



Land and Environment Court New South Wales

Medium Neutral Citation:

**Donware Holdings Pty Ltd trading as The Trustee for
Charliewin Unit Trust v Camden Council [2022]
NSWLEC 1714**

Hearing dates:

Conciliation conference on 19 December 2022

Date of orders:

21 December 2022

Decision date:

21 December 2022

Jurisdiction:

Class 1

Before:

Dixon SC

Decision:

The Court orders:

- (1) The applicant is to pay the respondent's costs thrown away by the amendment of the development application pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, in a sum to be agreed or assessed.
- (2) The appeal is upheld.
- (3) Development consent is granted to development application DA2020/841/1 for the demolition of existing structures, and construction of a two-storey light industrial building consisting of 12 units, neighbourhood shop, takeaway shop, carparking and associated landscaping at 19 and 19A Little Street, Camden, subject to the conditions of consent in Annexure A.

Catchwords:

DEVELOPMENT APPLICATION – conciliation conference
– agreement between the parties – orders

Legislation Cited:

Camden Local Environmental Plan 2010, cl 2.3, 4.3, 4.4,
5.1, 5.1A, 5.4, 5.21, 7.1, 7.4
Environmental Planning and Assessment Act 1979, s
8.15(3)
Environmental Planning and Assessment Regulation 2000,
cl 55
Land and Environment Court Act 1979, s 34

State Environmental Planning Policy (Biodiversity and Conservation) 2021, ss 2.6, 6.13

State Environmental Planning Policy (Resilience and Hazards) 2021

Category: Principal judgment

Parties: Donware Holdings Pty Ltd trading as The Trustee for Charliewin Unit Trust (Applicant)
Camden Council (Respondent)

Representation: Counsel:
J Reid (Applicant)
C Rose (Solicitor) (Respondent)

Solicitors:
Meehans Solicitors Pty Ltd (Applicant)
Wilshire Webb Staunton Beattie (Respondent)

File Number(s): 2021/340210

Publication restriction: Nil

JUDGMENT

- 1 This is an appeal against the Council's refusal of development application no. 2020/841/1. The application sought development consent for the construction of a mixed-use industrial development and associated site works over two allotments at 19 and 19A Little Street, Camden (the site).
- 2 The site is generally rectangular in shape with a combined area of 20,875m². The site has a front boundary length of 73m to Little Street and 80m to Cawdor Road.
- 3 The eastern end of the site is zoned IN2 Light Industrial and the western portion is zoned RU1 Primary Production, pursuant to the Camden Local Environmental Plan 2010 (LEP). The carparking associated with the use extends on to the RU2 zoned land by 50m. The development is permissible with consent in the relevant zones.
- 4 The objectives of the RU1 zone are:
 - To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
 - To encourage diversity in primary industry enterprises and systems appropriate for the area.
 - To minimise the fragmentation and alienation of resource lands.
 - To minimise conflict between land uses within this zone and land uses within adjoining zones.
 - To permit non-agricultural uses (including tourism-related uses) that are compatible with the agricultural, environmental and conservation values of the land.
 - To maintain the rural landscape character of the land.

Clause 2.3(2) provides that regard must be had to the zone objectives. The IN2 zone objectives are:

- To provide a wide range of light industrial, warehouse and related land uses.
- To encourage employment opportunities and to support the viability of centres.
- To minimise any adverse effect of industry on other land uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To support and protect industrial land for industrial uses.
- To enable non-industrial land uses that are compatible with and do not detract from the surrounding industrial and warehouse land uses.
- To minimise the impacts of development on surrounding residential or other sensitive land uses.

6 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 19 December 2022. I presided over the conciliation conference.

7 During the conciliation conference, three objectors addressed the Court:

- (1) Ms G Davis on behalf of Camden Residents' Action Group;
- (2) Mr D Nethercote; and
- (3) Ms S O'Dell.

