



Land and Environment Court
New South Wales

Case Name:	Clutch Capital Pty Ltd v Woollahra Municipal Council
Medium Neutral Citation:	[2021] NSWLEC 1134
Hearing Date(s):	Conciliation conference on 8 February 2021
Date of Orders:	17 March 2021
Decision Date:	17 March 2021
Jurisdiction:	Class 1
Before:	Washington AC
Decision:	Refer to orders at [35]
Catchwords:	DEVELOPMENT APPLICATION – residential flat building – conciliation conference – agreement between the parties – clause 4.6 request – orders
Legislation Cited:	Environmental Planning and Assessment Act 1979 Land and Environment Court Act 1979 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy No 55— Remediation of Land Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Water Management Act 2000 Woollahra Local Environmental Plan 2014
Cases Cited:	Initial Action Pty Ltd v Woollahra Municipal Council (2018) 236 LGERA 256; [2018] NSWLEC 118 Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827
Texts Cited:	Woollahra Development Control Plan 2015
Category:	Principal judgment

Parties: Clutch Capital Pty Ltd (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
M Staunton (Applicant)
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File Number(s): 2020/229417

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** These proceedings arise following the Council's deemed refusal of a development application (DA117/2020), lodged on the 23 April 2020, for the demolition of existing structures and construction of a three storey residential flat building with basement parking and associated landscaping at 9 Carlisle Street, Rose Bay (Lot 5 in Deposited Plan 78022).
- 2 The appeal is made pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act), and proceedings are held under the Class 1 jurisdiction.
- 3 The statutory power or function to be exercised in determining the proceedings is s 8.7 of the EPA Act.
- 4 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties which was held on 8 February 2021, commencing on site, and then further online via Microsoft Teams. I presided over this conciliation conference.
- 5 At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved upholding the appeal and granting development consent to the development application subject to the conditions in Annexure A.
- 6 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is one that the Court could

have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.

- 7 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings in a filed Statement of Jurisdictional Requirements, which is detailed in the following paragraphs.
- 8 Pursuant to s 4.15(1) of the EPA Act, I am satisfied that the Statement of Environmental Effects (SEE), drawings and relevant documents within the Class 1 Application demonstrate that the relevant matters listed in s 4.15(1) have been considered and the proposed development is acceptable, subject to conditions.
- 9 The proposed development was referred to Water NSW for review under s 4.46 of the EPA Act and was notified as integrated development from 13 May 2020, for a period of 28 days under s 2.22(1) and Schedule 1, cl 8A(1) of the EPA Act.
- 10 By letter dated 9 July 2020, Water NSW issued its General Terms of Approval for a Water Supply Work approval under s 90(2) of the *Water Management Act 2000*. Those General Terms of Approval have been incorporated into the agreed conditions of consent at Condition A.6.
- 11 An updated BASIX Certificate has been submitted that relates to the proposed development in accordance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. Compliance with the commitments of this BASIX Certificate is further required under Condition I.1 of the agreed conditions of consent.
- 12 The provisions of State Environmental Planning Policy No 55—Remediation of Land have been taken into consideration in assessing the proposed Development. I am satisfied that as per the submitted 'SEPP 55 Contamination Statement', the subject site has been used historically for residential purposes and there is no evidence that the land is contaminated.

- 13 Clause 13 of the Sydney Region Environmental Plan—(Sydney Harbour Catchment) 2005 (SREP) requires the consent authority to consider the planning principles for land within the Sydney Harbour catchment as follows, inter alia:
- (f) development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,
 - ...
 - (h) development is to improve the water quality of urban run-off, reduce the quantity and frequency of urban run-off, prevent the risk of increased flooding and conserve water,
- 14 Regarding cl 13(f) of the SREP, the Applicant states in the SEE that the development will not be readily visible from the waterways and foreshores of Sydney Harbour. I note that the building is situated on a south-west facing slope that does not face the harbour, three blocks south-east of the harbour foreshore. Based on its position in relation to the harbour, the scale of the development relative to its context and the information provided in the SEE, I accept this statement, and that cl 13(f) has been adequately considered.
- 15 I accept that the submitted Stormwater Management Plan adequately addresses the requirements of cl 13(h) of the SREP, addressing proposed stormwater management and flood mitigation measures.
- 16 Under the Woollahra Local Environmental Plan 2014 (WLEP), the site is zoned R3 Medium Density Residential. The proposed residential flat building is permitted with consent in this zone.
- 17 The WLEP Land Use Table contains the following relevant objectives for the R3 Medium Density Residential Zone:
- To provide for the housing needs of the community within a medium density residential environment.
 - To provide a variety of housing types within a medium density residential environment.
 - To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.
- 18 I am satisfied that the objectives of the R3 Medium Density Residential Zone under the WLEP are met for the following reasons:

