



Land and Environment Court New South Wales

Medium Neutral Citation:	Graham & Sanders Pty Ltd v Camden Council [2021] NSWLEC 1433
Hearing dates:	18 June 2021
Date of orders:	30 July 2021
Decision date:	30 July 2021
Jurisdiction:	Class 1
Before:	Chilcott C
Decision:	Orders – see below at [39] of the judgment:
Catchwords:	DEVELOPMENT APPLICATION – consent orders – commercial development – potential heritage impacts – height of buildings non-compliance – consideration of written request to vary the height of buildings development standard – written request is well founded – resident objectors – public interest
Legislation Cited:	Camden Local Environment Plan 2010, cl 2.3, 2.7, 4.3, 4.6, 5.10, 7.1, 7.4 Environmental Planning and Assessment Act 1979, ss 4.15(1), 4.16, 8.2, 8.7 Environmental Planning and Assessment Regulation 2000, cl 77, Sch 1 cl 2A Land and Environment Court Act 1979, s 34 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy No 55—Remediation of Land, cl 7(1)
Texts Cited:	Camden Development Control Plan 2011 Camden Development Control Plan 2019 NSW Heritage Office and Royal Australian Institute of Architects, Design in Context: Guidelines for Infill Development in a Historic Environment, 2005 Land and Environment Court of New South Wales, COVID-19 Pandemic Arrangements Policy, (April 2021) Land and Environment Court of New South Wales, Practice Note – Class 1 Development Appeals

Category:	Principal judgment
Parties:	Graham & Sanders Pty Ltd (Applicant) Camden Council (Respondent)
Representation:	Counsel: N Eastman (Applicant) J Smith (Respondent) Solicitors: Mills Oakley (Applicant) Swaab Lawyers (Respondent)
File Number(s):	2020/81653
Publication restriction:	No

JUDGMENT

- 1 **COMMISSIONER:** Graham & Sanders Pty Ltd (the Applicant) has appealed the refusal by the Camden Local Planning Panel under delegation from Camden Council (the Respondent) of its application for review under s 8.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) of the Panel's refusal of its development application (DA 2018/559/1), made with owner's consent, seeking consent for demolition of an existing dwelling house, shed and timber awning, removal of one jacaranda tree, and the construction of a commercial development for three (3) commercial tenancies (excluding fit out) and one (1) cafe (excluding fit out) and associated works at 20 Elizabeth Street, Camden (legally described as Lot 6 in DP357010) (the Subject Site).
- 2 The appeal is made pursuant to s 8.7 of the EP&A Act and is determined subject to the provisions of s 4.16 of that Act. The proceedings fall within Class 1 of the Court's jurisdiction under the provisions of s 17 of the *Land and Environment Court Act 1979* (the LEC Act). The Parties advised that the contentions between them had been resolved and they now come before the Court seeking orders by consent.
- 3 The Subject Site is zoned B4 mixed use pursuant to cl 2.3 of Camden Local Environmental Plan 2010 (CLEP) and the Proposed Development is permissible on the Subject Site with consent.
- 4 The hearing was convened in a manner consistent with the Court's *COVID-19 Pandemic Arrangements Policy* (the Policy). A site view was undertaken at the commencement of the hearing, and the evidence of the following objectors was taken at the commencement of the view:
 - (1) Councillor Eva Campbell and Councillor Cindy Cagney;
 - (2) Ms Jo O'Brien, on behalf of the Camden Historical Society;
 - (3) Ms Glenda Davis, on behalf of the Camden Residents Action Group;
 - (4) Mr Jim David, the owner of three properties adjoining the Subject Site; and
 - (5) Mr David Nethercote, a resident of the adjoining suburb of Elderslie.

