



Land and Environment Court  
New South Wales

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Case Name: Powani v Lake Macquarie City Council

Medium Neutral Citation: [2017] NSWLEC 1695

Hearing Date(s): Conciliation conferences on 26 October 2017, 9, 22 November 2017,

Date of Orders: 5 December 2017

Decision Date: 5 December 2017

Jurisdiction: Class 1

Before: Brown C

Decision: See (5) below

Catchwords: DEVELOPMENT APPLICATION: demolition of existing dwellings, erection of multi unit housing development, lot consolidation and 7 lot strata subdivision; conciliation conference; agreement between the parties; orders

Legislation Cited: Environmental Planning and Assessment Act 1979  
Land and Environment Court Act 1979

Category: Principal judgment

Parties: Deepak Powani (Applicant)  
Lake Macquarie City Council (Respondent)

Representation: Solicitor:  
Mr G Long, solicitor(Applicant)  
Mr T To, barrister (Respondent)

File Number(s): 2017/156219

Publication Restriction: No

## JUDGMENT

- 1 **COMMISSIONER:** This is an appeal against the refusal of Development Application DA/1675/2016 for demolition of existing dwellings, erection of Multi Dwelling Housing, two into one lot consolidation and 7 lot Strata Subdivision at 84 and 86 Dudley Road, Charlestown. demolition of existing dwellings, erection of Multi Dwelling Housing, two into one lot consolidation and 7 lot Strata Subdivision
- 2 In this matter, at or after a conciliation conference, an agreement under s 34(3) of the *Land and Environment Court Act 1979* (the Court Act) was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. As the presiding Commissioner, I was satisfied that the decision was one that the Court could have made in the proper exercise of its functions (this being the test applied by s 34(3) of the Court Act). As a consequence, s 34(3)(a) of the Act required me to “dispose of the proceedings in accordance with the decision”.
- 3 The Court Act also required me to “set out in writing the terms of the decision” (s 34(3)(b)). The orders made to give effect to the agreement constitute that document.
- 4 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the parties.
- 5 The final orders to give effect to the parties’ agreement under s34(3) of the Land and Environment Court Act 1979 are:

(1) the Applicant be granted leave to rely upon the following amended plans:

(a) Architectural Plans: ELK Designs Newcastle Project No. 16054

(i) Title Sheet/Summary of BASIX Commitments - DA001

(ii) Site Plan - DA003 - Issue M dated 21 November 2017

(iii) Ground Floor Plan - DA100 - Issue J dated 15 November 2017

<p>(iv) First Floor Plan - DA101 - Issue J dated 15 November 2017</p> <p>(v) Roof Plan - DA102 - Issue G dated 31 October 2017</p> <p>(vi) Elevations - DA300 - Issue I dated 15 November 2017</p> <p>(vii) Elevations - DA301 - Issue I dated 15 November 2017</p> <p>(viii) Sections - DA400 - Issue I dated 15 November 2017</p>
<p>(b)</p> <p>Landscape Plans: JK's Garden Creations</p> <p>(i) Overall Landscape Plan - 2 of 5 – dated 21 November 2017</p> <p>(ii) Units 1-4 Landscape Plan - 3 of 5 – dated 21 November 2017</p> <p>(iii) Units 5-7 Landscape Plan - 4 of 5 – dated 21 November 2017</p> <p>(iv) Specification Plan - 5 of 5 dated 21 November 2017</p>
<p>(c) Arborist Report: Bradley Magus of Abacus Tree Services dated 6 February 2017 (amended November 2017)</p>
<p>(d) Waste Management Plan: ELK Designs dated 10 November 2017</p> <p>(e) Arborist Report: Bradley Magus of Abacus Tree Services dated 6 February 2017 (amended November 2017)</p> <p>(f) Waste Management Plan: ELK Designs dated 10 November 2017</p>

- (2) the appeal be upheld;
- (3) development consent be granted for demolition of existing dwellings, erection of Multi Dwelling Housing, two into one lot consolidation and 7 lot Strata Subdivision at 84 and 86 Dudley Road, Charlestown NSW 2290 on conditions set out in Annexure A;
- (4) the Applicant pay the Respondent's costs pursuant to s97B of the Act as agreed in the sum of \$5,000.

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**Commissioner Brown**

**Annexure A**

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