



## Land and Environment Court New South Wales

<b>Medium Neutral Citation:</b>	<b>Archidrome Pty Ltd v Blacktown City Council [2025] NSWLEC 1342</b>
<b>Hearing dates:</b>	7-9 May 2025
<b>Date of orders:</b>	20 May 2025
<b>Decision date:</b>	20 May 2025
<b>Jurisdiction:</b>	Class 1
<b>Before:</b>	Horton C
<b>Decision:</b>	<p>The Court orders that:</p> <ol style="list-style-type: none"><li>(1) The Applicant is granted leave to rely upon amended plans and other documents, subject to paying the costs of the Respondent thrown away as agreed or assessed in accordance with s 8.15(3) of the Environmental Planning and Assessment Act 1979.</li><li>(2) The appeal is upheld.</li><li>(3) Development application No. DA 24-00024 for staged Development to create 126 residential lots, involving a mix of Torrens title lots and community title lots, as well as residue lots, a community lot and new roads at Lot 100 DP 1233054 &amp; Lot 10 DP 31540 H/N 30-32 and 52 Advance Road, Schofields is determined by the grant of consent, subject to conditions at Annexure A.</li><li>(4) All exhibits are returned except for Exhibits A, B, C and 8.</li></ol>
<b>Catchwords:</b>	DEVELOPMENT APPLICATION: subdivision of land – dwelling house development in R3 Medium Density Residential zone – biodiversity impact assessment – orders
<b>Legislation Cited:</b>	<i>Biodiversity Conservation Act 2016</i> , ss 6.5, 6.12, 7.13, 7.16, <i>Environment Protection and Biodiversity Conservation Act 1999</i> <i>Environmental Planning and Assessment Act 1979</i> , ss 4.16, 4.46, 8.7, 8.15

*Land and Environment Court Act 1979, s 22*

*Water Management Act 2000, s 91*

Biodiversity Conservation Regulation 2017, cll 6.7,  
Environmental Planning and Assessment Regulation 2021,  
s 38

State Environmental Planning Policy (Biodiversity and  
Conservation) 2021, Ch 2, Ch 6, ss 2.6, 6.6, 6.7, 6.9,  
State Environmental Planning Policy (Precincts – Central  
River City) 2021, App 7, Part 4 ss 2.6, 4.1AB, 4.1AD,  
4.1AE, 4.1AF, 4.1AG, 4.1B, 4.3, 4.4, 6.1, 6.4, 6.5

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

State Environmental Planning Policy (Sustainable  
Buildings) 2022, 2.1

**Texts Cited:**

Blacktown City Council Growth Centre Precincts  
Development Control Plan 2010  
Community engagement strategy and Community  
Participation Plan 2024-2028

**Category:**

Principal judgment

**Parties:**

Archidrome Pty Ltd (Applicant)  
Blacktown City Council (Respondent)

**Representation:**

Counsel:  
T March (Applicant)  
S Simington (Solicitor) (Respondent)

Solicitors:  
K&L Gates (Applicant)  
Lindsay Taylor Lawyers (Respondent)

**File Number(s):**

2024/214476

**Publication restriction:**

Nil

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## JUDGMENT

- 1 **COMMISSIONER:** Advance Street in the western Sydney suburb of Schofields is undergoing transition in its urban form and density. Once an area of detached single dwellings in a quasi-bushland setting, the street is now a hive of construction activity as recent approval for medium density development is realised.
- 2 Furthering such a transition, development application DA 24-00024 was lodged by the Applicant in these proceedings, Archidrome Pty Ltd (Archidrome) on 27 March 2024, seeking consent for the removal of vegetation on the site, and construction of a Torrens

title subdivision comprising 134 lots including construction of 132 x 2 storey dwellings, public and community titled roads, drainage basin and 1 residual lot at 332 and 52 Advance Street, Schofields.

