



Land and Environment Court
New South Wales

Case Name:	Zhinar Architects v Camden Council
Medium Neutral Citation:	[2025] NSWLEC 1300
Hearing Date(s):	Conciliation conference on 28 February 2025
Date of Orders:	06 May 2025
Decision Date:	6 May 2025
Jurisdiction:	Class 1
Before:	O'Neill C
Decision:	<p>The orders of the Court are:</p> <p>(1) Pursuant to section 8.15(3) of the Environmental Planning and Assessment Act 1979, the Applicant is to pay those costs of the Respondent thrown away as a result of the amendment of the application, in the amount of \$1,500.00, payable within 28 days of the date of these Orders.</p> <p>(2) The appeal is upheld.</p> <p>(3) Development Application No. 2024/334/1, as amended, for the construction of a residential flat building of 8 storeys comprising 122 apartments, including 20 affordable housing apartments to be used for affordable housing for 15 years, basement parking for 178 vehicles and ancillary works, at 28A Ingleburn Road, Leppington NSW 2179 known as Lot 1 in Deposited Plan 1261472, subject to the conditions of consent at Annexure A.</p>
Catchwords:	DEVELOPMENT APPLICATION – residential flat building – conciliation conference – agreement between the parties – orders
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979 ss 4.16, 8.7, 8.15</p> <p>Land and Environment Court Act 1979 s 34</p>

Camden Local Environmental Plan 2010 cl 4.6
Environmental Planning and Assessment Regulation
2021 s 38
State Environmental Planning Policy (Housing) 2021 ss
15C, 16, 43C
State Environmental Planning Policy (Precincts -
Western Parkland City) 2021 App 5, ss 4.1AB, 4.1B
State Environmental Planning Policy (Resilience and
Hazards) 2021 s 4.6
State Environmental Planning Policy (Transport and
Infrastructure) 2021 ss 2.120, 2.122

Cases Cited: Cumming v Cumberland Council (No 2) [2021]
NSWLEC 117
Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC
90
Initial Action Pty Ltd v Woollahra Municipal Council
(2018) 236 LGERA 256; [2018] NSWLEC 118
Wehbe v Pittwater Council (2007) 156 LGERA 446;
[2007] NSWLEC 827

Texts Cited: NSW Department of Planning and Environment,
Apartment Design Guide (July 2015)

Category: Principal judgment

Parties: Zhinar Architects (Applicant)
Camden Council (Respondent)

Representation: Counsel:
M Parrino (Solicitor) (Applicant)
L Raffaele (Solicitor) (Respondent)

Solicitors:
Project Lawyers (Applicant)
Bartier Perry (Respondent)

File Number(s): 2024/343688

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. 2024/334/1, as amended, for alterations and additions to an existing development consent, DA/2019/598/1, by way of a new development application for the construction of a residential flat building of 8 storeys comprising 122 apartments, including 20 affordable housing apartments to be used for affordable housing for 15 years, basement parking for 178 vehicles and ancillary works, (the proposal), at 28A Ingleburn Road, Leppington (the site), by Camden 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 28 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. 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.
- 3 The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application. There are preconditions to the exercise of power to grant development consent for the proposal.

Amended application

- 4 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:

1	Architectural Plans (NATHERS stamp) prepared by Zhinar Architects comprising of:		
	i. Lot 1 – Development Summary, dwg no. DA-001	C	14 March 2025
	ii. Site Analysis, dwg no. DA-002	C	14 March 2025
	iii. Site Plan, dwg no. DA-003	C	14 March 2025

iv. Lot 1 – Basement 2, dwg no. DA-100	C	14 March 2025
v. Lot 1 – Basement 1, dwg no. DA-101	C	14 March 2025
vi. Lot 1 – Ground Floor, dwg no. DA-102	C	14 March 2025
vii. Lot 1 – Level 1, dwg no. DA-103	C	14 March 2025
viii. Lot 1 – Level 2, dwg no. DA-104	C	14 March 2025
ix. Lot 1 – Level 3, dwg no. DA-105	C	14 March 2025
x. Lot 1 – Typical Level 4-7, dwg no. DA-106	C	14 March 2025
xi. Lot 1 – Roof Plan, dwg no. DA-107	C	14 March 2025
xii. North & South Elevation, dwg no. DA-200	C	14 March 2025
xiii. East & West Elevation, dwg no. DA-201	C	14 March 2025
xiv. Internal Elevation 1, dwg no. DA-202	C	14 March 2025
xv. Internal Elevation 2, dwg no. DA-203	C	14 March 2025
xvi. Section A, dwg no. DA-204	C	14 March 2025
xvii. Section B & Driveway Section, dwg no. DA- 205	C	14 March 2025
xviii. Shadow Diagram 1, dwg no. DA-300	C	14 March 2025
xix. Shadow Diagram 2, dwg no. DA-301	C	14 March 2025
xx. 3D View 1, dwg no. DA-400	C	14 March 2025

