



Land and Environment Court
New South Wales

Case Name: Leda Holdings Pty Ltd v Fairfield City Council

Medium Neutral Citation: [2025] NSWLEC 1319

Hearing Date(s): Conciliation conference on 17 April 2025

Date of Orders: 09 May 2025

Decision Date: 9 May 2025

Jurisdiction: Class 1

Before: Young AC

Decision: The Court orders that:
(1) The appeal is upheld.
(2) The Development Application No. 4.1/2024, as amended, seeks consent for the construction of a double-storey industrial complex, consisting of 62 industrial units with mezzanines, 284 car parking spaces, associated amenity facilities and vehicular manoeuvring space, landscaping works, stormwater drainage works and site works, at 1403 The Horsley Drive, Wetherill Park NSW (legally known as Lot 2 in DP 700336) is determined by the grant of consent subject to the conditions contained in Annexure A.

Catchwords: DEVELOPMENT APPLICATION – s34 conciliation conference – agreement reached – orders made

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 8.7
Land and Environment Court Act 1979, s 34

Environmental Planning and Assessment Regulation 2021, ss 23, 38
State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.119, 2.122
State Environmental Planning Policy (Resilience and

Hazards) 2021, s 4.6
State Environmental Planning Policy (Sustainable
Buildings) 2022, s 3.2
State Environmental Planning Policy (Biodiversity and
Conservation) 2021, ss 6.6, 6.7, 6.8, 6.9, 6.10
Fairfield Local Environment Plan 2012, cl 2.1, 2.3, 5.2,
6.2, 6.3, 6.6, 6.9

Category: Principal judgment

Parties: Leda Holdings Pty Ltd (Applicant)
Georges River Council (Respondent)

Representation: Counsel:
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File Number(s): 2024/116657

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the deemed refusal by Fairfield City Council of Development Application No. 4.1/2024.
- 2 The Development Application, as amended, seeks consent for the construction of a double-storey industrial complex, consisting of 62 industrial units with mezzanines, 284 car parking spaces, associated amenity facilities and vehicular manoeuvring space, landscaping works, stormwater drainage works and site works, at 1403 The Horsley Drive, Wetherill Park NSW (the site).
- 3 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties on 17 April 2025. I presided over the conciliation conference.

- 4 At the conference, the Court heard from the owners of a neighbouring property who objected to the Development Application. The objector raised concerns about traffic on surrounding local roads and drainage on the site.
- 5 Prior to the conference, the parties agreed on a range of amendments to the architectural plans, the landscaping plan and associated documentation to address the concerns being raised by the objector and by Fairfield City Council. The key amendments included a reduction in the number of units, reconfiguring the parking and an increase in number of units able to be accessed by heavy rigid vehicles.
- 6 Pursuant to s 38(1) of the Environmental Planning and Assessment Regulation 2021 (EPA Regulation), Fairfield City Council has approved amending the Development Application in accordance with the amended plans and supporting material listed in the agreed conditions of consent (Part B Condition 1A in Annexure A of this judgment).
- 7 As the amended Development Application is the subject of Court proceedings, it is not required to be lodged on the NSW Planning Portal pursuant to s 38(4) of the EPA Regulation. The objector was also subsequently notified about the amendments to the Development Application by Fairfield City Council.
- 8 On 17 April 2025, the parties submitted an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal and granting development consent to the amended Development Application, and subject to conditions in Annexure A.
- 9 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.
- 10 The signed agreement is supported by a Jurisdictional Note from the parties, that sets out the jurisdictional prerequisites that must be satisfied before the Court can exercise its functions under s 34(3) of the LEC Act.

Jurisdictional Prerequisites

- 11 Based on the Jurisdictional Note, the documents that accompany the Class 1 Application, and the documents referred to in Annexure A, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act, as have

Landowner's consent

- 12 In accordance with s 23(1) of the EPA Regulation, I am satisfied that the amended Development Application was lodged with the consent of the owners of the land to which the development relates.

Public Notification

- 13 The Development Application was publicly notified from 24 January 2024 to 20 February 2024 and 1 objection was received. The parties agree, and I accept that the matters raised by the objector has been adequately addressed through the amended plans and conditions imposed in the development consent.
- 14 I also consider that the recent further amendments to the Development Application do not intensify or change the environmental impact of the amended form of the Development Application that was publicly notified, and accordingly public notification of the amended Development Application is not required.

