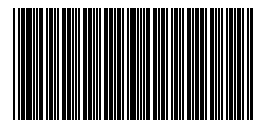




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## Expert Report

### COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2023/00026455

### TITLE OF PROCEEDINGS

First Applicant	Peter John Zembis
First Respondent	SUTHERLAND SHIRE COUNCIL ABN 52018204808

### FILING DETAILS

Filed for	Peter John Zembis, Applicant 1
Legal representative	Jason Brian Hones
Legal representative reference	
Telephone	0299293031
Your reference	JBH:PC:22277

### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Expert Report (Clauses 6.2 and 6.5 Assessment - 421 Willarong Road, Carringbah South.pdf)

[attach.]

**CLAUSES 6.2 AND 6.5 OF SSLEP 2015  
421 WILLARONG ROAD, CARRINGBAH SOUTH**

This supplementary assessment of Clauses 6.2 and 6.5 of SSLEP 2012 is intended to supersede and/or address the consideration of these clauses in the Amended SEE prepared by Planning Ingenuity dated 9 March 2022. The consideration is provided below.

Clause 6.2 of SSLEP 2015	Response	Complies
<p>(3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:</p> <p>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</p> <p>(b) the effect of the development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the development on the existing and likely amenity and structural integrity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	<p>The proposed excavation works for the proposed dwelling are minor and largely limited to footings for the new additions, the new rumpus/games rooms with garage over and the swimming pool.</p> <p>The extent and depth of the excavation proposed is limited and will be setback at least 900mm from the boundary to ensure the stability and amenity of adjoining properties is maintained. It is noted that Council in the SSLPP report dated 20 December 2022 stated the following:</p> <p><i>The proposal includes earthworks and therefore Clause 6.2 of SSLEP 2015 is applicable. Clause 6.2 requires certain matters to be considered in deciding whether to grant consent. These matters include impacts on drainage; future development; quality and source of fill; effect on adjoining properties; destination of excavated material; likely disturbance of relics; impacts on waterways; catchments and sensitive areas and measures to mitigate impacts. The relevant matters have been considered and the application is acceptable.</i></p> <p>The proposed development satisfies the requirements of Clause 6.2(3) for the following reasons:</p> <ul style="list-style-type: none"> <li>(a) The excavation for the dwelling and swimming pool are limited in quantum and depth which will not have any adverse impacts on drainage patterns in the locality. The setbacks from the boundaries will ensure stability of adjoining properties is appropriately maintained. Conditions of consent are anticipated in this regard.</li> <li>(b) The proposed excavation is limited and will not prejudice the future use or redevelopment of the site or surrounding sites.</li> <li>(c) The site is not located within an area mapped as containing classified P.A.S.S or contaminated land. Therefore, the quality of the soil to be excavated is appropriate for the use.</li> <li>(d) The limited depth of excavation proposed coupled with the setbacks will ensure the amenity and stability of adjoining properties is maintained. Dilapidation Report conditions of consent are anticipated in this regard.</li> <li>(e) Any excavated materials will be reused on site where possible or disposed of in a licensed facility. This can be secured by conditions of consent.</li> </ul>	Yes



Clause 6.2 of SSLEP 2015	Response	Complies
	<p>(f) The subject site is not located in a known archaeological area or aboriginal heritage area. Any unexpected finds will be dealt with via conditions of consent.</p> <p>(g) The quantum of excavation is limited and adequately separated from any waterway, drinking water catchment or environmentally sensitive area. Conditions of consent are anticipated in this regard.</p> <p>(h) Excavation cannot be avoided as a result of the proposed development. The extent of bulk excavation is minimised and setback from all boundaries. Conditions of consent will be imposed to mitigate the impacts associated with excavation, noise, dust and amenity.</p>	

Clause 6.5 of SSLEP 2015	Response	Complies
<p>(2) This clause applies to land identified as “Environmentally Sensitive Land” on the Terrestrial Biodiversity Map.</p> <p>(3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider—</p> <p>(a) whether the development is likely to have—</p> <ul style="list-style-type: none"> <li>(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and</li> <li>(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and</li> <li>(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and</li> <li>(iv) any adverse impact on the habitat elements providing connectivity on the land, and</li> </ul> <p>(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> <p>(4) Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that—</p>	<p>The subject site is mapped as “Environmentally Sensitive Land” on the Terrestrial Biodiversity Map and the provisions of this Clause apply.</p> <p>It is noted that Council in the SSLPP report dated 20 December 2022 stated the following:</p> <p><i>Clause 6.5 requires Council’s assessment to consider certain matters. Council must consider the potential adverse impact of the development on vegetation/ flora, fauna, biodiversity and habitat. Of further consideration is the conservation and recovery of flora and fauna and their habitats and the potential to fragment or diminish the biodiversity structure, function and connectivity of the land. The relevant matters have been considered as part of the assessment of this application and the proposal is acceptable in this regard.</i></p> <p>The proposed development satisfies the provisions of Clause 6.5 for the following reasons:</p> <p>(3)(a)(i) The proposed development will not have an adverse impact of flora and fauna. The trees to be removed will be replaced as detailed on the Landscape plan to ensure the ecological value and significance of the site is retained.</p> <p>(ii) The landscaping within the foreshore will be maintained which will permit the natural migration of native fauna across the foreshore land to be maintained.</p> <p>(iii) The proposed alterations and additions do not fragment or disturb corridors along the foreshore. The proposal will not diminish the biodiversity values of the site.</p> <p>(iv) As discussed above, the foreshore vegetation will be maintained to provide a corridor for native fauna.</p>	Yes





Clause 6.5 of SSLEP 2015	Response	Complies
(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.	(b) The proposal avoids impacts in the most prominent foreshore areas. The impacts around the dwelling are minimised and mitigated by the provision of replacement planting to enhance the biodiversity values of the site and surrounds.  (4)(a)-(c) As discussed above, the proposed alterations and additions generally retain the footprint of the existing building avoids work to the significant foreshore areas. Therefore, the proposed works occur to previously disturbed land around the dwelling which is typical of surrounding development. The works around the dwelling will be managed to minimise any impacts on native fauna and replacement planting and landscaping will maintain the biodiversity values of the native flora and fauna.	

This supplementary report was prepared in accordance with Pt.31, Div.2 *Uniform Civil Procedure Rules (UCPR)* and the *Expert Witness Code of Conduct* in Sch.7 *Uniform Civil Procedure Rules*. I acknowledge and accept that my role is to assist the Court in this appeal and give evidence on this basis and agree to be bound by the Code of Conduct.

Yours faithfully,

David Waghorn  
**DIRECTOR**  
**PLANNING INGENUITY**

