



Land and Environment Court New South Wales

Medium Neutral Citation:

Muscat Developments Pty Ltd trading as Muscat Developments Pty Ltd v Camden Council [2021] NSWLEC 1486

Hearing dates:

Conciliation conference on 7 May 2021; 10 June 2021

Date of orders:

25 August 2021

Decision date:

25 August 2021

Jurisdiction:

Class 1

Before:

Dixon SC

Decision:

The Court notes:

- (1) That Camden Council as the relevant consent authority has agreed, under cl 121B(1) of the Environmental Planning and Assessment Regulation 2000, to the applicant amending the application for modification of the development consent (DA/1999/1112) granted by Camden Council on 26 June 2000 by the modification of the mound, landscaping and addition of an unexpected finds protocol.
- (2) That Camden Council has uploaded the amended application on the NSW planning portal on 10 August 2021.
- (3) That the applicant has subsequently filed the amended application with the Court on 19 August 2021.

The Court orders that:

- (1) The appeal is upheld.
- (2) Development Consent No. DA/1999/1112 is modified in the terms set out in Annexure A.
- (3) Development Consent No. DA/1999/1112/4 for the retrospective approval of an earth mound is approved, as modified by the Court set out in Annexure B.

Catchwords:

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

Legislation Cited:

Camden Local Environmental Plan 2010, cll 4.3, 7.4

Environmental Planning and Assessment Act 1979, ss
4.17, 4.55, 8.17
Environmental Planning and Assessment Regulation 2000,
cl 121B
Land and Environment Court Act 1979, s 34
State Environmental Planning Policy No 55—Remediation
of Land, cl 7
Sydney Regional Environmental Plan No 20—
Hawkesbury-Nepean River (No 2—1997), cll 5, 6

Category:

Principal judgment

Parties:

Muscat Developments Pty Ltd trading as Muscat
Developments Pty Ltd (Applicant)
Camden Council (Respondent)

Representation:

Counsel:
J Smith (Applicant)
A Hudson (Solicitor) (Respondent)

Solicitors:
CAW Legal (Applicant)
Wilshire Webb Staunton Beattie (Respondent)

File Number(s):

2021/28720

Publication restriction:

No

JUDGMENT

- 1 **COMMISSIONER:** The applicant seeks approval for a modification to an approved poultry farm under s 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EPA Act). The Council has refused consent to the modification application and the applicant has appealed the Council's determination to the Court under s 8.17 of the EPA Act.
- 2 The development consent (DA 1999/1112) which is sought to be modified was granted on 26 June 2000 (original consent). It approved the construction and use of four poultry sheds in the north-eastern corner of land at 90 Westbrook Road, Bickley Vale (site). The approved sheds were in addition to the four existing poultry sheds on the site.
- 3 The current application seeks to modify the approved DA to include retrospective approval for an existing earth mound sited parallel to the northern boundary between the development and the northern boundary. The earth mound was constructed without development consent and is not complying development.
- 4 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 7 May 2021 and 10 June 2021. I presided over the conciliation conference.

During the conciliation conference, the parties have reached an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties, being a decision the Court could have made in the proper exercise of its functions for the following reasons:

State Environmental Planning Policy No 55-Remediation of Land (SEPP 55)

- 6 SEPP 55 applies to the site. SEPP 55 provides a State-wide planning approach to the remediation of contaminated land. Clause 7 requires the consent authority to assess: whether the land is contaminated and 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 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.
- 7 The Martens and Associates Site Contamination Assessment dated April 2021 concludes that the extensive laboratory testing together with the detailed visual inspections have concluded that the earth mound contains a very low risk of contamination and is suitable for the proposed agricultural purpose.

Sydney Regional Environmental Plan No 20-Hawkesbury-Nepean River (No 2-1997) (SREP 20)

- 8 SREP 20 applies to the site. SREP 20 aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.
- 9 Clauses 5 and 6 contain provisions that must be considered in assessing a DA. The parties consider the proposal acceptable having regard to SREP 20 cl 5 and 6.

Camden Local Environmental Plan 2010 (CLEP)

- 10 The land is zoned RU1- Primary Production. The proposal is permissible with development consent.
- 11 Clause 4.3 of the CLEP provide a maximum height of 9.5m for structures. The proposal has a maximum height of 5m.
- 12 Clause 7.4 of the CLEP requires an assessment by the consent authority of the likely disruption or effect on drainage patterns, and the effect on the future redevelopment of the land. These matters have been addressed in the amended plans, and the proposal is not considered to negatively affect the future use of the land.
- 13 Clause 7.4 also requires assessment of the quality of the fill. This assessment has been undertaken by Martens and Associates and the fill is considered acceptable. All the matters under cl 7.4 have been assessed and considered acceptable (see also part 4.1.2 page 12-13 of the SEE).

- 14 Notification requirements under the EPA Act have been satisfied and all submissions have been taken into consideration. Owner's consent has been provided for the modification application. The modified conditions of development consent are reasonable, relate to the development for which consent is sought and are for a proper planning purpose and otherwise permissible pursuant to s 4.17 of the EPA Act.
- 15 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)(a) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 16 The Court notes:
- (1) That Camden Council as the relevant consent authority has agreed, under cl 121B(1) of the Environmental Planning and Assessment Regulation 2000, to the applicant amending the application for modification of the development consent (DA/1999/1112) granted by Camden Council on 26 June 2000 by the modification of the mound, landscaping and addition of an unexpected finds protocol.
 - (2) That Camden Council has uploaded the amended application on the NSW planning portal on 10 August 2021.
 - (3) That the applicant has subsequently filed the amended application with the Court on 19 August 2021.
- 17 Accordingly, the Court orders that:
- (1) The appeal is upheld.
 - (2) Development Consent No. DA/1999/1112 is modified in the terms set out in Annexure A.
 - (3) Development Consent No. DA/1999/1112/4 for the retrospective approval of an earth mound is approved, as modified by the Court set out in Annexure B.

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S Dixon

Senior Commissioner of the Court

[Annexure A \(167696,.pdf\)](#)

[Annexure B \(189961,.pdf\)](#)
