

## **Attachment D**

**Concept Approval – Land and Environment  
Court Judgement**



## Land and Environment Court New South Wales

**Medium Neutral Citation:**

**Landream Pymont Pty Ltd v Council of the City of  
Sydney [2021] NSWLEC 1245**

**Hearing dates:**

14 and 16 April 2021

**Date of orders:**

21 May 2021

**Decision date:**

21 May 2021

**Jurisdiction:**

Class 1

**Before:**

Horton C

**Decision:**

The Court orders that:

- (1) Leave is granted to the Applicant to rely on the amended plans and supplementary documents referred to in Condition 2 of Annexure A.
- (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 as a result of the amendment to the development application allowed by Order (1) above, as agreed or assessed.
- (3) The Applicant's written request required under cl 4.6 of the Sydney Local Environmental Plan 2012 for the approval of the development application D/2019/649 in relation to the variation to the 27m height development standard that applies to the land under cl 4.3 of the Sydney Local Environmental Plan 2012 is upheld.
- (4) The appeal is upheld.
- (5) Development application D/2019/649 seeking approval of a concept proposal comprising demolition of the existing buildings, removal of trees, and a mixed-use development comprising residential, commercial, childcare and recreational uses at the land at 14-26 Wattle Street, Pymont and contained in Lot 200 DP1224234 is approved subject to the conditions set out in Annexure A.
- (6) All exhibits are returned, except for Exhibits A, C, D, 7, 14 and 15.

**Catchwords:**

DEVELOPMENT APPLICATION – Concept development application – mixed use development – consideration of public submissions – voluntary planning agreement – orders

#### Legislation Cited:

Architects Act 2003  
 Environmental Planning and Assessment Act 1979 cl 4.15, 4.16, 4.17, 4.22, 4.23, 4.47, 7.4, 7.7, 8.7  
 Environmental Planning and Assessment Regulation 2000, cll 50, 70B  
 Land and Environment Court Act 1979 cl 39  
 State Environmental Plan (Building Sustainability Index: BASIX) 2004  
 State Environmental Planning Policy (Educational Establishments and Child Care Centres) 2017  
 State Environmental Planning Policy (Infrastructure) 2007 cll 45, 85, 86, 101, 102, 104  
 State Environmental Planning Policy No 55—Remediation of Land, cl 7  
 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, cll 4, 19, 28  
 State Regional Environmental Plan (Sydney Harbour Catchment) 2005  
 Sydney Local Environmental Plan 2012 cll 4.3, 4.6, 6.21, 7.3, 7.4-7.9, 7.14, 7.15  
 Water Management Act 2000

#### Cases Cited:

Initial Action Pty Ltd v Woollahra Municipal Council (2018) 236 LGERA 256; [2018] NSWLEC 118  
 Local Democracy Matters Inc v Infrastructure NSW (2019) 367 ALR 733; [2019] NSWCA 65  
 The Uniting Church in Australia Property Trust (NSW) v Parramatta City Council [2018] NSWLEC 158

#### Texts Cited:

Apartment Design Guide  
 Practice Note Class 1 – Development Appeals

#### Category:

Principal judgment

#### Parties:

Landream Pyrmont Pty Ltd (Applicant)  
 Council of the City of Sydney (Respondent)

#### Representation:

Counsel:  
 A Pickles SC with A Hemmings (Applicant)  
 J Lazarus SC (Respondent)

Solicitors:  
 Corrs Chambers Westgarth (Applicant)  
 Holding Redlich (Respondent)

#### File Number(s):

2020/209408

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## JUDGMENT

- 1 **COMMISSIONER:** The Applicant in this Class 1 appeal, Landream Pyrmont Pty Ltd, seeks consent for a concept development application on land that is located between Wattle Street, Fig Street and Jones Street, in the vicinity of Wentworth Park, Pyrmont.
- 2 The appeal is brought under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) following the refusal of the Development Application D/2019/649, by the Council of the City of Sydney (the Respondent) for a building envelope that includes residential, commercial, retail, child care and recreational facilities.
- 3 It is helpful at this stage to set out the particular aspects or components of the concept development application (Concept DA), as described by the Respondent in the Amended Statement of Facts and Contentions (Exhibit 1):
  - In principle approval for the demolition of existing buildings and structures on the site;
  - In principle approval for the removal of 53 trees;
  - Building envelopes and indicative future land uses for a mixed-use development comprising:
 

Wattle Street: An 'L' shaped building envelope on Wattle Street extending to the middle of the site comprising retails, non-residential uses at the ground level on Wattle Street, and residential uses above,

Jones Street Block: A building envelope on Jones Street with a potential zone for a roof terrace, above a recreational centre and child care centre, and residential uses,

Fig Street Block: A building envelope on Fig Street extending from Wattle Street to Jones Street accommodating commercial/non-residential uses, with residential uses at the upper level,

A small building envelope adjoining the Wentworth Park Light Rail Station accommodating a café/retail use,

Publicly accessible open space comprising through-site links providing pedestrian connection between Jones Street and Wattle Street, and between the site and the Wentworth Park Light Rail station to the north of the site,

Car parking,

Demolition/excavation of the sandstone cliff adjoining Jones Street; and

A new footpath along the site's Jones Street frontage.
- 4 As the Concept DA proposes works to a classified road, and requires approval to interfere with an aquifer, the proposal is integrated development requiring agency approval.

