not required to, his evidence is that in early August he gave the applicants for joinder and all the other objectors copies of the without prejudice material and his solicitor has continued to engage directly with the applicants for joinder in an effort to address their concerns without the need for joinder.

The applicant opposes the joinder and submits that the applicants for joinder have been provided with the opportunity to raise the issue of view loss. They have provided a written submission in response to the proposal, their seven-page written submission has also been provided to the conciliating commissioner as part of the conciliation process, they had the opportunity to address the conciliating commissioner at the onsite s 34 conciliation conference on issues relating to view loss, and the conciliating commissioner and the parties attended their property to observe the proposal's potential impact on their views.

The applicant also submits that the applicants for joinder do not address or satisfy the tests for joinder. The applicant submits that the view loss issue sought to be raised by the applicants for joinder is not a new issue, instead Council has squarely raised this issue and particularised it in detail in its Statement of Facts and Contentions filed on 31 March 2026.

The applicant submits that the following contentions raise the visual or amenity impact of the proposal on neighbouring properties:

Wall height – Contention 1, particular (d) which states:

“The floor-to-floor heights are excessive (3.5m) and contribute to excessive wall heights, exacerbating view, shadow, privacy and visual impacts to surrounding properties.”

Amenity (Neighbouring Dwellings) - Visual impact (appearance of bulk and built form) – Contention 3, particular (a) to (j) which states:

“The development application should be refused because the proposal does not maintain adequate amenity for neighbouring properties and is inconsistent with the objectives for development in Zone R3 Medium Density Residential under MLEP 2012.

Particulars

- (a) For the reasons raised in the below particulars, the proposal is not consistent with the following objectives of Zone R3 Medium Density Residential under MLEP 2012:
 - To provide for housing that is compatible with the desired future character of the area in terms of bulk, height and scale.
 - To encourage residential development that has regard to local amenity and, in particular, public and private views.

View Loss

- (b) The Statement of Environmental Effects describes the view impacts as “...ranging from moderate to severe” but goes on to conclude that the view impact is consisted to be acceptable in the context of broader planning objectives and community benefit (BBF, dated September 2025, p. 29).
- (c) However, no view loss assessment was carried out for the purposes of the development application, and application does not sufficiently address the steps identified in Part 4.3 of MRDCP 2012 (including photographs and quantification of the extent of view loss) in order to arrive at a conclusion that the proposal results in acceptable view impacts.
- (d) The view loss emanating from the proposal is not considered to be reasonable, particularly having regard to the proposal’s building height, wall height and setbacks, which are inconsistent with the objectives of in clause 4.3 (1)(a)(i) and (iv) and clause 4.4 (1)(a)(i) and (iii) of MLEP 2012 as well as the fifth R3 zone objective.
- (e) The proposal is therefore inconsistent with the objectives and controls in Part 4.3 of MRDCP 2012, particularly Planning Controls P4, P5 and P6.
- (f) The proposal is inconsistent with the intent of planning control (m) in Part 7.4(1) of MRDCP 2012, which seeks the retention of views to Middle Harbour and foreshore area.

Privacy impact (visual and acoustic)

- (g) Objective O1, O3 and Planning Controls P1, P2 and P3 in Part 5.7 of MRDCP 2012 provide as follows:

“O1. To have adequate visual privacy levels for residents and neighbours.

P1. For new dwellings and additions, habitable room windows with a direct sightline to the habitable room windows or private open space in an adjacent dwelling within 9m should be either: (a) offset from the edge of one window to the edge of the other by a distance equivalent to the width of the existing window; or (b) have sill heights of 1.6m above floor level; or (c) have permanently fixed translucent glazing in any part of the window below 1.6m above floor level.

P2. Above ground balconies, terraces, decks, verandahs, and outdoor spaces must not directly overlook rooms and private open space of adjoining properties unless screening can mitigate overlooking. When overlooking would be likely, permanent screening will be required to mitigate overlooking.

P3. Due to their potential to affect privacy and views, roof top terraces are not permitted unless it can be demonstrated that there is no loss of privacy or view impact.

O3. To have adequate acoustic privacy levels for residents and neighbours.”

- (h) The proposed balconies, roof top terrace and spa on the roof terrace will result in overlooking and acoustic impacts upon the adjoining properties.
- (g) The proposal is inconsistent with Part 5.7 of MRDCP 2012, Objectives O1 and Planning Controls P1 – P4 inclusive and Objective O3, due to the size of the east-facing terraces at ground level and Levels 1 to 3.

Visual impact (appearance of bulk and built form)

- (i) The proposed development will have a visual impact on adjoining and nearby properties as a result of its appearance of bulk, exacerbated by the significant departure to the MRDCP 2012 minimum side boundaries setbacks. Further, the significant departure to the wall height standard (6.8m, 94%) and the projection eastwards of the large terraces contributes to these impacts.”

