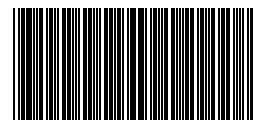




Filed: 29 June 2020 9:52 AM



D0001AJTR3

Statement of Facts and Contentions

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2020/00155198

TITLE OF PROCEEDINGS

First Applicant	MCCALL GARDENS COMMUNITY FOUNDATION LIMITED ACN 058889679
First Respondent	THE HILLS SHIRE COUNCIL ABN 25034494656

FILING DETAILS

Filed for	MCCALL GARDENS COMMUNITY FOUNDATION LIMITED, Applicant 1
Legal representative	GRAHAM NEIL MCKEE
Legal representative reference	
Telephone	02 9635 1100
Your reference	GMC:DT:mm:23125

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions (704867.pdf)

[attach.]

Form A (version 2)

STATEMENT OF FACTS AND CONTENTIONS

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2020/00155198

TITLE OF PROCEEDINGS

First Applicant	McCALL GARDENS COMMUNITY FOUNDATION LIMITED ACN 058889679
Respondent	THE HILLS SHIRE COUNCIL ABN 25034494656

FILING DETAILS

Filed for	McCall Gardens Community Foundation Limited, applicant
Legal representative	Graham McKee McKees Legal Solutions
Legal representative reference	PCN: 21873 Ref: GMC:DT:mm:23125
Contact name and telephone	Graham McKee Tel. (02) 9635 1100
Contact email	david@mckees.com.au

PART A - FACTS

1. The applicant sets out the following facts as being relevant to the determination of Development Application Number 1331/2017/JPZ

THE APPROVED DEVELOPMENT

2. This is an appeal against the conditions imposed on Development Consent No. 1331/2017/JPZ for the Concept Master Plan to establish a future subdivision layout, road pattern and heritage curtilage, layout and land uses to guide the staged creation of residential flats buildings, shop top housing, multi-dwelling housing and dwelling houses with a maximum total of 1,274 dwellings and a maximum of 6,063m² commercial gross floor area.

THE SITE

3. The site is legally described as Lot 1 in DP 1235252 and is known as 10 - 32 Terry Road, Box Hill. The site has an area of 35.66 hectares.

4. The site contains various zones including:-

- R1 General Residential;
- R2 Low Density Residential;
- R3 Medium Density Residential;
- R4 High Density Residential;
- RE2 Private Recreation; and
- E2 Environmental Conservation.

5. The site is located within the Box Hill Growth Centre Precinct within the North/West Growth Centre and is located to the immediate west of the future Box Hill Town Centre on the Corner of Terry Road and Mason Road.

6. The Site has been used by McCall Gardens for over 60 years for the provision of accommodation and care for persons with an intellectual disability, and includes Box Hill House (a heritage listed house of State significance) which was constructed by the Terry family, early pioneers of the region, and which shares significant history with Rouse Hill House. Box Hill House has been used by McCall Gardens since being gifted the site by Mr William V. McCall (later Sir William) in 1954.

7. The site currently contains the following built improvements and structures:-

- A brick dwelling (Box Hill House) constructed in the 1820s, which is now used as the administration area for McCall Gardens;
- A two-storey building known as Nelson Hall originally used for horse stables and a billiards room;
- A two-storey residential complex known as Ross House constructed in the 1970s to provide additional, modern accommodation for the residents of McCall Gardens;
- A swimming pool and outdoor shade structure;
- Two existing single storey day support services building; and
- A carpark.

The rezoning and planning controls introduced under State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth Centres SEPP) provides the opportunity for the future urban development of the site, to address appropriate heritage considerations and to define and promote the lasting legacy of community care services provided by McCall Gardens.

8. The subject site is shown below in figure 1, identifying its subject location and figure 2 which shows the Box Hill Indicative Layout Plan pursuant to the *State Environmental Planning Policy (Sydney Regional Growth Centres) 2006*.

