



Land and Environment Court New South Wales

Medium Neutral Citation:

**BB Wilson Property Pty Ltd v Willoughby City Council
[2025] NSWLEC 1541**

Hearing dates:

Conciliation conference on 23 July 2025

Date of orders:

29 July 2025

Decision date:

29 July 2025

Jurisdiction:

Class 1

Before:

Porter C

Decision:

The Court orders:

- (1) The Applicant is to pay the First Respondent's reasonable costs thrown away as a result of the Further Amended Development Application in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW), as agreed or assessed.
- (2) The appeal is upheld.
- (3) Development Application No. DA/2024/47, as amended, construction of a 28 storey mixed use development comprising of basement parking, commercial and retail premises, childcare centre and shop top housing, public domain works, landscaping and associated works at 2-8 Wilson Street, 849-859 Pacific Highway and O'Brien Street, Chatswood is determined by the grant of development consent subject to the conditions of consent at Annexure A.

Catchwords:

DEVELOPMENT APPEAL – mixed use development – residential – conciliation conference – agreement between the parties – orders

Legislation Cited:

Airports Act 1996 (Cth), s 183
Environmental Planning and Assessment Act 1979 (NSW), ss 4.16, 8.7
Land and Environment Court Act 1979 (NSW), s 34
Water Management Act 2000 (NSW)

Environmental Planning and Assessment Regulation 2021 (NSW), ss 23, 24, 29, 38
State Environmental Planning Policy (Housing) 2021, Schs 7A, 9, ss 8, 144, 147
State Environmental Planning Policy (Planning Systems) 2021, Sch 6
State Environmental Planning Policy (Resilience and Hazards) 2021, ss 2.11, 2.12, 4.6
State Environmental Planning Policy (Sustainable Buildings) 2022, s 2.1
State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.48, 2.97, 2.99, 2.100, 2.118, 2.119, 2.120, 2.122
Willoughby Local Environmental Plan 2012, cll 2.3, 4.3, 4.6, 5.1, 5.1A, 6.2, 6.3, 6.8, 6.16, 6.23, 6.25

Cases Cited:

Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) 365 ALR 86; [2018] NSWCA 245
McMillan v Taylor (2023) 111 NSWLR 634; [2023] NSWCA 183

Texts Cited:

NSW Department of Planning and Environment, *Apartment Design Guide*, (July 2015)
Willoughby City Council, *Guidelines for Design Excellence*, (October 2019)

Category:

Principal judgment

Parties:

BB Wilson Property Pty Limited (Applicant)
Willoughby City Council (First Respondent)
Sydney Metro (Second Respondent)

Representation:

Counsel:
C Novak (Applicant)
J Merlino (Solicitor) (First Respondent)
N Day (Solicitor) (Second Respondent)

Solicitors:
Mills Oakley (Applicant)
HWL Ebsworth Lawyers (First Respondent)
Sydney Metro (Second Respondent)

File Number(s):

2024/399563

Publication restriction:

Nil

JUDGMENT

- 1 **COMMISSIONER:** This is a Class 1 Development Appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) being an appeal against the deemed refusal of DA-2024/47 for the construction of a mixed-use development comprising of basement parking, commercial and retail premises, childcare centre and shop top housing, public domain works, landscaping and associated works (DA) at 2-8 Wilson Street, 849-859 Pacific Highway and O'Brien Street, Chatswood (site).
- 2 The proceedings commenced as a hearing on 21 July 2025. At the hearing, the parties agreed that the issues in dispute had been resolved as a result of joint expert conferencing and amendments to the DA. The Court granted the request and arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (NSW) (LEC Act) between the parties, which was held on 23 July 2025. I presided over the conciliation conference.
- 3 The Respondent, as the relevant consent authority, has agreed under s 38 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (EPA Reg) to the Applicant amending DA-2024/47 in accordance with the documents listed at below (amended DA):