- 3 As the development application was not otherwise determined by Blacktown City Council (the Council), Archidrome appealed the deemed refusal of the development application by filing an appeal in Class 1 of the Court's jurisdiction on 7 June 2024, under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act).
- 4 It is relevant to record that Archidrome was granted leave by the Court to amend the development application on 2 April 2025, resulting in a number of contentions that were initially pressed by the Council being resolved.
- 5 I also note that the Council notified the amended development application on 9 April 2025. The notification period concludes after the date of hearing, on 12 May 2025.
- 6 In broad terms, the proposal, as now amended, is for 63 Torrens Title lots and 63 Community Title lots, a drainage lot, a road held in Community title and one residual lot.
- 7 The subdivision is proposed to be staged in the following ways:
- Stage 1: subdivision to create the residential parent lot (Lot 300), the residual lot (Lot 302) and a drainage basin lot (Lot 301) for a regional drainage basin.
  - Stage 2A: subdivision of the residential parent lot to create 62 final Torrens Title dwelling lots, public road reserve and footpath, residual residential lot (Lot 157) for Stage 2B and temporary drainage basin (Lots 100 and 156)
  - Stage 2B: subdivision of the residual residential lot (Lot 157) to create 62 final Community Title dwelling lots and one Community Lot for a road.
  - Stage 3A: subdivision of the temporary drainage basin lot, Lot 100, to create two Torrens title dwelling lots (Lots 201 and 202).
  - Stage 3B: subdivision of the temporary drainage basin Lot 156 to create seven final Torrens title lots (Lots 203-209).

## The site and its context

- 8 The site comprises two lots that, together, measure a total area of around 40,466m<sup>2</sup> of open grassland and mature vegetation comprising a mix of native, exotic and weed species.
- 9 The site is largely set back from Advance Street, behind existing residential development, except in two locations where the site fronts Advance Street to the north of the site.
- 10 The site is notable for its vegetated character, being predominantly open grass with some significant trees on the site, and where terrain slopes from a high point on the northeast to a drainage swale and creek in the southwest of the site, associated with a riparian corridor beyond the boundaries of the site.
- 11 A large parcel of land to the west is also predominantly open grassland, known as 10 Advance Street.
- 12 Existing development in Advance Street is predominantly detached dwellings, but for:
- (1) A five-storey residential flat building currently being constructed on a site known as 56 Advance Street.
  - (2) Three sites to the immediate east of the site known as No.s 42, 64 and 66 Junction Road on which consent has been granted for the construction of eight 5-storey residential flat building containing 690 apartment and new public roads, and a half-road that adjoins the subject site.
- 13 The site is zoned under the State Environmental Planning Policy (Precincts – Central River City) 2021, Appendix 7 Alex Avenue and Riverstone Precinct Plan 2010, (Precincts SEPP) as predominantly R3 Medium Density Residential, and part SP2 Infrastructure.
- 14 The uses proposed on the land are permitted on the site by virtue of the Land Use Table, and where the objectives for development on the land are, in respect of the land zoned R3:
- To provide for the housing needs of the community within a medium density residential environment.
  - To provide a variety of housing types within a medium density residential environment.
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
  - To support the well being of the community, by enabling educational, recreational, community, and other activities where compatible with the amenity of a medium density residential environment.
- 15 Likewise, the uses proposed for the area of the site zoned SP2 Infrastructure, such as drainage are permitted with consent, with relevant objectives as follows:
- To provide for infrastructure and related uses.
  - To prevent development that is not compatible with or that may detract from the provision of infrastructure.

## Inadequate Biodiversity Impact Assessment

- 16 The Council contends that the biodiversity impact assessment on which Archidrome relies is inadequate when regard is had to the vegetation on the site.
- 17 The Council also contends that a portion of the site includes Cumberland Shale Plains Woodland, a Critically Endangered Ecological Community.
- 18 It is commonly held that the site is certified land but for that part identified on the relevant Native Vegetation Protection Map at s 6.4 of the Precincts SEPP. However, the relevant map also indicates there is no Existing native vegetation to which s 6.5 of the Precinct SEPP is directed.
- 19 In considering those matters contended for by the Council, the Court was assisted by the evidence of the following ecological experts:
- Dr Alison Hewitt on behalf of the Council
  - Mr Clayton Woods on behalf of Archidrome
- 20 The experts conferred in the preparation of a joint expert report filed 24 April 2025 (Exhibit 5), in which the experts agree that the contentions are capable of being resolved by the preparation of an amended Biodiversity Development Assessment Report (BDAR).
- 21 The experts also agree that an amended BDAR, prepared by Environmental Services & Services Australia dated 6 May 2025 (Exhibit A, Tab 16) is consistent with the requirements of such a report at s 6.12 of the *Biodiversity Conservation Act 2016* (BC Act).
- 22 Section 6.12 provides as follows:

