



Land and Environment Court
New South Wales

Case Name: Universal Property Group Pty Ltd v Camden Council

Medium Neutral Citation: [2023] NSWLEC 1048

Hearing Date(s): Conciliation conference on 14 November, 1 and 13 December 2022

Date of Orders: 07 February 2023

Decision Date: 7 February 2023

Jurisdiction: Class 1

Before: Harding AC

Decision: The Court Orders that:
(1) The Appeal is upheld.
(2) Development Application No. DA/2021/1820/1, as amended, for the demolition of existing structures, remediation of land, tree removal, Torrens Title subdivision of land into two (2) lots (one (1) super lot and one (1) SP2 lot), construction of public road, drainage works and associated site works on land legally described as Lot 75 in DP1180577 and known as 11 Ingleburn Road, Leppington, NSW, 2179, is determined by the grant of Development Consent, subject to the conditions at Annexure A.

Catchwords: DEVELOPMENT APPLICATION –subdivision – amended plans – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 8.7
Interpretation Act 1987 (NSW), s 30A
Land and Environment Court Act 1979, s 34
State Environmental Planning Policy (Biodiversity and Conservation) 2021, s 1.4
State Environmental Planning Policy (Infrastructure)

2007, cl 101

State Environmental Planning Policy (Precincts – Western Parkland City) 2021, s 1.4, Appendix 5, ss 2.6, 2.7, 4.1, 4.1AB, 4.1B

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

State Environmental Planning Policy (Sydney Region Growth Centres) 2006

State Environmental Planning Policy (Transport and Infrastructure) 2021, s 1.4

Sydney Regional Environmental Plan No 20– Hawkesbury-Nepean River Plan, cl 4, 5, 6

Category: Principal judgment

Parties: Universal Property Group Pty Ltd (Applicant)
Camden Council (Respondent)

Representation: Counsel:
M Staunton (Applicant)
C Rose (Solicitor)(Respondent)

Solicitors:
Macpherson Kelley (Applicant)
Wilshire Webb Staunton Beattie Lawyers (Respondent)

File Number(s): 2022/237301

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) by Universal Property Group Pty Ltd (the Applicant) against the deemed refusal of Development Application No. DA/2021/1820/1 lodged with Camden Council (the Respondent) in October 2021.
- 2 The Development Application seeks consent for the subdivision of land into two (2) lots (one (1) super lot and one (1) SP2 lot), demolition of existing structures, construction of public road, drainage works and associated site works on land legally described as Lot 75 in DP1180577 and known as 11 Ingleburn Road, Leppington, NSW, 2179.

- 3 The Court arranged a conciliation conference between the parties pursuant to s 34 of the *Land and Environment Court Act 1979* (the LEC Act). This was held on 14 November and then again on 1 and 13 December 2022.
- 4 At the conciliation conference, the parties reached an agreement, as to the terms of a decision in the proceedings that would be acceptable to the parties. The proposed decision was to grant Development Consent to the Development Application subject to agreed outcomes and agreed conditions.
- 5 The agreement reached by the parties was based on amended plans and material that resolved the contentions before the Court to the agreement of the parties. The amendments address the major concern of the Respondent as to whether the proposed works were requiring owners' consent for work on an adjoining parcel of land. The amendments included adjustments to ensure all works were within the subject site and covered by the owners' consents provided with the Development Application.
- 6 Pursuant to s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' agreement if the proposed decision, the subject of the agreement, is a decision that the Court could have made in the proper exercise of its functions.
- 7 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties have identified the jurisdictional prerequisites of relevance in these proceedings and how they are satisfied. The parties agree that there are no jurisdictional prerequisites in these proceedings which would prevent the Court from exercising its function under s 34(3) of the LEC Act.
- 8 As the presiding Commissioner, I am satisfied that the decision to grant Development Consent is one that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). In reaching that state of satisfaction, I note the following:
 - (1) The Site is located in an area covered by State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth Centres SEPP) which was applicable to the DA at the time of lodgement. The State Environmental Planning Policy (Precincts – Western Parkland City) 2021 (WPC SEPP) commenced on 1 March 2022 and served to repeal the Growth Centres SEPP and transfer relevant provisions to the WPC

SEPP. Section 1.4 of the WPC SEPP provides that s 30A of the *Interpretation Act 1987* (NSW) applies to all transferred provisions, such that the transferred provisions are to be construed as if they had not been so transferred.

