



Land and Environment Court of New South Wales

**Zeng v Blacktown City Council [2025] NSWLEC 1524 (7 August 2025)**

Last Updated: 7 August 2025

Land and Environment Court  
New South Wales

Case Name: [← Zeng v Blacktown City Council →](#)  
Medium Neutral Citation: [\[2025\] NSWLEC 1524](#)  
Hearing Date(s): 14 May 2025  
Date of Orders: 07 August 2025  
Decision Date: 7 August 2025  
Jurisdiction: Class 1  
Before: Peatman AC  
Decision: The Court orders:

(1) The appeal is dismissed.

(2) The Applicant is to comply with the Development Control Order dated 21 August 2024 (Ref: ON2004/0124; File no. 143991) issued by Blacktown City Council within forty days from the date of judgment in relation to the premises on Lot 51 in Deposited Plan 2161 and known as 40 Sarsfield Street Blacktown 2148 in accordance with Annexure A.

Catchwords: DEVELOPMENT CONTROL ORDER — Order 3 demolish or remove unauthorised buildings works and Order 3 restore premises

Legislation Cited: [Environmental Planning and Assessment Act 1979 \(NSW\) ss 8.18, 9.34, 9.35, Sch 5 Pt 1, Pt 6](#)

[Land and Environment Court Act 1979 \(NSW\) ss 17, 39](#)

Blacktown Local Environmental Plan 2015

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 ss 1.16, 2.51, 2.52

Texts Cited: Blacktown Development Control Plan 2015

NSW Guide to Standards and Tolerances

National Construction Code

Category: Principal judgment

Parties: Cheng Zeng (Applicant)

Blacktown City Council (Respondent)

Representation: Counsel:

Dr L Zeng (Agent) (Applicant)

M Fozzard (Respondent)

Solicitors:

Bilias & Associates, Solicitors & Barristers (Respondent)

File Number(s): 2024/342844

Publication Restriction: No

## JUDGMENT

1. **COMMISSIONER:** This is an appeal against the Development Control Order (DCO) (Ex 1 Respondent's Bundle of Documents, pp10-11) under Div 9.3, Orders 3 and 10, of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) dated 21 August 2024 (Ref: ON2004/0124; File no. 143991) issued by Blacktown City Council (Council) to the Applicant in relation to the premises on Lot 51 in Deposited Plan 2161 and known as 40 Sarsfield Street Blacktown 2148 (Premises - Site).
2. The Premises are owned by the Applicant (Ex 6), and he has given authority to his father, Dr Luping Zeng, to act as his agent for the purposes of the present proceedings (Ex A).
3. Although Dr Zeng has been appointed agent for the Applicant, at the request of the Applicant, and with the Respondent's consent, I agreed to both the Applicant and Dr Zeng being able to address the Court on the basis that the Applicant's English is superior to Dr Zeng's English. From time to time throughout the hearing I permitted the Applicant and Dr Zeng to speak together at the Bar Table prior to addressing the Court or examining/cross-examining a witness.
4. These proceedings fall within Class 1 of the Court's jurisdiction pursuant to s. 17(d) of the *Land and Environment Court Act 1979* (NSW) (LEC Act).
5. On 25 September 2024 Justice Robson granted the Applicant a stay of the DCO pending determination of these Class 1 proceedings.
6. The DCO requires the Applicant to (Ex 1 p 10-13):

"(1) Restore the premises into the condition in which it was before the unauthorised building works occurred by doing the following:

- a. Remove the wall including one of the built-in wardrobes between the garage and the store room on ground floor so that the storeroom is no longer being used as a bedroom which is marked in red at the attached floor plan 'Attachment A'.
- b. Remove the wall dividing the store room and workshop marked in red at the attached floor plan 'Attachment A'.
- c. Restore the garage to a class 10A structure under the National Construction Code 2022 to be used for storage purposes only."

7. The reasons Council issued the DCO are (Ex 1 p 11):

"1. Building works occurred are not exempted under the exempt provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

2. Building requiring a planning approval is erected without approval.

3. Council cannot be satisfied that the conversion of a 4-Bedroom dwelling to a 7-bedroom dwelling satisfied the structural, fire safety and health and amenity provisions of the National Construction Code.