- 5 The objector's oral submission, some complemented by substantial written submissions, included the following specific matters of concern:
- (1) the non-compliance of the Proposed Development with the height of buildings (HoB) development standard applicable to the Subject Site;
 - (2) the adequacy of the Applicant's written request to vary the HoB development standard pursuant to cl 4.6 of the CLEP;
 - (3) the potential heritage impacts of the Proposed Development, including the potential impact on the Camden Heritage Conservation Area (HCA); including heritage items in the vicinity of the Subject Site;
 - (4) whether the Proposed Development included a third storey which was uncharacteristic of the area;
 - (5) the potential impacts of the Proposed Development on the character and streetscape of the area;
 - (6) whether the Proposed Development represented an overdevelopment of the Subject Site;
 - (7) whether the existing building on the Subject Site should be demolished or, by preference, subject to adaptive re-use;
 - (8) potential solar access and privacy impacts on adjoining lots; and
 - (9) whether the Proposed Development and the Parties' proposal that the hearing of the appeal with proposed orders by consent, had been appropriately notified.
- 6 At the commencement of the hearing, the Applicant submitted that, in response to the matters raised in the Respondent's Statement of Facts and Contentions filed 2 April 2020, it now sought to amend its development application and to rely on the following documents:
- (1) a schedule of amendments prepared by BKA Architecture;
 - (2) an amended Clause 4.6 Variation Request prepared by Planning Ingenuity dated 3 March 2021;
 - (3) an amended Heritage Impact Statement prepared by John Oultram Heritage and Design dated March 2021;
 - (4) amended Landscape Plans prepared by Conzept Landscape Architects dated 7 December 2020; and
 - (5) amended Architectural Plans prepared by BKA Architectural dated 10 January 2021.
- 7 The Amended Application includes:
- (1) demolition of an existing dwelling house;
 - (2) construction of a 2-storey, plus attic, commercial building containing a café at ground level and 3 commercial tenancies across levels 1 and 2, communal lobby area, ground floor car park, earthworks, fencing;
 - (3) landscaping; and
 - (4) drainage.
- 8 The Applicant said that the key amendments within the Amended Application includes:
- (1) a reduction in the size of the net lettable area from 457.9sqm to 372.99sqm;
 - (2) a reduction in car spaces from 18 to 16;
 - (3) centralisation of the proposed driveway location;
 - (4) an increase in the proposed setbacks as follows:
 - (a) the front setback has been increased from 2.95m to 4m;

- (b) the north setback has been increased from 1.59m to 1.8m;
- (c) the south setback has been increased from 0.9m to 1.8m; and
- (d) the rear setback has been increased from 8.45m to 14.6m, with the last car space positioned 8.9m from the rear boundary.

Application for consent orders

9 The Court's Practice Note – Class 1 Development Appeals (at par 99), provides as follows in relation to applications for final orders by consent of parties in circumstances where the appeal concerns the refusal of a development application:

“[99] Any application for consent final orders in development appeals will be listed before the Court for determination. The parties will be required to present such evidence as is necessary to allow the Court to determine whether it is lawful and appropriate to grant the consent or approval having regard to the whole of the relevant circumstances, including the proposed conditions. The consent authority will be required to demonstrate that relevant statutory provisions have been complied with and that any objection by any person has been properly taken into account. Additionally, the consent authority will be required to demonstrate that it has given reasonable notice to all persons who objected to the proposal of the following:

- (i) the content of the proposed orders (including the proposed conditions of consent);
 - (ii) the date of the hearing by the Court to consider making the proposed consent orders; and
 - (iii) the opportunity for any such person to be heard;
- or that, in the circumstances of the case, notification is not necessary.”

10 During the hearing the Respondent advised that on 20 May 2021 it had notified all objectors to the s 8.2 review proceedings that:

- (1) the Applicant's appeal against the decision of the Panel to refuse its application had been listed before the Court for orders by consent on 18 June 2021; and
- (2) the hearing would commence on site at 9:30am and thereafter would be heard via Microsoft teams.

11 The Respondent also advised that:

- (1) it had provided to the objectors, in advance of the hearing, the proposed consent orders sought by the Parties and the proposed conditions of consent that would be presented to the Court;
- (2) it had confirmed to the objectors that:
 - (a) their written submissions would be provided to the Court during the proceedings;
 - (b) the objectors were able to provide further written submissions in relation to the Parties proposed orders by consent; and
 - (c) consistent with the Policy, up to six objectors would be permitted to make oral submissions to the Court at the commencement of the on-site view, and the submissions made in response to this advice were identified above (at [4]).