### 6.12 Biodiversity development assessment report

For the purposes of the biodiversity offsets scheme, a biodiversity development assessment report is a report prepared by an accredited person in relation to proposed development or activity that would be authorised by a planning approval, or proposed clearing that would be authorised by a vegetation clearing approval, that—

- (a) assesses in accordance with the biodiversity assessment method the biodiversity values of the land subject to the proposed development, activity or clearing, and
- (b) assesses in accordance with that method the impact of proposed development, activity or clearing on the biodiversity values of that land, and
- (c) sets out the measures that the proponent of the proposed development, activity or clearing proposes to take to avoid or minimise the impact of the proposed development, activity or clearing, and
- (d) specifies in accordance with that method the number and class of biodiversity credits that are required to be retired to offset the residual impacts on biodiversity values of the actions to which the biodiversity offsets scheme applies.

- 23 A BDAR is to be considered by the consent authority, or the Court on appeal, when assessing the likely impact on biodiversity values, in accordance with s 7.13 of the BC Act in the following terms:

### 7.13 Development other than State significant development or infrastructure

(1) This section applies to an application for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* that is required under Division 2 to be accompanied by a biodiversity development assessment report, except—

- (a) an application for development consent for State significant development, or
- (b) an application for a complying development certificate.

(2) The consent authority, when determining in accordance with the *Environmental Planning and Assessment Act 1979* any such application, is to take into consideration under that Act the likely impact of the proposed development on biodiversity values as assessed in the biodiversity development assessment report that relates to the application. The consent authority may (but is not required to) further consider under that Act the likely impact of the proposed development on biodiversity values.

...

- 24 Section 7.16 of the BC Act requires the Court to refuse to grant consent to the development application if it is of the opinion that the development is likely to have “serious and irreversible impacts on biodiversity values”. Section 7.16 relevantly provides:

**7.16 Proposed development or activity that has serious and irreversible impacts on biodiversity values**

(1) In this section, serious and irreversible impacts on biodiversity values of proposed development or activity means serious and irreversible impacts on biodiversity values as determined under section 6.5 that would remain after the measures proposed to be taken to avoid or minimise the impact on biodiversity values of the proposed development or activity.

(2) The consent authority must refuse to grant consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values.

...

(4) If the determining authority is of the opinion that the proposed activity to which this Division applies is likely to have serious and irreversible impacts on biodiversity values, the determining authority—

- (a) is required to take those impacts into consideration, and
- (b) is required to determine whether there are any additional and appropriate measures that will minimise those impacts if the activity is to be carried out or approved.

- 25 Section 7.16(1) provides guidance as to how the determination of Serious and Irreversible Impacts on biodiversity values by reference to s 6.5 of the BC Act which is in the following terms:

**6.5 Serious and irreversible impacts on biodiversity values**

(1) The determination of serious and irreversible impacts on biodiversity values for the purposes of the biodiversity offsets scheme is to be made in accordance with principles prescribed by the regulations.

(2) The Environment Agency Head may provide guidance on the determination of any such serious and irreversible impacts, and for that purpose may publish, from time to time, criteria to assist in the application of those principles and lists of potential serious and irreversible impacts.

- 26 The regulations referred to in s 6.5(1) of the BC Act are found at cl 6.7 of the BC Regulation as follows:

**6.7 Principles applicable to determination of “serious and irreversible impacts on biodiversity values” (section 6.5(1))**

(1) This clause applies for the purposes of determining whether an impact on diversity values is a serious and irreversible impact for the purposes of the biodiversity offsets scheme.

(2) An impact is to be regarded as serious and irreversible if it is likely to contribute significantly to the risk of a threatened species or ecological community becoming extinct because—

(a) it will cause a further decline of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline, or

(b) it will further reduce the population size of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size, or

(c) it is an impact on the habitat of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution, or

(d) the impacted species or ecological community is unlikely to respond to measures to improve its habitat and vegetation integrity and therefore its members are not replaceable.

