



Land and Environment Court of New South Wales

Al Bazzi v Canterbury Bankstown Council [2025] NSWLEC 1815 (21 November 2025)

Last Updated: 21 November 2025

Land and Environment Court
New South Wales

Case Name:	Al Bazzi v Canterbury Bankstown Council
Medium Neutral Citation:	[2025] NSWLEC 1815
Hearing Date(s):	Conciliation conference 27 June, 14 November 2025
Date of Orders:	21 November 2025
Decision Date:	21 November 2025
Jurisdiction:	Class 1
Before:	Dickson C
Decision:	The Court orders that:

(1) The appeal is upheld.

(2) Development Consent is granted to DA-1481/2024 (PAN 496065) lodged on 17 December 2024 for the consolidation of two lots, demolition of existing structures and construction of a two-storey centre-based child care facility (120 places) over a basement carpark with associated landscaping upon land known as No 28-30 Forrest Road, East Hills (comprised by Lots 38 & 39 respectively, in Section 1, DP 14650), is approved subject to conditions in Annexure A.

(3) Pursuant to [s 8.15\(3\)](#) of the [Environmental Planning and Assessment Act 1979](#) (NSW), the applicant is to pay, within 28 days of the date of these orders, the agreed sum of \$3,000.00 in costs of the respondent thrown away by reason of the amended development application.

Catchwords:	DEVELOPMENT APPLICATION: lot consolidation, demolition and construction of a new childcare centre – conciliation conference – amended plans and documents – agreement reached – orders made
Legislation Cited:	Environmental Planning and Assessment Act 1979 (NSW), ss 4.15, 4.16, 8.7, 8.15 Land and Environment Court Act 1979 (NSW), ss 34 Education and Care Services National Regulation 2011 (NSW), regs 107, 108 Environmental Planning and Assessment Regulations 2021 (NSW), ss 23, 38 Canterbury Bankstown Local Environmental Plan 2023, cl 2.3, 2.7, 4.3, 4.4, 6.1, 6.2, 6.3, 6.9, 6.13, 6.15 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 2, s 2.3 State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 4, s 4.6 State Environmental Planning Policy (Transport and Infrastructure) 2021, s 3.23, 3.25, 3.26
Cases Cited:	McMillan v Taylor (2023) 111 NSWLR 634; [2023] NSWCA 183
Texts Cited:	NSW Government, Child Care Planning Guideline, September 2021 Canterbury Bankstown Development Control Plan 2023
Category:	Principal judgment
Parties:	Al Bazzi (Applicant) Canterbury Bankstown Council (Respondent)
Representation:	Counsel: M Fozzard (Applicant) M Bonnano, solicitor (Respondent) Solicitors:

File Number(s): 2025/44796

Publication Restriction: No

JUDGMENT

1. **COMMISSIONER:** This is an appeal pursuant to [s 8.7](#) of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) by Al Bazzi (the Applicant) against the deemed refusal of development application DA-1481/2024 by the Respondent, Canterbury Bankstown Council. The development application, as amended, seeks consent for the consolidation of two lots, demolition of existing structures and construction of a two-storey centre based childcare facility (120 places) over a basement carpark with associated landscaping. The site of the proposed development is 28-30 Forest Road, East Hills 2213 NSW (Lots 38 & [39 Sec 1](#) in DP 14650).
2. The Court arranged a conciliation conference between the parties, pursuant to [s 34\(1\)](#) of the *Land and Environment Court Act 1979* (NSW) (LEC Act). The conciliation conference commenced on 27 June 2025. The conciliation conference was adjourned to provide the parties the opportunity to seek to resolve their dispute, but the conciliation was ultimately terminated on 21 July 2025 and the matter listed for hearing.
3. Prior to the commencement of the hearing, the parties advised the Court they had reached agreement following an adjournment of the hearing, the Court arranged a conciliation conference under [s 34\(1\)](#) of the LEC Act between the parties, which was held on 14 November 2025. I presided over the further conciliation conference. The decision agreed upon is for the grant of development consent to the development application, as amended, subject to conditions of consent pursuant to [s 4.16\(1\)](#) of the EPA Act. This agreement meets the first condition to the exercise of power and obligation of a commissioner to dispose of the proceedings in accordance with the decision of the parties (this being the test applied by [s 34\(3\)](#) of the LEC Act): see *McMillan v Taylor* (2023) 111 NSWLR 634; [2023] NSWCA 183 (McMilan) at [51].
4. As the presiding Commissioner, I am satisfied that the second condition is met, that being the decision is one that the Court can make in the proper exercise of its functions see *McMillan* at [51]. I form this state of satisfaction on the basis that:

(1) The development application is lodged with the consent of the owners of the land: [s 23](#) of the *Environmental Planning and Assessment Regulation 2021* (NSW) (EPA Regulation).

