

AUSTRALIA / JUDGMENT

Sukkar v Inner West Council

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Land and Environment Court New South Wales Medium Neutral Citation: Sukkar v Inner West Council [2026] NSWLEC 1483 Hearing dates: Conciliation Conference on 7 May 2026 and 28 May 2026 Date of orders: 07 August 2026 Decision date: 07 August 2026 Jurisdiction: Class 1 Before: Bilmon AC Decision: The Court orders:

- (1) The Applicant is granted leave to file the amended Development Application No. DA/2025/1038 with the Court.
- (2) The Applicant is to pay the Respondent's costs thrown away pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 (NSW) in the agreed amount of \$4,000.
- (3) The appeal is upheld.
- (4) Development Application No. DA/2025/1038, as amended, for alterations and additions to an approved Residential Flat Building under DA/2024/0882, which includes the construction of a new fourth level with 6 additional residential units and the allocation of a total of 13 affordable housing units on land legally described as Lot 100 in DP1283051 and known as 314 Liverpool Road, Ashfield is determined by the grant of development consent subject to the conditions at Annexure A. Catchwords: APPEAL — Deemed refusal — amended Development Application — affordable housing — conciliation conference — agreement between the parties — orders made Legislation Cited: Environmental Planning and Assessment Act 1979 (NSW), Div 4.11, ss 4.15, 4.16, 4.17, 4.55, 4.65, 4.66, 4.67, 4.68, 4.69, 4.70, 8.7 Land and Environment Court Act 1979 (NSW), s 34 Environmental Planning and Assessment Regulation 2021 (NSW), ss 23, 24, 26, 27, 29, 38, 163, 164, 165 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 2 State Environmental Planning Policy (Housing) 2021, Div 1, Pt 2, Ch 2, ss 15A, 16, 17 State Environmental Planning Policy (Sustainable Buildings) 2022, Sch 1, s 2.1 State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.119, 2.120 State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.16 Inner West Local Environmental Plan 2022, cll 4.3, 4.4, 4.6, 5.10, 5.21 Texts Cited: Inner West Council, Comprehensive Inner West Development Control Plan 2016 (10 January 2027) NSW Department of Planning and Environment, Apartment Design Guide (July 2015) Category: Principal judgment Parties: Tony Sukkar (Applicant) Inner West Council (Respondent) Representation: Counsel: D Arraj (Solicitor) (Applicant) S Turner (Solicitor) (Respondent) Solicitors: Blackstone Waterhouse (Applicant) Inner West Council (Respondent) File Number(s): 2026/49813 Publication restriction: Nil

Judgment

COMMISSIONER: These proceedings relate to a Class 1 residential development appeal pursuant to the provisions of s 8.7(1) of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) against the deemed refusal by Inner West Council (Council) of Development Application DA/2025/1038 (Development Application) for alterations and additions to a residential flat building originally approved under DA/2020/0583 (as amended by MOD/2023/0316 and as further amended by DA/2024/0882). The proposal includes a new fifth storey (Level 4) and rooftop communal open space above and changes to Level 3 to provide 6 additional residential units and the allocation of a total of 13 affordable housing units (Proposal) at land known as 314 Liverpool Road, Ashfield (Site). 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 7 May 2026 and 28 May 2026. I presided over the conciliation conference. Outcome After the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This parties' decision is recorded in the executed s 34 agreement filed on 5 June 2026 and involves the Court granting leave to the Applicant to file the Development Application with the Court, upholding the appeal and granting development consent to the Development Application subject to conditions. Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. 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 at Annexure A. There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings to be the terms of s 4.55 of the EPA Act to modify a consent. The parties explained how the jurisdictional prerequisites have been satisfied in an agreed jurisdictional statement provided to the Court. Jurisdictional matters As the presiding Commissioner 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 formed this state of satisfaction as each of the jurisdictional preconditions identified by the parties is met, for the following reasons. State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP) Consideration has been given to Ch 2 of the BC SEPP regarding the removal of vegetation in nonrural areas and it is noted that no removal of vegetation is proposed, the provisions of Ch 2 do not apply. State Environmental Planning Policy (Housing) 2021 (Housing SEPP) The Development Application adopts the infill affordable housing provisions, pursuant to Div 1 of Pt 2 of Ch 2 of the Housing SEPP. Housing SEPP s 15A sets out the objective of Div 1, being "to facilitate the delivery of new infill affordable housing to meet the needs of very low, low and moderate income households". The existing use rights provisions of the EPA Act apply to the Development on the MU1 portion of the Site. Enlargement or intensification of such existing use rights is permitted by operation of the provisions in Div 4.11(ss 4.654.70) of the EPA Act and the incorporated provisions (ss 163165 of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Reg)), made pursuant to s 4.67 of the EPA Act. The Development Application