(3) For the purpose of this clause, a decline of a species or ecological community is a continuing or projected decline in—

(a) an index of abundance appropriate to the taxon, or

(b) the geographic distribution and habitat quality of the species or ecological community.

...

- 27 The site is land subject to bio-certification. As such, the proposed development is permitted without assessment of the impact of the development on the biodiversity values of the site, other than for a portion of the site in the southwest corner of the site. That said, an assessment of the certified land, prepared by Environmental Services & Services Australia dated 24 October 2024 concludes that no mapped biodiversity value areas are present within that part of the site so certified.
- 28 Plans illustrating an overlay of the proposed development (Exhibit D) on the site that is certified, and that which is not certified support the agreed position of the ecology experts that impacts on non-certified land are accounted for as required by the Biodiversity Offset Scheme.
- 29 The BDAR identifies 0.43 hectares of the site to be within land that is not certified, and that 0.23 hectares of this portion to be remnant native vegetation. As such, 0.11 hectares of vegetation is proposed to be cleared within non-certified land on the site.
- 30 The experts agree that floristic surveys undertaken on the site in accordance with the Biodiversity Assessment Method (BAM) indicate an understorey below the relevant threshold to achieve the condition required to be identified as a threatened ecological community under the *Environment Protection and Biodiversity Conservation Act 1999*.
- 31 The experts also agree that the proposed development is located on the site in a manner that avoids certain impacts of the development proposed by reasons outlined in the BDAR, primarily because of changes made to the siting and scope of the proposal adjoining the non-certified land that has the effect of avoiding 0.12 hectares of impact. Next, the proposal minimises the impact on the biodiversity values of the site by virtue of the revegetation proposed in the Vegetation Management Plan (Exhibit A, Tab 17),

and because a portion of that loss is envisaged in the relevant Indicative Layout Plan (Exhibit 1, folio 374) that locates a regional drainage basin in the area of vegetation now proposed to be removed.

32 Next, the experts also agree that the BDAR correctly identifies and assesses the risk of serious and irreversible impacts on Cumberland Shale Plains Woodland and the Swift Parrot, and appropriately accounts for species credits in a manner that offset the potential impact on Swift Parrot habitat.

33 In reaching agreement on the potential impact on the Swift Parrot habitat, the experts agree that while no sightings are recorded in the BioNet database, sightings are recorded in the area, and the Swift Parrot is known to feed on flowering eucalypts present on the site. Accordingly, the experts agree that adopting the precautionary principle, credits should be retired.

34 Finally, the experts agree that the Vegetated Riparian Zone width for a Strahler 1st Order hydroline such as that for the creek to the southwest of the site is 10m, which is beyond the boundary of the site. As such, there is no riparian vegetation present on the site, and so there are no aquatic species evident either.

35 I accept the consensus of the experts who were able to articulate the reasons for their agreement in oral evidence.

36 Relatedly, Chapter 2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity SEPP) applies to the site for that aspect of the development proposing the removal of vegetation in a non-rural area. The development application is accompanied by an Arboricultural Impact Assessment (Exhibit A, Tab 11) that identifies 113 trees proposed to be removed, and 80 trees to be retained.

37 Twenty nine of the trees proposed for removal are assessed to have high retention value, and another fifty are assessed to have medium retention value.

38 For reasons summarised above, the ecology experts agree that the removal of trees is offset by the proposed revegetation of the site in a manner set out in the VMP. The agreed conditions of consent (Exhibit 8) provide for protection of those trees proposed to be retained. I note s 2.6 of the Biodiversity SEPP allows for the removal of vegetation with consent, and in a manner the ecology experts agree will not have serious and irreversible impacts on biodiversity values.

39 I also accept the agreed position of the ecology experts in respect of the proposed disturbance of native vegetation in the SP2 land to the effect that there is no reasonable alternative available to the proposed disturbance given the strategic planning imperative for a drainage basin in this location, and where as little native vegetation as possible is proposed to be disturbed. On the basis of the conclusions of the Salinity Assessment prepared by Development Risk Management Pty Ltd dated 11 December 2024 (Exhibit A, Tab 9) I am satisfied that the disturbance of the native



vegetation in the SP2 will not increase salinity in that location, and I am also satisfied that the VMP sets out reinstatement of vegetation on the site and will effectively compensate by the revegetation proposed in the VMP.

