



Land and Environment Court
New South Wales

Case Name: Winifred West Schools Ltd v Wingecarribee Shire Council (No 2)

Medium Neutral Citation: [2024] NSWLEC 1066

Hearing Date(s): 18, 21-23 and 25 March 2022; 7 and 11 April 2022; 10 May 2022; 17 June 2022

Date of Orders: 22 February 2024

Decision Date: 22 February 2024

Jurisdiction: Class 1

Before: Adam AC

Decision: The Court orders:
(1) The appeal is upheld.
(2) Development application no. DA20/0747 for the construction of student bush accommodation buildings and a multi-purpose hall is determined by the granting of development consent subject to the conditions of consent set out in Annexure A.
(3) The exhibits are to be retained except for G and 6; the Applicant's list of authorities filed 11 April 2022 is also to be returned.

Catchwords: APPEAL – development application – consent sought for construction of student accommodation buildings, a multi-purpose hall and associated works at Frensham School – deemed refusal – amended application renotified – objectors' submissions – commencement at Frensham School with objector submissions, inspection of site of proposal and observation of areas to south including upper Holt – whether site is core koala habitat – change to conservation status of koala – Biodiversity Development Assessment Report (BDAR) – Flood Emergency Response Plan (FERP) – impacts on

platypus – water quality assessment is not required to be met – nature of vegetation on site – establishment of Asset Protection Zones – managing bush fire risk – bush fire evacuation plan – whether the proposal is appropriate given biodiversity and other values – agreed conditions imposed

Legislation Cited:	Biodiversity Conservation Act 2016, s 2.11 Environmental Planning and Assessment Act 1979
Cases Cited:	Winifred West Schools Ltd v Wingecarribee Shire Council [2023] NSWLEC 1799
Category:	Principal judgment
Parties:	Winifred West Schools Ltd (Applicant) Wingecarribee Shire Council (Respondent)
Representation:	Counsel: P Larkin SC (Applicant) R O’Gorman-Hughes (Respondent) Solicitors: HWL Ebsworth Lawyers (Applicant) Marsdens Law Group (Respondent)
File Number(s):	2021/88697
Publication Restriction:	Nil

JUDGMENT

- 1 On 22 December 2023 the judgment in *Winifred West Schools Ltd v Wingecarribee Shire Council* [2023] NSWLEC 1799 was handed down. Due to the proximity to Christmas, the judgment did not appear on Caselaw until early January 2024. In the judgment I indicated (at [320]) that I was inclined to grant consent, subject to appropriate conditions being imposed and directed that the parties were to amend the then proposed conditions of consent to reflect the findings in the judgment.
- 2 The parties had each provided proposed conditions of consent, most of which were agreed between them. However, for a number of proposed conditions there were competing versions.

- 3 In the judgment (at [322]-[407]) for a number of disputed conditions I determined to accept one of the proposed versions, but in some instances further clarification was required and resolution between the parties on these would involve further discussions between them.
- 4 The parties have agreed on conditions, and have addressed the matters which were raised in the judgment. I am of the opinion that the proposed conditions are appropriate and address the concerns that I had expressed, and development consent should be granted.
- 5 Granting development consent under the *Environmental Planning and Assessment Act 1979*, for the development application submitted by the Applicant may not exhaust the approval process for the proposal. For example, in the judgment (at [44]) I indicated that for the proposed capture, relocation and re-release of wombats a biodiversity conservation licence might be required under s 2.11 of the *Biodiversity Conservation Act 2016*.

Final orders

- 6 Accordingly, the Court orders:
 - (1) The appeal is upheld.
 - (2) Development application no. DA20/0747 for the construction of student bush accommodation buildings and a multi-purpose hall is determined by the granting of development consent subject to the conditions of consent set out in Annexure A.
 - (3) The exhibits are to be retained except for G and 6; the Applicant's list of authorities filed 11 April 2022 is also to be returned.

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P Adam

Acting Commissioner of the Court

Annexure A (766678, pdf)

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