



Land and Environment Court  
New South Wales

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Case Name: Allam Property Pty Ltd v Midcoast Council

Medium Neutral Citation: [2024] NSWLEC 1467

Hearing Date(s): Conciliation conference 15 and 29 January, 22 July 2024

Date of Orders: 06 August 2024

Decision Date: 6 August 2024

Jurisdiction: Class 1

Before: Dickson C

Decision: The Court orders that:  
(1) The appeal is upheld.  
(2) Development Application DA2022/0214, as amended, for a manufactured home estate at 40-80 Chapmans Road, Tuncurry is approved subject to the conditions set out in Annexure A.

Catchwords: DEVELOPMENT APPLICATION – manufactured home estate including community club house and recreation facilities – conciliation conference – amended plans and additional materials – agreement between the parties – orders made.

Legislation Cited: Biodiversity Conservation Act 2016, s 7.2  
Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 4.46, 8.7  
Land and Environment Court Act 1979, ss 34, 39  
Local Government Act 1993, Ch 7, Pt 1  
Rural Fires Act 1997, s 100B

Environmental Planning and Assessment Regulation 2021, s 23, 37  
Great Lakes Local Environmental Plan 2014, cll 4.3, 4.4, 5.21, 7.1, 7.2, 7.5, 7.21

State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 2  
State Environmental Planning Policy (Housing) 2021, Pt 8, ss 122, 123, 125,  
State Environmental Planning Policy (Planning Systems) 2021, Pt 2.4, Sch 6, s 3  
State Environmental Planning Policy (Resilience and Hazards) 2021, Div 3, ss 2.10, 2.12, 2.13, 4.6

Texts Cited: Great Lakes Development Control Plan 2015

Category: Principal judgment

Parties: Allam Property Group Pty Ltd (Applicant)  
Midcoast Council (Respondent)

Representation: Counsel:  
J Smith (Applicant)  
M Caban (Solicitor) (Respondent)

Solicitors:  
Storey and Gough (Applicant)  
Local Government Legal (Respondent)

File Number(s): 2023/327030

Publication Restriction: No

## JUDGMENT

1 **COMMISSIONER:** This is an appeal pursuant to s 8.7(1) of the *Environmental Planning and Assessment Act 1979* against the actual refusal of development application DA2022/0214. The development application, as amended, seeks consent for a manufactured home estate at 40-80 Chapmans Road, Tuncurry. The development application seeks consent for:

- (a) Filling and regrading of the land to accommodate 88 manufactured home sites together with a community club house and recreation facilities plus maintenance shed;
- (b) Internal road works and parking for 18 vehicles;
- (c) Extension of the public road network from Chapmans Road to the entry of the estate;
- (d) Landscaping of the site;
- (e) Retention of vegetation over the eastern part of the site; and

(f) Provision of necessary services and infrastructure.

2 The Court arranged a conciliation conference between the parties pursuant to s 34 of the Land and Environment Court Act 1979 (LEC Act) on 15 January 2023. The matter did not resolve, the conciliation conference was terminated, and the proceedings were listed for hearing. However, the parties continued discussions and based on further changes to the plans and other documentation and the agreed conditions of consent, the parties advised the Court that the contested issues had been resolved. The parties therefore requested that the proceedings be adjourned and listed for a conciliation conference under s 34 of the LEC Act. The Court granted the request and arranged a conciliation conference between the parties, which was held on 22 July 2024. I presided over the further conciliation conference. 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 for the amended application and granting development consent to the amended application subject to conditions of consent.

3 As the presiding Commissioner, I am satisfied that the decision is one that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I form this state of satisfaction on the basis that:

- (1) As the Development Application was lodged after 1 March 2022, the Environmental Planning and Assessment Regulation 2021 (EPA Regulation) applies. The development application is made with the consent of the owners of the land: s 23 of the EPA Regulation. Further, the amended development application includes fill battering works on Lot 11 in DP 6152269. The owner of that land provides their consent to the development application.
- (2) The development application is integrated development within the meaning of s 4.46 of the EPA Act as it requires approval from the NSW Rural Fire Service pursuant to s 100B of the *Rural Fires Act 1997*. On 5 August 2022 the NSW Rural Fire Service provided General Terms of Approval to the development application. Their conditions are incorporated in the conditions in Annexure A.
- (3) Pursuant to Pt 2.4 and Sch 6 s 3 of State Environmental Planning Policy (Planning Systems) 2021 the application is regionally significant development as Midcoast Council owned the land at the time the

development application was made, and the capital investment value of the land exceeds \$5 million. Accordingly, the Hunter Central Coast Planning Panel was the consent authority for the application at first instance. Pursuant to s 39 of the LEC Act the Court exercises the function under s 4.16 of the EPA Act to grant consent to the development application in accordance with the parties' agreement.

