



Land and Environment Court New South Wales

Medium Neutral Citation:

**TWT Property Group Pty Ltd v North Sydney Council
[2025] NSWLEC 1594**

Hearing dates:

Conciliation conference on 6 August 2025

Date of orders:

21 August 2025

Decision date:

21 August 2025

Jurisdiction:

Class 1

Before:

Horton C

Decision:

The Court orders that:

- (1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application for development consent pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW), as agreed or assessed.
- (2) The appeal is upheld.
- (3) Development Application DA120/24 for development described as demolition, site preparation and excavation and mixed use development comprising a total of 136 apartments across 2 buildings, including an 11 storey building at 55-69 Chandos Street containing 61 apartments and a 12 storey building at 71-89 Chandos Street containing 75 apartments with vehicular access from Atchison Lane, a pedestrian through site link between buildings, dedication of a 5m wide linear park and landscaping to Oxley Street and associated landscaping and public domain works above 3 basement levels containing car parking and shared facilities, on land at 55-61, 63-65, 67-69, 71-73, 75, 79-81, 83-85, 87 & 89 Chandos Street, St Leonards NSW 2065 (being the land legally identified as Lot C DP 172499, Lot 1 DP 927407, Lot 1 DP 104816, Lot 10 DP 877196, Lot 1 DP 900998, Lot 1 DP 115581, Lots 28 and 29 DP 455939, Lots A and B DP

443166, Lots 31 and 32 Section 11 DP 2872) is determined by the grant of consent subject to the conditions set out in Annexure 'A' to this agreement.

Catchwords:

DEVELOPMENT APPLICATION – deemed refusal of mixed use development in MU1 Mixed Use zone – conciliation conference – agreement between parties - orders

Legislation Cited:

Architects Act 2003 (NSW), Sch 7
Environmental Planning and Assessment Act 1979 (NSW), ss 4.16, 7.4, 8.7, 8.15
Land and Environment Court Act 1979 (NSW), s 34

Environmental Planning and Assessment Regulation 2021 (NSW), ss 29, 38
North Sydney Local Environmental Plan 2013, cll 1.2, 1.8A, 4.3, 4.4, 4.4A, 4.6, 6.10, 6.12A
State Environmental Planning Policy (Biodiversity and Conservation) 2021, ss 6.6, 6.7, 6.8, 6.9
State Environmental Planning Policy (Housing) 2021, Ch 4, ss 146, 147, 148, Sch 9
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6
State Environmental Planning Policy (Sustainable Buildings) 2022, Ch 3, ss 2.1, 3.1, 2.15, 3.2, 3.3, Sch 3, 43
State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.48, 2.119, 2.122, Sch 1
State Environmental Planning Policy Amendment (Crows Nest Transport Oriented Development Precinct) 2024
Willoughby Local Environment Plan 2012xx

Cases Cited:

Terrace Towers Holdings v Sutherland Shire Council (2003) 129 LGERA 195; [2003] NSWCA 289
Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827

Texts Cited:

Apartment Design Guide 2015
Explanation of Intended Effect Crows Nest Transport Oriented Development Precinct: July 2024
St Leonards and Crows Nest Plan 2036, published by the Department of Planning, Industry and Environment in August 2020
North Sydney Development Control Plan 2013

Category:

Principal judgment

Parties:

TWT Property Group Pty Ltd (Applicant)
North Sydney Council (Respondent)

Representation:**Counsel:**

J Farrell (Applicant)

A Stafford (Respondent)

Solicitors:

Mills Oakley (Applicant)

HWL Ebsworth (Respondent)

File Number(s):

2024/301278

Publication restriction:

