



CASE SUMMARY – VOLLMER V PORT STEPHENS COUNCIL [2025] NSWLEC 120

BACKGROUND

Tony and David Vollmer appealed against a Commissioner’s refusal of their DA for a re-subdivision of rural land at Wallalong. Their proposal involved consolidating two lots (one a small 4,491m² parcel landlocked within a larger 96.61ha lot) and simultaneously redividing them into two new lots, one of which (4,000m²) breached the 40ha minimum lot size in the RU1 Primary Production zone.

They argued the development qualified as a “boundary adjustment” under clause 4.1E of the Port Stephens LEP 2013, which allows such subdivisions even where a resulting lot breaches minimum lot size, provided certain conditions are met.

KEY FINDINGS

No error of law by the Commissioner

- The Court found no legal error in the Commissioner’s interpretation of cl 4.1E.
- The Court held that a consolidation and redivision of lots into entirely new lots cannot qualify as a “boundary adjustment between adjoining lots.”

What counts as a “boundary adjustment”?

- A boundary adjustment implies a modification of an existing shared boundary between adjoining lots.
- Once the lots are consolidated, they cease to be “adjoining”, and their boundaries are extinguished.
- The redivision creates entirely new lots, not adjusted versions of the originals.

Interpretation supported by statutory and planning context

- The Court confirmed this approach is consistent with the purpose of cl 4.1E, the planning proposal that introduced it, and relevant case law (*McCabe v Blue Mountains*).
- Clauses 4.1 and 4.6, which set out the minimum lot size rule and restrictions on varying it, are strict — and cl 4.1E is not a workaround for major boundary shifts.

IMPACTS AND TAKEAWAYS

- Boundary adjustments must involve minor reconfigurations of existing, adjoining lots, not relocations or lot creation through re-subdivision.
- The form of the subdivision matters: if it involves extinguishing and creating lots, it likely falls outside cl 4.1E.
- Consent authorities and applicants must carefully distinguish between adjustments and redesigns.