

Item for Darling Point Society newsletter/website

In respect of a Development Application 408/2021 for 41 Etham Avenue, Darling Point, the Land & Environment Court has handed down its judgement on September 21<sup>st</sup> 2022.

This DA proposal is for a heritage house in a group of three heritage listed houses at the gateway to the Etham Avenue Heritage Conservation Area, which comprises around seven heritage listed and contributory heritage listed houses along with the actual Etham Avenue, which was, in part, formerly the serpentine drive of historical Etham House Mansion.

Woollahra Council, upon receiving almost 30 objections to this huge renovation proposal which included the demolition of part of the original heritage house, refused permission at a Woollahra Local Planning Panel (WLPP).

The owners of 41 Etham, subsequently withdrew all radical renovation and extension proposals and any demolition to the original house, but retained the proposal for a swimming pool, new garage and cabana and applied to the Land and Environment Court for a conciliatory hearing to reverse Council's refusal.

Apart from the obvious heritage value of a rare intact group of three quintessential examples of 1902 Sydney Edwardian Federation Queen Anne style houses; next door, in the garden of the neighbouring heritage house at 39 Etham Avenue, there is a significant heritage listed 150 year old Camphor Laurel tree which is considered a remnant part of the landscaping of Etham House Mansion from before its estate was subdivided in 1900. The tree is 25 metres high and with a 20 metre canopy and having a basal diameter of 2.6 metres and a trunk diameter of 1.8 metres. There was much concern by many submissions of objection to the overdevelopment that the building works involved in the construction of a swimming pool at 41 Etham could also seriously damage the roots of the Camphor Laurel on 39 Etham and so lead to it's health being seriously compromised and even to it's possible demise. Apart from the historic and aesthetic loss of such a magnificent tree and the privacy it provides to at least four houses from two large apartment blocks, it's removal would be a mammoth undertaking and be at considerable cost.

The Land & Environment Court conciliatory hearing, under a Section 34 Agreement, has agreed for the hugely amended proposed development to proceed. Council defended it's initial refusal, but considered the amended plans were acceptable with certain conditions.

Many of these conditions relate to **protection provisions for the Camphor Laurel** and other trees as well. There are extensive directives as to the manner and the extent in which the **roots have to be protected**. The distance of the extent of the roots is measured from the centre of the trunk and these radii of the Tree Protection Zone (TPZ) are all detailed in the conditions - and must be **cordoned off** prior to work commencement. **No severance or damage to any roots that are greater in diameter than 50 mm, that's about 2 inches, are to be done to these trees' roots.**

**Four statutory modifications must be provided to Council before a construction certificate will be issued** and these are:

An amended landscape plan to reflect the comments and recommendations in the TPZ.

An amended architectural drawing set to reflect the comments and recommendations in the TPZ.

Any **existing ground level modifications must not result in an increase to the overall height of the garage/cabana.**

Plans must be revised to show the deletion of all repair works proposed to the principal building including to any original fencing.

Other conditions include that there be **no paving within distance of the centre of the tree trunks** and elsewhere only semi-porous materials to be used.

All **excavations within this distance must be done by hand** and all exposed roots be retained. Also, there are very particular conditions relating to the **installation of piers**, presumably for under the swimming pool and around the sewage line and where stormwater pipes are installed. And **acoustic certification must be provided to Council for the pool pump.**

The Darling Point Society maintains that it is possible to make changes to a heritage property – if it's done sympathetically and proportionately.

The initial proposals by 41 Etham did not fall within this criteria, rather they overwhelmed the context of the existing heritage house and were not consistent with the form and scale of the original heritage building. And they would have undermined the value of the Heritage Item Group. They would also have adversely affected the amenity of the neighbouring heritage house. However, with the Darling Point Society's strong opposition to the original proposal and Council's handling of that significant opposition that included many from the Darling Point community and beyond and the applicant subsequently withdrawing the radical additions and demolition proposals, the end result is acceptable - with the concomitant conditions.

**It is now clearly the responsibility of Woollahra Council to oversee the imposition and monitoring of these conditions.**