40 I am satisfied of those matters at s 6.4(6) of the Precinct SEPP when regard is had to the objectives for development in the SP2 land, which would appear to anticipate a degree of clearing for the purposes of regional drainage, being a use that is expressed permitted by the terms of the Land Use Table, in accordance with s 6.4(7).

41 It is also relevant to record that as the proposal is for development within the Hawkesbury Nepean Catchment, Chapter 6 of the Biodiversity SEPP also applies to the proposal.

42 Section 6.6 of the Biodiversity SEPP precludes the grant of consent unless the Council, or the Court on appeal, is satisfied that the proposed development ensures that, firstly, the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and secondly, that the impact on water flow in a natural waterbody will be minimised.

43 Civil engineering plans prepared by Mepstead & Associates dated 9 May 2025 (Exhibit A, Tab 3), and a Stormwater Management Plan (Exhibit A, Tab 10) details the collection, storage and discharge parameters proposed. The Blacktown City Council Growth Centre Precincts Development Control Plan 2010 (Blacktown DCP) requires stormwater treatment to be undertaken on site.

44 Two onsite detention basins (OSD) are proposed, as is a rainwater tank to each of the proposed dwellings of 1,500L capacity. Filtration devices are proposed in pits and in the two OSD. The result of the MUSIC modelling, and of DRAINS modelling, depicted on Table 4, demonstrates a reduction in post development flow of stormwater when compared to pre-development flow, and a reduction in pollutants. While there is not a corresponding reduction in pollutants such as nitrogen or phosphorous, I accept the oral evidence of the experts that the means by which such reductions could be achieved, such as infiltration, are unsuited to the soils in the area and so is not supported by the Council. As such, I am satisfied the discharge into the nearby SP2 land will be beneficial, but for that portion of discharge that achieves a less than neutral level of discharge but about which I am satisfied when the terms of the provision “as close as possible” are given meaning.

45 For the reasons set out at [34], and on the basis of the spreader shown in the SP2 land, I have also considered those matters at s 6.7 of the Biodiversity SEPP and am satisfied, there will be no direct, indirect or cumulative impact on terrestrial, aquatic or migratory animals or on vegetation or aquatic reserves, no adverse impact in terms of erosion.

46 Neither will the proposed development have an adverse impact on recreational land uses or access to public land, in terms set out in s 6.9 of the Biodiversity SEPP. However, I note the pedestrian path proposed to adjoin the land zoned SP2 facilitates a degree of access along the edge of the site adjoining the riparian corridor.

## **The proposed road network**

- 47 The Council initially contended that the layout of roads within the site was unacceptable for two primary reasons:
- (1) Firstly, that a turning head at the western end of what is known as Road 1 and 4 are not wholly within the site.
  - (2) Secondly, that turning heads shown do not ensure the clear forward movement of Council's waste vehicles whenever conditions of consent do not provide an easement or restriction as to user to avoid obstructions within the swept paths of trucks in the future.
- 48 In respect of the first contention, I note the agreed conditions of consent now provide for a barrier such that the contention is resolved by Condition 5.25.1, and that the revised geometry and signage depicted in Exhibit E and Sheet 5 of the amended Civil Engineering plans resolve this issue.
- 49 In respect of the second contention, amended plans depicting a revised turning head also provide for No Stopping signage to prevent the parking of cars within the turning circle of waste vehicles, and the placement of temporary kerbs and a temporary traffic island that maintains vehicle access to proposed Lots 113 and 114.
- 50 The parties advise the Court those amendments above, and agreed conditions of consent resolve the issue initially pressed by Council.

## **Internal amenity**

- 51 The Council initially contended that the placement and orientation of windows within the proposed dwellings failed to adequately provide for visual and acoustic privacy of occupants.
- 52 In the joint expert report prepared by town planning experts, Mr Brendon Clendenning and Mr Tarun Chadha for Archidrome and Mr Stephen McMahon for the Council (Exhibit 4), amendments to the window openings are agreed, and reflected in agreed conditions of consent at Condition 6.10.5.