(2) The development application was notified by the Respondent. Three initial submissions were received. Further, a concerned resident made oral submissions to the Court at the second conciliation. The concerns of the resident centred on dilapidation of adjoining properties, stormwater impacts of the proposed development and design and detail of boundary fencing and conditions. With the assistance of the amended development application documents filed in the proceedings I am satisfied that the submissions have been considered in the determination of the development application by either amendment to the application or by the imposition of conditions of consent: [s 4.15\(1\)\(d\)](#) of the EPA Act.

(3) Chapter 4 (Remediation of Land) of State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP RH) applies to the land. Section 4.6 of SEPP RH requires a

consent authority to consider the contamination of land when determining a development application. The development application includes a site contamination assessment and a Remediation Action Plan (RAP). The RAP concludes that the Site can be made suitable for the proposed development subject to the implementation and completion of matters outlined in the RAP. Compliance with the RAP is a requirement of the conditions of development consent in Annexure A. I am satisfied that the site will be suitable for the purpose of the development application.

(4) Pursuant to s 2.3 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BC), Ch 2 'Vegetation in Non Rural Areas' applies to the development application. The development application is accompanied by an Arborists report, compliance with which is required by the conditions in Annexure A. Further, replacement planting is proposed in the landscaping strategy for the site. The parties agree, and I accept, that the relevant provisions of Ch 2 of SEPP BC are met.

(5) Pursuant to s 3.23 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP TI), the consent authority must take into consideration any applicable provisions of the Child Care Planning Guidelines before determining the application. The Education and Care Services National Regulation 2011 (Childcare Regulation) apply to the development application along with the Child Care Planning Guidelines issued by the NSW Department of Planning, Industry and Environment in 2021. The Statement of Environment Effects (SEE) accompanying the development application confirms that the proposed development complies with the non-discretionary standards for centre-based childcare facilities at s 3.26 of the Transport and Infrastructure SEPP. I accept the parties' agreed submission that the development application complies with the relevant matters under the Child Care Planning Guidelines and the Childcare Regulation, as demonstrated by the SEE.

(6) I note that pursuant to reg 107 of the Childcare Regulation, education and care service premises must have at least 3.25 square metres of unencumbered indoor space per child. The proposed development complies with this clause.

(7) Further, I note that pursuant to reg 108 of the Childcare Regulation, education and care service premises must have at least 7 square metres of unencumbered outdoor space per child. The proposed development complies with this regulation.

(8) The development is proposed on land zoned R2 Low Density Residential pursuant to Canterbury Bankstown Local Environmental Plan 2023 (LEP 2023). Section 3.25 of the SEPP TI precludes development consent being granted for the purposes of a centre-based child care facility in Zone R2 Low Density Residential if the floor space ratio for the building on the site of the facility exceeds 0.5:1. The Amended Architectural Plans confirm the proposed floor space ratio is 0.399:1 and, as such, I accept I can be satisfied that the proposal is in accordance with s 3.25 of the SEPP TI.

(9) Pursuant to LEP 2023 a centre based childcare centre is permissible with consent in the R2 Low Density Residential zone. As required by cl 2.3 of LEP 2023, in determining the development application, I have given consideration to the objectives of the zone.

(10) Pursuant to cl 2.7 'Demolition', demolition is permitted with consent in the zone.

