

AUSTRALIA / JUDGMENT

DPG Project 56 Pty Ltd v North Sydney 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: DPG Project 56 Pty Ltd v North Sydney Council [2026] NSWLEC 1643 Hearing dates: Conciliation Conference on 12 May and 9 June 2026 Date of orders: 29 September 2026 Decision date: 29 September 2026 Jurisdiction: Class 1 Before: Bilmon AC Decision: The orders of the Court are:

- (1) 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 \$27,832.00.
- (2) The appeal is upheld.
- (3) Development consent is granted to Development Application DA 456/2025, as amended, for demolition of existing buildings and structures and construction of a nine storey residential flat building with three basement levels including 3 affordable housing units, and associated landscaping and tree works at 16, 18 and 18A Watson Street, Neutral Bay (being Lot 1 DP 1001075, Lot 2 DP 100175 and Lot 2 DP 224887) (the Site) subject to the conditions in Annexure A. Catchwords: APPEAL — Development Application — conciliation conference — additional s 34 agreement documentation — cl 4.6 variation to storey limitation — agreement between the parties — orders Legislation Cited: Environmental Planning and Assessment Act 1979 (NSW), ss 4.15, 4.16, 4.17, 8.7, 8.15 Land and Environment Court Act 1979 (NSW), s 34 Environmental Planning and Assessment Regulation 2021 (NSW), s 38 North Sydney Local Environmental Plan 2013, cl 2.3, 2.7, 4.6, 5.10, 6.10, 6.12 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chs 2, 6, ss 6.6, 6.7, 6.8, 6.10, 6.11 State Environmental Planning Policy (Housing) 2021, Sch 9, Chs 4, 6, ss 15C, 16, 18, 19, 20, 21, 22, 147, 148, 174, 175, 177, 180 State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 4, s 4.6 State Environmental Planning Policy (Sustainable Buildings) 2022 State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.48, 2.119 Texts Cited: Apartment Design Guide North Sydney Development Control Plan 2013 Category: Principal judgment Parties: DPG Project 56 Pty Ltd (Applicant) North Sydney Council (Respondent) Representation: Counsel: J Cole (Solicitor) (Applicant) V McGrath (Solicitor) (Respondent) Solicitors: Messenger Cole Solicitors (Applicant) North Sydney Council (Respondent) File Number(s): 2026/00035667 Publication restriction: No

Judgment

COMMISSIONER: These proceedings arise following an appeal pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) against the deemed refusal by North Sydney Council (Council) of Development Application No. DA 456/2025 (DA) which seeks consent for the demolition of existing buildings and structures and construction of a nine storey residential flat building with three basement levels including three affordable housing units, and associated landscaping and tree works on land at 16, 18 and 18A Watson Street, Neutral Bay, legally described as Lot 1 DP 1001075, Lot 2 DP 100175 and Lot 2 DP 224887 (the Site). The background facts and the relevant statutory framework are set out in the Council's Statement of Facts and Contentions (SOFAC) filed at the Court on 31 March 2026. In accordance with the Court's practice a conciliation conference under s 34(1) of the Land and Environment Court Act 1979 (NSW) (LEC Act) was arranged between the parties and held on 12 May and 9 June 2026. I presided over the conciliation conference. At and after the conference the Applicant provided amended architectural drawings and additional documents noted herein at [51(1)] that were responsive to the Council's contentions and the concerns expressed by local objectors with respect to solar access, privacy, built form including façade articulation, traffic access and landscaping including landscaping adjacent to the easement along the northern boundary of the Site ('Final Plans'). The Applicant also provided the following additional documents ('Additional Documents') including: Tree Protection Plan & Tree Protection Specifications prepared by Xylology Arboricultural Consultancy, rev C, dated 31 July 2026 (the 'Tree Protection Plan & Specifications'); Pruning Assessment Report prepared by Xylology Arboricultural Consultancy, rev E dated 31 July 2026 (the 'Pruning Assessment Report'); Arboricultural Impact Assessment prepared by Xylology Arboricultural Consultancy, rev E, dated 31 July 2026 (the 'Arboricultural Impact Assessment'); BASIX Certificate 1819294M_02 prepared by Efficient Living Pty Ltd dated 31 July 2026 (the 'BASIX Certificate'); and Access Performance Solution Report prepared by Projected Design Management dated 28 May 2026 (the 'APSR'). (the Final Plans together with the Additional Documents are hereinafter collectively referred to as the 's 34 agreement documentation'). The Final Plans result in modifications to the DA whereby the proposed new structure includes: Increased vegetation, expansion of the undercroft communal space, and the introduction of ground floor terraces and a south-western communal open space which together enhance the landscape curtilage and general amenity at the base of the building; Setting back the western edge of the basement to increase the deep soil area to facilitate more substantial and mature planting to enhance screening to the neighbouring properties; Additional localised setbacks to Level 2 adjacent to the northern boundary to provide a greater area for the existing trees on the public land to the north of the Site; Raising the building cantilever over the easement by one storey at the west and east ends of the building to improve the spatial experience along the easement; Setting back the upper levels of the western façade further from the boundary to reduce potential amenity impacts on neighbouring residential properties; and Removing the western balcony and including privacy blades on the western façade to direct outlook away from neighbouring residential properties to enhance the architectural expression and articulation of the building and resolve privacy issues. Specific amendments to the architectural drawings have