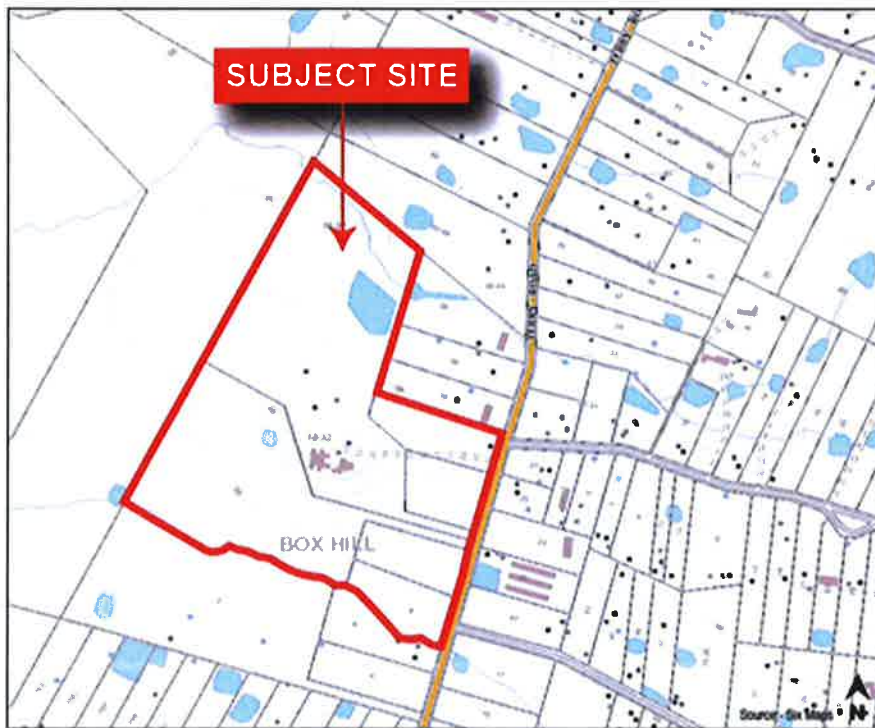


Figure 1 – Site Locality Plan

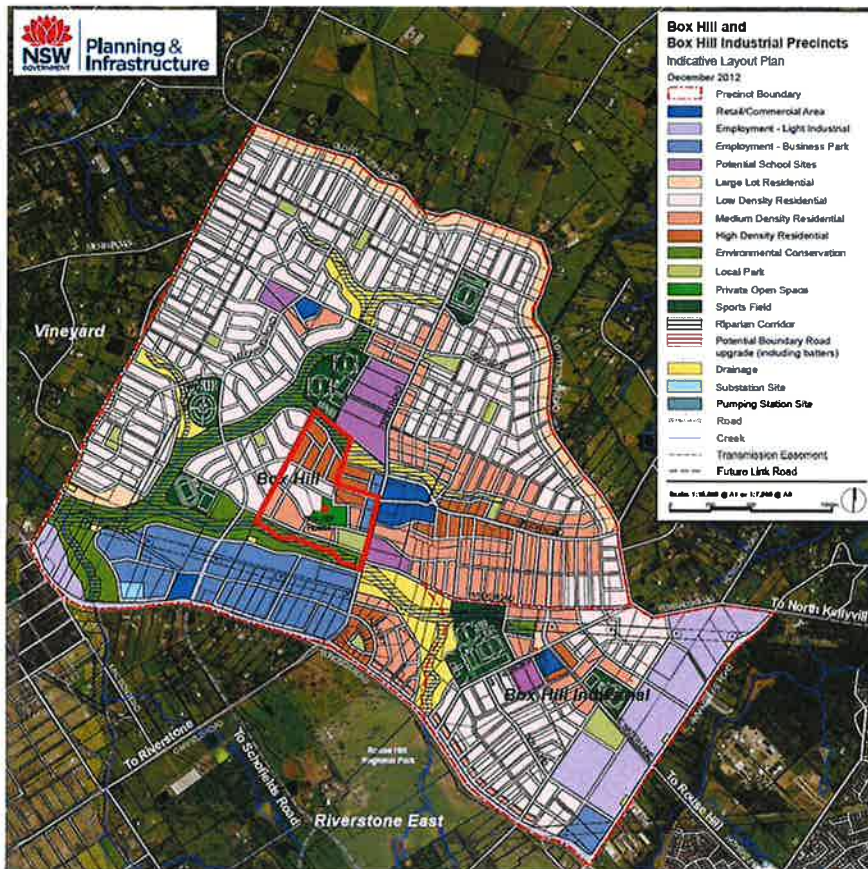


Figure 2 – Box Hill Indicative Layout Plan

STATUTORY CONTROLS

9. The statutory instruments applicable to DA 1331/2017/JPZ are as follows: -
 - *Environmental Planning and Assessment Act 1979*
 - *State Environmental Planning Policy (State and Regional Development) 2011*
 - *State Environmental Planning Policy (Infrastructure) 2007*
 - *State Environmental Planning Policy (Sydney Region Growth Centres) 2006 – Appendix 11 The Hills Growth Centre Precincts Plan*
 - *North West Priority Growth Area Land Use and Infrastructure Implementation Plan*
 - *State Environmental Planning Policy No. 55 – Remediation of Land*
 - *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development*

- *Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 – 1997)*
- *Box Hill Growth Centre Precincts Development Control Plan*
- *Draft amendments to State Environmental Planning Policy (Growth Centres) 2006*
- *Draft Growth Centres Development Control Plan 2017*

