
Builders Beware – The Importance of Council Approval

Date : March 3, 2020

A recent Land and Environment Court Case highlights the importance of obtaining Council approval before spending time and incurring costs in constructing a secondary dwelling on a property.

The case of *Sutherland Shire Council v Perdikaris* [2019] NSWLEC 149 tells the tale of a man named Mr Perdikaris who made the decision to build a new shed on his property in Menai, to replace a small garage which was not suitable for his needs.

He started by seeking Council approval, which was granted, for the building of a driveway. This application did not contain any reference to the construction of a garage. Mr Perdikaris then sought quotes for a garage. During this process, he received advice from various companies that he did not necessarily need approval for a new garage. Mr Perdikaris also assumed that as there had already been approval for the previous, smaller garage, it would not be necessary to seek approval for a larger garage, in circumstances where the larger garage kept the same distance from the neighbours fence as the smaller garage had.

On these assumptions, Mr Perdikaris bought a new shed and organised for the construction of a concrete slab. Just before Christmas 2017, Mr Perdikaris was the owner of a brand new garage.

Unluckily for Mr Perdikaris, one of his neighbours complained to the local council about the garage. Council officers attended and viewed the garage from the street before confirming that Council approval had not been obtained. Mr Perdikaris then lodged an application with the Council to approve the garage, but this application was refused. The Council asked Mr Perdikaris to demolish the garage.

Understandable, Mr Perdikaris was upset. He had spent over \$40,000.00 building the shed and subsequently trying to obtain compliance.

The Council then commenced proceedings against Mr Perdikaris, seeking an order that the garage be demolished.

Justice Pepper noted that the zoning of Mr Perdikaris land specified that consent was required from the Council for the development of a secondary dwelling on the land, and that the garage was not an exempt development, such as a carport, as the garage was enclosed, the size and the fact there was already a garage on the premises. Justice Pepper held that Mr Perdikaris did not seek the necessary consent.

In determining what relief to grant to the Council, Justice Pepper referred to various cases where the Court had ordered demolition, including cases where demolition was ordered as the dwelling had not complied with relevant building regulations. He also referred to a case where the concerns about financial loss raised by a respondent were not justified, on the basis that

there was a potential for the building materials to be used elsewhere.

Ultimately, Justice Pepper determined that, as Mr Perdikaris knew he needed development consent but proceeded to build the shed despite not having approval, the garage cannot easily be rendered compliant given its breaches of the planning regulations, the likelihood that Council would have refused consent at the beginning due to the size, scale and location of the shed, and the costs incurred by Mr Perdikaris could be offset by selling the garage once it has taken down, that the relief sought by Council of demolition of the garage was appropriate.

Justice Pepper also held that, by constructing the garage without approval, Mr Perdikaris undermined the legislative purpose of the *Environmental Planning and Assessment Act 1979* and provided him with a private advantage. As such, demolition was the appropriate remedy in order to place Mr Perdikaris back in the position he would have been if he had complied with the law.

The case can be read here:

<https://www.caselaw.nsw.gov.au/decision/5da66f84e4b0c3247d7126a7>

This case is a cautionary tale for those who seek to fly under the radar of local council by constructing dwellings without approval. Incurring the cost of obtaining consent from local council will ensure that the construction and other costs associated with constructing a dwelling are not costs thrown away.