- (1) The proposed development is for a residential flat building consisting of three apartments. This replaces an existing detached dwelling and will contribute to the housing needs of the community within a medium density residential environment.
 - (2) The proposal further offers three three-bedroom units, which the Applicant states and I accept will contribute to providing a variety of housing types within this environment.
 - (3) The three storey, 10.49m height and scale of the proposed development is consistent with the desired future character of the area, as is demonstrated by numerous new developments in the area and directly adjacent to the site, as observed at the site visit at the commencement of proceedings.
- 19 The proposed development complies with WLEP cl 4.3 Height of buildings which allows a maximum height of 10.5m. The proposed building is 10.49m high.

Variations to development standards

- 20 The principal development standards of the WLEP are established in Part 4. The proposed development does not comply with two of these standards: WLEP cl 4.1A, minimum lot size and WLEP cl 4.4, floor space ratio (FSR). Pursuant to cl 4.6 of the WLEP, written requests to vary these two development standards have been submitted in support of the proposed development.
- 21 WLEP cl 4.6 is as follows:

4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows—
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
 - (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building*

Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

Variation to Minimum Lot Size Development Standard

22 Clause 4.1A of the WLEP requires a minimum lot size of 700m² for a residential flat building in an R3 Medium Density Residential Zone. The subject site does not comply with this, having a lot size of 696.7m². The Applicant's written request pursuant to cl 4.6 of the WLEP addresses the matters required to be demonstrated in respect of the 3.3m² site area non-compliance, and is detailed in the following paragraphs:

- (1) In relation to the objectives of WLEP cl 4.6, the Applicant seeks flexibility in the application of the minimum lot size development standard. The Applicant submits that the lot size is appropriate for a number of reasons, including the quality and compliance of the design, consistency with the desired character of the R3 Medium Density Residential Zone and the reasonable amenity impacts of the proposed development. They further submit that the proposed development will achieve a better planning outcome both for and from the development if this non-compliance is allowed, with the flexibility enabling the development of a well-designed residential flat building that provides additional housing with a high level of amenity for the residents.
- (2) Pursuant to WLEP cl 4.6(2), the development standard set by WLEP cl 4.1A is not expressly excluded from the operation of WLEP cl 4.6, so development consent may be granted for a development that contravenes this development standard, subject to the provisions of WLEP cl 4.6.
- (3) Pursuant to WLEP cl 4.6(3)(a), the Applicant's written request must justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in these circumstances. To demonstrate this, the Applicant applies the five-point test established by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 (*Wehbe*), and further in *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118 (*Initial Action*) and submits:
 - (a) The objectives of the standard are achieved notwithstanding non-compliance with the standard. The objective of cl 4.1A of the WLEP is to achieve planned residential density in certain zones consistent with the desired future character of the neighbourhood. The Applicant submits, and I accept, that the proposed building is consistent with the desired future medium density character of the locality, as it replaces a single residential dwelling with a residential flat building that is consistent with the

scale, density and emerging character of the precinct. Accordingly, the first test of *Initial Action* is met.

- (b) The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable. The Applicant submits, and I accept, that the underlying purpose of the development standard is to present a building that is compatible with the height, context and character of the locality whilst preserving the amenity of adjoining properties. As there are no opportunities for lot amalgamation on this site, enforcing strict compliance with the minimum lot size development standard would prevent the redevelopment of the site in accordance with the desired medium density character of the locality. The Applicant further submits, and I accept, that allowing the proposed residential flat building would not constitute an overdevelopment of the site as the proposal is compliant with the key building envelope controls, provides high levels of amenity, and would positively contribute to the streetscape. Strict compliance with WLEP cl 4.1A would prevent the orderly and economic development of the site and is unreasonable. Accordingly, the third test of *Initial Action* is met.
- (4) Pursuant to WLEP cl 4.6(3)(b), the Applicant's written request must further demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Initial Action*, Preston CJ states that "the adjectival phrase 'environmental planning' is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act." With reference to s 1.3 of the EPA Act, I accept that the following environmental planning grounds justify contravening the minimum lot size development standard:
- (a) The development will promote good design and amenity of the built environment, as per EPA Act s 1.3(g). The proposed development is consistent with the relevant zone objectives, is consistent with Council's desired future character for the Rose Bay precinct, and is of good design.
 - (b) The development will promote the orderly and economic use and development of land, as per EPA Act s 1.3(c). The non-compliance will not result in a development that is inconsistent with the existing and desired future planning objectives for the locality, whereas strict compliance may result in the retention of a single dwelling house, preventing the orderly and economic use and development of the land.
- (5) For the reasons above at [23(4)], I am satisfied that there are sufficient environmental planning grounds to justify the minor variation to the development standard, and the requirements of WLEP cl 4.6(3)(b) are met.