ACTIONS OF THE APPLICANT AND THE RESPONDENT CONSENT AUTHORITY

10. On 24 March 2016, a pre-lodgment meeting was held between the applicant and respondent Council.
11. On 18 January 2017, a second pre-lodgment meeting was held between the applicant and the respondent Council.
12. On 7 March 2017, the Development Application was lodged. The application sought approval for staged urban redevelopment of the site for 1452 dwellings in a mix of residential flat buildings, shop-top housing, townhouses, dwellings and subdivision of the site. The application has a capital investment value of \$472,531,600.00 and is therefore considered regionally significant.
13. The application was notified by the respondent Council from 16 March 2017 to 23 April 2017. Fifteen adjoining property owners were notified. Council did not receive any submissions during the notification period.
14. On 9 August 2017, the applicant and respondent Council met to discuss the application. The applicant, in that meeting, confirmed its requirement to lock in a dwelling yield in accordance with the application submitted to Council.
15. On 18 October 2017, the respondent Council issued a letter requesting additional information. Particular reference was made to the level of commentary and architectural detail provided regarding staged concept masterplan.
16. On 28 September 2018, the applicant provided a response to the respondent Council's request for additional information. As part of this submission, additional documentation including building envelope plans and road layout changes, was provide. The proposed density was increased to 1538 dwellings.
17. On 8 March 2019, the respondent Council issued a further request for information regarding the proposed density.

18. On 30 May 2019, the applicant submitted further amended and additional information to the respondent Council.
19. On 16 April 2020, the respondent Council issued its Council Assessment Report. The report recommended the approval of the development application subject to conditions. The conditions imposed limited the scope of the approval and effectively approved an indicative staged road and subdivision layout plan/concept master plan, but with no approval for the proposed dwelling density, yield and land use mix.
20. On 24 April 2020, the respondent Council determined the application by way of granting consent subject to the imposition of conditions limiting the scope of the application to a *"concept master plan to establish a road pattern and heritage curtilage and guide the staged creation of residential flat buildings, shop-top housing, multi dwelling housing and dwelling houses via future subdivision and built form applications."*
21. We note this is significantly different to the approval sought by the applicant which was for *"The application sought approval for urban redevelopment of the site for 1452 dwellings in a mix of residential flat buildings, shop-top housing, townhouses, and dwellings."*
22. On 5 May 2020, the applicant filed the subject Class 1 proceedings.

PART B – CONTENTIONS

The applicant contends that the following facts, matters and circumstances should result in the Court exercising the functions of the respondent Council as the consent authority to approve the development consent with the conditions amended in accordance with the below contention.

Contention 1

That conditions 1 and 2 of the development consent be as follows:-

"1. Approved Plans and Documentation

The development must be carried out in accordance with the following plans and documentation: -

i. approved site plan prepared by McFadyen Architects Drawing A103 Revision C dated 07/06/2019. Specifically:

- a) The road layout changes the Indicative Layout Plan included with the Box Hill Growth Centre Precincts Development Control Plan (DCP).*
- b) The road typologies from the DCP remain unaltered.*

c) Gardiner Drive has been moved north so that it abuts the northern site boundary adjacent to 34 Terry Road.

d) Each Development Application lodged that includes the physical construction of any of the planned roads within the subject must comply with Council's Design Guidelines Subdivision/ Development and the DCP (including the need to address earthworks, flooding and stormwater management in accordance with the stormwater management report prepared by JWP referenced in the DCP).

[ii. Lot Plan prepared by McFayden Architects, Rev C, dated 7/6/2019.](#)

[iii. Site Plan – Lot 1, R4 Zone Concept Building Envelope prepared by McFayden Architects, Rev C, dated 7/6/2019.](#)

[iv. Site Plan – Lot 4 and 5, R4 Zone Concept Building Envelope prepared by McFayden Architects, Rev B, dated 29/5/2019.](#)

[v. Site Plan – Lot 9, R1 Zone Concept Building Envelope prepared by McFayden Architects, Rev B, dated 29/5/2019.](#)

[vi. Stormwater Management & Drainage Strategy Report prepared by Indesco, dated September 2018](#)

[vii. Vegetation Management Plan prepared by Anderson Environmental, dated 08/05/2018.](#)

[viii. Remediation Action Plan prepared by WSP, dated 27/08/2018."](#)

"2. Compliance with Masterplan

Approval is granted for the proposed masterplan in accordance with the stamped approved plan referred to under Condition 1 only. ~~The other changes detailed in the plans and information provided specifically relating to density, building design, landscaping and subdivision works is not included as part of this development consent.~~ All stages of work subject to the masterplan will require the submission and approval by the relevant authority of a Development Application as required by the relevant legislation (including the need for concurrence from the relevant/ applicable external authorities)."

Particulars

- a) The Court, having the functions of the consent authority for the purposes of hearing and disposing of this appeal, would be satisfied that the subject Development Application submission of plans and documentation is adequate and appropriately demonstrates that Development Consent should be granted to the staged concept Masterplan for the

approved development subject to amended Conditions 1 and 2 (referred to above) and the remaining conditions of consent.

SIGNATURE**Applicant**

Signature

A handwritten signature in black ink, appearing to read "D. T. Morell", written over a horizontal line.

Capacity

Solicitor

Date of signature

29 June 2020