xxi. 3D View 2, dwg no. DA-401	C	14 March 2025
xxii. 3D View 3, dwg no. DA-402	C	14 March 2025
xxiii. 3D View 4, dwg no. DA-403	C	14 March 2025
xxiv. Material Schedule, dwg no. DA-500	C	14 March 2025
xxv. Area Calculation, dwg no. SP-100	C	14 March 2025
xxvi. COS – Solar Access, dwg no. SP-101	C	14 March 2025
xxvii. FSR Calculation, dwg no. SP-102	C	14 March 2025
xxviii. Affordable Housing Calculation, dwg no. SP-103	C	14 March 2025
xxix. ADG Table, dwg no. SP-200	C	14 March 2025
xxx. Cross Ventilation Diagram, dwg no. SP-202	C	14 March 2025
xxxi. Adaptable Units, dwg no. SP-203	C	14 March 2025
xxxii. Height Limit, dwg no. SP-300	C	14 March 2025
xxxiii. Sun View, dwg no. SP-400	C	14 March 2025
xxxiv. Overall Shadow Diagram 1, dwg no. SP- 600	C	14 March 2025
xxxv. Overall Shadow Diagram 2, dwg no. SP- 601	C	14 March 2025
xxxvi. Shadow Perspective – Lot 1, dwg no. SP- 602	C	14 March 2025
xxvii. Shadow Perspective – Lot 1 (2), dwg no. SP- 603	C	14 March 2025

	xxviii. Shadow Perspective – Lot 2, dwg no. SP - 604			C	14 March 2025
	xxxix. Shadow Perspective – Lot 2 (20m dwg no. SP-605			C	14 March 2025
2.	Stormwater	B	17		

	Plans prepared by SCG Consulting comprising of:		March 2025
	i. Cover sheet & Drawing Index, dwg no. S01-SW100	B	17 March 2025
	ii. Erosion & Sediment Control Plan, dwg no. S01-SW201	B	17 March 2025
	iii. Erosion & Sediment Control Details, dwg no. S01-SW202	B	17 March 2025
	iv. Stormwater Concept Design Basement 2 Plan, dwg no. S01-SW301	B	17 March 2025
	v. Stormwater Concept Design Basement 1 Plan, dwg no. S01-SW302	B	17 March 2025

	vi. Stormwater Concept Design Ground Floor Plan, dwg no. S01-SW303	B	17 March 2025
	vii. Stormwater Concept Design Roof Plan, dwg no. S01-SW304	B	17 March 2025
	viii. Stormwater Concept Design Details Sheet, dwg no. S01-SW401	B	17 March 2025
	ix. Music Catchment Plan & Details OSD Catchment & Drains Result, dwg no. S01-SW501	B	17 March 2025
3.	Landscape Plans prepared by Conzept Landscape Architects comprising of:	C	19 March 2025
	i. Public Domain Plan, dwg no.	C	19 March

LPS34 24- 223		2025
ii. Hardscape Plan, dwg no. LPS34 24- 223	C	19 March 2025
iii. Deep Soil Calculation & Soil Depth, dwg no. LPS34 24- 223	C	19 March 2025
iv. Landscape Plan 1, dwg no. LPS34 24- 223	C	19 March 2025
v. Landscape Plan 2, dwg no. LPS34 24- 223	C	19 March 2025
vi. Landscape Plan 3, dwg no. LPS34 24- 223	C	19 March 2025
vii. Landscape Plan 4, dwg no. LPS34 24- 223	C	19 March 2025
viii. Detail + Specification, dwg no. LPS34 24- 223	C	19 March 2025
ix. Details 2, dwg no. LPS34	C	19 March

