

AUSTRALIA / JUDGMENT

Galea v Penrith City Council

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Land and Environment Court New South Wales Medium Neutral Citation: Galea v Penrith City Council [2026] NSWLEC 1494 Hearing dates: Conciliation Conference 31 July 2026 Date of orders: 07 August 2026 Decision date: 07 August 2026 Jurisdiction: Class 1 Before: Targett C Decision: The Court orders that:

- (1) The appeal is upheld.
- (2) Development Application No DA25/0449 for the construction of a shed, continued use of a driveway and ancillary works on land at Lot 1 in DP 538628, known as 394-400 Cranebrook Road, Cranebrook, is determined by the grant of development consent subject to the conditions set out in Annexure A. Catchwords: APPEAL – Development Application – appeal against conditions – conciliation conference – agreement between the parties – orders Legislation Cited: Biodiversity Conservation Act 2016 (NSW), ss 6.12, 6.15, 7.2, 7.4, 7.7, 7.13 Environmental Planning and Assessment Act 1979 (NSW), ss 4.14, 4.15, 8.7 Land and Environment Court Act 1979 (NSW), ss 17, 34 Biodiversity Conservation Regulation 2017 (NSW), ss 7.1, 7.2 Penrith Local Environmental Plan 2010, cl 7.1, 7.5, 7.6, 7.30 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6 State Environmental Planning Policy (Resilience and Hazards) 2021 Texts Cited: Penrith Development Control Plan 2014 Category: Principal judgment Parties: Jonathon Charlies Galea (First Applicant) Michelle Kay Galea (Second Applicant) Penrith City Council (Respondent) Representation: Counsel: T Hall (Solicitor) (Applicant) T Johnston (Solicitor) (Respondent) Solicitors: Hall Partners (Applicant) Penrith City Council (Respondent) File Number(s): 2026/164434 Publication restriction: Nil

Judgment

COMMISSIONER:

Background

This is a Class 1 Development Appeal pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) by the applicant against the imposition of various conditions by the respondent in granting consent to the applicant's Development Application No DA25/0449 (Development Application) seeking consent for the construction of a shed (15m by 18m and 6.568m tall) and use of a driveway on land legally described as Lot 1 in Deposited Plan 538628, known as 394-400 Cranebrook Road, Cranebrook (Subject Land). The Court has power to

dispose of these proceedings under its Class 1 jurisdiction pursuant to s 17(d) of the Land and Environment Court Act 1979 (NSW) (LEC Act). The Development Application The Development Application was lodged with the respondent on 20 June 2025. The Development Application was notified between 2 and 15 July 2025. No submissions were received in response to the notification. On 27 October 2025, the Development Application was approved by the respondent subject to conditions. On 22 April 2026, the applicant commenced these Class 1 proceedings under s 8.7 of the EPA Act in respect of the imposition of conditions 7, 21, 22 and 23. The proceedings were commenced within the appeal period prescribed by s 8.10 of the EPA Act. The Court arranged a conciliation conference under s 34 of the LEC Act between the parties, which was held on 31 July 2026. I presided over the conciliation conference. Prior to the conciliation conference, the parties reached agreement as to the resolution of the proceedings. The decision agreed upon is for the grant of consent to the Development Application subject to conditions of consent and in particular, the deletion of the requirement to register a restrictive covenant on title and to demolish a cottage on the Subject Land. The signed agreement is supported by an agreed jurisdictional statement. 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. 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 that were originally in dispute between the parties. Jurisdictional considerations As the presiding Commissioner, I am satisfied that the decision is one that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I form this state of satisfaction for the reasons that follow. Owner's consent The applicants in the proceedings are the registered proprietors of the Subject Land. Biodiversity Conservation Act 2016 Section 7.7(2) of the Biodiversity Conservation Act 2016 (NSW) (BC Act) relevantly provides that if proposed development is likely to significantly affect threatened species, the application is to be accompanied by a Biodiversity Development Assessment Report (BDAR). Section 7.2 of the BC Act provides a series of triggers for when a proposed development is deemed "likely to significantly affect threatened species". The parties agree that the proposed development is likely to significantly affect threatened species for the purposes of Pt 7 of the BC Act because the previous unlawful tree removal on the Subject Land to facilitate the construction of the unauthorised driveway (for which this application seeks consent to use) involved the clearing of native vegetation that exceeds the threshold for the purposes of ss 7.1 and 7.2 of the Biodiversity Conservation Regulation 2017 (NSW) (BC Regulation) and s 7.4 of the BC Act. A Streamlined BDAR prepared by Anderson Environmental dated 30 May 2025 forms part of the Development Application under s 7.7(2) of the BC Act. The BDAR: was prepared by a suitably accredited person for the purposes of the BC Act who has certified that the report has been prepared on the basis of the requirements of (and information provided under) the biodiversity assessment method as of 14 June 2025 as required by s 6.15 of the BC Act; sets out in section 3 the biodiversity values of the land the subject of the proposed development as required by s 6.12(a) of the BC Act; sets out in section 4 the impact of the proposed development on the biodiversity values of the land as required by s 6.12(b) of the BC Act; sets out in section 4 the measures that the proponent of the proposed development proposes to take to avoid or minimise the impacts of the proposed