seeks consent for the ‘enlargement’ or ‘intensification’ of an existing use and consequently, the provisions relating to ‘enlargement’ or ‘intensification’ are taken to be incorporated in every environmental planning instrument in accordance with s 4.67(2) of the EPA Act. The Development Application is permitted by operation of the existing use provisions in Div 4.11 (ss 4.654.70 of the EPA Act) and the incorporated provisions (ss 163165 of the EPA Reg), made pursuant to s 4.67 of the EPA Act. Accordingly, the Court agrees that the objective in s 15A of the Housing SEPP is satisfied. Ch 2, Pt 2 of Div 1 of the Housing SEPP, requires that the consent authority be satisfied that a percentage of the floor space is allocated to affordable housing. The consent authority must consider the design principles for residential flat buildings, the Apartment Design Guide (ADG) and any advice received from the design review panel: The Development Application proposes to increase the affordable housing component from 8.1% (7 units) to 14.92% (13 units) and complies with the maximum permitted floor space ratio (FSR) under Ch 2, Pt 2, Div 1 ‘Infill affordable housing’ of the Housing SEPP. During the conciliation conferences the bulk and scale was reduced with the deletion of a unit on Level 3, and increased side setbacks to Level 4. Condition 68 in Annexure A confirms the affordable housing requirements and identifies the 13 affordable housing units as being Units G.2, G.3, G.4, G.6, G.9, 1.5, 1.6, 1.7, 2.5, 3.4, 3.6, 4.4 and 4.6. The floor space ratio requirements under cl. 16(3) of the Housing SEPP are discussed in [23][25] below. In accordance with ss 24 & 26 of the EPA Reg and s 17 of the Housing SEPP, evidence of an agreement with a registered community housing provider including the name of the registered community housing provider is required in Condition 68 of Annexure A. The Court is satisfied that the above matters have been considered and addressed in the Development Application. State Environmental Planning Policy (Sustainable Buildings) 2022 (SB SEPP) The Proposal is a BASIX development in accordance with s 27 of the EPA Reg and accordingly the standards set out in Sch 1 of SB SEPP apply. A BASIX Certificate was submitted with the application as required by s 27 of the EPA Reg prepared by Building and Energy Consultants Australia (Cert No 1116292M dated 3 June 2026). Further the embodied emissions of the development have been quantified as required by s 2.1(5) of the SB SEPP. State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP) The TI SEPP requires a consent authority to consider s 2.119(2)(a) and (2)(b) and s 2.120 (1), (2) and (3). These matters were addressed in the original consent for DA/2020/0583 and therefore, the Court is satisfied that these matters have been addressed. State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) Section 4.16(1) of the RH SEPP requires a consent authority to consider any contamination and remediation of land when determining a development application. These matters were addressed in the original consent for DA/2020/0583 and therefore, the Court is satisfied that these matters have been addressed. Inner West Local Environmental Plan 2022 (IWLEP) Pursuant to the IWLEP, the relevant local environmental planning instrument, the Site is zoned: Part MU1 Mixed Use (MU1), being the portion of the Site fronting Liverpool Road; and Part R3 Medium Density Residential (R3), being the portion of the Site fronting Norton Street. Clause 4.3 – Height of Buildings Under IWLEP cl 4.3(2) and the Height of Buildings Map, the maximum building height for the Site is 12.5 m. The Site is within “Area 2” and, therefore, a building on land must not contain, or be reasonably capable of being modified to contain, an area forming part of the building’s gross floor area (GFA) within 3 m of the maximum height

shown on the Height of Buildings Map: cl 4.3(2A). This requirement is modified by the bonus provisions provided for pursuant to s 16(3) of the Housing SEPP which allows for a percentage of additional height, being twice that of the affordable housing component. Accordingly, given that the affordable housing component is 14.92%, the height bonus is 29.84% and the resultant height limit is 16.23 m. The proposed height is 19.29 m. The Development Application is accompanied by a written request prepared by PCN Urban, dated 29 May 2026 pursuant to cl 4.6 with respect to height justifying the contravention of the development standard. The Court is satisfied that the cl 4.6 request has adequately addressed the matters required to be demonstrated by subcl 4.6(3) and the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone, and there are sufficient environmental planning grounds to justify contravention of this development standard.