4. To ensure adequate health, safety and amenity for the residents of the subject land and neighbouring land."

8. The DCO is directed to two relatively straightforward actions:

(1) Remove unauthorised building works;

(2) Restore the building to the condition which it was before the unauthorised building works were carried out.

9. The Site is occupied by a two-storey dwelling with two approved awnings attached to the rear. The Site is approximately 557m<sup>2</sup> in area.
10. The Site is predominantly level with a slight fall to the rear of the property towards Peter Street Blacktown. The development within the vicinity of the Site is characterised by low-scale residential land uses.



*Aerial of surrounding area to the Site which is shaded in pink and identified with a red dot: Council's Statement of Facts and Contentions (Source: GISWeb) (Ex 1 pp 1-9) (SOFAC)*

11. The Site is zoned R2 Low Density Residential pursuant to Blacktown Local Environmental Plan 2015 (BLEP 2015) (Ex 1 p 9).
12. The Site is subject to the following planning approvals:

(1) Building Permit 89/2941 for a two storey dwelling consisting of:

- (a) First Floor: 3 bedrooms bathroom and kitchen;
- (b) Ground Floor: 1 bedroom, rumpus room, garage, storeroom, workshop, laundry and bathroom.

(2) DA-01-31 approved a screen/glass enclosure attached to the rear of the dwelling on the ground floor;

(3) DA-02-2471 approved an awning at the front of the premises facing Sarsfield Street.

(4) DA-05-2446 approved an awning at the rear of the premises attached to the screen/glass enclosure.

(Ex 1: SOFAC p 5)

(5) On the first floor an additional wall has been constructed to create a bedroom at the northwest corner of the premises. Council has allowed this room to remain and the bedroom does not form part of these proceedings.

(Ex 1: SOFAC p 5 [17 ff]).

13. Council issued a Notice of Intent to Give a Development Control Order (ref ON2024/0124) on 4 April 2024 in accordance with cl 8 of Pt 6 of Sch 5 of the EPA Act (Ex 7 p 5 [18]-[20]).

14. On 21 August 2025 Council issued the DCO pursuant to Div 9.3, s 9.34(1) and Sch 5 Pt 1 General Orders, Orders No 3 and 11 of the EPA Act (Ex 1 pp 10-13).

15. The Council was the relevant enforcement authority pursuant to s 9.35(1)(a) of the EPA Act.

16. On 16 September 2024 the Applicant filed its appeal against the DCO pursuant to s 8.18(1) of the EPA Act within the time provision provided in s 8.18(3) of the EPA Act.

## **Legislation**

### ***Environmental Planning and Assessment Act 1979***

#### **8.18 Appeals concerning orders**

(cf previous s 121ZK)

(1) A person who is given a development control order may appeal to the Court against the order.

.....

(3) The appeal may be made only—

(a) within 28 days after the development control order is given to the person, or

(b) if an order is given subsequently that forms part of the development control order, within 28 days after the subsequent order is given to the person.

(4) On hearing an appeal, the Court may—

(a) revoke the development control order, or

(b) modify the development control order, or

(c) substitute for the development control order any other order that the relevant enforcement authority who gave the order could have given, or

(d) find that the development control order is sufficiently complied with, or

(e) make such order with respect to compliance with the development control order as the Court thinks fit, or

(f) make such other order with respect to the development control order as the Court thinks fit.

### 9.34 Orders that may be given

(cf previous s 121B)

(1) The development control orders that may be given under this Act are as follows—

(a) general orders in accordance with the table to [Part 1](#) of Schedule 5,

.....

(2) The regulations may amend those tables.

(3) A reference in those tables to a **planning approval** is a reference to a development consent, an approval for State significant infrastructure or a certificate under [Part 6](#) (other than a compliance certificate).

