



Land and Environment Court  
New South Wales

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Case Name: Lees v The Owners Strata Plan 52751

Medium Neutral Citation: [2018] NSWLEC 1053

Hearing Date(s): Conciliation conference on 9 February 2018

Date of Orders: 9 February 2018

Decision Date: 9 February 2018

Jurisdiction: Class 3

Before: Gray C

Decision: See (4) below

Catchwords: APPLICATION - order for easement for drainage -  
conciliation conference - agreement between the  
parties - orders

Legislation Cited: Land and Environment Court Act 1979

Category: Principal judgment

Parties: Tim Lees (Applicant)  
The Owners Strata Plan 52751 (Respondent 1)  
Somasunderam Muralitharan (Respondent 2)  
Chrishathi Sasikala Muralitharan (Respondent 3)

Representation: Counsel:  
Mr J Mort (Applicant)  
Mr S Nash (Respondent)

Solicitor:  
Sattler & Associates Pty Ltd (Applicant)  
J S Mueller & Co (Respondent)

File Number(s): 2017/72303

Publication Restriction: No

## JUDGMENT

- 1 **COMMISSIONER:** In this matter, at or after a conciliation conference, an agreement under s 34(3) of the *Land and Environment Court Act 1979* (the Court Act) was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. As the presiding Commissioner, I was satisfied that the decision was one that the Court could have made in the proper exercise of its functions (this being the test applied by s 34(3) of the Court Act). As a consequence, s 34(3)(a) of the Act required me to “dispose of the proceedings in accordance with the decision”.
- 2 The Court Act also required me to “set out in writing the terms of the decision” (s 34(3)(b)). The orders made to give effect to the agreement constitute that document.
- 3 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the parties.
- 4 The final orders to give effect to the parties’ agreement under s34(3) of the Land and Environment Court Act 1979 are:
  - (1) Easement granted in accordance with the Class 3 Application filed on 8 May 2017, the site of which is to be situated in accordance with the plan of easement to drain water 1m wide prepared by Michael Trifiro, registered surveyor, in Annexure A to this Agreement.
  - (2) The terms of the easement are to be in accordance with the easement terms recorded in Annexure B attached to this agreement.
  - (3) The Applicant is to pay the First Respondent compensation for the grant of the easement in the sum of \$150,000.00 within 42 days of these orders.
  - (4) No order as to costs of the proceedings, to the intent that each party is to bear its own costs.

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Joanne Gray

Commissioner of the Court

[Annexure A \(130 KB, pdf\)](#)

[Annexure B \(29.6 KB, pdf\)](#)

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