



Land and Environment Court New South Wales

Medium Neutral Citation:

**Fabcot Pty Ltd v Blacktown City Council [2026]
NSWLEC 1106**

Hearing dates:

Conciliation conference on 2 March 2026

Date of orders:

05 March 2026

Decision date:

05 March 2026

Jurisdiction:

Class 1

Before:

O'Neill C

Decision:

The orders of the Court are:

- (1) The Applicant is to pay the Respondent's reasonable costs 'thrown away' in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW) as a result of the amendment to the development application as agreed or assessed.
- (2) The appeal is upheld.
- (3) Development Application No. 24-01305 for a commercial development at 156-162 Guntawong Rd, Rouse Hill (Lots 51 DP 30186 and Lot 101 DP 1282613), is determined by the grant of consent, subject to the conditions of consent at Annexure A.

Catchwords:

DEVELOPMENT APPLICATION — commercial development — conciliation conference — agreement between the parties — orders

Legislation Cited:

Biodiversity Conservation Act 2016 (NSW), Pts 7, 8, ss 7.6, 8.4

Environmental Planning and Assessment Act 1979 (NSW), ss 4.16, 4.46, 8.7, 8.15, Pt 4

Land and Environment Court Act 1979 (NSW), s 34

Water Management Act 2000 (NSW), Pt 3, Ch 3

Environmental Planning and Assessment Regulation 2021 (NSW), s 38

State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6, ss 6.6, 6.7, 6.8, 6.21

State Environmental Planning Policy (Precincts – Central River City) 2021, s 3.26, Appendix 11, ss 2.6, 4.5, 4.6, 6.1, 6.9

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

State Environmental Planning Policy (Sustainable Buildings) 2022, ss 3.1, 3.2

State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.48, 2.122

Cases Cited:

Cumming v Cumberland Council (No 2) [2021] NSWLEC 117

Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90

Initial Action Pty Ltd v Woollahra Municipal Council (2018) 236 LGERA 256; [2018] NSWLEC 118

McMillan v Taylor (2023) 111 NSWLR 634; [2023] NSWCA 183

Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827

Category:

Principal judgment

Parties:

Fabcot Pty Ltd (Applicant)

Blacktown City Council (Respondent)

Representation:

Counsel:

I Hemmings SC (Applicant)

A Stafford (Respondent)

Solicitors:

Mills Oakley (Applicant)

Norton Rose Fullbright (Respondent)

File Number(s):

25/181531

Publication restriction:

Nil

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) against the deemed refusal of Development Application No. 24-01305 for a commercial development (the proposal), at 156-162 Guntawong Rd, Rouse Hill (Lots 51 DP 30186 and Lot 101 DP 1282613) (the site), by Blacktown City Council (the Council). The proposal includes de-watering of an existing dam, demolishing existing structures, removing vegetation, excavation, construction of a commercial and retail development,

construction and fit out of a Woolworths Supermarket, hours of operation for the commercial/retail uses, erection of signage, landscaping, and public domain works such as construction of new roads and footpaths.

- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (NSW) (LEC Act) between the parties, which was held on 2 March 2026. 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.
- 3 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 preconditions to the exercise of power to grant development consent for the proposal.

Amended application

- 4 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 (NSW). The plans and documents comprising the amended application are the following:

DOCUMENT	DATE
Owners Consent letter - 166 Guntawong Road	8 December 2025
Owners Consent letter - 150 Guntawong Road	24 February 2026
Loading dock truck turn paths and turning path sections prepared by Henry & Hymas • 240596_DA_EX760 Loading Dock turning path plan (rev 2) • 240596_DA_EX761 Loading Dock turning path sections (rev 1)	24 February 2026
Water Quality Design Statement prepared by Henry and Hymas	4 February 2026

Amended Civil Engineering plans prepared by Henry & Hymas • 240596_DA_C252 – WSUD Stormwater Catchment Plan (Rev 10) • 240596_DA_EX202 - Road 2 Longitudinal Section drawing (Revision 6)	4 February 2026
Amended MUSIC Model prepared by Henry and Hymas	2 February 2026
Amended DRAINS Model prepared by Henry and Hymas	2 February 2026

