



FILED ON

22 JUL 2024

AFFIDAVIT OF JULIDE AYAS 22 JULY 2024

COURT DETAILS

Court	Land and Environment Court
Class	1
Case number	2023/266853

TITLE OF PROCEEDINGS

Applicant	Waluya Pty Ltd
Respondent	Minister for Planning and Public Spaces

FILING DETAILS

Applicant	Waluya Pty Ltd, Applicant	
Legal representative	Aaron Gadiel Mills Oakley Level 7 151 Clarence Street Sydney NSW 2000	
Legal representative reference	AXGS/JZAS/3698757	
Contact name and telephone	Julide Ayas	02 8035 7918
Contact email	jayas@millsoakley.com.au	

AFFIDAVIT DETAILS

Name Julide Ayas
Address Level 7, 151 Clarence Street, Sydney NSW 2000
Occupation Solicitor
Date 22 July 2024

I, Julide Ayas, affirm:

1. I am the solicitor employed by the solicitor on the record for the Applicant and I have the day to day carriage of this matter, under the supervision of the solicitor on the record.
2. This affidavit has been prepared in support of a notice of motion seeking leave to rely on amended documents.
3. My knowledge about the matters set out in this affidavit is drawn from:
 - (a) my personal knowledge;
 - (b) my review of documents relating to the matter; and
 - (c) information I have obtained from various individuals named in this affidavit.
4. Exhibited before me at the time of swearing this affidavit is a bundle of documents titled 'Exhibit JA-1' (**the exhibit**). Each document in the exhibit is behind a sequentially numbered tab. A reference to a tab number in this affidavit is a reference to a tab in the exhibit.
5. To the best of my knowledge the contents of this affidavit are true and correct.

Background

6. The proceedings relate to development application no. 23/1084 (**DA**) which seeks consent for a bus depot transport facility at 1-3 Faunce Street; 7A Racecourse Road, 9 Racecourse Road, 9A-11 Racecourse Road, 38 Young Street and 50 Young Street West Gosford (**the site**).
7. On **18 December 2022**, the DA was lodged with the Respondent.
8. On **22 August 2023**, these proceedings were commenced as an appeal against the Respondent's deemed refusal of the DA.
9. On **14 September 2024**, the Respondent filed a notice of motion for separate question on the issue of permissibility.

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10. On **20 September 2023**, the Respondent's motion was listed. The Court made orders (among other things) listing the Respondent's motion for hearing on 4 December 2023.
11. On **25 September 2023**, the substantive proceedings were listed for directions hearing. The Court made orders (among other things) listing the matter for a conciliation conference on 30 April 2024.
12. On **9 October 2023**, the Respondent filed and served its statement of facts and contentions.
13. On **31 October 2023**, the Applicant filed and served its statement of facts and contentions in reply.
14. On **4 December 2023**, the Respondent's motion was heard by Justice Robson. An order was made reserving judgment on that date.
15. On **22 February 2024**, the parties participated in a 'without prejudice' meeting.
16. On **15 March 2024**, the Respondent's motion was listed for judgment. Orders were made dismissing the Respondent's motion.
17. On **30 April 2024**, the parties participated in a conciliation conference before Commissioner Dickson. The conciliation was adjourned and was ultimately terminated on 19 June 2024.
18. On **27 June 2024**, the proceedings were listed for second directions hearing. The Court made orders (among other things) listing the matter for hearing on 7 and 8 November 2024.

Basis for amendments

19. The amended material has been prepared in response to the Respondent's statement of facts and contentions and matters discussed at the conciliation conference.
20. I believe the Respondent's statement of facts and contentions raises issues in respect of the development application which can be summarised as follows:
 - (a) **Contention 1:** The Application comprises prohibited development under s4.3 of the EP&A Act and clause 5.13 of the Regional SEPP.
 - (b) **Contention 2:** The Application is not compatible with the flood hazard of the Site and is likely to significantly adversely affect flood behaviour.
 - (c) **Contention 3:** The Application will have an unacceptable traffic impact on Racecourse Road.