been identified in the key amendments list in the cover page of the Final Plans. Outcome Following the conciliation conference the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to each of them. The decision involves the Court exercising the functions under s 4.16 of the EPA Act to grant consent to the development application as amended subject to the agreed conditions in Annexure A. Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' signed agreement if the Court could have made that decision in the proper exercise of its functions. The pre-conditions that must be satisfied before the Court can exercise its functions are addressed in a written submission prepared by the parties. Based on the parties' written submission and the amended drawings and additional documents before me, as the presiding Acting Commissioner I am satisfied that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I form this state of satisfaction for the reasons that follow. Owner's consent Owner's consent was given to the Respondent for lodgement of the DA. The owner's consent letters are filed with the Class 1 Application documentation (Tab 2 of the Class 1 Application). Notification The DA was publicly notified by the Respondent from 12 December 2025 to 9 January 2026. The Respondent received 47 submissions during the notification period. The parties have confirmed that the matters raised by the submissions have been considered. Residents were invited to make oral submissions at the start of the conciliation process, and those submissions were also considered. Following the provision of the s 34 agreement documentation, the Applicant agreed to allow the Respondent to provide those amended materials to the submitters. There were 3 responses received to the amended materials. State Environmental Planning Policy (Sustainable Buildings) 2022 A BASIX certificate is included in the s 34 agreement documentation. State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 2 applies to removal of vegetation. The s 34 agreement documentation includes the updated arboriculture report, the tree protection plan and tree pruning plans / information. The parties' arborists have reviewed the proposal and are of the view that it is an acceptable outcome in relation to vegetation pruning or removal. Chapter 6 applies as the Site is located within the Sydney Harbour Catchment. The parties have considered the requirements under s 6.6 regarding water quality and quantity and are satisfied with the impact of the proposal. A Dewatering Management Plan ('Dewatering Management Plan') is filed with the Class 1 Application documentation (Tab 17 of the Class 1 Application). I accept the parties' submission that the requirements of s 6.7 have been considered, and that they are satisfied with the impact of the proposal as detailed in the Dewatering Management Plan. I accept the parties' submission that there will be no adverse impact on the aquatic ecology of water catchments with the proposed stormwater plans including appropriate stormwater management measures. There are no known aquatic reserves in the immediate area of the Site. Having regard to s 6.10 (now repealed), I note the parties have agreed that the development is not considered likely to have an adverse environmental impact and is considered sustainable / well managed such that referral to adjoining local government areas was not considered necessary. The Site is not flood affected or within 100m of any natural waterbody such that s 6.8 and s 6.11 do not apply. State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) The aim of RH SEPP Ch 4 is to ensure that a change of land use will not increase the risk to health.

