

AUSTRALIA / JUDGMENT

Andrade v Bayside Council

Source: caselaw.nsw.gov.au · Research copy typeset by Esheria. Not court-issued or certified.

Land and Environment Court New South Wales Medium Neutral Citation: Andrade v Bayside Council [2026] NSWLEC 1637 Hearing dates: Conciliation conference held on 15 September 2026 Date of orders: 29 September 2026 Decision date: 29 September 2026 Jurisdiction: Class 1 Before: Espinosa C Decision: The Court orders:

- (1) The appeal is upheld.
- (2) Development consent is granted to development application DA-2025/706, as amended, for the demolition of existing structures, construction of a two-storey dual occupancy (detached), front fencing, reconstruction of an existing public drainage pipe and subsequent Torrens Title Subdivision at 14 McRae Road, Sans Souci NSW 2219 shown in folio identifier as Lot 24 in Deposited Plan 35595 subject to the conditions in Annexure A. Catchwords: DEVELOPMENT APPEAL — residential development — dual occupancy development — Torrens title subdivision — conciliation conference — agreement between the parties — orders Legislation Cited: Environmental Planning and Assessment Act 1979 (NSW), ss 4.16, 8.7 Land and Environment Court Act 1979 (NSW), s 34 Bayside Local Environmental Plan 2021, cll 2.6, 2.7, 4.1, 4.3, 4.4, 4.6, 5.21, 6.1, 6.3 Environmental Planning and Assessment Regulation 2021 (NSW), ss 3, 27, 38 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6, Pt 6.2, ss 6.6, 6.9 State Environmental Planning Policy (Sustainable Buildings) 2022, s 2.1 State Environmental Planning Policy (Transport and Infrastructure) 2021, s 2.48 Texts Cited: Bayside Council Engagement and Communications Strategy, November 2019 Category: Principal judgment Parties: Paula Cristina Vales Andrade (Applicant) Bayside Council (Respondent) Representation: Counsel: M Staunton (Applicant) A Epstein (Solicitor)(Respondent) Solicitors: Fortis Law (Applicant) Messenger Cole Solicitors (Respondent) File Number(s): 2026/198651 Publication restriction: No

Judgment

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 refusal of Development Consent No. DA-2025/706 (DA) for the demolition of existing structures and construction of a 2 storey detached dual occupancy with in-ground swimming pools, front fence, and associated Torrens title subdivision (Proposed Development) at 14 McRae Road, Sans Souci and is legally described as Lot 24, DP 35595 (the Site). The Court arranged a conciliation conference under s 34(1) of the Land and Environment Court Act 1979 (NSW) (LEC Act) between the parties, which has been held on 15 September 2026. I presided over the conciliation

conference. Joint Expert Reports (JER) were prepared by the parties' Town Planners, Traffic Engineers and Landscape Architects who considered amended plans prepared by the Applicant in response to the Statement of Facts and Contentions filed by the Respondent on 4 June 2026. The Applicant's amendments to the Proposed Development include the deletion of the in-ground swimming pools and the inclusion of the reconstruction of an existing public drainage pipe. 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 the Court upholding the appeal and granting development consent to the development application subject to conditions. 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. 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. 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. The parties identified the jurisdictional prerequisites of relevance in these proceedings to be the terms of Ch 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP) regarding water quality and various provisions of the Bayside Local Environmental Plan 2021 (BLEP) including the terms of cl 4.6 of the BLEP to justify the contravention of a development standard. The parties explained how the jurisdictional prerequisites have been satisfied in a jurisdictional statement provided to the Court and orally during the conciliation conference. The Applicant engaged Graphio Architects to lodge the DA with the Respondent on her behalf as the owner of the Site. A copy of the Applicant's owners consent is included at Tab 11 of the Class 1 Application filed with the Court. The DA was notified between 15 January 2026 and 30 January 2026 in accordance with Bayside Council Engagement and Communications Strategy. Two submissions were received by the Respondent during the notification period. The two submitters were notified by the Respondent that an in-principle agreement had been reached by letter on 3 September 2026 including a copy of the amending documents. No further objections were received by the Respondent. The Respondent has filed a copy of all written submissions with the Court. The DA was referred to Ausgrid on 9 January 2026 pursuant to s 2.48(2)(a) of the State Environmental Planning Policy (Transport and Infrastructure) 2021. Ausgrid has responded raising no objection subject to conditions which have been incorporated into the agreed conditions of consent at Annexure A. The Site is zoned R3 Medium Density Residential under the BLEP. The DA for construction of "dual occupancies" is permissible with consent in the R3 Zone. Demolition of existing structures is permissible with consent pursuant to cl 2.7 of the BLEP. Justification of contravention of minimum lot size development standard The Applicant seeks consent, pursuant to cl 2.6 of the BLEP, for the subdivision of Site into two lots, with one lot being 301.195m² and the second into 301.188m² which will take place after the completion of the construction of the dual occupancy development. Clause 4.1 (Minimum Subdivision Lot Size) of the BLEP provides a relevant development standard that applies to this Site. The Lot Size Map 7 prescribes a minimum lot size development standard of 450m², however, the Applicant relies on the exception to the minimum lot size development

