

AUSTRALIA / JUDGMENT

Simpson v Sutherland Shire Council

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Land and Environment Court

New South Wales

Medium Neutral Citation:

Simpson v Sutherland Shire Council [2026] NSWLEC 1555

Hearing dates:

Conciliation conferences on 22 and 23 July 2026

Date of orders:

02 September 2026

Decision date:

02 September 2026

Jurisdiction:

Class 1

Before:

Kullen AC

Decision:

The Court orders that:

- (1) The appeal is upheld.
- (2) Development consent is granted to development application DA25/0533 for the use of an existing inclinor and to construct two new landing stations on the eastern elevation of the primary dwelling on land legally identified as Lot 7 Deposited Plan 228088, known as 22 Goldfinch Place, Grays Point, NSW, 2232, subject to the conditions at Annexure A.

Catchwords:

DEVELOPMENT APPEAL – conciliation conference – agreement between the parties – orders

Legislation Cited:

Crown Land Management Act 2016 (NSW)

Environmental Planning and Assessment Act 1979 (NSW), ss 4.15, 4.16, 4.17, 7, 8.7, Sch 1, Div 2

Land and Environment Court Act 1979 (NSW), ss 17, 34, 34AA

Environmental Planning and Assessment Regulation 2021 (NSW), ss 23, 37

State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 2, 4, ss 2.10, 2.11, 2.12, 2.13, 4.6

State Environmental Planning Policy (Sustainable Buildings) 2022

Sutherland Local Environmental Plan 2015, cll 2.2, 2.3, 4.3, 4.4, 4.6, 5.21, 6.1, 6.2, 6.4, 6.5, 6.7, 6.8, 6.9, 6.14, 6.16, 6.17

Texts Cited:

Sutherland Shire Council, Community Engagement Strategy 2022-2026 (2023)

Category:

Principal judgment

Parties:

Glenn Stephen Simpson (First Applicant)

Danielle Yvonne Simpson (Second Applicant)

Sutherland Shire Council (Respondent)

Representation:

Counsel:

P Vergotis (Solicitor) (Applicant)

J Amy (Solicitor) (Respondent)

Solicitors:

Madison Marcus Law Firm (Applicant)

Sutherland Shire Council (Respondent)

File Number(s):

2026/113560

Publication restriction:

Nil

Judgment

COMMISSIONER: This is an appeal pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) against Sutherland Shire Council's imposition of conditions on Development Application No DA25/0533 (Development Consent) granted on 14 November 2025 for the prospective use of an existing inclinator and to construct two new landing stations on the eastern elevation of the primary dwelling at 22 Goldfinch Place, Grays Point, NSW, 2232 and below the Mean High Water Mark (the site).

The site is legally identified as Lot 7 in DP 228088 and known as 22 Goldfinch Place, Grays Point, 2232 and the adjacent Crown Land below the Mean High-Water Mark known as 'North West Arm' within Port Hacking.

The Court may dispose of these proceedings under its Class 1 jurisdiction, pursuant to s 17(d) of the Land and Environment Court Act 1979 (NSW) (LEC Act).

The Development Application

The DA sought consent to formalise the use of an existing inclinator and to construct two new landing stations on the eastern elevation of the existing dwelling house on the site.

The inclinator (as existing and proposed) provides step-free access along the steeply sloping eastern portion of the site between the existing dwelling house and the waterfront of North West Arm within Port Hacking.

History of the DA

The DA was lodged with the Respondent on 17 September 2026.

The DA was publicly notified to surrounding residents from 30 September 2025 to 14 October 2025. One objection was received from the owners of an adjoining property.

Council granted development consent which authorised the use of the inclinator subject to various conditions of consent (conditions 8.1, 13, 18, 19 and 20 in the development consent) which the Applicants were dissatisfied with, thus lodging this appeal to the Court.

On 19 March 2026 the Applicants filed a Class 1 Application pursuant to s 8.7 of the EPA Act with the Court. The Applicants filed a Statement of Facts and Contentions (SOFAC) on 13 April 2026 with the Court.

The Respondent filed a Statement of Facts and Contentions in Reply (SOFAC in Reply) on 23 April 2026.

On 25 June 2026 the Respondent filed with the Court the Joint Expert Report (Planning) prepared by Jonathan Joseph (for the Applicant) and Luke J Stewart (for the Respondent).

