

AUSTRALIA / JUDGMENT

Cooper View Developments Pty Ltd v Woollahra Municipal 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:

Cooper View Developments Pty Ltd v Woollahra Municipal Council [2026] NSWLEC 1562

Hearing dates:

Conciliation Conference on 23 April and 20 May 2026

Date of orders:

31 August 2026

Decision date:

31 August 2026

Jurisdiction:

Class 1

Before:

Bilmon AC

Decision:

The orders of the Court are:

- (1) The appeal is upheld.
- (2) Development Application DA307/2025/1 for alterations and additions to an approved new residential flat building (approved under DA166/2023) and to incorporate low and mid-rise housing with affordable housing provisions, at 214-218 Victoria Road, Bellevue Hill NSW 2023 is determined by the grant of consent subject to conditions contained in Annexure A.

- (3) The Applicant is to pay the Respondent's costs thrown away under s 8.15(3) of the Environmental Planning and Assessment Act 1979 (NSW) in the amount of \$8,000 within 28 days of the date of the making of these orders.

Catchwords:

CLASS 1 RESIDENTIAL DEVELOPMENT APPEAL – deemed refusal – alterations and additions – residential flat building – apartment development – conciliation conference – amended application – affordable housing – agreement between the parties – orders made

Legislation Cited:

Coastal Management Act 2016 (NSW)

Environmental Planning and Assessment Act 1979 (NSW), 4.15, 4.16, 4.17. 8.15, 8.7, 8.11

Land and Environment Court Act 1979 (NSW), s 34

Local Land Services Act 2013 No 51 (NSW), s 600

Environmental Planning and Assessment Regulation 2021 (NSW), s 38

State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 2, ss 2.1, 2.7, 6.2

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Housing) 2021, Ch 2 Pt 1 s 15, Ch 2 Pt 2 Div 1 ss 15C, 16, 18, 19, 20, 21, Ch 4, ss 144, 147, 148, Ch 6 Pt 1 s 163, Ch 6 Pt 4 Div 1 s 176

State Environmental Planning Policy (Resilience and Hazards) 2021, Chs 2, 4, ss 2.10, 2.11, 4.6

State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy (Transport and Infrastructure) 2021, Ch 2 Pt 2.3 Div 17 ss 2.118, 2.119, 2.120

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (now repealed)

Woollahra Local Environment Plan 2014, cll 2.3, 2.7, 4.1A, 4.3, 4.4, 4.6, 5.10, 5.21, 6.1, 6.2, 6.9

Texts Cited:

Department of Planning, Housing and Infrastructure, Tree Canopy Guide for Low and Mid Rise Housing (February 2025)

Department of Urban Affairs and Planning Environment Protection Authority, Managing Land Contamination Planning Guidelines SEPP 55-Remediation of Land

NSW Department of Planning and Environment, Apartment Design Guide (July 2015)

Roads and Traffic Authority, NSW, Guide to Traffic Generating Developments (October 20020)

Transport of NSW, Guide to Transport Impact Assessment

Woollahra Community Participation Plan

Woollahra Development Control Plan 2015

Category:

Principal judgment

Parties:

Cooper View Developments Pty Ltd (Applicant)

Woollahra Municipal Council (Respondent)

Representation:

Counsel:

A Boskovitz (Solicitor) (Applicant)

R Bullmore (Solicitor) (Respondent)

Solicitors:

Boskovitz Lawyers (Applicant)

Woollahra Municipal Council (Respondent)

File Number(s):

2025/00435814

Publication restriction:

No

Judgment

COMMISSIONER: These proceedings relate to a Class 1 residential development appeal pursuant to the provisions of s 8.7 and s 8.11 of the Environmental Planning and Assessment Act 1979 (EPA Act) against the deemed refusal by Woollahra Municipal Council (Council) of Development Application DA-307/2025 (DA) lodged with the Council on 26 August 2025 for the alterations and additions including the addition of two units to DA-166/2023 which was an application which approved the demolition of existing structures and the construction of a residential flat building comprising 13 units, associated car parking, landscaping and site works (Proposed Development) at 214-218 Victoria Road, Bellevue Hill, legally described as Lot 4 in DP70181, Lot Y in DP441045 and Lot X in DP441045.

The Court 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 April and 20 May 2026. I presided over the conciliation conference.

Outcome

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. The parties' decision is recorded in the executed s 34 agreement filed with the Court on 29 May 2026. 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 subject to conditions. There are preconditions to the exercise of power to grant development consent for the Proposed Development.