## The site and its context

- 5 The site is a former quarry and Council depot located on the western side of the Pyrmont Peninsula, and is legally described as Lot 200 in DP 1224234, otherwise known as 14-26 Wattle Street.
- 6 A significant feature of the site is the exposed sandstone rock face to the east which is the result of quarrying, and contributes to a difference in level between the site and Jones Street that is in the order of 11m-14m.
- 7 The site presents a frontage of 104.82m to Wattle Street to the west, a frontage of 97.84m to Fig Street to the south, and a frontage of 149.7m to Jones Street to the east.
- 8 To the north of the site is the Wentworth Park Light Rail station, which is a continuation of the railway viaduct that is a well-known feature in Wentworth Park and which is, itself, a heritage item of State significance.
- 9 While the site itself is not listed as an item of heritage significance, a number of sites adjacent to the subject site are listed as items of local heritage significance including:
  - The former Woolstore at 28-48 Wattle Street known as 'Winchcombe Carson' which is located to the south of the site.
  - A group of one-storey terrace houses at 286-318 Jones Street which is located to the east of the site ('Jones Street terrace group').
  - Remnants of the former 'Edwin Davey & Sons Flour Mill at 280 Jones Street, known as the 'Harbour Mill Apartments' which is located to the north-east of the site.
- 10 The site is located in the B4 Mixed Use zone as identified in the Sydney Local Environmental Plan 2012 (SLEP), in which the uses proposed in the Concept DA are permitted with consent.
- 11 The objectives of the B4 zone are as follows:
  - To provide a mixture of compatible land uses.
  - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
  - To ensure uses support the viability of centres.

## Evolution of the application

- 12 On 21 June 2019, the initial Concept DA was lodged with the Respondent and revised shortly after on 3 September 2019, before being publicly exhibited from 23 September to 22 October 2019.
- 13 The Respondent's Design Advisory Panel considered the Concept DA on 12 December 2019 and provided certain advice.
- 14 On 24 January 2020, the Respondent requested further information and identified certain amendments to the application were required.
- 15 The Applicant provided additional information on 23 April 2020.

- 16 On 25 June 2020, the Respondent's Central Sydney Planning Committee refused the Concept DA.
- 17 The Applicant filed an appeal against the refusal of the Concept DA on 16 July 2020.
- 18 On 9 December 2020, the Applicant was granted leave to amend the application and rely upon amended plans and other documents that were subsequently exhibited between 15 December 2020 and 2 February 2021.
- 19 At the commencement of the hearing, the Applicant sought leave to further amend the application and rely upon amended plans, unopposed by the Respondent, subject to costs thrown away pursuant to s 8.15(3) of the EPA Act.
- 20 The Applicant was granted leave to amend the application and rely upon the further amended plans that were marked Exhibit D.
- 21 The further amended plans result from joint expert conferencing between experts in town planning, heritage and urban design, and it is commonly held by the experts in joint reports marked Exhibits 3, 4, 5 and 6, that the further amended plans resolve the contentions in their entirety.
- 22 To this end, the parties, by consent, seek the Court to make orders set out in Exhibit 10, in support of which the parties tendered agreed conditions of consent marked Exhibit 11, and an agreed summary of relevant jurisdictional preconditions marked Exhibit 13.
- 23 The Respondent submitted that it was appropriate to adjourn the hearing so as to allow those persons who had prepared objections to be provided with the agreed conditions of consent, in accordance with par 99(i) of the Court's Practice Note Class 1 – Development Appeals, and to make any submissions in response.
- 24 An adjournment of one day was granted, and the Court directed that public submissions be lodged by 4pm on 15 April 2021.
- 25 Prior to the resumption of the hearing the following day, the Respondent provided to the Court a copy of correspondence to and from objectors in the area, and a resident was granted leave to address the Court (see [33]).
- 26 At the conclusion of the proceedings, the Court directed that evidence of agreement between the parties in respect of a planning agreement prepared pursuant to s 7.4 of the EPA Act be provided the same day, which was provided to the Court at the close of the Court on Friday 16 April 2021 and was entered as Exhibit 15 at the request of the parties.

### Public submissions

- 27 Public notification of the proposal has been undertaken on a number of occasions, as summarised in Exhibit 1 and evidence of which is contained in the Respondent's bundle of documents marked Exhibit 2.
- 28 Public submissions made in response to notification are contained behind Tabs 35 and 36 of Exhibit 2, and correspondence from the Respondent to objectors appears behind Tabs 1-3 of Exhibit 7.

- 29 Included in the correspondence, are copies of emails from the Respondent's instructing solicitor dated 8 April 2021. The letter sets out in some detail further amendments to the application arising from joint conferencing, and seeks notice from residents of any intention to provide additional submissions at the onsite view.
- 30 Further correspondence between residents and the Respondent's instructing solicitor is contained in Exhibit 12, wherein particular matters raised by residents are addressed by reference to the Respondent's relevant experts.
- 31 Two public submissions were heard in person at the onsite view undertaken at the commencement of the proceedings, that may be broadly characterised as supportive, subject to provision of public access and heritage interpretation being undertaken. Those submissions were made by:
- (1) Ms Mary Mortimer OAM, of 203/40 Refinery Drive spoke on behalf of Friends of Pyrmont Community Centre and Pyrmont Action.
  - (2) Mr Ken Loudon, of 1/2A Rosa Street, Oatley, who also identified as a member of Pyrmont Action.
- 32 As stated earlier, public submissions also resulted from notification directed by the Court at [24], marked Exhibit 14.
- 33 Resulting from the notification directed by the Court, Ms Elena Akhromova, of 711/280 Jones Street was granted leave to provide an oral submission via Microsoft Teams, and which may be summarised as follows:
- Clarification of the proposed height of buildings envelopes is needed, as the exceedance of the allowable height by 30% is excessive.
  - Any further height permitted under cl 6.21 of the SLEP should be disallowed given the exceedance already proposed.
  - Granting permission to the proposed exceedance undermines public confidence in the planning system.

## The statutory framework

- 34 The Applicant seeks concept development approval pursuant to s 4.22 of the EPA Act, which relevantly provides:

### 4.22 Concept development applications

- (1) For the purposes of this Act, a *concept development application* is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.
- (2) In the case of a staged development, the application may set out detailed proposals for the first stage of development.
- (3) A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.
- (4) If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless—

(a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or

(b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

(5) The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.

