



Land and Environment Court
New South Wales

Case Name: CK Design v City of Parramatta Council

Medium Neutral Citation: [2025] NSWLEC 1420

Hearing Date(s): Conciliation conference 8 May 2025

Date of Orders: 13 June 2025

Decision Date: 13 June 2025

Jurisdiction: Class 1

Before: Miller AC

Decision: The Court orders:
(1) The appeal is upheld.
(2) Development Application No. 737/2022 for construction of a mixed use development over two levels of basement parking in relation to land known as 1-17 Grey St and 32- 48 Silverwater Road, Silverwater (Lots 1-2 DP 1110059, Lot 1 DP 90071, Lots 5-7 DP 89550, Lots 8-11 Section 5 DP 979426, Lot 12 DP 76894, Lot 13 Section 5 DP 75209, Lots 14-17 Section 5 DP 979426, Lot 18 DP 77341), is determined by the grant of consent subject to conditions contained in Annexure 'A'.
(3) The Applicant's written request pursuant to clause 4.6 of the Auburn Local Environmental Plan 2010 seeking to vary the height of development standard contained in clause 4.3(2A) of Auburn Local Environmental Plan 2010 is upheld.

Catchwords: DEVELOPMENT APPLICATION – mixed use development and basement parking – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 8.7
Land and Environment Court Act 1979, s 34

Auburn Local Environmental Plan 2010, cl 4.3, 4.3A, 4.4, 4.6, 5.4, 6.2, 6.5

Environmental Planning and Assessment Regulation 2021, ss 23, 38

Parramatta Local Environmental Plan 2023, cl 1.8A

State Environmental Planning Policy (Industry and Employment) 2021 s 3.6, Sch 5

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

State Environmental Planning Policy (Transport and Infrastructure) 2021, Ch 3, ss 2.118, 2.119, 2.121

Category: Principal judgment

Parties: CK Design (Applicant)
City of Parramatta Council (Respondent)

Representation: Counsel:
C Ireland (Applicant)
P Hudson (Solicitor) (Respondent)

Solicitors:
Raad Group (Applicant)
Marsdens Law Group (Respondent)

File Number(s): 2024/66881

Publication Restriction: Nil

JUDGMENT

Introduction

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) being an appeal against the refusal of Development Application No. 737/2022 for construction of a mixed use development over two levels of basement parking in relation to land known as 1-17 Grey St and 32- 48 Silverwater Road, Silverwater, legally known as Lots 1-2 DP 1110059, Lot 1 DP 90071, Lots 5-7 DP 89550, Lots 8-11 Section 5 DP 979426, Lot 12 DP 76894, Lot 13 Section 5 DP 75209, Lots 14-17 Section 5 DP 979426, Lot 18 DP 77341 (site).
- 2 The Court granted leave to amend the DA on 3 December 2024.

- 3 The proceedings were set down for a hearing on 8 and 9 May 2025. Following the amendment of the application on 3 December 2025 and further discussions between the parties, the parties agreed that the contested issues had been resolved. The parties, therefore, requested that the proceedings be adjourned and listed for a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act). The Court granted the request and arranged a conciliation conference between the parties, which was held on 8 May 2025. I presided over the conciliation conference.

Outcome

- 4 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 a decision that the Court could have made in the proper exercise of its functions.
- 5 The decision agreed upon is for the grant of development consent subject to conditions of consent pursuant to s 4.16(1) of the EPA 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 Jurisdictional Statement, together with the documents referred to therein, the Class 1 Application and its attachments, the respondents bundle of documents and the plans 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 EPA Act.
- 6 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 (EPA Reg). The plans and documents comprising the amended application were submitted to the Court on 3 December 2024 and are listed under Condition 1 of the conditions of consent at Annexure A. Changes made to the proposal to address the contentions include:
- Provision of setbacks and additional deep soil landscaping on all street frontages
 - Changes to the design of the childcare centre to improve ventilation and natural light

- Inclusion of a trial period for operation of the proposed hotel
- Reduction in height exceedance through reduced floor to floor heights
- Provision of a revised clause 4.6 variation request in relation to height exceedance
- Provision of additional information in relation to air quality
- Change to the floor plans to provide for FSR compliance
- Provision of additional information in relation to traffic and parking and the inclusion of agreed conditions to reduce impacts
- Increase in landscape area to provide for compliance
- Provision of additional information in relation to contamination and the inclusion of agreed conditions, and
- The provision of further / amended supporting documentation.

Jurisdictional matters

7 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 reasons set out below.

State Environmental Planning Policy (Resilience and Hazards) 2021

8 The provisions of s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) apply to the site. A remedial action plan (6 November 2024), Detailed Phase 2 Contamination Investigation (24 July 2024), Human Health Risk Assessment (31 October 2024) and other supporting documentation have been prepared for the site by Sullivan Environmental Sciences. This documentation concludes that subject to the proposed remediation and construction the site will be made suitable for the proposed use in accordance with the SEPP requirements. Accordingly, the parties agree, and I accept that the provisions of s 4.6 of the RH SEPP have been satisfied.

State Environmental Planning Policy (Transport and Infrastructure) 2021

9 The site has frontage to a classified road (Silverwater Road) and is traffic generating development in accordance with the provisions of State

Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP). Sections 2.118, 2.119 and 2.121 of the SEPP, as it applied at the lodgement date, therefore apply.

