



Land and Environment Court
New South Wales

Case Name:	Busways Group Pty Ltd v Blacktown City Council
Medium Neutral Citation:	[2024] NSWLEC 1574
Hearing Date(s):	Conciliation conference on 30 August 2024
Date of Orders:	17 September 2024
Decision Date:	17 September 2024
Jurisdiction:	Class 1
Before:	O'Neill C
Decision:	<p>The orders of the Court are:</p> <p>(1) The applicant is to pay the respondent's costs thrown away as a result of the amendment of the application, pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979, as agreed or assessed.</p> <p>(2) The appeal is upheld.</p> <p>(3) Development Application No. DA-22-01379 for the demolition of structures, the removal of trees, the construction and operation of a new bus depot at 65 Owen Street, Glendenning is determined by the grant of consent, subject to the conditions of consent at Annexure A.</p>
Catchwords:	DEVELOPMENT APPLICATION – bus depot – conciliation conference – agreement between the parties – orders
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979, ss 4.16, 8.7</p> <p>Land and Environment Court Act 1979, s 34</p> <p>Blacktown Local Environmental Plan 2015</p> <p>Environmental Planning and Assessment Regulation 2021, s 38</p>

State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 9, ss 9.4, 9.5

Texts Cited: Blacktown Development Control Plan 2015

Category: Principal judgment

Parties: Busways Group Pty Ltd (Applicant)
Blacktown City Council (Respondent)

Representation: Counsel:
N Eastman SC (Applicant)
N Thomas (Solicitor) (Respondent)

Solicitors:
Addisons (Applicant)
Clayton Utz (Respondent)

File Number(s): 2023/221565

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No DA-22-01379 for the demolition of structures, the removal of trees, the construction and operation of a new bus depot (the proposal), at 65 Owen Street, Glendenning (the site), by Blacktown City Council (the Council).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 30 August 2024. I presided over the conciliation conference. At the conciliation conference, 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. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.

- 3 There are preconditions to the exercise of power to grant development consent for the proposal.

The site and its context

- 4 The site is legally described as Lot 201 DP 829034, known as 65 Owen Street, Glendenning. The site has an area of 19,695m².

The application is amended

- 5 The applicant, by Notice of Motion heard on 29 August 2024, sought to amend the application to rely on additional information referred to by the traffic experts in their joint report and amended stormwater plans. The Council did not oppose leave being granted to the applicant to amend the application.
- 6 Exercising the consent authority's function under s 38(1) of the Environmental Planning and Assessment Regulation 2021, the Court granted leave to the applicant to amend the application to rely on the additional information and amended plans.
- 7 The parties agreed that the amendments were not minor within the meaning of s 8.15(3) of the EPA Act.

Background and the proposal

- 8 The application was refused by the Sydney Central Planning Panel on 21 August 2023.
- 9 The applicant was granted leave by the Court on 27 March 2024 to amend the application to rely on amended plans and additional information.
- 10 The new bus depot would comprise 163 bus parking spaces; a car parking structure for 170 car parking spaces over 5 split levels; a workshop building with mezzanine; a 3-storey administration building; fuel bays and fuel tanks; and bus wash zone.
- 11 The proposal is to be delivered in two stages, as follows:
- Stage 1: 119 at grade car parking spaces, 113 bus parking spaces; 11 bicycle parking spaces; a workshop building with mezzanine; a three storey administration building with outdoor area; fuel bays and fuel tanks; a bus wash zone; and landscaping.

- Stage 2: car parking structure for 170 car parking spaces over 5 split levels; 163 bus parking spaces.

Jurisdictional matters

- 12 The site is zoned E4 General Industrial pursuant to the Blacktown Local Environmental Plan 2015 (LEP 2015) and the proposal is permissible with consent. The objectives of the E4 zone, to which regard must be had, are:
 - To provide a range of industrial, warehouse, logistics and related land uses.
 - To ensure the efficient and viable use of land for industrial uses.
 - To minimise any adverse effect of industry on other land uses.
 - To encourage employment opportunities.
 - To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.
 - To minimise adverse impacts on the natural environment.
- 13 The conditions of consent at Annexure A include conditions from the referral response by Sydney Water dated 10 January 2023.
- 14 Transport for NSW and the former Department of Planning and Environment – Water were notified of the proposal and provided no requirements in their respective referral responses.
- 15 The site is within the Hawksbury-Nepean River catchment and is subject to the provisions of Ch 9 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP Biodiversity and Conservation). An assessment of the proposal against the general planning considerations of s 9.4 and the specific planning policies and recommended strategies of s 9.5 of SEPP Biodiversity and Conservation relevant to stormwater management have been undertaken. I accept and adopt the Council's submission that the proposal is consistent with the applicable provisions of SEPP Biodiversity and Conservation.
- 16 I accept and adopt the Council's submission that the proposal is consistent with the objectives for carparking under the Blacktown Development Control Plan 2015 (DCP 2015) under Section 6.2, notwithstanding that the proposal does not comply with the numerical car parking requirements under Section 6.3 of DCP 2015, as appropriate measures have been put in place to ensure that the

demand for staff parking does not dramatically increase as to what is proposed.

- 17 Condition 1.1 of the Conditions of Consent at Annexure A provides a deferred commencement condition in accordance with s 4.16(3) of the EPA Act which requires the parties execute the Water Drainage Planning Agreement prior to the development consent becoming operational, which requires the application to make monetary contributions to Council in lieu of providing stormwater treatment “on-lot” in accordance with the water sensitive urban design requirements under Part J of DCP 2015. I accept and adopt the Council’s submission that the requirements of Part J of DCP 2015 are complied with.

Conclusion

- 18 I have considered the submissions made by the Council in the Jurisdictional Statement filed with the Court on 30 August 2024 and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.

Orders

- 19 The orders of the Court are:
- (1) The applicant is to pay the respondent’s costs thrown away as a result of the amendment of the application, pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, as agreed or assessed.
 - (2) The appeal is upheld.
 - (3) Development Application No. DA-22-01379 for the demolition of structures, the removal of trees, the construction and operation of a new bus depot at 65 Owen Street, Glendenning is determined by the grant of consent, subject to the conditions of consent at Annexure A.

Susan O’Neill

Commissioner of the Court

Annexure A

Annexure B

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