



## Land and Environment Court New South Wales

<b>Medium Neutral Citation:</b>	<b>MMDA Pty Limited v Canterbury-Bankstown Council [2026] NSWLEC 1029</b>
<b>Hearing dates:</b>	Conciliation conference 17 November 2025
<b>Date of orders:</b>	27 January 2026
<b>Decision date:</b>	27 January 2026
<b>Jurisdiction:</b>	Class 1
<b>Before:</b>	Miller AC
<b>Decision:</b>	<p>The Court orders:</p> <ol style="list-style-type: none"><li>(1) The Applicant is to pay respondent costs thrown away pursuant to s 8.15(3) of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) in the agreed sum of \$10,000.00, payable within 28 days of receiving a tax invoice for payment.</li><li>(2) The appeal is upheld.</li><li>(3) Development Application No. DA-289/2025, as amended, for the demolition of existing structures, associated site remediation works including removal of underground petroleum storage tanks, vegetation removal, and construction of a seven (7) storey mixed use building comprising four (4) retail premises on the ground floor and 58 residential apartments above, including 12 affordable housing units over two (2) levels of basement parking and landscaping, stormwater and associated site works on land legally described as Lot 21 in DP624967 and known as 190 Waterloo Road, Greenacre NSW 2190, is determined by the grant of development consent subject to the conditions at Annexure A.</li></ol>
<b>Catchwords:</b>	DEVELOPMENT APPLICATION — mixed use development including affordable housing and basement parking — conciliation conference — agreement between the parties — orders

**Legislation Cited:**

*Environmental Planning and Assessment Act 1979* (NSW),  
ss 4.15, 4.16, 4.46, 8.7, 8.15

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

*Water Management Act 2000* (NSW), s 90

Canterbury-Bankstown Local Environmental Plan 2023, cl  
2.3, 2.7, 4.3, 4.4, 6.2, 6.3, 6.9, 6.10, 6.15, 6.21

Environmental Planning and Assessment Regulation 2021  
(NSW), ss 23, 38, Sch 7

State Environmental Planning Policy (Biodiversity and  
Conservation) 2021, Ch 2, s 2.6

State Environmental Planning Policy (Housing) 2021, Chs  
2, 4, 9, ss 16, 18, 19, 20, 21, 145, 147, Pt 2

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

State Environmental Planning Policy (Sustainable  
Buildings) 2022, Sch 1

State Environmental Planning Policy (Transport and  
Infrastructure) 2021, ss 2.48, 2.119, 2.122

**Texts Cited:**

NSW Department of Planning and Environment, Apartment  
Design Guide (July 2015)

**Category:**

Principal judgment

**Parties:**

MMDA Pty Limited (Applicant)

Canterbury Bankstown Council (Respondent)

**Representation:**

Counsel

E Fleming (Solicitor) (Applicant)

L Mountford (Solicitor) (Respondent)

Solicitors:

Macpherson Kelley (Applicant)

Canterbury Bankstown Council (Respondent)

**File Number(s):**

2025/330964

**Publication restriction:**

Nil

---

## JUDGMENT

### Introduction

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) being an appeal against the refusal of Development Application DA-289/2025 for demolition of existing on site structures and construction of a seven storey mixed use building comprising 4 retail premises and 60

residential apartments (of which 11 are affordable housing) with two levels of basement parking in relation to land known as 190 Waterloo Road, Greenacre (Lot 21 DP 624967) (site).

- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (NSW) (LEC Act) between the parties, which was held on 17 November 2025. I presided over the conciliation conference.

### **Outcome**

- 3 At the conciliation conference, an agreement under s 34(3) of the LEC Act was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. The agreement was recorded in a signed agreement filed on 30 December 2025.
- 4 The agreement follows the Council's approval of an application for an amendment to the development application pursuant to s 38(1) of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Reg). Amendments to the plans were made and additional documentation submitted to address the contentions identified by the Respondent.
- 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 (Agreed 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.

### **Jurisdictional matters**

- 6 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.

#### *Water Management Act 2000*

- 7 The application is integrated development under s 4.46 of the EPA Act as a water supply works approval is required from WaterNSW under s 90(2) of the *Water Management Act 2000* (NSW). WaterNSW issued its General Terms of Approval (Reference No. IDAS1161020) on 3 June 2025, and these have been incorporated in the conditions of consent.