TAB	DOCUMENT	DATE
1	Schedule of Amendments to Architectural Plans prepared by PBD Architects	21 July 2025
2	Amended Architectural Plans, prepared by PBD Architects: • DA001: Project Summary [Rev 7] • DA102: Basement 02 [Rev 6] • DA103: Basement 03 [Rev 17] • DA104: Basement 01 Mezzanine [Rev 8] • DA105: Ground Floor [Rev 12] • DA106: Level 1 [Rev 9] • DA109: Level 4 [Rev 7] • DA201: North Elevation & East Elevation [Rev 5] • DA300: Section A & B [Rev 4] • DA560: Landscape Diagram Sheet 1 [Rev 6]	21 - 22 July 2025

TAB	DOCUMENT	DATE
3	Amended Landscape Plans, prepared by LandFX • 9: Ground Floor Landscape Plan (D4) • 13: Ground Floor - Landscape Sections (D3)	21 July 2025
4	Amended Stormwater Civil Plan, prepared by Xavier Knight: • C101: Ground Floor Sheet 1 (Rev F) • C103: Basement Mezzanine (Rev B)	22 July 2025
5	Amended Operational Waste Management Plan (Rev O), prepared by Elephants Foot	22 July 2025
6	Amended Structural Engineering Report - Shoring Arrangement (Rev 08), prepared by Cadigal	21 July 2025
7	Structural Engineering Impact Assessment (Rev 09), prepared by Cadigal	21 July 2025
8	Letter from SDG Surveyors Verifying Shoring	21 July 2025
9	Amended Swept Path, prepared by JMT Consulting: • 2456_06: Turning Paths Basement Loading • 2456_06: Turning Paths Basement Circulation	21 July 2025

TAB	DOCUMENT	DATE
10	a. Updated BASIX Certificate No. 1805014M issued by JHA Consulting Engineers (NSW) Pty Ltd (JHA) b. Updated NatHERs Certificate 00126064450 issued by JHA c. BASIX Stamped Architectural Plans issued by JHA • DA000 [Rev 1] • DA001 [Rev 7] • DA002 [Rev 5] • DA003 [Rev 1] • DA004 [Rev 5] • DA005 [Rev 4] • DA100 [Rev 5] • DA101 [Rev 5] • DA102 [Rev 6] • DA103 [Rev 16] • DA104 [Rev 8] • DA105 [Rev 12] • DA106 [Rev 9] • DA107 [Rev 5] • DA108 [Rev 6] • DA109 [Rev 7] • DA110 [Rev 6] • DA111 [Rev 6] • DA112 [Rev 5] • DA113 [Rev 6] • DA114 [Rev 4] • DA200 [Rev 3] • DA201 [Rev 5] • DA202 [Rev 3] • DA300 [Rev 4] • DA301 [Rev 1]	21 July 2025

- 4 As part of the conciliation conference process, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal for the amended application and granting development consent to the amended DA subject to conditions of consent.

Jurisdictional Prerequisites

- 5 As part of the s 34 agreement, the parties have submitted a jurisdictional statement setting out how the proposal has satisfied the jurisdictional requirements and other matters.
- 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 a decision that the Court *could* have made in the proper exercise of its functions.
- 7 In considering if the agreement is a decision that could be made by the Court, the obligation is limited to being satisfied that there 'are no jurisdictional constraints on the power of the Court which would preclude an order of the kind reached in the agreement' and not an evaluative decision (*McMillan v Taylor* (2023) 111 NSWLR 634; [2023] NSWCA 183 at [60] to [65]).
- 8 I have carried out the required jurisdictional check (*Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 365 ALR 86; [2018] NSWCA 245 at [202]). For the reasons set out below, 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.
- 9 The amended DA is regionally significant development pursuant to Sch 6 of the State Environmental Planning Policy (Planning Systems) 2021 (SEPP PS) and is for general development over \$30 million dollars, as the cost of works is approximately \$166 million.
- 10 I am satisfied that owner's consent accompanied the DA as required by ss 23 and 24 of the EPA Reg as the Applicant is the owner. The Applicant advised that the registered proprietor has now purchased the part of the site previously owned by Transport Asset Holding Entity of NSW (TAHE). I accept that the tree removal on Willoughby City

Council's (Council) land has owner's consent, as Council has agreed to the proposed orders to uphold the appeal and grant development consent for works including the tree removal.