Amended application

The Council as the consent authority, has consented to the amendment of the application pursuant to s 38 of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Reg). The approved plans and supporting documents comprising the amended application (amended application) including those referred to or listed in Condition A.3 of the conditions of consent at Annexure A, are the following final plans and documents prepared by the Applicant:

a letter prepared by Home Ground Real Estate offering to manage the affordable housing stock in the Proposed Development dated 17 September 2025 behind Tab 14 of the Class 1 Application (the Housing Letter);

an updated Design Verification Statement prepared by SRHA dated 6 May 2026 (the DVS);

an amended BASIX Certificate No 1386429M_06 prepared by Max Brightwell dated Wednesday 13 May 2026;

amended architectural plans prepared by SRHA Rev 05 dated 6 May 2026 (the Final Plans);

Embodied Emissions Report prepared by Berco Consulting dated 7 August 2025 at Tab 13 of the Class 1 Application;

Demolition Report and Heritage Impact Assessment prepared by Zoltan Kovacs Architect dated March 2023 behind Tab 8 of the Class 1 Application (Demolition Report)

Acoustic Report prepared by PWNA dated 31 March 2026;

cl 4.6 application to vary the development standard for storeys prepared by GSA Planning dated 5 May 2026 (the cl 4.6 Application);

Geotechnical Report prepared by Geotesta dated 17 March 2023 (the Geotechnical Report) behind Tab 6 of the Class 1 Application; and

Updated Survey rev E prepared by ESA Survey (Survey).

Pre-conditions to the grant of consent

I am satisfied that the decision to grant development consent to the amended application subject to conditions of consent is a decision that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I have formed this state of satisfaction as each of the jurisdictional preconditions identified by the parties is met, for the following reasons.

Owner of the Site and identity of the Applicant

The owner of the site is Cooper View Developments Pty Ltd (ACN 649 897 594) (Owner), and the Owner is also the Applicant.

The Owner's consent to the lodgement of the DA was included at Tab 2 of the Class 1 Application by the previous owners, which is no longer relevant.

Notification and review of the DA

The DA was notified and advertised in accordance with the requirements of Clause 6 of the Woollahra Community Participation Plan from 17 September to 2 October 2025. Three submissions were received, and these are summarised at par 48 of the Statement of Facts and Contentions filed at the Court on 19 December 2025. The issues were also considered by the Woollahra Local Planning Panel on 18 December 2025 which refused the DA in accordance with recommendations included in a Local Planning Panel Development Application Assessment Report prepared by the Council (the WLPP DA Report).

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 - Coastal Management

Chapter 2 (Coastal Management) of the State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) gives effect to the objectives of the Coastal Management Act 2016 (NSW) from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the Coastal Zone.

The subject site is located wholly outside of the Coastal Environment Area (RH SEPP s 2.10) and the Coastal Use Area (RH SEPP s 2.11). Regarding subs 2.10(3) and 2.11(2) and as confirmed in par 15.1 of the WLPP DA Report, the parties agree these sections do not apply to land within the Foreshores and Waterways Area within the meaning of the now repealed Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Paragraph 15.1 of the WLPP DA Report concludes that no further consideration is required under Ch 2 of the RH SEPP. Based on this and the above considerations, the parties agree that the Court can be satisfied that no further action is required under Ch 2 of the RH SEPP.

I am satisfied that relevant matters relating to coastal management in RH SEPP have been adequately considered by the parties.

Chapter 4 – Remediation of Land

Under RH SEPP s 4.6 of the RH SEPP, the consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if it is, that it is satisfied that the site is suitable (or will be suitable after undergoing remediation) for the proposed use.

Section 4.6(2) of the RH SEPP requires that the consent authority consider a report specifying the findings of a preliminary site investigation (PSI) of the land concerned, if the Proposed Development as amended would involve a change of use on any of the land specified in s 4.6(4). As the DA does not propose a change of use on any of the land no PSI is required.

In respect to s 4.6(4) of the RH SEPP, the Site:

is not within an investigation area;

is currently used as residential premises and not for any use listed in ‘Table 1. Some activities that May Cause Contamination’ of the Managing Land Contamination Planning Guidelines Planning Guidelines SEPP 55-Remediation of Land; and

the building has been existing for some time and the parties agree that the long-term pre-existing use of the Site has been for residential purposes.

Section 4.4 of the Statement of Environmental Effects prepared by GSA Planning dated August 2025 (SEE) indicates that the long-term use of the Site has been residential and there is no evidence of any potentially contaminating uses occurring. The SEE concludes that further investigation is not considered necessary. This matter was also considered at par 15.2 of the WLPP DA Report, which resolved that the relevant matters are acceptable.

I am satisfied that relevant matters relating to contamination in RH SEPP have been dealt with adequately and that the Site is unlikely to be contaminated.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The parties agree that the Site is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore only s 6.2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP) applies in this case.