Amended Landscape DA Report (Rev D) prepared by Ground Ink Landscape Architects • 1.1 Project Information • 2.1 Suburb Character Analysis • 2.2 Topography & Solar Access • 2.3 Existing Tree Management • 2.4 Development Precinct & Characteristics • 3.1 Material Board • 3.2 Landscape Masterplan • 3.3 Tallawong Road Piazza Area • 3.4 Tallawong Road Piazza Area Sections • 3.5 Northern Site Boundary & Commercial Balcony Sections • 3.6 Tree Canopy • 3.7 Deep Soil & Soil Volume • 4.1 Tree Planting Plan • 4.2 Street Tree Planting Plan • 4.3 Planting Palette - Shrubs & Groundcovers • 4.4 Planting Schedule • 4.5 Planting Plan 1 • 4.6 Planting Plan 2 • 4.7 Planting Plan 3 • 4.8 Planting Plan 4 • 4.9 Landscape Specifications	24 February 2026
---	-------------------------

Pre-conditions to the grant of consent

- 5 The development application constitutes integrated development under s 4.46 of the EPA Act as the applicant nominated the approval under Pt 3 of Ch 3 of the *Water Management Act 2000* (NSW) (WM Act) as integrated development for the purpose of the application due to the existing dams and watercourses on-site. The Department of

Planning and Environment issued correspondence on 8 January 2025 confirming no activity approval is required to carry out the proposed works and the proposed works are not located on waterfront land as defined by the WM Act.

- 6 The parties advise that the site, is mapped as Biodiversity Certified land under Pt 8 of the *Biodiversity Conservation Act 2016* (NSW) (the BC Act), and:
- (1) Pursuant to s 8.4(2) and (3) of the BC Act, no assessment of the likely impact of the development on biodiversity on the land the subject of the Order (“the Certified Land”) is required for the purposes of Pt 4 of the EPA Act;
 - (2) Pursuant to s 7.6 of the BC Act, Pt 7 of the BC Act dealing with biodiversity assessment, does not apply to the site; and as such
 - (3) No further assessment is required of the impacts to biodiversity values.
- 7 I accept the Council’s assessment that the site is suitable for the development, and that the Detailed Site Investigation (DSI) prepared by Geotesta dated 30 July 2024 addresses the matters under s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, and I accept the parties agreed position that the site is suitable for the proposed commercial development subject to the recommendations of the DSI, which have been incorporated into the Conditions of Consent at Annexure A.
- 8 As the development application involves the erection of a new building with an estimated cost of \$5 million or more, s 3.1(1)(a) of State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP) applies to the development application. Pursuant to s 3.2 of the Sustainable Buildings SEPP, the consent authority must consider the matters in s 3.2. The parties submit, and I accept, that that the relevant matters have been considered and that the development application achieves the aims of s 3.2(1) and that the embodied emissions have been quantified in documentation submitted with the application and sustainability initiatives have been proposed, thereby satisfying 3.2(2).
- 9 Section 2.48 State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP) relates to development applications which are likely to affect any electricity transmission or distribution network. An existing transmission line easement traverses through the site. The development application was referred to TransGrid. Correspondence was received from TransGrid dated 10 September 2024 raising no concerns with the proposal subject to compliance with conditions attached to their correspondence. Those requirements have been adopted in the conditions of consent.
- 10 Section 2.122(4) of the Transport and Infrastructure SEPP provides that, before determining a development application for traffic-generating development, the consent authority must give notice of the application to Transport for NSW (TfNSW) and take into consideration any submissions made by TfNSW and the accessibility of the site

concerned. I am satisfied with TfNSW's correspondence dated 13 December 2024 advising that the proposal is unlikely to affect the classified road network and aligns with the DCP.

