



Land and Environment Court New South Wales

Case Name: **Austral & Leppington No. 8 Pty Ltd as trustee for
Austral & Leppington No. 8 Unit Trust v The
Council of Camden**

Medium Neutral Citation: [2024] NSWLEC 1335

Hearing Date(s): Conciliation conference on 15 March, 10 April and 1,
2 and 16 May 2024

Date of Orders: 18 June 2024

Date of Decision: 18 June 2024

Jurisdiction: Class 1

Before: Horton C

Decision: The Court orders that:
(1) The Applicant is to pay the Respondent's costs
thrown away as a result of the amendment of the
application for development consent in accordance
with s 8.15(3) of the *Environmental Planning and
Assessment Act 1979*, in the agreed amount of
\$15,000.
(2) The appeal is upheld.
(3) Development consent is granted to Development
Application No DA/2023/326/1, as amended, for
subdivision creating 34 residential lots, 2 residue
lots, including remediation of land, relocation of an
existing heritage item to proposed Lot 1, vegetation
removal, road construction, drainage construction,
landscaping and associated site works on land
legally described as Lot 72 in DP 8979 , known as 66
Rickard Road, Leppington subject to the conditions
at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – subdivision of
land – conciliation conference – agreement between
parties – orders

Legislation Cited: *Environmental Planning and Assessment Act 1979*,
ss 4.16, 8.7, 8.15, Div 4.8
Land and Environment Court Act 1979, s 34
Rural Fires Act 1997, s 100B
Water Management Act 2000, s 91

Environmental Planning and Assessment Regulation
2021, s 38

State Environmental Planning Policy (Biodiversity
and Conservation) 2021 ss 6.6, 6.7, 6.8, 6.65

State Environmental Planning Policy (Resilience and
Hazards) 2021, s 4.6

State Environmental Planning Policy (Precincts—
Western Parkland City) 2021, Appendix 5, ss 4.1AA,
4.1AB, 5.9, 5.10, 6.1

State Environmental Planning Policy Amendment
(Water Catchments) 2022

Category: Principal judgment

Parties: Austral & Leppington No. 8 Pty Ltd as trustee for
Austral & Leppington No. 8 Unit Trust (Applicant)
The Council of Camden (Respondent)

Representation: Counsel:
G Hugo (Solicitor) (Applicant)
K Huxley (Solicitor) (Respondent)

Solicitors:
McKees Legal (Applicant)
Holding Redlich (Respondent)

File Number(s): 2023/00285014

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This Class 1 appeal is brought under s 8.7 of the *Environmental Planning and Assessment Act 1979* following the deemed refusal of Development Application DA/2023/326/1 seeking development consent for subdivision creating 32 residential lots and 5 residue lots, including remediation of land, relocation of an existing heritage item to proposed Lot 34, vegetation removal, road construction, drainage construction, landscaping and associated site works at Lot 1 in DP 1286162 and Lot 2 in DP 1286162, known as 66 Rickard Road, 60 Pluto Avenue and 62 Pluto Avenue, Leppington (the site).
- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, at which I presided on 15 March 2024.
- 3 At the conciliation conference, the parties reached in-principle agreement as to the scope of amendments required for the parties to reach terms of a decision in the proceedings that would be acceptable to the parties, subject to time being granted for certain amendments to the development the subject of the development application.
- 4 I granted the parties an adjournment to permit the preparation of amended plans and other documents. I subsequently granted a further adjournment so that those amendments agreed to between the parties could be finalised in amended plans and other documents.
- 5 This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions.
- 6 A signed agreement prepared in accordance with s 34(10) of the LEC Act was finally submitted with the Court on 16 May 2024.
- 7 The parties ask me to approve their decision as set out in the s 34 agreement before the Court. In general terms, the agreement approves the development

subject to amended plans that were prepared by the Applicant, and noting that the final detail of the works and plans are specified in the agreed conditions of development consent annexed to the s 34 agreement.

