



Land and Environment Court
New South Wales

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

Medium Neutral Citation: [2025] NSWLEC 1133

Hearing Date(s): Conciliation conference on 18 February 2025

Date of Orders: 11 March 2025

Decision Date: 11 March 2025

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:
(1) The appeal is upheld.
(2) Development Application No. DA-23-00337, as amended, for a 20 storey commercial tower over 7 levels of basement including 177 car parking spaces, ground floor retail, function centre, recreational facilities and office space, signage, stormwater drainage, landscaping, tree removal and associated site works, at 30 First Avenue, Blacktown (Lot 2 in DP 550677), is determine by the grant of consent, subject to the conditions at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – commercial tower – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.16, 8.7, 8.15
Land and Environment Court Act 1979, s 34
Water Management Act 2000, s 90

Blacktown Local Environmental Plan 2015, cll 4.3, 7.5, 7.7, 7.12, 7.14
Environmental Planning and Assessment Regulation

2021, s 38

State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6, ss 6.1, 6.7

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

State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.48, 2.98, 2.99, 2.122, Sch 3

Texts Cited: Blacktown Development Control Plan 2015

Category: Principal judgment

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

Representation: Counsel:
M Staunton (Applicant)
N Hammond (Respondent)

Solicitors:
Macpherson Kelley (Applicant)
Clayton Utz (Respondent)

File Number(s): 2023/205639

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the deemed refusal of Development Application No. DA-23-00337 for a 20 storey commercial tower over 7 levels of basement (the proposal), at Lot 2 DP 550677, and is otherwise known as 30 First Avenue, Blacktown (the site), by Blacktown City Council (the Council).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 18 February 2025. I presided over the 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.
- 3 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.

- 4 There are preconditions to the exercise of power to grant development consent for the proposal.

The application is amended

- 5 The application was previously amended by leave of the Court on 14 March 2024 and on 11 December 2024 and the applicant was ordered to pay the respondent's costs thrown away as a result of the amendment in each case, in accordance with s 8.15(3) of the EPA Act.
- 6 The Council, as the consent authority, consented to the amendment of the application pursuant to s 38(1) of the Environmental Planning and Assessment Regulation 2021. The plans and documents comprising the amended application are listed below:

Drawing No. and Revision	Title	Prepared by	Date
Demlakian Engineering (Propped Concept) Drawings 224083, SK200-SK212 rev P1 dated 31 January 2025			
224083 SK200, Rev P1	Shoring Notes - Prop Scheme	Demlakian Consulting Engineers	31 January 2025
224083 SK201, Rev P1	Shoring Plan - Basement 7 Prop Scheme		31 January 2025
224083 SK202, Rev P1	Shoring Plan - Basement 5&6 Prop Scheme		31 January 2025
224083	Shoring Plan -		31

SK203, Rev P1	Basement 2-4 Prop Scheme	January 2025
224083 SK204, Rev P1	Shoring Plan - Basement 1 Prop Scheme	31 January 2025
224083 SK205, Rev P1	Shoring Plan - Ground Floor Prop Scheme	31 January 2025
224083 SK206, Rev P1	Shoring Elevation 1 Prop Scheme	31 January 2025
224083 SK207, Rev P1	Shoring Elevation 2 & 4 Prop Scheme	31 January 2025
224083 SK208, Rev P1	Shoring Elevation 3 Prop Scheme	31 January 2025
224083 SK209, Rev P1	Shoring Elevation 5 Prop Scheme	31 January 2025
224083 SK210, Rev P1	Shoring Typical Sections - Sheet 1 Prop Scheme	31 January 2025
224083 SK211, Rev P1	Shoring Typical Sections - Sheet 2 Prop Scheme	31 January 2025

224083 SK212, Rev P1	Shoring Typical Details - Sheet 1 Prop Scheme	31 January 2025
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Expert evidence

- 7 The applicant relied on the geotechnical engineering expert evidence of Ken Demlakian and Linton Speechley and the Council relied on the geotechnical engineering expert evidence of Patrick Wong. The experts conferred on the geotechnical and structural engineering implications of the 7 storey basement construction and the associated excavation and earthworks at the site on the adjoining properties and the public infrastructure as contended by the Council in the amended Statement of Facts and Contentions filed 12 April 2024 and raised in objectors' submissions. The experts confirmed their agreement that the basement design is feasible and suitable for the location from a geotechnical and structural perspective and can be successfully implemented subject to the required future documentation (conditions 6.11.2 and 6.11.3 of the conditions of consent at Annexure A).

