



Land and Environment Court New South Wales

Medium Neutral Citation:

Woolworths Group Limited v Wingecarribee Shire Council [2026] NSWLEC 1454

Hearing dates:

20-22 May 2026

Date of orders:

28 July 2026

Decision date:

28 July 2026

Jurisdiction:

Class 1

Before:

O'Neill C

Decision:

The orders of the Court are:

- (1) The applicant is to pay the respondent's costs thrown away as a result of the amendments made to the proposed development on 20 May 2026, as agreed or assessed, pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW).
- (2) The appeal is upheld.
- (3) Development Application No 24/0212, for a Torrens title subdivision to create two lots and the construction of a two-storey shopping centre on Lot 1 comprising a supermarket, six specialty retail shops, a first-floor commercial tenancy, a carpark with 242 spaces, and landscaping and business signage, at 231-233 Argyle Street Moss Vale, is determined by the grant of consent, subject to the conditions of consent at Annexure A.
- (4) The exhibits, other than Exhibits A, B, 1, F and G, are returned.

Catchwords:

DEVELOPMENT APPLICATION – neighbourhood shopping centre and associated works – economic and social impact on the locality – compatibility with zone objectives – urban design – traffic and pedestrian impacts

Legislation Cited:

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

Land and Environment Court Act 1979 (NSW), ss 34, 39

State Environmental Planning Policy (Biodiversity and Resilience) 2021, Ch 6, Pt 6.5, ss 6.61, 6.64

Standard Instrument—Principal Local Environmental Plan

Wingecarribee Local Environmental Plan 2010

Cases Cited:

Billyard Ave Developments Pty Limited v The Council of the City of Sydney [2025] NSWLEC 22

Cartier Holdings Pty Ltd v Newcastle City Council (2001) 115 LGERA 407; [2001] NSWLEC 170

Fabcot Pty Ltd v Hawkesbury City Council (1997) 93 LGERA 373

Jeffrey v Canterbury Bankstown Council (2021) 250 LGERA 340; [2021] NSWLEC 73

Kentucky fried Chicken Pty Ltd v Gantidis (1979) 140 CLR 675; [1979] HCA 20

Randall Pty Ltd v Willoughby City Council (2005) 144 LGERA 119; [2005] NSWCA 205

Rovest Holdings Pty Ltd v Cobar Shire Council [2021] NSWLEC 1618

The Village McEvoy Pty Ltd v Council of the City of Sydney (No 2) (2010) 176 LGERA 119; [2010] NSWLEC 17

Texts Cited:

WaterNSW, Neutral or Beneficial Effect on Water Quality Assessment Guideline, (October 2022)

Wingecarribee Shire Council, Moss Vale Development Control Plan, (January 2021)

Category:

Principal judgment

Parties:

Woolworths Group Limited (Applicant)

Wingecarribee Shire Council (Respondent)

Representation:

Counsel:

H Grace (Applicant)

M Staunton (Respondent)

Solicitors:

Mills Oakley (Applicant)

Marsdens Law Group (Respondent)

File Number(s):

2025/251237

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 Wingecarribee Shire Council's (the Council) refusal of Development Application No 24/0212, for a Torrens title subdivision of Lot 1 in DP 1192022 into two lots (hereafter Lot 1 and Lot 2) and the construction of a two-storey shopping centre on Lot 1 comprising a supermarket, six specialty retail shops, a first-floor commercial tenancy, a carpark with 242 spaces, landscaping and business signage (the proposal). Works include the construction of an access entry road to the site from Argyle Street and the upgrading of the intersection at the corner of Argyle Street and Valetta Street, including the installation of traffic signals, and the upgrading of the road on Hoskins Street. The site is 231-233 Argyle Street, Moss Vale (Lot 1 in DP 1192022 and Lot 11 in DP 1192264).
- 2 The appeal was subject to conciliation on 13 November 2025, in accordance with the provisions of s 34 of the *Land and Environment Court Act 1979* (NSW) (LEC Act). As agreement was not reached, the conciliation conference was terminated, pursuant to s 34(4) of the LEC Act.

Amended application

- 3 On the first day of the hearing, the applicant, by notice of motion, sought leave to amend the application to rely on the amended drawings and documents listed in Annexure A to the motion. Leave was not opposed and was granted, subject to the applicant paying the Council's costs thrown away as a result of the amendment of the proposal, pursuant to s 8.15(3) of the EPA Act.
- 4 On the second day of the hearing, the applicant sought leave to amend the application to rely on an amended subdivision plan. Leave was not opposed and was granted. The applicant replaced two civil drawings with updated plans which deleted references to business identification signage (the subject of contention 3 in Ex 1). It was uncontroversial that these changes were minor within the meaning of s 8.15(3) of the EPA Act.
- 5 The plans comprising the amended application were admitted into evidence as Ex G.
- 6 On the final day of the hearing, the applicant sought leave to amend the application to replace two civil engineering drawings with updated plans which deleted the realignment of the northern side of Hoskins Street (Hoskins Street Civil Works Dwg No 22T73_EX_C860 Rev 03 and Hoskins Street B99 Turning Path Dwg No 22T73_EX_C855 Rev 01). The previous iteration of those plans had required a reduction in the depth of the verge and removal of vegetation outside 45 Hoskins Street opposite the vehicular entry/exit to the proposal. The Council has consented to the amendment of the application by including Hoskins Street Civil Works Dwg No 22T73_EX_C860 Rev 03 under condition 2 of the conditions of consent (Annexure A).

Issues

7 The Council's contentions can be summarised as:

- The proposal will have an unacceptable economic and social impact upon the Moss Vale local centre. The proposal will result in there being an oversupply of supermarket floor space in the locality, and the proposed retail activity is excessive and likely to compete with and impact upon the social and economic viability of the Moss Vale local centre. This will undermine the current social and economic stability and vibrancy of the Moss Vale town centre.
- The proposal is inconsistent with the zone objectives of the Wingecarribee Local Environmental Plan 2010 (LEP 2010) E3 zone, being the second, third, fourth and seventh objectives. The proposal is out-of-centre as defined by its zoning and it is highly likely to have an adverse social and economic impact upon the nearby Moss Vale local centre within the E1 zone. The proposal lacks a well-designed physical interface and pedestrian access to encourage pedestrian movement between the proposal and the town centre. The proposal duplicates existing provisions within the Moss Vale town centre. The proposal does not demonstrate that the development will avoid adverse amenity impacts on adjacent and nearby residential areas.
- The proposal results in an unacceptable urban design and planning outcome for the site and surrounding locality. The proposal integrates poorly with the existing town centre and necessitates an over-reliance upon vehicular access. The proposal adopts a convention big box format with extensive surface car parking dominating the site, resulting in poor visual presentation and limited engagement with surrounding streets. The building form does not respond to the site's topography or the scale of the surrounding area. The building form includes lengthy blank walls and service areas at the interface with surrounding properties. Building siting, orientation and massing do not respond to the streetscape or reinforce the character of Moss Vale, particularly along Argyle Street. The proposed access road has the character and utility of a supermarket driveway and carpark and is not a publicly accessible urban landscape that terminates Valletta Street and connects through to Hoskins Street. The constrained shape and dimensions of Lot 2 will make it difficult to develop.
- The proposal will have unacceptable traffic and access related impacts.
- The proposal does not incorporate adequate design measures to address environmental sustainability.