8 The objectors raised merit concerns in respect of traffic, noise and amenity impacts arising from the development, emphasising the proximity of the industrial zone to the existing residential area. These matters were discussed at the conciliation and the Council is satisfied on the expert evidence that the amendments to the development and the comprehensive conditions imposed on the development consent will address the relevant merit objections raised by the local submitters.

9 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. This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions.

10 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.

11 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties have identified and explained how the jurisdictional prerequisites have been satisfied in a jurisdictional submission accompanying the s34 agreement. In that regard, I note the parties' submissions:

The applicant has submitted a Remediation Action Plan prepared by Douglas Partners dated November 2022 (RAP) which refers (at Section 6) to previous environmental investigations that identified fill in the east of the site contaminated with hydrocarbons and asbestos that required management to consider the site suitable for development.

- 13 The remediation work required to render the site suitable, from a contamination perspective is identified in the RAP in Section 10. The agreed conditions of consent require the remediation works to be carried out and for a Site Audit Statement to be issued by a NSW EPA Accredited Site Auditor following demolition works and prior to the commencement of construction works (condition 31; see also: conditions 1, 24, 27, 28 and 30).
- 14 Having regard to the above, I am satisfied that the land will be suitable, after remediation, for the purpose for which the development is proposed to be carried out.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- 15 The site is within the Hawkesbury-Nepean conservation area sub-catchment. I note that the parties have considered the matters in s 6.13(2) and are satisfied that the proposal is consistent with the policy and will not impact the water quality of the Hawkesbury-Nepean catchment.
- 16 I note that the DA seeks consent for removal of trees 3, 8, 9-13 and 18 as described in the Arboricultural Impact Assessment report prepared by Green Earth Trees. A permit for removal of trees is required by s 2.6. Condition 8 authorises the tree removal. The balance of trees is to be retained and protected in accordance with the recommendations of the report and condition 8.

Camden Local Environmental Plan 2010

LEP Standards

- 17 Clause 4.3 provides for a maximum building height of 9.5m. The proposed building height is below the height control as demonstrated on sheet 10, issue H of the architectural plans.
- 18 Clause 4.4 provides for a maximum floor space ratio of 1:1. The proposed FSR is 0.2:1.
- 19 Clause 5.4(7) of the LEP permits neighbourhood shops on the site where the retail floor area does not exceed 100m². The proposed shops are under the requirement.
- 20 Clause 5.21 draws upon the Floodplain Development Manual for the definition of a flood planning area. The Manual defines flood planning area to be an area of land below the flood planning level. The flood planning level is further defined to mean the combinations of flood levels (derived from significant flood events or floods of specific annual exceedance probability) and freeboards selected for floodplain risk management purposes. Council's flood mapping does not identify the site as being less than the flood planning area. However, the Nepean River Flood Study shows the site

affected in the PMF toward Little Street, and the 1% and 5% events toward Cawdor Road. The floor levels of the development in Blocks A-E will be above the 1% AEP, but below the PMF. The lower-level carpark will be below the 5% AEP.

21 A flood evacuation plan has been prepared to enable evacuation of the site in the event of a flood, subject to a probable maximum flood or as requiring a flood study. I note that the parties are satisfied that the application satisfactorily addresses cl 5.21(3) and that it is appropriate to impose conditions (Part 2) 3, 4 8, (Part 5) 13, 14, 19.

22 Development consent is required under cl 7.4 for the proposed excavation earthworks. In relation to cl 6.2(3) criteria, the Council's position is that:

(a), (d) Drainage and soil stability can be appropriately managed subject to provision of appropriate drainage infrastructure on site and noting the site's ability to drain downstream to Council's stormwater system.

(b) The excavation is part of the proposed redevelopment of the site and will not of itself stymie the future use or redevelopment.

(c) The quality of soil to be excavated of is de minimis importance and not of determinative weight.

(e) Conditions of consent are imposed to ensure the use of clean fill and disposal of excavated material to an appropriate destination – see condition numbers Part 4, (21), (24).

