



## Land and Environment Court New South Wales

**Medium Neutral Citation:**

**Aventus Tuggerah Pty Ltd ATF the Aventus Tuggerah  
Unit Trust v Central Coast Council [2025] NSWLEC  
1401**

**Hearing dates:**

Conciliation conference on 3 April and 6 May 2025

**Date of orders:**

03 June 2025

**Decision date:**

03 June 2025

**Jurisdiction:**

Class 1

**Before:**

Washington C

**Decision:**

The Court orders:

- (1) The appeal is upheld.
- (2) Development consent is granted to Development Application No. DA/1301/2024 for the construction of a specialised retail premises including 2 tenancies; associated civil works including earthworks and retaining walls; construction of vehicle access from Lake Road and internal driveways; and installation of services, at 11 Bryant Drive, Tuggerah (Lot 102 in DP1209157) subject to the conditions set out in Annexure B.
- (3) Pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW), the applicant is to pay the costs of the respondent in the agreed sum of \$22,000.

**Catchwords:**

DEVELOPMENT APPLICATION – construction of specialised retail premises – conciliation conference – agreement between the parties – orders

**Legislation Cited:**

*Biodiversity Conservation Act 2016*, ss 7.7, 7.13, Pt 6, Div 3  
*Environmental Planning and Assessment Act 1979*, ss 4.14, 4.16, 8.7  
*Land and Environment Court Act 1979*, s 34

Environmental Planning and Assessment Regulation 2021,  
s 38

State Environmental Planning Policy (Resilience and  
Hazards) 2021, s 4.6

State Environmental Planning Policy (Transport and  
Infrastructure) 2021, s 2.122

State Environmental Planning Policy (Biodiversity and  
Conservation) 2021, s 4.9, Ch 4

Central Coast Local Environmental Plan 2022, cll 5.21, 7.1,  
7.6

**Texts Cited:**

Planning for Bush Fire Protection 2019

**Category:**

Principal judgment

**Parties:**

Aventus Tuggerah Pty Ltd ATF the Aventus Tuggerah Unit  
Trust (Applicant)

Central Coast Council (Respondent)

**Representation:**

Counsel:

F Rourke (Solicitor) (Applicant)

M Ball (Solicitor) (Respondent)

Solicitors:

Allens (Applicant)

MBM Legal and Conveyancing (Respondent)

**File Number(s):**

2024/382980

**Publication restriction:**

Nil

## JUDGMENT

- 1 **COMMISSIONER:** These Class 1 proceedings arise as a result of the deemed refusal, by Central Coast Council, of Development Application DA/1301/2024 which seeks consent for the construction of specialised retail premises, associated civil works on Lot 102 DP 1209157, 11 Bryant Drive, Tuggerah.
- 2 These proceedings have been brought to the Court pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act).
- 3 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 3 April and 6 May 2025. I presided over the conciliation conference.
- 4 After the conciliation conference, the parties reached agreement as to acceptable terms of a decision in the proceedings. This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions.
- 5 As part of this agreement, pursuant to s 38 of the Environmental Planning and Assessment Regulation 2021 (EPA Regulation), the Council agreed to the applicant amending the development application to adequately address the Council's concerns. Subsequently, the amended application that is now before the Court seeks consent for:
  - (1) Construction of a specialised retail premises including two tenancies with an associated back of house area and loading dock;
  - (2) Associated civil works including earthworks and retaining walls;
  - (3) Construction of vehicle access from Lake Road and internal driveways; and
  - (4) Modification of Stage 1 Consent by condition to update various document references and to amend the drafting of condition 1.6.
- 6 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if that decision is one that the Court could have made in the proper exercise of its functions. 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 jurisdictional prerequisites that must be satisfied before this function can be exercised, which the parties outlined in a jurisdictional submission, and from this I note the following points.