The site and its context

8 The site is legally described as Lot 11 DP 1192264 and Lot 1 DP 1192022. The site is irregular in shape with an area of 3.47 hectares (ha) and has a frontage to Argyle Street of 20.12m and to Hoskins Street of 39.39m. The site is undeveloped.

The proposal

9 The proposal includes the following:

- A Torrens title subdivision of Lot 1 in DP 1192022 to create two lots. Proposed Lot 1 is 2.295ha and proposed Lot 2 is 1.116ha.
- The construction of a two-storey shopping centre on (proposed) Lot 1 with a gross floor area (GFA) of 7,248.9m², comprising:
 - A supermarket with a gross leasable area (GLA) of 4,354.9m² comprising the Woolworths supermarket with a GFA of 3,775m², and Direct to Boot (DTB) and Home Delivery storage areas and cool rooms with a combined GFA of 597.7m².
 - Six specialty retail shops including a BWS packaged liquor store (194m²) and a kiosk (20m²) with a combined GFA of 1,208m².
 - A first-floor commercial tenancy with a GFA of 842m².
 - A mall and lobby with a combined GFA of 257m².
 - Amenities including, end of trip facilities, male and female bathrooms and a parents' room, and a central managers office, with a combined GFA of 168m².
 - A carwash, an alfresco dining area and outdoor playground.
 - Landscaping as shown on LDA-01-LD-8.
 - The erection of business signage as shown on DA061-DA062.
 - An associated carpark with 242 spaces, comprising 234 onsite carparking spaces and eight DTB spaces.
 - The Woolworths, specialty retail shops and commercial tenancy will operate from 7am to 10pm Monday to Sunday. The loading dock will operate from 5am to 10pm Monday to Sunday.
 - The construction of an access road over Lot 11 in DP 1992264 (land zoned SP2).
 - The carrying out of works to upgrade the intersection at the corner of Argyle Street and Valetta Street, including the installation of traffic signals.
 - The carrying out of works to upgrade the road on Hoskins Street.

Public submissions

- 10 The Council received 435 submissions during the original notification of the application, most of which raised concerns regarding the proposal. Five resident objectors provided evidence onsite, and one by telephone in court, on the first day of the hearing. Their concerns can be summarised as:
- The proposal will detrimentally impact on the residential character of Hoskins Street. The proposal will result in a loss of residential amenity for 45 Hoskins Street as this property is opposite one of the vehicular entries to the site.
 - The proposal will generate significant traffic which will detrimentally impact on the existing traffic congestion along Argyle Street; and disrupt the residential amenity of Hoskins Street.
 - The town is already serviced by three supermarkets and there is no demand for another supermarket.
 - The proposal is outside of the town centre and will detrimentally impact on the viability of shops within the town centre.
 - The site is suitable for bulky goods storage.

Expert evidence

- 11 The applicant relied on the expert evidence of Jeff Mead (town planning), Gavin Duane (economics) and Tim Rogers (traffic engineering).
- 12 The Council relied on the expert evidence of Jeremy Swan (town planning), Dr Stephen Collier (urban design), Brian Haratsis (economics) and Jason Rudd (traffic engineering).

The economic and social impact of the proposal on the locality

- 13 In determining the application, the consent authority, or the Court exercising the functions of the consent authority, is to take into consideration the social and economic impacts in the locality, pursuant to s 4.15(1)(b) of the EPA Act.
- 14 The Council contends that the proposal will result in there being an oversupply of supermarket floor space in the locality and that the proposed retail activity is likely to compete with and impact upon the social and economic viability of the Moss Vale local centre.

Evidence

Main trade area of the proposal and trading levels of the existing supermarkets

- 15 There are two supermarkets in the Moss Vale town centre (the town centre), Coles and IGA. Aldi is further away, over 500m to the north-east of the town centre. The existing supermarkets are all small at 2,500m² or less, whereas a full line supermarket is 3,500m² or greater. The experts agreed on the trading levels of the existing

supermarkets; total sales in 2026 are around \$82 million from a combined floor area of 6,260m² representing \$13,100/m². The experts agreed that the average trading for supermarkets nationally is \$12-13,000/m², as Woolworths trades at \$13,800/m², Coles trades at \$13,840/m², Aldi trades at \$13,900/m², and typically independent supermarkets such as IGA trade at around \$10-\$11,000/m² (as independent supermarkets do not report sales, this value is an assumption, at par 20d of Ex 6).

- 16 The experts agreed on the overall main trade area of the proposal (a combination of the primary and secondary sectors), however, Mr Haratsis is of the view that Mr Duane's primary sector is too extensive and would define areas in the eastern portion of Mr Duane's primary sector as a secondary sector. A primary sector is the region from which a retail facility attracts its highest market shares, and a secondary sector is where lower market shares of spending are attracted (par 13 of Ex 6). Mr Duane's evidence is that the difference in the definition of the trade area sectors does not change the analysis of sales and impacts from the proposal (par 13 of Ex 6), and Mr Haratsis' evidence is that the differences in retained supermarket spend and market shares between a primary and secondary sector can be significant (par 14 of Ex 6). The author of the HillPDA Consulting peer review (Ex 2, tabs 17 and 28) of the applicant's Economic Impact Assessment (Ex A, tab 6) is of the view that the applicant's estimated trade area is overstated, meaning that the estimated trade area resident population and spend is also overstated (Ex 2, f 89).
- 17 Mr Duane predicts the proposal will result in retained spending in the local centre. He estimates that 40% of supermarket spending from the main trade area is spent in other town centres, and it will reduce to 20% following the carrying out of the proposal (par 22 of Ex 6). Mr Haratsis predicts a lower level of retained spending (Table 5.3 of Ex 6).
- 18 Mr Duane was able to determine visitation rates for various facilities by trade area sector based on his own defined trade area using mobile phone data. It is his evidence that supermarkets at Mittagong and Bowral attract around 20% of visitors from the main trade area. He says that this reflects escaped expenditure to the larger, more modern supermarkets with a broader offering (Table 5.1 and par 37c of Ex 6).
- 19 The population growth in the main trade area is projected to be 1.1% between 2026 and 2046 by Mr Duane, which is not considered to be strong growth according to Mr Haratsis (Table 1.1 and 25 of Ex 6); and 0.9% between 2024 and 2041 by Mr Haratsis (Table 1.3 of Ex 6).