- 23 I am satisfied that the requirements of WLEP cl 4.6(4)(a) are met for the reasons listed above, and that the proposed development is in the public interest because it achieves the objectives of both the development standard and of the R3 Medium Density Residential Zone, is designed with high amenity, and is of good design.
- 24 For these reasons, I am satisfied that compliance with the minimum lot size development standard of WLEP cl 4.1A is unreasonable or unnecessary in these circumstances, and there are sufficient environmental planning grounds to justify contravening this development standard.
- 25 I am further satisfied that pursuant to WLEP cl 4.6(4)(b), under cl 64 of the Environmental Planning and Assessment Regulation 2000, concurrence of the Planning Secretary in relation to contravention of this development standard is assumed, but pursuant to WLEP cl 4.6(5), that the proposal does not raise any matter of significance for State or regional environmental planning, and that the public benefit of maintaining the development standard is not considered significant in the circumstances of this case. The minimum lot size non-compliance will not result in any significant impact on neighbouring buildings, and the proposed development will appear consistent in the streetscape.
- 26 The proposal is therefore consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the streetscape and is in the public interest.

Variation to Floor Space Ratio Development Standard

- 27 Clause 4.4 of the WLEP and the corresponding FSR Map requires the maximum FSR for development on the subject site to not exceed 0.75:1. The proposed development exceeds this standard with an FSR of 0.78:1. This is a variation of 25.5m², or 4.8%. The Applicant's written request pursuant to cl 4.6 of the WLEP addresses the matters required to be demonstrated in respect of this non-compliance, and is detailed in the following paragraphs.
- (1) In accordance with the objectives of WLEP cl 4.6, flexibility is sought in order to allow for the orderly and economic use of the land. The proposed building will comply with all WLEP and Woollahra Development Control Plan 2015 controls in terms of setbacks, height,

solar access to adjoining properties, private open space, landscaping and tree retention.

- (2) Pursuant to WLEP cl 4.6(2), the development standard set by WLEP cl 4.4 is not expressly excluded from the operation of WLEP cl 4.6, so development consent may be granted for a development that contravenes this development standard, subject to the provisions of WLEP cl 4.6.
- (3) Pursuant to WLEP cl 4.6(3)(a), the Applicant's written request must justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in these circumstances. The Applicant has again applied the five-point test established by Preston CJ in *Initial Action*, and submits that, in accordance with Test 1 of *Initial Action*, the objectives of the standard, WLEP cl 4.4, are achieved notwithstanding non-compliance with this standard, for the following reasons:
 - (a) The first objective of WLEP cl 4.4 is to ensure the bulk and scale of new development is compatible with the desired future character of the area. The Applicant submits that the desired future character is determined in this instance by the WLEP, with the R3 Medium Density Residential Zone providing for the evolution from dwelling houses to medium density residential flat buildings. The proposed three storey built form is compatible with existing development in the vicinity and the desired future medium density character of the area, with a bulk and scale that is commensurate with the relevant WLEP and WDCP controls. Based on the evidence demonstrated by the architectural plans and from my observations at the site view, I accept this submission.
 - (b) The second objective of WLEP cl 4.4 is to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain. The Applicant submits that the proposed development is thoughtfully designed to minimise impacts on adjoining properties and to positively contribute to the public domain. The proposed building complies with the majority of WDCP provisions, and minimises impacts on adjoining properties by limiting windows along side boundaries and providing appropriate setbacks and unit layouts. As demonstrated by the architectural drawings, the proposal complies with the solar access provisions of the DCP and will not result in adverse impacts on views. Furthermore, the façade is highly articulated to reduce the perceived bulk and scale of the building. Finally, the applicant submits that the building will sit comfortably on the site and will not create an unreasonable sense of enclosure or overdevelopment on the site. Based on the evidence demonstrated by the architectural plans, I accept this submission.