- (2) The Site comprises the following land use zonings under the Precinct Plan:
 - (a) SP2 – Infrastructure; and
 - (b) R3 – Medium Density Residential.
- (3) Subdivision is permitted with consent under s 2.6 of Appendix 5 of the WPC SEPP, being the Camden Growth Centres Precinct Plan (Appendix 5). Demolition work is permitted with consent under s 2.7 of the Precinct Plan. The parties have had regard to s 2.3 of the Precinct Plan in respect to zone objectives.
- (4) The parties have also had regard to ss 2.7, 4.1, 4.1AB and 4.1B of Appendix 5, to the extent that they are applicable to this application (noting that these sections generally relate to subsequent application for built forms, not subdivision).
- (5) The development application was publicly notified from 7 December 2021 to 25 January 2022. No submissions were received.
- (6) Consideration has been given to State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP) which commenced on 1 March 2022 and served to repeal the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) and transfer relevant provisions to the Transport and Infrastructure SEPP. Section 1.4 of the Transport and Infrastructure SEPP provides that s 30A of the *Interpretation Act 1987* (NSW) applies to all transferred provisions, such that the transferred provisions are to be construed as if they had not been so transferred.
- (7) The Site is bounded by Ingleburn Road and Camden Valley Way, which are both classified roads. Clause 101 of the Infrastructure SEPP requires a consent authority to consider certain matters. In so doing, the parties note that the proposal provides for the construction of a public road, Road 01, at the southern boundary of the Site to provide vehicular access from Mallow Street. The proposed road is not accessible from Camden Valley Way. As such, the safety, efficiency and ongoing operation of Ingleburn Road and Camden Valley Way will not be adversely affected by the new proposed road. The proposal is not of a type that is sensitive to traffic noise or vehicle emissions.
- (8) Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (Hawkesbury-Nepean River Plan) was applicable to the DA at the time of lodgement. The State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP) commenced on 1 March 2022 and served to repeal the Hawkesbury-Nepean River Plan and transfer relevant provisions to the Biodiversity and Conservation SEPP. Section 1.4 of the Biodiversity and

Conservation SEPP provides that s 30A of the *Interpretation Act 1987* (NSW) applies to all transferred provisions, such that the transferred provisions are to be construed as if they had not been so transferred.

- (9) Clause 4 of the Hawkesbury-Nepean River Plan requires a consent authority to consider the matters referred to in cl 5 and the specific planning policies and related recommended strategies set out in cl 6 which are applicable to the proposed development. The matters for consideration under cl 5 and cl 6 have been considered in the Statement of Environmental Effects prepared by The Bathla Group dated November 2021 and the Aboriginal Due Diligence Assessment prepared by Apex Archaeology dated November 2021.
- (10) Consideration has been given to whether the Site is contaminated as required by s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP). A Stage 1 – Preliminary Site Investigation and a Remedial Action Plan have been prepared for the Site. Based on the assessments undertaken as part of the site investigations, the parties agree that the Site is considered suitable for the proposed future residential development. Where there are contaminants of potential concern, the Remedial Action Plan submitted with the Development Application provides an appropriate methodology to allow remediation of these contaminants in an environmentally responsible manner for the Site to be used for residential use and that any proposed remediation works are permissible under the Resilience and Hazards SEPP. The parties agree that the site can be made suitable for residential development consistent with the Resilience and Hazards SEPP.

9 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' agreement.

10 I was not required to make, and have not made, an assessment of the merits of the development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.

Orders

11 The Court Orders that:

- (1) The appeal is upheld.
- (2) Development Application No. DA/2021/1820/1, as amended, for the demolition of existing structures, remediation of land, tree removal, Torrens Title subdivision of land into two (2) lots (one (1) super lot and one (1) SP2 lot), construction of public road, drainage works and associated site works on land legally described as Lot 75 in DP1180577 and known as 11 Ingleburn Road, Leppington, NSW, 2179, is

determined by the grant of Development Consent, subject to the conditions at Annexure A.

Stuart Harding

Acting Commissioner of the Court

Annexure A

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