development on biodiversity values as required by s 6.12(c) of the BC Act; and concludes that eleven biodiversity credits are required to offset the impacts of the clearing for the purpose of s 6.12(d) of the BC Act. Pursuant to s 7.13(2) of the BC Act, the consent authority is to relevantly take into consideration the likely impact of the proposed development on biodiversity values as assessed in the BDAR that relates to the application. In determining the Amended Development Application, I confirm that I have considered the likely impact of the proposed development on biodiversity values as assessed in the BDAR. Pursuant to s 7.13(3) of the BC Act, the conditions of consent require the applicant to retire biodiversity credits as specified in the BDAR (see conditions 16 and 18). Environmental Planning and Assessment Act 1979 Pursuant to s 4.14 of the EPA Act relating to consultation and development consent – certain bushfire prone land, development consent cannot be granted for development on bush fire prone land unless, relevantly, the specifications and requirements of Planning for Bush Fire Protection (PFBP). The parties agree, and I accept, that the Development Application seeks approval for a Class 10 shed located more than 6m away from a Class 1a dwelling. As such, the Development Application is exempt from any construction requirements under the PFBP. State Environmental Planning Policy (Resilience and Hazards) 2021 I accept the parties' submission that the requirements of the State Environmental Planning Policy (Resilience and Hazards) 2021 have been considered and the Subject Land is suitable to accommodate the development that is the subject of the Development Application. This is primarily because there is no known history of potentially contaminating uses or events relating to the Subject Land. State Environmental Planning Policy (Biodiversity and Conservation) 2021 The Subject Land is located within the Hawkesbury-Nepean Catchment and the provisions of Ch 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 therefore apply. I have had regard to the Stormwater Management Plans prepared by SDS Engineering dated 16 October 2025 and agreed conditions of consent in relation to the requirements of Ch 6, and accept the parties' submissions that the relevant provisions have been considered and satisfied. Penrith Local Environmental Plan 2010 The Subject Land is zoned C4 Environmental Living pursuant to the Penrith Local Environmental Plan 2010 (PLEP). The proposed development is permissible with consent in the C4 zone. I have had regard to the C4 zone objectives which are extracted below:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To ensure land uses are compatible with the available infrastructure, services and facilities and with the environmental capabilities of the land.
- To preserve and improve natural resources through appropriate land management practices. The parties agree, and I accept, that the Development Application complies with all relevant development standards in the PLEP. Pursuant to cl 7.1 of the PLEP relating to

earthworks, the parties agree, and I accept, that the matters in cl 7.1(3) have been considered having regard to the Statement of Environmental Effects prepared by Stimson dated 22 December 2023 (p 11) (SEE) and agreed conditions of consent. Pursuant to cl 7.5 of the PLEP relating to protection of scenic character and landscape values, the parties agree, and I accept, that the measures will be taken to minimise the visual impact of the development from major roads and other public places having regard to conditions 21, 23 and 27 of the agreed conditions. Pursuant to cl 7.6 of the PLEP relating to salinity, the parties agree, and I accept, that the matters in cl 7.6(2) have been considered. Pursuant to cl 7.30 of the PLEP relating to urban heat, the parties agree, and I accept, that the matters in cl 7.30(3) of the PLEP have been considered having regard to conditions 21, 23 and 27 of the agreed conditions. Penrith Development Control Plan 2014 The parties agree, and I accept that, the Amended Development Application is capable of approval having regard to the relevant provisions of the Penrith Development Control Plan 2014 (see also SEE, p 12-13). Remaining matters in s 4.15(1) of the EPA Act The parties agree, and I accept, that the Development Application may be approved having regard to the remaining matters under s 4.15(1) of the EPA Act (see also SEE, pp15-16).

Conclusion

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

The Court orders that: The appeal is upheld. Development Application No DA25/0449 for the construction of a shed, continued use of a driveway and ancillary works on land at Lot 1 in DP 538628, known as 394-400 Cranebrook Road, Cranebrook, is determined by the grant of development consent subject to the conditions set out in Annexure A. N Targett Commissioner of the Court Annexure A (230 KB, pdf)

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Prepared on 29 October 2026 · Esheria