On 14 July 2026 the Respondent filed with the Court the Joint Expert Report (Acoustics) prepared by Richard Haydon (for the Applicant) and Adam Shearer (for the Respondent).

The 34 Conciliation Conference

The Court arranged a mandatory s 34 conciliation conference commencing on site pursuant to s 34AA of the LEC Act on 22 and 23 July 2026. There was 1 submission made in response to the public notification of the DA, and that submitter made a verbal submission to the Court at the on-site view.

The subject matter of these proceedings relates to specific conditions imposed by the Respondent in the Development Consent.

Over the course of the first day of the s 34 conciliation conference, the parties worked towards reaching a s 34 agreement in relation to the conditions imposed on the proposed development. The final s 34 agreement was filed with the Court on 23 July 2026 with amended plans and documentation. Subsequently a corrected s 34 agreement and Annexure A were filed with the Court on 27 August 2026. A further corrected s 34 agreement was filed with the Court on 28 August 2026.

The s 34 agreement reflects the outcome of the conciliation conference which includes at Annexure A the following changes now imposed as Condition of consent No 16 to ensure an acceptable acoustic environment, as follows:

“16. Operation of inclinator

1. Except in the event of an emergency, the operation of the inclinator must only be between 5.30 am and 11 pm, 7 days per week. Alternative access must be used outside of these hours.
2. Noise emitted must not exceed an L_{Amax} sound pressure level of 60 dB(A) when measured in the immediate vicinity of the external structure of any adjoining premises.
3. The inclinator shall be regularly maintained and serviced annually to maintain low mechanical noise emission levels.
4. Vegetation such as bushes, trees, and shrubs around the inclinator shall be regularly trimmed to ensure noise is not generated from foliage or branches brushing against the inclinator carriage as it passes.”

The final signed s 34 agreement with Annexure A and the amended plans as agreed between the parties are supported by an agreed statement of jurisdictional prerequisites provided by the parties.

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 proposed development. This decision involved the Court upholding the appeal and granting development consent to the proposed development subject to the agreed conditions.

There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties have identified and explained how the jurisdictional prerequisites of relevance have been satisfied in a jurisdictional note accompanying the s 34 agreement.

Jurisdictional Prerequisites

As the presiding Commissioner, I am satisfied that the decision is one 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 form this state of satisfaction for the reasons that follow.

Owner's Consent

The parties advise that:

The Applicants to the DA are the registered owners of the land;

The Applicants to the DA have a current Licence pursuant to the Crown Land Management Act 2016 (NSW) for waterfront structures;

On 4 March 2026, landowner's consent was obtained from the Department of Planning, Housing and Infrastructure for the use of the Crown Land for the inclinorail below the Mean High Water Mark (MHWM); and

The making of the DA complies with, and meets the requirements of, s 23 of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Regulation).

Public Notification (Sch 1, Div 2, s 7(1) of the EPA Act)

The parties advise that the DA was appropriately notified in accordance with the Sutherland Shire Community Engagement Strategy 2022-2026 from 17 September 2025 to 3 October 2025. Six properties were notified. No submissions were received during the notification period. A late submission from an adjoining property was submitted to the Respondent on 19 October 2025.

The parties submit that they have considered the submission received in the assessment of the DA as required by s 4.15(1)(d) of the EPA Act.

Conditions

The s 34 agreement includes the imposition of conditions which are imposed under s 4.17(1) of the EPA Act.

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 (the Resilience SEPP) aims to provide a coordinated planning framework for managing development in areas affected by environmental hazards and resilience issues, including coastal hazards, hazardous and offensive development, and contaminated land, while ensuring that development is undertaken in a manner that protects environmental values and minimises risk to people, property and the environment.

Chapter 2 of the Resilience SEPP relates to Coastal Management. Section 2.10 of the Resilience SEPP precludes the granting of development consent on land within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the matters in s 2.10(1) of the Resilience SEPP, including the integrity and resilience of the biophysical, hydrological and ecological environment; coastal environmental values and natural coastal processes; the water quality of the marine estate; marine vegetation, native vegetation and fauna and their habitats; existing public open space and safe access to and along the foreshore; and Aboriginal cultural heritage, practices and places. Section 2.10(2) of the Resilience SEPP further precludes the granting of consent unless the consent authority is satisfied that the development is designed, sited and will be managed to avoid an adverse impact of that kind or, if the impact cannot reasonably be avoided, to minimise it or, if the impact cannot be minimised, to mitigate it.

