



Land and Environment Court
New South Wales

Case Name: Universal Property Group Pty Ltd v Blacktown City Council

Medium Neutral Citation: [2024] NSWLEC 1728

Hearing Date(s): Conciliation conference on 1 November 2024

Date of Orders: 12 November 2024

Decision Date: 12 November 2024

Jurisdiction: Class 1

Before: Porter C

Decision: The Court orders:
(1) The appeal is upheld.
(2) Development consent is granted to Development Application No DA-23-00157, as amended, for four lot subdivision, staged construction of multi dwelling housing comprising 158 x 2 storey dwellings including 280 car parking spaces, construction and dedication of public roads, internal private roads, stormwater drainage works, tree removal and landscaping on land legally described as Lots 21, 22 and 23 in DP1224519 and Lot 1 in DP224731, known as 1578, 1580, 1584 and 1586 Windsor Road, Vineyard NSW 2765, and Part of Lots 18 and 19 in DP1224519, known as O'Connell Street, Vineyard NSW 2765, Lot 2 DP795119, known as 10 Bandon Road, Vineyard NSW 2765, and Lot 1 in DP547368, and known as 34 Bandon Road, Vineyard NSW 2765, subject to the conditions at Annexure A.

Catchwords: DEVELOPMENT APPEAL – multi-dwellings – conciliation conference – agreement between the parties – orders

Legislation Cited: Biodiversity Conservation Act 2016, Pts 7,8
Environmental Planning and Assessment Act 1979, ss

4.14, 4.16, 4.47, 8.7

Land and Environment Court Act 1979, s 34

Rural Fires Act 1997, s 100B

Biodiversity Conservation (Savings and Transitional)
Regulation 2017, cl 35

Environmental Planning and Assessment Regulation
2021, ss 37, 37, 38

State Environmental Planning Policy (Building
Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Precincts –
Central River Cities) 2021, Appendix 7, ss 2.6, 4.1AB,
4.3, 5.9, 6.1, 6.2, 6.5

State Environmental Planning Policy (Resilience and
Hazards) 2021, s 4.6

State Environmental Planning Policy (Sustainable
Buildings) 2022

State Environmental Planning Policy (Transport and
Infrastructure) 2021, ss 2.118, 2.119, 2.120, 2.122

Category: Principal judgment

Parties: Universal Property Group Pty Ltd (Applicant)
Blacktown City Council (Respondent)

Representation: Counsel:
M Staunton with J Reid (Applicant)
G Farland (Respondent)

Solicitors:
Macpherson Kelley (Applicant)
Bartier Perry Lawyers (Respondent)

File Number(s): 2023/173731

Publication Restriction: Nil

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 deemed refusal of development application No DA-23-00157 (DA) for a four lot subdivision, staged construction of a multi dwelling development comprising 158 x 2 storey dwellings including 280 car parking

spaces, construction and dedication of public roads, internal private roads, stormwater drainage works, tree removal and landscaping on land legally described as Lots 21, 22 and 23 in DP1224519 and Lot 1 in DP224731, known as 1578, 1580, 1584 and 1586 Windsor Road, Vineyard NSW 2765, and Part of Lots 18 and 19 in DP1224519, known as O'Connell Street, Vineyard NSW 2765, Lot 2 DP795119, known as 10 Bandon Road, Vineyard NSW 2765, and Lot 1 in DP547368, and known as 34 Bandon Road, Vineyard NSW 2765 (site).

- 2 The proceedings were set down for a hearing on 31 October 2024 and 1 November 2024. The parties agreed that following the previous amendments of the DA, joint conferencing of the experts, amended/further information, and the agreed conditions of consent, 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 Land and Environment Court Act 1979 (LEC Act).
- 3 The Court granted the request and arranged a conciliation conference between the parties, which was held on 1 November 2024. I have presided over the conciliation conference.
- 4 The Respondent, as the relevant consent authority, has approved under s 38 of the Environmental Planning and Assessment Regulation 2021 (EPA Reg) to the Applicant amending development application No. DA-23-00157 in accordance with the documents listed below (amended DA):
 - (1) Arboricultural Impact Assessment & Tree Protection Plan (Version 8) prepared by Tree Survey dated 23 October 2024.
- 5 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 DA and granting development consent, subject to conditions of consent.
- 6 I note that as part of the s 34 agreement, the parties have submitted a jurisdictional statement setting out how the proposal has satisfied the jurisdictional requirements and other matters. 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.