- (11) Pursuant to cl 4.3 (Height of buildings) in LEP 2023, and the Height of Buildings Map, a maximum height limit of 9m and a storey limit of two storeys applies. The proposed development complies with the development standard.
- (12) Pursuant to cl 4.4(2B)(a)(i) of LEP 2023 a maximum floor space ratio of 0.4: 1 for non residential uses on land zoned residential. The proposed development complies with the development standard.
- (13) Clause 6.1 (Acid Sulfate Soils) provides that development consent is required for the carrying out of works described in the Table at cl 6.1(2) on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The Site is identified as containing Class 5 acid sulfate soils. However, whilst the proposed development is located within 500m of class 1, 2, 3 or 4 land, it is not likely to lower the water table below 1m Australian Height Datum. Therefore, I accept the agreement of the parties that an acid sulfate soils management plan is not required. The proposed development complies with cl 6.1 of LEP 2023.
- (14) Clause 6.2 'Earthworks' in LEP 2023 applies as the development application involves excavation for a basement. The development application is accompanied by a RAP. Further, appropriate conditions of consent have been included to address required earthworks and the potential impacts of same. In determining whether to grant development consent, I have given consideration to the matters at cl 6.2 and find that none warrant the refusal of the applicant.
- (15) Clause 6.3 'Stormwater Management' in LEP 2023 requires the consent authority to consider stormwater management. The applicant has prepared a stormwater design that appropriately deals with stormwater through a controlled OSD system. Further, the proposed development provides for sustainable permeable landscaping. The conditions include the requirement for imposition of a covenant and ongoing maintenance of this infrastructure. I accept the submission of the parties that the matters in cl 6.3 of LEP 2023 have been appropriately considered.
- (16) Pursuant to cl 6.9 'Essential services' in LEP 2023 a consent authority must be satisfied that the services essential to the development are available, or that adequate arrangements have been made to make them available when required. Based on the Statement of Environment Effects (SEE), the civil and architectural plans and the fact that there are existing sewer and water supply services to the site, I am satisfied of the matters in cl 6.9 of LEP 2023.
- (17) Clause 6.13 of LEP 2023 restricts the development of centre-based child care facilities on land fronting a classified road, or a cul-de-sac or a road carriageway of less than 10 metres in width. Forrest Road is neither a classified road or a cul-de-sac. The width of Forrest Road is greater than 10 metres. I accept that cl 6.13 is satisfied,
- (18) Clause 6.15 'Design Excellence' applies to centre-based child care facilities with capacity for over 100 children. Pursuant to cl 6.15(3) development consent must not be granted to development to which the clause applies unless the consent authority is satisfied the development exhibits design excellence. Further, in determining the development application the consent authority is required to consider the matters listed at subcl (4).

(19) With the benefit of the SEE, which addresses the requirements of cl 6.15 of LEP 2023, and following a review of the amended development application, and having considered the matters at subcl (4) of the provision, I am satisfied the development exhibits design excellence for the following reasons:

- (a) I note the explanation and assessment in the SEE that accompanies the development application of design excellence.
- (b) The form, materials and detailing of the amended proposal achieve a standard of architectural design that is consistent with and reinforces the character of the site and locality. Further, the form and external appearance of the amended proposal are responsive to the site's opportunities and constraints.
- (c) There is no impact arising from the proposed development on maintaining view corridors from adjoining development.
- (d) The amended design includes a landscape plan which is integrated into the development as a whole.
- (e) With the assistance of the amended development application, I am satisfied that the development adequately addresses the matters listed at cl 6.15(4)(d).

(20) The Canterbury Bankstown Development Control Plan 2023 (DCP 2023) applies to the site. The SEE filed with the application details the compliance of the proposed development with DCP 2023. In determining the development application, I have considered the provisions of the development control plan pursuant to s 4.15(1) of the EPA Act.

5. Having reached the state of satisfaction that the decision is one that the Court could make in the exercise of its functions, s 34(3)(a) of the LEC Act requires me to “dispose of the proceedings in accordance with the decision”. The LEC Act in s 34(3)(b) also requires me to “set out in writing the terms of the decision”.

6. In making the orders to give effect to the agreement between the parties, the parties have not raised, and I am not aware of any jurisdictional impediment to the making of these orders. Further, I was not required to make, and have not made, any assessment of the merits of the development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.