12 I am satisfied that the Respondent made all reasonable efforts, including by way of notification, to contact objectors to the Applicant's s 8.2 review of the refusal of its development application and to ensure that they were advised of the time and date of the consent orders hearing, and of the opportunity to make representations to the Court in these proceedings.

Before the Court can grant consent, the Parties must also demonstrate that the relevant statutory provisions applicable to the Proposed Development have been met, and that the concerns of objectors have been properly taken into account.

14 The Parties addressed these matters during the hearing at Court.

Jurisdictional considerations

Environmental Planning and Assessment Act 1979

15 Section 4.15(1) of the EP&A Act provides:

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

(v) (Repealed)

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

State Environmental Planning Policy No 55—Remediation of Land

16 Clause 7(1) of State Environmental Planning Policy No 55—Remediation of Land (SEPP55) provides that:

A consent authority must not consent to the carrying out of any development on land unless -

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

17 The Parties have advised, and I am satisfied, that a Preliminary Site Investigation with Supplementary Sampling in relation to the Subject Site has been prepared by Canopy Enterprises and is dated March 2018. This Investigation concluded that the Subject Site will be suitable for its proposed commercial use without a requirement for further assessment.

- 18 The Parties have also agreed that any further investigations that may be required prior to the commencement of works is addressed through the proposed imposition of agreed conditions of consent, in particular Part 3, condition 19.
- 19 Based on the advice of the Parties and the provision of the materials noted above (at [17]), I am satisfied that the provisions of cl 7(1) of SEPP55 have been fulfilled.

Camden Local Environmental Plan 2010

- 20 Development on the Subject Site is subject to the provisions of CLEP, and in particular the version of CLEP in force between 26 February 2021 to 13 July 2021 when the appeal was heard.
- 21 Under the provisions of cl 2.3 of CLEP the Subject Site is zoned B4 Mixed Use. The objectives of this zone are:
- To provide a mixture of compatible land uses.
 - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - To minimise conflict between land uses within the zone and land uses within adjoining zones.
 - To encourage development that supports or complements the primary office and retail functions of the local centre zone.
- 22 The Applicant's Proposed Development is for commercial premises and this is a permitted use within the B4 Mixed Use zone applicable to the Subject Site.
- 23 The following further provisions of CLEP are of particular relevance in this appeal:
- (1) clause 2.7, concerning demolition, which is permissible with consent on the Subject Site;
 - (2) clause 4.3, concerning the height of buildings, in relation to which:
 - (a) the objectives of the clause are identified as:
 - (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,
 - (b) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
 - (c) to minimise the adverse impact of development on heritage conservation areas and heritage items.
 - (b) the proposed development is above the height control of 7m, being 11.2m at the ridge of the roof at the rear building;
 - (c) the extent of the non-compliance is a maximum of 4.2m , or a non-compliance of around 60%, above the standard;
 - (d) the Applicant has submitted a written request, prepared pursuant to cl 4.6 of CLEP, to vary the development standard in cl 4.3 which states that:
 - (i) compliance with the standard is unreasonable or unnecessary as the Proposed Development achieves the objectives of the standard notwithstanding the development's contravention of the standard;
 - (ii) the Subject is flood affected which means that basement parking is not feasible and needs to be provided at grade;
 - (iii) as a consequence of the need for compliance with the flood planning levels applicable to the Subject Site, the Proposed Development has been arranged to provide car parking at ground

level, with commercial floor space located at the first and mezzanine levels, and has required an exceedance of the HoB development standard;