The parties advise that:

The proposed development comprises the use of an existing structure and the construction of two minor landing stations on land at the land-water interface that has already been substantially altered from its natural state. It does not involve the clearing of vegetation, any significant alteration to the shape, natural form or drainage of the foreshore, or any interference with public access to or along the foreshore.

The Respondent's assessment considered the required matters in the Resilience SEPP, and no contention is raised about them in these proceedings.

The parties submit that the Court can be satisfied that the matters in s 2.10(1) of the Resilience SEPP have been considered and that the proposed development is designed, sited and will be managed to avoid any adverse impact of the kind described in s 2.10(1) of the Resilience SEPP.

Section 2.11 of the Resilience SEPP precludes the granting of development consent on land within the coastal use area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on: existing, safe access to and along the foreshore for members of the public (including persons with a disability), overshadowing, wind funnelling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, and Aboriginal cultural heritage and cultural and built environment heritage. The consent authority must be satisfied that the development is designed, sited and will be managed to avoid an adverse impact of that kind or, failing that, to minimise or mitigate it,

and must take into account the surrounding coastal and built environment and the bulk, scale and size of the proposed development.

The parties advise that:

The new landing stations are minor in scale, are positioned adjacent to the existing dwelling house above existing hard-stand areas and are compatible with the surrounding built form along the foreshore; and

The proposed development will not affect public access to or along the foreshore, will not overshadow any public place and will not diminish the visual amenity or scenic qualities of the coast. Council's assessment considered the required matters under the Resilience SEPP, and no issue is raised about them by the Respondent in these proceedings.

The parties submit that the Court can be satisfied of the matters in s 2.11 of the Resilience SEPP, having regard to the bulk, scale and size of the proposed development and the surrounding coastal and built environment.

Section 2.12 of the Resilience SEPP also precludes the granting of development consent to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

The parties submit that:

The proposed development, being the use of an existing elevated structure and the construction of two minor landing stations, is not likely to cause any increased risk of coastal hazards, complying with s 2.12 of the Resilience SEPP.; and

No certified coastal management program applies to the site and no further consideration under s 2.13 of the Resilience SEPP is required.

Section 4.6 of Ch 4 of the Resilience SEPP requires that a consent authority must not grant consent to a development unless it has considered whether a site 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.

The parties agree that:

The site is not (or is unlikely to be) contaminated. The history of the site has always been residential in nature and there is no evidence that the land has been used for any potentially contaminating purposes; and

For the purposes of s 4.6 of the Resilience SEPP the Court can be satisfied that the site is suitable for the proposed development.

I am satisfied for the purposes of s 4.6 of the Resilience SEPP that the site is suitable for the proposed development.

State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP) aims to drive the design and construction of buildings which exhibit energy efficiency, water efficiency and thermal comfort.

The parties advise that the proposed development is not a Basix Development as the estimated costs of works of \$40,700 which is less than the \$50,000 required as defined in the EPA Regulation. No Basix Certificate is required

Sutherland Local Environmental Plan 2015

The Sutherland Local Environmental Plan 2015 (the LEP) is the principal environmental planning instrument that applies to the site and to the proposed development.

The land above the MHWL is zoned C3 – Environmental Management pursuant to cl 2.2 of the LEP. The land below the MHWL is zoned W1 – Natural Waterways Zone pursuant to cl 2.2 of the LEP

Clause 2.3(2) of the LEP requires the consent authority to have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The parties agree that that they have had regard to the relevant zone objectives.

I am satisfied that the proposed development is consistent with the objectives for development within the zone in which the development is proposed to be carried out.

The Respondent issued a Building Information Certificate for the existing inclinor on 11 February 2026. The parties agree that use of the existing inclinor is ancillary to the dwelling house and existing waterfront development.

Clause 4.3 of the LEP relates to Height of buildings. The height of a building on the site is not to exceed the maximum height of 8.5 m under the LEP. The proposed new landing stations are below 8.5 m above ground level and therefore would not exceed the maximum height control

Clause 4.4 of the LEP relates to Floor space ratio (FSR). Clause 4.4 of the LEP permits a maximum FSR of 0.5:1 for the site. The proposed development will result in an FSR of 0.47:1 on the site.