### *Canterbury-Bankstown Local Environmental Plan 2023*

- 8 The site is zoned E1 'Local Centre' in accordance with the Canterbury-Bankstown Local Environmental Plan 2023 (CBLEP). The proposed development including commercial premises and shop-top housing is permissible with consent in the zone and the parties agree that the proposal is consistent with the zone objectives in accordance with cl 2.3.
- 9 In accordance with cl 2.7 of CBLEP consent is sought for the demolition of the existing building on site.
- 10 Clause 4.3 of CBLEP prescribes a maximum height of 20m for the subject site. The proposal however includes affordable housing (comprising greater than 15% of the total GFA) and therefore in accordance with s 18 of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) is eligible for additional height up to a maximum of an additional 30%. The maximum height applicable to the site is therefore 26m and the proposal is compliant with this having a maximum height of 25.35m to the highest point on the lift overrun.
- 11 Clause 4.4 floor space ratio (FSR) of CBLEP also applies to the site and provides that the maximum applicable FSR is 2.5:1. However the proposal includes affordable housing (comprising greater than 15% of the total GFA) and therefore in accordance with s 16 of the Housing SEPP is eligible for additional GFA up to a maximum of an additional 30%. The maximum FSR applicable to the site is therefore 3.25:1 and the proposal is compliant having an FSR of 3.249:1 (5,790.77m<sup>2</sup> GFA / 1782m<sup>2</sup> site area).
- 12 Clause 6.2 earthworks of CBLEP 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 Stormwater Plans (Australiawide Consulting Services, 3 December 2025), Detailed Site Investigation (EI Australia, 24 November 2025), Remedial Action Plan (EI Australia, 14 November 2025), Geotechnical Investigation Report (16 December 2024), Groundwater Seepage Analysis (23 July 2025) and having regard to the recommended conditions of consent.
- 13 I am further satisfied that the proposal complies with cl 6.3 of CBLEP in respect of stormwater management and water sensitive urban design having regard to the proposed plans, the Stormwater Plans (Australiawide Consulting Services, 3 December 2025), Landscape Plans (Concept Landscape Architects, 15 December 2025) and recommended conditions of consent.
- 14 On the basis of the existing use of the site, the survey plan (14 March 2025), Stormwater Plans (Australiawide Consulting Services, 3 December 2025), Architectural Plans (Ghazi Al Ali Architect, 5 December 2025), Traffic Impact Assessment (Genesis

Traffic, 15 December 2025) and Waste Management Plan (Ghazi Al Ali Architect, 4 November 2025), I am satisfied that essential services are available to the proposed development as required by cl 6.9 of CBLEP.

- 15 The site is mapped on the active street frontage map to which cl 6.10 of CBLEP applies. On the basis of the amended plans, I am satisfied that the proposal provides an active frontage to Waterloo Road as required.
- 16 Clause 6.15 Design excellence of CBLEP applies to buildings with a height of at least 4 storeys. Based on the parties' agreement and updated Architectural Plans (Ghazi Al Ali Architect, 5 December 2025) and Landscape Plans (Conzept Landscape Architects, 15 December 2025) I am satisfied that the relevant matters have been considered as required.
- 17 Further cl 6.21 (Restrictions on development in Zones E1 and E3) of CBLEP also applies to the site and requires that the ground floor of a development not be used for residential accommodation. The proposal complies with this provision.

*State Environmental Planning Policy (Housing) 2021*

- 18 Chapter 2, Pt 2 of the Housing SEPP applies to the proposal as it includes affordable housing. As noted above the proposal complies with s 16 in respect of additional floor space ratio and s 18 in respect of additional building height.
- 19 Section 19 prescribes non-discretionary development standards for affordable housing. I accept that the proposal complies with all relevant standards as advised by the parties.
- 20 At s 20 of the Housing SEPP, consent for affordable housing cannot be granted unless the consent authority has considered whether the design of the residential development is compatible with the desirable elements of the local area or for precincts undergoing transition – the desired future character of the precinct. Based on the Agreed Statement, the architectural plan and the Statement of Environmental Effects (Think Planners, March 2025), I am satisfied that the proposed development is compatible with the desired future character of the precinct.
- 21 Further, at s 21 the Housing SEPP provides that the consent authority must not grant consent to development for the purposes of affordable housing unless satisfied that the development will include the approved affordable component and that the affordable

housing component will be managed by a registered community housing provider. A condition of consent (Condition 152) to this effect has been included and I am therefore so satisfied.