- 35 The Applicant seeks concept development approval in lieu of a site-specific development control plan as is permitted by subs 4.23(2) of the EPA Act which relevantly provides:

**4.23 Concept development applications as alternative to DCP required by environmental planning instruments**

...

(2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.

...

(3) Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.

- 36 Section 4.15 of the EPA Act sets out certain matters that a consent authority, or the Court exercising the functions and powers of the consent authority on appeal, must take into consideration including, at s 4.15(1):

(a) the provisions of—

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

(v) (Repealed)

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

37

Subsection 4.22(5) further assists by directing that, in this case, the Court, when considering those matters at s 4.15 of the EPA Act, should only consider the likely impact of the concept proposals that are the subject of the concept development application, and not the likely impact of the carrying out of development that may be the subject of subsequent development applications.

- 38 As shown by Preston CJ in *The Uniting Church in Australia Property Trust (NSW) v Parramatta City Council* [2018] NSWLEC 158 (*Uniting Church v Parramatta*), a concept development application is still a development application under the EPA Act (at [36]); a concept development application, just like a development application, seeks consent for development (at [39]); a consent authority determines a concept development application under the same power as it determines all development applications, namely s 4.16 of the EPA Act (at [42]); a consent granted on the determination of a concept development application for a site sets the parameters for the determination of any further development application in respect of the site (at [43]).
- 39 Relevant to my consideration of those matters at s 4.15 of the EPA Act, I understand Preston CJ, at [55] of *Uniting Church v Parramatta*, to state that when considering the development the subject of a concept development application, the Court need only consider the likely impacts of the development the subject of the concept development application and does not need to consider the likely impacts of the carrying out of the development that may be the subject of subsequent development applications.
- 40 I adopt this approach in considering the provisions of relevant environmental planning instruments in accordance with s 4.15(1) of the EPA Act as follows.

### **Sydney Local Environmental Plan 2012**

- 41 The Concept DA exceeds the height of 27m permitted by cl 4.3 of the Sydney Local Environmental Plan 2012, and the Applicant relies upon a written request in accordance with cl 4.6 of the SLEP, prepared by Mecone dated March 2021 ('written request') (Exhibit C, Tab 25).
- 42 It is relevant here to note that while the Concept DA illustrates an additional envelope of up to 10% in height that is potentially available to the site pursuant to cl 6.21 of the SLEP, the Applicant does not seek consent for the additional height in this application.
- 43 In general terms, the written request considers the areas of non-compliance to be setback from the edges of the site, and be located so as to preserve and protect the interface with adjoining buildings, and the amenity of its residents.
- 44 The town planning experts agree that the contravention of the height standard is justified. However, cl 4.6 of the SLEP requires that a consent authority, or the Court on appeal, consider a written request and be satisfied in respect of those matters set out at cl 4.6(4)(a) of the SLEP.

45

In so doing, cl 4.6 of the SLEP provides the Court with the power to grant development consent to the development even though the development would contravene the height standard. However, the power of the Court is subject to conditions.

46 As shown by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118 (*Initial Action*), for the Court to have the power to grant development consent for a development that contravenes a development standard, cl 4.6(4)(a) requires that the Court be satisfied that:

- (1) The proposed development will be consistent with the objectives of the particular standard in question (cl 4.6(4)(a)(ii)), and
- (2) The proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)),
- (3) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)), and
- (4) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)).

47 The Court must form two positive opinions of satisfaction under cl 4.6(4)(a) to enliven the power of the Court to grant development consent (*Initial Action* at [14]). I must be satisfied that:

- (1) the Applicant's written request has adequately addressed the matters required to be demonstrated by subcl (3) and;
- (2) that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objective of the zone in which the development is proposed to be carried out.

48 The exceedance is described on pp 4-5 of the written request, and may be summarised as follows:

| <i>Area of site</i> | <i>Extent of exceedance</i>                                                              |
|---------------------|------------------------------------------------------------------------------------------|
| Jones Street block  | 0.5m for the finished floor level of the upper most envelope area.                       |
|                     | 4.8m for an area of 325m <sup>2</sup> for lift overrun, roof and pergola structures.     |
|                     | 1.5m for balustrades to the roof terrace enclosing an area of around 755m <sup>2</sup> . |
| Fig Street block    | Up to 3.55m for part of one setback residential level, including for balustrades.        |

|                     |                                                                      |
|---------------------|----------------------------------------------------------------------|
| Wattle Street block | Up to 6.08m for a portion of the building in the centre of the site. |
|                     | 3.4m for a residential storey height.                                |

- 49
- The written request asserts that compliance with the height standard is unreasonable and unnecessary as the objectives of the standard are achieved, notwithstanding the non-compliance with the numerical standard.
- 50
- The objectives of the standard are found at cl 4.3 of the SLEP, and relevantly provide:

(a) to ensure the height of development is appropriate to the condition of the site and its context,

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

(c) to promote the sharing of views,

...
- 51
- In respect of objective (a), the written request identifies that the site has four different contextual interfaces, and it is appropriate to respond to the conditions of each frontage as follows:

(1) In response to the Light Rail interface to the north of the site, built form is both minimised and setback, preserving existing trees and resulting in an inviting prospect for through-site links adjacent to communal open space on the site, subject to owners consent that Sydney Trains has indicated may be granted subject to conditions that are contained in the agreed conditions of consent.

(2) The proposed height of the Wattle Street frontage is designed to be compatible with the street wall established by the former wool store to the south of the site. Additional height is setback to avoid additional overshadowing to Wentworth Park, and so that it is not visible in the context of the dominant street wall along Wattle Street. Figure 8 of the written request, re-produced below, is provided in support of the proposed massing, noting that the envelope depicts the additional height not sought by the application, but available to the development subject to the provisions at cl 6.21 of the SLEP.