Clause 4.6 of the LEP relates to Exceptions to development standards. The proposed development does not contravene any development standard in the LEP. No written request is required.

Clause 5.21 of the LEP relates to Flood Planning. The parties advise that:

Part of the site is identified as potentially affected by flooding as such cl 5.21 of the LEP applies; and

The Respondent was satisfied about the matters contained in cl 5.21 of the LEP in its assessment of the proposed development.

Clause 6.1 of the LEP relates to Acid sulfate soils. The land is mapped as 'Class 5 Land' under the LEP. The parties advise that development consent for the proposed development is not required under cl 6.1 of the LEP and the matters for consideration in cl 6.1(3) and (4) of the LEP do not apply as the proposed development does not involve excavation greater than 5 m below natural ground level.

Clause 6.2 of the LEP relates to earthworks. The parties advise that the proposed development does not contemplate any removal or importation of fill material onto the land.

Clause 6.4 of the LEP relates to Stormwater management. The parties advise that:

The proposed development involves the use of an existing structure, and the construction of landing stations positioned above existing hard-stand areas, and does not materially increase impervious surfaces on the land; and

The Respondent was satisfied of these matters and that the Court can be satisfied that the relevant matters under cl 6.4 of the LEP have been considered and that the proposed development will not cause any adverse stormwater impacts on adjoining properties, native bushland or receiving waters.

Clause 6.5 of the LEP relates to Environmentally sensitive land – Terrestrial biodiversity. The land is located within an area mapped as terrestrial biodiversity. Clause 6.5 of the LEP requires the consideration of a number of matters in relation to whether the proposed development will have adverse environmental impacts on the land.

The parties advise that the Court can be satisfied that the proposed development will not result in any adverse environmental impacts on the land that require minimisation, mitigation or management as the nature of the development is the use of the existing structure and minor new stations and no clearing of vegetation proposed.

Clause 6.7 of the LEP relates to Environmentally sensitive land – riparian land within watercourses. The land is located within an area mapped as riparian land and water courses under the LEP. Clause 6.7 of the LEP requires the consideration of several matters in relation to whether the proposed development will have any adverse impacts on water quality, aquatic species within the watercourse, the ecosystem of the water course and the future rehabilitation of the watercourse. The parties advise that the Respondent was satisfied of these matters.

Clause 6.8 of the LEP relates to Environmentally sensitive land – environmental and scenic qualities of natural landforms. The parties advise that the proposed development is not assessed to cause any adverse environmental impacts as the inclinators are existing structures. The new landing stations are minor in scale, are compatible with the surrounding built form and do not add any excessive height or bulk that would create adverse visual or environmental impacts or interfere with the scenic qualities of the foreshore locality.

Clause 6.9 of the LEP relates to Limited development on the foreshore area. Clause 6.9(2) of the LEP prohibits development within the foreshore area except for specified forms of development.

The parties advise that the proposed development, being an inclinor, is a permitted form of development under cl 6.9(2)(c)(ix) of the LEP as it does not significantly alter the shape, natural form or drainage of the foreshore area. The existing structure is located on land that has already been highly altered from its natural state.

Clause 6.14 of the LEP relates to Landscaped areas in certain residential, business, industrial and environmental protection zones and requires a minimum landscaped area of 40% for land as identified on the Landscape Area Map in the LEP. The parties advise that the existing landscaped area of the land is 32.4%. However, an inclinor is 'relevant development' within the meaning of cl 6.14(4B) of the LEP and the concession at cl 6.14(4A) of the LEP applies as there is no net loss in landscaped area. The inclinor is existing and the landing stations are positioned above existing concrete areas.

The parties submit that:

The Respondent is satisfied that the matters in cl 6.14(4A) of the LEP are met. The tree canopy on the site is maintained (no clearing or vegetation is proposed), the landscaped area is protected and enhanced by the retention of existing areas and new native understorey plantings are shown on the landscape plan; and

The development does not have an adverse effect on the landscape quality on the site. Consent may therefore be granted notwithstanding the numerical non-compliance of the landscaped area.