Impact of the proposal on the existing supermarkets

- 20 The experts disagreed on the projected sales of the proposal. According to Mr Duane the proposal will achieve sales of \$53.1 million (of which \$45 million will be supermarket sales) and the Woolworths will achieve a sales productivity in the first instance of \$10,500/m² which will grow over time (par 23 of Ex 6). Mr Haratsis predictions are

higher because he says Mr Duane's predictions are conservative, he opined that the proposal would achieve sales of \$59.7 million and the Woolworths would achieve a sales productivity in the first instance of \$11,308/m² (par 26 of Ex 6).

- 21 According to Mr Duane, a trading impact less than -5% is considered negligible, less than -10% is moderate, and between -10 to -20% is typically considered by the industry to be high but acceptable (par 42 of Ex 6). According to Mr Haratsis, an impact greater than -15% on a supermarket is considered very high and likely to threaten the long-term viability of that supermarket.
- 22 In Mr Duane's opinion, the analysis shows that most of the economic impact of the proposal would be concentrated on the existing, well-performing supermarkets with only minimal impact on most specialty retailers in the town centre (par 48 of Ex 6). He says that Coles' proposal to expand is evidence of its strong performance (par 47 of Ex 6). He predicts that the total sales of the existing supermarkets will fall to \$70 million at par 24 \$67-68 million at par 48 (representing a -19.1% trading impact in 2029), which equates to \$11,100/m² at par 24 or \$10,650/m² at par 48, and the trading level will grow back to levels over \$13,000/m² by around 2039 at par 24 or 2041 at par 48. All supermarkets will remain viable, and Coles and IGA will continue to anchor the town centre because they are now trading at levels at the higher end of typical averages and there is growth over time (pars 48-49 of Ex 6).
- 23 According to Mr Haratsis, the impact of the proposal on the town centre and supermarkets is significantly high at Mr Duane's estimate of -19.1%, which will result in a negative impact on specialty shops anchored by the supermarkets. He estimates that the trading impact to the IGA will lower its sales productivity to \$8,468/m², which will severely affect trading at the supermarket and may cause it to close (par 51 of Ex 6).

Increase in trade in the Moss Vale town centre

- 24 Mr Haratsis, in his oral evidence, estimated that \$17 million will be spent in Moss Vale following the carrying out of the proposal, in other words, the proposal will bring in large numbers of customers. In his opinion, the proposal's biggest impact will be on existing Woolworths supermarkets in other town centres. It is his evidence that shops in the town centre will lose \$14.9 million to the proposal, however, \$47.9 million not currently spent in Moss Vale will be spent in Moss Vale following the carrying out of the proposal, resulting in an overall net benefit to the town of \$32.9 million. Mr Duane noted that this is a fine balancing act and not a simple equation of money lost/money gained, however

he noted that retaining customers currently travelling out of the town for their supermarket spending is a benefit. Mr Duane acknowledged that if the IGA closes, it would probably not be replaced by a supermarket.

- 25 Mr Haratsis agreed that the shops around the IGA including the post office, a gym and a karate dojo are not dependent on the IGA and are therefore not anchored by it.
- 26 In Mr Haratsis' opinion, trade of \$5.2 million currently being spent at Aldi in Moss Vale will move to the proposal's Woolworths supermarket.
- 27 Mr Haratsis agreed that the proposal would have a net economic benefit of \$32.4 million to the town of Moss Vale and that customers would be drawn to the town centre from outside of Moss Vale.

Impact of the proposal on the specialty retail in the Moss Vale town centre

- 28 According to Mr Duane, the analysis shows that the proposal will have only minimal impact on most specialty retailers in the town centre (par 48 of Ex 6). He estimates the impact of the proposal on retail sales (other than supermarkets) by 2029 to be low and acceptable; -10% for food and liquor, -7% for food catering, -3.5% for leisure, general retail and retail services, and 0% for apparel, household goods and large format retail (Table 7.2 of Ex 6). In his analysis, there are 135 leased tenancies on the ground level of the town centre, which accounts for 18% of the total number of tenants. 20% of the ground floor tenancies are non-retail; businesses or uses that occupy shopfronts or commercial space but do not sell goods or products directly to the public, such as professional services, financial institutions, education and training, offices and community and civic uses. 18% of ground floor tenancies are apparel and household goods. 26% are food catering and 5% are food and liquor (par 47 of Ex 6).
- 29 Mr Haratsis' projected impacts following the opening of the proposal include -1.5% decrease in retail sales (other than supermarkets) within Moss Vale by 2028. He agreed that this is a negligible impact on retail (other than supermarkets) within the town centre. He says that 1.5% may be negligible, however, the impact may be substantial on an individual shop (Table 7.3 of Ex 6).
- 30 According to Mr Duane, the site forms a natural extension of the northern end of the town centre (par 52 of Ex 6). He notes that Aldi is outside of the town centre, 500m to the north (par 55 of Ex 6). In his view, the position of the proposed Woolworths in relation to the town centre is no different to Coles, which is at the southern end of the town centre. He says the town centre is vibrant, with limited retail vacancies (excluding the Coles shopping centre, as Coles is planning to expand and those shops are currently vacant). The town centre provides community facilities and a large number of on-street car parking spaces. The role of the supermarket in a town is to draw in customers, who then take advantage of nearby specialty retail shops. Although specialty retail shops may relocate from the E1 Local Centre to the proposal, the shops around the IGA are not anchored by the IGA in his opinion, because the bank and post office do not require an anchor, and the pharmacy is located so as to be close to the

medical centre. In his view, customers of the Woolworths will move to the E1 Local Centre for banking, fast food, pharmacy and so on, just as they do from Coles. He notes that the town centre also serves tourists and a large number of specialty retail in Argyle Street targets tourists.

- 31 According to Mr Haratsis, the proposal will split the town centre into two, whereas it is better to have consolidated town centre in a regional town. Customers' every day needs will be satisfied at the new centre and as a result the retail node around the IGA will be most impacted by the proposal. Customers of the proposal would have to travel by car to the E1 Local Centre because it is improbable that they would walk from the site (pars 58-59 of Ex 6).