Consideration of s 6.2 of the BC SEPP was undertaken at par 14.2 in the WLPP DA Report which found that the Proposed Development as amended raises no adverse concerns with regards to water quality targets and stormwater management concerns of the Site subject to appropriate conditions of consent.

The parties are satisfied that this is appropriately addressed in the Stormwater Plans prepared by Smart Structures Australia dated 15 August 2025, the stormwater management plan and the agreed conditions of consent.

The stormwater management plans are included in Condition A.3 of the conditions of consent in Annexure A. Accordingly, I am satisfied that there are no specific matters requiring more consideration under these provisions of the BC SEPP.

Chapter 2 – Vegetation in non-rural areas

Chapter 2 of the BC SEPP relates to vegetation in non-rural areas and applies to the DA. The aims of s 2.1 in Ch 2 of the BC SEPP, are:

2.1 Aims of Chapter

The aims of this Chapter are–

to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The parties agree that the proposed removal of five trees and replacement as proposed in the landscape plan satisfies the objectives of this section, subject to the conditions of consent and particularly Condition A.6 Tree Preservation and Landscaping Works at Annexure A.

Whilst Ch 2 of the BC SEPP provides a general requirement to obtain a permit to clear vegetation in a non-rural area of the State:

Section 2.7(1) of the BC SEPP provides:

- (1) A permit or approval to clear vegetation is not required under this Chapter if it is clearing of a kind that is authorised under the Local Land Services Act 2013, section 600 or Part 5B.

Section 600 of the Local Land Services Act 2013 No 51 (NSW) authorises clearing of vegetation by a development consent under Pt 4 of the EPA Act.

I accept the parties' agreement that the need for a permit pursuant to Ch 2 of the BC SEPP is not required where development consent under Pt 4 of the EPA Act is obtained.

State Environmental Planning Policy (Sustainable Buildings) 2022

The development is a BASIX development as defined by the EPA Reg, and accordingly the State Environmental Planning Policy (Sustainable Buildings) 2022 (SB SEPP) applies. I note that the SB SEPP repealed the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) with effect from 1 October 2023 and the SEPP BASIX provisions were re-enacted in the SB SEPP.

Amended BASIX Certificate No 1386429M_06 has been issued in accordance with the provisions of the SB SEPP and relates to the Final Plans. Conditions A.3, D.6, G.2 and H.1 in the conditions of consent require compliance with the issued BASIX Certificate.

The parties agree that the Court would be satisfied that the amended BASIX Certificate No 1386429M_06 complies with all the relevant requirements in the EPA Reg.

Having regard to [28] above, I am satisfied that the BASIX provisions in SB SEPP have been satisfied.

Woollahra Local Environmental Plan 2014

Zoning and permissibility

Woollahra Local Environmental Plan 2014 (WLEP) is the relevant local environmental planning instrument that applies to the Site and compliance with the relevant provisions in WLEP has been addressed in the SEE included at Tab 5 of the Class 1 Application.

Clause 2.3(2) of the WLEP requires the consent authority to have regard to the zone objectives for development in a zone when determining a development application in respect of land within the zone. The Site is situated within the R3 Medium Density Residential Zone which has the which has the following objectives:

- 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 enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.
- To ensure development conserves and enhances tree canopy cover.

An assessment of the originally proposed development against the zone objectives is included in SEE Section 4.1.

The Proposed Development as amended is a residential flat building which is permissible with consent under the applicable land use table in the WLEP. Development for the purposes of residential flat buildings is permissible with consent in the R3 zone, and demolition may be carried out with development consent under WLEP cl 2.7.

I am satisfied that the zone objectives are met by the Proposed Development as amended for the reasons explained in SEE Section 4.1.

Clause 4.1A - Minimum lot size

The site has a lot size of 1,107.5m² and therefore complies with WLEP cl 4.1A which requires lot sizes over 700m² for residential flat building developments in zone R3 Medium Density Residential.

Clause 4.3 - Height of buildings

WLEP cl 4.3 prescribes the maximum height control of 13.5m to the Site. The provisions of the Housing SEPP increase this to 17.5m and the Proposed Development as amended also relies on the affordable housing provisions of the Housing SEPP that permits an additional 30% height.. Together, these provisions bring the maximum permissible height to 22.75m.

The DA as amended by the Final Plans complies with the maximum permissible height. There is no contention between the parties that the DA as amended by the Final Plans complies with the maximum permissible height, given that the Survey previously resolved this being a potential issue. I accept this is the case.