Clause 4.4 – Floor Space Ratio Under IWLEP cl 4.4(2) and the FSR Map, the maximum FSR for: The MU1 part of the Site is 1.5:1; and The R3 part of the Site is 0.7:1. These maximum FSR's are modified by the bonus provisions under cl 16(3) of the Housing SEPP which allows for a percentage of additional FSR, in this case being 29.84% which results in a maximum FSR for the MU1 part of the Site of 1.9476:1. As the proposed FSR is 1.9452:1, the Court is satisfied the Proposal is compliant.

Clause 5.10 – Heritage Conservation IWLEP cl 5.10 requires the Consent Authority to consider the effect of the proposed development on the heritage significance of a heritage item or heritage conservation area concerned. The Site is located in the vicinity of the Miller Avenue Heritage Conservation Area. I am satisfied that the impacts upon the conservation area have been considered in accordance with IWLEP cl 5.10(4) and that the proposal will not result in a detrimental impact on the Miller Avenue Heritage Conservation Area.

Clause 5.21 – Flood Planning Flood planning has previously been addressed under DA/2020/0583 (as amended by MOD/2023/0316 and as further amended by DA/2024/0882). The Development Application does not alter the circumstances in connection with flood planning. I am satisfied that the requirements of this clause have been adequately considered.

Comprehensive Inner West Development Control Plan 2016 (IWCDCP 2016) I am satisfied that the Development Application can be approved having regard to the provisions of the IWCDCP 2016 and Section 4.15(1)(a)(iii) – Development Control Plans. Compliance with the IWCDCP has been addressed in the Statement of Environmental Effects (SEE) at Tab 16 of the Class 1 Application. The Summary Compliance Table in the SEE demonstrates the Proposal satisfies the relevant development standards or was addressed under DA/2020/0583 (as amended by MOD/2023/0316 and as further amended by DA/2024/0882). Other matters The Council has taken into consideration matters in ss 4.15(1)(b)–(e) of the EPA Act including site suitability, submissions, and the public interest in assessing the Development Application. The Development Application was notified between 9 December 2025 and 21 January 2026. Two submissions were received in respect of the application. Council also referred the Development Application to two external agencies, these being Roads and Maritime Services (RMS) and Sydney Water. Owner's consent to the lodgement of the application has been provided in accordance with the requirements of s 23(1) of the EPA Reg. The Development Application has been lodged with the consent of the six owners of the land. An authority to act as agent has been submitted at Tab 2 of the Class 1 Application. A design verification statement was prepared confirming that the development, as modified complies with the design quality

principles and objectives in Parts 3 and 4 of the ADG in satisfaction of s 29 of the EPA Reg. The statement confirms that the development is consistent with the design principles of the SEPP Housing and has been designed with regard to the ADG. The proposed 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 and respond to the contentions raised.

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)). 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. Notes The Court notes that the Council has approved, as the relevant consent authority, under s 38(1) of the EPA Reg for the Applicant to amend Development Application No. DA/2025/1038 and rely upon the conditions and documents listed under Condition 15 in Annexure A.

Orders

The orders of the Court are: The Applicant is granted leave to file the amended Development Application No. DA/2025/1038 with the Court. The Applicant is to pay the Respondent's costs thrown away pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 (NSW) in the agreed amount of \$4,000. The appeal is upheld. Development Application No. DA/2025/1038, as amended, for alterations and additions to an approved Residential Flat Building under DA/2024/0882, which includes the construction of a new fourth level with 6 additional residential units and the allocation of a total of 13 affordable housing units on land legally described as Lot 100 in DP1283051 and known as 314 Liverpool Road, Ashfield is determined by the grant of development consent subject to the conditions at Annexure A. J Bilmon Acting Commissioner of the Court

Annexure A (477 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: 07 August 2026

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Prepared on 28 October 2026 · Esheria