Submissions

Applicant's submissions

- 32 The applicant noted that a development application has been lodged to increase the size of the Coles supermarket in the local centre to a full line supermarket.
- 33 The applicant submitted that there are no other suitably sites for a full line supermarket because there is no available vacant land within the town centre.
- 34 The provision of a full line supermarket which currently does not exist in Moss Vale will bring increased choice, competition and convenience for those who live and work in Moss Vale and its surrounds. Residents of Moss Vale currently travel to Bowral or Mittagong to access a full line supermarket.
- 35 The applicant relies on Mr Duane's evidence, including that the proposal will have only minimal impact on most speciality retailers in the town centre, with the majority of effects concentrated on the existing, well performing supermarkets. Although impacts on existing supermarkets would be considered very high in percentage terms, given they are trading at levels at the higher end of typical averages, and there is growth over time, the stores will continue to anchor the town centre.
- 36 Mr Haratsis does not opine that the proposal will threaten the viability of Coles or Aldi, notwithstanding that they would experience the greatest impacts in percentage terms. Mr Haratsis' projected impacts on the IGA are based on assumptions, as the experts had no access to financial information on the IGA (par 20d of Ex 6). The shops in the vicinity of the IGA, such as the Karate dojo, the gym, Australia Post, the pathology centre and medical centres are not the types of businesses that depend on passing foot traffic from a supermarket.
- 37 Mr Haratsis' assertions that customers will be largely forced to travel by car between centres to fulfil their shopping requirements, thereby reducing the walkability of the town centre; that the retail node around the IGA will be the focus of the trading impacts;

and that Woolworths customers will be less willing to travel south up the hill to visit the IGA node (pars 59-61 of Ex 6), are inadequately substantiated or explained, and likely fall outside his area of expertise.

- 38 The expert evidence merely establishes that there would be economic impacts on trade competitors which is not a relevant planning matter, but does not establish that the town centre, or any business within it, would cease to viable in the application was approved. Mr Haratsis' evidence is that the proposal would have an average impact on non-supermarket stores of -1.5% (Table 7.3 of Ex 6) and he agreed that impact would be "negligible". That is not sufficient to establish the sort of economic contagion that would be necessary to "undermine the current social and economic stability and vibrancy of the town centre". The Council has not identified any particular business that would be lost following the opening of the proposal.
- 39 The relevant impacts must be "significant", "likely", "social" and/or "economic" in nature, and "in the locality" (s 4.15(1)(b) of the EPA Act). Lloyd J noted that the only relevance of the economic impact of a development is its effect "in the locality", that is to say in the wider sense as described in *Kentucky fried Chicken Pty Ltd v Gantidis* (1979) 140 CLR 675; [1979] HCA 20 ("*Gantidis*") at 687, per Stephen J.
- 40 Clay AC in *Rovest Holdings Pty Ltd v Cobar Shire Council* [2021] NSWLEC 1618 at [124] observed that the economic impact in the locality is more than simply the impact on one or more competitors, but rather whether there is, and to what extent, detriment to the extent and adequacy of facilities available to the local community.
- 41 The term 'locality' is not defined under the EPA Act. It must be given its ordinary and natural meaning having regard to the context in which it appears. The identification of the locality is a mixed question of fact and law; it requires the construction of that term and its application in this context (*Randall Pty Ltd V Willoughby City Council* (2005) 144 LGERA 119; [2005] NSWCA 205 ("*Randall*") at [42]). As Basten JA observed in *Randall*, the concepts of economic impact and locality will interact. Subject to identifiable outer limits of connotation, the provision should be construed as leaving to the consent authority, or the Commissioner on appeal, the identification of what constitutes a relevant impact in a particular case and what constitutes the appropriate locality within which to consider the impact.
- 42 The Council's assumption is that the locality is the E1 Local Centre under LEP 2010. The facts of this case do not support such a narrow application of this section. The experts agreed that the proposal will have economic impacts beyond the E1 Local Centre.
- 43 The relevant enquiry is whether "adequate facilities will be available to the local community" if the proposal is carried out, which requires an assessment of whether any "community detriment will not be made good by the proposed development itself".

Council's submissions

- 44 The Council submitted that consideration of the economic impacts of the proposal include not only the terms of s 4.15(1)(b) of the EPA Act but also the specific reference to competition in the objectives of the E3 zone, “to provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres” and “to maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity”.
- 45 The Council submitted that the principles in relation to the consideration of economic impact were collected by Pepper J in *The Village McEvoy Pty Ltd v Council of the City of Sydney (No 2)* (2010) 176 LGERA 119; [2010] NSWLEC 17 (“*Village McEvoy*”). Prior to *Randall*, the Court had applied an approach that s 4.15(1)(b) did not require the consideration of economic impact on individual competitors, except to the extent that economic impact upon individual competitors, or competition generally, demonstrated economic impact in the locality as an environmental or planning matter. In *Randall*, Basten JA suggested, without identifying a limit, that a broader construction of s 4.15(1)(b) (then s 79C(1)(b)) should be adopted than the earlier cases indicated.
- 46 The Council relies on Mr Haratsis’ evidence. The Court would accept his opinion that the initial trading level of the Woolworths is likely to be higher than Mr Duane’s estimate, which increases the percentage impacts on the existing supermarkets. It is important to focus upon the existing supermarkets because of their role as anchors to the surrounding specialty retail shops. The loss of an anchor in the northern section of the main centre will adversely affect retail activation which supports speciality shops and that loss will not be made good by the proposal.
- 47 Mr Haratsis’ evidence in relation to car dependence and the proposal splitting the town centre is supported by Mr Swan and Dr Collier. It follows that there will be a loss of shopping facilities in the E1 Local Centre and that loss will impact on the use of the community facilities and infrastructure. The social and economic impacts of themselves are sufficient to warrant refusal of the application.

Findings

Evidence

- 48 I accept the experts’ agreement on the identification of the main trade area for the proposal, notwithstanding their individual differences regarding the primary and secondary trade areas that make up the main trade area. I accept their agreement that population growth in the main trade area is stable and moderate. I accept their agreement that the trading level of the existing supermarkets in Moss Vale is greater than the average trading level for supermarkets nationally.
- 49 I accept the experts’ agreement that the proposal will result in retained supermarket spending in the town centre. There is inevitably escaped expenditure to the larger, more modern supermarkets with a broader offering in other town centres as there is not

currently a full line supermarket in Moss Vale. I accept Mr Duane's opinion that some of this spending will be captured by the proposal's Woolworths supermarket following the carrying out of the development.

- 50 I accept the experts' agreement that the economic impact of the proposal will be concentrated on the existing supermarkets in the Moss Vale town centre. I accept Mr Duane's opinion that the Coles' proposal to expand is evidence of its strong performance. I accept Mr Duane's evidence that all the existing supermarkets in the town centre will remain viable because they are now trading at levels at the higher end of typical averages for supermarkets in Australia and there will be growth over time given that the population growth in the main trade area is stable and moderate.
- 51 I accept Mr Haratsis' evidence that the proposal's Woolworths supermarket is likely to achieve viable sales productivity in the first instance and ongoing, as this is self-evidently the estimation of the applicant in lodging the application. The provision of a modern, full line supermarket with convenient car parking will be attractive to shoppers because it currently does not exist in Moss Vale and it will bring increased choice and convenience.
- 52 I accept and agree with Mr Duane that the site forms a natural extension at the northern end of the town centre, comparable to Coles' position at the southern end of the E1 zoned land, and that the town centre is vibrant with limited retail vacancies. I am satisfied that the E1 zoned land, directly across Argyle Street to the site, is easily accessible to an able-bodied pedestrian who has parked their car on the site. I accept the applicant's submission that there are no suitable sites for a full line Woolworths within the E1 zoned Local Centre.