8 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 power under s 4.16 of the EPA Act. In this case, there are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties explained to me during the conference as to how the jurisdictional prerequisites have been satisfied in order to allow the Court to make the agreed orders at [32], as follows:

9 The site is located within an area identified by the Camden Growth Centres Precinct Plan, at Appendix 5 of State Environmental Planning Policy (Precincts—Western Parkland City) 2021 (Parkland City SEPP) to be zoned partly R2 Low Density Residential, and partly R3 Medium Density Residential, and partly SP2 Infrastructure.

10 Subdivision is permissible with consent in the relevant zones, where consistent with the relevant objectives of that zoning identified at [9].

11 Relevantly, a dwelling density of 15 dwellings per hectare applies to that part of the site within the R2 Low Density Residential zone, while a dwelling density of 25 dwellings per hectare applies to that part of the site within the R3 Medium Density Residential zone.

12 A minimum lot size standard of 300m² applies to the proposal by virtue of s 4.1AB(3)(a) of Appendix 5 of the Parkland City SEPP.

13 That said, s 4.1AA of Appendix 5 of the Parkland City SEPP provides for the subdivision of land into lots with an area of less than 300m², but not less than 225m² where the Court, exercising the powers and discretions of the Respondent, is satisfied that the lot after subdivision contains a sufficient building envelope to enable erection of a dwelling on that lot. On the basis of

building envelope to enable erection of a dwelling on that lot. On the basis of the Subdivision Plan prepared by Colliers, I note the parties agree such an envelope is illustrated on proposed Lots 6, 7, 12-17, 19 and 20-25.

- 14 Section 5.9 of Appendix 5 of the Parkland City SEPP deals with the preservation of trees or vegetation, where removal of the same is permitted by consent at subs (3). A landscape plan proposes replacement tree species. On this basis, the Respondent proposes consent be granted.
- 15 The site contains a cottage identified for its local heritage significance. The parties agree that the relocation of the cottage is appropriate, subject to the Heritage Impact Statement prepared by Weir Phillips Heritage and Planning dated April 2023, and the Existing Structure Report prepared by Colliers dated 10 November 2023, because the relocation maintains an appropriate spatial relationship between the cottage and Rickard Road. Accordingly, the parties agree that the effect on the heritage significance of the heritage item is acceptable, pursuant to s 5.10 of Appendix 5 of the Parkland City SEPP.
- 16 On the basis of statements at p 26 of the Statement of Environmental Effects prepared by Colliers and dated June 2023, I am satisfied that adequate arrangements have been made to make public utility infrastructure available to the proposed development when required in accordance with s 6.1 of Appendix 5 of the Parkland City SEPP.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- 17 As the site is within the Hawkesbury Nepean catchment, State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity SEPP) applies to regulate certain aspects of the catchment.
- 18 As the development application was lodged after the commencement of State Environmental Planning Policy Amendment (Water Catchments) 2022, the savings and transitional provisions at s 6.65 of the Biodiversity SEPP do not apply. The effect of this is that Chs 7-12 are repealed.

- 19 Section 6.6 of the Biodiversity SEPP precludes the grant of consent unless the Respondent council, or the Court on appeal, is satisfied that the proposed development ensures that, firstly, the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and secondly, that the impact on water flow in a natural waterbody will be minimised.
- 20 On the basis of the Civil engineering drawings prepared by Craig & Rhodes, in particular the temporary onsite detention basin plans and cross sections, the statement prepared by Colliers International Engineering & Design dated 16 May 2024 (Colliers Assessment), and the agreed conditions of consent, I accept s 6.6 of the Biodiversity SEPP is adequately addressed and I am satisfied that the proposal achieves a neutral or beneficial effect on the water quality and water flow into the Hawkesbury-Nepean catchment will be minimised.
- 21 I also accept the Colliers Assessment in respect of s 6.7 of the Biodiversity SEPP and am satisfied that the direct, indirect or cumulative impacts on terrestrial, aquatic and migratory animals is minimised, and that no effect will be imposed on aquatic reserves, because of the flows into, and capacity of the temporary onsite detention (OSD) basins, and the bio retention filters contained therein. Additionally I note the terms of Condition 7 require a water quality facility be constructed for the site such that no untreated stormwater is to be disposed of into a natural waterway
- 22 In respect of flooding, that is dealt with at s 6.8 of the Biodiversity SEPP, I am satisfied that no adverse impacts will arise on a waterbody in the event of a flood, nor will there be adverse impacts on any wetlands or riverine ecosystems as the site does not contain nor is it near wetlands or riverine ecosystems.

