



Land and Environment Court

New South Wales

Case Name: Swadling Developments Pty Ltd v The Council of Camden

Medium Neutral Citation: [2022] NSWLEC 1723

Hearing Date(s): Conciliation conference held on 1 November 2022 and 15 December 2022

Date of Orders: 22 December 2022

Decision Date: 22 December 2022

Jurisdiction: Class 1

Before: Bish C

Decision: The Court orders that:
(1) Leave is granted to the Applicant to rely upon the amended plans in condition 1 of Annexure A.
(2) The appeal is upheld.
(3) Development Application DA 2020/289/1, as amended for Torrens title subdivision into 24 lots, one drainage reserve, with associated essential service infrastructure and site works at Lot 1 in DP 542867, also known as 156 Macarthur Road Spring Farm is determined by grant of consent, subject to the conditions in Annexure A.
(4) The Applicant is to pay the Respondent's costs thrown away as agreed or assessed as a result of the amendments pursuant to section 8.15(3) of the Environmental Planning and Assessment Act 1979.

Catchwords: DEVELOPMENT APPLICATION – Torrens title subdivision – flooding management – lot design and relevant to site constraints - conciliation conference
conciliation conference – agreement between the parties – orders

Legislation Cited: Camden Local Environmental Plan 2010, cl 2.3
Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 4.17, 4.47, 8.7
Environmental Planning and Assessment Regulation 2000, cl 49, 55
Land and Environment Court Act 1979, s 34
State Environment Planning Policy (Resilience and Hazards) 2021, s 4.6
State Environment Planning Policy (Biodiversity and Conservation) 2021, s 6.65, Ch 9
State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.48, 2.119

Texts Cited: Camden Development Control Plan 2019

Category: Principal judgment

Parties: Swadling Developments Pty Ltd (Applicant)
The Council of Camden (Respondent)

Representation: Counsel:
J Smith (Applicant)
D Loether (Solicitor) (Respondent)

Solicitors:
Shaw Reynolds Lawyers (Applicant)
Bartier Perry Lawyers (Respondent)

File Number(s): 2021/275052

Publication Restriction: No

JUDGMENT

1 **COMMISSIONER:** This is an appeal against refusal of Development Application DA 2020/289/1 (the DA) by the Council of Camden (hereafter the Council) which, as amended, seeks a Torrens title subdivision into 24 lots, with associated essential service infrastructure and site works on Lot 1 in Deposited Plan (DP) 542867, also known as 156 Macarthur Road Spring Farm (hereafter together the site).

Background

2 The DA was lodged with Council on 15 May 2020. The original DA was notified to residents, with two submissions received. The DA was referred to the

relevant authorities, pursuant to s 4.47 of the *Environmental Planning and Assessment Act 1979* (EPA Act).

- 3 Following consideration by Council, the DA was refused on 12 August 2021. The applicant appealed against the refusal of the DA, pursuant to s 8.7(1) of the EPA Act.
- 4 The Council agreed for the applicant to amend the plans and documents that support the DA, pursuant to cl 55 of the Environmental Planning and Assessment Regulation 2000 (EPA Reg). An amended DA was renotified and Council received four submissions in objection.
- 5 Pursuant to s 34(1) of the *Land and Environment Court Act 1979* (the LEC Act), the Court arranged a conciliation conference, which at the parties' request, commenced without a site view and held in person. It is noted that I attended a site view for the hearing relating to this appeal, held on 18 July 2022 and heard from a number of objectors. The hearing was subsequently adjourned and vacated after an agreement was filed, pursuant to s 34(3) of the LEC Act.
- 6 Based on the amended DA and the agreed conditions of consent, the parties reached an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The parties advise that the contentions of Council have been considered and are resolved, and also that the resident objections have been considered. With concurrence of the Panel, the agreed position of the parties is for the Court to grant consent to the amended Development Application (DA 2020/289/1), with conditions.
- 7 Pursuant to s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision, if it is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising its function under s 4.16 of the EPA Act and being satisfied, pursuant to ss 4.15 and 4.17, to determine the grant consent to DA 2020/289/1, subject to conditions in Annexure 'A'.