Construction of section 4.15(1)(b) of the EPA Act

- 53 In *Gantidis*, Stephen J held that economic competition to existing businesses was not a valid town planning consideration, unless the proposed development would result in a detrimental impact on the shopping facilities presently available or planned for in the future and such an impact would not be made good by the proposed development:

"The significant word... is "facilities". If the shopping facilities presently enjoyed by a community or planned for it in the future are put in jeopardy by some proposed development, whether that jeopardy be due to physical or financial causes, and if the resultant community detriment will not be made good by the proposed development itself, that appears to me to be a consideration proper to be taken into account as a matter of town planning...

...the mere threat of competition to existing businesses, if not accompanied by a prospect of a resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development be proceeded with, will not be a relevant town planning consideration." at [141]

- 54 In *Fabcot Pty Ltd v Hawkesbury City Council* (1997) 93 LGERA 373 ("*Fabcot*") Lloyd J held that economic competition between competing businesses was not a planning consideration to which the economic effect of the former s 90(1)(d) of the EPA Act was directed; the only relevance of the economic impact of a development is its effect "in the locality", in the wider sense as described in *Gantidis* at 378. The fact that a

proposed supermarket may have an adverse economic impact on existing and planned supermarkets is self evident. The proposal may provide benefits in the form of increased competition at 379.

- 55 In *Cartier Holdings Pty Ltd v Newcastle City Council* (2001) 115 LGERA 407; [2001] NSWLEC 170 ("*Cartier Holdings*"), Pearlman J held that the terms of s 79C(1)(b) of the EPA Act (now s 4.15(1)(b)) were not materially different in ambit to the terms of the former s 90(1)(b) dealt with by Lloyd J in *Fabcot*, and that, consistent with Lloyd J's findings, the provision does not require the consideration of economic impact on individual competitors, except to the extent that any impact upon individual competitors or competition generally demonstrates economic impact in the locality as a planning matter at 416.
- 56 In *Randall*, the meaning of locality under s 79C(1)(b) of the EPA Act was considered. The provision should be construed as leaving to the consent authority the identification of what constitutes a relevant impact in a particular case and what constitutes the appropriate locality in which to consider the impact at [131]. In *Randall*, Basten JA concluded that it was arguable that a broader construction of s 79C(1)(b) should be adopted when considering *Fabcot* and *Cartier Holdings* at [131].
- 57 In *Village McEvoy*, Pepper J summarises these principles at [137]-[139] and dismissed an appeal of a commissioner's decision where he had refused an application because of planning issues that had a significantly wider economic import than an economic impact upon private individual traders, consistent with the "broader construction" of s 79C(1)(b) described in *Randall* at [139] and [141].

Evaluation

- 58 The evaluation of an application requires the significant likely impacts of that development's social and economic impacts in the locality to be considered, pursuant to s 4.15(1)(b) of the EPA Act.
- 59 I accept that the proposal is likely to have a significant detrimental impact on the existing supermarkets in the town centre, given Mr Duane's estimate of - 19.1% trading impact in 2029 and Mr Haratsis' opinion that the proposal may severely affect trading at the IGA. The proposal's impact on the existing supermarkets in the town centre is, however, an economic impact on individual competitors, which is not a required consideration under the provision unless that impact or competition generally demonstrates an economic impact in the locality as a planning matter.
- 60 I accept the applicant's submission that the meaning of 'locality' in s 4.15(1)(b) is wider than the E1 zoned Local Centre land in Moss Vale. The 'locality' for the assessment of economic impact under the provision is the retail and commercial centre of Moss Vale,

which includes the E1 Local Centre zoned land, as well as the E3 Productivity Support zoned land and the MU1 Mixed Use zoned land, because all these zones include businesses that contribute to the economic viability of the town centre of Moss Vale.

61 The objectives of the MU1 Mixed Use zone under LEP 2010 demonstrate that the MU1 zone is intended to play a significant part in the economic viability of the town centre, and the MU1 zoned land extends eastward along Argyle Street and on the opposite side of the railway corridor fronting Lackey Road, extending the retail and commercial street front beyond the E1 zoned land:

- “• To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.”

62 The ‘locality’ for the purpose of assessing social impact under the provision may well be wider than the town centre, including residential and/or rural zones, because the social impact of a particular development may be felt well beyond the retail and commercial town centre. This is not of any relevance to the assessment of this application because the focus here is on the economic impact of the proposal on the retail and commercial town centre, with the social impact being merely a consequence of the economic impact of the proposal.

63 I am satisfied by the evidence before me that the economic impact of the proposal on specialty retailers in the town centre will be minimal at its highest, notwithstanding that there may be a substantial impact on an individual shop. I accept Mr Haratsis' evidence that the impact on specialty retailers in the town centre will be negligible; that the ground level leased tenancies around the IGA are not dependent on the IGA as an anchor due to their offering; and that the town centre will enjoy a net economic benefit arising from the carrying out of the proposal including in retained supermarket spending.

64 The experts agreed that the proposal will negatively impact on the Aldi store 500m north of the town centre, which is not on E1 zoned land. The transfer of spending currently going to the Aldi in Moss Vale to the proposed Woolworths supermarket will not affect the specialty retailers, because none are anchored by the Aldi.

65 I do not accept the Council's contention that there would be an oversupply of supermarket floor space in the locality following the carrying out of the proposal. It is the agreed evidence of the experts that the existing supermarkets are trading at an estimated average of \$13,100/m² which is higher than the average trading for supermarkets nationally; and a full line supermarket in Moss Vale will retain spending in the locality.

66 I do not accept the Council's contention that the proposed retail activity of the proposal is likely to compete with and impact upon the social and economic viability of the Moss Vale locality. It is the agreed evidence of the experts that the proposal would result in only negligible impact on most specialty retailers in the town centre. The economic

impact of the proposal in the locality is acceptable because the proposal will have a minimal impact on the specialty retailers and other businesses in the town centre; and the residents of Moss Vale will have adequate shopping facilities in the town centre after the proposal is carried out.

The proposal is compatible with the E3 zone objectives

67 The site is zoned E3 Productivity Support, pursuant to the LEP 2010 and the proposal is an innominate permissible use with consent in the zone. The objectives of the E3 zone are:

To provide a range of facilities and services, light industries, warehouses and offices.

To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.

To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.

To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.

To provide opportunities for new and emerging light industries.

To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.

To ensure new development has regard to the character and amenity of adjacent and nearby residential areas.