22 Chapter 4 of the Housing SEPP applies to residential apartment development including shop-top housing and applies to the proposed development. Section 145 requires referral to a design review panel. The parties advise in the Agreed Statement that the matter was referred to the design review panel in accordance with this requirement.

23 Further having regard to the amended plans, the parties agreement, and the design verification statement (Ghazi Al Ali Architects, 3 December 2025) I am satisfied that, as required by s 147, consideration has been given to the design principles for residential apartment development set out in Sch 9, the Apartment Design Guide and the advice of the Design Review Panel.

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

24 The provisions of s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) apply to the site. A Remediation Action Plan (EI Australia, 14 November 2025) and Detailed Site Investigation (EI Australia, 24 November 2025) has been prepared for the site. 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. Relevant conditions of consent have also been included.

#### *State Environmental Planning Policy (Transport and Infrastructure) 2021*

25 Section 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP) applies to the proposed development as it is within proximity of electricity infrastructure. I note that Ausgrid has been notified of the proposal as required and has advised that it does not object to the proposal subject to recommended conditions of consent. Accordingly, I am satisfied in respect of s 2.48.

26 Section 2.119 also applies to the development as it has frontage to a classified road (Boronia Road) and provides that consent must not be granted to such development unless the consent authority is satisfied of the matters listed at subs (2) including matters in relation to access, safety and efficiency and the sensitivity of the proposed use to traffic noise and vehicle emissions. The proposal has access off Waterloo Road which is not a classified road. Based on the parties' agreement, the amended plans, the Traffic Impact Assessment prepared by Genesis Traffic (15 December 2025) and the Acoustic Report (Acouras Consultancy, 2 June 2025) I am satisfied of the relevant matters.

27 The proposal is also 'traffic-generating development' in accordance with the TI SEPP and therefore s 2.122 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 provided its comments on 24 April 2025. The parties advise and I accept that TfNSW's comments have been addressed in the amended proposal.

#### *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

28 Consideration has been given to Ch 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 in respect of the provisions relating to vegetation in non-rural areas. As consent is sought the requirements of s 2.6 are satisfied. Further, the parties agree that the proposed tree removal is acceptable subject to the landscape planting proposed.

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

29 The proposal is BASIX development in accordance with Sch 7 of the EPA Reg and accordingly the standards set out in Sch 1 of State Environmental Planning Policy (Sustainable Buildings) 2022 (SB SEPP) apply. An updated BASIX Certificate has been submitted for the amended proposal (Certificate No. 1827915M) prepared by Zhang Wei dated 21 December 2025. The certificate also includes quantification of the embodied emissions of the proposal as required by s 2.1(5) of the SB SEPP.

#### *Other matters*

30 The development application is made with the consent of the owners of the site in accordance with s 23 of the EPA Reg.

31 The Respondent notified the original development application between 2 and 29 April 2025. Nine (9) submissions (one by way of support) were received in response to the notification. In reaching agreement, the parties have advised that consideration has been given to the matters raised in submissions in the amended proposal and that renotification is not warranted.

#### **Conclusion**

32 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)).

33 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

34 The Court orders:

- (1) The Applicant is to pay respondent costs thrown away pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW) in the agreed sum of \$10,000.00, payable within 28 days of receiving a tax invoice for payment.
- (2) The appeal is upheld.
- (3) Development Application No. DA-289/2025, as amended, for the demolition of existing structures, associated site remediation works including removal of underground petroleum storage tanks, vegetation removal, and construction of a seven (7) storey mixed use building comprising four (4) retail premises on the ground floor and 58 residential apartments above, including 12 affordable housing units over two (2) levels of basement parking and landscaping, stormwater and associated site works on land legally described as Lot 21 in DP624967 and known as 190 Waterloo Road, Greenacre NSW 2190, is determined by the grant of development consent subject to the conditions at Annexure A.

**H Miller**

**Acting Commissioner of the Court**

\*\*\*\*\*

[Annexure A \(669 KB, pdf\)](#)

## Amendments

30 January 2026 - Case title amended.

---

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: 30 January 2026