Nil

JUDGMENT

- 1 **COMMISSIONER:** Mixed use development is proposed on a site comprising 12 lots of land located at 55-89 Chandos Street, St Leonards (the Site). Relevantly, the development proposes the demolition of all existing structures to permit staged development of two new buildings, identified as a Western Building and Eastern Building, and including alterations and additions to an existing building on the site, and the consolidation of the lots.
- 2 To this end, development application DA120/24 was lodged with North Sydney Council by the applicant in these proceedings, TWT Property Group Pty Limited (TWT Property) on 21 June 2024. The development application sought consent for the following:
 - (1) Demolition of eight existing buildings of various sizes on the Site;
 - (2) Alterations and additions to an existing building at 55-61 Chandos Street to achieve its integration into the built form described at paragraph (d) below;
 - (3) Excavation works to various depths, to a maximum of approximately RL 75.14;
 - (4) Construction of an 11-storey mixed use building containing 61 apartments over a part-one/part-three level basement on the western part of the Site at 55-69 Chandos Street (the Western Building), comprising (by way of alterations and additions to the existing seven-storey building at 55-61 Chandos Street, and construction of a new building at 63-69 Chandos Street):
 - (a) Basement Level 3 (at RL 76.970-75.420): residential storage areas and pedestrian connections to the Eastern Building;
 - (b) Basement Level 2 (at RL 80.190-78.640): residential car and motorcycle parking, non-residential car parking and vehicular connections to the Eastern Building;
 - (c) Basement Level 1 (at, in part, RL 83.410 and otherwise at "various" finished floor levels): a retail tenancy, residential and non-residential bicycle parking, non-residential car parking and a pedestrian connection

- to the Eastern Building;
- (d) Level 00 (at RL89.14-87.50): a pedestrian colonnade facing Chandos Street with connection to the Through-Site Link (see below), retail tenancies, a commercial tenancy, non-residential parking, a non-residential/residential indoor communal space lobby area and a residential lobby area;
 - (e) Level 01 (at RL90.00-91.66): a commercial tenancy, loading dock and loading bay, two substations, residential waste areas, non-residential waste area and four apartments;
 - (f) Level 02 (at RL94.69): indoor residential communal space and four apartments;
 - (g) Level 03 (at RL97.95-97.96): Residential communal indoor space, four apartments and a "communal" room;
 - (h) Levels 04 (at RL101.18-101.20) residential communal space, containing four apartments, Level 05 (at RL104.48-104.52) and Level 06 (at RL107.79-107.82): residential communal space and five apartments on each floor;
 - (i) Levels 07 (at RL111.59), 08 (at RL114.74), 09 (at RL117.98) and 10 (at RL121.22): apartments, being respectively nine apartments, ten apartments, nine apartments and seven apartments;
 - (j) Level 11 (at 124.460): communal open space, plant rooms, accessible toilet and photovoltaic solar panels;
 - (k) Level 12 (at RL129.06): lift overrun;
- (5) Construction of a 12-storey mixed use building containing 75 apartments over basement on the eastern part of the Site at 71-89 Chandos Street (the Eastern Building), comprising:
- (a) Basement Level 3 (at RL75.42-76.97): residential car parking, storage and bicycle storage, non-residential bicycle storage, end of journey facilities and pedestrian connections to the Western Building;
 - (b) Basement Level 2 (at RL78.64-80.19): residential car and motorcycle parking, non-residential car parking and vehicular connections to the Western Building;
 - (c) Basement Level 1 (at RL81.928-83.41): a split-level retail tenancy connected to Level 00, non-residential car parking, and servicing areas (communication room, grease arrestor rooms and fire-fighting infrastructure);
 - (d) Level 00 (at RL85.2-87.42): a pedestrian colonnade facing Chandos Street with connection to the Through-Site Link, retail tenancies, a non-residential lobby, a residential lobby, residential and non-residential waste

