



Land and Environment Court
New South Wales

Case Name:	Green Gold Energy Pty Ltd v Edward River Council
Medium Neutral Citation:	[2025] NSWLEC 1359
Hearing Date(s):	Conciliation conference held on 9 October 2024, 18 February and 16 May 2025
Date of Orders:	21 May 2025
Decision Date:	21 May 2025
Jurisdiction:	Class 1
Before:	Dixon SC
Decision:	<p>The Court orders that:</p> <p>(1) The appeal is upheld.</p> <p>(2) Development consent is granted to Development Application 2023/0024 for the installation of a 4.95MW solar farm and associated works including the installation of 9,396 solar panels mounted on single axis tracking arrays, construction of a 1.8m high perimeter chain mesh fencing, with barb wire, landscaping of the perimeter, construction of a 22kV pole, construction of a high voltage power switchboard, and construction of an inverter station at 39 Hogans Lane, Deniliquin NSW 2710 (Lot 2 in DP778062), subject to the conditions of consent contained at Annexure B.</p>
Catchwords:	APPEAL – development application – Solar Farm – conciliation conference – agreement between the parties – orders
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979, ss 3.28, 4.15, 4.16, 8.7</p> <p>Land and Environment Court Act 1979, s 34</p> <p>Conargo Local Environmental Plan 2013 (Amendment</p>

	<p>No 2)</p> <p>Deniliquin Local Environmental Plan 2013, cll 2.2, 2.3, 2.7, 5.10, 6.1, 6.3, 6.5, 6.7</p> <p>Edward River Local Environmental Plan 2013, cl 1.8, 1.8A</p> <p>Environmental Planning and Assessment Regulation 2021, s 38</p> <p>State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 4, ss 4.4, 4.9, 4.10</p> <p>State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 4, s 4.6; Sch 2</p> <p>State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.7, 2.25, 2.36</p>
Cases Cited:	CK Design Pty Ltd v Penrith City Council (No 2) [2022] NSWLEC 97
Texts Cited:	Environment Protection Authority, Managing Land Contamination – Planning Guidelines, August 1998
Category:	Principal judgment
Parties:	<p>Green Gold Energy Pty Ltd (First Applicant)</p> <p>GGE Deniliquin Solar Pty Ltd (Second Applicant)</p> <p>Edward River Council (Respondent)</p>
Representation:	<p>Counsel:</p> <p>M Winram (Solicitor)(Applicants)</p> <p>M Rogers (Solicitor)(Respondent)</p> <p>Solicitors:</p> <p>Maddocks (Applicants)</p> <p>Kell Moore (Respondent)</p>
File Number(s):	2024/00109124
Publication Restriction:	Nil

JUDGMENT

- 1 These proceedings arise following an appeal pursuant to s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) against Western Regional Planning Panel’s (Panel) actual refusal of development application no 2023/0024 (DA), which sought consent for a 4.95MW solar farm

and associated works, at 39 Hogans Lane Deniliquin NSW 2710 (Lot 2 in Deposited Plan 778062) (the site), consisting of:

- (1) the installation of approximately of 9,396 solar panels mounted on single axis tracking arrays;
- (2) the construction of 1.8m high perimeter chain mesh fencing around the perimeter of the facility, including a single gate position on the western side;
- (3) landscaping around the perimeter of the proposal;
- (4) construction of a 22kV pole connecting to the overhead power line;
- (5) construction of a high voltage power switchboard; and
- (6) construction of an inverter station, consisting of an inverter and transformer.

(the Proposed Development).

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 first held on 9 October 2024 and reconvened over an extended period. I presided over the conciliation conferences.

3 The parties now propose resolution of the proceedings in accordance with the terms outlined in their executed s 34 written agreement dated 20 May 2025 (Agreement), resulting in the following amendments to the proposed development (Amended Application).

- (1) Bushfire Report prepared by Australian Bushfire Protection Planners Pty Ltd dated 21 November 2024;
- (2) Waste Management & Decommissioning Plan (Rev 1) dated 6 December 2024;
- (3) Construction Environmental Management Plan (Rev 1) dated 6 December 2024;
- (4) Solar Photovoltaic Glint and Glare Study prepared by Pager Power dated February 2025;
- (5) Vegetation Management Plan prepared by Narla Environmental Pty Ltd dated March 2025;
- (6) Decommissioning Plan (Rev 1) dated 18 March 2025;
- (7) Planning Response prepared by P S Grahame and Associates dated 18 March 2025;

- (8) Visual Impact Assessment prepared by Premier3D dated 17 March 2025;
 - (9) Site Plan prepared by P S Graham and Associates Pty Ltd (Rev C) dated 25 February 2025;
 - (10) Landscape Plans prepared by Conzept Landscape Architects (Rev F) dated 5 March 2025; and
 - (11) Revised Solar Farm Photomontages dated December 2024.
- 4 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' signed agreement if the Court could have made that decision in the proper exercise of its functions. The decision involves the Court exercising the functions under s 4.16 of the EPA Act to grant consent to the DA.
- 5 The pre-conditions that must be satisfied before the Court can exercise its functions are identified in a written submission by the parties.
- 6 After a consideration of the submission 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 for the following reasons.