Planning framework

- 8 The original DA was referred to Endeavour Energy pursuant to s 2.48(2) of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Transport) as the proposal may involve the penetration of ground within 2m of an Endeavour Energy underground electricity power line or an electricity distribution pole; and may be carried out immediately adjacent to an electricity substation or within 5m of an exposed overhead electricity power line. Endeavour Energy provided its responses on 30 May 2023 and did not object to the proposal. The respondent re-referred the amended application on 14 March 2024 to Endeavour Energy, who confirmed on 21 March 2024 that the previous responses remained valid and it had no objection to the amended proposal.
- 9 The original application was referred to Sydney Trains pursuant to ss 2.98(2) and 2.99(2) of SEPP Transport. Sydney Trains provided its concurrence with recommended conditions on 19 December 2023. The respondent re-referred

the amended application on 14 March 2024 to Sydney Trains, who did not provide a further response.

- 10 The original application was referred to Transport for NSW (TfNSW) pursuant to s 2.122(4) of SEPP Transport as the proposal is considered a traffic-generating development being new commercial premises and having a gross floor of 10,000m² or more with access to a road (Sch 3 of SEPP Transport). TfNSW provided its comments on the original application on 13 June 2023. The respondent re-referred the amended application on 14 March 2024 to TfNSW, who provided its further comments on 5 April 2024.
- 11 The proposed development will require a Water Supply Work approval under s 90 of the *Water Management Act 2000* for the dewatering activities as part of the proposed basement construction for the Development. The conditions acknowledge that the Applicant will separately need to obtain a Water Supply Work approval from WaterNSW.
- 12 I accept the Council's submission that the amended proposal is suitable for the site, pursuant to s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021.
- 13 Chapter 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP Biodiversity) applies to the proposal as the site is located within the Hawkesbury-Nepean Catchment (s.6.1(d)), being a regulated catchment under SEPP Biodiversity. I accept the Council's submission that the amended proposal ensures that the effect on the quality of water entering the natural waterbody of the nearby Blacktown Creek within the Hawkesbury-Nepean Catchment will be as close as possible to neutral or beneficial and the impact on water flow in that natural waterbody will be minimised, by incorporating:
 - stormwater controls including a 22KL rainwater reuse tank to achieve 80% reuse for rainwater, with all roof runoff be directed through the rainwater tank before discharging into onsite detention tank, to provide a beneficial effect on the quality of water entering the waterway and have no adverse impact on water flow in the waterway. The rainwater reuse tank will reduce the total volume of water discharging from the Site with the stored rainwater being reused for toilet flushing of 7 toilets per one level of the proposed building (see

Drawings No. C-0301, Issue F, dated 1 March 2024, C-0310, Issue E, dated 2 February 2024);

- the Letter in response to WaterNSW Request for Further Information confirmed that a tanked basement would be adopted for the proposal to avoid the need for dewatering after construction is completed, and the Hydrogeological Assessment Report relevantly provides that engineered drainage around and beneath the proposed tanked basement is to be installed in consultation with a suitably qualified hydraulic engineer to restore natural groundwater flow conditions following completion, in accordance with the "Minimum Requirements for Building Site Groundwater Investigations and Reporting" by the Department of Planning and Environment (2022).
- 14 I accept the Council's submission that the stormwater drainage design including the sediment control plans and details have been assessed and any potential erosion impact from the proposal will be minimised if not avoided, pursuant to the required considerations under s 6.7 of SEPP Biodiversity.
- 15 The site is zoned MU1 Mixed Use under the Blacktown Local Environmental Plan 2015 (LEP 2015) and commercial premises and retail premises are nominate permissible uses with consent. The objectives of the MU1 zone, to which regard must be had, are:
- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
 - To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
 - To minimise conflict between land uses within this zone and land uses within adjoining zones.
 - To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- 16 The proposal complies with the height of building development standard for the site of 80m, pursuant to cl 4.3 of LEP 2015. There is no floor space ratio development standard for the site.
- 17 I accept the Council's submission that the essential services are available to the proposal or that adequate arrangements have been made to the made them available when required, pursuant to cl 7.5 of LEP 2015.
- 18 Design excellence, cl 7.7 of LEP 2015 is in the following terms:
- (4) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
- (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,
- (c) whether the development detrimentally impacts on view corridors,
- (d) whether the development detrimentally impacts on any land protected by solar access controls established in the Blacktown Development Control Plan,
- (e) the requirements of the Blacktown Development Control Plan,
- (f) how the development addresses the following matters—
 - (i) the suitability of the land for development,
 - (ii) existing and proposed uses and use mix,
 - (iii) heritage issues and streetscape constraints,
 - (iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
 - (v) bulk, massing and modulation of buildings,
 - (vi) street frontage heights,
 - (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
 - (viii) the achievement of the principles of ecologically sustainable development,
 - (ix) pedestrian, cycle, vehicular and service access and circulation requirements,
 - (x) the impact on, and any proposed improvements to, the public domain.

