



Land and Environment Court  
New South Wales

---

Case Name: Calleija v Parramatta City Council

Medium Neutral Citation: [2025] NSWLEC 1179

Hearing Date(s): Conciliation conference on 26 February 2025

Date of Orders: 27 March 2025

Decision Date: 27 March 2025

Jurisdiction: Class 1

Before: Miller AC

Decision: The orders of the Court are:  
(1) The appeal is upheld.  
(2) Development Application No. DA/655/2023 for Torrens title subdivision of one lot into two and associated civil works at 35 Surrey Street, Epping, is determined by the grant of consent subject to the conditions contained in Annexure A.

Catchwords: APPEAL – development application – subdivision and civil works - conciliation conference – agreement reached – orders made

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 8.7  
Land and Environment Court Act 1979, ss 34, 34AA  
  
Environmental Planning and Assessment Regulation 2021, ss 23, 38  
Parramatta Local Environmental Plan 2023, cl 2.3, 2.6, 4.1, 5.10, 6.2, 6.5, 6.7 Sch 5  
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6

Category: Principal judgment

Parties: Sam Patrick Calleija (Applicant)  
Parramatta City Council (Respondent)

Representation: Counsel:  
G McKee (Solicitor - Applicant)  
A Seton (Solicitor - Respondent)

Solicitors:  
McKees Legal Solutions (Applicant)  
Marsdens Law Group (Respondent)

File Number(s): 2024/329199

Publication Restriction: Nil

## JUDGMENT

- 1 COMMISSIONER: This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) against the refusal of Development Application No DA/655/2023 for Torrens title subdivision of one lot into two and associated civil works at 35 Surrey Street, Epping (Lot 12 DP 654042) (the Site) by Parramatta City Council.
- 2 The Court was required to arrange a conciliation conference between the parties, pursuant to s 34AA(2)(a) of the *Land and Environment Court Act 1979* (LEC Act). The conciliation conference which I presided over was held on 26 February 2025.

## Outcome

- 3 At the conciliation, 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 one that the Court could have made in the proper exercise of its functions.
- 4 The decision agreed upon is for the grant of development consent subject to conditions of consent pursuant to s 4.16(1) of the EP&A Act. The signed agreement is supported by a Jurisdictional Statement that sets out the matters that the Court must consider prior to the grant of development consent. I have considered the contents of the Jurisdiction Statement together with the

documents referred to therein, the Amended Class 1 Application and its attachments, the joint reports filed in the proceedings, the Council's bundle of documents filed in the proceedings, and the documents that are referred to in condition 1 of Annexure A. Based on those documents, I have considered the matters required to be considered pursuant to s 4.15(1) of the EP&A Act.

- 5 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 (EP&A Reg). The plans and documents comprising the amended application were submitted to the Court on 26 February 2025 and are listed under condition 1 of the conditions of consent at Annexure A.

### **Jurisdictional matters**

- 6 As the presiding Commissioner, I am satisfied that the decision to grant development consent to the amended application subject to conditions of consent, is a decision that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I formed this state of satisfaction as each of the jurisdictional preconditions identified by the parties is met, for the following reasons:

#### *Parramatta Local Environmental Plan 2023*

- 7 The proposal is for subdivision and ancillary works which is permissible in the R2 – Low Density Residential zone in which the site is located, pursuant to Parramatta Local Environmental Plan 2023 (PLEP 2023).
- 8 The development is consistent with the objectives of the R2 – Low Density Residential zone in accordance with cl 2.3 of PLEP 2023 which include:
  - To provide for the housing needs of the community within a low density residential environment, and
  - To maintain the low density residential character of the area.
- 9 Torrens title subdivision is permissible in the R2 Low Density Residential Zone by virtue of cl 2.6 of PLEP 2023.
- 10 Clause 4.1 Minimum Lot Size prescribes a minimum lot size of 550m<sup>2</sup> on the subject land. The proposed allotments comply with this requirement having a minimum lot size of 600m<sup>2</sup> and 872.5m<sup>2</sup> respectively.

- 11 The subject site does not contain any heritage items but is located in a Heritage Conservation Area in accordance with Sch 5 and the Heritage Map of PLEP 2023 and is a contributory item. Further it adjoins a heritage item at 33 Surrey Street, Epping. In accordance with the requirements of cl 5.10(4) of PLEP 2023 consideration has been given to the impact of the proposed subdivision on the heritage significance of the heritage conservation area and the adjacent heritage item and it has been found to be acceptable. I accept the agreement of the parties that the amended proposal will not result in an adverse heritage impact and is therefore acceptable having regard to this provision.
- 12 Clause 6.2 Earthworks requires that certain matters are considered prior the granting of consent in relation to earthworks. On the basis of the parties' agreement and relevant conditions of consent, I am satisfied that consideration has been given to the relevant matters.
- 13 In respect of cl 6.5 Stormwater Management I am satisfied having regard to the parties agreement, the relevant civil plans prepared by Hydracor Consulting Engineers and condition 42 that the proposal is consistent with the relevant requirements.
- 14 Clause 6.7 of PLEP 2023 provides that development consent must not be granted unless the consent authority is satisfied that essential services (including water, electricity, sewage, stormwater drainage and vehicular access) are available or that adequate arrangements have been made to make them available for the proposed development. I am satisfied on the basis of the existing use of the site and the amended plans, that essential services are available to the land.

*State Environmental Planning Policy (Resilience and Hazards) 2021*

- 15 Consideration has been given to whether the subject site is contaminated as required by s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) and the parties agree that the site has a long history of residential use and therefore contamination is unlikely. No further investigation in accordance with the RH SEPP is therefore required.

### *Other Matters*

- 16 Owner's consent to the lodgement of the application has been provided in accordance with the requirements of s 23(1) of the EP&A Reg with the applicants being the landowners.
- 17 The development application, in its original form, was notified between 7 to 21 November 2023. No submissions were received.

### **Conclusion**

- 18 Having reached the state of satisfaction that the decision is one that the Court could make in the exercise of its functions, s 34(3)(a) of the LEC Act requires me to "dispose of the proceedings in accordance with the decision". The LEC Act also requires me to "set out in writing the terms of the decision" (s 34(3)(b)).
- 19 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any assessment of the merits of the development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EP&A Act.

### **Orders**

- 20 The orders of the Court are:
- (1) The appeal is upheld.
  - (2) Development Application DA/655/2023 for Torrens title subdivision of one lot into two and associated civil works at 35 Surrey Street, Epping (Lot 12 DP 654042), is determined by the grant of consent subject to the conditions contained in Annexure A.

**H Miller**

**Acting Commissioner of the Court**

### **Annexure A**

\*\*\*\*\*

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on 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.