- (4) Part of the land is mapped as within the Coastal Environment Area and Division 3 of State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP RH) applies. The development application includes detailed stormwater plans, flood impact assessments and water cycle management plans. Further, a search of the Aboriginal Heritage Information Management System has been completed which indicates no known sites within the land. Pursuant to s 2.10(2) of SEPP RH in granting consent I am satisfied based on the statements in the SEE, and the agreement of the parties, that the development is designed, sited and will be managed to avoid an adverse impact on the matters listed at s 2.10(1) of SEPP RH.
- (5) Pursuant to SEPP RH, the site is also within the coastal zone. I am satisfied based on the statements in the SEE, and the agreement of the parties that the proposed development does not lead to increased risk of coastal hazards on the subject land or surrounding land satisfying s 2.12. Pursuant to s 2.13 there is no certified coastal management program which applies to the land.
- (6) Pursuant to s 4.6 of SEPP RH the consent authority must not grant consent to a development unless it has considered whether a site is contaminated, and if it is, that it is satisfied that the site is suitable (or will be suitable after undergoing remediation) for the proposed use. The development application is accompanied by a Detailed Site Investigation report prepared by Regional Geotechnical Solutions. That report concludes that the site can be made suitable for the proposed residential use provided the recommendations and advice contained in the report is adopted and the site preparation works are conducted with appropriate management protocols and in line with legislative requirements. The annexed conditions impose these requirements on the consent. On the basis of the preceding, and the annexed conditions, I can be satisfied that the land will be suitable for the purpose for which the development is proposed to be carried out under the development application.
- (7) Part of the site is zoned R2 Low Density Residential under Great Lakes Local Environmental Plan 2014 (LEP 2014), as such Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BC) applies. The site has the benefit of an existing consent for clearing and bulk earthworks. The current development application proposes additional filling. Further, the development application proposes that the works under the existing consents would be completed before any works on the manufactured home estate is commenced. Accordingly, the vegetation clearing of the site is not proposed under this development application, and ecological

requirements have been addressed as part of the previous assessment and consent condition and do not trigger further requirements under this development application.

- (8) On the same reasoning as [4(7)] the parties agree, and I accept that the proposed development is not likely to significantly affect threatened species within the meaning of s 7.2 of the *Biodiversity Conservation Act 2016*. The site is not mapped on the Biodiversity Values Map and the development does not trigger the need for a Biodiversity Development Assessment Report.
- (9) As the development is for a manufactured home estate, Pt 8 of State Environmental Planning Policy (Housing) 2021 (SEPP Housing) applies. Pursuant to s 122 of SEPP Housing a manufactured home estate is permitted on the land as development for the purposes of a caravan park is permitted with consent in land zoned R2 under LEP 2014. All the works proposed in the development application are contained within the portion of the site zoned R2 Low Density Residential.
- (10) Included in the annexed conditions is a condition requiring that an approval to operate a manufactured home estate is obtained under Pt 1 of Ch 7 of the *Local Government Act 1993*. This meets the requirement at s 123 of SEPP Housing.
- (11) Clause 125 of SEPP Housing contains matters of which the consent authority must be satisfied prior to the grant of consent. In relation to those matters, the parties agree, and I accept that:
  - (a) As demonstrated by the concept services plan accompanying the development application, each of the sites on which a manufactured home will be installed will be adequately provided with reticulated water and sewer, site drainage and electricity.
  - (b) The site is proximate to existing public bus services in Chapmans Road and the manufactured home estate is or will be provided with adequate transport services.
  - (c) The development application proposes the construction of community and recreation facilities within the site and the site itself is located some 3 kilometres from the main Tuncurry Shopping Centre. The residents will have reasonable access to sufficient community facilities and services.
  - (d) The parties agree and I accept that I can be satisfied that the development will not have an adverse effect of a conservation area, heritage item or waterway or land having special landscape, scenic or ecological qualities that is identified in an environmental planning instrument.
- (12) In granting consent to the manufactured home estate, I have given consideration to the matters listed at s 125(2) of SEPP Housing and I find that none warrant the refusal of consent.
- (13) As noted at [4(7)] the site is part zoned R2 Low Density Residential and part zoned C2 Environmental Conservation. In determining the

development application, I have had regard to the objects of both of the relevant zones.