- rooms, a substation, a loading dock with vehicle crossover to Atchison Lane, and a ramp connecting Atchison Lane to Basement Level 1;
- (e) Level 01 (at RL91.42): a commercial tenancy;
 - (f) Levels 02 (at RL95.42) and 03 (at RL98.67): ten apartments on each floor and a split-level mechanical plant area;
 - (g) Level 04 (at RL101.92): eight apartments and an outdoor communal open space area;
 - (h) Levels 05 (at RL105.07), 06 (at RL108.22), 07 (at RL111.37), 08 (at RL114.62), 09 (at RL117.77), 10 (at RL120.92) and 11 (at RL124.07): apartments, being respectively nine apartments, nine apartments, nine apartments, six apartments, six apartments, six apartments, and two penthouse apartments;
 - (i) Level 12 (at RL127.32): rooftop terraces, accessible toilets, connected to the Level 11 penthouse apartments (L11.01 and L11.02), photovoltaic solar panels and plantrooms;
- (6) A 6m wide through-site pedestrian link (The Link) connecting Chandos Street to Atchison Lane, separating the Eastern Building and Western Building from Level 00 above, containing five trees, and proposed to be the subject of an easement in gross, benefiting the Council in accordance with a voluntary planning agreement;
 - (7) A 5m wide linear park, located on the Oxley Street frontage of the site, on land that is associated with the Site and also within the Respondent's road reserve, proposed to be dedicated to the Respondent pursuant to a voluntary planning agreement;
 - (8) Landscaping works within select areas of the Site designated for planting, including in raised planter boxes and garden areas;
 - (9) The retention of existing street trees located along Chandos Street;
 - (10) Associated mechanical and engineering services works; and
 - (11) Consolidation of allotments associated with the Western Building, with Lot C in Deposited Plan 172499, Lot 1 in Deposited Plan 927407, Lot 1 in Deposited Plan 104816 and Lot 10 in Deposited Plan 877196 to be consolidated pursuant to a draft Plan of Consolidation.
- 3 The Council notified the development application from 5 July - 2 August 2024, in accordance with the Respondent's Community Participation Plan.
 - 4 As the development application was otherwise undetermined, TWT Property appealed the deemed refusal of the development application under s 8.7 of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) on 15 August 2024.
 - 5 The matter was initially listed before me for, and commenced in, hearing. However, on the third day the parties advised the Court that the parties had reached in-principle

agreement on the matters in contention, and sought for the matter to be re-allocated to me for conciliation between the parties under s 34(1) of the Land and Environment Court Act 1979 (NSW) (LEC Act), which was held on 6 August 2025, and at which I presided.

6 A signed agreement prepared in accordance with s 34(10) of the LEC Act was filed with the Court on 6 August 2025. The agreement records the approval of the Council, as the relevant consent authority, to the amending of the application in accordance with s 38 of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Regulation), and the filing of the amended application with the Court, in accordance with s 8.15(3) of the EPA Act, which were effected prior to the conciliation conference.

7 The parties ask me to approve their decision as set out in the s 34 agreement before the Court. In general terms, the agreement approves the development subject to amended plans that were prepared by TWT Property, and noting that the final detail of the works and plans are specified in the agreed conditions of development consent annexed to the s 34 agreement.

8 This decision involved the Court upholding the appeal and granting conditional development consent to the development application.

9 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. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application. There are jurisdictional prerequisites that must be satisfied before this function can be exercised.

10 The site is located within an area identified to be designated MU1 Mixed Use zone according to the North Sydney Local Environmental Plan 2013 (NSLEP), in which shop top housing and commercial premises are permitted with consent, where consistent with the objectives for development in the MU1 zone.

11 Those objectives are as follows:

- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.

- To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.

12 The Site is located within the 'St Leonards Town Centre' area, which is in turn part of the St Leonards/Crows Nest Planning Area according to the North Sydney Development Control Plan 2013 (NSDCP).

13 The character statement for the St Leonards/Crows Nest Planning Area is at Part C3:

The Planning Area is focussed around the town centres of St Leonards and Crows Nest in the north-west of the Local Government Area, both of which are situated on major vehicular traffic routes. The remainder of the Planning Area comprises a number of predominantly low-density residential neighbourhoods, much of which is characterised by retention of the historic subdivision pattern. The St Leonards Town Centre is identified as a Strategic Centre within the heart of the Eastern Economic Corridor and forms part of an identified Health and Education Precinct under the Greater Sydney Region Plan. In particular, it is a dense, significant, sustainable and busy urban centre where:

- it will accommodate sustained growth in the health and technology sectors, whilst supporting creative industries, small to medium sized businesses, startups, galleries, entertainment and speciality retail to ensure it enhances the economic function of North Sydney
- a diverse range of living, employment, recreation and social opportunities are provided which serve both local and regional populations and contribute to the vibrancy of the Town Centre
- residents, workers and visitors enjoy a high level of amenity and quality of the natural and built environment
- residents, workers and visitors can easily access the Planning Area through excellent public transport links to the Sydney CBD, other suburban centres and many parts of the Sydney Region by rail and bus.