Preconditions

Owner's Consent

- 7 Owner's consent for the Land was filed with the Class 1 Application (Tab 4 of the Class 1 Application), being consent from Roger Campton and Nadine Campton pursuant to s 4.15 of the EPA Act.

Public Notification

- 8 The DA was notified by the Edward River Council (Council) for a period of 25 days from 13 April 2023 to 8 May 2023.
- 9 Twelve individual submissions were received in response to the DA which raised the following matters:
- (1) compatibility with existing 'rural residential' character;
 - (2) suitability of the site;
 - (3) visual amenity;
 - (4) Council road infrastructure;

- (5) landscaping/screening;
 - (6) health impacts;
 - (7) agricultural land use conflict;
 - (8) flora and fauna;
 - (9) land value decline;
 - (10) lack of consultation;
 - (11) hazards – fire & flood;
 - (12) construction impacts;
 - (13) electricity infrastructure; and
 - (14) community benefit.
- 10 The matters raised by the objectors have been considered by the parties, and the parties have agreed and I accept that the matters raised where relevant have been satisfactorily addressed, including through the applicants' Amended Application.

Permissibility and State Environmental Planning Policy (Transport and Infrastructure) 2021

- 11 At the time the DA was lodged, the site was zoned RU1 Primary Production (RU1 Zone) pursuant to cl 2.2 of the Deniliquin Local Environmental Plan 2013 (DLEP).
- 12 On 4 April 2025, the DLEP was repealed pursuant to cl 1.8 of the Edward River Local Environmental Plan 2013 (ELEP) as amended by the Conargo Local Environmental Plan 2013 (Amendment No 2) (Conargo Amendment).
- 13 Clause 1.8A of the ELEP is a savings provision which has the effect that development applications made, but not finally determined, before the commencement of the Conargo Amendment are to be determined as if the Conargo Amendment had not commenced. In accordance with the findings of Robson J in *CK Design Pty Ltd v Penrith City Council (No 2)* [2022] NSWLEC 97, the Proposed Development is saved by operation of cl 1.8A of the ELEP and the DLEP will continue to apply to the assessment of the DA because the DA was lodged but not finally determined by the relevant date.
- 14 As such, the RU1 Primary Production zone (RU1 Zone) under the DLEP applies to the site and the assessment of the DA. Under the RU1 Zone an

“electricity generating facility” is prohibited as it is not mentioned in Items 2 and 3 of the DLEP.

- 15 The Proposed Development is described as an “electricity generating facility” (Tab 2 of the Class 1 Application).
- 16 Development for the purpose of “electricity generating works” is an innominate prohibited use in the RU1 Zone in accordance with the Land Use Table in cl 2.3 of the DLEP. However, electricity generating works are permissible with consent in prescribed non-residential zones pursuant to s 2.36 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP).
- 17 Section 2.36(1) provides as follows:
 - (1) Development for the purpose of electricity generating works may be carried out by any person with consent on the following land—
 - (a) in the case of electricity generating works comprising a building or place used for the purpose of making or generating electricity using waves, tides or aquatic thermal as the relevant fuel source—on any land,
 - (b) in any other case—any land in a prescribed non-residential zone.
- 18 Section 2.35 defines “*electricity generating works*” as follows:

electricity generating works means a building or place used for the following purposes, but does not include a solar energy system—

 - (a) making or generating electricity,
 - (b) electricity storage
- 19 Section 2.35 of the T&I SEPP defines “prescribed non-residential zone” as including the RU1 Zone.
- 20 Section 3.28 of the EPA Act provides that, in the event of an inconsistency between environmental planning instruments (EPIs), there is a general presumption that a State EPI prevails over an LEP. Section 2.7 of the T&I SEPP and cl 1.9 of the DLEP are of similar effect.
- 21 Therefore, the Court is satisfied that the designation of the “electricity generating works” use as a prohibited use in the RU1 Zone is not a jurisdictional bar to the grant of consent to the DA.