### 9.35 Relevant enforcement authorities who may give orders

(cf previous ss 121B, 121C)

(1) Development control orders may be given by the following (a **relevant enforcement authority**)—

(a) the Minister or the Planning Secretary, but only in connection with State significant development, State significant infrastructure or any other development for which the Minister, the Planning Secretary or the Independent Planning Commission is or has been the consent authority,

(b) a council,

.....

## Schedule 5 Development control orders

### Part 1 General orders

Column 1 To do what?	Column 2 When?	Column 3 By whom?
<b>Order 3</b> Demolish Works Order To demolish or remove a building	<b>A building—</b> <ul style="list-style-type: none"><li>• requiring a planning approval is erected without approval, or</li><li>• requiring approval under the is erected without approval, or</li><li>• is or is likely to become a danger to the public, or</li><li>• is so dilapidated that it is prejudicial to persons or property in the neighbourhood, or</li><li>• is erected in contravention of this Act.</li></ul>	Owner of building or, if the building is situated wholly or partly in a public place, the person who erected the building

**Order 10**

An unauthorised building has been the subject of a Demolish Works Order or unauthorised works have been carried out. building or other works occurred	<ul style="list-style-type: none"> <li>• The owner of the premises</li> <li>• Any person entitled to act on a planning approval, or acting in contravention of a planning approval</li> </ul> <p>.....</p>
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17. Council's contentions are set out below, excluding the particulars of each contention (Ex 1 SOFAC pp 5-7):

"A. Lack of development consent:

- (1) The unauthorised Development requires development consent.
- (2) The Unauthorised Development without development consent has denied the Respondent of due process to assess the merits of the development.

"B. Contrary to Approved Development.

- (3) The Unauthorised Development is contrary to the Development Consent

.

"C. The Merits and Impacts of the unauthorised Development.

- (4) The Unauthorised Development is contrary to the DCP.
- (5) The unauthorised Development causes a change to the approved building and intensification of use.

"D. Structural Integrity and Adequacy.

- (6) It is unknown if the Unauthorised Development is structurally sound.

"E. Appropriateness and Reasonableness of the Order.

- (7) The Order is appropriate.

"F. Power of the Court on an Appeal.

- (8) The Respondent contends the order should be affirmed."

18. The Applicant's Response to the Council's SOFAC was filed on 15 November 2024 and states (Ex D):

"1. The Council's allegations are false. They have misapplied the order, and my renovations do not violate Schedule 5 of the EPA Act.

a. The issue arises from the council's representatives lacking fundamental legal knowledge. They have acted without any evidence, ignored my explicit objections - - both written and verbal – and have unlawfully entered my property multiple times, taking photos inside my home. Their actions constitute serious violations of privacy and trespass laws.

b. We challenged the illegal actions of the council representatives, who subsequently threatened us during a meeting at the council building. The council's actions are in clear violation of the laws, including the Privacy Act of NSW; trespassing, false accusations, and discrimination against Asian Australians. Their behaviour has been characterised by intimidation and bullying, particularly unfair given our limited English proficiency.]

"2. [As a senior with rich experience architect of my father, He has been unable to identify which specific provision of the law has been breached. Kindly provide the details of the relevant legal provision. The law does not prohibit covering the sliding doors of two rooms and integrating them into the wall for functional use in a residential property. Additionally, the law does not restrict the installation of AC, flooring, curtains, or wardrobes in the garage for residential purposes.

This order is incorrect, and I request that the court revoke it. It is entirely unrelated to my internal renovation.]"

19. I note the particulars in Council's SOFAC (Ex 1 pp 5-7) sets out how the Applicant has failed to comply with the legal requirements for the works as carried out on the Premises.

20. Mustafa Murak Karahasanoglu is the engineering expert for the Applicant, and Paul Bezkorovainy is the engineering expert for the Respondent. The building experts conferred and prepared a Joint

Report (Ex 4), and on p 5 of Ex 4 they identified the wall between the garage and the storeroom to be 'Wall 1' and the wall between the storeroom and the workshop to be 'Wall 2'.