Section 4.6(1)(a) of the RH SEPP provides that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. The Detailed Site Investigation provided with the Class 1 Application documentation (Tab 16 of the Class 1 Application) concluded that the Site can be made suitable for the proposed residential development subject to some further recommendations which are incorporated into the consent. I accept the parties' submission that the requirements of s 4.6 of the RH SEPP have been considered and note that they are satisfied the Site is suitable to accommodate the development, the subject of the DA as amended and with appropriate conditions in place. State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP) The Site is separated from a classified road (Military Road) by an easement (burdening the subject site), bus shelters and park/reserve. Nevertheless, it was referred to Transport for New South Wales under s 2.119 of the TI SEPP. No objection was received. The DA was referred to Ausgrid pursuant to s 2.48 of the TI SEPP. No objection was received. State Environmental Planning Policy (Housing) 2021 (Housing SEPP) The DA includes dedication of 15% GFA to affordable housing (three of the 14 units). The Site is also within a low and mid rise housing inner area under Ch 6 of the Housing SEPP as it is within 100m on land zoned MU1 Mixed Use zone and therefore within 400m walking distance of a land in a relevant or equivalent zone (per s 15C(1)). Under s 16 of the Housing SEPP a 30% bonus of additional FSR is applied under affordable housing controls in addition to the low mid rise housing rates of 2.2:1 under s 180. Therefore, the applicable floor space ratio ('FSR') is 2.86:1 in accordance with s 16(3). The proposed FSR complies with this ratio (see Final Plans drawing DA-501 Issue C). Under s 18 of the Housing SEPP, a bonus for height is applied as the DA includes dedication of 15% of total GFA to affordable housing. As the Site is within a low and mid rise housing area under Ch 6, the base height available is 22m (under s 175) and with the bonus it is 28.6m. The height complies with this control (see Final Plans drawings DA-302 Issue C and DA-301 Issue C) The parties agree that the storey limitation under s 175 is breached noting that, with the height bonus under the affordable housing provisions, six storeys cannot be maintained. Arguably, the bonus under the affordable housing provisions are inconsistent with, and supersede, the storey limitation under s 175. Nevertheless, for the avoidance of doubt a cl 4.6 variation has been submitted in relation to storey controls. The parties consider that the cl 4.6 variation request is acceptable and that compliance with the standard is unreasonable and unnecessary and there are planning grounds justifying variation. I am satisfied that the Applicant has demonstrated that compliance with the storey controls development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with the requirements under cl 4.6(3) of the North Sydney Local Environmental Plan 2013 (NSLEP). The development complies with the non-discretionary development standards under s 19(2) of the Housing SEPP as follows: The minimum site area is 813.2m²; The minimum landscape area exceeds 30% (see Final Plans drawing DA-499 Issue C); Deep soil provided exceeds the 15% control (see Final Plans drawing DA-499 Issue C); Solar access is provided to comply with the Apartment Design Guide (ADG) in accordance with s 19(3) noting that affordable housing is proposed; Car parking complies with the minimum numbers in the North Sydney Development Control Plan 2013 (NSDCP) which is more onerous than the s

19(2) parking controls, which the DA also complies with; Minimum floor areas comply with ADG minimums. I note that the parties agree, and I accept, that the design has been assessed and considered under the ADG in accordance with s 20 of the Housing SEPP. The area is undergoing transition and provides infill housing in accordance with the Housing SEPP anticipated density controls and design. It is noted that there are existing surrounding residential apartment buildings of a range of heights. Condition G30 in relation to using the affordable housing for at least 15 years in accordance with s 21 is included in the conditions of consent. A registered provider has been identified, and a letter has been provided. Subdivision is permitted with consent and is sought per s 22. Chapter 4 of the Housing SEPP also applies given this is a residential apartment development. The development has been considered having regard to residential apartment design principles per s 147 set out in Sch 9 as set out in the Design Verification Statement (DVS) filed with the Class 1 Application documentation (Tab 24 of the Class 1 application). The development complies with the non-discretionary standards at s 148 as follows: Car parking complies with the minimum requirements in the Housing SEPP; Minimum internal apartment areas are provided; Ceiling heights comply with Part 4C of the ADG. In accordance with s 177 the parties agree, and I accept, that the Tree Canopy Guide for Low and Mid Rise Housing (February 2025) has been considered with canopy diagrams included with the amended landscape plans. North Sydney Local Environmental Plan 2013 (NSLEP) Zoning and permissibility The Site is zoned R4 High Density Residential. Residential flat buildings are permissible with consent in the zone. The proposal also relies on s 175 of the Housing SEPP for permissibility. The parties agree, and I accept, that the proposal is permissible and consistent with the objectives of the zone pursuant to cl 2.3 of the NSLEP. Pursuant to cl 2.7 of the NSLEP, consent is required for demolition. Consent for demolition will be granted as part of this DA approval. Heritage The Site is located in proximity to heritage listed bus shelters such that the consent authority must consider the effect on the heritage significance per cl 5.10 of the NSLEP. The Site is separated from this heritage item by a treed council reserve (Cheal Park) which provides screening and softening. The parties agree, and I accept, that the impact on the heritage significance of this item is acceptable. Earthworks As basement parking is proposed, considerations under cl 6.10 are required including considering any dewatering requirements and impacts on environmental functions and processes. Earthworks are proposed to be wholly within the site and are unlikely to adversely impact the environment or neighbouring properties. The Dewatering Management Plan includes relevant measures. Conditions of consent also address standard requirements and control measures. Residential flat buildings Under cl 6.12, the consent authority must consider:

- (3) Development consent must not be granted for development for the purposes of a residential flat building if the development will result in a single dwelling house, dual occupancy or semi-detached dwelling being located on adjoining land in Zone R4 High Density Residential unless—
 - (a) the adjoining land is at least 900 square metres, or