Section 4.15 of the EPA Act

- 15 The parties agree, and I accept, that all of the mandatory matters in s 4.15 of the EPA Act that are of relevance to the amended Development Application have been taken into consideration (as described in more detail below), and the Development Application (as amended) is acceptable, subject to the proposed conditions of consent in Annexure A. This includes:

- (1) The relevant provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP);
- (2) The relevant provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP);
- (3) The relevant provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP);

- (4) The relevant provisions of State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP);
- (5) The provisions of the Fairfield Local Environmental Planning 2012 (LEP);
- (6) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- (7) The suitability of the site for the development; and
- (8) The issues raised in public submissions.

State Environmental Planning Policy (Transport and Infrastructure) 2021

- 16 Section 2.119 of the Transport and Infrastructure SEPP requires that a consent authority must be satisfied with certain matters (as described below) in relation to the safety and efficiency of access to developments from a classified road (in this case The Horsley Drive) before consent can be granted.
- 17 I am satisfied that the safe and practicable vehicular access to the site via another road (in this case Toohey Road) is not available due to differences in the levels between the site and Toohey Road, the site already has constructed access to/from The Horsley Drive with a dedicated deceleration lane, the construction of access formed part of the works commenced under the original development consent for the site, existing traffic congestion on Toohey Road and its intersection with Newton Road, and finally, Transport for NSW (TfNSW) has raised no objections to access to the site to/from The Horsley Drive.
- 18 For the reasons outlined above, and due to the proposed nature of the development (being industrial units), I am also satisfied that the safety, efficiency and ongoing operation of The Horsley Drive will not be adversely affected by the development as a result of the design of the access to the site, emissions of smoke or dust from the site, or the nature, volume or frequency of vehicles using The Horsley Drive.
- 19 Section 2.122 of the SEPP requires traffic generating development to be referred to TfNSW for comment. The site has an area of 197,700m² and has access from a classified road, therefore it is considered traffic generating development in accordance with Sch 3 of the Transport and Infrastructure SEPP.

- 20 The Development Application was referred to TfNSW for comment in accordance with ss 2.119 and 2.122. On 8 February 2024, TfNSW provided comments on the Development Application, including in relation to stormwater drainage, compliance with Australian Standards and provision of swept paths, which have been addressed in the design of the development application (as amended).
- 21 Given the above, I am satisfied that the relevant provisions of the Transport and Infrastructure SEPP have been appropriately addressed.

State Environmental Planning Policy (Resilience and Hazards) 2021

- 22 Section 4.6 of the Resilience and Hazards SEPP requires that a consent authority must not grant consent to any development on the land unless it has considered whether a site is contaminated or potentially contaminated land, and if it is, that it is satisfied that the land is suitable (or will be suitable after undergoing remediation) for the proposed use.
- 23 In this case, the Development Application is accompanied by a Detailed Site Investigation prepared by Sydney Environmental Group dated 26 July 2022. The investigation found that there are levels of contaminants present on the site which are likely to pose an unacceptable human health exposure risk.
- 24 Accordingly, a Remediation Action Plan prepared by Sydney Environmental Group dated 26 July 2022 was prepared. The RAP and its recommendations have been incorporated into the conditions of consent (see conditions 1, 8, and 9 in Annexure A).
- 25 With the implementation of the RAP, as required under the conditions of consent, I am satisfied that the land can be made suitable for the proposed use in accordance with s 4.6 of the Resilience and Hazards SEPP.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- 26 Chapter 6 of the Biodiversity and Conservation SEPP provides controls with respect to the Georges River Catchment, among others. As the site is located in the Georges River Catchment, this chapter of the SEPP applies.
- 27 Pursuant to s 6.6, the amended stormwater plans have been prepared to accompany the stormwater management plan which include appropriate

controls for treatment and control of stormwater runoff, and includes stormwater arrangements to improve the quality of stormwater and minimise pollutant transfer to receiving waters.