The proposal is Integrated Development

- 23 The Proposed Development is integrated development under Div 4.8 of the EPA Act as it requires an authorisation under s 100B of the *Rural Fires Act 1997* for the subdivision of bushfire prone land that could lawfully be used for residential purposes, and because it requires an activity approval from the NSW

Department Planning and Environment - Water (DPE Water) to carry out a controlled activity pursuant to s 91 of the *Water Management Act 2000* as the Proposed Development involves works within 40m of a water course (being waterfront land).

- 24 On 14 December 2023, the NSW Rural Fire Services issued general terms of approval that are incorporated into the agreed conditions of consent.
- 25 On 30 April 2024, DPE Water issued general terms of approval that are incorporated into the agreed conditions of consent.

Contamination

- 26 Consistent with the terms of s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazard SEPP) I have given consideration to the potential contamination of the site.
- 27 The Applicant relies upon a Detailed Site Investigation prepared by GeoEnviro Consultancy Pty Ltd dated August 2022 that concludes the site is likely contaminated, necessitating site remediation and validation.
- 28 A Site Remediation Action Plan (RAP), incorporated in the agreed conditions of consent, by the same author and date concludes that, subject to following the procedures set out in the RAP, the site will be made suitable for residential development.

Conclusion

- 29 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 30 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.

31 The Court notes that:

- (1) The Respondent has agreed under section 38 of the Environmental Planning and Assessment Regulation 2021, to the Applicant amending Development Application No DA/2023/326/1 to include the further and amended plans and documents described below:

Drawing No and Revision	Title	Prepared by	Date
Plans			
Dwg: 208-22 G L01 Rev: 18	Site Plan Sheet 1 of 7	Colliers	23 April 2024
Dwg: 208-22 G L01 Rev: 18	Subdivision Plan Stage 1 Sheet 2 of 7		
Dwg: 208-22 G L01 Rev: 18	Subdivision Plan Stage 2 Sheet 3 of 7		
Dwg: 208-22 G L01 Rev: 18	Subdivision Plan Stage 3 Sheet 4 of 7		
Dwg: 208-22 G L01 Rev: 18	Subdivision Plan Stage 4 Sheet 5 of 7		
Dwg: 208-22 G L01 Rev: 18	NDA Plan Sheet 6 of 7		
Dwg: 208-22 G L01 Rev: 18	Building Envelope Plans Sheet 7 of 7		
Dwg: 208-22C-DA-0001 Rev: K	Cover Sheet, Locality Plan & Index Sheet	Craig & Rhodes	7 May 2024
Dwg: 208-22C-DA-0002 Rev: K	General Notes		
Dwg: 208-22C-DA-0003 Rev: K	Legends & Abbreviations		
Dwg: 208-22C-DA-0004 Rev: K	Key Plan		
Dwg: 208-22C-DA-0021 Rev: K	Demolition Plan		
Dwg: 208-22C-DA-0051 Rev: K	Bulk Earthworks Plan		