(f) The likelihood of disturbing relics is low, but safeguards can be implemented via conditions of consent to suspend work pending the unearthing of relics – see condition number (Part 4, (31)).

(g), (h) The site is not proximate to a waterway, drinking water catchment of environmentally sensitive area. The prospect of any adverse impacts on such areas can be managed by conditions, including the provision and maintenance of sediment and erosion control measures – see condition numbers Part 4 (23), Part 1 (1).

23 Having considered the matters under cl 7.4, I am satisfied that the evidence is acceptable.

Notification and Submissions

24 The amended plans were notified by the Council from 17 August 2022 to 14 September 2022. Three submissions were received opposing the development. As noted above, all relevant submissions have been taken into account in the Council's assessment of the merits of the application.

25 Based on the above, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act. Accordingly, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.

The Court notes:

- (1) Camden Council as the relevant consent authority has pursuant to cl 55(1) of the Environmental Planning and Assessment Regulation 2000 to the applicant amending its application by relying on the following amended plans and documents:

Architectural Plans – Job No JMA-069			
Sheet: 02	Site Plan	J Mammone Architecture Pty Ltd	Issue: N, Date: 14/09/22
Sheet: 04	Site Waste Management Plan		Issue: I, Date: 14/09/22
Sheet: 05	Demolition Plan		Issue: I, Date: 14/09/22
Sheet: 06	Ground Floor		Issue: W, Date: 14/09/22
Sheet: 07	Level 1		Issue: Q, Date: 14/09/22
Sheet: 08	Rooftop		Issue: R, Date: 14/09/22
Sheet: 09	Elevations		Issue: L, Date: 14/09/22
Sheet: 10	Sections		Issue: H, Date: 14/09/22

Sheet: 11	Area Diagrams		Issue: I, Date: 14/09/22
Sheet: 12	Area Diagrams		Issue: I, Date: 14/09/22
Sheet: 13	Signage Design		Issue: H, Date: 14/09/22
Sheet: 14	Signage Design		Issue: G, Date: 14/09/22
Sheet: 15	Finishes Schedule		Issue: H, Date: 14/09/22
Sheet: 16	Driveway Sections		Issue: H, Date: 14/09/22
Engineering Plans – Job No. 182971			
Drawing: DAC01.01	Cover Sheet, Drawing Schedule and Locality Plan	Northrop Consulting Engineers Pty Ltd	Rev: 5, Date: 17/11/22
Drawing: DAC01.11	Specification Notes		Rev: 8, Date: 17/11/22
Drawing: DAC01.21	General Arrangement Plan		Rev: 6, Date: 17/11/22
Drawing: DAC02.01	Concept Sediment and Erosion Control Plan		Rev: 7, Date: 17/11/22

Drawing: DAC02.11	Sediment and Erosion Control Details	Rev: 6, Date: 17/11/22
Drawing: DAC03.01	Cut and Fill Plan	Rev: 5, Date: 17/11/22
Drawing: DAC03.11	Cut and Fill Sections	Rev: 5, Date: 17/11/22
Drawing: DAC04.01	Siteworks and Stormwater Management Plan - Sheet 01	Rev: 10, Date: 17/11/22
Drawing: DAC04.02	Siteworks and Stormwater Management Plan - Sheet 02	Rev: 10, Date: 17/11/22
Drawing: DAC04.10	Stormwater Pit Schedule	Rev: 6, Date: 17/11/22
Drawing: DAC04.11	Stormwater Longitudinal Sections - Sheet 01	Rev: 6, Date: 17/11/22
Drawing: DAC04.12	Stormwater Longitudinal Sections - Sheet 02	Rev: 6, Date: 17/11/22
Drawing: DAC04.13	Stormwater Longitudinal Sections - Sheet 03	Rev: 6, Date: 17/11/22
Drawing: DAC04.21	OSD Details	Rev: 7, Date: 17/11/22