- (d) **Contention 4:** The proposal is not in the public interest.
- (e) **Contention B2(1):** Inadequate consideration of traffic impacts.
- (f) **Contention B2(2):** Inadequate consideration of vehicle manoeuvrability.
- (g) **Contention B2(3):** Inadequate consideration of the impacts of road infrastructure and works required by the development.
- (h) **Contention B2(4):** Inadequate consideration of bulk earthworks.
- (i) **Contention B2(5):** Inadequate assessment of trees proposed for removal.
- (j) **Contention B2(6):** Inadequate stormwater considerations.
- (k) **Contention B2(7):** Inadequate consideration of the flooding impacts of the development.
- (l) **Contention B2(8):** Inadequate geotechnical considerations.
- (m) **Contention B2(9):** Insufficient groundwater considerations.
- (n) **Contention B2(10):** Inadequate consideration of biodiversity impacts.
- (o) **Contention B2(11):** Inadequate consideration of design excellence and streetscape impacts.
- (p) **Contention B2(12):** Inadequate information of the proposed site operations.
- (q) **Contention B2(13):** Inadequate information around the existing sewer main.
- (r) **Contention B2(14):** Inadequate consideration of the coastal environmental area.

Identification of documents

21. I believe the Applicant has prepared amended and additional plans and documents in an effort to respond to the Respondent's statement of facts and contentions and issues raised at the conciliation conference.



22. A list of the new and amended material is at the schedule to the notice of motion. The documents are as follows:

- (a) Addendum statement of environmental effects prepared by Urbis dated 18 July 2024 (**Tab 1**),
- (b) Schedule of amendments summarising architectural changes prepared by DEM dated 15 July 2024 (**Tab 2**);
- (c) Architectural plans prepared by DEM (**Tab 3**):
 - (i) Cover Page (Drawing no. ar-cv00, Revision a03) dated 19 March 2024;
 - (ii) Site Plan (Drawing no. ar-0200, Revision a07) dated 15 July 2024;
 - (iii) Site analysis (Drawing no. ar0201, Revision a01) dated 16 December 2022;
 - (iv) Demolition plan (Drawing no. ar-0300, Revision a03) dated 13 February 2024;
 - (v) Ground floor plan – part 1 (Drawing no. ar-1200, Revision a05) dated 15 July 2024;
 - (vi) Ground floor plan – part 2 (Drawing no. ar-1201, Revision a04) dated 15 July 2024;
 - (vii) First floor plan – part 1 (Drawing no. ar-1202, Revision a05) dated 15 July 2024;
 - (viii) First floor plan – part 2 (Drawing no. ar-1203, Revision a04) dated 15 July 2024;
 - (ix) Roof plan – part 1 (Drawing no. ar-1204, Revision a05) dated 15 July 2024;
 - (x) Roof plan – part 2 (Drawing no. ar-1205, Revision a04) dated 15 July 2024;
 - (xi) Sections (Drawing no. ar-2200, Revision a05) dated 15 July 2024;
 - (xii) Building sections sheet 1 (Drawing no. ar-2210, Revision a05) dated 15 July 2024;
 - (xiii) Building sections sheet 2 (Drawing no. ar-2211, Revision a04) dated 15 July 2024;

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- (xiv) Site elevations (Drawing no. ar-2600, Revision a03) dated 15 July 2024;
- (xv) Building elevations sheet 1 (Drawing no. ar-2610, Revision a03) dated 15 July 2024;
- (xvi) Building elevations sheet 2 (Drawing no. ar-2611, Revision a03) dated 15 July 2024;
- (xvii) Building elevations sheet 3 (Drawing no. ar-2612, Revision a03) dated 15 July 2024;
- (xviii) Shadow diagram 9am Mid-Winter (21 June) (Drawing no. arsk5300, Revision - 02) dated 15 July 2024;
- (xix) Shadow diagram 12pm Mid-Winter (21 June) (Drawing no. arsk5301, Revision -02) dated 15 July 2024;
- (xx) Shadow diagram 3pm Mid-Winter (21 June) (Drawing no. arsk5302, Revision - 02) dated 15 July 2024.
- (d) Schedule of amendments summarising landscape plan amendments prepared by Studio IZ Pty Ltd dated 15 July 2024 (**Tab 4**);
- (e) Landscape plans prepared by Studio IZ Pty Ltd (**Tab 5**):
 - (i) Cover Sheet (Drawing No. LA-000, Issue F) dated 15 July 2024;
 - (ii) Legends & General Notes (Drawing No. LA-001, Issue F) dated 15 July 2024;
 - (iii) General Arrangement Plan – Sheet 1 (Drawing No. LA-101, Issue F) dated 15 July 2024;
 - (iv) General Arrangement Plan – Sheet 2 (Drawing No. LA-102, Issue F) dated 15 July 2024;
 - (v) Planting Plan – Sheet 1 (Drawing No. LA-201, Issue F) dated 15 July 2024;
 - (vi) Planting Plan – Sheet 2 (Drawing No. LA-202, Issue F) dated 15 July 2024;
 - (vii) Specification Notes (Drawing No. LA-500, Issue F) dated 15 July 2024.
- (f) Visual impact assessment prepared by DEM (Aust) Pty Ltd dated 17 July 2024 (**Tab 6**);