The height standard is exceeded

14 Following lodgement of the development application in June 2024, the height of buildings standard applicable to the site was changed. Further changes are also agreed to be imminent and certain. As such, it is helpful to set out a chronology of the height standard that applies to the site.

15 At the time of lodgement, the applicable height standard for the site at 55-69 Chandos Street was 33m. On 19 July 2024, that portion of the site was designated a height standard of 42m by State Environmental Planning Policy Amendment (Crows Nest

Transport Oriented Development Precinct) 2024 (TOD SEPP). However, the savings provision at cl 1.8A (3) of the NSLEP saves the development from obtaining the benefit of the additional height.

- 16 At the time of lodgement, the applicable height standard for the site at 71-89 Chandos Street was 20m. On 27 November 2024, that portion of the site was designated a height standard of 43m, with further provision for an additional height of 2m in certain circumstances.
- 17 The proposal exceeds the height standard at the western portion of the site, on which the building proposed for Stage 2 development is 41.841m in height. As the applicable height standard is 33m, the exceedance is a maximum of 8.841m when measured from the existing ground level in the basement, to the highest point of the proposed development.
- 18 TWT Property relies on a written request authored by Ethos Urban dated 22 May 2025, prepared in accordance with cl 4.6 of the NSLEP (the Height Request) to justify the exceedance of the development proposed on the site at 51-69 Chandos Street.
- 19 The Height Request sets out a chronology of the controls summarised at [14]-[16], with particular note given to the Explanation of Intended Effect Crows Nest Transport Oriented Development Precinct: July 2024 (St Leonards EIE), and the St Leonards and Crows Nest Plan 2036, published by the Department of Planning, Industry and Environment in August 2020 (Plan 2036).
- 20 The St Leonards EIE states:
- “The 2036 Plan includes heights in storeys. These height controls in storeys have been converted into metres for the LEP controls and are based on analysing the massing model and floor to floor height assumptions outlined in Table 5. The proposed height includes provisions for rooftop services and plant. It is proposed to amend the height of building controls in the precinct through a map amendment to:
- ...
- apply height in metres consistent with the 2036 Plan and the urban design review of the 2036 Plan.” (pp15-16)
- 21 The Height Request also asserts that the height of 43m envisaged by the St Leonards EIE translates into a height of 12 storeys, with which the proposal is consistent.
- 22 Next, the Height Request cites authority, stating that merely because the TOD SEPP is taken by the savings provision to not apply does not prevent the Court from giving it weight, where the relevant provisions have become certain and its commencement imminent: *Terrace Towers Holdings v Sutherland Shire Council* (2003) 129 LGERA 195; [2003] NSWCA 289 at [5].
- 23 The Height Request relies on three of the five tests set out by the Court in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 (Wehbe) to argue, in the first instance, that compliance with the Height standard is unreasonable or unnecessary because the development is consistent with the objectives of the standard, notwithstanding the non-compliance.
- 24 The relevant objectives at cl 4.3 of the NSLEP are as follows:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
- (b) to promote the retention and, if appropriate, sharing of existing views,
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- (e) to ensure compatibility between development, particularly at zone boundaries,
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,

...