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

- 53 I have considered whether the land is contaminated in accordance with s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (Hazards SEPP).
- 54 A combined Stage 1 and Stage 2 Detailed Site Investigation Report, prepared by Development Risk Management dated 7 November 2023 (the DSI) (Exhibit A, Tab 7) concludes the site is likely to be contaminated including, but not limited to, asbestos within soil, a concentration of zinc and unidentified risks associated with existing structures that are proposed for demolition.
- 55 A Remedial Action Plan, recommended as an outcome of the DSI, has been prepared by the same author dated 6 December 2023 (the RAP) (Exhibit A, Tab 8). The RAP proposes further assessment of the site following demolition of the existing structures

and validation of works undertaken as a result, after which the RAP concludes the site will be made suitable for the proposed residential use.

- 56 The proposed conditions of consent incorporate the recommendations contained in the DSI and RAP. As such, I am satisfied the site can be made suitable, following remediation, for the purpose for which development is proposed to be carried out.

### **Water Management Act 2000**

- 57 The creek to the southwest of the site is agreed between the ecology experts to be a first order watercourse, giving rise to land defined as Waterfront land in the dictionary of the *Water Management Act 2000* (Water Act). However, when the width of the riparian corridor is properly understood, Dr Hewitt and Mr Woods agree, notwithstanding the definition at [34], that Waterfront land includes the bed of rivers, lakes, or estuaries, as well as land on each side within 40m of a riverbank. Under the Water Management Act 2000, any hydroline with a defined channel with bed and banks may be considered a river.
- 58 While I am not convinced the creek demonstrates characteristics consistent with the definition of a river to which a 40m corridor applies, the experts agree that the site comprises waterfront land and a Controlled Activity Approval pursuant to s 91 of the Water Act is required for the proposed development.
- 59 I also note the parties are agreed provision is made for such approval by the terms of condition 2.7.1 of the agreed conditions.

### **State Environmental Planning Policy (Sustainable Buildings) 2022**

- 60 The application is accompanied by a BASIX certificate for 126 single dwelling houses (Cert No. 1731808M\_04 prepared by Eco-Mantra Design dated 7 May 2025) in accordance with State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP).
- 61 An embodied energy report is a part of the BASIX Certificate, such that the Court can be satisfied that the embodied emissions attributable to the proposed development have been quantified in accordance with s 2.1(5) of the Sustainable Buildings SEPP.

## Other jurisdictional preconditions to the grant of consent

- 62 The development application was lodged with written consent of the owners of the land at the time of lodgement (Exhibit B).
- 63 Subdivision is permitted with consent according to the terms of s 2.6 of the Precincts SEPP.
- 64 The minimum lot size resulting from subdivision is dealt with by numerous provisions under Part 4 of the Precincts SEPP.
- (1) The minimum lot size resulting from subdivision in the R3 zone is set out in s 4.1AB of the Precincts SEPP. As the relevant map at s 4.1AB(3) designates a residential density of 25 dwellings per hectare, the minimum lot size for a dwelling is 300m<sup>2</sup>.
  - (2) That said, s 4.1AD provides that consent may be granted to the subdivision resulting in the creation of a lot that has an area of less than 300m<sup>2</sup> (but not less than 225m<sup>2</sup>) if the consent authority is satisfied that the lot will contain a sufficient building envelope to enable the erection of a dwelling house on the lot under section 4.1AE or 4.1AF.
  - (3) Section 4.1AE relevantly applies to a lot in the R3 zone with an area of less than 300m<sup>2</sup>, and where the dwelling density is not less than 25 dwellings per hectare. Notwithstanding the minimum lot size at s 4.1AB, development consent may be granted for the erection of a dwelling on a lot if, relevantly (s 4.1AE(2) of the Precincts SEPP):
 

...