pursuant to cl 4.1(3B) where development consent may be granted to the subdivision of a lot on which there is an existing dual occupancy, or on which a dual occupancy is proposed if the area of each lot resulting from the subdivision is equal to or greater than 350m² and each of the lots will have one of the dwellings on it. This would require a parent lot of at least 700m² whereas the Site has an area of 602.3m². The Applicant relies on Clause 4.6 written request (Written Request) to justify the contravention of the minimum lot size development standard pursuant to cl 4.1(3B) of the BLEP dated 27 August 2026. The parties agree that the Written Request demonstrates that compliance with the standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify variation. The Town Planning experts consider the Written Request in the JER and agree as follows: “33. The Clause 4.6 request relies upon the first of the “Wehbe” tests, being to demonstrate that the objectives that underpin Clause 4.1 are achieved. The objectives state:

- (a) to ensure that subdivision is consistent with the predominant subdivision pattern of the area,
 - (b) to minimise any likely impact of subdivision, and development on subdivided land, on the amenity of neighbouring properties,
 - (c) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.
34. We agree that the development seeks to front one dwelling to McRae Road and another to Alfred Street, with a subdivision pattern typical of other developments that have taken place further along McRae Road. Objective (a) is met.
35. We agree that objectives (b) and (c) are met [...]
36. We agree that the variation does not give rise to adverse environmental impacts.
37. We agree that some weight must be given to the double frontage, in that the resulting lots do not read as smaller lots from either street. Each dwelling will achieve its own frontage and access.
38. We agree that a conventional duplex arrangement would result in elongated, narrow lots with constrained street address.
39. HB adds that the development will create independently functioning and conventionally configured street fronting lots as a direct consequence of the sites dual parallel frontage configuration and distinguishes the proposal from a typical duplex style subdivision.” I have also read and considered the Written Request and the Court is satisfied that the cl 4.6 written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the minimum lot size development standard. Justification of contravention of floor space ratio (FSR) development standard Clause 4.4(2) of the BLEP provides an FSR development standard of 0.7:1 pursuant