Deniliquin Local Environmental Plan 2013

Demolition requires development consent – Clause 2.7

- 22 Clause 2.7 of the DLEP requires that the demolition of a building or work may be carried out only with development consent.
- 23 The site contains a residential dwelling and agricultural buildings. However, p 2 of the Statement of Environmental Effects prepared by Chris Smith & Associated at Tab 4 of the Class 1 Application (SEE) confirms that the residential dwelling and agricultural buildings are outside the footprint of the Proposed Development. No demolition works are proposed as part of the Proposed Development.
- 24 As such, the parties agree and the Court is satisfied that consent for demolition is not required under cl 2.7 of the DLEP.

Heritage Conservation – Clause 5.10

- 25 The Council Assessment Report on p 21 states
- “the site is not subject to any heritage conservation provisions. There are no known items of aboriginal cultural heritage identified on the subject land. In any event statutory requirements would trigger contingency measures if any aboriginal cultural heritage was subsequently identified.” (See also section 5.7 of the SEE).
- 26 The Court is therefore satisfied that cl 5.10 of the DLEP does not apply to the assessment of the DA.

Earthworks – Clause 6.1

- 27 Clause 6.1 of the DLEP requires the consent authority to consider the matters outlined in that clause relating to the impacts of earthworks before granting development consent.
- 28 The Council Assessment Report summarises the position in this regard stating that the Proposed Development complies with the DLEP, in the table on p 18 and stating that “earthworks are required to construct the proposal. Appropriate conditions of consent would satisfactorily mitigate any adverse impacts”.
- 29 The parties agree that appropriate conditions of development consent have been proposed to address the requirements of cl 6.1 (see Conditions D2, D3, D6, D7, D9, D10 and D11).

- 30 The Court is therefore satisfied that the requirements of cl 6.1 of the DLEP have been met.

Terrestrial Biodiversity – Clause 6.3

- 31 Clause 6.3 of the DLEP requires the consent authority to be satisfied of various matters listed in the clause with the objective to maintain terrestrial biodiversity.

- 32 The Council Assessment Report on p 18 states that:

“A small treed area in the south east corner of the site is identified as “biodiversity” on the terrestrial biodiversity map. The applicant submitted a test of significance for the proposal. The test of significance concluded that the proposal would not significantly impact on any threatened species or ecological communities. It is noted that this test of significance was based on a previous site layout that required tree clearing – the site layout was changed before the DA was lodged and now does not require any tree clearing, further reducing impact.”

- 33 This is consistent with the:

- (1) Amended Landscaping Plans prepared by Conzept Landscape Architects (Rev F) dated 5 March 2025 at Tab 10 of the Amended Application; and
- (2) the Amended Site Plan (Rev C) dated 25 February 2025 at Tab 9 of the Amended Application,

which propose to retain all existing vegetation on the site.

- 34 Further, the parties agree and I accept that all vegetation existing on the site will be protected during the length of operations of the Proposed Development (see Vegetation Management Plan prepared by Narla Environment dated March 2025 at Tab 5 of the Amended Application).

- 35 The site is not listed on the NSW Government Biodiversity Values tool as land with a high biodiversity value. The site is cleared agricultural land that has mostly been cleared of native vegetation with only a few trees remaining.

- 36 Thus, the Court is satisfied that the requirements of cl 6.3 of the DLEP have been satisfied.

Salinity – Clause 6.5

- 37 Clause 6.5 of the DLEP requires the consent authority to be satisfied of various matters listed in that clause with the objective of providing appropriate

management of land that is subject to salinity and to minimise and mitigate adverse impacts from development that contributes to salinity.

- 38 Clause 6.5(2) of the DLEP requires the consent authority to consider various matters if the consent authority is satisfied that the proposal “may affect the process of salinisation or is proposed to be carried out on land affected by groundwater salinity”.
- 39 Section 10.3.2 of the Construction Environmental Management Plan Rev 1 dated 6 December 2024 (CEMP December 2024) states that the potential environmental impacts to soils arising from the Proposed Development include sediment runoff from newly exposed surfaces, sedimentation of waterways, wetlands, swamps and low-lying areas, sediment runoff/water pooling during heavy rainfall event. The Council Assessment Report notes no confirmed impacts to water/air/soils.
- 40 There is no indication that the Land is affected by groundwater salinity.
- 41 The parties agree and I accept that the Proposed Development is not likely to affect the process of salination and to salinisation or is proposed to be carried out on land affected by groundwater salinity.
- 42 The Court is satisfied that the requirements of cl 6.5 of the DLEP have been met.

