

AUSTRALIA / JUDGMENT

Crossling v Sutherland Shire Council

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Land and Environment Court New South Wales Medium Neutral Citation: Crossling v Sutherland Shire Council [2026] NSWLEC 1585 Hearing dates: Conciliation conference on 25 & 26 August 2026 Date of orders: 08 September 2026 Decision date: 08 September 2026 Jurisdiction: Class 1 Before: Washington C Decision: The Court orders:

- (1) The appeal is upheld.
- (2) Development Consent is granted to DA26/0017, as amended, for demolition of an existing dwelling house, timber awning, timber deck and shed, and construction of a new multi-level dwelling house, swimming pool and associated landscaping works at 47 Taloombi Street, Cronulla subject to conditions set out in 'Annexure A'. Catchwords: DEVELOPMENT APPLICATION – conciliation conference – single dwelling – heritage item – agreement between the parties – orders Legislation Cited: Environmental Planning and Assessment Act 1979 (NSW), s 4.16, 8.7 Land and Environment Court Act 1979 (NSW), ss 34, 34AA Environmental Planning and Assessment Regulation 2021 (NSW), 38 State Environmental Planning Policy (Resilience and Hazards) 2021, ss 2.10, 2.11, 2.12, 2.13, 4.6 State Environmental Planning Policy (Sustainable Buildings) 2022 Sutherland Shire Local Environmental Plan 2015, cl 4.3, 4.4, 4.6, 5.10, 5.21, 6.1, 6.2, 6.4, 6.7, 6.9, 6.14, 6.16, 6.17, Sch 5 Category: Principal judgment Parties: Kerry Crossling (Applicant) Sutherland Shire Council (Respondent) Representation: Counsel: M Staunton (Applicant) C Rose (Respondent) Solicitors: Mills Oakley (Applicant) Sutherland Shire Council (Respondent) File Number(s): 2026/122183 Publication restriction: Nil

Judgment

COMMISSIONER: These Class 1 proceedings arise as a result of the deemed, and subsequent actual refusal, by Sutherland Shire Council, of Development Application No 26/0017 which seeks consent for the demolition of an existing dwelling house and structures, tree removal, the construction of a new multi-level dwelling house and swimming pool, and associated earthworks and landscaping works at 47 Taloombi Street, Cronulla, Lot 19 DP6875 (the site). These proceedings have been brought to the Court pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act). The Court arranged a conciliation conference and hearing under s 34AA of the Land and Environment Court Act 1979 (NSW) (LEC Act) between the parties, which was held on 25 and 26 August 2026. At the conciliation conference, the parties reached agreement as to acceptable terms of a decision in the proceedings, which involved the Court upholding the appeal and granting development consent to the development application subject