Dwg: 208-22C-DA-0061 Rev: K	Bulk Earthworks Site Sections Sheet 1 of 4		
Dwg: 208-22C-DA-0062 Rev: K	Bulk Earthworks Site Sections Sheet 2 of 4		
Dwg: 208-22C-DA-0063 Rev: K	Bulk Earthworks Site Sections Sheet 3 of 4		
Dwg: 208-22C-DA-0064 Rev: K	Bulk Earthworks Site Sections Sheet 4 of 4		
Dwg: 208-22C-DA-0101 Rev: K	Road and Drainage Plan Sheet 1 of 2		
Dwg: 208-22C-DA-0102 Rev: K	Road and Drainage Plan Sheet 2 of 2		
Dwg: 208-22C-DA-0151 Rev: K	Typical Road Cross Section		
Dwg: 208-22C-DA-0201 Rev: K	Venus Street Longitudinal Section		
Dwg: 208-22C-DA-0202 Rev: K	Road No 1 Longitudinal Section		
Dwg: 208-22C-DA-0203 Rev: K	Pluto Avenue Longitudinal Section		
Dwg: 208-22C-DA-0204 Rev: K	Rickard Road Longitudinal Section		
Dwg: 208-22C-DA-0205 Rev: K	Laneway No 1 Longitudinal Section		
Dwg: 208-22C-DA-0551 Rev: K	Turning Paths Plan Sheet 1 of 3		
Dwg: 208-22C-DA-0552 Rev: K	Turning Paths Plan Sheet 2 of 3		
Dwg: 208-22C-DA-0553 Rev: K	Turning Path Plan Sheet 3 of 3		
Dwg: 208-22C-DA-0601 Rev: K	Signage and Line Marking Plan		
Dwg: 208-22C-DA-0701 Rev: K	Interim Catchment Plan		

Dwg: 208-22C-DA-0702 Rev: K	Ultimate Catchment Plan		
Dwg: 208-22C-DA-0751 Rev: K	Channel No 1 Longitudinal Section		
Dwg: 208-22C-DA-0752 Rev: K	Temporary OSD/WSUD Basin No 1 Plan and Cross Sections		
Dwg: 208-22C-DA-0753 Rev: K	Temporary OSD/WSUD Basin No 2 Plan and Cross Sections		
Dwg: 208-22C-DA-0754 Rev: K	Stormwater Drainage Details		
Dwg: 208-22C-DA-0755 Rev: K	Swale Plan and Longitudinal Section		
Dwg: 208-22C-DA-0901 Rev: K	Sediment and Erosion Control Plan		
Dwg: 208-22C-DA-0902 Rev: K	Sediment and Erosion Control Plan		
LDA-001 Rev: F	Landscape Cover Sheet	Ground Ink	7 May 2024
LDA-101 Rev: F	Existing Tree Plan		
LDA-102 Rev: F	Landscape Master Plan		
LDA-201 Rev: F	Landscape Plan – Inset 1		
LDA-202 Rev: F	Landscape Plan – Inset 2		
LDA-203 Rev: F	Landscape Plan – Inset 3		
LDA-204 Rev: F	Landscape Plan – Inset 4		
LDA-301 Rev: F	Landscape Details		
Document Title		Prepared by	Date
Acoustic Report Ref: 7704-1.1R Rev: B		Day Design Pty Ltd	30 April 2024
Asbestos Register Report		Clearsafe Environmental Solutions	7 December 2023

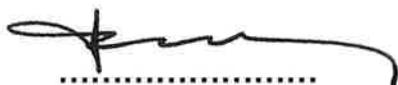
Existing Structure Report Ref: 208-22-SR01	Colliers	10 November 2023
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Orders

32 The Court orders that:

- (1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application for development consent in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, in the agreed amount of \$15,000.
- (2) The appeal is upheld.
- (3) Development consent is granted to Development Application No DA/2023/326/1, as amended, for subdivision creating 34 residential lots, 2 residue lots, including remediation of land, relocation of an existing heritage item to proposed Lot 1, vegetation removal, road construction, drainage construction, landscaping and associated site works on land legally described as Lot 72 in DP 8979 , known as 66 Rickard Road, Leppington subject to the conditions at Annexure A.

I certify that this and the preceding 8 pages are a true copy of my reasons for judgment.



T Horton

Commissioner of the Court
