



## CASE SUMMARY – PAINTERS LANE DEVELOPMENTS PTY LTD V CENTRAL COAST COUNCIL (NO 2) [2025] NSWLEC 105

### BACKGROUND

This Class 4 judicial review concerned whether a deferred commencement condition (Condition 1.1(b)) in development consent DA/49578/2016 had been satisfied, preventing the consent from lapsing. The consent - granted by Central Coast Council in April 2020 - related to a 20-storey mixed-use development at 321–331 Mann Street, Gosford. The applicant, Painters Lane Developments Pty Ltd, submitted a deed on 18 March 2021 purporting to demonstrate compliance with the condition, which required written permission and a deed of agreement to carry out sewer relocation works on neighbouring land (333–337 Mann Street).

### KEY FINDINGS

#### Condition 1.1(b) did not require Council approval or satisfaction

- The Court held that Condition 1.1(b) only required the submission of a deed sufficient to enable Council to be satisfied, not that Council be satisfied.
- Unlike Condition 1.1(a), which expressly required approval from Sydney Trains, Condition 1.1(b) was framed in the present tense and did not require a future determination or state of satisfaction.

#### The deed was valid despite inelegance

- While poorly drafted, the deed granted access and permission to carry out sewer works on the adjoining land, and was signed by the then owner.
- The deed's recitals and definitions were found to sufficiently describe the land, the development, and "The Works."
- The Court rejected Council's argument that the deed was void for uncertainty or lacked consideration - it was a deed and thus enforceable without consideration.

#### Council's late dissatisfaction was irrelevant

- The deed was submitted on 18 March 2021 - before the lapse date (29 April 2025, after COVID extensions).
- Council's claim in May 2025 that the consent had lapsed was based on an erroneous reading of the condition.
- The Court found that the requirement had been satisfied in time, and the consent had not lapsed.

### IMPACTS AND TAKEAWAYS

- **Clear wording matters:** If a consent authority wants a condition to require its approval or satisfaction, this must be stated explicitly.
- **Don't overreach post-fact:** A consent authority cannot later impose more stringent interpretive requirements than those expressed in the condition.
- **Recitals can save documents:** Even if poorly drafted, deeds may still be effective when their recitals and operative clauses provide sufficient clarity.
- **Deferred commencement ≠ enduring right:** Once satisfied, such conditions are exhausted and need not bind successors unless expressly required.