



Land and Environment Court
New South Wales

Case Name: HPG General Pty Ltd v Lane Cove Municipal Council

Medium Neutral Citation: [2024] NSWLEC 1273

Hearing Date(s): Conciliation conference on 9 May 2024

Date of Orders: 28 May 2024

Decision Date: 28 May 2024

Jurisdiction: Class 1

Before: Porter C

Decision: The Court orders:
(1) The appeal is upheld.
(2) Development Consent No. 162/2021 is modified in the terms in Annexure “A”.
(3) Development Consent No. 162/2021 as modified by the Court is Annexure “B”.

Catchwords: MODIFICATION APPLICATION – mixed use -
conciliation conference – agreement between the
parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss
4.15, 4.55, 8.9
Land and Environment Court Act 1979, s 34

Lane Cove Local Environmental Plan 2009
Environmental Planning and Assessment Regulation
2021, ss 100, 102

Category: Principal judgment

Parties: HPG General Pty Ltd (Applicant)
Lane Cove Municipal Council (Respondent)

Representation: Counsel:
A Pickles SC (Applicant)

A Seton (Solicitor) (Respondent)

Solicitors:

Mills Oakley (Applicant)

Marsdens Law Group (Respondent)

File Number(s): 2023/217429

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This is a Class 1 development appeal pursuant to s 8.9 of the *Environmental Planning and Assessment Act 1979* (EPA Act). The appeal is against the refusal of a modification application of DA-162/2021 at 13-19 Canberra Avenue, St Leonards legally known as Lots 11-14, Section 3, DP 7259. The modification application, as amended, primarily seeks alterations and additions for an additional storey of two storey apartments, alterations to Level 12 and associated works in the basement.
- 2 The matter was set down for hearing on 9 and 10 May 2024. At the commencement of the hearing, the parties requested a s 34 conciliation conference as the issues in dispute had been resolved. The Court granted the request and arranged a conciliation conference under s 34 of the Land and Environment Court Act 1979 (LEC Act) on 9 May 2024. I presided over the conciliation conference.
- 3 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 modification application and modifying the development consent.
- 4 Accompanying the submitted s 34 agreement, the parties have provided a jurisdictional statement setting out how the proposal has satisfied the jurisdictional requirements.
- 5 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.

- 6 The parties' decision involves the Court exercising the function under s 4.55(2) of the EPA Act to modify the development consent.

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. With consideration of the agreed jurisdictional note and documentation within the Class 1 Application, 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. This is set out below.
- 8 I am satisfied that owners consent accompanied the modification application.
- 9 I have considered the documentation within the amended application, including the Statement of Environmental Effects prepared by Planning Ingenuity dated 9 March 2023 (SEE), the town planning and urban design joint expert report (JER), the supplementary town planning and urban design joint expert report (Supplementary JER) and the parties' jurisdictional statement. I accept the parties' agreement that the proposed modifications to the approved mixed use development for an additional storey with associated works, will be substantially the same as the original development (s 4.55(2)(a) of the EPA Act).
- 10 With respect to s 4.55(2)(b), (c) and (d) of the EPA Act, the modification application was notified between 14 March 2023 to 11 April 2023. 16 objections were received. I accept the parties' agreement that these provisions have been met and note that the submissions were considered in the JER. Section 4.55(3) in relation to the reasons for the grant of consent has been considered in the JER.
- 11 With respect to ss 4.55(3) and 4.15 of the EPA Act, the modification application is accompanied by a Design Statement dated January 2023 by a qualified registered architect (Mr Haddow, registration number 7188) as required by s 102 of the Environmental Planning and Assessment Regulation 2021 (the EPA Reg).

- 12 With respect to the Lane Cove Local Environmental Plan 2009, I note that the development continues to meet the provisions as previously considered in the original application, with the exception of building height and floor space ratio which have increased as set out in the JER and Supplementary JER.
- 13 In accordance with ss 100 and 102 of the EPA Reg, an amended BASIX Certificate (number 1246915M_12) accompanied the amended application.
- 14 The parties agree and I accept that the provisions required to be addressed by s 4.55(2) of the EPA Act have been met as evidenced in the documentation accompanying the Class 1 appeal, amended application, JER's and supported by the jurisdictional statement.

Conclusion

- 15 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.
- 16 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.
- 17 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:

- 18 The Court orders:
- (1) The appeal is upheld.
 - (2) Development Consent No. 162/2021 is modified in the terms in Annexure "A".
 - (3) Development Consent No. 162/2021 as modified by the Court is Annexure "B".

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S Porter

Commissioner of the Court

Annexure A

Annexure B

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