- (b) the consent authority is satisfied that the adjoining land is land on which development may be carried out for the purposes of a residential flat building. Adjoining land to the Site is either not in the same R4 zone or is already developed as a residential flat building such that the parties agree, and I accept, this clause is satisfied. North Sydney Development Control Plan 2013 (NSDCP) The relevant provisions of the NSDCP have been considered in the Respondent's assessment of the development application as required by section 4.15(1)(a) (iii) of the EPA Act. Conditions of consent The Court notes that the conditions of consent sought by the Council are agreed to by the Applicant. The parties have also confirmed, and I accept, 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 and Additional Documents have been met. I am satisfied that that is the case. Conclusion and orders 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)). 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: North Sydney Council, as the relevant consent authority, has approved, under s 38 of the Environmental Planning and Assessment Regulation 2021 (NSW) the amendment of DA 456/2025 to incorporate the amended drawings and additional documents listed below:
- | Plan/Rev No. | Description |
|----------------------------|---|
| Prepared by Dated DA-002 C | BASIX Squillace 09.07.26 |
| DA-011 C | Site Plan Squillace 09.07.26 |
| DA-097 C | Floor Plan Basement Level 3 Squillace 09.07.26 |
| DA-098 C | Floor Plan Basement Level 2 Squillace 09.07.26 |
| DA-099 C | Floor Plan Basement Level 1 Squillace 09.07.26 |
| DA-100 C | Floor Plan Ground Level Squillace 09.07.26 |
| DA-101 C | Floor Plan Level 1 Squillace 09.07.26 |
| DA-102 C | Floor Plan Level 2 Squillace 09.07.26 |
| DA-103 C | Floor Plan Level 3-5 Squillace 09.07.26 |
| DA-106 C | Floor Plan Level 6 Squillace 09.07.26 |
| DA-107 C | Floor Plan Level 7 Squillace 09.07.26 |
| DA-108 C | Floor Plan Level 8 Squillace 09.07.26 |
| DA-109 C | Floor Plan Level Roof Squillace 09.07.26 |
| DA-150 C | Adaptable Apartment Layout Squillace 09.07.26 |
| DA-201 C | North Elevation Squillace 09.07.26 |
| DA-202 C | South Elevation Squillace 09.07.26 |
| DA-203 C | East Elevation Squillace 09.07.26 |
| DA-204 C | West Elevation Squillace 09.07.26 |
| DA-301 C | Sections Sheet 1 Squillace 09.07.26 |
| DA-302 C | Sections Sheet 2 Squillace 09.07.26 |
| DA-220 C | Material Schedule Squillace 09.07.26 |
| L03 K | Landscape Concept Plan: Ground Level Habit8 10.07.26 |
| L04 K | Tree Canopy Cover Calculation Habit8 10.07.26 |
| L05 K | Ground Level Planting Plan 01 Habit8 10.07.26 |
| L06 K | Ground Level Planting Plan 02 Habit8 10.07.26 |
| L07 K | Ground Level Planting Plan 03 Habit8 10.07.26 |
| L08 K | Landscape Sections A-A, B-B, C-C Habit8 10.07.26 |
| L09 K | Landscape Sections D-D, E-E, F-F Habit8 10.07.26 |
| L10 K | Plant Schedule Habit8 10.07.26 |
| L11 K | Typical Specification + Maintenance Notes Habit8 10.07.26 |
| L12 K | Typical Details Habit8 10.07.26 |
- (the Final Plans) Tree Protection Plan & Tree Protection Specifications prepared by Xylology Arboricultural Consultancy, rev C, dated 31 July 2026 Pruning Assessment Report

prepared by Xylology Arboricultural Consultancy, rev E dated 31 July 2026 Arboricultural Impact Assessment prepared by Xylology, rev E, dated 31 July 2026 BASIX Certificate 1819294M_02 prepared by Efficient Living Pty Ltd dated 31 July 2026 Access Performance Solution Report prepared by Projected Design Management dated 28 May 2026 (the Additional Documents)

Orders

The orders of the Court are: 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 \$27,832.00. The appeal is upheld. Development consent is granted to Development Application DA 456/2025, as amended, for demolition of existing buildings and structures and construction of a nine storey residential flat building with three basement levels including 3 affordable housing units, and associated landscaping and tree works at 16, 18 and 18A Watson Street, Neutral Bay (being Lot 1 DP 1001075, Lot 2 DP 100175 and Lot 2 DP 224887) (the Site) subject to the conditions in Annexure A. J Bilmon Acting Commissioner of the Court

Annexure A.826 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/1a0d6f474587ef5c8dbd3c96>

CASE PAGE <https://chat.esheria.ai/case-law/australia/dpg-project-56-pty-ltd-v-north-sydney-council-2026>

Prepared on 28 October 2026 · Esheria