Jurisdictional Prerequisites

- 7 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 explained how the jurisdictional prerequisites have been satisfied. 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, as set out below.
- 8 I am satisfied that owners consent accompanied the amended DA, being 52 UPG Pty Ltd. Council granted owners consent for works located on SP2 zoned land for part lots 18 and 19 DP 1224519. The land is community land and the proposed development is consistent with the endorsed General Community Use 2010 Plan of Management (as amended 2019) for SP2 zones that are designated for drainage. Owners consent was issued by the Minister for Education on 5 August 2024 in relation to 10 Bandon Road, Vineyard.
- 9 The DA was lodged to the Respondent on 7 March 2023. The Respondent notified the development application between 21 June 2023 to 4 July 2023. One submission was received. The previous amendments to the DA were notified 3 June to 17 June 2024 and 26 September to 10 October 2024. No submissions were received.
- 10 As the parties have reached agreement, the concerns raised in the first notification have been considered by the parties.

Integrated Development

- 11 The original DA and amendments to the DA were referred to the NSW Rural Fire Services (RFS) as integrated development pursuant to s 4.47 of the EPA Act and s 100B of the *Rural Fires Act 1997*. The DA was also for advice pursuant to s 4.14 of the EPA Act.
- 12 The RFS provided General Terms of Approval on the earlier version of the Bushfire Protection Assessment report dated 22 December 2022 by Travers Bushfire & Ecology. During the proceedings, the RFS did not respond to the

integrated development referral for subsequent amendments to the DA. Pursuant to s 4.47(5) of the EPA Act, the consent authority can determine to issue a development consent where an approval body has not informed the consent authority whether or not it will grant an approval. I accept that the RFS has not informed Council whether it will grant approval or not to the amended DA as set out in the EPA Reg. I accept the parties' agreement that there is power to issue a consent absent a response and that s 4.47 of the EPA Act has been met on the basis of the revised bushfire assessments accompanying the DA.

- 13 Though not integrated development, the amended DA was referred to Transport for NSW (TfNSW) who did not oppose the DA and provided conditions of consent which have been included in Annexure A.

Biodiversity Conservation Act 2016

- 14 The parties agree and I accept that the site is biodiversity certified land under Pt 8 of the *Biodiversity Conservation Act 2016* (BC Act) and mapped on the North West Growth Centre – Biodiversity Certification Map. Part 7 of the BC Act therefore does not apply, in accordance with the Order by the Minister assisting the Minister for Climate Change, Environment and Water (gazetted 14 December 2007) and still in force pursuant to cl 35 of the Biodiversity Conservation (Savings and Transition) Regulation 2017.

State Environmental Planning Policy (Precincts—Central River City) 2021

- 15 The site is subject to State Environmental Planning Policy (Precincts – Central River City) 2021 (SEPP Central River City). Appendix 7 Alex Avenue and Riverstone Precinct Plan 2010 (Precinct Plan) applies to the site.
- 16 The site is predominately zoned R2 Low Density Residential as well as part SP2 Infrastructure – Classified Road and part SP2 Infrastructure - Drainage under the Precinct Plan. The proposed development for multi-dwellings is permissible with consent pursuant to s 6.2(2A). The proposed road works on SP2 Infrastructure - Classified Road, are permissible in the zone, as are the drainage works in SP2 Infrastructure – Drainage. Subdivision is permitted under s 2.6 of the Precinct Plan. I have had regard to the objectives of the zones.