- (14) Pursuant to cl 4.3 'Maximum Building Height' under LEP 2014 the site has a maximum building height of 8.5m. The proposed buildings, including the community centre, are compliant with this development standard.
- (15) Pursuant to cl 4.4 'Floor Space Ratio' (FSR) the site has a maximum FSR of 0.5:1. The proposed development is compliant with this development standard.
- (16) Clause 5.21 'Flood Planning' applies as the land is subject to flood and considered flood prone due to its proximity to Wallamba River. The proposed development is to be filled to the Flood Planning Level of 3.2m AHD. Further, the development application is accompanied by a Flood Impact Assessment and Hydrological Investigation (FIA) and Flood Evacuation Plan.
- (17) Pursuant to cl 5.21(2) development consent cannot be granted unless the consent authority is satisfied of the following matters:
  - (a) is compatible with the flood function and behaviour on the land, and
  - (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
  - (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
  - (d) incorporates appropriate measures to manage risk to life in the event of a flood, and
  - (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.
- (18) Further, in determining the development application the consent authority must give consideration to the following matters:
  - (a) the impact of the development on projected changes to flood behaviour as a result of climate change,
  - (b) the intended design and scale of buildings resulting from the development,
  - (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
  - (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.
- (19) The FIA concludes that during events that are modelling in the assessment changes to the peak flood levels due to the proposed design are minor and not notable. Further, given the proposed site

levels flooding the FIA notes a reduction in flood hazard of the site where the manufactured home estate is proposed. Further, by their nature the future dwellings will be relocatable or modifiable if flood risk changes. The parties agree, and I accept that:

- (a) the proposed development is compatible with the flood function and behaviour.
  - (b) the development will not adversely affect flood behaviour or affectation of other development or properties.
  - (c) does not adversely affect safe occupation or evacuation and incorporates appropriate measures to manage risk in event of flood.
  - (d) as demonstrated in the stormwater plans will not adversely affect the environment, cause avoidable erosion or other listed impacts.
- (20) Pursuant to cl 7.1 'Acid Sulphate soils' the site is mapped as partly containing acid sulphate soils. The development application includes an Acid Sulphate Soils Assessment. That report recommends that an Acid Sulphate Soils Management Plan be implemented for all excavations into the natural ground profile (such as for the proposed stormwater basin). Such a requirement is included in the annexed conditions.
- (21) Clause 7.2 'Earthworks' applies as the development application proposes which proposes further earthworks to regrade the site. The development application includes a Geotechnical Investigation Report, Civil Engineering Plans, including a Bulk Earthwork Cut/Fill Plan, and an Erosion and Sediment Control Plan and Details. Further, appropriate conditions of consent have been included to address required earthworks and the potential impacts of same. In determining the development application, I have considered the matters listed at cl 7.2(3) and I am satisfied that none would warrant the refusal of the development application.
- (22) Clause 7.5 'Stormwater Management' applies to the development application. The details in the Stormwater Management Plans which are part of the development application allow me to be satisfied of the matters at cl 7.5(2), namely that the development:
- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and
  - (b) is designed to minimise the use of impervious surfaces on the land, directing run off to piped drainage systems and waterways, and
  - (c) is designed to integrate water sensitive design measures, including stormwater, groundwater and waste water management, to minimise environmental degradation and to improve the aesthetic and recreational appeal of the development, and
  - (d) incorporates an appropriately managed and maintained stormwater management system that will maintain or improve the quality of stormwater discharged from the land, and

(e) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

(f) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland, groundwater, wetlands and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

(23) Pursuant to cl 7.21 'Essential Services' of LEP 2014 the consent authority must not grant development consent to development on land to which LEP 2014 applies unless it is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required. Public utility infrastructure is defined to include infrastructure for the supply of water, supply of electricity, and the disposal and management of sewage. The parties agree, and I accept, that the site will have access to the essential services identified within this clause as demonstrated by the services concept plan in the development application and the requirements of the annexed conditions. I am satisfied the requirements of cl 7.21 'Essential Services' are met.