Figure 8 as shown in the written request

Likewise, the Fig Street interface is compatible with the street wall height established by the former wool store to the south of the site, but differs from the other frontages in that no pedestrian links are proposed given the function of Fig Street as a major traffic route into the CBD, and on to the Sydney Harbour Bridge. Setbacks are provided, firstly, to Jones Street of 10m in deference to the heritage-listed terrace group, and secondly, the topmost levels setback from Fig Street so that it is not visually a part of the Fig Street presentation.

- (4) The Concept DA proposes a four-storey street wall height setback 4m from the Jones Street boundary, with additional height setback further to avoid adverse impacts beyond that of a compliant envelope. The written request cites the opinion of the Applicant's heritage expert, Mr Paul Davies, in support of the additional height which is, in effect, built form relocated from the 4m setback to Jones Street. Such a reallocation of built form is preferable to Mr Davies as it provides benefits to the public domain, appropriately scales proposed development when considered in context with existing terraces, allows the sandstone rock face to be visible to public areas and aligns to heritage buildings to the south of the site.

52 In respect of objective (b), the site's adjacency to heritage items on Jones Street and Fig Street has been appropriately considered in the transition provided to both frontages for the reasons that follow:

- (1) While the Jones Street terrace group is low scale, it is currently viewed in the context of the Harbour Mill apartment building that rises in scale from 5 to 10 storeys in height, as well as larger buildings evident in the precinct. In this context, the proposed building heights are lower than existing buildings in the immediate context and are predominantly within the height control of 27m. Furthermore, the transition between the scale of the Jones Street terrace group and that of the proposed development is assisted by the proposed setback from the Jones Street boundary of 1-4m beyond that which is permissible, and by matching the four storey height of the lower portion of the Harbour Mill Apartments.
- (2) Similarly, the Fig Street interface is consistent with the heritage-listed former wool store when viewed in context, due to the 4.5m setback of the uppermost level from the Fig Street boundary, and 10m from Jones Street.

53 In respect of objective (c) which seeks to promote the sharing of views, the written request identifies the western views over Wentworth Park currently enjoyed by the Jones Street terrace group as the most impacted by the development, but which would be lost by a development wholly compliant with the height control. Likewise, a complying envelope fronting Jones Street, by virtue of the profile of the sandstone rock face, could achieve a 27m height at the Jones Street boundary that would adversely impact views from the Harbour Mill apartments. Instead, the proposed height, shown in Drawing DA2-3004 adopts a lower profile that achieves the sharing of views.

- 54 As the site is not located within Central Sydney, or Green Square Town Centre, objectives (d) and (e) are not relevant.
- 55 Next the written request sets out grounds it considers to be sufficient environmental planning grounds to justify the contravention of the height standard in accordance with cl 4.6(3)(b) of the SLEP. The grounds are set out in detail on pp 23-28 of the written request and may be summarised as follows:
- (1) The proposed development provides large scale community uses such as child care, and public benefits such as generous through-site links to address the Respondent's terms of sale for the land, but for which provision is not made in the planning controls. Still, the floor space ratio (FSR) proposed for the site complies.
  - (2) Additionally, further public benefit is evident in the setback from the boundary at Jones Street in response to the Jones Street terrace group, and from the Light Rail station where development of 27m in height is possible, but is not proposed.
  - (3) While additional height is permitted under the design excellence provisions at cl 6.21 of the SLEP, this is the subject of detailed development application(s) in the future. Absent the additional height that is possible in subsequent stages, the exceedance of height on the Jones Street block is less than 1m, and is less than one storey on the Fig Street block.
  - (4) The proposed envelope is derived from analysis of the existing built form adjacent to the site so that unreasonable impacts do not result, particularly in respect of solar access and streetscape character. As evidence of the same, no unreasonable additional overshadowing is imposed on Wentworth Park, Fig Lane Reserve or the existing properties on the eastern side of Jones Street.
  - (5) The abrupt change in level on the site formed by the sandstone rock face to the east, is a primary driver of the exceedance. The proposed development could be built to the boundary where the rock face is close to the level of Jones Street, and where a narrow envelope of 27m in height could be developed. Instead, this floor space is redistributed on the site where it is largely below the 27m height control.
  - (6) A consistent building setback is adopted to the irregular Jones Street boundary line by the Jones Street block. The result is a loss of floor space on an area of the site on which it is otherwise allowed, in favour of a footpath with tree planting to the west of Jones Street. The Jones Street building footprint is consistent with the standards found in the Apartment Design Guide, and its envelope is compatible with surrounding development.
  - (7) Likewise, a generous setback of around 15m is evident at the uppermost storey that is the subject of the exceedance on the Fig Street block.
  - (8)

Floor levels in the Wattle Street and Fig Street blocks are elevated by 700mm for flood planning which contributes to the height exceedance.

- (9) The envelope of the Wattle Street building protects solar access in mid-winter and accommodates floor space that could otherwise be located in the communal open space adjoining the Light Rail station.

