

NEW SOUTH WALES LAND AND ENVIRONMENT COURT

CITATION: Sell & Parker Pty Limited v Blacktown Council [2001] NSWLEC 12

PARTIES:

APPLICANT:

Sell & Parker Pty Limited  
ACN 000 101 315

RESPONDENT:

Blacktown City Council

CASE NUMBER: 10204 of 2000

CATCH WORDS: Development Application

LEGISLATION CITED:

Environmental Planning and Assessment Act 1979 s 91 and s 97  
Environmental Planning and Assessment Regulation 1994 Sch 3  
Protection of the Environment Operations Act 1997  
State Environmental Policy No. 33 - Hazardous and Offensive Development Pt 2 and Pt 3  
Blacktown Local Environmental Plan 1998

CORAM: Lloyd J

DATES OF HEARING: 06/11/2000; 07/11/2000; 08/11/200; 09/11/2000;  
10/11/2000; 05/02/2001 and 06/02/2001

DECISION DATE: 11/05/2001

LEGAL REPRESENTATIVES

APPLICANT:

Mr N A Hemmings QC (Solicitor)

SOLICITORS:

Allen Allen & Hemsley

RESPONDENT:

Mr M J Craig QC

SOLICITORS:

Michell Sillar

JUDGMENT:

24

IN THE LAND AND  
2000  
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OF NEW SOUTH WALES  
2001

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Coram: Lloyd J

Decision date: 11 May

51. I do not think it is necessary to impose the condition. None of the acoustical engineers who gave evidence suggested that there would be any problem in meeting the nominated standard set out in the EIS. The condition is both onerous and unnecessary. It is deleted.

**Condition 9(g)**

52. The council seeks additional details in relation to the landscaping plan. The details sought by this condition are not included in the landscaping plan, neither are they included in the report of Dem Design which was tendered in evidence. In my opinion the additional information is both proper and necessary.

**Condition 9(i)**

53. This condition is in two parts. In the first part the council seeks to require that stormwater pollution controls be designed to meet the 95th percentile, five-day storm event. The need for this is said to arise from the uncertainty attaching to the capacity of the detention dam. The evidence shows, however, that stormwater pollution controls designed for the 75th percentile five-day storm would be appropriate. Both the EPA and the council's engineer have expressed satisfaction with the storage capacity of the dam. I see no reason to adopt the standard sought by the council.

54. In the second part of the condition the council requires that waters in the post-construction phase which discharge into Breakfast Creek comply with the ANZEC Guidelines. The applicant argues, however, that the water in the dam meets drinking standard and is the same as the quality of the water in the creek and that the ANZEC Guidelines are excessive, onerous and cannot be met.

55. The evidence shows that stormwater goes through the ground and then into the detention dam, but the naturally occurring metals in the groundwater commonly exceed the ANZEC Guidelines. This is commonly the case throughout western Sydney. The minerality of the soil is a result of the weathering process of the underlying Wiararamatta shale. I thus accept the applicant's contention that, for this reason, the condition as proposed by the council cannot be met. Condition 9(i) is amended accordingly to reflect these conclusions.

**Condition 9(j)**

56. The council seeks to impose a condition that, as part of the Erosion and Sediment Control Plan described in Condition 9(h), provision be made for the modelling of storm water pollution and to specify what the model must show.

57. I note that an Erosion and Sediment Control Plan is required by condition 03.1 of the EPA's General Terms of Approval and that it must be prepared in accordance with the requirements for such plans outlined in the so-called "*Blue Book*": *Managing Urban Stormwater: Soils and Construction*. In the light of the expert evidence adduced during the hearing I see no reason to impose different or other requirements. This condition, in my opinion, is not required and is deleted.

**Condition 9(k)**

58. The council requires an assessment of the adequacy of the existing water quality control measures on the site, including details relating to the existing sedimentation dam. The evidence adduced during the hearing, however, did not disclose any shortcoming in the operation, capacity or effectiveness of the dam or of water control measures on the site. In my opinion, this condition is unnecessary and is deleted.

**Condition 9(l)**

59. Both parties have agreed to the deletion of this condition.

**Condition 10**

60. The council seeks to supplement Condition 9(h) by requiring the applicant to consult it regarding design parameters for the Erosion and Sediment Control Plan and requiring the system to be design in accordance with certain publication nominated by it. This condition may have the effect, however, of altering the design parameters in the "*Blue Book*" referred to in Condition 9(h)