

## Case Summary - [Nagra v Coffs Harbour City Council \[2026\] NSWLEC 1028](#)

### Background

This case was an appeal to the Land and Environment Court against a development control order (**DCO**) given by Coffs Harbour Council (**Council**) to Mr and Mrs Nagra (**Applicants**), the owners of 170 Crossmaglen Road, Bonville (**Site**) requiring the erection of polytunnels for raspberry farming cease on the basis that the Council alleged that they were ‘farm buildings’ requiring development consent.

The portion of the Site on which polytunnels were being erected is zoned RU2 under the *Coffs Harbour Local Environmental Plan 2013 (CHLEP)*. ‘Farm buildings’ are permitted with development consent in this zone. ‘Intensive plant agriculture’ is permissible without development consent.

In appealing against the DCO, the Applicants argued that:

- (a) the polytunnels are not ‘buildings’ for the purposes of the EPA Act; and
- (b) even if the polytunnels are ‘buildings’, they are development for the purposes of ‘intensive plant agriculture’, not ‘farm buildings’.

### Key findings

The Court found that the polytunnels used in raspberry farming on the Site:

- are ‘buildings’ under the *Environmental Planning and Assessment Act 1979 (EPA Act)*;
- are **not** ‘farm buildings’ that would require development consent on the Site under the CHLEP; and
- **are** for the purpose of ‘intensive plant agriculture’ because the polytunnels form an integral part of the raspberry cropping on the Site. This means that they were lawfully erected without development consent under the CHLEP on the Site.

### Reasons for Judgment

#### *Polytunnels are buildings*

The Court followed the decision of Preston CJ in *Royal Motor Yacht Club (Broken Bay) Pty Ltd v Northern Beaches Council* [2017] NSWLEC 56, which summarised the Courts’ approach to identifying a structure as a building where the structure is of considerable size and substance, and intended to be permanent or to endure for a considerable time.<sup>1</sup>

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<sup>1</sup> *Nagra v Coffs Harbour City Council* [2026] NSWLEC 1028 at [21] (**Nagra**) citing *Royal Motor Yacht Club (Broken Bay) Pty Ltd v Northern Beaches Council* [2017] NSWLEC 56 at [153].

The Court found in the circumstances of this case that the polytunnels were buildings as:<sup>2</sup>

1. the polytunnels are constructed from component parts which, when brought together, make a substantial object at a fixed site and having some utility value;
2. The way in which the polytunnels are braced and screwed into the ground means that they can remain in place for a long period of time, even though they are capable of being moved; and
3. The polytunnels are of considerable size with a range *'between 20m and 60m in length'*.<sup>3</sup>

*Polytunnels are for the purpose of 'intensive plant agriculture', not 'farm buildings'*

The question of whether the polytunnels are for the purpose of 'farm buildings' or 'intensive plant agriculture' turned on whether their use was separate and ancillary to the growing of raspberries, or an integrated part of the growing of raspberries.

The Commissioner found in favour of the Applicants' argument, applying the reasoning of Preston CJ in *Chamwell Pty Ltd v Strathfield Council* (2007) 151 LGERA 400 (**Chamwell**) where it was held that *'the nature of a use needs to be distinguished from the purpose of the use'*.<sup>4</sup> Commissioner Walsh held:<sup>5</sup>

*'... While the nature of the polytunnels is in the form of a structure comprising physical legs, hoops, bracing, plastic film, clips and rope. I believe their purpose is to provide greater control over the growing environment in the cultivation of raspberries: (see [6]).*

*In my opinion, the polytunnels, pots, raspberry canes and irrigation system constitute one integrated and indivisible activity: Chamwell at [42]. The polytunnels are integral to the undertaking of cultivation of irrigated crops for commercial purposes on this site. ..."*

The Commissioner's reasoning was not changed by the fact that some raspberry farms don't use polytunnels.

In coming to this conclusion, the Commissioner did not accept the Council's argument that the 'farm building' definition created a carve out to the 'intensive plant agriculture' land use, such that any building used as an accessory, subsidiary to, or helping in the activity of growing berries would be a 'farm building' and could not be part of the 'intensive plant agriculture' land use.<sup>6</sup> The Commissioner also found that there was no evidence that the statutory drafter had intended for polytunnels to require development consent under the CHLEP - If this was the intention, the CHLEP would need to be amended so that intensive plant agriculture was a land use permissible only with consent.<sup>7</sup>

## Orders Made

The Court upheld the appeal, and revoked the DCO.

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<sup>2</sup> *Nagra* at [28].

<sup>3</sup> *Nagra* at [28].

<sup>4</sup> *Nagra* at [34].

<sup>5</sup> *Nagra* at [34] and [35].

<sup>6</sup> *Nagra* at [42] – [49].

<sup>7</sup> *Nagra* at [53].