- 56 I am satisfied that the written request has adequately addressed the grounds on which strict compliance with the height standard is unreasonable or unnecessary in accordance with cl 4.6(3)(a). In arriving at this conclusion, I am assisted by images of the proposed envelope contained in the written request that demonstrate in 3-dimensional terms the topographical condition of the site, and the context of the existing built form adjacent to the site, which also assists an understanding of the transition between the proposed new development and heritage items and buildings in the vicinity.
- 57 I am also satisfied that the written request demonstrates sufficient environmental grounds to justify the contravention of the height standard for the reasons summarised above. In particular, I accept that the exceedance is owed, in part, to the unique topography of the site in the location of the sandstone rock face, and in response to which the Jones Street building is setback, and modulated in 3-dimensions so as to transition between the scale of existing development on Jones Street and the height of buildings generally permitted on the site. Furthermore, where the exceedance occurs is set well back from the boundary line where adverse impacts can be managed, and where the uppermost levels are least visible from the street frontages.
- 58 Furthermore, I am satisfied that the objectives of the B4 zone are achieved. The development the subject of the Concept DA proposes a mix of public and community uses alongside commercial, retail and residential purposes on a site that imposes constraints, in response to which the exceedance is reasonable. The site is bounded on 3 sides by transport corridors, and on Jones Street by the sandstone rock face that precludes solar access to lower levels that would permit residential uses, and by considerations of heritage places above that. I accept that the location and scale of communal open space, including through site links, will encourage access to, and use of, the Light Rail corridor, and encourage walking.
- 59 In reaching an opinion of satisfaction that both the objectives of the height standard, and the B4 zone are achieved, I have considered the submissions of the Applicant in respect of the Jones Street frontage, and I accept that the height of the development is appropriate to the condition of the site and its context. In particular, I accept that strictly applying the 27m height plane to the unique topography of site permits a built form along Jones Street that would impose a far greater impact than that which is now proposed as a result of the decision to redistribute the floor space in favour of a lower envelope, and provides a setback accommodating a footpath on an important pedestrian link to the Light Rail station where none exists today.

Clause 4.6(4)(b) of the SLEP requires that the concurrence of the Planning Secretary be obtained for development consent to be granted to development that contravenes a development standard.

61 The Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 that the Secretary's concurrence may be assumed for exceptions to development standards, subject to certain conditions contained in the notice.

62 That said, s 39(6) of the *Land and Environment Court Act 1979* gives the Court the power to grant development consent without obtaining the concurrence of the Secretary, although consideration ought be given to the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

63 I have considered whether the contravention of the height standard raises any matter of significance for State or regional environmental planning, and whether there is a public benefit of maintaining the development standard. I conclude that no matter of significance arises, and I consider there to be a public benefit served by upholding the written request for the reasons set out above.

#### *Heritage conservation*

64 While the heritage experts agree that the site is not a heritage item, and it is not within a heritage conservation area (Exhibit 3, par 3.1), the experts also agree that the site has "high heritage significance for its historic associations as a quarry" (Exhibit A, Vol 2 of 3, p44).

65 The heritage experts also agree that all concerns in respect of heritage are resolved by the imposition of a condition of consent evident in the agreed conditions, at Condition 5.

66 I also state here for completeness that, while Mr Davies, heritage expert for the Applicant, holds that while there is no statutory requirement to provide an interpretation strategy or plan for the site, the experts are agreed that such interpretation is of value in the context of the Pyrmont peninsula, and the parties have agreed the form of a condition, at Condition 15, that provides for a heritage interpretation strategy to be prepared prior to the commencement of the competitive design process.

67 I note the requirements of this condition appear to address concerns set out in resident submissions at Exhibit 2 (Tab 35), and Exhibit 12, including interpretation of the history of the site as a quarry, and as a Council Depot; the exposure and interpretation of the rock face; use of salvaged sandstone from the site, the retention and display of the weighbridge scales in a publicly accessible location on the site; and archival recording of the buildings and structures on the site.

#### *Design excellence*

68

According to cl 6.21(3) of the SLEP, development consent must not be granted to development unless, in the opinion of the consent authority, or the Court on appeal, the proposed development exhibits design excellence.

69 The objective of the provision, at cl 6.21(1) is to deliver the highest standard of architectural, urban and landscape design, and the matters to which the Court must have regard are set out at cl 6.21(4) of the SLEP.

70 As it was put by the Court of Appeal in *Local Democracy Matters Inc v Infrastructure NSW* (2019) 367 ALR 733; [2019] NSWCA 65, at [74]:

“It also follows that not all matters identified in cl 6.21(4) as bearing on design excellence are relevant to a concept development application. For example, cl 6.21(4) (a) refers to a high standard of architectural design, materials and detailing as a consideration relevant to design excellence.”

71 Consistent with this view, I accept the Applicant’s submission that the Court should have regard to the following relevant matters in considering whether development to which this clause applies exhibits design excellence as defined at cl 6.21(4) of the SLEP:

...

(b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,

(c) whether the proposed development detrimentally impacts on view corridors,

(d) how the proposed development addresses the following matters—

(i) the suitability of the land for development,

(ii) the existing and proposed uses and use mix,

(iii) any heritage issues and streetscape constraints,

...

(v) the bulk, massing and modulation of buildings,

(vi) street frontage heights,

(vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,

(viii) the achievement of the principles of ecologically sustainable development,

(ix) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network,

(x) the impact on, and any proposed improvements to, the public domain,

...

(xii) achieving appropriate interfaces at ground level between the building and the public domain,

(xiii) excellence and integration of landscape design.

72 The experts in town planning, and urban design agree that the Concept DA, as amended by the plans at Exhibit D is capable of exhibiting design excellence (Exhibit 5, par 14).

73 As I am satisfied that the Concept DA depicts a development that is consistent with the objectives of the B4 zone, and proposes a mix of uses for the land that are permitted with consent, I am satisfied that the site is suitable for the development proposed (subcll 6.21(4)(d)(i) and (ii)).

On the basis of the agreement between the town planning, urban design and heritage experts in Exhibit 6, including the agreed amendment to the setback of the Fig Street block from Jones Street in Appendix A, I consider the heritage issues and streetscape constraints, the bulk, massing and modulation of buildings, and the respective street frontage heights to be addressed (subcll 6.21(4)(d)(iii), (v)(vi)).