to conditions. Subsequently, the matter concluded in conciliation and did not proceed to a hearing. As part of this agreement, pursuant to s 38 of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Regulation), the Council agreed to the applicant amending the development application to adequately address their contentions. This now forms the application before the Court. The amendments include: increase of landscaped curtilage to the heritage item – from 1,590mm to 3,665mm – with associated embellishment of landscaping works in this area and the planter box above to be cantilevered; increased western setbacks to the upper levels by up to 2,550mm; amendments to the western façade glazing with the inclusion of fixed timber shutters; reduction in all cut/fill proposed along the southern boundary; increased street frontage setback by 0.5m to 2m total provision of a 1600mm landscaped planted area to the north of the proposed pool area, with associated movement of the pool to the south; increased setback to the pool and landscaped planter box by 450mm to the east via associated reduction in area to first floor verandah and living room; update of materiality to garage door to be a darker metal colour; Increased height of the finished level within 1.5m of the northern setback area (adjacent first level courtyard) to be RL 6.370, with stair access connecting down to the finished level of the courtyard; and a condition imposed requiring a planter box within this setback. Minor reduction in cut to the northern boundary area adjacent to the courtyard. Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if that decision is one that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application. There are jurisdictional prerequisites that must be satisfied before this function can be exercised, which the parties identified and explained. From this I note the following points. Jurisdictional matters The development application was made with the written consent of the owner of the land. The application was adequately notified from 27 January to 11 February 2026. Two submissions were received, but no oral submissions were made at the commencement of proceedings. Based on the amended application, the parties submit, and I accept, that the development as amended adequately responds to the concerns raised in these submissions. As the site is identified as being within a Coastal Environment Area and Coastal Use Area pursuant to the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP R&H), Ch 2 of this SEPP applies. From the Coastal Engineering and Estuarine Inundation Assessment by Horton Coastal Engineering dated 24 October 2025 (Coastal Engineering Report), and the parties' submission, I accept that the proposed development satisfies the requirements of ss 2.10, 2.11 and 2.12 of the SEPP R&H. Further, as no coastal management plan currently applies to the site, s 2.13 is also satisfied. Section 4.6 of the SEPP R&H requires the consent authority to consider whether the site is contaminated, and if so, whether it is or will be made suitable for the intended use. From the parties' submissions and the Statement of Environmental Effects by Planning Approvals dated 27 October 2025 (SEE), I accept that there is no known contamination on the site, nor any history of contaminating activities and that the site is suitable for the continued residential use. Pursuant to the State Environmental Planning Policy (Sustainable Buildings) 2022, the proposal is a BASIX affected development. Accordingly, the application is accompanied by a BASIX certificate that applies to the development. The subject site is zoned C4 Environmental Living under the Sutherland Shire

Local Environmental Plan 2015 (SSLEP), within which development for the purposes of a dwelling house is permissible with consent. Pursuant to SSLEP cl 4.3, a maximum building height of 8.5m applies to the subject site. The proposed development exceeds this development standard with a maximum height of 9.83m. Pursuant to SSLEP cl 4.6, the applicant has submitted a request to vary the height of buildings development standard, written by Planzone dated 28 July 2026. From this written request, I am satisfied that compliance with this standard is unreasonable or unnecessary in these circumstances because the proposed development complies with the relevant objectives of the standard, notwithstanding the non-compliance. The written request demonstrates sufficient environmental planning grounds to justify the variation because the height exceedance is the combined result of the natural site topography and the necessary retention of the heritage waterfront cottage. Additionally, the non-compliance does not result in any adverse amenity impacts. SSLEP cl 4.4 establishes a maximum floor space ratio (FSR) for the site of 0.5:1. The proposed development also exceeds this development standard with a FSR of 0.62:1. Pursuant to SSLEP cl 4.6, the applicant has submitted a second request to vary the height of buildings development standard, written by Planzone dated 26 August 2026. From this request, I am satisfied that compliance with this standard is unreasonable or unnecessary in these circumstances because the proposed development complies with the relevant objectives of the standard, notwithstanding the non-compliance. This request demonstrates sufficient environmental planning grounds to justify the variation because the FSR exceedance allows for the retention of the heritage item, which does not contribute directly to the residential function of the land and is not suitable for habitable use. Further, the additional gross floor area is not visible from adjoining properties or the public domain, and maintains a built form that is compatible with the bulk and scale of existing developments in the local context. The waterfront cottage on the site is identified as a heritage item (Item 1049), listed on Sch 5 of the SSLEP. From the joint report of heritage experts and the Heritage Impact Assessment Report by Zoltan Kovacs dated September 2025, I accept that the impact of the proposed development on the significance of the heritage item has been considered pursuant to cl 5.10 of the SSLEP, and is acceptable. The site is subject to estuarine inundation. From the SEE, the Coastal Engineering Report and the parties' submission, I accept that the flood-planning related matters listed in SSLEP cl 5.21(3) have been considered, and the proposed development satisfies the requirements at cl 5.21(2). Pursuant to SSLEP cl 6.1, the site is predominantly identified as Class 5 on the Acid Sulfate Soils Map, with the rear of the site mapped as Class 1. The Geotechnical Investigation by Green Geotechnics dated 22 September 2025 contains an acid sulfate soils assessment which states that the works are not likely to lower the water table below 1m Australian Height Datum and that an acid sulfate soils management plan is not required. The proposed development includes earthworks. From the parties' submissions, Geotechnical Report, amended application and Structural Engineering Feasibility Report by Acroyali Engineering dated 22 July 2026, I accept that the proposed earthworks are acceptable when considered against the matters listed in SSLEP cl 6.2(3). From the stormwater plans, the amended application and the parties' submission, I accept that the proposed development meets the stormwater requirements of SSLEP cl 6.4. Pursuant to SSLEP cl 6.7, the site is mapped as environmentally sensitive land on the Riparian Lands and Watercourses map. From the parties' submissions and the stormwater plans, I accept