- (c) The third objective of WLEP cl 4.4 is to ensure that development allows adequate provision on the land for deep soil planting and areas of private open space. The Applicant submits that despite the FSR non-compliance, the proposed development exceeds the WDCP requirements for deep soil and landscaping, with a carefully considered landscape design and substantial tree retention. In terms of private open space, all units feature balconies fronting Carlisle Street, in addition to balconies to the rear for the first and second floors. The ground level also includes a large rear open space with decking, planting and a swimming pool. The open space provision also exceeds the requirements of the WDCP. Based on the evidence provided by the landscape and architectural plans, I accept this submission.
 - (d) Accordingly, Test 1 of *Initial Action* is met and I accept that the objectives of WLEP cl 4.4 are achieved notwithstanding non-compliance with the standard.
- (4) Pursuant to WLEP cl 4.6(3)(b), the Applicant's written request must further demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. The Applicant submits that there are sufficient environmental planning grounds to justify this contravention for the following reasons:
- (a) General compliance with planning controls: the non-compliance with the FSR development standard does not result in, or arise from, non-compliances with other controls. Rather, the proposal is entirely contained within a compliant building envelope. The proposal complies with the height development standard and the majority of the WDCP provisions including setbacks, open space and landscaping, and parking.
 - (b) No unreasonable amenity impacts: the additional floor space will not result in any unacceptable amenity impacts, including overshadowing, overlooking or views. The proposed development provides compliant solar access within the site and to neighbouring sites, and retains two mature trees.
 - (c) Contextually compatible: the proposal will result in a built form that is consistent with the surrounding and desired density of the area. The bulk and scale of the proposed building is similar to, and consistent with, the surrounding properties.
 - (d) Orderly and economic use of the land: for the reasons listed above, strict compliance with the FSR development standard would not result in a better outcome from the development or for the site. Accordingly, strict compliance would prevent the orderly and economic use and development of the land, as it would unnecessarily inhibit a medium density residential flat building which proposes a similar bulk and scale to surrounding development. Strict compliance with the FSR development standard on this occasion would result in a built form that would not achieve what is envisaged by the building envelope controls,

be out of character and would represent an inefficient utilisation of the site.

- 28 I am satisfied that the reasons listed above form sufficient environmental planning grounds to justify the requested variation to the FSR development standard, aligning with the objectives of EPA Act s 1.3(c), to promote the orderly and economic use and development of land, and s 1.3(g) to promote good design and amenity of the built environment. Accordingly, the requirements of WLEP cl 4.6(3)(b) are met.
- 29 I am further satisfied that the requirements of WLEP cl 4.6(4)(a) are met for the reasons listed above, and that the proposed development is in the public interest because it achieves the objectives of both the development standard and of the R3 Medium Density Residential Zone, is designed with high amenity, and is of good design.
- 30 For these reasons, I am satisfied that compliance with the minimum lot size development standard of WLEP cl 4.1A is unreasonable or unnecessary in these circumstances, and there are sufficient environmental planning grounds to justify contravening this development standard.
- 31 I am further satisfied that pursuant to WLEP cl 4.6(4)(b), under cl 64 of the Environmental Planning and Assessment Regulation 2000, concurrence of the Planning Secretary in relation to contravention of this development standard is assumed, but pursuant to WLEP cl 4.6(5), that the proposal does not raise a matter of significance for State or regional environmental planning, and that the public benefit of maintaining the development standard is not considered significant in the circumstances of this case.
- 32 The proposal is consistent with the matters required to be taken into consideration before concurrence can be granted, and that the non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is in the public interest.

Conclusion

- 33 For the jurisdictional reasons stated above, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act.

34 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.