- 25 In respect of objective (a), the Height Request asserts the proposal respects the topography by reference to a lowering of the height to the east where the land slopes towards Oxley Street. The frontage of the site falls from RL 90.34 at the west of the site, to an RL of 84.63m to the east. Conformity to the sloping landform is also evident in a stepped podium.
- 26 In respect of objective (b), the Height Request asserts the existing buildings on the site, which form part of the higher density St Leonards Town Centre have significantly altered the views achieved from low rise residential development in the vicinity of the site. Where additional height is now proposed, it is no higher than that envisaged by the TOD SEPP, and so does not obstruct views beyond that anticipated by the strategic work that led to the St Leonards EIE.
- 27 In respect of objective (c), the Height Request asserts:
- (1) Elevational shadow diagrams prepared by the architect Smart Design Studio compare the shadow generated by a compliant building of 33m in height, and the proposed development that is consistent with the height anticipated by the TOD SEPP.
 - (2) Elevational studies to residential buildings at 40-48 Atchison Street and 38 Atchison Street demonstrate that solar access to living rooms, balconies and private open spaces to the south is improved when compared to development that maximises the 42m height permitted under the TOD SEPP. The degree of improvement is expressed in percentage terms where, for example, the proposal will have the result of 47% of living rooms and balconies at 40-48 Atchison receiving at least two hours of sunlight, whereas development of a height permitted by the TOD SEPP would result in only 7% of those spaces receiving sunlight.
 - (3) Such an outcome is said to be achieved by observing building separation distances that exceed those at Objective 3F of the Apartment Design Guide (ADG), and by achieving the objective at Objective 3B-2 of the ADG to minimise overshadowing to neighbouring properties.
- 28 In respect of objective (d), the Height Request asserts that as the proposal is consistent with the height of buildings permitted by the TOD SEPP, there are no privacy impacts likely other than those anticipated by the TOD SEPP. That said, the upper levels of the

proposed development exceed the building separation guidance at Objective 3F of the ADG to preserve the privacy of residents in both existing and proposed developments. In respect of objective (e), the Height Request asserts:

- (1) Land surrounding the subject site is likewise zoned MU1, but for land on the opposite side of Chandos Street which is designated, by the Willoughby Local Environment Plan 2012, as E2 Local Centre. The proposal is compatible with existing development by virtue of the width of Chandos Street, which is 20m, and by locating a colonnade at the ground floor and a diversity of commercial and retail uses.
- (2) Existing development to the northern side of Chandos Street is five-six storeys in height, with which a height of 11 storeys is compatible.

In respect of objective (f), the Height Request asserts:

- (1) As the proposal is consistent with the height envisaged by the TOD SEPP it is of a scale and density that is appropriate for the site and the character of the area.
- (2) The proposal appears visually consistent with buildings in the immediate vicinity that are 11-12 storeys in height, and is responsive to the topography by stepping down towards Oxley Street.
- (3) The mix of commercial, retail and residential promotes the area's intended mixed-use character, supports the economic aims of the TOD SEPP and delivers mixed use development close to transit modes.

The Height Request also argues that the underlying object or purpose of the standard would be defeated or thwarted if compliance was required, and that the standard has been virtually abandoned or destroyed by Council's own actions in granting consent that depart for the standard. It is unnecessary to consider the arguments set out in the Height Request in respect of these grounds, as I accept and am satisfied that the proposed development is consistent with the objectives at [29].

I note Council does not raise an objection to the Height Request and does not contend that it is other than acceptable. Next the Height Request advances environmental planning grounds it argues are sufficient to justify the contravention of the standard. These are summarised as follows:

- (1) Firstly, the proposal is consistent with all but four of the objects of the EPA Act for reasons that are detailed in the Height Request.
- (2) Secondly, when the aims of Ch 4 of State Environmental Planning Policy (Housing) 2021 (Housing SEPP), the variation does not give rise to an inconsistency.
- (3) Thirdly, the proposal is consistent with the aims of the NSLEP at cl 1.2 of the NSLEP. In particular, the proposed development is more appropriate to its context and will enhance the amenity of the North Sydney community and

environment (cl 1.2(2)(a)) and is more compatible with the desired future character of an area in terms of bulk, scale and appearance when compared to development that complies with the lower height standard (cl 1.2(2)(b)(i)).

(4) Fourthly, requiring strict compliance would not deliver benefits but only suppress an optimal outcome that is superior, which is a sufficient environmental planning ground. Instead, the proposed development is entirely consistent with the current strategic planning intent for the area and the subject site.

(5) Fifthly, thirteen authorities are relied on to support the environmental planning ground that the significance or degree of variation is of no great moment in considering whether there are sufficient environmental planning grounds to justify the contravention.

33 While I regard a number of the grounds advanced above to merely promote the benefits of the development as a whole, I accept that the proposed development is entirely consistent with the current strategic planning intent for the area and the subject site.