- 11 The First Respondent notified the DA between 20 March 2024 to 19 April 2024. The Court and parties benefitted from hearing oral submissions on the day of the hearing from residents and their representatives objecting to the DA.
- 12 As the parties have entered into an agreement, the Court's role is limited to ensuring that there is jurisdiction / power to grant consent, and not the merits of the issues raised (*Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 365 ALR 86; [2018] NSWCA 245 at [217]).
- 13 In reaching agreement, the parties have advised the Court that they considered the concerns raised in the written and oral objections and where possible, these have been addressed through amendments, further information, or conditions of consent. The parties took the Court through how the objections had been addressed, where possible. In particular, I note that:
- (1) Construction works are to occur from Wilson Street.
 - (2) Conditions of consent have been included at Annexure A in relation to construction, dust, acoustic and vibration management, including conditions 60, 69, 83, 90, and 91 (amongst others).

Airports Act 1996 (Cth)

- 14 Though there is some disagreement about the application of the *Airports Act 1996* (Cth), Sydney Airport has provided their approval to the proposed development pursuant to s 183, to a maximum height of 198.15m Australian Height Datum (AHD) inclusive of construction cranes, lift overrun, aerals, vents and the like (Tab 51 of the Class 1 Application).

Water Management Act 2000 (NSW)

- 15 General Terms of Approval (GTA) have been received from WaterNSW, dated 28 January 2025. The parties agree that though the conditions refer to a tanked basement, the documents relied on in the GTA's are for the proposed drained basement and the conditions of consent therefore refer to the proposed drained basement. I acknowledge that the GTA's state that they are not an approval under the *Water Management Act 2000* (NSW), which will need to be obtained post consent if required. I accept that the GTA's and amendments in the conditions of consent satisfy the relevant provisions and the Court has power to modify the GTA's pursuant to s 39(2) and s 39(6) of the LEC Act, and s 8.14(3) and s 8.14(4) of the EPA Act.

State Environmental Planning Policy (Housing) 2021

- 16 Chapter 4 of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) applies to the amended DA in accordance with Sch 7A, s 8(2A), and s 144. Section 147 of SEPP Housing requires consideration of the design principles contained in Sch 9 and the Apartment Design Guide (ADG).
- 17 Relevantly, s 29 of the EPA Reg requires that residential apartment development must be accompanied by a statement prepared by a qualified designer in relation to the design principles within Sch 9 of the Housing SEPP and Parts 3 and 4 of the ADG. The parties advised the Court that there is no Design Review Panel constituted for the purposes of the Housing SEPP.
- 18 The parties agree and I accept that the amended DA meets the provisions of the Housing SEPP on the basis of the Design Verification Statement completed by the nominated qualified designer Paul Buljevic (registered architect number 7768) and the Urban Design Joint Expert Report.

State Environmental Planning Policy (Resilience and Hazards) 2021

- 19 Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) applies to the site. The amended DA is supported by a Detailed Site Investigation Report prepared by Reditus Consulting dated 13 December 2023 and Remedial Action Plan (RAP) prepared by Reditus Consulting that finds that the site can be made suitable. To the extent that the site requires remediation following the separate demolition consent, the recommendations have been implemented through the conditions of consent. The parties agree and I accept, that the provisions of s 4.6 of SEPP RH have been satisfied.