    - (b) the development application is a single development application for development consisting of both of the following—
      - (i) the subdivision of land into 2 or more lots,
      - (ii) the erection of the dwelling house on one of the lots resulting from the subdivision.
  - (4) Finally, s 4.1AG also contains exceptions to minimum lot sizes permitted in the R3 zone where the area of the lot is not less than 125m<sup>2</sup>, whenever the applicable residential density is, relevantly, designated to be 25.
- 65 The lots resulting from subdivision are nominated with an area ranging from 145.2m<sup>2</sup> to 349.8m<sup>2</sup>, with a residential density of 34 dwellings per hectare which complies with the provision at s 4.1B of the Precinct SEPP.
- 66 A height of buildings standard of 16m applies to the site, according to the relevant map at s 4.3(2) of the Precinct SEPP, with which the proposal complies.
- 67 A floor space ratio of 1.75:1 applies to the site, according to the relevant map at s 4.4(2) of the Precinct SEPP, with which the proposal complies.
- 68 Section 6.1 of the Precincts SEPP precludes the grant of consent unless the Court on appeal is satisfied that public infrastructure of a kind at subcl(2) is available or that adequate arrangements have been made to make that infrastructure available when

required.

- 69 The Council does not contend that the provision of public utilities is other than likely to be made available when required, and the parties agree that conditions of consent support the provision of public utility infrastructure of a kind at s 6.1(2) of the Precinct SEPP, by the terms at condition 5.11 and 6.4.1 of the agreed conditions.

### Public submissions

- 70 Consistent with the Council's summary of advertising and notification of the development application in the Statement of Facts and Contentions, one submission is contained in the Council's bundle of documents (Exhibit 1, Tab 18).
- 71 The submission is from a resident of Advance Street. It states the author is not opposed to the proposal, subject to improvements being made to the intersection of Railway Terrace and Advance Street in the interests of road safety and pedestrian welfare.
- 72 I have considered the matters raised in the public submission. I do not understand the submission to seek the refusal of the development application, and I consider the matters raised to be the proper preserve of Council's strategic planning for the area rather than a particular burden to be placed on any one development proposal.

### Conclusion

- 73 Notwithstanding the notification period cited at [5] is ongoing at the time of hearing, it is the task of the Court to grant either absolutely or on such terms and conditions as the Court thinks just, all remedies to which any of the parties appears to be entitled in respect of a legal or equitable claim properly brought forward by that party in the matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of proceedings concerning any of those matters may be avoided: s 22, *Land and Environment Court Act 1979* (the LEC Act).
- 74 While I accept it is open to the Court to make directions in respect of notification of an amended development application, it is my understanding this is not obligatory.
- 75 As I have determined the development application, as amended, is deserving of the grant of consent in accordance with s 4.16 of the EPA Act and subject to conditions of consent, it is not necessary to await the conclusion of the notification period.
- 76 I note the Council would appear to have exercised a degree of discretion in taking its decision to notify for a period exceeding 28 days, when the terms of the Council's Community engagement strategy and Community participation plan 2024-2028 are

read (p 51). The timing of this decision appears to have been taken in the knowledge that the notification period would close after the date for hearing, which was set down by the Court on 3 December 2024.

77 In arriving at this determination, the Court notes:

- (1) Blacktown City Council as the relevant consent authority, has agreed under section 38(1) of the *Environmental Planning and Assessment Regulation 2021* to the Applicant amending Development Application DA 24-00024, in accordance with the following amended plans and other documents:
  - (a) Amended civil engineering plans (Exhibit A, Tab 3)
  - (b) Amended Stormwater Management Plan (Exhibit A, Tab 10)
  - (c) Amended Arboricultural Impact Assessment (Exhibit A, Tab 11)
  - (d) Amended BDAR (Exhibit A, Tab 16)
  - (e) Amended VMP (Exhibit A, Tab 17)
  - (f) Amended Turning Head plans (Exhibit E)

## Orders

78 The Court orders that:

- (1) The Applicant is granted leave to rely upon amended plans and other documents, subject to paying the costs of the Respondent thrown away as agreed or assessed in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979*.
- (2) The appeal is upheld.
- (3) Development application No. DA 24-00024 for staged Development to create 126 residential lots, involving a mix of Torrens title lots and community title lots, as well as residue lots, a community lot and new roads at Lot 100 DP 1233054 & Lot 10 DP 31540 H/N 30-32 and 52 Advance Road, Schofields is determined by the grant of consent, subject to conditions at Annexure A.
- (4) All exhibits are returned except for Exhibits A, B, C and 8.

**T Horton**

**Commissioner of the Court**

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[Annexure A \(771 KB, .pdf\)](#)

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Decision last updated: 20 May 2025