68 The entry to the site from Argyle Street is zoned SP2 Infrastructure (local road) under LEP 2010.

69 Pursuant to subcl 2.3(1)(a) of LEP 2010, the land use table specifies the objectives for development; and at subcl 2.3(2), the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

70 The Council contends that the proposal is inconsistent with the second, third, fourth and seventh zone objectives for the E3 zone.

Submissions

Applicant's submissions

71 The applicant submits that there is no requirement for the proposal to be consistent with the zone objectives under LEP 2010. Subclause 2.3(2) merely requires that the consent authority have regard to the objectives. That phrase does not require the objectives to be applied like a checklist.

72 The first six objectives are mandatory from the Standard Instrument – Principal Local Environmental Plan (Standard Instrument). They describe the purpose of establishing the E3 Productivity Support zone, see *Billyard Ave Developments Pty Ltd v The Council of the City of Sydney* [2025] NSWLEC 22 ("*Billyard Avenue Developments*") at [66], as follows:

“The statutory provision to be construed was an objective of the R1 General Residential zone... this is a prescribed objective of the R1 General Residential zone required to be included by the Standard Instrument in all local environmental plans. It is not an objective that is bespoke tailored for SLEP or for any neighbourhood in the City of Sydney such as Elizabeth Bay. As a standard objective it is descriptive of the purpose of establishing the general residential zone... the first objective describes the purpose of the respective residential zones.”

- 73 The key way the zone achieves the objectives is by specifying development that is permitted without consent, permitted with consent and prohibited (*Billyard Ave Developments* at [61]-[66]).
- 74 The first, second and third objectives focus on the “land uses”, not on particular development. It is an error to construe them as requiring an economic analysis of whether the proposal will compete with land uses in surrounding local and commercial centres or maintain the economic viability of local and commercial centres, instead of focusing on the purpose of the proposed use.
- 75 In 2022, the NSW Department of Planning, Housing and Infrastructure (the Department), in consultation with councils, carried out the employment zone reform, in which the existing business and industrial zones were replaced with five employment zones and four supporting zones under the Standard Instrument. As part of the process, the Department sought submissions in relation to the reforms and the Council made a submission in the following terms (Ex B, tab 29):
- “Council’s key request from the exhibition is that permissible land uses for each new zone reflect all of the currently permissible land uses for each relevant existing zone.
- This is especially requested for the new E3 Productivity Support zone which will incorporate both our B5 Business Development and B7 Business Park. The Shire does not have many areas of B7 land, but there are a few areas of B5, and of particular concern is the prohibition of shops.
- A good example is the B5 zone in Mittagong which contains over 30 shops within what is known as the Highlands Marketplace development at 197 Old Hume Highway Mittagong...”
- 76 The broad range of uses permitted in the E3 zone reflects the Council’s request. The reason why shops are permissible with consent in the E3 zone is because the Council specifically requested that use be added to the permissible land uses in the land zoning table. The example given to the Department, the Highlands Marketplace, is a shopping centre comprising a Woolworths supermarket, a Big W and 30 speciality shops located in the E3 zone, which is separated from the E1 zone in Mittagong. Accordingly, the proposal is consistent with the objectives of the zone as embodied in the express objectives and the permissible land use table.

Council's submissions

- 77 The Council submits that the task for the Court is defined in subcl 2.3(2) of LEP 2010. The requirement to “have regard to” something is a requirement to take into account and give weight to that thing as a fundamental element in making the determination. In this case, the objectives are focal points.
- 78 It is the Council’s position that the relevant surrounding local centre zone is the E1 Local Centre in the Moss Vale town centre. It is not enough for a land use to be compatible with, but it must also not compete with, land uses in the Moss Vale E1 Local Centre zone. The evidence establishes that the proposal does compete with the existing supermarkets in the E1 Local Centre zone. The supermarket use does not meet the second objective.
- 79 The proposal will have an impact on the economic viability of the town centre. On Mr Haratsis’ evidence, the proposal will put in jeopardy the economic viability of the centre and this is supported by the PDA Hill review. The proposal is inconsistent with the third objective.
- 80 The proposal is inconsistent with the fourth objective because the shop use is suited to the E1 zone.
- 81 The proposal is inconsistent with the seventh objective, the bespoke objective, for the reasons given by the Council’s town planning and urban design experts.
- 82 The E3 zoned land is not part of the town centre. The LEP 2010 maps nominate the local centre as the E1 zoned land.
- 83 The letter relied upon by the applicant requesting that shops be made permissible in the E3 zone does not support a general proposition that Council supports development such as the proposal in the E3 zone. As Mr Swan pointed out, the letter may well have been addressing the issue of prohibiting development for shops which would be problematic from a planning perspective with limitation on existing use rights.

Findings

- 84 The threefold classification in the EPA Act controlling the carrying out of development on land is performed by the Land Use Table for each zone. The objectives of each zone inform the decision as to which land uses should be placed into which classifications. The objectives of the zone should be construed so as to promote the purpose of the threefold classification, and the presumption that development for a purpose that is classified as being permitted with consent in the zone will be compatible with the objectives of the zone. The inquiry is only concerned with the consistency of development for a purpose permitted with consent with the objectives of the zone, there

is no warrant to look at the particular features of any proposal to ascertain whether the development is consistent with the zone objectives (*Jeffrey v Canterbury Bankstown Council* (2021) 250 LGERA 340; [2021] NSWLEC 73 ("*Jeffrey*") at [61], [62] and [64]).

- 85 I accept the applicant's submissions that sub-cl 2.3(2) of LEP 2010 does not require the objectives to be applied like a checklist. The first six objectives, the mandatory objectives from the Standard Instrument, describe the purpose of establishing the E3 Productivity Support zone. The first, second and third objectives focus on the "land uses", and not on particular development. The zone objectives should not be construed as requiring an economic analysis of whether the proposal will compete with land uses in surrounding local and commercial centres or maintain the economic viability of local and commercial centres. As the proposal is permitted with consent in the E3 zone, its compatibility with the zone objectives is dependent on *how* it is carried out. If the proposed use was inherently inconsistent with the objectives of the zone, the use would not have been classified as being permitted with consent in the E3 zone (*Jeffrey* at [61] and [64]).

The urban design and spatial planning of the proposal is acceptable

Submissions

Applicant's submissions

- 86 The Council's experts have failed to identify any relevant or applicable planning control that the proposal is alleged to contravene. Section 4.15(3A)(a) of the EPA Act provides that if the provisions of a development control plan set standards with respect to an aspect of the development and the proposal complies with those standards, the consent authority is not to require more onerous standards with respect to that aspect of the development.
- 87 The criticism of the proposal that it has a minimal presence on Argyle Street lacks substance because that is a direct product of the site's physical characteristics and the zoning of the access road from Argyle Street into the site. It is not a valid criticism of the proposal.
- 88 The applicant relies on Mr Mead's evidence.