State Environmental Planning Policy (Sustainable Buildings) 2022

- 20 State Environmental Planning Policy (Sustainable Buildings) 2022 (SEPP Sustainability) applies to the proposed development. The amended DA is accompanied by a satisfactory amended BASIX Certificate, NatHERs Certificate, NABERS Embodied Emissions Materials Form prepared by Integreco, and stamped architectural plans. I accept the parties' agreement that the provisions of SEPP have been met, including s 2.1(5) regarding embodied emissions.

State Environmental Planning Policy (Transport and Infrastructure) 2021

- 21 Section 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP TI) applies given the proximity of the proposed development to electricity power lines. Ausgrid has not raised any objections to the proposed development and the conditions requested have been included in the conditions of consent.
- 22 Section 2.118 of SEPP TI applies as there are road related works in the part of the site zoned SP2 under the Willoughby Local Environmental Plan 2012 (WLEP). TfNSW have

provided their concurrence.

23 Section 2.119 of SEPP TI applies as the site has a frontage to a classified road, being the Pacific Highway. I accept that s 2.119(2) has been satisfied as:

- (1) The proposed development is accessed from O'Brien Street, not the Pacific Highway.
- (2) The safety, efficiency, and ongoing operation of the Pacific Highway will not be adversely affected as demonstrated by the Architectural Plans prepared by PDB Architects with various dates (architectural plans), Structural Engineering Plan prepared by Cadigal Group with various dates (structural plans), Traffic Impact Assessment prepared by Traffix dated 14 December 2023 and other traffic related documentation accompanying the Class 1 application, and the Construction and Demolition Waste Management Plan dated 16 April 2024, Amended Waste Management Plans dated 2 September and 22 July 2025 all prepared by Elephants Foot.
- (3) The amenity of future residents and other sensitive uses will not be adversely affected by the Pacific Highway as demonstrated by the Noise and Vibration Assessment prepared by E-LAB consulting dated 14 December 2023 (Acoustic Report), Ambient Air Quality Report dated 25 February 2025, and amended Preliminary Ambient Air Quality Report dated 22 May 2025 both prepared by E-lab, Childcare Noise and Vibration Impact Assessment prepared by E-Lab dated 29 January 2025.
- (4) Conditions of consent have been included to implement the recommendation of the above mentioned reports.

24 Section 2.120 of SEPP TI applies as the proposal includes residential accommodation. I accept the parties' agreement that the stated noise levels are not exceeded as demonstrated by the Acoustic Report and included as conditions of consent.

25 Section 2.122 of SEPP TI applies as the proposed development is traffic generating development. TfNSW has provided their concurrence to the proposal.

26 Sections 2.99 and 2.100 of SEPP TI apply to the proposed development given the proximity to several rail lines. The Second Respondent, Sydney Metro, have issued their concurrence and their conditions of consent have been included at Annexure A. Sydney Trains requested further information and did not provide any response to the latest amended DA. I accept the parties' submissions the Court has power to modify or set aside Sydney Trains' referral pursuant to s 39(2) and s 39(6) of the LEC Act, and s 8.14(3) and s 8.14(4) of the EPA Act. The inclusion of Sydney Train's comments as conditions of consent does not defer any jurisdictional matters, which I

accept have been satisfied on the basis of the same reports referred to at [23] and various Geotechnical Reports submitted with the amended DA. I therefore accept the parties' agreement that the provisions have been satisfied.

27 The proposed development includes a childcare centre area, as detailed in the Statement of Environmental Effects dated 20 December 2023 (SEE) and Childcare Planning Guidelines Assessment dated 25 February 2025 both prepared by Urbis. A future DA is required for the operation and the fit out of the nominated childcare centre area. Satisfaction and consideration of Ch 3 of SEPP TI is a matter for that future DA.

28 I accept the parties' agreement that the provisions of the SEPP TI are met.

WLEP

29 The subject site is primarily zoned MU1 Mixed Use and a portion of the site along the Pacific Highway is zoned SP2 Infrastructure. The proposed mixed use development including shop top housing, centre-based child care facilities, and commercial premises are permissible with consent. The proposed works in the SP2 zone are ancillary works related to a road and are permissible. Pursuant to cl 2.3 of the WLEP, regard has been had to the objectives of the zones.