21. The Applicant's case:

(1) The DCO be revoked. Revocation of the DCO would not authorise the buildings works nor the use of the building contrary to its approved use as a residential dwelling with five bedrooms. Only a building information certificate (for the built works), and/or a development consent (for the built works and/or use) could achieve that outcome sought by the Applicant, i.e. that the building works, the subject of the DCO, are lawful.

(2) The works are exempt development pursuant to the State Environmental Planning Policy (Exempt and Complying Development) 2008 (Codes SEPP). Relevant provisions of the Codes SEPP are:

#### **1.16 General requirements for exempt development**

(1) To be exempt development for the purposes of this Policy, the development—

(a) must meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, or if there are no such relevant provisions, must be structurally adequate, and

(b) must not, if it relates to an existing building, cause the building to contravene the *Building Code of Australia*, and

.....

#### **2.51 Specified development**

(1) A minor internal building alteration for the replacement or renovation of—

(a) a doorway, wall, ceiling or floor lining, or

(b) a deteriorated frame member, including stairs and stairwells, or

(c) a bathroom or kitchen, or

(d) a built in fixture such as a vanity, a cupboard or a wardrobe, or

(e) an existing sanitary fixture, such as a grease trap or the like, or

(f) shelving or racking, or

(g) a partition, work station or counter,

is development specified for this code if it is not constructed or installed on or in a heritage item or a draft heritage item.

(2) .....

(3) A minor internal building alteration consisting of other remedial work necessary to repair or maintain a building is development specified for this code if the work is not carried out on or in a heritage item or a draft heritage item.

#### **2.52 Development standards**

(1) The standards specified for that development are that the development must—

(aa) not be an alteration to a food preparation area in food and drink premises, and

(a) if it is the replacement or renovation of a deteriorated frame member—be of equivalent or improved quality materials, and

(b) not include a change to the configuration of a room, whether by removal of an existing wall, partition or other means, and

(c) not cause reduced window arrangements for light and ventilation needs, reduce the size of a doorway or involve the enclosure of an open area, and

(d) not affect the load bearing capacity (whether vertical or horizontal) of a building, and

(e) not include a change to the fire resisting components of, or interfere with the entry to, or exit from, or the fire safety measures contained within, a building, and

(e1) if it is the installation of a partition, work station or counter—

- (i) comply with the requirements set out in the *Building Code of Australia*, Volume 1, D2D5, and
- (ii) if located beneath a fire sprinkler—not be higher than 1.5m, and
- (f) if it is the installation of new or replacement insulation material in a dwelling, it must be in accordance with the *ABCB Housing Provisions Standard*, Part 13.2, and

.....

(2) In this clause—

published by the Australian Building Codes Board *ABCB Housing Provisions Standard* means the *Housing Provisions Standard* in 2022.

(a) The Applicant submitted that Walls 1 and 2 were not ‘walls’ but were ‘partitions’ and relied upon s 2.52(e1) of the Codes SEPP. For the reasons set out below, neither Wall 1 nor Wall 2 (Ex 4 p 5) meet the requirements of the Codes SEPP:

(i) The works introduce a wall that is not in existence, such that the building works could not be a ‘renovation or replacement’ of a wall pursuant to s 2.51(1)(a) of the Codes SEPP.

(ii) Even if I determined that Wall 1 and Wall 2 were ‘partitions’ (which I do not) the building works would not meet the development standards as such building work must ‘not include a change in configuration of a room’ (s 2.52(1)(b) of the Codes SEPP). In this case the open garage, storeroom and workshop on the northern side of the ground floor are enclosed into two possible additional bedrooms, with the garage also being used (on the Applicant’s own admission) as a possible additional bedroom. The building works change the configuration of the five bedroom residence into a seven to eight bedroom residence.

(iii) Further, the building works reduce the size of a ‘doorway’ between the storeroom and the workshop in contravention of s 2.52(1)(c) of the Codes SEPP.