Design principles – Contention 4, particulars (b)(i), (c)(ii) and (iv), which states:

“(b) The proposal is not satisfactory with respect to Principle 1 “Context and neighbourhood character” in that:

- (i) It does not satisfactorily respond or contribute to its context or the quality and identity of the area, primarily due to its dominating scale (building height) and the consequential residential amenity impacts on properties in that area including in terms of views, overshadowing, privacy and visual impact (visual bulk). A desirable element of the area’s existing and future character is the retention of existing residential amenity and achieving a scale of development that does not dominate the neighbourhood, Balmoral Slopes and the

Harbour.

...

(c) The proposal is not satisfactory with respect to Principle 2 “Built form and scale” in that: ...

(ii) The large footprint of the building and reduced setbacks results in insufficient separation to neighbouring properties and a dominant visual impact to the street and surrounding properties.

...

(iv) The floor-to-floor heights are excessive (3.5m), which thrusts the building skywards, exacerbating view, shadow, privacy and visual impacts to surrounding properties.”

Character – Contention 5, which states:

“The development application should be refused because the proposal is inconsistent with the existing and desired future character of the local area.

Particulars

- (a) The desirable elements of the character of the local area include a uniformity of low scale built form such that buildings do not visually dominate their surrounds and do not create detrimental residential amenity impacts to their surrounds, including visual impacts on Mosman and Sydney Harbour. A critical element of the character is accordingly the way in which views to the harbour area are available from private and public spaces, resulting from the “amphitheatre” form of the Balmoral slopes.
- (b) The desired future character of the precinct includes the preservation of the medium density residential environment in close proximity to the C4 Environmental Living environments and the preservation of the residential amenity and visual environment of properties in the area.”

Insufficient setbacks and landscaped area (deep soil) – Contention 6, particular (e), which states:

“The proposal is insufficiently set back from side boundaries to satisfactorily mitigate the visual impact of its bulk and scale, overshadowing, privacy and view impacts to surrounding properties.”

and

View Loss – Contention 12, particular (c), which states:

“A comprehensive Visual Impact Assessment is to be provided that accurately depicts, quantifies and evaluates the proposal’s impacts on views to surrounding properties. The Visual Impact Assessment must diligently follow the steps contained in Part 4.3 of MRCP 2012.”

Therefore, the applicant submits that the issue concerning view loss and the VIA have already been raised in the proceedings by the Council.

I agree with the applicant and I am satisfied that the issue that the applicants for joinder wish to advance is already clearly an issue before the Court and capable of being sufficiently addressed without the need for their joinder to proceedings.

In the alternative to joinder under s 8.15(2)(a) the applicants for joinder seek to be joined under r 6.24 of the UCPR, that being:

6.24 Court may join party if joinder proper or necessary (cf SCR Part 8, rule 8(1); DCR Part 7, rule 8(1); LCR Part 6, rule 8(1))

- (1) If the court considers that a person ought to have been joined as a party, or is a person whose joinder as a party is necessary to the determination of all matters in dispute in any proceedings, the court may order that the person be joined as a party.

The Applicants for joinder are not someone who ought to have been joined to these proceedings. Based on my earlier findings in this decision, I do not consider it necessary for them to be joined for the Court to determine all the matters in the dispute in these proceedings.

I find that the tests for joinder, under both s 8.15(2)(a) of the EPA Act and r 6.24 of the UCPR, to not be satisfied and dismiss the application for joinder accordingly.

Costs

An application for costs under r 3.7 of the Land and Environment Court Rules 2007 (NSW) has been made by the applicant. In making an order for costs in Class 1 proceedings, r 3.7 requires the Court to be satisfied that a costs order is fair and reasonable in the circumstances before making such an order.

Relevantly, pursuant to subr (3)(f)(i), the Court might consider the making of a costs order to be fair and reasonable in the circumstances where a party has commenced or continued a claim in the proceedings that did not have reasonable prospects of success.

It is clear from the evidence before the Court that the applicants for joinder misunderstand s 34 of the Court Act, the conciliation conference process, and their role as objectors in that process. Furthermore, the motion for joinder and the basis on which the joinder was sought did not have reasonable prospects of success when considering the tests in s 8.15(2)(a) of the EPA Act and r 6.24 of the UCPR.

The applicant's evidence is that although he has no obligation to do so, since July 2026 the applicant's solicitor has corresponded directly with the applicants for joinder and provided them with the applicant's without prejudice amended plans and reports, including the VIA and photomontages. Furthermore, the applicant agreed to the applicants for joinder preparing a VIA or submitting a peer review of his VIA to the conciliating commissioner as an alternative their seeking joinder to these proceedings.

This offer was not taken up by the applicants for joinder and they instead pursued this unsuccessful application for joinder. As a result, the applicant has been put to considerable expense defending this motion and I consider it to be fair and reasonable that the applicant be awarded its costs.

Orders

The Court orders that:

The motion for joinder is dismissed.

The applicants for joinder are to pay the applicant's costs of the motion.

S Froh

Registrar of the Court

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Decision last updated:

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