- 28 Pursuant to s 6.7, the development is unlikely have an impact on terrestrial, aquatic or migratory animals, vegetation or aquatic reserves; the development does not involve the clearing of riparian vegetation; the development is designed to minimise stormwater runoff and will therefore minimise or avoid the erosion of land abutting a natural waterbody or sedimentation of a natural waterbody; and the development is designed to avoid adverse impacts on wetlands and protect aquatic ecology.
- 29 Pursuant to s 6.8, the development is unlikely to result in the release of pollutants that may have an adverse impact on water quality of a natural waterbody or on the natural recession of floodwaters into wetlands or other riverine ecosystems.
- 30 Pursuant to s 6.9, the site is not located in the vicinity of any access points to natural waterbodies and therefore is unlikely to have an impact on those areas.
- 31 Pursuant to s 6.10, the development is not likely to have an adverse environmental impact and therefore the Respondent is not required to consult with adjacent or downstream Councils.
- 32 Given the above, I am satisfied that the proposed development is consistent with Ch 6 of the Biodiversity and Conservation SEPP.

State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP)

- 33 On 1 October 2023, the Sustainable Buildings SEPP came into force and applies to the site. The parties agree, and I accept that the Development Application (as amended) addresses the matters in s 3.2 of the Sustainable Buildings SEPP, including quantification of the embodied emissions of the proposed development.

Fairfield Local Environmental Plan 2012

- 34 Clause 2.1 – Land Use Zone — The Site is located on land zoned E4 General Industrial. The proposed use is permissible in the E4 General Industrial zone.

- 35 Clause 2.3 – Zone objectives and Land Use Table - cl 2.3(2) provides that the consent authority must have regard to the relevant zone objectives. The parties agree, and I accept that the Development Application (as amended) is consistent with the objectives of the zone.
- 36 Clause 5.21 – Flood Planning – The site is adjacent to an existing drainage channel running along the northern boundary and is potentially affected by flooding. The Development Application is accompanied by a Flood Impact Assessment which found that all habitable and critical areas of the building are adequately protected from all flood events, up to and including the Probable Maximum Flood event. There are also a number of conditions addressing flood risks (see conditions 39, 61, 69 in Annexure A).
- 37 Clause 6.2 – Earthworks – cl 6.2 of the LEP sets out the matters that the consent authority is required to consider before granted development consent for earthworks. The Development Application is accompanied by amended civil and stormwater engineering plans (see Annexure B, Tab 3) and the parties agree, and I accept that the proposed earthworks are not expected to have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and that appropriate measures to avoid or minimise the impacts of the development have been imposed, and the Development Application is suitable subject to the conditions of consent (see conditions 30 and 38 in Annexure A).
- 38 Clause 6.6 – Riparian Lands and Watercourses –m cl6.6 sets out requirements for development on land identified as “riparian area”. The Site is partially identified in the “Riparian Lands and Watercourses Map”. The Development Application is accompanied by a Stormwater Management Plan which makes several recommendations to reduce the impact of the development on riparian lands. The recommendations of the Stormwater Management Plan have been incorporated into the conditions of consent (see Condition 1, 14, 15, 21, 71 in Annexure A).
- 39 Clause 6.9 – Essential Services –cl6.9 sets out the requirements for adequate arrangements to be made for the provision of essential services to the site. The parties agree, and I accept that all essential services are available for the

proposed development and note that the conditions of consent require these services to be available prior to an occupation certificate being issued (see condition 43 in Annexure A).

Conclusion

- 40 Based on the information before the Court, including various expert reports and plans accompanying the original and amended Development Application, and the recommended conditions of consent in Annexure A, the parties agree and I am satisfied that the amended Development Application can be approved taking into consideration the matters in s 4.15(1) of the EPA Act, including in regard to the applicable environmental planning instruments, the likely impacts of the development, the suitability of the site, the issues raised in submissions and the public interest.
- 41 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues against the discretionary matters that arise pursuant to an assessment under s 4.15(1) of the EPA Act.
- 42 I have considered the jurisdictional prerequisites, 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.
- 43 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.

Orders

- 44 The Court orders:
- (1) The appeal is upheld.
 - (2) The Development Application No. 4.1/2024, as amended, seeks consent for the construction of a double-storey industrial complex, consisting of 62 industrial units with mezzanines, 284 car parking spaces, associated amenity facilities and vehicular manoeuvring space, landscaping works, stormwater drainage works and site works, at 1403 The Horsley Drive, Wetherill Park NSW (legally known as Lot 2 in DP 700336) is determined by the grant of consent subject to the conditions contained in Annexure A.

M Young

Acting Commissioner of the Court

Annexure A (409 KB, pdf)

Annexure B (112 KB, pdf)

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