



**In this issue:**

*Lake Illawarra Park Pty  
Limited v Wollongong City  
Council [2024] NSWLEC 1027*

***Lake Illawarra Park Pty Limited v Wollongong City Council  
[2024] NSWLEC 1027***

This decision underscores the importance of balancing compliance with flood risk management, environmental outcomes and socioeconomic impacts when imposing conditions on a development consent.

These proceedings involved two appeals: a Class 1 Appeal against the refusal of modification of conditions of consent, and a Class 2 Appeal which challenged the basis of a Local Government Act Approval (LGA Approval) under s 94 of the *Local Government Act 1993* (NSW) (LGA Act). Both pertain to the development of a site operating as a caravan park.

The key issue in this case was the time constraint set in the original consent which required site works to address flood and fire risks within a period of 5 years (see ***Lake Illawarra Park Pty Ltd v Wollongong City Council [2020] NSWLEC 1622 at 2***). The Applicant (Lake Illawarra Park Pty Ltd) argued that the five-year condition would constitute an uneconomic use of the land and would create hardship for existing residents. In effect, the Applicant sought to replace the five-year compliance deadline with respect to resident-owned dwellings with an event trigger linked to the end of the 'useful asset life' of the dwellings. The proposed modification sought to alleviate the socioeconomic impacts associated with redevelopment of the dwellings **[at 4]**.

The principal issue for determination was whether the site risks were acceptable, thus allowing the Applicant's proposed modification to mitigate the impacts on park residents.

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**The above are summaries only. They are not intended to take the place of legal advice.**

## **The Class 1 Appeal**

In these proceedings, it was agreed that the site faced fire and flood risks and that the cost to undertake the siteworks would exceed \$14, 000, 000.

The Applicant relied upon expert evidence which explained that 93% of existing resident-owned or partly resident-owned dwellings were affected by consent conditions that required relocation or raising of the structure [at 42]. Further submissions were made in relation to provisions of the *Residential (Land Lease) Communities Act 2013* (RLLC Act) which precluded the Applicant from taking possession of resident-owned dwellings (see s 107). Similarly, the Applicant contended that it was not in an economic position to undertake works on behalf of the residents, potentially resulting in park closure and increased socioeconomic impacts on elderly and vulnerable residents [at 44-45, 47]. Significantly, the Applicant sought to draw a distinction in the compliance period between moveable dwellings owned by occupants and dwellings owned by the park [at 61-71]. As such, the modification would result in the gradual attainment of compliance, as residents either sold properties or passed away.

The Respondent contended that the modification application should be refused as the consent authority could not be satisfied the development (as modified) would be substantially the same development as provided in the original consent. Moreover, the Respondent argued that compliance triggers should be precise and capable of being objectively determined [at 72, 93].

Ultimately, Commissioner Espinosa agreed with the Applicant's proposed modification and timeframe of a 'useful asset life' as the period for compliance, despite not being a fixed period [at 79]. The Court accepted evidence relating to the turnover of dwellings [at 98] and was satisfied that compliance would eventually be achieved [at 102].

Although it was agreed that the proposed modification would heighten fire or flood risks to resident-owned dwellings, these risks were found to be comparatively low when balanced against the socioeconomic impacts (i.e., financial hardship or homelessness) on the locality associated with redevelopment [at 128]. Interestingly, the Court accepted that the site did not comply with local flood controls and that an evacuation strategy was not a sufficient mitigation strategy [at 117]. However, Commissioner Espinosa found that there was merit in continued occupation of the dwellings as the risks posed by a 5-year deadline were more impactful and more likely [at 118, 150].

This decision suggests that while the loss of a home due to fire or flood may have a significant impact on residents, the socioeconomic impacts of redevelopment cannot be underestimated.

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