

AUSTRALIA / JUDGMENT

Ly v Fairfield City Council

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Land and Environment Court New South Wales Medium Neutral Citation: Ly v Fairfield City Council [2026] NSWLEC 1618 Hearing dates: Conciliation conference on 7 September 2026 Date of orders: 22 September 2026 Decision date: 22 September 2026 Jurisdiction: Class 1 Before: Washington C Decision: The Court orders:

- (1) The appeal is upheld.
- (2) Development Application No. DA 36.1/2026 (as amended) for the demolition of existing structures, the construction of a two-storey residential dwelling and associated works, on land legally described as Lot 25 in Deposited Plan 10281 and known as 9 Cook Avenue, Canley Vale NSW 2166, is determined by way of consent subject to the conditions at Annexure A. Catchwords: DEVELOPMENT APPLICATION – single dwelling – conciliation conference – agreement between the parties – orders Legislation Cited: Environmental Planning and Assessment Act 1979 (NSW), ss 4.16, 8.7 Land and Environment Court Act 1979 (NSW), ss 34, 34AA Environmental Planning and Assessment Regulation 2021 (NSW), s 38 Fairfield Local Environmental Plan 2013, cll 4.3, 4.4, 5.21, 5.22, 6.1, 6.2, 6.5, 6.9 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6 State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6 State Environmental Planning Policy (Sustainable Buildings) 2022 Category: Principal judgment Parties: Aaron Ly (Applicant) Fairfield City Council (Respondent) Representation: Counsel: J Reid (Applicant) S Shneider (Respondent) Solicitors: Miller & Prince Lawyers (Applicant) Houston Dearn O'Connor (Respondent) File Number(s): 2026/211637 Publication restriction: Nil

Judgment

COMMISSIONER: These Class 1 proceedings arise as a result of the actual refusal, by Fairfield City Council, of Development Application 36.1/2026 which seeks consent for the demolition of existing structures, and construction of a two-storey residential dwelling and associated works at 9 Cook Avenue, Canley Vale, Lot 25 DP 10281 (the site). These proceedings have been brought to the Court pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act). The Court arranged a conciliation conference and hearing under s 34AA of the Land and Environment Court Act 1979 (NSW) (LEC Act) between the parties, which was held on 7 September 2026. At the conciliation conference, the parties reached agreement as to acceptable terms of a decision in the proceedings. This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions. Subsequently, the matter concluded in conciliation and did not proceed to a hearing. As part of

this agreement, pursuant to s 38 of the Environmental Planning and Assessment Regulation 2021 (NSW), the Council agreed to the applicant amending the development application to adequately address their contentions. This amended application now forms the application before the Court under the parties' agreement. Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if that decision is one that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application. There are jurisdictional prerequisites that must be satisfied before this function can be exercised, which the parties identified and explained. From this, I note the following points. The development application was made with the written consent of the owner of the land. The application was adequately notified from 3 March to 17 March 2026, during which time no submissions were received. The parties agree that the amended application does not necessitate renotification. The subject site is zoned R2 Low Density under the Fairfield Local Environmental Plan 2013 (FLEP), within which development for the purposes of a dwelling house is permissible with consent. The proposed development is consistent with the relevant objectives of this zone. Pursuant to FLEP cl 4.3, a maximum building height of 9m applies to the subject site. The proposed development complies with this development standard with a maximum height of 8.845m. FLEP cl 4.4 establishes a maximum floor space ratio (FSR) for the site of 0.45:1. The proposed development again complies with this development standard with a FSR of 0.23:1. The site is mapped as being within the flood planning area. Based on the Flood Impact Study by Deboke Engineering Consultants dated 23 August 2026 and the parties' detailed submission, I accept that the flood-planning related matters listed in FLEP cl 5.21(3) have been considered, and the proposed development satisfies the requirements at 5.21(2). Further, the special flood considerations at FLEP cl 5.22 applies to the site. Again, from the parties' submission and the Flood Impact Study, I accept that the proposed development will not adversely affect the safe occupation and efficient evacuation of people in a flood; incorporates appropriate measures to manage risk to life in the event of a flood, and; will not adversely affect the environment in the event of a flood. Pursuant to FLEP cl 6.1, the site is identified as Class 5 on the Acid Sulfate Soils Map, but is not within 500m of and Class 1, 2, 3 or 4 land and therefore there are no further requirements under this clause. The proposed development includes earthworks. From the parties' submission, the relevant conditions of consent and the stormwater plans by Deboke Engineering Consultants dated 24 April 2026, I accept that the proposed earthworks are acceptable when considered against the matters listed in FLEP cl 6.2(3). The site is partly mapped as 'biodiversity' on the Terrestrial Biodiversity Map pursuant to FLEP cl 6.5, however the amended application confirms that no development is proposed in the mapped areas. From the parties' submission, and the amended application, I accept that the matters listed in cl 6.5(3) have been considered. I further accept that the proposed development has been sited and managed to avoid any potentially adverse impact and meets the requirements of cl 6.5(4). From the Statement of Environmental Effects by Deboke Visualisation dated July 2025 (SEE), the parties' submission and the fact that the site facilitates existing fully serviced residential use, I accept that the essential services listed in FLEP cl 6.9 are available or will be available when required. Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 requires the consent authority to consider whether the site