19 I accept and agree with the Council's submission that the amended proposal achieves a high standard of architectural design, materials and detailing appropriate to a commercial tower in the Blacktown CBD and exhibits the form and external appearance that will improve the quality and amenity of the public domain, as follows:

- the amended proposal achieves a high standard of architectural design, materials and detailing appropriate to a commercial tower in the Blacktown CBD (pursuant to cl 7.7(4)(a)), and exhibits the form and external appearance that will improve the quality and amenity of the public domain (pursuant to cl 7.7(4)(b)), with particular consideration of the design details shown on:
 - (a) Extent of Proposed Awning (Drawing No. DA006, Rev 4, dated 13 February 2024);
 - (b) Building Frontage (Drawing No. DA007, Rev 3, dated 21 January 2024);

- (c) Sections and Detailed Sections (Drawings No. DA301 to DA302, Rev 4, 13 February 2024, DA303, Rev 3, dated 21 January 2024);
 - (d) Material and Finishes (Drawings No. DA407, Rev 4, dated 13 February 2024, DA407A and DA407B, Rev 2, dated 21 January 2024);
 - (e) Logo Detail (Drawing No. DA600, Rev 3, dated 13 February 2024); and
- the amended proposal will not detrimentally impact on view corridors (pursuant to cl 7.7(4)(c)), or on any land protected by solar access controls established in (pursuant to cl 7.7(d)), and the requirements of (pursuant to cl 7.7(e)), the Blacktown Development Control Plan 2006 (DCP 2006) (pursuant to cl 7.7(5)), based on assessment of:
 - (f) Setback (Drawing No. DA008, Rev 2, dated 21 January 2024), which demonstrates zero setbacks to the site's southern (rear) and eastern (side) boundaries, and 1m setbacks to the Site's northern (front) and western (side) boundaries, at the podium levels (ground floor and levels 1 and 2), with the levels above the podium having appropriate setbacks to create a comfortable street scale, reduce building bulk and provide greater solar access and privacy for future residents, in accordance with Section 5.3.1 in Part D of DCP 2006;
 - (g) Elevations (Drawings No. DA200 to DA202, Rev 5, DA203, Rev 6, dated 13 February 2024);
 - (h) Shadow Diagram, Sun Study and Shadow Analysis (Drawings No. DA404 and DA405, Rev 3, dated 18 January 2024, DA406, Rev 4, dated 21 January 2024);
 - (i) Shadow Study on 21 First Ave (Drawing No. DA408, Rev 3, dated 21 January 2024), which demonstrates the reshaping of the proposed building at the northern corner to allow additional solar access to the adjoining apartment building; and
- the amended proposal has appropriately addressed the suitability of the land for the development (pursuant to cl 7.7(4)(f)(i)).
- the amended proposal has appropriately addressed the existing and proposed uses and use mix (pursuant to cl 7.7(4)(f)(ii)), heritage issues and streetscape constraints (pursuant to cl 7.7(4)(f)(iii)), the relationship of the proposal with other development on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form, (pursuant to cl 7.7(4)(f)(iv)), bulk, massing and modulation of buildings (pursuant to cl 7.7(4)(f)(v)), street frontage heights (pursuant to cl 7.7(4)(f)(vi)), and the impact on, and the proposed improvements to, the public domain (pursuant to cl 7.7(4)(f)(x)).
- the amended proposal has appropriately addressed environmental impacts such as sustainable design, overshadowing, wind and reflectivity (pursuant to

cl 7.7(4)(f)(vii)), and the achievement of the principles of ecologically sustainable development (pursuant to cl 7.7(4)(f)(viii)).

- the amended proposal appropriately addressed pedestrian, cycle, vehicular and service access and circulation requirements (pursuant to cl 7.7(4)(f)(ix)).

20 The ground floor and first floor are to be used for a purpose other than residential accommodation, pursuant to cl 7.12 of LEP 2015.

21 I accept the Council's submission that the relevant Shadow Diagram (Drawing No. DA404, Rev 3, dated 18 January 2024) demonstrates that the amended proposal will not result in the solar impacts described under cl 7.14(3)(a) and (b) of LEP 2015.

Conclusion

22 I have considered the submissions made by the Council in the Jurisdictional Statement filed with the Court on 18 February 2025 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.

Orders

23 The orders of the Court are:

- (1) The appeal is upheld.
- (2) Development Application No. DA-23-00337, as amended, for a 20 storey commercial tower over 7 levels of basement including 177 car parking spaces, ground floor retail, function centre, recreational facilities and office space, signage, stormwater drainage, landscaping, tree removal and associated site works, at 30 First Avenue, Blacktown (Lot 2 in DP 550677), is determine by the grant of consent, subject to the conditions at Annexure A.

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Susan O'Neill

Commissioner of the Court

Annexure A

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.