- 11 The site is located within the Hawkesbury Nepean Catchment in accordance with the maps in State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BC). The provisions of Ch 6 of SEPP BC include jurisdictional prerequisites to be satisfied that relate to the water catchment. In particular those contained in ss 6.6(2), 6.7 (2), 6.8 (2), 6.21(3) relating to water quality and quantity; aquatic ecology; flooding; and stormwater quality. With the assistance of the expert evidence filed in the proceedings (Drainage Joint Expert Report), Updated Water Quality Statement prepared by Henry and Hymas dated 4 February 2026, and the Updated Biodiversity Certification Letter prepared by Eco Logical dated 10 July 2025, and with the agreement of the parties, I accept, that the Court can be satisfied these preconditions are met.
- 12 In relation to required considerations at s 3.26 Development on flood prone and major creeks land—additional heads of consideration, in the State Environmental Planning Policy (Precincts – Central River City) 2021 (the Central River City SEPP) the development application is accompanied by stormwater engineering plans and a flood certificate. With the assistance of the agreed evidence of the drainage experts, I accept the agreed position of the parties that the development will have no adverse impacts on flood behaviour.
- 13 The site is zoned part B2 Local Centre, part B4 Mixed Use and part R3 Medium Density Housing under Appendix 11 Blacktown Growth Centre Precinct Plan of State Environmental Planning Policy (Precincts – Central River City) 2021 (Blacktown Precinct Plan). The proposed commercial development is sited within the B2 Local Centre Zone, and public domain works are proposed in the R3 Medium Density Residential zone. The objectives of the zones, to which regard must be had, are:

Zone B2 Local Centre

1 Objectives of zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.

Zone B4 Mixed Use

1 Objectives of zone

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To provide for residential development that contributes to the vitality of the local centre.
- To ensure that residential development adjacent to the local centre does not detract from the primary function of the centre, being to provide for retail, business, entertainment and community uses.

- To facilitate active retail, commercial, entertainment and community facility uses at ground level of mixed use developments.
- To provide for residential development that contributes to the vitality of the local centre.
- To ensure that residential development within the local centre does not detract from the primary function of the centre, being to provide for retail, business, entertainment and community uses.
- To encourage development that will contribute to the economic growth of, and creation of employment opportunities within, the City of Blacktown.

Zone R3 Medium Density Residential

1 Objectives of zone

- 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, religious and other activities where compatible with the amenity of a medium density residential environment.

- 14 The commercial development will be constructed on the part of the site zoned B2 Local Centre. Development for the purposes of offices and retail premises are permissible uses with consent in the B2 zone.
- 15 Subdivision is permissible with consent under s 2.6 of the Blacktown Precinct Plan.
- 16 Pursuant to s 6.1 'Public utility infrastructure', I am satisfied from the expert evidence and the agreed position of the parties that the site will have access to water, electricity, disposal and management of sewage, stormwater drainage and suitable vehicular access prior to occupation, and that conditions of consent have been imposed in satisfaction of this.
- 17 Pursuant to s 6.9 'Active street frontages', the application plans (reflected in the conditions of consent) provide active street frontages to both Guntawong Road and Tallawong Road.
- 18 The application includes written requests under s 4.6 of the Blacktown Precinct Plan to vary the height of buildings and the floor space ratio (FSR) development standards for the site.

Contravention of the height of buildings development standard

- 19 The proposal has a maximum height of 19.2 m. The maximum height of buildings development standards for the site is 12 m in the R3 zoned portion of the site; and 14 m in the B2 and B4 zoned portion of the site. The proposed commercial development height variation is located within the B2 Local Centre zone.
- 20 The Applicant provided a written request seeking to justify the contravention of the height of buildings development standard, prepared by Planning Ingenuity and dated 14 November 2025.
- 21 Section 4.6(3) of the Blacktown Precinct Plan establishes preconditions that must be satisfied before a consent authority or the Court exercising the functions of a consent authority can exercise the power to grant development consent (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118 at [13] (*Initial Action*)). The consent authority must form two positive opinions of satisfaction under s 4.6(3). The consent authority, or the Court on appeal, must be satisfied that, (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

The applicant's written request to contravene the height of buildings development standard