- 17 Section 4.1AB(7)(a) requires a minimum lot size of 1,500m². I accept the parties' agreement on the basis of the architectural plans that s 4.1AB(7)(a) is met.
- 18 Section 4.3 height of buildings applies a maximum height of 9m. On the basis of the architectural plans, I accept that the development is less than 9m.
- 19 Section 5.9 preservation of trees or vegetation applies. For the detailed reasons agreed by the parties from par 53 to 57 of the jurisdictional statement and the Arboricultural Impact Assessment & Tree Protection Plan report dated 23 October 2024 by Tree Survey, I accept that the proposed tree removal has been adequately considered.
- 20 Section 6.1 Public Utility Infrastructure of the Precinct Plan applies to the proposed development. The parties agree that water, electricity and sewer is either currently available or able to be available when required (set out in correspondence issued by Sydney Water and Enlight Engineering in Exhibit C) and I accept that the requirements of s 6.1 have been satisfied.
- 21 Section 6.2(3) requires that a Council must be satisfied that the proposed multi dwelling development will not impact on the amenity of adjoining properties, provide active frontages and surveillance to public recreation and drainage land and not adversely impact on solar access to adjoining residential and public open space areas. I accept the parties' agreement that the section has been adequately addressed as set out in the joint expert reports and shown on the architectural plans.
- 22 In relation to s 6.5 which applies to the SP2 zoned land, the parties agree that no native tree clearing is proposed on any land shown on the North West Growth Centre Native Vegetation Protection Map – Sheet NVP_004.

State Environmental Planning Policy (Resilience and Hazards) 2021

- 23 The provisions of s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards) apply to the site. The amended DA is supported by a Remedial Action Plan and Asbestos Characterisation Assessment Report both prepared by Sydney Environmental Group dated 5 June 2024 and 31 May 2024 respectively which sets out the required

remediation for the site. Appropriate conditions of consent have been included at Annexure A. On this basis, the parties agree, and I accept that s 4.6 has been met.

State Environmental Planning Policy (Transport and Infrastructure) 2021

- 24 Section 2.118 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP TI) applies to the land reserved for classified road at the northeastern frontage of Windsor Road. The architectural plans show that the proposed development does not encroach on the land reservation and no issues have been raised by TfNSW.
- 25 Sections 2.119, 2.120 and 2.122 apply as the site has a frontage to Windsor Road, a classified road and is traffic generating development that proposes 75 or more dwellings. I accept the agreement of the parties on the basis of the joint expert reports, lack of issues raised by TfNSW, various traffic reports and civil engineering plans accompanying the amended DA, DA Acoustic Assessment Report prepared by Acoustic Logic and architectural plans that the relevant sections have been satisfied. The deferred commencement condition is not in relation to one of the matters to be satisfied and relates to merit assessment ventilation matters.

Environmental Planning and Assessment Regulation 2021 and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

- 26 The amended DA is saved from the application of State Environmental Planning Policy (Sustainable Buildings) 2022 pursuant to s 4.2(1)(a). The parties agree and I accept that the DA is accompanied by a BASIX Certificate that meets the provisions of s 27 of the Environmental Planning and Assessment Regulation 2021 and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- 27 Pursuant to s 37(5) of the EPA Regulation, the amendments are not materially different, and a condition of consent has been included to amend the previous version of the BASIX Certificate.

Conclusion

- 28 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.
- 29 I have considered the jurisdictional prerequisites and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.
- 30 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.

Orders:

- 31 The Court orders:
- (1) The appeal is upheld.
 - (2) Development consent is granted to Development Application No. DA-23-00157, as amended, for four lot subdivision, staged construction of multi dwelling housing comprising 158 x 2 storey dwellings including 280 car parking spaces, construction and dedication of public roads, internal private roads, stormwater drainage works, tree removal and landscaping on land legally described as Lots 21, 22 and 23 in DP1224519 and Lot 1 in DP224731, known as 1578, 1580, 1584 and 1586 Windsor Road, Vineyard NSW 2765, and Part of Lots 18 and 19 in DP1224519, known as O'Connell Street, Vineyard NSW 2765, Lot 2 DP795119, known as 10 Bandon Road, Vineyard NSW 2765, and Lot 1 in DP547368, and known as 34 Bandon Road, Vineyard NSW 2765, subject to the conditions at Annexure A.

S Porter

Commissioner of the Court

Annexure A

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that 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.