(iv) To be exempt development, the building works must meet the deemed-to-satisfy provisions of the Building Code of Australia (s 1.16(1)(a) of the Codes SEPP), for which AS 1684 timber framing is the relevant deemed to satisfy provision. The engineering experts agreed in their Joint Report (Ex 4 pp 12-13) that the only way to ensure the building works meet the minimum requirements of AS1684 – Residential Framed Construction – Part 2 – is for a suitable contractor to drill horizontal pilot holes through each panel of Wall 1 to determine wall thickness; and for a suitable contractor to remove one sheet from each of Wall 1 and 2 (exploratory works). The Applicant considered the Respondent should pay for the exploratory works to be carried out, and as the Respondent was not prepared to do so, these works were not done. (Ex E p 72 email from C Tsavdaridis, Biliias & Associates to Dr Zeng on 18 March 2025, saying, inter alia):

“Can you please advise if you are agreeable to the experts attending the site and the Applicant’s expert (in the presence of the Respondent’s expert) opening the walls.”

And the response from Dr Zeng on 20 March 2025, saying inter alia:

“....both experts attend the site, with the Applicant’s expert (in the presence of the Respondent’s expert) to pen the filled doorway section of the wall. However, we would like to clarify that all associated costs should be borne by the Respondent, as this action is being proposed by them. Applicant believes the suggestion may either reflect a lack of professional knowledge, or, potentially, an intentional attempt to create an issue that could damage my property....”

This request for the Council to pay for the wall to be opened, is traversed in the hearing inter alia at T 58-65.

(v) I find that even if the exploratory works were carried out, it would not resolve the issues of the change in the configuration of the northern ground floor of the residence, nor the change in the doorway between the storeroom and the workshop.

(3) Walls 1 and 2 are structurally adequate: the Applicant relies upon the advice of Dr Zeng (who has several degrees including as an architect but he did not act as an expert and no details of his qualifications, e.g. name of university or his experience, were before the Court) that Walls 1 and 2 are structurally adequate:

(a) Wall 1:

(i) Mr. Karahasanoglu states that AS 1684 of the Building Code of Australia (BCA) does not apply to Wall 1 because Wall 1 is a partition created by two mirrored built-in cupboards. Mr Karahasanoglu cannot identify any evidence that there is a structural wall between the two cupboards. However, both experts agree that further information is required to determine whether any framing to Wall 1 exists, and that manufacturers details would be necessary to determine the structural soundness. There is simply insufficient evidence to find that Wall 1 is structurally sound. (Ex 4 p 12)

(ii) Prior to inspection, both experts observed that the wall was configured in a different fashion to just a straight line, it's actually a zigzag, which is the wall component, and which should be a stud wall – a stud wall constructed in accordance with AS1684.2 timber framing code. The dashed lines (Ex 4 p10) are cupboards, which can be from structurally non-graded materials, plywood, etc. The only wall Mr Bezkorovainy suggested that should be compliant to the framing code is the zigzag wall: Wall 1. (T p 43 L 46-50' p 44 L 1-4).

(b) Wall 2: The joint building experts agree that Wall 2 may not meet the minimum requirements of AS 1684. Without more evidence Wall 2 does not satisfy the gateway in s 1.16(1)(a) of the Codes SEPP. In reference to sub-par [20(a)(iv)] above, I find that without removing the sheeting from Wall 2 so that the building experts can determine whether Wall 2 has been constructed in accordance with the requirements of AS 1684, there is insufficient evidence to find that Wall 2 is structurally sound.

(4) The Applicant relies upon a representation by Council on 1 April 2015 that "Council is content to allow you to retain half of the built-in robe between the garage and the storeroom". However it is now 2025 and half of the built-in robe still remains in place. I consider that the Applicant cannot rely upon a ten-year old representation when the Applicant has not implemented the relevant works within that period. The two adjoining built-in robes were still in situ when I inspected the property on 18 November 2024. In exercising my discretion, I recognise that the Respondent is exercising a public function in the implementation of the DCO, and I reject the Applicant's position that it be permitted to retain one of the built-in robes between the garage and the storeroom.

(5) The Applicant suggested that the DCO was not served correctly. In view of the fact that the Applicant filed its appeal within the time provision provided by s 8.18(3) of the EPA Act. I reject the Applicant's complaint.