30 Clause 4.3 height of buildings applies to the site, permitting a maximum height of 90m. The amended DA is 92.6m at its highest point and seeks a variation to the development standard. The amended DA is supported by a cl 4.6 written request to vary the building height prepared by Urbis dated 4 March 2025 (height written request). I accept the parties' agreement and accept that the height written request addresses the legally mandatory provisions of cl 4.6 of the WLEP.

31 Clause 4.4 floor space ratio (FSR) applies to the site, permitting a maximum FSR of 6:1. The amended DA proposes an FSR of 6.43:1. The amended DA seeks to vary the development standard pursuant to cl 4.6 and is supported by a cl 4.6 written request to

vary FSR prepared by Urbis dated 25 March 2025 (FSR written request). The parties agree and I accept that the FSR written request addresses the legally mandatory provisions of cl 4.6 of the WLEP.

32 Clause 5.1 relevant acquisition authority and cl 5.1A development on land intended to be acquired for a public purpose apply as the site contains land on the associated land reservation map. The amended DA proposes permissible works related to use as a road, which is permitted.

33 Clause 6.2 earthworks applies and contains provisions for consideration. I accept that the parties' have considered the provision as demonstrated by the suite of structural reports forming part of the amended DA and relevant conditions of consent.

34 Clause 6.3 urban heat applies and contains provisions for consideration. I accept the provisions have been considered on the basis of the documentation referred to at [20] and the architectural plans.

35 Clause 6.8 affordable housing applies and requires a 4% contribution payment to Council, which is proposed by the amended DA. Conditions of consent have been included to enforce this requirement.

36 Clause 6.16 minimum lot sizes for mixed use development applies to the site. The site, at 4,294m², exceeds the minimum lot size.

37 Clause 6.23 design excellence applies to the site. As detailed in the SEE, the proposal was selected through the architectural design competition process in accordance with Council's Guidelines for Design Excellence. As set out in the urban design joint expert report, the SEE, and demonstrated by the architectural plans, I am satisfied that the development exhibits design excellence and that regard has been had to cl 6.23(5) of the WLEP.

38 Clause 6.25 shop top housing in MU1 zones applies, as most of the site is zoned MU1 and the amended DA proposes shop top housing. Clause 6.25 requires a minimum of 17% of the gross floor area to be used for non-residential purposes. The amended DA proposes 16.48%. The amended DA seeks to vary the development standard pursuant to cl 4.6 and is supported by a cl 4.6 written request to vary the non-residential FSR prepared by Urbis dated 25 March 2025 (non-res GFA written request). The parties agree and I accept that the non-res GFA written request addresses the legally mandatory provisions of cl 4.6 of the WLEP.

Heads of consideration

39 On the basis of the material accompanying the Class 1 Application and the jurisdictional statement, I accept that the relevant matters for consideration pursuant to s 4.15(1) of the EPA Act have been adequately considered.

Conclusion

- 40 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.
- 41 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.
- 42 I have considered the jurisdictional prerequisites and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.

Orders

- 43 The Court orders:
- (1) The Applicant is to pay the First Respondent's reasonable costs thrown away as a result of the Further Amended Development Application in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, as agreed or assessed.
 - (2) The appeal is upheld.
 - (3) Development Application No. DA/2024/47, as amended, construction of a 28 storey mixed use development comprising of basement parking, commercial and retail premises, childcare centre and shop top housing, public domain works, landscaping and associated works at 2-8 Wilson Street, 849-859 Pacific Highway and O'Brien Street, Chatswood is determined by the grant of development consent subject to the conditions of consent at Annexure A.

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S Porter

Commissioner of the Court

[Annexure A](#) (1.14 MB, pdf).

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Decision last updated: 29 July 2025