Clause 4.4 - Floor Space Ratio

WLEP cl 4.4 prescribes the maximum floor space ratio (FSR) control of 1.3:1 on the Site. The Proposed Development as amended also relies on provisions in the Housing SEPP that permit an FSR of 1.5:1, and the affordable housing additional 30% gross floor area (GFA) uplift (this is dealt with later at [63]-[65]). Together, these provisions bring the maximum permissible FSR to 1.95:1.

The Proposed Development as amended in the Final Plans has a GFA of 2,158.63m² which is under the permissible GFA of 2159.62m². The FSR Calculations are shown on Drawing No. DA2400-05 in the Final Plans and the FSR is not a contention between the parties in this matter.

The parties agree that the Proposed Development as amended by the Final Plans complies with the FSR development standard. Based on the evidence available to me, I am satisfied this is the case.

Clause 5.10 - Heritage conservation

Neither the Site nor the existing building on the Site is a heritage item, nor is the Site within a heritage conservation area. Nevertheless, the Applicant has prepared the Demolition Report.

WLPP DA Report par 17.5 also assessed Heritage Conservation and referred to an internal review by Council's heritage officer that raised no objections subject to standard conditions of consent relating to heritage matters. The parties agree the Proposed Development as amended by the Final Plans will not have a detrimental effect on any heritage items.

I am satisfied that cl 5.10 Heritage conservation of the WLEP has been considered appropriately and that a 'Requirement for consent' is not required in this case.

Clause 5.21 - Flood Planning

The Site is not located within an area identified in the Flood Planning Area on the Flood Planning Map in the WLEP. On this basis, the parties agree that the Court can be satisfied in respect of cl 5.21 flood planning of the WLEP.

I am satisfied that the Site is not within the Flood Planning Area.

Clause 6.1 - Acid sulfate soils

The Site is located within a Class 5 area of land as marked in the Acid Sulfate Soils Map in the WLEP. WLEP cl 6.1 requires development consent for the carrying out of works on Class 5 land within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum (AHD), and by which the watertable is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 and 4 land.

WLPP DA Report par 17.6 notes the Proposed Development as amended involves no additional bulk excavation work beyond that was previously approved under DA-166/2023, and that those works approved the construction of basement levels to a maximum depth that sits well above the 5m AHD threshold and is not likely to result in the lowering of the water table.

The parties agree the subject works at the Site are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 3 or 4 land classification. The parties also agree that a preliminary assessment is not required and there is unlikely to be any acid sulfate affectation and that the Court can be satisfied in respect of this clause of the WLEP that no acid sulfate soils management plan or preliminary assessment is required.

I am satisfied that WLEP cl 6.1 has been appropriately considered by the parties and that neither an acid sulfate soils management plan nor preliminary assessment is required.

Clause 6.2 - Earthworks

WLEP cl 6.2 requires the consent authority to consider various matters at cl 6.2(3) in deciding whether to grant development consent for earthworks.

The Applicant provided the Geotechnical Report which deals with the some of the matters in cl 6.2(3). Earthworks was also reported in the WLPP DA Report at par 17.7 and par 18.4, which concluded that subject to standard conditions of consent the Proposed Development as amended involves no additional bulk excavation work beyond that previously approved.

The parties confirm that the Final Plans have not amended the design to require reconsideration of earthworks, and that on this basis and the WLPP DA Report referred to in the above paragraph, agree that the Court can be satisfied that the issues noted in WLEP cl 6.2 have been considered and resolved, and that the development is suitable subject to appropriate conditions of consent.

I am satisfied that the issues arising in WLEP cl 6.2 Earthworks have been appropriately considered and resolved and that the Proposed Development as amended is suitable subject to the various conditions of consent relating to excavation included in Annexure A.

Clause 6.9 - Tree canopy cover in Zones R2 and R3

WLEP cl 6.9 requires the consent authority to consider various matters at cl 6.9(3) which states:

- (3) Development consent must not be granted to development on the land unless the consent authority has considered whether the development -
 - (a) incorporates planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect, and
 - (b) will avoid, minimise or mitigate adverse impacts on the existing tree canopy.

The parties confirm that the tree canopy provided is compliant with the controls set out in cl 6.9 of the WLEP and note that this was not a matter contended between them. The parties confirm they are satisfied this clause has been adequately considered.

I accept that WLEP cl 6.9 Tree canopy cover has been satisfied and note that Condition A.3 in Annexure A includes the amended Landscape Plans.

State Environmental Planning Policy (Housing) 2021

Chapter 2 – Affordable housing

The Proposed Development as amended intends to provide infill affordable housing and that the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) as it applies to infill affordable housing applies to the Site.