**Jurisdictional matters**

- 7 The development application was made with the written consent of the owner of the land.
- 8 The application was adequately notified from 20 September to 21 October 2024. No submissions were received during this period. The parties agree that the amended application does not necessitate renotification.
- 9 The land that forms the subject site is mapped as bushfire prone land. From the parties' submission and the information contained in the Bushfire Threat Report by Tattersall Lander dated July 2024, I accept that the proposed development conforms to the requirements of Planning for Bush Fire Protection 2019 in accordance with the requirements of EPA Act s 4.14.
- 10 The proposed development includes clearing of 0.42ha of native vegetation and therefore the biodiversity offset scheme (BOS) threshold is triggered under the *Biodiversity Conservation Act 2016* (BC Act). Accordingly, under s 7.7 of the BC Act, a Streamlined Biodiversity Development Assessment Report (SBDAR), prepared in accordance with Div 3 of Pt 6 of the BC Act, accompanies the application. Pursuant to s 7.13 of the BC Act, the consent authority is to take into consideration the likely impact of the proposed development on biodiversity values as assessed in the SBDAR. From the SBDAR, the parties' submission, the amended application and the agreed conditions of consent, I accept that the development has been designed to avoid and minimise impacts on biodiversity values, and that adequate biodiversity credits will be retired to offset the residual impact on biodiversity values, meeting the requirements of the BC Act.
- 11 Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 requires the consent authority to consider whether the site is contaminated, and if so, whether it is or will be made suitable for the intended use. The parties submit, and I accept, that the site has a historically been undeveloped and there is no known contamination on the site nor any history of contaminating activities and subsequently, the site is suitable for the intended use.
- 12 Pursuant to s 2.122 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP TI), the proposed development is traffic generating development. Accordingly, in response to notification, Transport for NSW provided draft conditions on 1 October 2024 which have been incorporated into the agreed conditions of consent.
- 13 The site is located within the Central Coast Management Area pursuant to Ch 4 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021. Pursuant to s 4.9, the consent authority is required to assess whether the development is likely to have any impact on koalas or koala habitat. From the parties' submissions and the

SBDAR I accept that there are no koalas present on the site and it is not considered to be core koala habitat, and therefore that the proposed development will no impact koalas or koala habitat.

- 14 The subject site is zoned E3 Productivity Support under the Central Coast Local Environmental Plan 2022 (CCLEP), within which development for the purposes of 'specialised retail premises' and 'warehouse or distribution centres' is permissible with consent. The proposed development is consistent with the objectives of this zone.
- 15 The site is not subject to a maximum building height or floor space ratio development standard.
- 16 The site is affected by flooding. From the parties' submission, the Flood Impact Assessment by C&M dated March 2025, I accept that the matters listed at CCLEP cl 5.21(3) have been considered, and that the proposed development satisfies the flood planning requirements of cl 5.21(2).
- 17 Pursuant to CCLEP cl 7.1, the site is mapped as containing Class 3 and 4 Acid Sulfate Soils. However, from the parties' submissions and the amended application I accept that the proposed development does not seek consent for earthworks of more than 2m below the natural ground surface, of that are likely to lower the watertable. The requirements of this clause are therefore met.
- 18 From the parties' submission and the amended application, I accept that all essential services are available, or will be made available when required in accordance with CCLEP cl 7.6.

## Conclusion

- 19 For these reasons, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act, and subsequently, I am required to dispose of the proceedings in accordance with the parties' decision.
- 20 The Court notes:
- (1) The respondent has agreed under s 38(1) of the Environmental Planning and Assessment Regulation 2021 (NSW) to the applicant amending Development Application No. DA/1301/2024 to rely upon the amended plans and documents as listed in Annexure A.

## Orders

- 21 The Court orders:
- (1) The appeal is upheld.
- (2) Development consent is granted to Development Application No. DA/1301/2024 for the construction of a specialised retail premises including 2 tenancies; associated civil works including earthworks and retaining walls; construction of

vehicle access from Lake Road and internal driveways; and installation of services, at 11 Bryant Drive, Tuggerah (Lot 102 in DP1209157) subject to the conditions set out in Annexure B.

- (3) Pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW), the applicant is to pay the costs of the respondent in the agreed sum of \$22,000.

## E Washington

### Commissioner of the Court

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[Annexure A \(115 KB, .pdf\)](#)

[Annexure B \(535 KB, .pdf\)](#)

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Decision last updated: 03 June 2025