that the development is designed, sited and will be managed to avoid any significant adverse environmental impact of the kind identified in cl 6.7(3). SSLEP cl 6.9 provides for limited development on the foreshore area. The foreshore building line extends 10m into the western part of the subject site. The only works proposed within this area are demolition and landscape works, which are expressly contemplated under cl 6.9(2)(c). From the parties' submission and the amended application, I accept that the matters listed in cl 6.9(3) are satisfied, and the matters listed in cl 6.9(4) have been considered. Accordingly, the development works within the foreshore are acceptable. Pursuant to SSLEP cl 6.14, the minimum percentage of landscaped area required for the site is 40%. The development delivers a deep soil area of 184.5m², which equates to 30.08%. Accordingly, the application is supported by a further written request pursuant to SSLEP cl 4.6 to vary the landscaped areas development control. This request is prepared by Planzone and dated 26 August 2026 and confirms that compliance with this standard is unreasonable or unnecessary in these circumstances because the proposed development complies with the relevant objectives of the standard, notwithstanding the non-compliance. This request also demonstrates sufficient environmental planning grounds to justify the variation because the development retains and enhances the aesthetic qualities of the site, its context, and the heritage building, and deep soil is adequately supplemented in this case by green roofs and planting on structure. From the parties' submissions and the town planning joint expert report, I accept that the urban design matters listed in cl 6.16 and 6.17 of the SSLEP have been considered and the proposed development is acceptable from an urban design perspective.

Conclusion

For these reasons, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions and subsequently, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision. The Court notes: Sutherland Shire Council, as the relevant consent authority, has approved, under s 38(1) of the Environmental Planning and Assessment Regulation 2021 (NSW), to the applicant amending Development Application DA26/0017 in accordance with the documents listed below: No. Dwg No. Drawing Title Rev Prepared by Dated Architectural Plans 1. DA 0000 Cover Page G MHN Design Union 25.08.2026 DA 1002 Demolition Plan G MHN Design Union 25.08.2026 DA 1003 Site & Roof Plan G MHN Design Union 25.08.2026 DA 2000 Ground Floor Plan G MHN Design Union 25.08.2026 DA 2001 First Floor Plan G MHN Design Union 25.08.2026 DA 2002 Second Floor Plan G MHN Design Union 25.08.2026 DA 2003 Third Floor Plan G MHN Design Union 25.08.2026 DA 3000 Elevation North & East G MHN Design Union 25.08.2026 DA 3001 Elevation South & West G MHN Design Union 25.08.2026 DA 3002 Streetscape & Foreshore Elevation G MHN Design Union 25.08.2026 DA 3003 Boundary Wall Elevations G MHN Design Union 25.08.2026 DA 4000 Section A, B & C G MHN Design Union 25.08.2026 DA 4001 Section A - Compliance G MHN Design Union 25.08.2026 DA 4002 Pool Details G MHN Design Union 25.08.2026 DA 6000 Schedule of Colours and Materials G MHN Design Union 25.08.2026 DA 7000 Excavation & Fill Plan G MHN Design Union 25.08.2026 DA 8000 GFA Calculation G MHN Design Union 25.08.2026 DA 8002 Height Plane G MHN Design Union 25.08.2026 DA 8003 Waste Management Plan G MHN Design Union