(24) The development application was notified by the Respondent between 1 April and 19 May 2022. 19 Submissions were received. The plans proposed for approval in this judgment have been amended and additional information provided, in part in response to the concerns raised by submissions and the residents who addressed the Court. I am satisfied that the submissions have been considered in the determination of the development application by either amendment to the application or in the imposition of conditions of consent: s 4.15(1)(d) of the EPA Act.

(25) Great Lakes Development Control Plan 2015 (DCP 2015) applies to the site. The statement of environmental impacts filed with the application details the compliance of the proposed development with DCP 2015. In determining the development application, I have considered the provisions of the development control plan s 4.15(1) of the EPA Act.

4 Having reached the state of satisfaction that the decision is one that the Court could make in the exercise of its functions, subs 34(3)(a) of the LEC Act requires me to “dispose of the proceedings in accordance with the decision”. The LEC Act also requires me to “set out in writing the terms of the decision” (subs 34(3)(b)).

5 In making the orders to give effect to the agreement between the parties, the parties have not raised, and I am not aware of any jurisdictional impediment to the making of these orders. Further, I was not required to make, and have not made, any assessment of the merits of the development application against the



discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.

6 The Court notes that:

- (1) The Midcoast Council as the relevant consent authority has agreed, under s 37 of the Environmental Planning and Assessment Regulation 2021 to the Applicant amending their development application DA2022/0214 the subject of these proceedings to include the following amended plans and reports:

Drawing Number	Name	Revision
001	Cover sheet	D
002	Overall Site Plan	D
101	Detail Plan - Sheet 1	D
102	Detail Plan - Sheet 2	D
201	Typical Road Cross Sections & Details	D
211	Road No 1 Long Section	D
212	Road No 2 Long Section – Sheet 1	D
213	Road No 2 Long Section – Sheet 2	D
214	Road No 3 Long Section	D
215	Chapmans Road Long Section	D
401	Stormwater Detail Plan	D
421	Eastern Basin Detail Plan	D
422	Western Basin detail Plan	D
423	Typical Basin Sections	D
501	Site Regrade Plan	D
511	Site Regrade Sections – Sheet1	D
512	Site Regrade Sections - Sheet 2	D
513	Site Regrade Sections – Sheet 3	D
601	Erosion & Sediment Control Plan	D
611	Erosion & Sediment Control Details & Notes	D
701	Traffic Management Plan	D
901	Concept Services Plan	D

(2)

- Community Building Site Plan 2870/0202/L Revision L by Webber Architects dated 21 June 2024.
- Community Building Floor Plan 2870/0301/J Revision J by Webber Architects dated 21 June 2024.
- Community Building Elevations 2870/0401/K Revision K by Webber Architects dated 21 June 2024.

- Flood Impact Assessment & Hydrological Investigation Report and Flood Evacuation Plan by Royal Haskoning dated 5 June 2024
- Groundwater Report R.006 Revision 0 by Douglas Partners dated 13 February 2024
- Landscape Plans L101-L104 Revision E by Myrtle Studio dated 21 June 2024.
- Owners Consent by Allam MHE No. 3 Pty Ltd dated 19 May 2023.
- Owners Consent by MidCoast Council dated 21 February 2022
- Application to Operate an MHE and s82 Objection dated June 2024 by David Pensini
- Addendum to Statement of Environmental Effects by ADW Johnson 24-6-2024
- Bushfire Assessment Report by Bushfire Planning Australia V6 June 2024
- Bushfire Evacuation Plan by Building and Environmental Services V4 June 2024
- Amended Great Lakes DCP 2014 - Part 16 Compliance 25-6-2024
- Amended MHE Regs Assessment by ADW Johnson June 2024
- Site Plans by ADW Johnson
- Masterplan Zoning Overlay Plan 190835-ESK-003 by ADW Johnson 21 June 2024
- Water Cycle Management Plan by ADW Johnson Rev F 21-6-2024
- Traffic Impact Assessment by Intersect Traffic Amended June 2024

7 The Court orders that:

- (1) The appeal is upheld.
- (2) Development Application DA2022/0214, as amended, for a manufactured home estate at 40-80 Chapmans Road, Tuncurry is approved subject to the conditions set out in Annexure A.

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**D Dickson**

**Commissioner of the Court**

Annexure A

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