Chapter 2 Pt 1 s 15 of the Housing SEPP states:

Before imposing a condition under the Act, section 7.32, the consent authority must consider the following—

- (a) affordable housing must aim to create mixed and balanced communities,
- (b) affordable housing must be created and managed so that a socially diverse residential population, representative of all income groups, is developed and maintained in a locality,
- (c) affordable housing must be made available to very low, low and moderate income households, or a combination of the households,
- (d) affordable housing must be rented to appropriately qualified tenants and at an appropriate rate of gross household income,
- (e) land provided for affordable housing must be used for the purposes of the provision of affordable housing,

- (f) buildings provided for affordable housing must be managed to maintain their continued use for affordable housing,
- (g) affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with other dwellings in the area.

The parties confirm that they have considered these matters and agree that the Court can be satisfied that conditions can be imposed that comply with Ch 2 Pt 1 s 15 of the Housing SEPP. I accept the parties' confirmation that this is the case.

Chapter 2 Pt 2 Div 1 s 15C of the Housing SEPP states:

- (1) This division applies to development that includes residential development if—
 - (a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5, Chapter 6 or another environmental planning instrument, and
 - (b) the affordable housing component is at least 10%, and
 - (c) all or part of the development is carried out—
 - (i) for development on in a designated Sydney local government area or the Central Coast, City of Cessnock, Kiama, City of Lake Macquarie, City of Maitland, City of Newcastle, City of Shellharbour or City of Wollongong local government area—in an accessible area, or
 - (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.
- (2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division.
- (2A) This division does not apply to development—
 - (a) on land identified as an “Accelerated TOD Precinct” on the Accelerated Transport Oriented Development Precincts Rezoning Areas Map, or
 - (b) on land identified as the “Warrawong Site” on the State Significant Development Sites Map, within the meaning of State Environmental Planning Policy (Planning Systems) 2021, Chapter 2, or
 - (c) on land identified as the “Kanwal Site” on the State Significant Development Sites Map, within the meaning of State Environmental Planning Policy (Planning Systems) 2021, Chapter 2, or
 - (d) carried out under the Codes SEPP, Parts 3B and 3BA, unless it is being carried out by or on behalf of the New South Wales Land and Housing Corporation constituted by the Housing Act 2001, or

(e) on land identified on the State Environmental Planning Policy (Precincts—Central River City) 2021 Sydney Olympic Park Land Application Map, or

(f) on land identified as “Leppington Town Centre” on the Land Application Map, within the meaning of State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 3.

...

(3) In this section—

relevant zone means the following—

(a) Zone E1 Local Centre,

(a1) Zone E2 Commercial Centre,

(b) Zone MU1 Mixed Use,

(c) Zone B1 Neighbourhood Centre,

(d) Zone B2 Local Centre,

(e) Zone B4 Mixed Use.

In respect of Ch 2 Pt 2 Div 1 s 15C of the Housing SEPP, the parties agree that the division applies because development for the purpose of residential flat buildings is allowed pursuant to the WLEP, at least 10% of the development is proposed to be affordable housing, and the Site is within an area considered by Ch 2 Pt 2 Div 1 s 15C(1)(c). I accept the parties’ confirmation that this is the case.

Chapter 2 Pt 2 Div 1 s 16 - FSR

Chapter 2 Pt 2 Div 1 s 16(1) of the Housing SEPP states:

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

The ‘maximum permissible floor space ratio’ is defined in the Housing SEPP s 10 Dictionary as follows:

maximum permissible floor space ratio means the maximum floor space ratio permitted on the land under Chapter 5 or 6, where relevant, an environmental planning instrument, other than this Policy, or a development control plan.

On this basis, the parties agree that the maximum permissible FSR for the Site is the FSR permitted in Housing SEPP Ch 6 Low and mid rise housing, plus 30%, being 1.95:1 (ie 1.5 x 1.3). As noted at [39], the Proposed Development as amended by the Final Plans seeks to take the benefit of approximately the entirety of the maximum permissible FSR for the Site.

Housing SEPP Ch 2 Pt 2 Div 1 s 16(2) provides a formula for the calculation of affordable housing contribution. In summary, this sub-section requires 15% of the gross GFA to be provided as affordable housing stock. As the GFA of the project is 2,158.63m², the application of the formula requires 323.79m² to be allocated as affordable housing. The Final Plans provide 324.30m² to affordable housing, which meets this requirement.

The parties agree that the development complies with the relevant standard and provides affordable housing consistent with the policy. I accept the parties' confirmation that this is the case.

Chapter 2 Pt 2 Div 1 s 18 - Height

Chapter 2 Pt 2 Div 1 s 18 of the Housing SEPP states:

- (1) This section applies to development that includes residential development to which this division applies if the development—
 - (a) includes residential flat buildings or shop top housing, and
 - (b) does not use the additional floor space ratio permitted under section 16.

...