- (iv) the HoB non-compliance is located centrally and to the rear of the Applicant's proposed built form and within a pitched roof element;
 - (v) the HoB non-compliance is located away from the sensitive front, rear and side boundaries of the Subject Site, and the balance of the development is compliant with the HoB standard;
 - (vi) the pitched roof form now proposed for the proposed building form is responsive to the character of the Camden HCA and of the heritage items within the vicinity of the Subject Site;
 - (vii) strict compliance with the HoB standard would require the removal of the traditional pitched roof form which would be contrary to the character of build form within the HCA and within the streetscape in relation to both historic and newer infill developments, and would prejudice the visual aesthetic of the HCA and the setting of heritage items in the vicinity of the site;
 - (viii) the matters identified above (at [(ii)] to [(vii)]) provide sufficient environmental planning grounds to justify contravening the HoB standard;
 - (ix) the Proposed Development is consistent with the objectives of the B4 zone within which the Subject Site is located;
- (3) clause 5.10, concerning heritage conservation, in relation to which the Parties have confirmed, and I am satisfied, that:
- (a) the Subject Site is located within the Camden HCA and is within the vicinity of a number of local heritage items as identified within CLEP;
 - (b) an assessment of proposed development has been undertaken by the Applicant's heritage consultant, John Oultram and was tendered as evidence at the hearing;
 - (c) the resolution of the heritage matters is also detailed in the Joint Report of the Parties' heritage experts filed 27 May 2021;
- (4) clause 7.1, concerning flood planning, in relation to which:
- (a) the Subject Site is identified as flood prone land and is subject to the provisions of cl 7.1;
 - (b) a flood impact assessment has been prepared for the Proposed Development by Cardno, dated 23 January 2019, and submitted as part of the Applicant's development application;
 - (c) the flood impact assessment included flood modelling for the Subject Site based on Council's letter dated 7 September 2018 which indicated that flood-compliant floor levels are not required for this development;
 - (d) the Proposed Development has been designed to comply with the flood planning level for the Subject Site such that the commercial floor space is above level of the probable maximum flood (PMF);
 - (e) the Proposed Development as depicted in Applicant's amended plans is compliant with the flood planning levels applicable to the Subject Site;
 - (f) given there has been no change to the compliance with the flood planning levels, and with amendments being focused to the building's built form and external appearance, the Parties have confirmed, and I accept, that the Applicant's stormwater management plan, erosion and sediment control plan, stormwater management report and final flood report can be updated to reflect the amended plans by imposition of a condition of consent (CoC) and to this end CoC 2 is proposed by the Parties;
 - (g)

as a result of the amendments made, the Proposed Development complies with the matters identified in cl 7.1(3) of CLEP, and that the Proposed Development:

- (i) is compatible with the flood hazard of the land;
 - (ii) is not likely to adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties;
 - (iii) incorporates appropriate measures to manage risk to life from flood;
 - (iv) the development will not affect evacuation from the land;
 - (v) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses; and
 - (vi) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.
- (5) clause 7.4 concerning earthworks which are required to be undertaken as part of the Proposed Development. The Parties advise, and I am satisfied, that they have considered the matters identified within cl 7.4(3) of CLEP. Further, the Parties have confirmed that the Proposed Development will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land and that the objectives of cl 7.4 are achieved.

Camden Development Control Plan

- 24 Camden Development Control Plan 2011 (CDCP) was in force at the time that the Applicant lodged its development application for the Proposed Development.
- 25 The Applicant has provided a Statement of Environmental Effects prepared by Creative Planning Solutions Pty Limited, and dated August 2019, that includes an assessment of the proposed development against the provisions of CDCP and which confirms its compliance with the provisions of that plan.
- 26 The Respondent has raised no contentions in relation to the Proposed Development's satisfaction of the provisions of CDCP, or any subsequent version of the development control plan.
- 27 I am satisfied, that the Proposed Development, subject to the Parties' proposed conditions of consent, is compliant with the relevant controls within CDCP and, on the basis of advice from the Parties, with Camden Development Control Plan 2019.
- 28 The Respondent confirmed that the Applicant's development application had been notified as required under the provisions of cl 77 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), and the notification and advertising provisions of CDCP.

