



Land and Environment Court

New South Wales

Case Name: Building Design & Technology Pty Ltd v Camden Council

Medium Neutral Citation: [2021] NSWLEC 1701

Hearing Date(s): Conciliation Conference 15 November 2021

Date of Orders: 18 November 2021

Decision Date: 18 November 2021

Jurisdiction: Class 1

Before: Espinosa C

Decision: The Court orders that:
(1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application for development consent in accordance with section 8.15(3) of the Environmental Planning and Assessment Act 1979.
(2) The appeal is upheld.
(3) Conditional development consent is granted to development application no. DA/2020/170/1 (as amended) for the construction of a two storey child-care centre with associated play areas, landscaping and carparking at Lot 23 DP 1251612 known as 128-132 Raby Road, Gledswood Hills subject to the conditions set out in Annexure "A".

Catchwords: DEVELOPMENT APPEAL – child care centre – conciliation conference – agreement between the parties – orders

Legislation Cited: Camden Local Environmental Plan 2010, cl 2.3, 4.3
Education and Care Services National Regulations
Environmental Planning and Assessment Act 1979, ss 4.16, 8.7
Land and Environment Court Act 1979, s 34

	State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy No 55 – Remediation of Land
Texts Cited:	Camden Development Control Plan 2019 NSW Department of Planning and Environment, Child Care Planning Guideline, (August 2017)
Category:	Principal judgment
Parties:	Building Design & Technology Pty Ltd (Applicant) Camden Council (Respondent)
Representation:	Counsel: N Hammond (Applicant) C Rose (Solicitor) (Respondent) Solicitors: Andresakis & Associates (Applicant) Wilshire Webb Staunton Beattie (Respondent)
File Number(s):	2021/75563
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 actual refusal of a development application DA/2020/170/1 seeking development consent for the construction of a double storey centre-based child care centre for ninety-nine (99) children with associated play areas, landscaping and car parking (Proposed Development) at 128-132 Raby Road, Gledswood Hills, legally described as Lot 23 DP 1251612 (the Site).
- 2 The appeal was listed for hearing on 15 and 16 November 2021.
- 3 Following the termination of an earlier section 34 conciliation conference on 3 August 2021, the parties continued without prejudice discussions. The Applicant provided to Council amended plans and documents to address

Council's contentions. The main change is to the layout of the proposed childcare centre, in that the play area and car park have been "flipped".

- 4 On the basis of the proposed amended plans and reports set out in Condition 1 of Council's conditions of consent, the parties have reached an agreement as to the terms of a decision that is acceptable to the parties and capable of approval by the Court.
- 5 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 15 November 2021 and the hearing was vacated. I have presided over the conciliation conference.
- 6 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.
- 7 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.
- 8 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 to be the provisions of the Camden Local Environmental Plan 2010 (CLEP) and the relevant provisions of the child care education state environmental policies, national regulation and guidelines.
- 9 The parties explained how the jurisdictional prerequisites have been satisfied in a Joint Submission on Jurisdiction Pre-Conditions annexed to the s34 Agreement filed 15 November 2021. I have considered this joint submission and I summarise how the parties explain how each jurisdictional prerequisite has been satisfied below. The parties rely on the documents filed by the Applicant, including but not limited to the Addendum Statement of

Environmental Effects prepared by Think Planners dated 27 September 2021
(Addendum SEE) filed 15 November 2021.

