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Ball Avenue Pty Limited v City of Ryde [2010] NSWLEC 1057 (12 January 2010)

Last Updated: 18 March 2010

NEW SOUTH WALES LAND AND ENVIRONMENT COURT

CITATION: Ball Avenue Pty Limited v City of Ryde [\[2010\] NSWLEC 1057](#)

PARTIES: APPLICANT Ball Avenue Pty Limited

RESPONDENT City of Ryde

FILE NUMBER(S): 10136 of 2009

CATCHWORDS: CONSENT ORDERS; DEVELOPMENT APPLICATION; THREATENED SPECIES

LEGISLATION CITED: [Environmental Planning and Assessment Act 1979](#)

CORAM: Moore SC

DATES OF HEARING: 29 October, 3 and 17 December 2009 and 12 January 2010

EX TEMPORE DATE: 12 January 2010

LEGAL REPRESENTATIVES

APPLICANT Mr A Pickles, barrister INSTRUCTED BY HWL Ebsworth

RESPONDENT Mr J Strati, solicitor City of Ryde

JUDGMENT:

THE LAND AND

ENVIRONMENT COURT

OF NEW SOUTH WALES

MOORE SC

12 January 2010

09/10136 Ball Avenue Pty Limited v City of Ryde

JUDGMENT

This decision was given as an extemporaneous decision. It has been revised and edited prior to publication.

1. **SENIOR COMMISSIONER:** In this matter, an initial hearing took place on site on 29 October during the course of which I heard evidence given informally by a number of resident objectors to the then proposed residential flat building proposed for the site. The site is one located at 20-22 Ball Avenue, Eastwood, and it is a site that has a frontage to a local stormwater channel and has, at the ends of the site, remnants of Blue Gum High Forest. The primary objections that were raised by the objectors related to the retention of the trees on the site, although there were other issues raised including concerns about traffic and parking.
2. I am satisfied, on the basis of the council's internal reporting of the proposal, that the traffic and parking issues have no foundation and do not warrant concern.
3. However, at the site inspection and subsequently, there was discussion as to whether a revised design was capable of achieving a reasonable development yield acceptable to the applicant but in a

design fashion that was more responsive to the council's concerns about the Blue Gum High Forest remnants. This morning, revised plans have been tendered and leave has been granted to amend, in terms of those revised architectural and landscaping plans – subject to an order pursuant to [s 97B\(2\)](#) of the [Environmental Planning and Assessment Act 1979](#) that the applicant pay the respondent council's costs in the sum of \$5,000.

4. I am satisfied, quite independently of the consent orders proposed to be entered into between the applicant and the council, that the new design is responsive to, and appropriately so, the concerns of the residents and the council about the impact on the Blue Gum High Forest remnants.
5. The effect of the amendments is to pull the development in at both of the long ends of the development, but to increase the development yield by the incorporation of “rooms in the roof” in four of the proposed residential units on the site. In addition, the driveway, which had previously been proposed to be constructed in a fashion that would have impacted on the Blue Gum High Forest remnant at one end of the site, has been redesigned so as to be a suspended slab driveway, thus also removing this impact on the Blue Gum High Forest remnant. I am satisfied, on balance, that the design as now proposed is appropriately responsive to these concerns and that the objectors matters raised no longer have a foundation to stand as an impediment to the proposal. I therefore propose, by consent, to issue the orders proposed by the parties to give effect to the revised design.

Tim Moore

Senior Commissioner