- 10 Section 2.118 of the TI SEPP requires that the consent authority be satisfied of various matters in respect of access to and the safe and efficient operation of the classified road and noise and vibration impacts from the classified road prior to the granting of consent. On the basis of the parties agreement, the various Traffic and Parking Advices (McLaren Traffic Engineering) and recommended conditions of consent I am satisfied that the various matters have been considered.
- 11 Section 2.119 also applies in respect of the impact of road noise or vibration on non-road development (including centre based child care) and requires the consideration of road noise. The Statement of Environmental Effects (Andrew Martin Planning, 28 July 2022) submitted with the Class 1 Application confirms that the proposal has been designed to comply with relevant Regulations and further an acoustic assessment (The Acoustic Group, 10 May 2022) has also been submitted in this regard. I therefore accept that adequate consideration has been given to these provisions.
- 12 The proposal is also 'traffic-generating development' in accordance with the TI SEPP and therefore s 2.121 applies and requires that notice of the proposal be given to Transport for NSW (TfNSW). In accordance with the provision TfNSW was notified of the proposal and advised on 12 December 2023 that it had no objection to the proposed development.
- 13 Chapter 3 Educational Establishments and Child Care Facilities of the TI SEPP also applies as the proposal which includes a childcare facility. It contains specific provisions for centre based child care and requires consideration of the Child Care Planning Guidelines. I am satisfied on the basis of the parties' agreement and the Statement of Environmental Effects (Andrew Martin Planning, 28 July 2022) submitted with the Class 1 Application that the proposal complies with the relevant provisions of the SEPP and has due regard to the Guidelines.

State Environmental Planning Policy (Industry and Employment) 2021

- 14 The proposed development includes building and business identification signage therefore s 3.6 of the State Environmental Planning Policy (Industry and Employment) 2021 (IE SEPP) applies. The provision requires that the proposal is consistent with the objectives of Chapter 3 and that it satisfies the assessment criteria specified in Schedule 5. On the basis of the parties' agreement and the Statement of Environmental Effects (Andrew Martin Planning, 28 July 2022) I am satisfied of the relevant matters as required.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- 15 The site is located within the Sydney Harbour Catchment area. Due to the DA lodgement date, the former provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP) apply in accordance with s 6.65. I accept the parties' agreement that the amended DA satisfies the provisions of Ch 10 and s 10.10 on the basis of conditions of consent at Annexure A and the jurisdictional statement.

Auburn Local Environmental Plan 2010

- 16 Due to the DA lodgement date and pursuant to cl 1.8A of the Parramatta Local Environmental Plan 2023, the DA falls under saved provisions and Auburn Local Environmental Plan 2010 (ALEP) applies instead.
- 17 The site is zoned B6 Enterprise Corridor under the ALEP. The proposed development for a mixed use development is permissible with consent.
- 18 Clause 4.3 height of buildings applies to the site, permitting a maximum height of 14m. The amended DA exceeds the maximum permissible height by a maximum of 740mm at the lift overrun. The amended DA seeks to vary the development standard pursuant to cl 4.6 and is supported by a Request for Variation under cl 4.6 prepared by Andrew Martin Planning dated 22 October 2024. The parties are satisfied of the merits of the written request. I accept that the written request responds to the mandatory provisions of cl 4.6.
- 19 Clause 4.4 floor space ratio (FSR) applies to the site and the parties agree that the amended proposal complies with the maximum FSR applicable to the site having an FSR of 1.98:1.

- 20 Clause 5.4 of ALEP provides that neighbourhood shops must not have an area of more than 80m² for each shop. The proposal complies with this requirement.
- 21 Clause 6.2 earthworks of ALEP also applies to the amended DA. I accept the parties' agreement that the provisions of cl 6.2 have been considered as demonstrated in the Statement of Environmental Effects (Andrew Martin Planning, 28 July 2022) and having regard to the recommended conditions of consent.
- 22 Clause 6.5 of ALEP requires that consent must not be issued unless the consent authority is satisfied that essential services are available or will be made available for the proposed development. I am satisfied on the basis of the parties' agreement, the proposed plans and the Statement of Environmental Effects (Andrew Martin Planning, 28 July 2022) that all required essential services are available to the site.

Other matters

- 23 The development application is made with the consent of the owner's of the site in accordance with s 23 of the EPA Reg.
- 24 The Respondent notified the original development application between 28 September and 28 October 2022. Two (2) submissions were received in response to the notification. In reaching agreement, the parties have advised that consideration has been given to the concerns raised in the submissions and that these matters are address via the imposition of suitable conditions of consent.

Conclusion

- 25 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)).
- 26 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 EPA Act.

Orders

27 The Court orders:

- (1) The appeal is upheld.
- (2) Development Application No. 737/2022 for construction of a mixed use development over two levels of basement parking in relation to land known as 1-17 Grey St and 32- 48 Silverwater Road, Silverwater (Lots 1-2 DP 1110059, Lot 1 DP 90071, Lots 5-7 DP 89550, Lots 8-11 Section 5 DP 979426, Lot 12 DP 76894, Lot 13 Section 5 DP 75209, Lots 14-17 Section 5 DP 979426, Lot 18 DP 77341), is determined by the grant of consent subject to conditions contained in Annexure 'A'.
- (3) The Applicant's written request pursuant to clause 4.6 of the Auburn Local Environmental Plan 2010 seeking to vary the height of development standard contained in clause 4.3(2A) of Auburn Local Environmental Plan 2010 is upheld

H Miller

Acting Commissioner of the Court

Annexure A (465 KB, pdf)

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