is contaminated, and if so, whether it is or will be made suitable for the intended use. From the parties' submission and the SEE, I accept that there is no known contamination on the site, nor any history of contaminating activities and that the site is suitable for the continued residential use. The site is located within the Georges River Catchment and accordingly, Ch 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BC) applies. Based on the Flood Impact Study, the amended application and the parties' submission, I accept that the requirements of Ch 6 of the SEPP BC relating to water quality and quantity (s 6.6), aquatic ecology (s 6.7), and flooding (s 6.8) are met by the proposed development. I further accept that the proposed development does not affect public access to and from natural waterbodies (s 6.9), and is not likely to have any adverse environmental impact on any adjacent local government areas (s 6.10). Pursuant to the State Environmental Planning Policy (Sustainable Buildings) 2022, the proposal is a BASIX affected development. Accordingly, the application was accompanied by a BASIX certificate that applies to the development.

Conclusion

For these reasons, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions and subsequently, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision. The Court notes: The Respondent, as the relevant consent authority, has approved under s 38(1) of the Environmental Planning and Assessment Regulation 2021 (NSW), to the Applicant amending Development Application No DA 36.1/2026 in accordance with the following amended plans: Drawing No and Revision Title Prepared by Date Architectural Plans 1 Cover Sheet Deboke 20 August 2026 Drawing No. A1-01, Revision No. 6 Render Drawing No. A1-02, Revision No. 6 Compliance Table Drawing No. A1-03, Revision No. 6 Context Plan Drawing No. A1-04, Revision No. 6 Demolition Plan Drawing No. A1-05, Revision No. 6 Site Plan Drawing No. A1-06, Revision No. 6 Lower Ground Plan Drawing No. A1-07, Revision No. 6 Ground Floor Plan Drawing No. A1-08, Revision No. 6 First Floor Plan Drawing No. A1-09, Revision No. 6 Roof Plan Drawing No. A1-10, Revision No. 6 Elevations Drawing No. A1-20, Revision No. 6 Sections Drawing No. A1-30, Revision No. 6 Landscape Plan Drawing No. A1-31, Revision No. 6 Landscape Calculation Plan Drawing No. A1-32, Revision No. 6 GFA Calculation Plan Drawing No. A1-33, Revision No. 6 Shadow Diagram 01 Drawing No. A1-34, Revision No. 6 Shadow Diagrams 02 Drawing No. A1-35, Revision No. 6 Shadow Diagram 03 Drawing No. A1-48, Revision No. 6 Windows Schedule Elevations Drawing No. A1-49, Revision No. 6 Window Schedule 01 Drawing No. A1-50, Revision No. 6 Windows Schedule - 02 Drawing No. A1-51 Issue No 6 Doors Schedule - 01 Drawing No. A1-52, Revision No. 6 Materials Schedule Drawing No. A1-53, Revision No. 6 3D View-01 Drawing No. A1-54, Revision No. 6 3D View-02 Drawing No. A1-55, Revision No. 6 3D View-03 Drawing No. A1-56, Revision No. 6 3D View-04 Drawing No. A1-57, Revision No. 6 3D View-05 Drawing No. A1-58, Revision No. 6 3D View-06 Drawing No. A1-59, Revision No. 6 3D View-07 Drawing No. A1-60 Revision No. 6 3D View-09 Drawing No. A1-61, Revision No. 6 Max Building Height LEP AXO Drawing No. A1-62, Revision No. 6 Max Building Height DCP AXO Drawing No. A1-70, Revision No. 6 Notification Plan Reports 2 BASIX Certificate No. 1863889S Can Chu 3 September 2026 3 Nationwide House Energy

Rating Scheme NatHERS Certificate No. 0013260922 Deboke 3 September 2026 4 Flood Impact Study Deboke Engineering Consultants 23 August 2026 The Court orders: The appeal is upheld. Development Application No. DA 36.1/2026 (as amended) for the demolition of existing structures, the construction of a two-storey residential dwelling and associated works, on land legally described as Lot 25 in Deposited Plan 10281 and known as 9 Cook Avenue, Canley Vale NSW 2166, is determined by way of consent subject to the conditions at Annexure A. E Washington Commissioner of the Court

Annexure A (586 KB, 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. Decision last updated: 22 September 2026

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