(6) The DCO is unjust and unreasonable: These issues between the Applicant and the Respondent have been live issues since at least 2015. (Ex 2 Respondent's Supplementary Bundle of Documents, p 11-18). The Applicant has not made any attempt to remove one built-in robe, nor Wall 2. This is so even since the Applicant commenced proceedings in this Court. The Applicant was given forty days to comply with the DCO, and up to the hearing he has failed to take any steps to do so. The Council in acting in its regulatory function has been reasonable.

22 The evidence in chief of Council's town planner (Ms Nabila Sarwary) is contained in Ex 3. The Applicant has not lead any town planning evidence. In Ex 3 Ms Sarwary comments on the Contentions in Council's SOFAC, dealing with the contentions seriatim, and noting her evidence inter alia:

(1) The unauthorised building works require development consent and development consent has not been sought by the Respondent (sic) – typographical error, she meant 'Applicant'.

(2) The impacts of the building works could not be assessed under Council's planning controls as a development application has not been lodged with Council.

(3) The present built form exceeds the development consents listed in contention 3.

(4) Under CI 6.3 Pt A and CI 3.5.3 Pt C of Blacktown Development Control Plan 2015 (BDCP 2015) dwelling houses are required to maintain two car parking spaces behind the building line. This has not occurred.

(5) The unauthorised dwelling is capable of being used as a boarding house. This contention was not pressed at the hearing.

(6) There is no contention No 6.

(7) The Order is appropriate: After the first Notice of Intention to Issue an Order dated 11 March 2024, Council officers met with the Applicant on 22 March 2024. As a result of the Applicant's representations Council agreed that the fifth bedroom located on the first floor could remain. Council



then issued a further Notice of Intention to Issue an Order dated 4 April 2024 removing reference to the fifth bedroom on the first floor. On 9 July 2024 Council officers attended the site for an inspection, and noted Wall 1 and Wall 2 were still in situ. On 21 August 2024 Council issued the DCO. The Applicant was afforded procedural fairness, and the time of forty days for compliance with the DCO was reasonable.

23 Under cross-examination Ms Sarwary admitted that the garage may only be long enough to contain one motor vehicle. Ms Sarwary is relying upon the current DCP 2015 and the residential development on the initial development was approved in 1989 under different controls. However, if the Applicant lodged a development application or a modification application under the EPA Act, the current controls would apply, and two motor vehicles would need to be accommodated behind the building line in accordance with BDCP 2015.

24. I find that the Applicant has not proved his case in relation to the Codes SEPP, relevantly:

(1) It has not met the deemed to satisfy provision of ss 1.16(1)(a) of the Codes SEPP, nor the requirements of the Building Code of Australia, 1.16(b) of the Codes SEPP.

(2) Under s 2.51(1) of the Codes SEPP it is not an internal building alteration for the replacement or renovation of sub-s (a) a doorway, or sub-s (g) a partition, work station or counter.

(3) Under s 2.52(1) of the Codes SEPP the building works fail to meet the following criteria:

(b) not include a change to the configuration of a room whether by removal of an existing wall, partition or other means, and

(c) not [...] reduce the size of a doorway or involve the enclosure of an open area; and

...

(e1) if it is the installation of a partition .... –

(i) comply with the requirements set out in the BCA Vol 1 D2D5, and ...

25. For the reasons set out above, I shall dismiss the appeal and order the Applicant to comply with the DCO.

26. In accordance with s 8.18(4)(e) of the EPA Act and s 39 of the LEC Act I shall dismiss the appeal and order the Applicant to comply with the DCO within forty days of the date of this judgment in accordance with Annexure A.

## Orders

27. The Court orders:

(1) The appeal is dismissed.

(2) The Applicant is to comply with the Development Control Order dated 21 August 2024 (Ref: ON2004/0124; File no. 143991) issued by Blacktown City Council within forty days from the date of judgment in relation to the premises on Lot 51 in Deposited Plan 2161 and known as 40 Sarsfield Street Blacktown 2148 in accordance with Annexure A.

**M Peatman**

**Acting Commissioner of the Court**

[Annexure A \(164 KB, pdf\)](#)

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