Drawing: DAC05.01	Post Development Catchment Plan	Rev: 8, Date: 17/11/22
Drawing: DAC05.11	Pre Development Catchment Plan	Rev: 8, Date: 17/11/22
Drawing: DAC06.01	Details	Rev: 7, Date: 17/11/22
Drawing: DAC07.01	Retaining Wall Plan	Rev: 2, Date: 17/11/22
Drawing: DAC07.11	Retaining Wall Elevations - Sheet 01	Rev: 2, Date: 17/11/22
Drawing: DAC07.12	Retaining Wall Elevations - Sheet 02	Rev: 2, Date: 17/11/22
Drawing: DAC07.13	Retaining Wall Elevations - Sheet 03	Rev: 2, Date: 17/11/22
Drawing: DAC07.14	Retaining Wall Elevations - Sheet 04	Rev: 2, Date: 17/11/22
Drawing: DAC07.15	Retaining Wall Elevations - Sheet 05	Rev: 2, Date: 17/11/22
Drawing: DAC07.16	Retaining Wall Elevations - Sheet 06	Rev: 2, Date: 17/11/22
Landscape Plans – Project No 30-20		

Drawing: 30-20.00	Coversheet	Distinctive Gardens & Interiors Pty Ltd	Rev: H, Date: 23/09/22
Drawing: 30-20.01	Landscape Masterplan		Rev: H, Date: 23/09/22
Drawing: 30-20.02	Sheet Directory		Rev: H, Date: 23/09/22
Drawing: 30-20.03	Mood Board Imagery		Rev: H, Date: 23/09/22
Drawing: 30-20.10	Landscape Detail Plan 01		Rev: H, Date: 23/09/22
Drawing: 30-20.11	Landscape Detail Plan 02		Rev: H, Date: 23/09/22
Drawing: 30-20.12	Landscape Detail Plan 03		Rev: H, Date: 23/09/22
Drawing: 30-20.13	Landscape Detail Plan 04		Rev: H, Date: 23/09/22
Drawing: 30-20.14	Landscape Detail Plan 05		Rev: H, Date: 23/09/22
Drawing: 30-20.15	Landscape Detail Plan 06		Rev: H, Date: 23/09/22

Drawing: 30-20.20	First Floor Landscape Plan		Rev: H, Date: 23/09/22
Drawing: 30-20.21	Rooftop Landscape Plan		Rev: H, Date: 23/09/22
Drawing: 30-20.22	Landscape Elevations		Rev: H, Date: 23/09/22
Drawing: 30-20.23	Palettes, Schedule, Notes & Details		Rev: H, Date: 23/09/22
Drawing: 30-20.24	Typical Strata Cell Detail		Rev: H, Date: 23/09/22
Document Title		Prepared by	Date
Waste Management Plan		Michael Rodger	20 October 2020
Demolition Waste Management Plan		Michael Rodger	6 May 2021
Flood Evacuation Plan, Rev B		Northrop Consulting Engineers Pty Ltd	16 November 2022
Remediation Action Plan, Proposed Industrial Development 19 & 19A Little Street Camden, Project92338.02 R.001.Rev0.		Douglas Partners Pty Ltd	25 November 2022
Arboricultural Impact Assessment V3		Green Earth Tree Consultancy	July 2022

Report on salinity investigation and Management Plan Proposed Industrial Development 19 & 19A Little Street Camden, Project 92338.01.	Douglas Partners Pty Ltd	May 2021
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27 The Court orders:

- (1) The applicant is to pay the respondent's costs thrown away by the amendment of the development application pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, in a sum to be agreed or assessed.
- (2) The appeal is upheld.
- (3) Development consent is granted to development application DA2020/841/1 for the demolition of existing structures, and construction of a two-storey light industrial building consisting of 12 units, neighbourhood shop, takeaway shop, carparking and associated landscaping at 19 and 19A Little Street, Camden, subject to the conditions of consent in Annexure A.

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S Dixon

Senior Commissioner of the Court

Annexure A (340199,.pdf)

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Decision last updated: 21 December 2022