

AUSTRALIA / JUDGMENT

Toki v Ku-ring-gai Council

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Land and Environment Court New South Wales Medium Neutral Citation: Toki v Ku-ring-gai Council [2026] NSWLEC 1655 Hearing dates: Conciliation conference on 24 and 25 September 2026 Date of orders: 25 September 2026 Decision date: 25 September 2026 Jurisdiction: Class 1 Before: Washington C Decision: The Court orders:

- (1) The appeal is upheld.
- (2) Development Application eDA0016/26 for subdivision of one lot into two and construction of a dwelling house and associated works on proposed Lot 121, which has frontage to Reservoir Road at 12 Bungalow Avenue, Pymble, as amended, is determined by the grant of consent, subject to the conditions set out in Annexure A. Catchwords: DEVELOPMENT APPLICATION – construction of a dwelling house – conciliation conference – agreement between the parties – orders Legislation Cited: Biodiversity Conservation Act 2016 (NSW), ss 7.2, 7.3, 7.7 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 Ku-ring-gai Local Environmental Plan 2015, cl 4.1, 4.3, 4.4, 6.1, 6.2, 6.3, 6.5 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6, ss 6.6, 6.7, 6.8, 6.9 State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6 State Environmental Planning Policy (Sustainable Buildings) 2022 Category: Principal judgment Parties: Davinder Toki (Applicant) Ku-ring-gai Council (Respondent) Representation: Counsel: M Harker (Applicant) C Nguyen (Respondent) Solicitors: Mills Oakley (Applicant) Shaw Reynolds Lawyers Pty Ltd (Respondent) File Number(s): 2026/229231 Publication restriction: Nil

Judgment

COMMISSIONER: These Class 1 proceedings arise as a result of the deemed refusal, by Ku-ring-gai Council, of Development Application eDA0016/26, which seeks consent for the Torrens title subdivision of the existing allotment into two lots and the construction of a new dwelling house, driveway crossover and associated landscaping at 12 Bungalow Ave, Pymble, Lot 12 in DP 814916. 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 24 and 25 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. Accordingly, 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) (EPA Regulation), the Council agreed to the applicant amending the development application to adequately address their contentions. 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 24 February to 23 March 2026, during which time no submissions were received. The parties agree that the amended application does not necessitate renotification as it has reduced the environmental impacts. 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, the Environmental Site Assessment- Preliminary Site Investigation (Site History Review) and Detailed Site Investigation (Soil and Groundwater Investigation) by JBS & G dated 3 May 2017 (Environmental Site Assessment), and the Statement of Environmental Effects by Minto Planning Services dated 27 January 2026 (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 intended residential use. 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. The site is partly mapped as 'biodiversity values'. The proposed development includes clearing of some native vegetation, and is likely to significantly affect threatened species as defined by s 7.2 of the Biodiversity Conservation Act 2016 (NSW) (BC Act), and as per the test in s 7.3. The proposed clearing will include some vegetation from the critically endangered ecological community of Blue Gum High Forest. Accordingly, pursuant to s 7.7(2) of the BC Act, the development is accompanied by a Biodiversity Development Assessment Report (BDAR) by Thrive Ecology dated September 2026. This confirms that the development will not result in any serious and irreversible impact to biodiversity values, and that sufficient credits will be retired to offset the proposed clearing. The site is located within the Sydney Harbour Catchment and accordingly, Ch 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BC) applies. Based on the Stormwater Letter by Hydracor Consulting Engineers dated 22 September 2026 (Stormwater Letter) and the Stormwater Plans by Hydracor Consulting Engineers, revision E in the amended application (Stormwater Plans), 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). The subject site is zoned R2 Low Density Residential under the Ku-ring-gai Local Environmental Plan 2015 (KLEP), within which development for the purposes of a dwelling house is permissible with consent. The proposed

development is consistent with the objectives of this zone. The proposed subdivision meets the minimum lot size set out in KLEP cl 4.1 of 930m². Proposed Lot 121 has an area of 931m² and Lot 122, 1861m². The lots also both exceed the minimum lot width of 18m pursuant to cl 4.1(3A). Pursuant to KLEP cl 4.3, a maximum building height of 9.5m applies to the subject site. The proposed development complies with this development standard with a maximum height of 7.35m. KLEP cl 4.4 establishes a maximum floor space ratio (FSR) for Lot 121, upon which the proposed dwelling is located, of 0.397:1. Lot 122, which contains the existing Pymble Telephone Exchange, when excluding plant areas in accordance with the definition in the KLEP, will have a gross floor area (GFA) of 0.20:1. The proposed development therefore complies with this development standard. Pursuant to KLEP cl 6.1, the site is identified as Class 5 on the Acid Sulfate Soils Map, but is not within 500m of any Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum (AHD), and is not likely to lower the water table below 1m AHD. The proposed development includes earthworks. From the Supplementary Geotechnical Statement by JK Geotechnics dated 21 September 2026 and the information contained in the SEE, the architectural plans, the Geotechnical Investigation Report by JK Geotechnics dated 22 December 2025, the Stormwater Letter and the SEE, I accept that the proposed earthworks are acceptable when considered against the matters listed in KLEP cl 6.2(3). The site is partly mapped as 'biodiversity values' on the Terrestrial Biodiversity Map pursuant to KLEP cl 6.3. From the parties' submission, the information within the BDAR, the Vegetation Management Plan by Thrive Ecology dated August 2026 and the amended application, I accept that the matters listed in cl 6.3(3) have been considered. I further accept that the proposed development is both consistent with the objectives of this clause and has been sited and managed to avoid any potentially adverse impact, and, if potentially adverse impact cannot be avoided, compliance with cl 6.3(4)(b) is nonetheless achieved. From the Stormwater Letter, Stormwater Plans and the parties' submission, I accept that the stormwater and water sensitive urban design of the proposed development meets the requirements of KLEP cl 6.5.