Consideration of the Applicant's written request to vary the HoB development standard

- 29 I have considered the Applicant's written request to vary the HoB development standard (see above at [23(2)(d)]) and I am satisfied that:

(1)

the Applicant's request has demonstrated that compliance with the HoB development standard in cl 4.3 of CLEP is unreasonable or unnecessary as it achieves the objectives of that standard notwithstanding the con-compliance, for the reasons set out within in section 7 of the request. These include:

- (a) the proposed contravention of the HoB standard is required to provide the pitched roof form for the proposed building which, in turn, provides compatibility of the built form with the existing and desired future character of the locality as sought by the first objective of the standard;
 - (b) the proposed contravention of the HoB standard is located centrally within the development and so:
 - (i) does not give rise to any privacy impacts on neighbouring lots;
 - (ii) will not give rise to any loss of views or outlook impacts across or through the Subject Site;
 - (iii) will maintain compliant levels of solar access to adjoining properties; and
 - (iv) as a consequence of these points, achieves the second objective of the standard;
 - (c) the landscaping and pitched roof form of the proposed Development is compatible with the existing and desired future character of the HCA, and so minimises any adverse impacts on heritage conservation areas and heritage items, as sought by the third objective of the HoB standard;
- (2) there are sufficient planning grounds to justify contravening the development standard for the reasons, including those identified by the Applicant in its written request, and as noted above (at [23(2)(d)(viii)]); and
- (3) the development is consistent with the B4 zone objectives because, as identified by the Applicant in its written request:
- (a) the Proposed Development will provide for a range of commercial tenancies along with a ground floor café use on the Subject Site, all of which uses are permitted within the B4 zone applicable to the Subject Site and which will contribute to the provision of a mixture of compatible land uses, as required by the first of the zone objectives;
 - (b) the Subject Site is located within an accessible location and within Camden Town Centre. The Applicant's proposed commercial tenancies and café with outdoor dining, will integrate business, office and retail uses in a location that is, in my assessment, accessible, and within comfortable walking and bike riding distance for residents of, and visitors to, Camden, as required by the second of the zone objectives;
 - (c) as required by the third of the zone objectives, the Proposed Development:
 - (i) minimises conflicts between land uses in the zone, because the permitted uses within that zone are varied and, as discussed above (at [(1)(b)]), is unlikely to result in negative impacts to other uses on adjoining lots within the B4 zone;
 - (ii) potential amenity impacts from the Subject Site have been considered as assessed to be acceptable; and so
 - (iii) while located within a short distance of land zoned B2 Local Centre and RU1 Primary Production, will not give rise to any impacts on those zones, and so has minimised conflict between the B4 zone and adjoining zones;
 - (d) as required by the fourth of the zone objectives, the Applicant's Proposed Development will provide commercial office space and a café that will complement the primary office and retail functions of the Camden Town Centre given its location within a 100m walk of the town centre.

30 For reasons provided above (at [29]), I am satisfied that:

(1)

the Applicant's written request has adequately addressed the matters required to be demonstrated by subcl 4.6(3) of CLEP;

- (2) the Proposed Development will be in the public interest because it is consistent with the objectives of the HoB standard and the objectives for development within the B4 zone in which the development is proposed to be carried out;
- (3) the Applicant's written request to vary the HoB development standard in cl 4.3 of CLEP is well founded and should be upheld; and
- (4) the Court has jurisdiction to determine the Applicant's development application, as amended.

Consideration of objector submissions

- 31 The matters raised by objectors in their submissions at the hearing of this appeal were identified above (at [5]).
- 32 A summary table of matters raised in the objectors' submissions has been prepared by the Applicant and the Parties' experts have responded to these matters in their joint reports (see below at [36(2)(a)] and [36(3)(d)]).