Jurisdictional prerequisites

8 Section 4.15(1) of the EPA Act establishes the matters to be considered in determining a development application. The following jurisdictional requirements have been specifically assessed and are addressed:

- (1) Camden Local Environmental Plan 2010 (CLEP):
 - (a) The site is located within land zoned as R1 General Residential and RU1 Primary Production, pursuant to cl 2.3 of the CLEP. The proposed subdivision, and associated civil works including flooding management, as described to the Court, are permissible with consent in the respective zones. The amended DA is supported by relevant documents, together with agreed conditions of consent, which sufficiently address all the relevant objectives, aims, standards and requirements of the CLEP.
- (2) State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience):
 - (a) Based on the supporting documents to the amended DA, the Court is satisfied that the site is suitable, and the applicant has provided sufficient information, including a Stage 1 Preliminary Site Investigation, which together with the agreed conditions of consent, address the requirements of s 4.6 of the SEPP Resilience.
- (3) State Environment Planning Policy (Biodiversity and Conservation) 2021 (SEPP Biodiversity)
 - (a) The site is located within the catchment of the Nepean River, therefore subject to the provisions of the SEPP Biodiversity, specifically Ch 9. Although Ch 9 of the SEPP Biodiversity is now repealed, the provisions still apply for consideration of the DA, pursuant to s 6.65. The amended DA addresses the relevant provisions of Ch 9.
- (4) State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Infrastructure):
 - (a) (a) The site is adjacent to the Camden Bypass and within proximity of an exposed overhead electricity power line, therefore relevant provisions of SEPP Infrastructure apply, pursuant to ss 2.48 and 2.119. The amended DA was referred to Transport for NSW and Endeavour Energy, and is supported by traffic and noise studies that assess no adverse impacts. The consent of the amended DA is supported by agreed conditions of consent, which address any future reliance of the DA on land associated with the Camden Bypass, pedestrian footpath and its proximity to electricity supply.
- (5) Camden Development Control Plan 2019 (CDCP):

- (a) The original and amended DA was publicly notified in accordance with the CDCP, with submissions received considered by Council in reaching this agreement. The relevant requirements of the CDCP are generally complied with, based on the amended plans and supporting documents to the amended DA, including a flood assessment report, and addressed in the agreed conditions of consent.
- 9 The agreed conditions of this consent adopt the GTA's as provided by relevant authorities, pursuant to s 4.47 of the EPA Act.
- 10 Pursuant to cl 49 of the EPA Reg, the applicant has satisfied the Court with the provision of consent from all landowners relevant to the amended DA.

Grant of consent

- 11 Based on the amended plans and supporting documents to the DA, the parties explained to the Court that there are no jurisdictional impediments to the making of the agreement or for the Court in making the orders, as sought.
- 12 The Council has undertaken the appropriate merit assessment of the proposed subdivision and works. The Court is advised that the issues raised in contention have been addressed by the amendments made to the application.
- 13 I am satisfied, based on the evidence before me, that there are no jurisdictional impediments to this agreement and that Development Application DA 2020/289/1 should be granted consent, as it satisfies the relevant requirements of the EPA Act.
- 14 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.
- 15 The Court notes that:
 - (1) The Council of Camden, as the relevant consent authority, has agreed, under cl 55(1) of the Environmental Planning and Assessment Regulation 2000, to the applicant amending Development Application DA 2020/289/1.
- 16 The Court orders that:
 - (1) Leave is granted to the Applicant to rely upon the amended plans in condition 1 of Annexure A.
 - (2) The appeal is upheld.

- (3) Development Application DA 2020/289/1, as amended for Torrens title subdivision into 24 lots, one drainage reserve with associated essential service infrastructure and site works at Lot 1 in DP 542867, also known as 156 Macarthur Road Spring Farm is determined by grant of consent, subject to the conditions in Annexure A.
- (4) The Applicant is to pay the Respondent's costs thrown away as agreed or assessed as a result of the amendments pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979*.

Sarah Bish

Commissioner of the Court

Annexure A

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