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: Ku-ring-gai Council, as the relevant consent authority, has approved under s 38(1) of the Environmental Planning and Assessment Regulation 2021 (NSW), the Applicant's application to amend Development Application eDA0016/26 in accordance with the documents listed below:

Amended Architectural Plans Plan name Drawing ref Revision Date Prepared by Site Analysis
DW.03 M 25 September 2026 Arc Innovationz Design & Construction Ret Wall DW.04 M 25
September 2026 Arc Innovationz Design & Construction Trees Plan DW.04.1 M 25 September 2026
Arc Innovationz Design & Construction Site Plan DW.05 M 25 September 2026 Arc Innovationz
Design & Construction Basement DW.06 M 25 September 2026 Arc Innovationz Design &
Construction Ground Floor Plan DW.07 M 25 September 2026 Arc Innovationz Design &
Construction First Floor DW.08 M 25 September 2026 Arc Innovationz Design & Construction

Elevations DW.09 M 25 September 2026 Arc Innovationz Design & Construction Elevations DW.10 M 25 September 2026 Arc Innovationz Design & Construction Sections DW.11 M 25 September 2026 Arc Innovationz Design & Construction Sections DW11.1 M 25 September 2026 Arc Innovationz Design & Construction Built Upon Area DW.12 M 25 September 2026 Arc Innovationz Design & Construction Finishes Schedule DW.13 M 25 September 2026 Arc Innovationz Design & Construction Shadow Plan DW.14 M 25 September 2026 Arc Innovationz Design & Construction GFA Area DW.15 M 25 September 2026 Arc Innovationz Design & Construction Building Footprint DW.16 M 25 September 2026 Arc Innovationz Design & Construction Amended Landscape Plans Plan name Drawing ref Revision Date Prepared by Landscape Plan 1 ONE/THREE E 24 September 2026 iScape Landscape Architects Landscape Plan 2 TWO/THREE C 24 September 2026 iScape Landscape Architects Landscape Plan 3 THREE/THREE C 8 September 2026 iScape Landscape Architects Amended Subdivision and Stormwater Plans Plan name Drawing ref Revision Date Prepared by Cover Sheet & Notes C1 J 25 September 2026 Hydracor Consulting Engineers Subdivision Plan C2 J 25 September 2026 Hydracor Consulting Engineers Stormwater Management Plan C3 J 25 September 2026 Hydracor Consulting Engineers Stormwater Management Details – Sheet No. 1 C4 J 25 September 2026 Hydracor Consulting Engineers Stormwater Management Details – Sheet No. 2 C5 J 25 September 2026 Hydracor Consulting Engineers Driveway & Crossover Plan C6 J 25 September 2026 Hydracor Consulting Engineers Driveway Long Section Sheet No. 1 C7 J 25 September 2026 Hydracor Consulting Engineers Driveway Long Section Sheet No. 2 C8 J 25 September 2026 Hydracor Consulting Engineers Driveway Long Section Sheet No. 3 C9 J 25 September 2026 Hydracor Consulting Engineers Standard Council Details C10 J 25 September 2026 Hydracor Consulting Engineers Erosion & Sediment Control Plan C11 J 25 September 2026 Hydracor Consulting Engineers Erosion & Sediment Control Notes & Details C12 J 25 September 2026 Hydracor Consulting Engineers Bulk Earthworks Plan C13 J 25 September 2026 Hydracor Consulting Engineers Cut & Fill Cross Sections Sheet No. 1 C14 J 25 September 2026 Hydracor Consulting Engineers Cut & Fill Cross Sections Sheet No. 2 C15 J 25 September 2026 Hydracor Consulting Engineers Driveway & Crossover B85 Swept Path Plan C16 J 25 September 2026 Hydracor Consulting Engineers Permeable Paving Details C17 J 25 September 2026 Hydracor Consulting Engineers Amended Documents Document name Ref Revision Date Prepared by Amended BASIX Certificate 1813968S_04 - - 22 September 2026 Australian Energy Efficiency Certificate Amended NatHERS Certificate No. #HR-MI4E1I-03 - - 22 September 2026 AKM Hassan Amended BASIX Plans Certificate No. #HR-MI4E1I-03 - - 22 September 2026 Australian Energy Efficiency Certificate Supplementary Geotechnical Statement Ref: 38114PH2le - 21 September 2026 JK Geotechnics Stormwater Statement in relation to KLEP Cl (5.21 and 6.5) and B and C SEPP Cl (6.6, 6.7, 6.8 and 6.9) CC250153/BAK:pm - 22 September 2026 Hydracor Consulting Engineers Addendum to the Advanced Treescape Consulting Arboricultural Impact Assessment dated 14/09/2026 – Issue 10 - - 23 September 2026 Advanced Treescape Consulting The Court orders: The appeal is upheld. Development Application eDA0016/26 for subdivision of one lot into two and construction of a dwelling house and associated works on proposed Lot 121 which has frontage to Reservoir Road at 12 Bungalow Avenue, Pymble, as amended, is determined by the grant of consent, subject to the conditions set out in Annexure A. E Washington Commissioner of the Court

Annexure A (357 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: 30 September 2026

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Prepared on 26 October 2026 · Esheria