Jurisdictional considerations

- 10 The Land is zoned RU2 Rural Landscape under the CLEP.
- 11 The proposed development, being a “centre-based child care facility” as defined in the CLEP, is permissible with development consent in the RU2 zone.
- 12 Pursuant to cl 2.3(2) of the CLEP, the Court must have regard to the objectives for development in a zone when determining the application. The objectives of the RU2 zone are as follows:
 - To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
 - To maintain the rural landscape character of the land.
 - To provide for a range of compatible land uses, including extensive agriculture.
 - To protect and enhance areas of scenic value by minimising development and providing visual contrast to nearby urban development.
 - To maintain the visual amenity of prominent ridgelines.
 - To permit non-agricultural uses (including tourism-related uses) that are compatible with the agricultural, environmental and conservation values of the land.
- 13 While the Site is zoned RU2, it has a residential character in terms of the streetscape, noting the residential development to the west and the planned development to the north. The Proposed Development is consistent with the objectives of the zone and is sympathetic to the character of the land and nearby urban development (Addendum SEE, p 5).
- 14 The Proposed Development complies with the height of buildings requirements of cl 4.3, as no part of the building exceeds the height limit of 9.5 m.
- 15 A Detailed Site Investigation was carried out for the parent subdivision of the Land by Douglas Partners, who conclude that the Land was suitable for residential use and no remediation was required (Addendum SEE, p 14) satisfying the requirements of cl 7 of the State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55).

- 16 Division 12A Pipelines and Pipeline Corridors of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) applies to the Site. The Respondent is satisfied of the relevant matters in cl 66C of the ISEPP, including having given written notice as required by subcl (1)(c) and taken into consideration the response as required by subcl (1)(d) (See Addendum SEE, p 15).
- 17 The State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP) applies to the Proposed Development. Clause 23, 25 and 26 are required to be considered by the Court. These are addressed in the Addendum SEE from p 17.
- 18 Clause 23 requires the Court to take into consideration any applicable provisions of the Child Care Planning Guideline (Guideline) in relation to the proposed development. The applicable provisions of the Guideline are addressed in detail in the Addendum SEE at pp 19 to 30. The Court can be satisfied that all applicable provisions of the Guideline have been considered and addressed in the DA.
- 19 Clause 25 sets out development standards for particular matters. The relevant nondiscretionary development standards have been addressed. The development provides more than 3.25m² of unencumbered indoor play space and more than 7m² of unencumbered outdoor play space, meeting the requirements of the National Regulations (see below).
- 20 In relation to cl 26, the Camden Development Control Plan 2019 does not contain any provisions that are relevant to the matters in subcl 26(1)(a) to (d) of the Education SEPP.
- 21 The applicable provisions of the Guideline are addressed in detail in the Addendum SEE at pp 19 to 30. The Court is satisfied that all applicable provisions of the Guideline have been considered and addressed in the DA.
- 22 The Education and Care Services National Regulations (National Regulation) supports the Education SEPP, and the following relevant regulations have been addressed in the Addendum SEE from p 30 and which are summarised as follows:

- (1) Reg 107: more than 3.25m² of indoor play space per child has been provided, and appropriate internal and external storage has been provided;
 - (2) Reg 106: on-site laundry facilities are provided which comply with the relevant requirements;
 - (3) Reg 109: compliant toilet and sanitary facilities have been provided;
 - (4) Reg 110: the DA provides adequate ventilation, natural light and temperature control;
 - (5) Reg 111: adequate space for administrative tasks has been provided;
 - (6) Reg 112: appropriate nappy changing and bathing facilities are provided;
 - (7) Reg 115: the layout facilitates supervision of children at all times;
 - (8) Regs 97, 168: emergency and evacuation procedures and plans have been provided;
 - (9) Reg 108: more than 7m² of outdoor play space per child has been provided;
 - (10) Regs 113, 114: a suitable outdoor play area is provided with shade structures and appropriate fencing.
- 23 The Proposed Development complies with all relevant controls in the Camden Development Control Plan 2019, as addressed in the Addendum SEE at pp 41 to 44.

Notification of Proposed Development and public interest considerations

- 24 The parties advise that the Proposed Development was notified to adjoining neighbours from 14 April 2020 to 27 April 2020. Twelve submissions were received by the Council. The amended application the subject of the parties' agreement was notified to the adjoining neighbours between 7 October 2021 and 21 October 2021. The Respondent has considered the submissions made as a result of that second public notification process and considers that those concerns are satisfactorily addressed by the amended plans and documents, particularly in relation to noise and visual impacts on neighbouring property.
- 25 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. I adopt the reasons given by the parties as summarised above.