Notes

7. The Court notes that the Respondent, Canterbury Bankstown Council, as the relevant consent authority, has under s 38 of the EPA Regulation consented to the Applicant amending the development application to rely on the drawings listed below:

(1) Architectural Plans set prepared by DawsonVu Pty Limited, scaled as nominated:

Plan No.	Rev. No.	Plan title	Plan Date
1	H	Site Plan	01.07.25

1a	B	Cut & Fill Plan	01.07.25
2	H	Basement Floor Plan	01.07.25
3	I	Ground Floor Plan	21.07.25
4	I	First Floor Plan	21.07.25
5	H	Roof Plan	01.07.25
6	I	Elevations	21.07.25
6a	C	Streetscape Elevation + Fence Detail	21.07.25
7	H	Sections	01.07.25
8a	H	Shadow Diagram 8am,9am	01.07.25
8b	H	Shadow Diagram 10am,11am	01.07.25
8c	H	Shadow Diagram 12pm,13pm	01.07.25
8d	H	Shadow Diagram 14pm,15pm	01.07.25
8e	H	Shadow Diagram 16pm	01.07.25
9	H	Erosion & Sediment Control Plan	01.07.25
10	H	Site Analysis	01.07.25
10a	B	Sustainability Measures	01.07.25
11	H	Demolition Plan	01.07.25
12a	H	FSR Area	01.07.25
12b	H	Play Area	01.07.25
13	H	Colour + Material Schedule	01.07.25
13a	A	Signage Details	16.06.25
14	C	Window + Door Schedule	21.07.25

(2) Landscape Plans prepared by B + E Landscape Architects, dated 1 April 2025, scaled as nominated:

Plan No.	Rev. No.	Plan Title	Plan Date
L00	F	Cover Sheet	10.07.25
L01	F	Landscape Plan	10.07.25
L02	F	Proposed Plant Schedule and Palette	10.07.25
L03	F	Proposed Play Equipment and Finishes Palette	10.07.25
L04	F	Play Equipment Specifications	10.07.25

(3) Stormwater Management Plans prepared by Broadcrest Engineering and Environmental Consultants, Project 3837-SW:

Plan No.	Rev. No.	Drawing	Plan Date
Sheet 1 of 7 (NTS)	A-03	Title Page & General Notes	8/07/2025
Sheet 2 of 7 (1:150 @A3)	A-03	L/Section, Catch, & Design Summary	8/07/2025

Sheet 3 of 7 (1:150 @A3)	A-03	Roof Drainage Plan	8/07/2025
Sheet 4 of 7 (1:150 @A3)	A-03	Ground Floor Drainage Plan	8/07/2025
Sheet 5 of 7 (1:150 @A3)	A-03	Basement Drainage Plan	8/07/2025
Sheet 6 of 7 (NTS)	A-03	OSD System Details	8/07/2025
Sheet 7 of 7 (NTS)	A-03	Infiltration Detail	8/07/2025

(4) Amended Plan of Management dated 8 July 2025 V.3.

(5) Traffic Management Compliance Review prepared by Positive Traffic, ref. PT25020 dated 8 July 2025.

(6) Amended Waste Management Plan prepared by DawsonVu dated 8 July 2025 V.3.

(7) Detailed Site Investigation Report prepared by Compaction & Soil Testing Services Pty Limited ref. E2000-AA dated 28 July 2025.

(8) Remediation Action Plan prepared by Compaction & Soil Testing Services Pty Limited ref. E2000-AB dated 27 August 2025.

Orders

8. The Court orders that:

(1) The appeal is upheld.

(2) Development Consent is granted to DA-1481/2024 (PAN 496065) lodged on 17 December 2024 for the consolidation of 2 lots, demolition of existing structures and construction of a two-storey centre-based child care facility (120 places) over a basement carpark with associated landscaping upon land known as No 28-30 Forrest Road, East Hills (comprised by Lots 38 & 39 respectively, in Section 1, DP 14650), is approved subject to conditions in Annexure A.

(3) Pursuant to [s 8.15\(3\)](#) of the *Environmental Planning and Assessment Act 1979* (NSW), the applicant is to pay, within 28 days of the date of these orders, the agreed sum of \$3,000.00 in costs of the respondent thrown away by reason of the amended development application.

D Dickson

Commissioner of the Court

[Annexure A \(629 KB, pdf\)](#)