Council's submission

- 89 The Council maintains that the proposal will result in an unacceptable urban design and planning outcome for the site and surrounding locality for the reasons given by their planning and urban design experts.

Findings

- 90 I accept and prefer Mr Mead's evidence and his reasoning, and the applicant's submissions.
- 91 The site is appropriate for the development, as it is of a size and in a location suitable for a full line supermarket. The carpark is conveniently directly adjacent to the built form but does not erode the urban street wall within the historic town centre. I do not accept that the proposal is a car destination because of its poor pedestrian access; it is a car destination because supermarket customers predominately wheel their bulky supermarket purchases directly to their car in a trolley.
- 92 The minimal presence of the built form to Argyle Street is acceptable and preferable, because large supermarkets and their associated carparks do not generally contribute meaningfully to the aesthetic urban character and amenity of a historic town centre. That the proposal does not "activate" Argyle Street is a function of both the configuration of the site and its relationship to Argyle Street, and the reality that large supermarket developments are invariably internally focused and adjacent to carparks. Large supermarket developments only activate the street front when small retail shops within those developments are orientated to the street. There is no opportunity to orientate the proposed specialty retail shops to Argyle Street on this site. The town centre, including Argyle Street, is activated by shopfronts, including retail displays, cafes, small businesses and so on. Only a small supermarket in the town centre without dedicated parking on the street front, such as the IGA, will contribute to the activation of an urban street.
- 93 The site is conveniently adjacent to the town centre and is near land zoned for medium density residential development. The site has excellent pedestrian access to and from Argyle and Valetta Streets and is close to the railway station. I am satisfied by the evidence before me that the spatial planning of the site is sufficiently legible and proximate for pedestrians coming from and going to the town centre.
- 94 The building envelope and its design is appropriate to the site and the proposed use. The extent of excavation at the southern end of the site is justified and the proposal's presentation to adjoining properties is sensitive and minimises amenity impacts. Lot 2 provides a separation between the proposal and the residential area and is capable of accommodating a variety of uses as demonstrated by the application. The landscaping of Lot 1 includes large canopy trees, screen planting and tree planting in the carpark, which will screen and soften the site when viewed from the public domain. The proposal responds sufficiently to the opportunities and constraints of this site.

The traffic and pedestrian aspects of the proposal

- 95 I accept the traffic experts' agreement that the proposal will improve traffic and parking management within the town centre (Ex 5, pars 47(a)-(d) and 48(a)-(d)).
- 96 The traffic experts agreed that the proposal is consistent with Section A2.2.2 'Urban Function' of the Moss Vale Development Control Plan (MVDCP), subject to the resolution of how the lack of sight lines between pedestrians and vehicles resulting from the retention of the substation adjacent to the site access at Argyle Street is to be managed.
- 97 To address the restricted sight line created by the retention of the historic substation, Mr Rogers has included a five second late start for the left turn into the site. This results in vehicles turning left from Argyle Street being held by a red arrow for five seconds allowing pedestrians to commence crossing and become more visible to vehicles turning left into the site. Mr Rudd agreed that this arrangement, along with signage and a pedestrian fence, is an improvement. The traffic experts also agreed that this issue could be further addressed by imposing a condition that there be a flashing yellow right-hand turn arrow after the five second delay, to further reduce the risk.
- 98 The applicant submitted that Transport for NSW has not raised any issue with the proposed sight distances following the kerb adjustments on the northwestern corner of Argyle Street to improve pedestrian visibility at the intersection.
- 99 Transport for NSW has granted concurrence to the development (Ex 5, Attachment B). The Transport for NSW conditions are incorporated under condition 5 (Annexure A).
- 100 I am satisfied that the traffic safety issue caused by the retention of the historic substation close to the Argyle Street intersection has been adequately addressed by the proposal.

Sydney drinking water catchment

- 101 The site is within the Sydney Drinking Water Catchment pursuant to Ch 6, Pt 6.5 of the State Environmental Planning Policy (Biodiversity and Conservation 2021 (SEPP Biodiversity and Conservation) and the Neutral or Beneficial Effect on Water Quality Assessment Guideline (NorBE) applies to the proposal at s 6.61(3). Development

consent must not be granted to development relating to any part of the Sydney Drinking Water Catchment unless the consent authority is satisfied the carrying out of the development would have a neutral or beneficial effect on water quality.

- 102 The Council raised an issue on the second day of the hearing regarding water quality associated with the proposed upgrading of Hoskins Street. The applicant responded with a letter from the consultant engineer from Henry & Hymas Consulting Engineers (Ex H) who concluded that the proposal, including the proposed work to Hoskins Street, meets the requirements of NorBE.
- 103 The Council submitted that relevant matters under Ch 6, Pt 6.5 of SEPP Biodiversity and Conservation are met by the proposal and the concurrence of the regulatory authority can be exercised by the Court pursuant to s 6.64(1) of SEPP Biodiversity and Conservation and s 39(2) of the LEC Act.

Conditions of consent

- 104 The conditions of consent include a deferred commencement condition requiring the consent holder to make arrangements to facilitate lawful access over, and the carrying out of all works proposed within, Lot 11 DP 1192264 to facilitate vehicular and pedestrian access to that part of the proposed development on Lot 1 DP 1192022. The consent will lapse two years after the date of determination of the application if the deferred commencement condition is not satisfied (unless an extension to the lapsing period has been granted) (condition 1, Annexure A).
- 105 The parties disagreed on conditions 12-23 and 80 (Ex 10). The parties filed an updated version of the conditions of consent following the hearing, which included their competing submissions regarding the disputed conditions. Their submissions on the Council's requirement for a Remedial Action Plan, conditions 12-23, are as follows:

"Applicant's position

The Applicant's position is that a Remedial Action Plan is not required for this development and as such the further conditions at 12 – 23 (inclusive) are not required having regard to the findings of the Applicant's Addendum Detailed Site Investigation report (in Exhibit "B"), including that:

- the identified contamination is limited and highly localised.
- the identified contamination does not present an unacceptable risk to human health or the environment.
- the contamination levels are well below commercial land use assessment criteria.
- the identified AEC areas are confined to the residual lot land (being Lot 2) rather than the proposed development footprint.

Respondent's position

The Respondent's position is that the preparation of a Remedial Action Plan, and therefore conditions 12-23, are considered necessary and appropriate as:

1. The Detailed Site Investigation and the Addendum when read together identify that contamination is present on site comprising two distinct areas of environmental concern. Whilst the reports indicate that the contamination is minor and does not pose an unacceptable risk in a general risk assessment sense, the reports do not definitively identify that the site is suitable that the land is suitable for intended future uses, particularly residential development, having regard to the contamination.

