



Land and Environment Court

New South Wales

Case Name: Ingleburn 143 Pty Ltd v Camden Council

Medium Neutral Citation: [2021] NSWLEC 1557

Hearing Date(s): Conciliation conference on 21 July, 11 August and 2 September 2021

Date of Orders: 24 September 2021

Decision Date: 24 September 2021

Jurisdiction: Class 1

Before: Espinosa C

Decision: The Court orders:
(1) The applicant is to pay the respondent's costs thrown away under section 8.15(3) of the Environmental Planning and Assessment Act 1979 in the amount of \$7,000 within 28 days of the orders disposing of these proceedings.
(2) The appeal in respect of the two properties known as Lot 11 in DP629130 and part of Lot 100 in DP1260283 at 143 and 149 Ingleburn Road, Leppington respectively, is upheld.
(3) Development application No. DA2020/10521/1 for the remediation of contaminated land, subdivision of residue lots 48, 49 and 51 created in DA2019/947 (Lot 100/DP1260283) and land at Lot 11 DP629130 into 18 residential lots and one residue (SP2) lot, including the demolition of existing structures, earthworks, road construction, civil/drainage works, tree removal and associated works is approved subject to the conditions contained in Annexure "A".

Catchwords: DEVELOPMENT APPEAL – subdivision – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.16, 8.7
Land and Environment Court Act 1979, s 34
National Parks and Wildlife Act 1974, s 90
Rural Fires Act 1997
State Environmental Planning Policy (Sydney Region Growth Centres) 2006, Appendix 9
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, 8, 11

Texts Cited: Camden Growth Centre Precincts Development Control Plan 2013

Category: Principal judgment

Parties: Ingleburn 143 Pty Ltd (Applicant)
Camden Council (Respondent)

Representation: Counsel:
S Kondilios (Solicitor) (Applicant)
C Campbell (Solicitor) (Respondent)

Solicitors:
Hall & Wilcox (Applicant)
Sparke Helmore Lawyers (Respondent)

File Number(s): 2021/131346

Publication Restriction: No

JUDGMENT

1 **COMMISSIONER:** This is a Class 1 Development Appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) being an appeal against the refusal of a development application DA 2020/10521/1 seeking development consent for the remediation of contaminated land, subdivision of residue lots 48, 49 and 51 created in DA2019/947 (Lot 100/DP1260283) and land at Lot 11 DP629130 into 18 residential lots and one residue (SP2) lot, including the demolition of existing structures, earthworks, road construction, civil/drainage works, tree removal and associated works (the Proposed Development) in respect of the land known as Lot 11 in DP629130

and part of Lot 100 in DP1260283 at 143 and 149 Ingleburn Road, Leppington (the Site).

- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which has been held on 21 July, 11 August and 2 September 2021. I presided over the conciliation conference.
- 3 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.
- 4 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. There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings and the parties explained how the jurisdictional prerequisites have been satisfied in an agreed statement of jurisdictional requirements.
- 5 The parties are satisfied that the following jurisdictional prerequisites are satisfied for the following reasons:
 - (1) The Development Application was made with the consent of the respective land owners of 143 and 149 Ingleburn Road, Joseph Stant and Ray Nolan on behalf of TC (Tallwoods) Pty Ltd.
 - (2) The Site is zoned R3 Medium Density Residential and SP2 Infrastructure - Local Drainage pursuant to Appendix 9 to the State Environmental Planning Policy (Sydney Region Growth Centres) 2006, being the Camden Growth Centres Precinct Plan (Precinct Plan).
 - (3) The subdivision of land is permitted with development consent pursuant to clause 2.6 of the Precinct Plan.
 - (4) The demolition of existing buildings or works is permitted with development consent pursuant to clause 2.7 of the Precinct Plan. Land uses that are permitted with consent in zone R3 Medium Density Residential include "roads", "earthworks and "drainage".

- (5) The development has been assessed against the relevant provisions of the Precinct Plan. The development achieves the aims and objectives of the Precinct Plan, including the objectives of the R3 Medium Density Residential zoning of the Site.
- (6) The development will contain sufficient building envelopes to enable the erection of a dwelling house on the proposed lot in accordance with clause 4.1AA of the Precinct Plan.
- (7) The development proposes a density of 25 dwellings per hectare, thereby complying with the minimum residential density requirements under clause 4.1B of the Precinct Plan.
- (8) The development seeks consent for the removal of trees pursuant to clause 5.9 of the Precinct Plan.
- (9) Council is satisfied on the prescribed matters in relation to the proposed removal and disturbance of native vegetation pursuant to clause 6.2 of the Precinct Plan.
- (10) The Applicant has satisfied the requirements of clause 6.1 of the Precinct Plan in respect of adequate arrangements for public utility infrastructure, having obtained:
 - (a) a Connection Offer from Endeavour Energy on 12 April 2021; and
 - (b) a Notice of Requirements from Sydney Water on 25 August 2021.
- (11) The Development Application was notified and advertised from 14 January 2021 until 10 February 2021. No submissions were received by Council.
- (12) A bushfire safety authority under section 100B of the *Rural Fires Act 1997* was issued by the NSW Rural Fire Service on 12 August 2021.
- (13) Heritage NSW has confirmed there are no known Aboriginal objects on the Site, therefore consent is not required under clause 5.10 of the Precinct Plan. Heritage NSW has confirmed there are no known Aboriginal objects within the area proposed for impact by the development. Accordingly, the development is not an integrated development. An Aboriginal Heritage Impact Statement Permit under s 90 of the *National Parks and Wildlife Act 1974* is therefore not required.
- (14) A Remediation Action Plan dated 21 January 2021 has been prepared and demonstrates that the identified contaminated land issues can be addressed, such that the Site can be rendered compatible with the proposed residential development as required by cl 7 the State Environmental Planning Policy No 55—Remediation of Land.
- (15) Remediation of contaminated land requires consent under cl 11(4) of the Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997). Council is satisfied the development meets the requirements of cll 5, 6 and 8 of the Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997).

- (16) The development has been assessed against the provisions of the Camden Growth Centre Precincts Development Control Plan 2013 (DCP). It achieves the objectives of the controls contained within the DCP. The development is considered acceptable with respect to the DCP.
- 6 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 and I adopt the reasons given by the parties.
- 7 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.
- 8 The Court orders:
- (1) The applicant is to pay the respondent's costs thrown away under section 8.15(3) of the *Environmental Planning and Assessment Act 1979* in the amount of \$7,000 within 28 days of the orders disposing of these proceedings.
 - (2) The appeal in respect of the two properties known as Lot 11 in DP629130 and part of Lot 100 in DP1260283 at 143 and 149 Ingleburn Road, Leppington respectively, is upheld.
 - (3) Development application No. DA2020/10521/1 for the remediation of contaminated land, subdivision of residue lots 48, 49 and 51 created in DA2019/947 (Lot 100/DP1260283) and land at Lot 11 DP629130 into 18 residential lots and one residue (SP2) lot, including the demolition of existing structures, earthworks, road construction, civil/drainage works, tree removal and associated works is approved subject to the conditions contained in Annexure "A".

.....

E Espinosa

Commissioner of the Court

[Annexure A \(356331, pdf\)](#)

[Subdivision Plans \(3709293, pdf\)](#)

[Engineering Drawings \(19958797, pdf\)](#)

material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.