



## **Land and Environment Court New South Wales**

**Case Name:** Liverpool City Council v Moorebank Recyclers Pty Limited; Benedict Industries Pty Ltd v Minister for Planning (No 3)

**Medium Neutral Citation:** [2017] NSWLEC 83

**Hearing Date(s):** 10 to 14 October, 17 to 20 October, 25 to 26 October and 11 and 18 November 2016 (written submissions)

**Date of Orders:** 14 July 2017

**Date of Decision:** 14 July 2017

**Jurisdiction:** Class 1

**Before:** Robson J

**Decision:** See orders at [6]

**Catchwords:** APPEAL – objector appeal under s 75L against approval of a material recycling facility – conditions of approval

**Legislation Cited:** Environmental Planning and Assessment Act 1979 (NSW)

**Cases Cited:** Gerroa Environment Protection Society Inc v Minister for Planning and Cleary Bros (Bombo) Pty Ltd (No 2) [2008] NSWLEC 254  
Ironstone Community Action Group Inc v NSW Minister for Planning and Duralie Coal Pty Ltd [2011] NSWLEC 195  
Liverpool City Council v Moorebank Recyclers Pty Limited; Benedict Industries Pty Ltd v Minister for Planning (No 2) [2017] NSWLEC 53  
Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council and Stoneco Pty Limited (No 2) [2010] NSWLEC 104

**Category:** Procedural and other rulings

**Parties:** Proceedings 00159652 of 2016  
Liverpool City Council (Applicant)

Moorebank Recyclers Pty Ltd (First Respondent)  
Minister for Planning (Second Respondent)

Proceedings 00157848 of 2016  
Benedict Industries Pty Ltd (First Applicant)  
Tanlane Pty Ltd (Second Applicant)  
Minister for Planning (First Respondent)  
Moorebank Recyclers Pty Ltd (Second Respondent)

Representation:

Counsel:  
C J Leggat SC (Applicant in 2016/00159652)  
T S Hale SC with D Robertson (Applicants in  
2016/00157848)  
T F Robertson SC with J E Lazarus (First Respondent  
in 2016/00159652 and Second Respondent in  
2016/00157848)  
S Duggan SC with D Beaufile (First Respondent in  
2016/00157848 and Second Respondent in  
2016/00159652)

Solicitors:  
Swaab Attorneys (Applicant in 2016/00159652)  
Minter Ellison (Applicant in 2016/00157848)  
Mark McDonald & Associates (First Respondent in  
2016/00159652 and Second Respondent in  
2016/00157848)  
Department of Planning and Environment (First  
Respondent in 2016/00157848 and Second  
Respondent in 2016/00159652)

File Number(s):

2016/00159652; 2016/00157848

## JUDGMENT

- 1 On 8 May 2017 I delivered judgment in two third party objector appeals indicating that approval for the construction and operation of a materials recycling facility at Moorebank ought to be granted, however, the conditions of approval needed to be revised to take into account the findings in the judgment, *Liverpool City Council v Moorebank Recyclers Pty Limited; Benedict Industries Pty Ltd v Minister for Planning (No 2)* [2017] NSWLEC 53.
- 2 The matter was set down before the Court for a further hearing in relation to disputed conditions on 14 July 2017. I have been informed, and I accept, that the parties have, as at 13 July 2017, agreed on proposed conditions. As such it is unnecessary to hold a hearing in relation to the earlier disputed conditions.
- 3 The two third party objector appeals before the Court were brought pursuant to the former s 75L of the *Environmental Planning and Assessment Act 1979* (NSW) ('EPA Act'), as the proposed development had been declared a major development under s 75B of the EPA Act.
- 4 This project application is being approved in a somewhat different form to that originally approved by the Planning Assessment Commission as delegate of the Minister for Planning. This is largely as a result of extensive further expert evidence marshalled in the proceedings, and expanded conditions which, as I have found at [215] of the judgment, address a number of the legitimate concerns raised in opposition to the proposal. Accordingly, in accordance with the approach adopted in *Gerroa Environment Protection Society Inc v Minister for Planning and Cleary Bros (Bombo) Pty Ltd (No 2)* [2008] NSWLEC 254 at [5]-[6]; *Ironstone Community Action Group Inc v NSW Minister for Planning and Duralie Coal Pty Ltd* [2011] NSWLEC 195 at [224] and *Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council and Stoneco Pty Limited (No 2)* [2010] NSWLEC 104 at [14], it is necessary for the Court, whilst granting approval, to uphold the appeal in each matter.

5 Accordingly, I make the following orders in each of proceedings 2016/00159652 and 2016/00157848:

- (1) The appeal is upheld.
- (2) Approval is granted to the project application 05-0157 referred to in Schedule A, subject to the conditions referred to in Schedules B-D of the approval in Annexure A.

#### Orders

6 The Court makes the following orders:

#### **In proceedings 2016/00159652:**

- (1) The appeal is upheld.
- (2) Approval is granted to the project application 05-0157 referred to in Schedule A, subject to the conditions referred to in Schedules B-D of the approval in Annexure A.

#### **In proceedings 2016/00157848:**

- (3) The appeal is upheld.
- (4) Approval is granted to the project application 05-0157 referred to in Schedule A, subject to the conditions referred to in Schedules B-D of the approval in Annexure A.

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I CERTIFY THAT THIS AND  
THE 1 PRECEDING PAGES ARE  
A TRUE COPY OF THE REASONS FOR  
THE JUDGMENT OF THE HONOURABLE  
JUSTICE J. E. ROBSON.

  
Associate

Date 14 July 2017