- (g) Updated transport impact assessment prepared by Stantec dated 17 July 2024 (**Tab 7**);
- (h) Detailed site investigation prepared by Stantec dated 8 February 2024 (**Tab 8**);
- (i) Hazardous materials survey prepared by Remedy Enviro Services dated 17 May 2024 (**Tab 9**);
- (j) Remediation Action Plan prepared by Stantec dated 19 July 2024 (**Tab 10**)
- (k) Report on Geotechnical Investigation prepared by Stantec dated 19 July 2024 (**Tab 11**);
- (l) Biodiversity Development Assessment Report prepared by Travers Bushfire & Ecology dated 19 July 2024 (**Tab 12**);
- (m) Arboriculture Impact Assessment Report prepared by Travers Bushfire & Ecology dated 18 July 2024 (**Tab 13**);
- (n) Civil Stormwater Management Report prepared by AT&L dated April 2024 (**Tab 14**) :
 - (i) Appendix A: Detailed site survey (**Tab 14a**)
 - (ii) Appendix B1: Civil Development Application Drawings (**Tab 14b**)
 - (iii) Appendix B2: Retaining Walls Package and Design Certificate (**Tab 14c**)
 - (iv) Appendix C: MUSIC Model and Report (**Tab 14d**)
 - (v) Appendix D: Dial Before You Dig (DBYD) (**Tab 14e**)
 - (vi) Appendix E: Drains Results (**Tab 14f**)
 - (vii) Appendix F: Flood Assessment dated 7 May 2024 (**Tab 14g**).
- (o) Letter summarising amendments to flood assessment post-DA prepared by AT&L dated 16 July 2024 (**Tab 15**);
- (p) Flood Emergency Response Plan prepared by AT&L dated 18 July 2024 (**Tab 16**).
- (q) Preliminary operational management plan prepared by Urbis dated 2 May 2024 (**Tab 17**);

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- (r) Operational Management Plan, Supplementary Information prepared by Urbis dated 11 July 2024 (**Tab 18**);
- (s) Site survey drawings prepared by Beveridge Williams (Version B) dated 21 July 2023 (**Tab 19**);
- (t) Concept signage plan prepared by Stantec (Sheet 1 of 1) dated 1 February 2024 (**Tab 20**);
- (u) Supplementary advice on extent of earthworks prepared by Stantec dated 11 July 2024 (**Tab 21**);
- (v) Racecourse Road License Agreement (**Tab 22**);
- (w) Structural drawings prepared by Triaxal Consulting (**Tab 23**):
 - (i) Cover Sheet & Drawing List (Drawing No. S1.01, Issue A) dated 7 February 2024;
 - (ii) General Notes Sheet 1 (Drawing No. S1.02, Issue A) dated 7 February 2024;
 - (iii) General Notes Sheet 2 (Drawing No. S1.03, Issue A) dated 7 February 2024;
 - (iv) Overall Site Retention Plan (Drawing No. S2.01, Issue B) dated 18 March 2024;
 - (v) Shoring Wall RW No. 01 Plan (Drawing No. S2.02, Issue B) dated 18 March 2024;
 - (vi) Shoring Wall RW No. 01 Plan Part 2 (Drawing No. S2.03, Issue B) dated 18 March 2024;
 - (vii) Shoring Wall R1 No. 01 Elevations – E01 (Drawing No. S3.01, Issue B) dated 18 March 2024;
 - (viii) Shoring Wall RW No. 01 Elevation – E02 (Drawing No. S3.02, Issue B) dated 18 March 2024;
 - (ix) Shoring Wall RW No. 01 Elevation – E03 (Drawing No. S3.03, Issue B) dated 18 March 2024;
 - (x) Shoring Wall RW No. 01 Elevation – E04 (Drawing No. S3.04, Issue B) dated 18 March 2024;