	24- 223		2025
	xi. Details 3, dwg no. LPS34 24- 223	C	19 March 2025
	xii. Details 4, dwg no. LPS34 24- 223	C	19 March 2025
4.	Clause 4.6 Variation (Building Height) prepared by Think Planners	-	13 March 2025
5.	Road Traffic Noise Impact Assessment prepared by Rodney Stevens Acoustics	9	17 March 2025
6.	BCA & Access Report prepared by Building Innovations Australia	V1.0	18 March 2025
7.	Thermal Assessor Certificate, cert no. 0006587985	-	19 March 2025

8.	BASIX Certificate, no. 1788338M	-	21 March 2025
9.	Statement of Environmental Effects prepared by Think Planners	B	13 February 2025
10.	QS letter prepared by Construction Consultants	-	14 February 2025
11.	Surveyor letter to PJM Group	-	15 April 2024
12.	Proposal to Manage Affordable Apartments at Lot 28A Ingleburn Road, Leppington, NSW	-	17 January 2025
13.	Car Park Compliance Review – Lot 1 prepared by Stanbury Traffic Planning	-	30 January 2025

14.	Updated Parking and Traffic Assessment – Lot 1 prepared by Stanbury Traffic Planning	-	5 February 2025
15.	Operational Waste Management Plan prepared by Elephants Foot Consulting	F	12 February 2025
16.	Stage 2 Contamination and Salinity Assessment at 28 Ingleburn Road Leppington, Report No. GTE1013 prepared by Ground Technologies	-	5 June 2019
17.	Bushfire Hazard Assessment 28 Ingleburn Road Leppington 2179 (Lot 84/-	-	30 July 2019

	/DP8979) Report No. BR-166919-B prepared by Bushfire Planning & Design		
18.	Aboriginal Heritage Due Diligence Assessment Revision 6 prepared by Artefact Heritage	6	14 June 2019
19.	Geotechnical Report – GTE1013 prepared by Ground Technologies	-	5 June 2019
20.	Advice re Contention 1 (i) a and c prepared by Project Lawyers		14 February 2024
21.	Proposal to Manage Affordable Apartments		17 January 2025

	prepared by Providential Homes		
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Pre-conditions to the grant of consent

Resilience and Hazards SEPP

- 5 I accept the Council's assessment that the site is suitable for the development, having been historically used for a residential purpose, and that the matters under s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 have been addressed (Statement of Environmental Effects prepared by Think Planners dated 13 February 2025 (SEE) Tab 9, pages 26-27, Tab 16 and Tab 19).

State Environmental Planning Policy (Housing) 2021

- 6 State Environmental Planning Policy (Housing) 2021 (SEPP Housing) applies to the proposal at s 15C. The proposal exceeds the minimum affordable housing component of 15% of gross floor area (GFA).
- 7 I accept the Council's submission that the relevant sections in the Housing SEPP have been addressed in the SEE (Tab 9, pages 31-40), Clause 4.6 (Tab 4), Advice re Contention 1 (i) a and c prepared by Project Lawyers (Tab 20) and Design Verification Statement (Class 1 Application, Tab 13).
- 8 Under s 43C of SEPP Housing, the relevant authority must consider the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9 and the Apartment Design Guide (ADG). I accept the Council's submission that Part 3 (Siting the development) and Part 4 (Designing the Building) of the ADG have been addressed in the SEE (Tab 9, Pages 41-48), the Design Verification Statement (Class 1 Application, Tab 13), the Architectural Plans prepared by Zhinar Architects dated 14 March 2025 (Tab 1), the Stormwater Plans prepared by SCG Consulting dated 17 March 2025 (Tab 2), and the Landscape Plans prepared by Conzept Landscape Architects dated 19 March 2025 (Tab 3).