26 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.

27 The Court notes:

- (1) That the Camden Council as the relevant consent authority for the purposes of clause 55(1) of the Environmental Planning and Assessment Regulation 2000 (NSW) agrees to the Applicant amending the development application no. DA/2020/170/1 as follows:

Plan Reference/ Drawing No.	Name of Plan	Prepared by	Date
Project No. 201912 – Drawing No. A1.01 – Revision I	Ground Floor/Site Plan	Building Design and Technology	2 November 2021
Project No. 201912 – Drawing No. A1.02 – Revision E	First Floor Plan	Building Design and Technology	2 November 2021
Project No. 201912 – Drawing No. A1.03 – Revision B	Roof Plan	Building Design and Technology	2 November 2021
Project No. 201912 – Drawing No. A1.04 – Revision D	Elevations & Colour Schedule 1	Building Design and Technology	2 November 2021
Project No. 201912 – Drawing No. A1.05 – Revision E	Elevations & Colour Schedule 2	Building Design and Technology	2 November 2021
Drawing No. C0_BDT – Revision B	Cover Sheet	Contour Landscape Architecture	2 November 2021

Drawing No. C1_BDT – Revision D	Landscape Plan	Contour Landscape Architecture	2 November 2021
Drawing No. C2_BDT – Revision D	Planting Plan	Contour Landscape Architecture	2 November 2021
Drawing No. C3_BDT – Revision A	Landscape Details and Specification	Contour Landscape Architecture	3 February 2020
Project No. GC20022 – Drawing No. SW01 – Revision F	Cover Sheet and Specification	GEBA Consulting Pty Ltd	1 November 2021
Project No. GC20022 – Drawing No. SW02 – Revision F	Erosion and Sediment Control Plan	GEBA Consulting Pty Ltd	1 November 2021
Project No. GC20022 – Drawing No. SW03 – Revision F	Ground Floor Plan	GEBA Consulting Pty Ltd	1 November 2021
Project No. GC20022 – Drawing No. SW04 – Revision F	Roof Plan	GEBA Consulting Pty Ltd	1 November 2021
Project No. GC20022 –	Details Sheet	GEBA Consulting	1 November

Drawing No. SW05 – Revision F		Pty Ltd	2021
Document Title	Prepared by	Date	
Addendum Statement of Environmental Effects	Think Planners	27 September 2021	
Noise Impact Assessment – Proposed Child Care Centre – Lot 2073 Gledswood Hills Drive, Gledswood Hills – Report 200008R1, Rev 6	Rodney Stevens Acoustics	5 October 2021	
Review of traffic and parking arrangements (letter)	Varga Traffic Planning Pty Ltd	27 September 2021	

- (2) The amended DA has been uploaded to the NSW Planning Portal: the architectural plans, amended landscape plan, stormwater plans and reports were uploaded on 15 November 2021.
- (3) The Applicant has subsequently filed the amended DA with the Court: the amended architectural plans, landscape plans and stormwater plans were filed on 12 November 2021 and the addendum statement of environmental effects, amended acoustic report and traffic letter were filed on 15 November 2021.

Orders

28 The Court orders that:

- (1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application for development consent in accordance with section 8.15(3) of the *Environmental Planning and Assessment Act 1979*.
- (2) The appeal is upheld.

- (3) Conditional development consent is granted to development application no. DA/2020/170/1 (as amended) for the construction of a two storey child-care centre with associated play areas, landscaping and carparking at Lot 23 DP 1251612 known as 128-132 Raby Road, Gledswood Hills subject to the conditions set out in Annexure "A".

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E Espinosa

Commissioner of the Court

[Annexure A \(245683, pdf\)](#)

[Architectural Plans \(608723, pdf\)](#)

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