35 The Court orders:

(1) The Applicant is granted leave to amend its development application to rely upon the following plans:

(a) Architectural Plans prepared by Bureau SRH:

- (i) DA000 Rev 02, Cover Page, dated 9 November 2020;
- (ii) DA010 Rev 02, Site Plan Proposed, dated 3 November 2020;
- (iii) DA100 Rev 04, Basement, dated 9 December 2020;
- (iv) DA101 Rev 05, Ground Floor, dated 8 February 2021;
- (v) DA102 Rev 03, First Floor, dated 3 November 2020;
- (vi) DA103 Rev 03, Second Floor, dated 3 November 2020;
- (vii) DA104 Rev 04, Roof, dated 3 November 2020;
- (viii) DA120 Rev 03, Shadow Diagrams 830AM, dated 3 November 2020;
- (ix) DA121 Rev 04, Shadow Diagrams 9AM, dated 3 November 2020;
- (x) DA122 Rev 04, Shadow Diagrams 10AM, dated 3 November 2020;
- (xi) DA123 Rev 03, Shadow Diagrams 1030AM, dated 3 November 2020;
- (xii) DA124 Rev 04, Shadow Diagrams 11AM, dated 3 November 2020;
- (xiii) DA125 Rev 04, Shadow Diagrams 12PM, dated 3 November 2020;
- (xiv) DA126 Rev 04, Shadow Diagrams 1PM, dated 3 November 2020;
- (xv) DA127 Rev 04, Shadow Diagrams 2PM, dated 3 November 2020;
- (xvi) DA128 Rev 04, Shadow Diagrams 3PM, dated 3 November 2020;
- (xvii) DA150 Rev 04, Area Calculations, dated 9 December 2020;
- (xviii) DA151 Rev 04, Deep Soil Calculations, dated 9 December 2020;

- (xix) DA200 Rev 03, Elevations Sheet 01, dated 3 November 2020;
- (xx) DA201 Rev 03, Elevations Sheet 02, dated 3 November 2020;
- (xxi) DA300 Rev 04, Sections, dated 3 November 2020;
- (xxii) DA301 Rev 03, Sections 02, dated 3 November 2020;
- (xxiii) DA302 Rev 03, Driveway Sections, dated 3 November 2020;
- (xxiv) DA500 Rev 02, Photomontage, dated 3 November 2020;
- (b) Landscape Plan, Drawing No. DA-L101, Revision C, prepared by Canvas dated 2 November 2020;
- (c) Stormwater management plans prepared by Mance Arraj:
 - (i) SW010 Issue E, Basement Level and Pump Out Tank Section Details and Notes, dated 30 October 2020;
 - (ii) SW020 Issue E, Ground Level, dated 30 October 2020; and
 - (iii) SW021 Issue C, Drawing and Notes, dated 21 May 2020.
- (2) The Applicant is granted leave to amend its development application to rely upon the following documents:
 - (a) Addendum to Arboricultural Impact Assessment Report prepared by Jacksons Nature Works, dated 14 December 2020;
 - (b) Tree Management Plan & Specifications prepared by Jacksons Nature Works, dated December 2020;
 - (c) Written request under clause 4.6 of the Woollahra Local Environmental Plan 2014 prepared by GSA Planning, dated February 2021, regarding the floor space ratio development standard under clause 4.4 of the *Woollahra Local Environmental Plan 2014*;
 - (d) Statement of Advice prepared by Stanbury Traffic Planning, dated October 2020; and
 - (e) BASIX Certificate No. 1095428M_02 prepared by Ecoplus Consultants Pty Ltd, dated 5 February 2021.
- (3) Pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979 (NSW)*, the Applicant is to pay those costs of the Respondent that are thrown away as a result of amending the development application in the amount of \$3,500, to be paid within 28 days of orders being made.
- (4) The Applicant's written request under clause 4.6 of the Woollahra Local Environmental Plan 2014 prepared by GSA Planning, dated February

2021, regarding the floor space ratio development standard under clause 4.4 of the Woollahra Local Environmental Plan 2014, is upheld.

- (5) The Applicant's written request under clause 4.6 of the Woollahra Local Environmental Plan 2014 prepared by GSA Planning, dated April 2020, regarding the minimum lot size development standard under clause 4.1A of the Woollahra Local Environmental Plan 2014, is upheld.
- (6) The Appeal is upheld.
- (7) Development Application No. 117/2020, for demolition of the existing dwelling and construction of a three storey residential flat building with basement parking and landscaping at 9 Carlisle Street, Rose Bay (Lot 5 in Deposited Plan 78022), is approved subject to the conditions of consent in **Annexure A**.

.....

E Washington

Acting Commissioner of the Court

[Annexure A \(876461, pdf\)](#)

[Plans \(2442002, pdf\)](#)

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