34 I note here that the Council is satisfied that the height request adequately addresses the matters required to be demonstrated by cl 4.6(3) of the NSLEP and does not contend that the contravention of the development standard raises any matter of significance for State or regional environmental planning, or that there is any public benefit in maintaining the development standard.

35 Accordingly, the Council raises no issue regarding cl 4.6 and accepts that a variation of the height development standard under cl 4.3 is justified.

36 I am satisfied under cl 4.6(4) that TWT Property has adequately addressed the matters required to be demonstrated by subcl (3) of the NSLEP.

37 In forming this opinion of satisfaction, I give weight to the degree of consistency shown by the proposal with the height standard arising from Plan 2036, the St Leonards EIE and the TOD SEPP, and I find the contravention deserving to be upheld.

Other jurisdictional issues

38 The western portion of the site is not subject to a maximum floor space ratio (FSR) control under cl 4.4(2) of the NSLEP, as no maximum floor space ratio was prescribed in relation to that portion of the site at the time of lodgement of the development application.

39 The proposed development complies with the FSR control at cl 4.4(2) of the NSLEP, with a FSR of 4:1 for the eastern portion of the site. Relatedly, cl 4.4A sets development standards for Non-residential FSR, with which the proposed development complies.

40 The development proposes excavation for the purpose of the basement. A Geotechnical Investigation Report prepared by EIAustralia dated 24 April 2024 assesses the subsurface conditions and recommends an excavation methodology and

methods to address groundwater observations.

41 EIAustralia also provide a Geotechnical Certificate in respect of those matters at cl 6.10 of the NSLEP, on the basis of which, when read in conjunction with the Civil Engineering Plans prepared by Meinhardt, propose an arrangement to address drainage patterns on the site, and Landscape Plans prepared by Ground Ink when read in conjunction with the architectural plans depict an extent of earthworks on the site that are unlikely to result in adverse off-site impacts. On the basis of those preceding documents, I consider those matters at cl 6.10(3) of the NSLEP in respect of earthworks to be satisfactorily addressed, and supported by agreed conditions of consent.

42 A component of the proposed development is a residential flat building. On the basis of the architectural plans, I note that no part of the ground floor of the building facing a street is used for residential accommodation, and so complies with the terms of cl 6.12A of the NSLEP.

State Environmental Planning Policy (Housing) 2021.

43 Where an application relates to residential apartment development, s 29 of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Regulation) requires the application be accompanied by a statement by a qualified designer, defined in the Dictionary at Sch 7 as a person registered as an architect in accordance with the Architects Act 2003 (NSW).

44 The statement is required by s 29 of the EPA Regulation to verify matters that are relevant to those matters that must be taken into consideration when determining a development application for residential apartment development, at s 147 of the Housing SEPP.

45 I am satisfied that the statement signed by Mr William Smart (Arch Reg No. 6381), dated 21 May 2025 is in accordance with s 29 of the EPA Regulation, and so assists the Court in its task to take into consideration those matters at ss 147 and 148 of the Housing SEPP.

46 For completeness, it is relevant to state here that the Council does not, for whatever reason, have a Design Review Panel to which a proposal may be referred to, or from which advice can be taken (s 146 of the Housing SEPP).

State Environmental Planning Policy (Biodiversity and Conservation) 2021

47 The site is located within the Sydney Harbour Catchment as identified by the Sydney Harbour Catchment Map. The parties agree the site is not a strategic foreshore site, a heritage item on the Sydney Harbour heritage map or land within a wetlands protection area.

48 Section 6.6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity SEPP) precludes the grant of consent unless the Respondent council, or the Court on appeal, is satisfied that the proposed development ensures

that, firstly, the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and secondly, that the impact on water flow in a natural waterbody will be minimised.

49 The Civil Plans depict a stormwater drainage system that includes both onsite detention and retention of water, including a 25,000L rainwater tank and OSD tank. Furthermore, Drawing C202 demonstrates improved water quality is achieved by cartridges contained within a treatment chamber. The combination of these provisions satisfies me that s 6.6 of the Biodiversity SEPP is achieved by providing sediment control and filtration to water in the post-development scenario in a manner that achieves a neutral or beneficial effect on the water quality and water flow into the harbour.