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- (xi) Shoring Wall RW No. 01 Elevation – E05 Part 1 (Drawing No. S3.05, Issue B) dated 18 March 2024;
 - (xii) Shoring Wall RW No. 01 Elevation – E05 Part 2 (Drawing No. S3.06, Issue B) dated 18 March 2024;
 - (xiii) Shoring Wall RW No. 01 Elevation – E06, E07 & E08 (Drawing No. S3.07, Issue B) dated 18 March 2024;
 - (xiv) Shoring Wall RW No. 01 Elevation -E09 (Drawing No. S3.08, Issue B) dated 18 March 2024;
 - (xv) Shoring Wall RW No. 01 Elevation – E10 (Drawing No. S3.09, Issue B) dated 18 March 2024;
 - (xvi) Shoring Wall RW No. 01 Construction Sequence (Drawing No. S3.10, Issue B) dated 18 March 2024;
 - (xvii) Shoring Wall Details (Drawing No. S5.01, Issue B) dated 18 March 2024;
 - (xviii) Retaining Wall Part Plan (Drawing No. S6.01, Issue B) dated 7 February 2024;
 - (xix) Retaining Wall Details Sheet 1 (Drawing No. S6.02, Issue A) dated 7 February 2024; and
 - (xx) Retaining Wall Details Sheet 2 (Drawing No. S6.03, Issue A) dated 7 February 2024.
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- (x) Revised DA Design Report prepared by DEM dated 13 February 2024 (**Tab 24**);
 - (y) Site survey – sewer location prepared by Beveridge Williams (Version A) dated 2 February 2024 (**Tab 25**);
 - (z) Letter from Urbis – Revised Design Environmental Impact Assessment dated 11 July 2024 (**Tab 26**);
 - (aa) Justification for maintaining the current location of the private vehicle ramp and retention of 'potential future depot expansion area' prepared by DEM dated 17 July 2024 (**Tab 27**).
 - (bb) Letter from Mills Oakley dated 22 July 2024 (**Tab 28**).



Nature of amendments

23. Based on my own consideration of the documents, I believe, that the nature of the amendments to the proposed development are as follows:

- (a) Increased setbacks to Faunce Street West and Young Street to provide additional landscaping.
- (b) Retaining walls adjacent to Faunce Street West and Young Street have been relocated to provide increased landscape buffers along these road frontages.
- (c) Private vehicle parking area reconfigured to retain mature trees located adjacent to Young Street. Private vehicle numbers reduced from 113 spaces to 110 spaces.
- (d) Bus parking hardstand reconfigured to accommodate increased setbacks.
- (e) Proposed right hand turn lane from Racecourse Road included on the site plan and floor plans.
- (f) Acoustic walls relocated at the northwest corner of the site to minimise visual impact.
- (g) Wayfinding signage shown on site plan and floor plans.
- (h) Sections, elevations and shadow diagrams have been updated.
- (i) Revised landscape plans have been prepared which retains 5 additional trees along Faunce Street West and 17 additional trees along Racecourse Road due to increased landscape setback.
- (j) Tree T128 has been removed along Racecourse Road due to the proposed driveway and vehicular crossover.
- (k) The following documentation has been prepared or revised to accompany the amended application:
 - (i) revised visual impact assessment;
 - (ii) revised transport impact assessment;
 - (iii) revised detailed site investigation report;
 - (iv) hazardous materials survey;

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- (v) remediation action plan;
- (vi) revised geotechnical report;
- (vii) revised biodiversity development assessment report;
- (viii) revised arboriculture impact assessment report;
- (ix) revised flood assessment report and flood emergency response plan;
- (x) operational management plan; and
- (xi) revised civil and structural engineering drawings.

Reduced environmental impact and/or improved community outcome

24. From my own review of the documents, I also believe that the amended and additional information will give the community greater confidence that all of the relevant impacts have been considered as part of the determination of the development application.
25. I am informed by Simon Wilkes, the Applicant's town planner, and I believe, that the amendments will result in a reduced environmental impact and an improved community outcome in the following respects:
- (a) The increased setbacks to Faunce Street West and Young Street allows a greater opportunity for more planting, thereby softening the hardstand appearance improving the streetscape presentation. More landscaping also reduces the heat island effect.
 - (b) Relocating the retaining walls adjacent to Faunce Street West and Young street also improves the streetscape presentation of the proposed development.
 - (c) The at grade private vehicle car park has been reconfigured which has resulted in the loss of private vehicle spaces from 113 to 110 (that is, a loss of 3 spaces). This has enabled the preservation of more mature trees existing on the site which is a better environmental outcome. This in turn softens the hardstand appearance and improves the streetscape presentation.
 - (d) The bus parking hard stand area has also been reconfigured to allow more landscaping, reduce visual impact and improve stormwater management by increasing permeable surfaces.