The DA seeks to apply the additional FSR permitted under s 16 of the Housing SEPP, so s 18 does not apply.

Chapter 2 Pt 2 Div 1 s 19 - Non-discretionary standards

In respect of the non-discretionary standards at Ch 2 Pt 2 Div 1 s 19(2) of the Housing SEPP, the parties agree as follows:

in respect of subs 19(2)(a), the Site area is greater than 450m²;

in respect of subs 19(2)(b), the Applicant relies on a WLEP cl 4.6 Application to vary the development standard applying to Landscape. The parties agree that the Proposed Development as amended by the Final Plans complies with these requirements.

in respect of subss 19(2)(c) and (d), they do not apply to development to which Ch 4 applies; and

in respect of subs 19(2)(g), the areas of each unit meet the minimum requirements.

I am satisfied that the non-discretionary development standards in Ch 2 Pt 2 Div 1 s 19 have been complied with as noted in the agreement between the parties.

Chapter 2 Pt 2 Div 1 s 20 – Design requirements

Chapter 2 Pt 2 Div 1 s 20(1) does not apply as Ch 4 applies to the development.

The parties agree that the Court can be satisfied that the parties have considered whether the design of the development is compatible with the matters specified in Ch 2 Pt 2 Div 1 subs 20(3)(a) and (b) of the Housing SEPP, and this consideration has resulted in the amended plans.

I am satisfied that the parties have considered the matters specified in Ch 2 Pt 2 Div 1 subs 20(3) (a) and (b) of the Housing SEPP and accept that this was a contributory factor in the preparation of the amended plans.

Ch 2 Pt 2 Div 1 s 21 - Must be used for affordable housing for at least 15 years

Chapter 2 Pt 2 Div 1 s 21 of the Housing SEPP states:

- (1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development—
- (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and
- (b) the affordable housing component will be managed by a registered community housing provider.

Condition A.7 in the conditions of consent in Annexure A requires that units 6, 8 and 11 must be allocated for affordable housing and that these units must be managed by a registered community housing provider for a period of at least 15 years commencing on the day an occupation certificate is issued for the development.

In respect of Ch 2 Pt 2 Div 1 subs 21(1)(b) of the Housing SEPP, the Housing Letter prepared by Home Ground Real Estate offering to manage the affordable housing stock in the Proposed Development as amended dated 17 September 2025 has been provided to satisfy this provision.

I am satisfied that the requirements specified in Ch 2 Pt 2 Div 1 s 21 of the Housing SEPP have been complied with as noted in the agreement between the parties.

Chapter 4 - Design of residential apartment development

Housing SEPP Ch 4 applies to the DA as it seeks consent for a residential flat building pursuant to Ch 4 subs 144(2)(a).

Chapter 4 subs 147(1) of the Housing SEPP requires a consent authority to take into consideration of the following matters:

- (1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—

- (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,
- (b) the Apartment Design Guide,
- (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.

The Council does not have a design review panel but does undertake internal referrals.

The DA is supported by the DVS. I am satisfied that the parties have considered the matters in Ch 4 subs 147(1) of the Housing SEPP and that the Court has sufficient material before it to consider these mandatory matters.

Chapter 4 s 148 of the Housing SEPP identifies non-discretionary development standards for particular matters relating to residential apartment development that if complied with prevent the consent authority from requiring more onerous standards for the matters. The Proposed Development as amended complies with those standards in Ch 4 ss 148(2)(a)-(c) as:

Chapter 4 ss 148(2)(a) – Apartment Design Guide (ADG) Part 3J Objective 3J-1 Design criteria states that the minimum car parking compliance requirement for residents and visitors is set out in the Guide to Traffic Generating Developments. The Guide to Transport Impact Assessment (GTIA) is the first full update to the Guide to Traffic Generating Developments since 2002 and the rates in this update document are at GTIA Section 8.5.2. In this proceeding, the Site is within Category 1 which is described at GTIA Section 8.5.1 as:

“Typical of urban areas with high alternative transport options and low car mode share.”

On this basis, the requirement for parking can be deemed to be less than Category 1 which requires:

- 0.5 spaces per 1 bedroom unit;
- 0.8 spaces per 2 bedroom unit;
- 1.2 spaces per 3 bedroom unit; and
- 1 visitor space per 5 units.

The Proposed Development as amended has 15 total units broken down as follows: 3 x 2 bedrooms and 12 x 3 (or more) bedrooms, requiring 19.8 spaces. The Proposed Development as amended has 25 parking spaces and therefore complies with this sub-section. These spaces were approved under the previous development consent.

The parties note that while Housing SEPP Ch 2 Pt 2 Div 1 subs 19(2)(e) and (f) slightly alters the parking space requirements, the DA still complies.