- 75 I have carefully considered the drawings at Exhibit D, the Acoustics and Natural/Cross ventilation report prepared by Stantec Australia dated 5 November 2020 (Exhibit F), and the targets for Environmentally Sustainable Development (ESD) at Condition 9 of Exhibit 11 and I conclude that the environmental impacts set out at subcl 6.21(4)(d)(vii), and the achievement of ESD principles (subcl 6.21(4)(d)(viii)), are addressed.
- 76 Having regard to the Landscape Concept Plans (Exhibit C, Tab 28), I consider subcl 6.21(4)(d)(ix) of the SLEP to be addressed by the integration of through site links and a future connection to the Light Rail station, stairs connecting Jones Street to Wattle Street, bicycle parking, public paths, landscape planting and treatment to public footpaths (subcll 6.21(4)(d)(ix) and 6.21(4)(d)(xiii)).
- 77 Similarly, for those reasons stated above, and due to the proposed new footpath made possible by the setback of the Jones Street block, and which is the subject of a planning agreement considered at [117]-[123], I consider the impact on the public domain arising from the Concept DA to be a positive one (subcl 6.21(4)(d)(x)).
- 78 On the basis of those drawings at Exhibit D (DA2-5000-DA2-8000), I consider the interfaces at ground level between the proposed buildings and public domain to be addressed at a level of resolution appropriate to a concept development application (subcl 6.21(4)(d)(xii)).
- 79 Furthermore, I note that the agreed conditions of consent provide, relevantly, for the following:
- (1) A competitive design process conducted in accordance with 'Design Excellence Strategy, 14-26 Wattle Street Pyrmont dated 30 March 2021, prepared by Mecone on behalf of the Applicant (Condition 4).
  - (2) Particular matters that must be incorporated in a competitive design process brief and detailed design development application (Condition 5).
- 80 Accordingly, and having regard to those matters set out at [72]-[79], I have formed an opinion in accordance with cl 6.21(3) of the SLEP that the Concept DA exhibits design excellence at the level of resolution that can be reasonably expected of a concept development application.
- 81 Clause 7.3 of the SLEP prevents the grant of development consent to development in circumstances where the total number of car parking spaces in connection with a proposed use of land exceed the number set out in Part 7, Division 1 of the SLEP. As a calculation of the total number of car parking spaces can only be derived by reference to cll 7.4-7.9 once a more detailed layout of uses is developed, I consider the Concept DA to demonstrate adequate car parking provision at the level appropriate to a concept

development application. Relatedly, I also note that Condition 3 of the agreed conditions of consent provides that no consent is granted for car parking numbers or the number of basement levels.

- 82 Clause 7.14(2) of the SLEP provides for the grant of development consent for the carrying out of works on land with soils classified class 5 acid sulfate under certain circumstances, and cl 7.14(3) provides that development consent must not be granted for the carrying out of works unless an acid sulfate soils management plan has been prepared. The development the subject of the Concept DA is not for the carrying out of works, but for concept development application, and Condition 20 of the agreed conditions of consent provides the terms in which an acid sulphate soils management plan is required. Accordingly, I am satisfied that cl 7.14 of the SLEP is appropriately the subject of future detailed development application(s).
- 83 On the basis of the Flooding Assessment report prepared by Cardno dated 29 August 2019, the summary of compliance/non-compliance contained in the Flooding advice letter prepared by Cardno dated 15 April 2020, and the wording of Condition 33 in the agreed conditions of consent, I am satisfied that those matters in respect of flood planning at cl 7.15(3) of the SLEP are adequately address in the Concept DA.
- 84 While the provisions of cl 7.20 of the SLEP require the preparation of a site-specific development control plan, I am satisfied that the preparation of a Concept DA is an acceptable alternative for the reasons set out at [35].

*State Environmental Planning Policy No 55—Remediation of Land*

- 85 Clause 7 of the State Environmental Planning Policy No 55—Remediation of Land requires a consent authority to consider whether the land is contaminated and requires remediation. On the basis of the following, I am satisfied that the land is contaminated, but is capable of being made suitable for the purpose for which the development is proposed to be carried out:
- Remediation Action Plan (RAP), prepared by JBS&G dated 9 October 2019 that includes a review of previous assessments at pp3-4, and concludes that the site can be made suitable for the intended uses.
  - Interim Advice prepared by Rebeka Hall (Site Auditor, NSW EPA 0802) and Cheryl Halim (Senior Environmental Engineer) of ZOIC Environmental dated 16 October 2019 which considers the RAP appropriate for the known contamination and agrees that the site is capable of being made suitable, subject to certain matters that are required by Condition 18 of the conditions of consent to be addressed in detailed development application(s).

*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*

86

While the appeal before the Court is for a Concept DA pursuant to s 4.22 of the EPA Act, and the carrying out of any development is contingent upon the preparation of subsequent development application(s), residential apartment development is proposed within a mixed use development.

87 Clause 4 of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) states that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if—

(a) the development consists of any of the following—

(i) the erection of a new building,

...

88 The parties jointly submit, firstly, that the provisions of SEPP 65 do not apply in the circumstances of the case, but that, secondly, it is not necessary for the Court to make a determination on this point as the parties also agree that the provisions of cl 28 of SEPP 65 are achieved in any event.

89 In support of the parties' first position, Mr Pickles SC, counsel for the Applicant, adopts the reasoning of Preston CJ in *Uniting Church v Parramatta* at [50] to identify that there is no text in the wording of cl 4 of SEPP 65 that would widen the class of development to which SEPP 65 applies, and that in this case, the Concept DA is not for development that *consists of the erection of a building*.

90 In support of the parties' second position, Mr Lazarus SC, counsel for the Respondent, submits that while the Respondent sought the advice of its Design Advisory Panel, this Panel is a panel of independent experts, and is not a Design Review Panel for the purposes of Part 3 of SEPP 65, as it is not constituted in accordance with cl 19 of the SEPP 65.

91 The effect of this is that the application was not required to be referred to a Design Review Panel as there is not any such panel, which is a circumstance provided for in cl 28(1) and (2)(a) of SEPP 65.

92 In respect of cl 28(2)(b) of SEPP 65, the Applicant, unopposed by the Respondent, submits there is agreement between the parties and their experts that the design quality principles contained at Schedule 1 of SEPP 65 are achieved.

