



Land and Environment Court  
New South Wales

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Case Name: Ghazi Al Ali Architect Pty Ltd v Canterbury-Bankstown Council

Medium Neutral Citation: [2022] NSWLEC 1493

Hearing Date(s): Conciliation conference on 31 August 2022

Date of Orders: 14 September 2022

Decision Date: 14 September 2022

Jurisdiction: Class 1

Before: Gray C

Decision: The Court orders that:  
(1) The applicant is granted leave to rely upon the updated Plan of Management dated 30 August 2022.  
(2) The appeal is upheld.  
(3) Development Consent is granted to Development Application DA-893/2020 seeking alterations and additions to the existing community facility and construction of a mixed-use development, including a public place of worship with ancillary facilities, food and drink premises, and basement car parking at 15-19 Enterprise Avenue, Padstow subject to the conditions contained in Annexure A.

Catchwords: APPEAL – development application – alterations and additions to community facility and place of public worship - conciliation conference - agreement between the parties

Legislation Cited: Bankstown Local Environmental Plan 2015 cl 6.2  
Environmental Planning and Assessment Act 1979, ss 2.22, 4.15, 4.16, 8.7, Sch 1  
Environmental Planning and Assessment Regulation 2000, cl 55  
Land and Environment Court Act 1979, s 34

State Environmental Planning Policy (Resilience and Hazards) 2021 cl 4.6

Category: Principal judgment

Parties: Ghazi Al Architect Pty Ltd (Applicant)  
Canterbury-Bankstown Council (Respondent)

Representation: Counsel:  
T To (Applicant)  
G Farland (Respondent)

Solicitors:  
Conomos Legal (Applicant)  
Canterbury-Bankstown Council (Respondent)

File Number(s): 2021/362101

Publication Restriction: Nil

## JUDGMENT

- 1 **COMMISSIONER:** These proceedings concern an appeal against the refusal of a development application for alterations and additions to an existing community facility and construction of a mixed-use development including a place of public worship, a community facility and a food and drink premises, with ancillary facilities and basement carparking at 15-19 Enterprise Avenue, Padstow. The respondent refused the development application in December 2021. The appeal is lodged pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act). In exercising the functions of the consent authority on the appeal, the Court has the power to determine the development application pursuant to ss 4.15 and 4.16 of the EPA Act. The final orders in this appeal, outlined in [11] below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 2 The Court arranged a conciliation conference under s 34(1) of the Land and Environment Court Act 1979 (LEC Act) between the parties, which was held on 31 August 2022. I presided over the conciliation conference.
- 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 filed on the same date.

The agreement was reached following the lodging of an amended Plan of Management on the NSW Planning Portal with the agreement of the Council, which amends the development application pursuant to cl 55(1) of the Environmental Planning and Assessment Regulation 2000 (EPA Regulation 2000).

- 4 The amended development application proposes a mixed-use development with:
  - A place of public worship comprising a ground level prayer hall for 416 worshippers, a mezzanine level prayer hall for 93 worshippers and basement level car parking over two levels for 309 vehicles.
  - A community facility that includes a men's gym, a women's gym, an indoor activity area, lecture halls and associated facilities.
  - A food and drink premises located on the ground floor that serves only those who attend the place of public worship or the community facility.
- 5 The Plan of Management gives direction and guidelines to ensure that the approved maximum capacity of the facility is complied with and that the use of the car park by attendees operates in an efficient and safe manner.
- 6 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 Statement of Jurisdictional Requirements that sets out the requirements about which the Court must be satisfied in order to have the power to grant development consent, and provides an explanation of the resolution of the contentions in the proceedings. I have considered the contents of the Statement of Jurisdictional Requirements, together with the documents referred to therein, the Class 1 Application and its attachments, and the documents that are referred to in condition 1. Based on those documents, I have considered the matters required to be considered pursuant to s 4.15(1) of the EPA Act.
- 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 following reasons:

- The site the subject of the development application is located within the IN2 – Light Industrial zone pursuant to the Bankstown Local Environmental Plan 2015 (BLEP), and development for the purposes of a place of public worship, community facilities and food and drink premises are permitted with development consent.
  - The proposed development complies with the relevant development standards in the BLEP.
  - Based on the Geotechnical Investigation Report dated 14 August 2020, I have considered the matters in cl 6.2(3) of the BLEP.
  - Consideration has been given as to whether the subject site is contaminated as required by cl 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021. Based on the Detailed Site Investigation report dated 9 August 2018 and the supplementary contamination report dated April 2019, the site is suitable for the development.
  - The development application was publicly notified in accordance with the community consultation requirements of s 2.22 and Sch 1 of the EPA Act, and I have considered the issues raised in the submissions received in response to the notification.
- 8 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)).
- 9 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.
- 10 The Court notes:
- (1) Canterbury-Bankstown Council, the respondent, as the relevant consent authority has agreed, under clause 55(1) of the Environmental Planning and Assessment Regulation 2000, to the applicant amending the development application DA number DA-893/2020 filed with the court on 21 December 2021, by the inclusion of an updated plan of management dated 30 August 2022.
  - (2) The applicant uploaded the updated plan of management onto the NSW Planning Portal on 30 August 2022.

- (3) The applicant filed the amended application with the court on 1 September 2022.

11 The Court orders that:

- (1) The applicant is granted leave to rely upon the updated Plan of Management dated 30 August 2022.
- (2) The appeal is upheld.
- (3) Development Consent is granted to Development Application DA-893/2020 seeking alterations and additions to the existing community facility and construction of a mixed-use development, including a public place of worship with ancillary facilities, food and drink premises, and basement car parking at 15-19 Enterprise Avenue, Padstow subject to the conditions contained in Annexure A.

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**Joanne Gray**

**Commissioner of the Court**

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Annexure A

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.