Consideration of contentions

- 33 As noted above at [1], the Applicant seeks consent for demolition of an existing dwelling house, shed and timber awning, removal of one jacaranda tree, and the construction of a commercial development for three (3) commercial tenancies (excluding fit out) and one (1) cafe (excluding fit out) and associated works.
- 34 The contentions in the appeal concerned the following matters:
- (1) the Applicant's proposed contravention of the HoB development standard in cl 4.3 of CLEP (Contention 1);
 - (2) the height, bulk, scale and roof form of the Proposed Development and whether this represented an overdevelopment of the Subject Site (Contention 2); and
 - (3) whether the Proposed Development was consistent with the character of the HCA (Contention 3).
- 35 The Parties agreed that these contentions had been resolved through the advice of the Parties experts, and the proposed imposition of conditions of consent, and in particular:
- (1) Contention 1 was resolved through Applicant's amendment to the built form of the Proposed Development and through provision of an amended cl 4.6 written request to vary the HoB development standard, prepared by Planning Ingenuity and dated 3 March 2021;
 - (2) Contentions 2 and 3 were resolved through the Applicant's provision of the following materials:
 - (a) the amended architectural plans prepared by BKA Architecture;
 - (b) the amended landscape plans prepared by Conzept Landscape; and
 - (c) the amended Heritage Impact Statement prepared by John Oultram.
- 36 The Parties' experts have provided a detailed consideration of each of the contentions in this appeal, and the agreed basis for their resolution, within the following joint expert reports, as follows:
- (1) within the joint report of the heritage experts, Mr Brian McDonald and Mr John Oultram, filed 27 May 2021, they had agreed that, based on the Applicant's amended plans;

- (a) the dwelling on the Subject Site is not a listed heritage item within Schedule 5 of CLEP;
 - (b) the Subject Site is located within the Camden Town Centre Heritage Conservation Area (HCA) as identified within CLEP;
 - (c) the Subject Site is located within the vicinity of 5 heritage items identified within CLEP (nos. I21, I22, I69, I70, I71);
 - (d) all of the heritage contentions raised by the Respondent within its statement of facts and contentions had been resolved to their satisfaction, including in relation to:
 - (i) overdevelopment of the Subject Site;
 - (ii) the consistency of the Proposed Development with the character of the HCA;
- (2) within the joint supplementary report of the heritage experts, filed 15 June 2021:
- (a) they had considered objections raised in submissions, and agreed that the Proposed Development, as amended, had responded satisfactorily to the following matters:
 - (i) potential impacts on heritage listed properties in the vicinity of the Subject Site;
 - (ii) the general design of the Proposed Development;
 - (iii) the pitched roof form of the Proposed Development;
 - (iv) the proposed height of the Proposed Development;
 - (v) the sufficiency of the setbacks of the Proposed Development;
 - (vi) the street frontage/façade of the Proposed Development;
 - (vii) the bulk and scale of the Proposed Development;
 - (viii) the impact of the Proposed Development on the heritage significance and character of the Camden HCA;
 - (ix) the proposed demolition of the existing dwelling on the Subject Site;
 - (x) the potential for adaptive re-use of the existing dwelling on the Subject Site;
 - (xi) the potential impact of the Proposed Development on Nepean House, an adjoining heritage listed property;
 - (xii) development in the immediate area of the Proposed Development;
 - (xiii) whether the Proposed Development is a two- or three-storey building;
 - (xiv) the adequacy of the Applicant's heritage impact statement;
 - (xv) the acceptability of the 'descending roof form';
 - (xvi) the responsiveness of the Proposed Development to the guidance provided within the document entitled 'Design in Context: Guidelines for Infill Development in a Historic Environment' published by the NSW Heritage Office and Royal Australian Institute of Architects; and
 - (xvii) the acceptability of the Proposed Development in relation to the Burra Charter principles, in relation to which the experts concluded that the Proposed Development responds appropriately to its established, historic context;
 - (b) they had agreed that the existing dwelling on the Subject Site:
 - (i) is a modest and undistinguished example of a post-war house of no discernible style and with no features of note; and