93 I note that Ms Robinson's assessment undertaken on 25 June 2020 (Exhibit 2, Tab 37) identifies deficiencies in respect of Design Quality principles no's 1, 2, 3, 5 and 6. Those deficiencies are, broadly speaking, in respect of the height, FSR, landscape area and deep, and whether residential amenity can be achieved in subsequent development application(s).

94 On the basis of Ms Robinson's letter dated 12 April 2021, I accept that the deficiencies in achieving Design Quality principles 1-3 are addressed by the removal of a storey on the Jones Street and Fig Street blocks, the additional setback of the built form

proposed to Jones Street, and a condition of consent requiring an increased setback for the commercial level of the Fig Street block.

- 95 On the basis of the Drawing RFI-4006 (Exhibit C, Tab 24), and Condition 14(b)(vi) of the agreed conditions of consent, I accept that the deficiencies in achieving Design Quality principle 5 have been addressed.
- 96 On the basis of the joint report prepared by the town planning and urban design experts (Exhibit 5), I accept the view of the experts that the proposal is capable of providing an acceptable level of residential amenity, addressing the deficiency identified by Ms Robinson in respect of Design Quality principle 6.
- 97 Additionally, where an application relates to residential apartment development, cl 50(1A) of the Environmental Planning and Assessment Regulation 2000 (EPA Regulation) requires that the application must be accompanied by a statement by a qualified designer, defined at cl 3 as a person registered as an architect in accordance with the *Architects Act 2003*.
- 98 However, cl 70B of the EPA Regulation sets aside the requirement at cl 50(1A) where the concept development application is for concept development only, as is this case here.

*State Environmental Planning Policy (Infrastructure) 2007*

- 99 As stated earlier, the Concept DA is subject to the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP). I have taken into consideration the following:
- (1) The Concept DA was referred to Energy Australia for a period of 21 days, pursuant to cl 45 of the Infrastructure SEPP, no objection was raised and conditions for the supply of electricity are contained in the agreed conditions of consent at Exhibit 11.
  - (2) While development the subject of the Concept DA is proposed within 25m of the Inner West Light Rail corridor, and proposes excavation that is greater than 2m in depth, I have taken into consideration the letters prepared by Transport for NSW dated 14 October 2019 (Exhibit 2, Tab 26) and 24 December 2020 (Exhibit 2, Tab 31) in accordance with cl 86 of the Infrastructure SEPP that provides requirements to be addressed in a Stage 2 development application in the form of conditions contained in the agreed conditions of consent at Exhibit 11.
  - (3) Additionally, I have taken in consideration the email prepared by Sydney Metro dated 23 September 2019 (Exhibit 2, Tab 25) to the effect that the application does not apply or impact on Sydney Metro City and Southwest Corridor within the terms of cll 85 or 86 of the Infrastructure SEPP.
  - (4) As the site fronts classified roads and is traffic-generating development for the purposes of cl 104 of the Infrastructure SEPP, cl 101 of the Infrastructure SEPP requires that the consent authority, or the Court on appeal, must not grant

consent unless it is satisfied of certain matters at cl 101(2). On the basis of the concurrence provided by Roads & Maritime Services dated 19 November 2019 (Exhibit 2, Tab 27), subject to requirements that are contained in the agreed conditions of consent at Exhibit 11, I am satisfied that those matters at cl 101(2) have been addressed.

- (5) As the average daily traffic volume of Wattle Street and Fig Street exceed 20,000 vehicles, cl 102 of the Infrastructure SEPP requires the Court to take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette, and for that part of the proposal that is for the purposes of residential accommodation, the Court must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure certain noise levels are not exceeded. On the basis of the conclusions set out on p19 of the Acoustic Report prepared by Wood & Grieve Engineers, dated 29 August 2019 (Exhibit A, Tab 4(s)), I accept that the impact of noise as a result of the proposed development will conform to the relevant noise criteria.

#### *Water Management Act 2000*

- 100 In accordance with s 4.47(2) of the EPA Act, I rely upon the Terms of Approval for Integrated Development in accordance with the *Water Management Act 2000*, as advised by Water NSW at Exhibit 2, Tab 30, and reaffirmed in the email dated 6 January 2021 (Exhibit 2, Tab 32) and which I note are contained in the agreed conditions of consent at Exhibit 11.

#### *State Regional Environmental Plan (Sydney Harbour Catchment) 2005*

- 101 The site is classified as land within the Sydney Harbour catchment for the purposes of the State Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Sydney Harbour Catchment SEPP) and I accept the joint position of the parties that the relevant principles set out in the Sydney Harbour Catchment SEPP are sufficiently addressed.

#### *BASIX*

- 102 As the Concept DA proposes residential uses on the site, future development application(s) are required to demonstrate the achieving of BASIX requirements, that will be satisfied by the provision of a BASIX certificate in accordance with the State Environmental Plan (Building Sustainability Index: BASIX) 2004.

#### *State Environmental Planning Policy (Educational Establishments and Child Care Centres) 2017*

- 103 While the development the subject of the Concept DA proposes centre-based child care uses on the site, I consider a detailed assessment against the State Environmental Planning Policy (Educational Establishments and Child Care Centres) 2017 (Childcare SEPP) to be properly a matter for future development application(s).

That said, I accept the compliance summary table at Exhibit A, Tab 4(f) sufficiently demonstrates the Concept DA is capable of being further developed in compliance with the requirements of the Childcare SEPP.