50 For similar reasons, I have also considered those matters at s 6.7 of the Biodiversity SEPP and am satisfied that the retention of water and post development flows will keep any direct, indirect or cumulative impact on terrestrial, aquatic or migratory animals or vegetation to a minimum, and will not have an adverse impact on aquatic reserves, or in terms of erosion.

State Environmental Planning Policy (Transport and Infrastructure) 2021

51 As development is proposed in close proximity to electrical powerlines, written notice was provided to the electricity supply authority, Ausgrid, in accordance with s 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP).

52 Ausgrid's response is undated but records that no objection is taken to the proposal, subject to consideration of matters that are incorporated into the agreed conditions of consent.

53 Section 2.119 stipulates that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that vehicular access to the land is provided by a road other than the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected. The development fronts Chandos Street which is a classified road, and all vehicular access will be via Atchison Lane so that the nature, volume and frequency of vehicles using Chandos Street will not be adversely affected.

54 As the proposed development is residential development, I note measures to ameliorate potential traffic noise are set out in an Acoustic Assessment prepared by Acoustic Logic dated 15 March 2024 including glazing to doors and windows, external wall construction, roof and ceiling, ventilation and air conditioning. A further memorandum by the same author dated 21 May 2025 states that the recommendations

and conclusions reached in the Acoustic Assessment remain valid. As such I am satisfied that the development includes measures to ameliorate the affect of traffic noise in residential units.

55 Traffic generating development s 2.122 requires that certain traffic generating development, as set out in Column 1 Sch 3 of the Transport and Infrastructure SEPP, be referred to TfNSW and that any submission from the TfNSW be considered prior to the determination of the application.

56 The application was referred to TfNSW, who did not object, and conditions provided by TfNSW are incorporated in to the without prejudice conditions of consent.

State Environmental Planning Policy (Resilience and Hazards) 2021

57 A Preliminary Site Investigation (PSI) prepared by EI Australia dated 24 April 2024 concludes the site can be made suitable for the proposed development, subject to a detailed site investigation to be undertaken following demolition of structures on the site, and the preparation of a Hazardous Materials Survey (HMS).

58 A HMS, undertaken 4-6 March 2024, identified friable asbestos on the site, noting that some areas, such as wall cavities, were inaccessible at the time.

59 I accept the site is likely to be contaminated but can be made suitable for the purpose for which development is proposed to be carried out, pursuant to s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021.

State Environmental Planning Policy (Sustainable Buildings) 2022

- 60 The application is accompanied by a BASIX certificate (Cert No. 1743677M_03 dated 23 May 2025) prepared by Aspire Sustainability Consulting Pty Ltd in accordance with State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP).
- 61 The embodied emissions are identified in the BASIX Certificate, such that the Court can be satisfied that the embodied emissions attributable to the proposed development have been quantified in accordance with ss 2.1(5) and s 3.2(2) of the Sustainable Buildings SEPP.
- 62 The Sustainable Buildings SEPP also provides standards for non-residential development at Ch 3 where development is estimated at a development cost of \$5m or more (s 3.1(1)(a)).
- 63 I have considered whether the development is designed to enable those matters to be considered at s 3.2(1) of the Sustainable Buildings SEPP. On the basis of the ESD Report for DA dated 23 May 2025 (ESD Report) and the Net Zero statement prepared by Aspire Sustainability Consulting of the same date, I find the development is so designed. In particular, I note the ESD Report undertakes the following:
- (1) Passive design and energy efficiency measures detailed in Section 6 that reduce peak demand for electricity and reduce the reliance on artificial lighting and mechanical heating and cooling.
 - (2) The minimising of waste by ensuring environmental performance declarations for major material elements, recycled content in products where appropriate, FSC (Forest Stewardship Council) Timber, use of local materials and low embodied energy materials and selection of paints, adhesives & sealants specified to contain low VOC & formaldehyde, improving internal air quality
 - (3) Plumbing fittings and fixtures that achieve 4 or 5 star WELS rating, ensuring native plant species are used, and inclusion of a rainwater tank for reuse of water in irrigation and toilets to minimise consumption of potable water.
- 64 In my view, the undertakings itemised above demonstrate that the development is designed to enable those matters at s 3.2(1) of the Sustainable Buildings SEPP:
- 65 Additionally, as the development answers the description of “large commercial development” as defined in the Dictionary at Sch 4 of the Sustainable Buildings SEPP, TWT Property rely on a Net Zero Statement prepared by Aspire Sustainability Consulting dated 23 May 2025 that states the development minimises the use of on-site fossil fuels by providing rooftop solar photovoltaic and will operate fossil free with the exception of fire sprinkler system pumps (p 1), for which offset provisions are proposed.
- 66 The Net Zero Statement includes a commitment from the building owner to ensure Greenhouse Gas Emissions (GHG) associated with any fossil fuel used on-site, calculated over a 10-year period will be offset through a certification scheme such as