- 22 The Applicant bears the onus to demonstrate that the matters in s 4.6(3) of the Blacktown Precinct Plan have been adequately addressed in order to enable the Court, exercising the functions of the consent authority, to form the requisite opinion of satisfaction.
- 23 The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [42]-[51] (*Wehbe*) and repeated in *Initial Action* [17]-[21]:
- (1) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
 - (2) the underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
 - (3) the underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
 - (4) the development standard has been abandoned by the council; and
 - (5) the zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).
- 24 The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).
- 25 The Applicant's written request justifies the contravention of the height of buildings development standard on the bases that compliance is unreasonable or unnecessary because the extent of non-compliance is limited to the western corner of the site and pertains to roof form and building services, and that the proposal is compatible with the surrounding built form, streetscape, surrounding development and the desired future character.
- 26 The grounds relied on by the Applicant in the written request under s 4.6 must be "environmental planning grounds" by their nature, and environmental planning grounds is a phrase of wide generality (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]) as they refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects of the Act (*Initial Action* at [23]). The environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (*Initial Action* at [24] and *Cumming v Cumberland Council* (No 2) [2021] NSWLEC 117 at [78]). Therefore, the

environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

- 27 I am satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by s 4.6(3). The Applicant's written request defends the exceedance of the building height development standard as a justified response to topography of the land. The proposal is predominantly compliant with the building development standard, and it is only where the topography falls most steeply that the variation is present. The proposed roof form, where non-compliant, is integrated into the overall character of the development to ensure it will not appear as visually obtrusive or jarring when compared to the remainder of the development. I am satisfied that justifying the aspect of the development that contravenes the development standard can be properly described as an environmental planning ground within the meaning identified by his Honour in *Initial Action* at [23].

Contravention of the Floor Space Ratio development standard

- 28 The proposal has a FSR of 0.678:1. A maximum FSR development standard of 0.4:1 applies to the B2 and B4 zoned portion of the site. The proposed commercial building is located on the B2 zoned portion of the site.
- 29 The Applicant provided a written request seeking to justify the contravention of the FSR development standard, prepared by Planning Ingenuity and dated 14 November 2025.

The Applicant's written request to contravene the FSR development standard

- 30 The Applicant's written request justifies the contravention of the FSR development standard on the bases that compliance is unreasonable or unnecessary because the increase in density is proportionate to the scale of the site, will not have any adverse environmental, amenity or traffic impacts and will not result a development which is unreasonable or unexpected within the B2 Local Centre zone.
- 31 I am satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by s 4.6(3). The Applicant's written request defends the exceedance of the FSR development standard as a justified response to the desired future character of the Riverstone East Village and a justified response to the characteristics of the overall visual and physical catchment of the site. Whilst the site area, as zoned B2 Local Centre, can only be relied upon for calculating floor space per s 4.5 Calculation of floor space ratio and site area of the Blacktown Precinct Plan, the allotment comprises of three differing zones, and includes delivery of a significant quantum of public domain area (such as roadways and pathways), which are not included as site area in the B2 zoned land floorspace calculation. When the proposed FSR is considered against the B2 zone land and the broader visual and physical catchment and characteristics of the site, the bulk and scale of the development is

sympathetic to and is what is reasonably anticipated within the B2 Local Centre zone and presents to the public domain as a predominately part one, part two storey, built form.

- 32 I am satisfied that justifying the aspect of the development that contravenes the development standard can be properly described as an environmental planning ground within the meaning identified by his Honour in *Initial Action* at [23].
- 33 I am satisfied, based on the justifications in the written request, that the proposal is consistent with the zone objectives and the objectives of the standard.

Conclusion

- 34 I have considered the submissions made by the Council in the Jurisdictional Statement filed with the Court on 2 March 2025 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

- 35 The orders of the Court are:
- (1) The Applicant is to pay the Respondent's reasonable costs 'thrown away' in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW) as a result of the amendment to the development application as agreed or assessed.
 - (2) The appeal is upheld.
 - (3) Development Application No. 24-01305, for a commercial development at 156-162 Guntawong Rd, Rouse Hill (Lots 51 DP 30186 and Lot 101 DP 1282613), is determined by the grant of consent, subject to the conditions of consent at Annexure A.

S O'Neill

Commissioner of the Court

[Annexure A \(530 KB, pdf\)](#)

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated: 05 March 2026