Clause 6.16 of the LEP relates to Urban design – general and requires the consideration of a number of matters prior to granting consent. The parties advise that the matters in cl 6.16 of the LEP have been considered and satisfied as follows:

The proposed development involves the use of an existing structure and the construction of two minor landing stations that do not cause any appreciable change to the bulk, scale, overshadowing or view impacts of the development on the land;

The proposed development has been designed to integrate with the existing dwelling house and is compatible with the adjoining dwellings along the foreshore in terms of height, bulk, scale and siting. It responds to the natural landform of the site by providing step-free access along the steeply sloping eastern portion of the land, and it retains the natural environment, with no clearing of vegetation proposed; and

Privacy and acoustic impacts are appropriately managed by the conditions of the development consent, and the proposed development does not give rise to any crime risk issues.

Clause 6.17 of the LEP relates to Urban design – Residential accommodation and requires the consideration of a number of matters prior to granting consent. The parties advise that the matters in cl 6.17 of the LEP have been considered and satisfied as follows:

The proposed development responds to the needs of the diverse and changing population of Sutherland Shire by providing step-free access between the dwelling house and the waterfront across the steeply sloping land;

The proposed development has been designed to integrate with the existing dwelling house and in a manner compatible with the adjoining dwellings along the foreshore, and any impacts on adjoining land in terms of overshadowing, overlooking, views, privacy and visual intrusion are minimised by the design of the development and the conditions of the development consent; and

The proposed development also integrates with the existing landscaped setting of the land, which is protected and enhanced by the retention of existing landscaped areas and the new native understorey plantings shown on the landscape plan which is approved in the development consent.

Matters set out in s 4.15 of the Environmental Planning and Assessment Act 1979 (NSW)

Section 4.15 of the EPA Act specifies the matters required to be considered under s 4.15(1)(a) – (e) of the EPA Act. The parties submit that the Court would be satisfied that the relevant matters in s 4.15 of the EPA Act have been adequately addressed and considered.

Conclusion

Having considered the advice of the parties provided above at [22]-[62], I am satisfied that:

The proposed development can be approved having regard to the matters in ss 4.15(1)(b)-(e) of the EPA Act;

The jurisdictional prerequisites on which I must be satisfied before I can exercise the power under s 4.16 of the EPA Act have been satisfied; and

Approval of the proposed development is in the public interest.

Further, 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.

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.

In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the parties.

The Court notes that:

Sutherland Shire Council as the relevant consent authority, for the purposes of clause 37 of the Environmental Planning and Assessment Regulation 2021 (NSW), approves the deletion of conditions to development consent no. DA25/0533 in accordance with the following plans and documentation:

Plan number

Revision number

Plan title

Drawn by

Date of plans

01/B

B

Site Plan/Site Analysis Plan

Bowerman Design

July 2026

03/B

B

Floor Plan

Bowerman Design

July 2026

04/B

B

Floor Plan

Bowerman Design

July 2026

06/B

B

Elevations

Bowerman Design

July 2026

07/B

B

Elevations

Bowerman Design

July 2026

08/B

B

Construction Management Plan/ Soil & Water Management Plan

Bowerman Design

July 2026

LP

A

Landscape Plan

Bowerman Design

August 2025

Conditions 8.1, 13, 18, 19, 20.1, 20.3 and 20.4 on the original development consent are deleted and the remaining conditions renumbered and the Table in condition 6 is updated accordingly; and

Original Condition 20 is now replaced with Condition 16 as follows:

“16.1 Except in the event of an emergency, the operation of the inclinator must only be between 5.30 a.m. and 11.00 p.m. 7 days per week. Alternative access must be used outside of these hours.

16.2 Noise emitted must not exceed an LA_{max} sound pressure level of 60 dB(A) when measured in the immediate vicinity of the external structure of any adjoining premises.

16.3 The inclinator shall be regularly maintained and serviced annually to maintain low mechanical noise emission levels.

16.4 Vegetation such as bushes, trees, and shrubs around the inclinator shall be regularly trimmed to ensure noise is not generated from foliage or branches brushing against the inclinator carriage as it passes.”

The Court orders:

The appeal is upheld.

Development consent is granted to development application DA25/0533 for the use of an existing inclinator and to construct two new landing stations on the eastern elevation of the primary dwelling on land legally identified as Lot 7 Deposited Plan 228088, known as 22 Goldfinch Place, Grays Point, NSW, 2232, subject to the conditions at Annexure A.

G Kullen

Acting Commissioner of the Court

Annexure A (280 KB, pdf)

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Decision last updated:

02 September 2026

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