State Environmental Planning Policy (Transport and Infrastructure) 2021

- 9 On 19 August 2024, the Council referred the Application to Endeavour Energy (Endeavour Energy), Sydney Water (Sydney Water), and Transport for NSW (TfNSW) as required under the State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Transport and Infrastructure). I accept the Council's submission that written notice was given to Sydney Water on 6 September 2024 (Reference: 217993, 183386) and Endeavour Energy on 19 August 2024 (Reference: CNR-72334 and Conditions of Consent 1.1 (2) at Annexure A).
- 10 Sections 2.120(2) and (3) and 2.122(1) of SEPP Transport and Infrastructure apply to the proposal. I accept the Council's submission that the relevant sections of SEPP Transport and Infrastructure have been addressed in the SEE (Tab 9, pages 27-29) and Road Traffic Noise Impact Assessment prepared by Rodney Stevens Acoustics dated 17 March 2025 (Tab 5).

State Environmental Planning Policy (Precincts - Western Parkland City) 2021

- 11 The site is zoned R3 Medium Density Residential pursuant to State Environmental Planning Policy (Precincts - Western Parkland City) 2021 (WPC SEPP) and the proposal is permissible with consent. The objectives of the R3 zone, to which regard must be had, are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment.

- 12 I am satisfied that the proposal is consistent with the minimum lot size and density requirements for residential flat buildings under ss 4.1AB(9) and 4.1B(2) of Appendix 5 of the WPC SEPP (SEE Tab 9, pages 12, 52-54).

Contravention of the height of buildings development standard

- 13 The height of buildings development standard for the site is 21m. Pursuant to s 16(3) of SEPP Housing, the proposal including the affordable housing

component which exceeds the 15% requirement, is entitled to 30% bonus increase in the height of buildings development standard, which is 27.3m.

- 14 Parts of the parapet and lift overrun exceed the standard. The applicant provided a written request seeking to justify the contravention of the height of buildings development standard (Clause 4.6 Variation of Building Height prepared by Think Planners dated 13 March 2025 Tab 4).
- 15 Clause 4.6(3) of the Camden Local Environmental Plan 2010 (CLEP) establishes preconditions that must be satisfied before a consent authority or the Court exercising the functions of a consent authority can exercise the power to grant development consent (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118 at [13] “*Initial Action*”). The consent authority must form two positive opinions of satisfaction under cl 4.6(3). The consent authority, or the Court on appeal, must be satisfied that, (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

The applicant’s written request to contravene the height of buildings development standard

- 16 The applicant bears the onus to demonstrate that the matters in cl 4.6(3) of the CLEP have been adequately addressed in order to enable the Court, exercising the functions of the consent authority, to form the requisite opinion of satisfaction.
- 17 The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [42]-[51] (“*Wehbe*”) and repeated in *Initial Action* [17]-[21]:
 - (1) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
 - (2) the underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
 - (3) the underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
 - (4) the development standard has been abandoned by the council;

- (5) the zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).
- 18 The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).
- 19 The applicant's written request justifies the contravention of the height of buildings development standard on the bases that compliance is unreasonable or unnecessary because the elements over the standard are not visually prominent in the streetscape as the protrusions above the standard are minor.
- 20 The grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature, and environmental planning grounds is a phrase of wide generality (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]) as they refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects of the Act (*Initial Action* at [23]). The environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (*Initial Action* at [24] and *Cumming v Cumberland Council* (No 2) [2021] NSWLEC 117 at [78]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).
- 21 I am satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3). The applicant's written request defends the exceedance of the height of buildings development standard as a specific design response to the constraints and opportunities of the site. I am satisfied that justifying the aspect of the development that contravenes the development standard in this way can be properly described as an environmental planning ground within the meaning identified by his Honour in *Initial Action* at [23].

Conclusion

22 I have considered the submissions made by the Council in the Jurisdictional Statement filed with the Court on 10 April 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) Pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act* 1979, the Applicant is to pay those costs of the Respondent thrown away as a result of the amendment of the application, in the amount of \$1,500.00, payable within 28 days of the date of these Orders.
- (2) The appeal is upheld.
- (3) Development Application No. 2024/334/1, as amended, for the construction of a residential flat building of 8 storeys comprising 122 apartments, including 20 affordable housing apartments to be used for affordable housing for 15 years, basement parking for 178 vehicles and ancillary works, at 28A Ingleburn Road, Leppington NSW 2179 known as Lot 1 in Deposited Plan 1261472, subject to the conditions of consent at Annexure A.

Susan O'Neill

Commissioner of the Court

[Annexure A \(377347, pdf\)](#)

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