Chapter 4 subs 148(2)(b) – this sub-section requires each apartment to meet the minimum size requirements of units at ADG Part 4D Apartment size and layout. In this Part, the minimum internal area of each 1-bedroom with 1 bathroom apartment is 50m², each 2-bedroom with 1 bathroom must be 70m² and each 3-bedroom with 1 bathroom must be 90m². For each additional bathroom, 5 m² is added. The parties confirmed each apartment in the Proposed Development as amended meets these minimum size requirements and therefore complies with s 148(2)(b).

Chapter 4 subs 148(2)(c) – ADG Part 4C Objective 4C-1 Design criteria requires minimum floor to ceiling heights of 2.7m for habitable rooms and 2.4m for non-habitable areas. The parties confirm that the Proposed Development as amended has adequate floor to floor heights and therefore complies with s 148(2)(c).

Chapter 6 - Low and mid rise housing

Chapter 6 of the Housing SEPP encourages the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport.

The Site is located within a low and mid rise outer area which is defined in Ch 6 Pt 1 s 163 of the Housing SEPP as meaning:

low and mid rise housing area means—

- (a) land between 400m and 800m walking distance of—
 - (i) land identified as "Town Centre" on the Town Centres Map, or
 - (ii) a public entrance to a railway, metro or light rail station listed in Schedule 11, or
 - (iii) for a light rail station listed in Schedule 11 with no public entrance—a platform of the light rail station, and
- (b) if part of a lot is on land identified in paragraph (a)—the lot.

Chapter 6 Pt 4 Div 1 subs 176(1)-(3) of the Housing SEPP states:

- (1) This section applies to land in a low and mid rise housing outer area in Zone R3 Medium Density Residential or R4 High Density Residential.
- (2) Development consent must not be granted for development for the following purposes if a resulting building will have a building height of up to 17.5m unless the consent authority is satisfied that the building will have 4 storeys or fewer—
 - (a) residential flat buildings,
 - (b) buildings containing shop top housing.
- (3) In this section, a storey does not include a basement within the meaning of the standard instrument.

The Court notes that in Council's view, the DA proposes six storeys and accordingly the Applicant has prepared a WLEP cl 4.6 Application to vary the development standard applying to the number of storeys set out s 176(2) of the Housing SEPP. The Council considers that the contravention of the standard is adequately justified by the cl 4.6 Application.

Having regard to the parties' agreement and the contents of the WLEP cl 4.6 Application to vary the development standard applying to the number of storeys set out subs 176(2) of the Housing SEPP, I am satisfied that:

The cl 4.6 Application prepared by GSA Planning Pty Ltd dated 5 May 2026 pursuant to s 176(2) of the Housing SEPP has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. These justifications include consistency with desired future character, economic and orderly development; environmental amenity; and that the proposed height facilitates a medium density development achieves the planning objectives of the area.

The cl 4.6 Application demonstrates that compliance with the standard is unreasonable and unnecessary in the circumstances of the case given that the Proposed Development as amended achieves the objectives of the standard, notwithstanding the variation from the development standard applying to the number of storeys set out s 176(2) of the Housing SEPP.

Chapter 6 Pt 4 Div 1 s 177 of the Housing SEPP requires consideration of the Tree Canopy Guide for Low and Mid Rise Housing, published by the Department in February 2025 prior to the granting of development consent.

This sub-section has been considered by the parties and the parties agree that the Court can be satisfied that the development as amended by the Final Plans and Landscape Plan provides for adequate deep soil and canopy planting on the Site.

I am satisfied that the relevant matters in the Housing SEPP have been considered appropriately by the parties and comply with the relevant conditions including those in the cl 4.6 Application to vary the development standard.

Woollahra Development Control Plan 2015

The parties agree that the DA can be approved having regard to the provisions of the Woollahra Development Control Plan 2015, an extensive consideration of which has been provided in the SEE. I accept this is the case.

State Environmental Planning Policy (Transport and Infrastructure) 2021

WLPP DA Report par 16 states that part of the subject site fronts a classified road (Old South Head Road) and is within 30m of a traffic signal, and therefore the provisions of the s 2.118 of the TI SEPP apply to the Proposed Development as amended.

The relevant provisions in Ch 2 Pt 2.3 Div 17 Subdiv 2 subs 2.119(2) of the TI SEPP states the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the Proposed Development as amended will not adversely affect the safety, efficiency and ongoing operation of the classified road; or includes measures to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Chapter 2 Pt 2.3 Div 17 Subdiv 2 s 2.120 of the TI SEPP also applies to the Proposed Development as amended as it is a development involving residential accommodation that is on land adjacent to a road with an annual average daily traffic volume of more than 20,000 vehicles (Old South Head Road) and that the consent authority considers is likely to be adversely affected by road noise or vibration.