to the Floor Space Ratio Map 7 which identifies that the Site is located in Special Area 15 and the relevant FSR development standard of 0.7:1. The parties considered the terms of cl 4.4(2E) of the BLEP which provides as follows: (2E) Despite subclause (2), the floor space ratio for a building on land that is in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone R4 High Density Residential on land identified as Area 15 on the Floor Space Ratio Map must not exceed 0.55:1 if the land has an area of less than 460 square metres. Pursuant to cl 4.6(8)(bd) of the BLEP, development consent cannot be granted for development that would contravene clause 4.4(2E) unless it is for a demonstrable public benefit. It is agreed that the Site has an area greater than 460m², as addressed above at [13]. Nevertheless, as the Respondent had originally taken the approach of considering the size of the lots after subdivision rather than the size of the Site, the Respondent sought and the Applicant provided a cl 4.6 written request to demonstrate that compliance would not have been reasonable or necessary because the objectives were otherwise achieved and that there are sufficient environmental planning grounds. The parties' experts agree that the proposed upgrade of the existing public stormwater infrastructure, including increasing pipe size/capacity and replacing pipes that have fallen into disrepair, that traverses the northern boundary of the Site would constitute a demonstrable public benefit if that were required to be established (JER at par 15-20). The parties' expert Town Planner also considered the FSR noting that the Proposed Development seeks consent for an FSR of 0.62:1 for both the proposed lots. The first lot (being lot 14) has a gross floor area (GFA) of 186.44m², and the second lot (being lot 14A) has a GFA of 186.5m². The Town Planning Experts agree at pars 26 and 27 of the JER that: "26. Prior to subdivision, the development is below the 0.70:1 threshold prescribed under Clause 4.4(3). 27 The exceedance in FSR only arises on the technical operation of Clause 4.4(2E) following subdivision, rather than any increase in GFA, bulk, scale or intensity of the development." For the purpose of the merit assessment, the parties agree that there is demonstrable public interest and that the clause 4.6 variation request demonstrates that compliance with the notional FSR standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify variation. Other jurisdictional prerequisites Clause 4.3 (Height of Building) applies to the site. The Height of Building Map 7 prescribes an 8.5m height limit. The sections and elevations diagrams at DA6.00 in the Architectural Plans prepared by Graphio Architects confirm that the height of the Proposed Development does not exceed 8.5m and that the maximum height of the Proposed Development is 6.85m. The Site is affected by Acid Sulfate Soils (ASS) under cl 6.1 of the BLEP, being class 3. The Acid Sulfate Soils Assessment prepared by AGS filed with the Class 1 Application at Tab 7, concludes that there is a low potential for ASS materials to be disturbed as part of the development in circumstances where the results did not exceed the criteria for net acidity, ph(kcl) and ph(fox). Considering the findings of the Assessment, the report concluded that an Acid Sulfate Soils Management Plan was not required for the Proposed Development. In any event, the Proposed Development no longer seeks consent for the swimming pools which further reduces the potential for ASS materials to be disturbed. The Site is affected during a 1% AEP flood event and the PMF event and pursuant to cl 5.21 (Flood planning) of the BLEP, before the granting of development consent, the

consent authority must be satisfied that the development:

- (a) is compatible with the flood function and behaviour on the land, and
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses. In satisfaction of the terms of cl 5.21 of the BLEP the Applicant relies on the Flood Management Report prepared by NY Civil filed with the Class 1 Application. The Flood Management Report: confirms that the Proposed Development has no impact on flooding in terms of storage, velocity, depth and behaviour, the natural ground levels for the pre-development state are to be maintained in the post-development state; recommends that all building components and services are to be constructed of flood compatible building materials up to RL 2.98m AHD; and contains a Flood Management Plan for implementation at the Proposed Development which includes the procedure which is to be followed in the case of a flooding which calls for a renewal of the plan every five years to account for the impacts of climate change. Chapter 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP) aims to protect the environment of the Georges River water systems, and certain divisions apply noting the Site is located within the Georges River Catchment. Part 6.2 of the Biodiversity and Conservation SEPP provides jurisdictional prerequisites to the grant of consent to development in a regulated catchment, which are set out in section 6.6 and 6.9, including whether the development will have a neutral or beneficial effect on the quality of water entering a waterway, and whether the development will increase the amount of stormwater run-off from the Site. The experts in the stormwater joint expert report filed on 27 August 2026 agree that the requirements of Chapter 6 of the Biodiversity and Conservation SEPP have been met by reference to the Stormwater Management Plans prepared by NY Civil and for the following reasons: The updated stormwater management plans have demonstrated via MUSIC modelling and through provision of rainwater tanks and infiltration systems that the development has had a beneficial effect on the quality of runoff leaving the site. This includes the reduction of nitrogen by 95.6%, phosphorus by 94.6% and suspended solids by 92.8%: Stormwater Plans, Drawing D4 The development also does not detract from the principles given the nature of the development, environmental safeguards proposed, including detailed drainage concepts and erosion and sediment controls: Stormwater Plans, Drawing D9 In satisfaction of cl 6.3 (Stormwater Management) of the BLEP, the Stormwater Management Plans depict the stormwater management systems, including erosion and sediment control measures to minimise the impact of stormwater drainage on public systems and avoid adverse impacts of

