



Land and Environment Court
New South Wales

Case Name: KRV Investments Pty Ltd v Camden Council

Medium Neutral Citation: [2023] NSWLEC 1294

Hearing Date(s): Conciliation conference held on 18 May 2023

Date of Orders: 14 June 2023

Decision Date: 14 June 2023

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:
(1) The Applicant is granted leave to amend the application to rely on the plans and documents listed under Schedule B, condition 1.0(2) of the conditions of consent at Annexure A.
(2) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application, pursuant to section 8.15(3) of the Environmental Planning and Assessment Act 1979, as agreed or assessed.
(3) The appeal is upheld.
(4) Development Application No. 2021/1871/1, as amended, for the subdivision of the land into eight (8) Torrens title lots comprising three (3) residential super lots, three (3) SP2 lots, two (2) RE1 zoned lots, construction of public roads, drainage construction and associated site works on land legally described as Lot 34A and Lot 34B in DP 8979 and known as 146-166 Ingleburn Road, Leppington, NSW 2179, is determined by the grant of consent, subject to the conditions of consent at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – Torrens title subdivision – conciliation conference – agreement

between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.16, 8.7
Environmental Planning and Assessment Regulation 2000
Environmental Planning and Assessment Regulation 2021, Sch 6, s 3
Land and Environment Court Act 1979, s 34
State Environmental Planning Policy (Precincts – Western Parkland City) 2021, appendix 5, ss 2.2, 2.6, 6.1, 6.2, 6.3
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6
State Environmental Planning Policy (Transport and Infrastructure) 2021, s 2.48
Rural Fires Act 1997, s 100B
Water Management Act 2000

Category: Principal judgment

Parties: KRV Investments Pty Ltd (Applicant)
Camden Council (Respondent)

Representation: Counsel:
E Fleming (Solicitor) (Applicant)
K Huxley (Solicitor) (Respondent)

Solicitors:
Macpherson Kelley (Applicant)
Holding Redlich (Respondent)

File Number(s): 2022/306732

Publication Restriction: No

JUDGMENT

1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No 2021/1871/1, as amended, for the subdivision of the land into eight (8) Torrens title lots comprising three (3) residential super lots, three (3) SP2 lots, two (2) RE1 zoned lots, construction of public roads, drainage construction and associated site works (the proposal),

on land legally described as Lot 34A and Lot 34B in DP 8979 and known as 146-166 Ingleburn Road, Leppington (the site), by Camden Council (the Council).

- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 27 February 2023. I presided over the conciliation conference. At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties.
- 3 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.
- 4 There are preconditions to the exercise of power to grant development consent for the proposal.

Amended Plans

- 5 The Environmental Planning and Assessment Regulation 2000 continues to apply to the application, because the application was lodged on 8 December 2021 and not yet determined on 1 March 2022 (s 3 of Sch 6 to the Environmental Planning and Assessment Regulation 2021). Pursuant to s 3(2) of Sch 6 to the Environmental Planning and Assessment Regulation 2021, a requirement to use the NSW Planning Portal under the 2000 Regulation, cll 55(1), 55AA(2)(d) or 121B(1) does not apply if the development application is subject to proceedings in the Court.
- 6 The Council, as the consent authority, consented to the amendment of the application. The application is amended to include the plans and documents listed under Sch B, condition 1.0(2) of the conditions of consent at Annexure A.

Jurisdiction pre-requisites

- 7 The proposal is 'nominated integrated development' as it requires an activity approval to carry out a controlled activity under the *Water Management Act*

2000. General Terms of Approval (GTAs) were provided by the Department of Planning and Environment.

- 8 The proposal is 'integrated development' under to s 100B of the *Rural Fires Act 1997* in respect of bush fire safety for the subdivision of land that could be lawfully used for residential or rural residential purposes. GTAs were provided by the Rural Fire Service on 7 March 2022.
- 9 Pursuant to s 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Transport and infrastructure), the application was referred to the electricity supply authority for the area, Endeavour Energy. Endeavour Energy recommended the approval of the application on 6 January 2022, subject to conditions.
- 10 I accept the parties' agreement that the site is suitable or will be suitable after remediation for the subdivision and ancillary works, pursuant to s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, and that the future suitability of the site for residential flat buildings will be addressed by those applications.
- 11 The State Environmental Planning Policy (Precincts – Western Parkland City) 2021 applies to the proposal and the site is within the Camden Growth Centres Precinct Plan (CGCPP) (appendix 5 State Environmental Planning Policy (Precincts – Western Parkland City) 2021). Pursuant to s 2.2, the site is zoned part R3 Medium Density Residential, and part SP2 Infrastructure (drainage) and part RE1 Public Recreation under the CGCPP. Subdivision is permissible with consent under s 2.6. The amended application satisfied s 6.1 by demonstrating that water, sewer, electricity and telecommunication services can be made available to the site, according to the Statement of Environmental Effects. The areas to the northern and eastern boundaries of the site are mapped as a Native Vegetation Retention Area and a Riparian Protection Area pursuant to s 6.2 of the CGCPP and no works are proposed to occur within these areas. A minor portion of the south-east corner of the site is mapped as an existing Native Vegetation Area pursuant to s 6.3 of the CGCPP and no works are proposed within this area.

Conclusion

- 12 I have considered the submissions made by the Council in the Statement of Jurisdictional Issues filed with the Court on 23 May 2023 and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.

Orders

- 13 The orders of the Court are:

- (1) The Applicant is granted leave to amend the application to rely on the plans and documents listed under Schedule B, condition 2 of the conditions of consent at Annexure A.
- (2) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application, pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979*, as agreed or assessed.
- (3) The appeal is upheld.
- (4) Development Application No 2021/1871/1, as amended, for the subdivision of the land into eight (8) Torrens title lots comprising three (3) residential super lots, three (3) SP2 lots, two (2) RE1 zoned lots, construction of public roads, drainage construction and associated site works on land legally described as Lot 34A and Lot 34B in DP 8979 and known as 146-166 Ingleburn Road, Leppington, NSW 2179, subject to the conditions of consent at Annexure A.

Susan O'Neill

Commissioner of the Court

306732.22 Annexure

<http://www.caselaw.nsw.gov.au/asset/188b8697ab8bedf4ffa32cef.pdf>

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