Chapter 2 Pt 2.3 Div 17 Subdiv 2 subs 2.120(3) of the TI SEPP requires that for development involving residential accommodation the consent authority is required to be satisfied that appropriate measures will be taken to ensure that the following noise (LAeq) levels are not exceeded:

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10pm and 7 am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

The Site has a frontage onto Old South Head Road (a classified road). However, the DA does not have impacts on traffic on Old South Head Road as the access arrangements are the same as previously approved.

The Court notes that the parties agree that the Acoustic Report addresses the issues raised in the TI SEPP and has made recommendations to ensure satisfaction of the requirements.

Condition A.9 in the conditions of consent at Annexure A is imposed and requires that the Proposed Development as amended is designed in accordance with the approved acoustic report (230591-214-218 Victoria Road, Bellevue Hill-Noise Impact Assessment-R1) to ensure that road traffic noise from Old South Head Road is mitigated in accordance with the requirements of the TI SEPP.

The parties agree that the Court can be assured that all relevant provisions in the TI SEPP have been considered and satisfied.

I am satisfied that with the imposition of Condition A.9 in the conditions of consent at Annexure A, appropriate measures will be taken to comply with the relevant matters in the TI SEPP.

Remaining matters in s 4.15(1) of the EPA Act

The parties have agreed that the Final Plans can be approved taking into consideration the matters in the EPA Act Pt 4 Div 4.3 subs 4.15(1)(b) - (e) and state:

Part 4 Div 4.3 subs 4.15(1)(a)(i) - all relevant environmental planning instruments have been taken into consideration in those relevant matters outlined above and in the Final Plans and supporting documents, including the SEE;

Part 4 Div 4.3 subs 4.15(1)(a)(iii) - all relevant development control plans have been taken into consideration - in those relevant matters outlined above, and in the SEE, and Final Plans;

Part 4 Div 4.3 subs 4.15(1)(a)(iv) - all relevant regulations have been considered;

Part 4 Div 4.3 subs 4.15(1)(b) - the environmental impacts of the development on both the natural and built environment and the social and economic impacts of the locality have been considered and are acceptable;

Part 4 Div 4.3 subs 4.15(1)(c) - the Site is suitable for the development taking into consideration the relevant environmental planning instruments and permissible uses in the Zone;

Part 4 Div 4.3 subs 4.15(1)(d) - issues of notification and submissions have been considered and complied with; and

Part 4 Div 4.3 subs 4.15(1)(e) - consideration has been given to the public interest.

Conditions of consent

The Court notes that the conditions of consent sought by the Council are agreed to by the Applicant. The Applicant has also confirmed that the conditions of consent are lawful having regard to the provisions of ss 4.16 and 4.17 of the EPA Act and relevant legal principles.

Having regard to all the above matters, the parties have agreed that the jurisdictional prerequisites to the proper exercise of the power to approve the DA as amended by the Final Plans have been met. I am satisfied that that is the case.

Power of the Court to make orders in accordance with the s 34 Agreement

The Court notes that the Applicant considers that the approval of the DA does not result in any contravention of the EPA Act, any environmental planning instrument or the EPA Reg. As such, the Applicant has submitted that the Court may exercise its function under s 4.16(1) of the EPA Act and grant consent to the DA.

The terms of the decision set out in the parties' s 34 agreement represent a decision that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act).

Conclusion

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. The LEC Act also requires me to "set out in writing the terms of the decision" (s 34(3)(b)).

Notes

In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any assessment of the merits of the development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.

The Court notes that the Applicant has relied on the following document filed with the DA for jurisdictional matters:

Statement of Environmental Effects prepared by GSA Planning dated August 2025 behind Tab 5 of the Class 1 Application.

Orders

The orders of the Court are:

The appeal is upheld.

Development Application DA307/2025/1 for alterations and additions to an approved new residential flat building (approved under DA166/2023) and to incorporate low and mid-rise housing with affordable housing provisions, at 214-218 Victoria Road, Bellevue Hill NSW 2023 is determined by the grant of consent subject to conditions contained in Annexure A.

The Applicant is to pay the Respondent's costs thrown away under s 8.15(3) of the Environmental Planning and Assessment Act 1979 (NSW) in the amount of \$8,000 within 28 days of the date of the making of these orders.

J Bilmon

Acting Commissioner of the Court

Annexure A(582 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:

31 August 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/1a045b0e025a9fafc5153b23>

CASE PAGE <https://chat.esheria.ai/case-law/australia/cooper-view-developments-pty-ltd-v-woollahra-municipal-council-2026>

Prepared on 25 October 2026 · Esheria