stormwater runoffs on adjoining properties. The Proposed Development includes the use of rainwater re-use tanks with roof water collection from non-trafficable areas. MUSIC modelling further demonstrates that the quality of runoff leaving the site has improved and the Proposed Development has had a beneficial impact. The Proposed Development is a 'BASIX development' under s 3(1)(a) the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Regulation) and a BASIX Certificate, required under s 27(1)(a) of the EPA Regulation, has been provided. That BASIX Certificate confirms that the embodied emissions have been calculated and are included in the BASIX certificate, as required by s 2.1(5) of the State Environmental Planning Policy (Sustainable Buildings) 2022. 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. I adopt the reasons given by the parties and as set out in this judgment. 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. Notations: The Court notes that the Respondent, as the relevant consent authority, has approved under section 38(1) of the Environmental Planning and Assessment Regulation 2021 (NSW), the Applicant amending Development Application No. DA-2025/706 in accordance with the following amended plans (Amended Development Application) which were filed with the Court: 1. Architectural Plans Site Plan/Cover Sheet DA1.00 Graphio Architects D 27 Aug 2026 Site Analysis Plan DA1.01 Graphio Architects D 27 Aug 2026 Construction Management Plan DA1.02 Graphio Architects D 27 Aug 2026 Calculations Plan DA1.03 Graphio Architects D 27 Aug 2026 Sub-Division Plan DA1.04 Graphio Architects D 27 Aug 2026 Demolition Plan DA2.00 Graphio Architects D 27 Aug 2026 Ground Floor Plan DA3.00 Graphio Architects D 27 Aug 2026 First Floor Plan DA4.00 Graphio Architects D 27 Aug 2026 Roof Plan DA5.00 Graphio Architects D 27 Aug 2026 Sections and Elevations DA6.00 Graphio Architects D 27 Aug 2026 Elevations Cont. DA7.00 Graphio Architects D 27 Aug 2026 Shadow Diagrams DA8.00 Graphio Architects D 27 Aug 2026 Shadow Diagrams Cont. DA8.01 Graphio Architects D 27 Aug 2026 Shadow Diagrams Cont. DA8.02 Graphio Architects D 27 Aug 2026 Shadow Diagrams Cont. DA8.03 Graphio Architects D 27 Aug 2026 Shadow Diagrams Cont. DA8.04 Graphio Architects D 27 Aug 2026 Shadow Diagrams Cont. DA8.05 Graphio Architects D 27 Aug 2026 Shadow Diagrams Cont. DA8.06 Graphio Architects D 27 Aug 2026 13. Clause 4.6 Exception to Development Standard (Min Lot Size) 14MRSS Polaris Planning & Development D 27 Aug 2026 3. BASIX BASIX Certificate_1778850M_03 Taylor Smith Consulting 4.03 14 Sep 2026 Stamped Plans - - -

Orders:

The Court orders: The appeal is upheld. Development consent is granted to development application DA-2025/706, as amended, for the demolition of existing structures, construction of a two storey dual occupancy (detached), front fencing, reconstruction of an existing public drainage pipe and subsequent Torrens Title Subdivision at 14 McRae Road, Sans Souci NSW 2219 shown in folio identifier as Lot 24 in Deposited Plan 35595 subject to the conditions in Annexure A. E Espinosa Commissioner of the Court

Annexure A.549 KB.pdf DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated. Decision last updated: 29 September 2026

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.caselaw.nsw.gov.au/decision/1a0d196ee17806bcacd13ff1>

CASE PAGE <https://chat.esheria.ai/case-law/australia/andrade-v-bayside-council-2026>

Prepared on 23 October 2026 · Esheria