Essential Services – Clause 6.7

- 43 Clause 6.7 of the DLEP requires the consent authority to be satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available when required.
- 44 The Council's Assessment Report identifies that the supply of water (cl 6.7(a)), the supply of electricity (cl 6.7(b)) and suitable vehicular access (cl 6.7(e)) are essential to the Proposed Development and are available to the Proposed Development, stating on p 19:

“Electricity is available to the site through Essential Energy overhead powerlines. Water is available to the site with existing rainwater tanks, dams and irrigation infrastructure. Vehicular access is available off Hogans Lane, subject to appropriate conditions of consent to ensure the road is constructed to an appropriate standard.”

- 45 The Court is satisfied that the requirements of cl 6.7 of the DLEP have been satisfied.

State Environmental Planning Policy (Resilience and Hazards) 2021

- 46 Section 4.6(1) of the State Environmental Planning Policy (Resilience and Hazards) 2021 (R&H SEPP) precludes the granting of development consent unless the consent authority has considered relevantly whether the site is contaminated.
- 47 Section 4.6(2) of the R&H SEPP requires that a consent authority must consider a report specifying the findings of a preliminary investigation of the land where the development would involve a change of use on any of the land specified in s 4.6(4) of the R&H SEPP, including land within an ‘*investigation area*’ and land used, or is known to have been used, for a purpose referred to in Table 1 to the contaminated land planning guidelines.
- 48 The parties agree and I accept that the site:
- (1) is not within an investigation area; and
 - (2) is not being used and has not known to have been used for the purposes listed in Table 1 of the Managing Land Contamination – Planning Guidelines (see SEE, section 4.4, p 8).
- 49 Therefore, the Court is satisfied that the Proposed Development is compliant with Ch 4 of the R&H SEPP.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- 50 Chapter 4 Koala habitat protection of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (B&C SEPP) is relevant to the Proposed Development.
- 51 In accordance with s 4.4 of the B&C SEPP, Ch 4 applies to the site because Edward River Council is referred to in Sch 2 of the B&C SEPP.
- 52 The site the subject of the Proposed Development is greater than 1ha and there is no approved koala plan of management applying to the site. On this basis, s 4.9 of the B&C SEPP applies. Section 4.9(2) requires the consent authority to assess whether the Proposed Development is likely to have any impacts on koalas or koala habitat.

- 53 Pursuant to s 4.10 of the B&C SEPP, the consent authority is not prevented from granting consent to a development application if:
- (a) the land does not have an approved koala plan of management applying to the land, or
 - (b) the council is satisfied that the land is not core koala habitat.
- 54 Council referred the DA to Department of Planning and Environment – Biodiversity & Conservation Division who commented, as recorded at Table 5 p 24 of the Council Assessment Report that:
- “...as the proposal does not include any clearing of native vegetation, potential impacts to threatened species and communities are considered unlikely. Recommended conditions of consent provided.”
- 55 As discussed at [35] above, the site is not listed by the NSW Government Biodiversity Values tool as land with a high biodiversity value and is cleared agricultural land with only a few trees remaining.
- 56 The parties agree and I accept that the Proposed Development is not likely to have any impacts on koalas or koala habitat, noting that the site is cleared agricultural land with only a few trees remaining. The parties also agree and I accept that the site is not core koala habitat.
- 57 The Court is satisfied that the requirements of the B&C SEPP have been satisfied.

Conclusion and orders

- 58 As the parties’ decision is within power I now dispose of the proceedings in accordance with that decision.
- 59 In forming that view, I am not required to make, and have not made, any assessment of the merits of the DA against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.
- 60 The Court notes that:
- (1) Edward River Council, as the relevant consent authority, has agreed under s 38 of the Environmental Planning and Assessment Regulation 2021 to the Second Applicant amending Development Application 2023/0024 in accordance with the amended material identified at Annexure A.

- (2) The Second Applicant has filed the documents identified at Annexure A on 16 May 2025.

61 The Court orders that:

- (1) The appeal is upheld.
- (2) Development consent is granted to Development Application 2023/0024 for the installation of a 4.95MW solar farm and associated works including the installation of 9,396 solar panels mounted on single axis tracking arrays, construction of a 1.8m high perimeter chain mesh fencing, with barb wire, landscaping of the perimeter, construction of a 22kV pole, construction of a high voltage power switchboard, and construction of an inverter station at 39 Hogans Lane, Deniliquin NSW 2710 (Lot 2 in DP778062), subject to the conditions of consent contained at Annexure B.

S Dixon

Senior Commissioner of the Court

Annexure A

Annexure B

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.