25.08.2026 DA 8004 Construction Waste Management Plan G MHN Design Union 25.08.2026 DA 8007 Glazing Comparison G MHN Design Union 25.08.2026 DA 8008 Shadows - Winter Solstice G MHN Design Union 25.08.2026 DA 8013 Garage Elevation - Materiality G MHN Design Union 25.08.2026 Landscape Plans 2. DA_001 Cover Page & Contents 05 Wyer & Co 25.08.2026 DA_002 Landscape Installation & Maintenance Specification 05 Wyer & Co 25.08.2026 DA_003 Landscape Controls & Schedules 05 Wyer & Co 25.08.2026 DA_100 Landscape Master Plan 05 Wyer & Co 25.08.2026 DA_101 Landscape Plan - Ground Floor - Rear Garden 05 Wyer & Co 25.08.2026 DA_102 Landscape Plan - First Floor - Rear Garden 05 Wyer & Co 25.08.2026 DA_103 Landscape Plan - Second Floor 05 Wyer & Co 25.08.2026 DA_104 Landscape Plan - Third Floor 05 Wyer & Co 25.08.2026 DA_105 Landscape Plan - Roof Garden 05 Wyer & Co 25.08.2026 DA_300 Landscape Area Calculation Plan 05 Wyer & Co 25.08.2026 DA_301 Canopy Coverage Plan 05 Wyer & Co 25.08.2026 DA_400 East Elevation - Taloombi Street 05 Wyer & Co 25.08.2026 DA_401 West Elevation - Gunnamatta Bay 05 Wyer & Co 25.08.2026 DA_500 Details - Typical 05 Wyer & Co 25.08.2026 Stormwater & Civil Plans 3. SWDA 1.1 Cover Sheet & Drawings List 4 Partridge Hydraulic 25.08.2026 SWDA 1.2 Stormwater Management Plan & General Notes 4 Partridge Hydraulic 25.08.2026 SWDA 1.3 Erosion & Sediment Control Plan and Details 4 Partridge Hydraulic 25.08.2026 SWDA 1.4 Existing and Proposed Site Plan And Impervious Areas 4 Partridge Hydraulic 25.08.2026 SWDA 1.5 Stormwater Drainage Ground and First Floor Layout 4 Partridge Hydraulic 25.08.2026 SWDA 1.6 Stormwater Drainage Third Floor Layout and Details Sheet 4 Partridge Hydraulic 25.08.2026 4. CDA1.1 Cover Sheet & Drawings List 2 Partridge Hydraulic 17.08.2026 CDA1.2 Driveway Access Layout 2 Partridge Hydraulic 17.08.2026 CDA1.3 Driveway Access Longitudinal Sections 2 Partridge Hydraulic 17.08.2026 CDA1.4 Council Standard Details, Sheet 1 2 Partridge Hydraulic 17.08.2026 CDA1.5 Council Standard Details, Sheet 2 2 Partridge Hydraulic 17.08.2026 Survey Plans 5. 124483-SU-DT-002 47 Taloombi St, Cronulla NSW 2230 (Lot 19 DP6875) Detail & Level Survey D Crux Surveying 19.05.2026 Supporting Documentation No. Document Title Prepared by Dated 6. Clause 4.6 Variation Request (Height of Buildings) Planzone 28.06.2026 7. Clause 4.6 Variation Request (Floor Space Ratio) Planzone 26.08.2026 8. Clause 4.6 Variation Request (Landscaped Area) Planzone 26.08.2026 9. Structural Statement Acroyali Engineering 22.07.2026 10. BASIX Certificate No. 1818999S_03 Efficient Living 17.08.2026 11. NatHERS Certificate No. #HR-FBRUKY-02 Efficient Living 17.08.2026

Orders

The Court orders: The appeal is upheld. Development Consent is granted to DA26/0017, as amended, for demolition of an existing dwelling house, timber awning, timber deck and shed, and construction of a new multi-level dwelling house, swimming pool and associated landscaping works at 47 Taloombi Street, Cronulla subject to conditions set out in 'Annexure A'. E Washington Commissioner of the Court

Annexure A (741 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: 08 September 2026

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