

## Difficulties due to COVID-19 not an excuse to vacate a hearing date

**Date :** June 25, 2020

A recent decision in the Land and Environment Court to set aside a Registrar's order that a three-day hearing be set aside substantially due to the difficulties associated with the COVID-19 pandemic has shown the Court's willingness to facilitate the continuation of hearings, where appropriate, despite the difficulties associated with virtual hearings.

In **DVCI Pty Ltd v City of Parramatta Council [2020] NSWLEC 31**, during a general call over of all matters pursuant to the Court's adoption of the COVID-19 Pandemic Arrangements Policy, the solicitor for the City of Parramatta Council sought an order that the hearing the subject of the Class 1 Appeal, scheduled to take place in May 2020, be vacated.

The hearing was scheduled to be heard before Acting Commissioner Bindon, who had, as part of the section 34 process, attended the subject site and heard submissions from nearby residents. Council argued that the hearing should be vacated as it was necessary for all relevant parties to attend the site as part of the hearing, which would be difficult in the current climate. Further, Council had only recently retained a planning expert who had not yet attended the site, and was unwilling to go the site due to COVID-19. Despite submissions from the developer as to the prejudice to the developer if the hearing was vacated, and a submission that the matter should proceed by way of audio-visual link due to the fact that Acting Commissioner Bindon had already attended the site and heard from residents, the Registrar ultimately made the decision to vacate the hearing date.

The developer lodged an appeal against the Registrar's decision, which was heard before Justice Robson.

In overturning the Registrar's orders and reinstating the three-day hearing scheduled for May 2020, Justice Robson noted the following:

- Council's town planning expert had now attended the site and conferred with the developer's experts.
- The parties had known for eight months that the hearing would be taking place, therefore making the judge less sympathetic to Council who had, on their earlier submissions, only recently briefed an appropriate expert.
- The developer was willing to attend the site and obtain further video and photographic evidence to assist the Court.
- Acting Commissioner Bindon had attended the site, heard from resident objectors, and was very familiar with the application as a result of presiding over the section 34 conference.



- All parties, including objectors, could attend the hearing in accordance with the COVID-19 Pandemic Arrangements Policy; and
- The application had been on foot since August 2018, and it was in the interests of justice, which include the just, quick and cheap resolution of proceedings, that the hearing date be reinstated and that, despite the difficulties presented by the COVID-19 pandemic, the procedures put in place ensure that there would be an appropriate hearing of the application.

The decision can be read in full here:

<https://www.caselaw.nsw.gov.au/decision/5e98124ce4b0f66047ed8af5>