2. The Addendum acknowledges that remediation may still be required to meet regulatory expectations.

3. There is no information in the development application about the intended future use of Lot 2 and therefore the [sic] it is appropriate that the Applicant be required to carry out remediation in accordance with a Remediation Action Plan to ensure it is suitable for the range of potential land uses.

In relation to Condition 16, see Respondent's submissions under Condition 80."

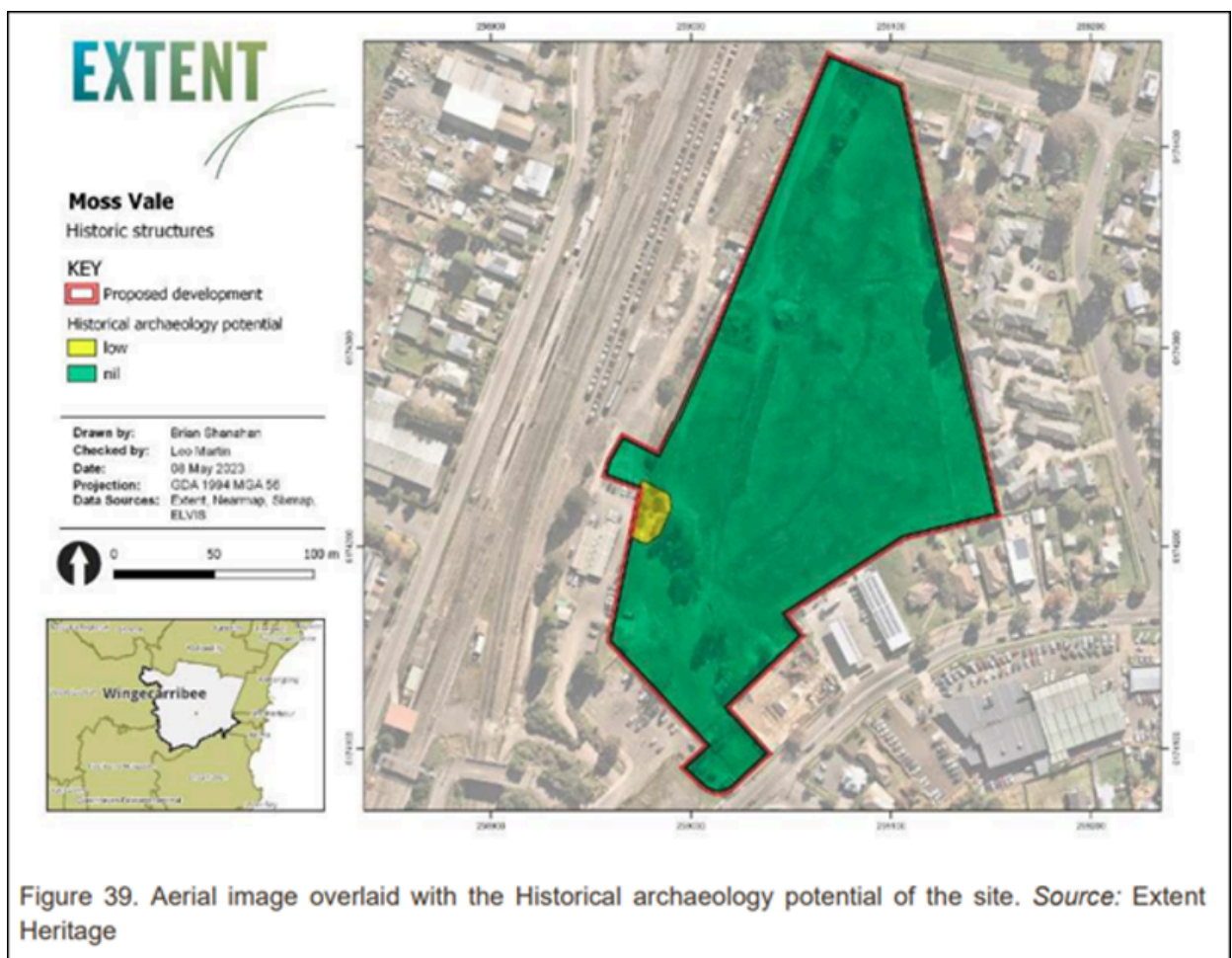
106 The parties competing positions on the Council's requirement for an archaeologist's "watching brief", conditions 16 and 80, are as follows:

"Applicant's Position"

This condition should be deleted. This condition does not appear to relate to the development as proposed and further to this, it is unclear what the condition actually requires.

Respondent's Position

The Applicant's Statement of Heritage Impact ("SOHI") identifies an area of low historical archaeological potential on site (see extract of Figure 39 of the SOHI below). Whilst the SOHI details an extensive history of disturbance across the site and concludes that the likelihood of survival of archaeological relics is low, it does not entirely discount the possibility that archaeological material may remain on site. Conditions 16 and 80 have been included at the two stages where ground disturbance is proposed – during remediation and during construction – to ensure that any unexpected archaeological finds are appropriately managed when encountered. The conditions are precautionary in nature and consistent with the recommendations in section 11.2 of the SOHI."



107 I am persuaded by the Council's submissions regarding both the requirement for the provision of a Remedial Action Plan and archaeological tracking, for the reasons given by the Council in the submissions. I am satisfied that condition 80 relates to the

proposed development and is clear in its purpose.

Conclusion

- 108 I am satisfied that the Council's contentions that the proposal will result in there being an oversupply of supermarket floor space in the locality and that the proposed retail activity is likely to compete with and impact upon the social and economic viability of the Moss Vale local centre are not made out by the evidence before me for the reasons set out in the judgment.
- 109 I have had regard to the objectives for development in the E3 Productivity Support zone under LEP 2010, pursuant to subcl 2.3(2). As the proposal is permitted with consent in the E3 zone, the presumption is that the proposal is compatible with the objectives of the zone. Its compatibility with the zone objectives is dependent on how it is carried out. I am satisfied that the spatial planning of the site is acceptable and the urban design outcome is sufficiently responsive to the opportunities and constraints of the site.

Orders

- 110 The orders of the Court are:
- (1) The applicant is to pay the respondent's costs thrown away as a result of the amendments made to the proposed development on 20 May 2026, as agreed or assessed, pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW).
 - (2) The appeal is upheld.
 - (3) Development Application No 24/0212, for a Torrens title subdivision to create two lots and the construction of a two-storey shopping centre on Lot 1 comprising a supermarket, six specialty retail shops, a first-floor commercial tenancy, a carpark with 242 spaces, and landscaping and business signage, at 231-233 Argyle Street Moss Vale, is determined by the grant of consent, subject to the conditions of consent at Annexure A.
 - (4) The exhibits, other than Exhibits A, B, 1, F and G, are returned.

S O'Neill

Commissioner of the Court

[Annexure A \(2.77 MB, .pdf\)](#)

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.