the Large Scale Energy Generation Certificate. As such I have considered the extent to which the development minimises on-site fossil fuels as part of the goal of achieving net zero emissions in New South Wales by 2050s (s 3.3(1)).

67 Finally, on the basis of the statements made on p5 of the ESD Report, I am satisfied that the development is capable of achieving the standards for energy and water use specified in Sch 3 of the Sustainable Buildings SEPP, in accordance with s 3.3(2).

Voluntary Planning Agreement

68 The parties advise that they have entered into a Planning Agreement that is consistent with the terms of s 7.4 of the EPA Act, and by which TWT Property has agreed to make the following contributions toward public purposes in connection with development on the eastern portion of the site:

- (1) dedication and embellishment of approximately 179 m² of private land to Council at a depth no less than 3m below ground level, and embellishment of approximately 271m² of public land for the purposes of a linear park along Oxley Street;
- (2) establishment of a The Link – a pedestrian pathway approximately 6m wide and 38.5m in length (approximately 215m² in total) that is open-to-sky connecting Chandos Street to Atchison Lane with easement for public access for 24 hours a day, 7 days a week;
- (3) construction of all outdoor lighting for the through-site link;
- (4) landscaping and improvements to public domain on-site;
- (5) providing maintenance and management of the through-site link and Oxley Street linear park; and
- (6) payment of a monetary contribution in the amount of \$405,000, paid in two instalments and indexed in accordance with consumer price index from the date of the agreement to the dates of payment.

Conclusion

69 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.

70 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.

71 The Court notes that:

- (1) the Council, as the relevant consent authority, approved the amending of the development application DA120/24 in accordance with s 38 of the Environmental Planning and Assessment Regulation 2021 (NSW) by those

amended plans and other documents contained in Annexure A.

- (2) TWT Property filed the amended plans and other documents in Annexure A on 6 August 2025

Orders

72 The Court orders that:

- (1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application for development consent pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW), as agreed or assessed.
- (2) The appeal is upheld.
- (3) Development Application DA120/24 for development described as demolition, site preparation and excavation and mixed use development comprising a total of 136 apartments across 2 buildings, including an 11 storey building at 55-69 Chandos Street containing 61 apartments and a 12 storey building at 71-89 Chandos Street containing 75 apartments with vehicular access from Atchison Lane, a pedestrian through site link between buildings, dedication of a 5m wide linear park and landscaping to Oxley Street and associated landscaping and public domain works above 3 basement levels containing car parking and shared facilities, on land at 55-61, 63-65, 67-69, 71-73, 75, 79-81, 83-85, 87 & 89 Chandos Street, St Leonards NSW 2065 (being the land legally identified as Lot C DP 172499, Lot 1 DP 927407, Lot 1 DP 104816, Lot 10 DP 877196, Lot 1 DP 900998, Lot 1 DP 115581, Lots 28 and 29 DP 455939, Lots A and B DP 443166, Lots 31 and 32 Section 11 DP 2872) is determined by the grant of consent subject to the conditions set out in Annexure 'B' to this agreement.

T Horton

Commissioner of the Court

[Annexure A \(145 KB, pdf\)](#)

[Annexure B \(971 KB, pdf\)](#)

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Decision last updated: 21 August 2025