- (e) The inclusion of the right hand lane from Racecourse Road will improve traffic flow, reduce congestion and enhances road safety. This ensures timely bus operations to enter and exist the site, contributing to overall traffic efficiency.
- (f) Relocation of the acoustic walls at the north west corner of the site will improve views and the streetscape presentation. It reduces the visual dominance of the walls, making the area more attracting and provides an opportunity for more landscaping.
- (g) Inclusion of signage will improve safety to guide pedestrians and vehicles. This will reduce confusion and potential traffic conflicts within the site.

Just quick and cheap resolution of proceedings

26. The proposed amendments and new documents seek to address issues raised in the Respondent's reasons for refusal. In particular:

- (a) In response to contention 1, a letter has been prepared by Mills Oakley which demonstrates that the proposed development is permissible with development consent.
- (b) In response to contentions 2 and B2(7), the amended application is accompanied by a revised flood impact assessment and flood emergency response plan to demonstrate that the proposed development is compatible with the flood hazard of the site and will not significantly adversely affect flood behaviour.
- (c) In response to contentions 3, B2(1), B2(2) and B2(3), the amended application is accompanied by a revised transport impact assessment which provides sufficient information on traffic impacts on the local and regional road network. The transport impact assessment also includes swept paths on how the vehicle can manoeuvre into, out of and around the site. The transport impact assessment also provides sufficient information on how the required road infrastructure works can be accommodated. The revised transport impact assessment also includes a channelised right turn lane concept layout.
- (d) In response to contentions B2(4) and B2(8), a revised geotechnical engineering report and revised bulk earthworks plans have been prepared by the Applicant's geotechnical and civil engineers. The revised material provides sufficient information (among other things) on potential impacts of the proposed development on groundwater.

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- (e) In response to contention B2(5), revised landscaping and an amended arboriculture impact assessment report has been prepared to provide sufficient information on the likelihood of survival of the trees proposed to be retained.
 - (f) In response to contention B2(6), revised civil and stormwater plans have been prepared which considers the suitability of the Council stormwater infrastructure to accommodate the proposed stormwater. A civil report has also been prepared in response to this contention.
 - (g) In response to contention B2(10), a revised biodiversity development assessment report has been prepared which considers the impacts of the development on biodiversity.
 - (h) In response to contention B2(11), a revised DA design report has been prepared which includes adequate consideration of design excellence and streetscape impacts. A supplementary statement of environmental effects has also been prepared which includes an analysis on design excellence.
 - (i) In response to contention B2(12), a revised preliminary operational management plan has been prepared which considers key aspects of the site's operation.
 - (j) In response to contention B2(13), a supplementary statement of environmental effects has been prepared which includes a further assessment against section 2.10 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* which applies to development on land in the coastal environment area.
27. If leave is granted for the Applicant to rely on the proposed new and amended drawings and supporting material, I believe the number and scope of issues likely to be raised in these proceedings will likely be reduced.
28. I believe the reduction of issues in dispute ought to promote the just, quick and inexpensive finalisation of these proceedings without affecting the hearing dates.

Timetable

29. This matter is listed for hearing on 7 and 8 November 2024.
30. The Applicant proposes that:
- (a) The Respondent file and serve its amended statement of facts and contentions by **19 August 2024**.



- (b) The Applicant file and serve any amended statement of facts and contentions in reply by **26 August 2024**.
- (c) The matter be listed for an online court communication on **6 September 2024** to enable the parties to seek any orders for expert evidence.
- (d) The online court listing on 9 August 2024 be vacated.

Costs

31. The Applicant agrees to pay the Respondent's costs that have been thrown away as a result of the amendment of the application for development consent under section 8.15(3) of the *Environmental Planning and Assessment Act 1979*, as agreed or assessed.

Affirmed at

Sydney

Signature of deponent



Name of witness

Allysia Khounpongsy

Address of witness

Level 7, 151 Clarence Street, Sydney NSW 2000

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

1. I saw the face of the deponent.
2. I have known the deponent for at least 12 months.

Identification document relied on (may be original or certified copy)

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.