- (ii) could only be classified as a non-contributory item in the Camden HCA and there are no heritage issues that would preclude demolition of the building;
- (c) they had concluded that the Applicant's Proposed Development, as amended:
 - (i) pays due regard to the character of the immediate area in terms of style, form, scale, detail and materials;
 - (ii) includes changes that will lessen any perceived impact on the immediate area and the heritage items in the vicinity of the Subject Site; and
 - (iii) draws on historic precedents in the area in its use, form and height, and will provide for a complementary development in the local streetscape and surrounding conservation area;
- (3) within the joint report of the planning experts, Mr Mead and Mr Apps, filed 15 June 2021, the experts had agreed that:
 - (a) the Applicant's written request to vary the HoB development standard was well founded;
 - (b) the Proposed Development would not give rise to any direct amenity impacts on adjoining properties, including in relation to overshadowing, loss of views or outlook or the visual bulk of the proposed building either generally or in relation to its non-compliance with the applicable HoB development standard;
 - (c) the Applicant's amended plans have greatly reduced the bulk and scale of the proposed building;
 - (d) following a detailed consideration of matters raised in objector submissions, those matters had been properly addressed by the Applicant through its amended plans, and none of the matters raised warranted refusal of the Proposed Development, including in relation to:
 - (i) the proposed height of the Proposed Development;
 - (ii) matters of character and precedent;
 - (iii) flooding matters;
 - (iv) general planning matters, including the need for the proposed café, alignment with strategic planning for the area;
 - (v) potential amenity impacts on adjoining properties;
 - (vi) the accuracy of the Applicant's plans;
 - (vii) the incorporation of a mezzanine within the Applicant's proposed built form and which, on the basis of definitions within CDCP, they agreed did not constitute a storey, and as a consequence, they further agreed that the building was of a two-storey built form;
 - (viii) the sufficiency of the landscaped area at the rear of the Subject Site to accommodate tree plantings.

Conclusion

37 On the basis of my considerations above, I am satisfied that:

- (1) the Applicant's development application has been properly made (see above (at [1]));
- (2) the jurisdictional prerequisites applicable in the appeal (see above (at [13])), including the Applicant's written request to vary the HoB development standard applicable to development on the Subject Site pursuant to the provisions of cl 4.3 of CLEP (see above at [23(2)], [29] and [30]), have been satisfied;
- (3)

all contentions in this appeal had been resolved, and the resolution of the contentions is supported by, and reflected in, the Parties' proposed conditions of consent;

- (4) the Court's requirements concerning the notification of applications for final orders by consent have been satisfactorily addressed (see [11]);
- (5) the concerns of the objectors to the Applicant's Proposed Development, particularly in relation to potential heritage impacts have been addressed (see above at [5], [31], [32], [36(2)(a)] and [36(3)(d)]);
- (6) the provisions of s 4.15(1) of the EP&A Act (see above (at [15]), have been satisfied;
- (7) approval of the Applicant's development application is in the public interest.

38 Consequently, I conclude that the Applicant's development application for its Proposed Development, as amended, should be approved, subject to conditions.

Orders

39 The orders of the Court are:

- (1) The Applicant is granted leave to amend its development application to rely on the following amended plans and documents at condition 1 of Annexure A.
- (2) Pursuant to s 8.15 of the EP&A Act the Applicant is to pay the Respondent's costs in the amount of \$42,000 within 14 days of these orders.
- (3) The Applicant's written request made pursuant to cl 4.6 of Camden Local Environmental Plan 2010, seeking to vary the height of building development standard and prepared by Planning Ingenuity, dated 3 March 2021, is upheld.
- (4) By consent, the appeal is upheld.
- (5) The Applicant's development application DA2018/559/1 for the demolition of an existing dwelling house, shed and timber awning, removal of one jacaranda tree, the construction of a commercial development for three (3) commercial tenancies (excluding fit out) and one (1) cafe (excluding fit out) and associated works at 20 Elizabeth Street, Camden (legally described as Lot 6 in DP357010) is approved subject to the Conditions of Consent annexed hereto at Annexure A.
- (6) The exhibits are returned, except for Exhibits A and 1.

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Michael Chilcott

Commissioner of the Court

[Annexure A \(308014,.pdf\)](#)

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Decision last updated: 30 July 2021