### **Public submissions are considered**

- 104 As stated at [31], submissions presented by residents sought public access onto, and through the site, and appropriate access to, and heritage interpretation of, the sandstone rock face.
- 105 On the basis of the drawings which show a through-site link of 9m in width addressing Jones Street, and 18m in width addressing Wattle Street, and the pedestrian link connecting the site to the Light Rail station to the north of the site which is shown on drawing DA2-3006 as 9m in width, I consider public access to be provided both onto and through the site.
- 106 I also consider the design principles contained on Drawing DA2-8000, when read in conjunction with Condition 15 of the agreed conditions of consent to appropriately provide for heritage interpretation of the sandstone rock face.
- 107 Ms Akhromova raises concerns as to whether the heights proposed on the site by the Concept DA are correct. Relatedly, the building heights are the subject of a written request to depart from the numerical standard about which Ms Akhromova also has concerns.
- 108 I am satisfied that the heights shown in the drawings are clearly marked and are unambiguous. Those heights are generally expressed as relative levels, or 'RL's', which as I noted during Ms Akhromova's submission, are different to heights expressed as a pure dimension. For example, the RL of the Level 1 podium plan, which in effect acts as a 'ground floor', is at RL7.150 and not RL0.0.
- 109 Next, Ms Akhromova seeks to preclude the consent authority from considering any further building height under s 6.21 of the SLEP and, relatedly, asserts that to do otherwise undermines public confidence in the planning regime. I note that the provisions of an environmental planning instrument, such as the SLEP, are the result of public exhibition and community consultation and are the subject of consideration by local and State government prior to their adoption and gazettal in accordance with Division 3.4 of the EPA Act. The exercise of the provisions of the SLEP in respect of future development application(s) is properly a matter for the consent authority at the time, and something that I am unable, and unprepared, to pre-empt.
- 110 In the submission prepared by Ms Elenius, dated 13 April 2021 (Exhibit 12), three concerns are identified:
- Loss of the quarry on the site known as 'Hellhole quarry';
  - The Jones Street terrace group will be 'walled in' by the proposed development; and

- The proposal is inconsistent with the Pyrmont Peninsula Place Strategy.

111 For the reasons stated earlier at [66]-[67] I consider the preparation of a heritage interpretation plan will serve to retain and recognise the history of the site.

112 In respect of the Jones Street terrace group, I consider the proposed development to appropriately address the scale of the Jones Street terrace group on three grounds:

- Firstly, the transition between the scale of the Jones Street terrace group and that of the proposed development is assisted by the proposed setback from the Jones Street boundary of 1-4m beyond that which is permissible.
- Secondly, the resulting setback permits a new footpath on the western side of Jones Street with tree planting, contributing to the setting of the Jones Street terrace group in its context.
- Thirdly, the further setback of the Fig Street block by 3.2m at Levels 4, 5 and 6 from that shown on the drawings at Exhibit D, as agreed by the experts in Exhibit 6, and the further setback at Level 8 results in a sightline from a number of the terraces in the Jones Street terrace group to the former wool store to the south of Fig Street.
- Fourthly, the 9m wide opening to the through-site link at Jones Street provides a sightline and relief from built form along this frontage.

113 The Pyrmont Peninsula Place Strategy (Pyrmont Place Strategy) was tendered by the Applicant as a digital copy, and marked Exhibit G. The Pyrmont Place Strategy identifies opportunities and challenges for the Wentworth Park area at p 62, including relevantly:

“• The sloping land towards Wattle Street allows for stepping of building height,”

And

“Building design will take advantage of the sloping land between Jones and Wattle streets and will not overshadow or detract from the amenity of Wentworth Park.”

114 The Wentworth Park Place priorities are set out on p 63 and provide relevantly:

“4 Ensure a genuine mix of business and residential uses to enhance the character, liveability and productivity of the sub-precinct

...

6 New development, including adaptive re-use and extension to heritage buildings, respects the transition of height down from Jones Street to Wattle Street and protects sunlight to Wentworth Park in line with sub-precinct master plans

...

10 Consider how development can create pedestrian connections between Jones and Wattle Street.

...

15 Investigate a multi-utility hub close to the light rail stop and major roads for sustainable precinct-scale solutions such as integrated parking, electric vehicle charging, battery storage, recycled water and organic waste systems, or bike facilities.”

115 The Applicant submits, and I accept, that, while the Pyrmont Place Strategy is not a mandatory consideration, the Concept DA is not antithetical to those matters set out above, and adequately responds to the priorities to the extent possible for a concept

development application.

- 116 In forming this conclusion, I consider the overshadowing of Wentworth Park on Drawing DA2-4001 to be limited in its duration, and to be generated by a form that is consistent with the street wall height of the former wool store to its south, as shown in the physical model re-produced at [51(2)]. I also note the pedestrian connections proposed by the through-site link and connection to the Light Rail station to the site's north.

### **The planning agreement**

- 117 As stated earlier at [77], the Concept DA proposes a setting back of the Jones Street and Fig Street blocks to accommodate improvements to the Jones Street frontage.
- 118 While Jones Street adopts a straight path, the boundary of the subject site varies along the Jones Street frontage. As a result, the proposed works associated with the proposed improvements will be located partially on the subject site, and land within the Jones Street road corridor, which is owned and under the control and management of the Respondent, as a public road.
- 119 The Applicant proposes to construct the Jones Street works, acquire the land in the Jones Street road reserve required for those works, and accept responsibility for ongoing maintenance of those works.
- 120 To give effect to this proposal, the Applicant has prepared a Letter of Offer (Exhibit 15) setting out the terms of a voluntary planning agreement (VPA) pursuant to s 7.4 of the EPA Act in respect of any Stage 2 development application that is lodged pursuant to the Concept DA.
- 121 The Respondent accepts the Letter of Offer and the parties propose a deferred commencement condition, at Condition A(1), requiring the drafting, exhibiting and executing of a Voluntary Planning Agreement (VPA) between the parties to capture the works within the Letter of Offer. The VPA, as executed, must also be registered on the title of the land and registered with the Respondent in accordance with the terms of the executed VPA.
- 122 In exercising the functions of the consent authority, the Court has the power to impose conditions of consent, pursuant to ss 4.16(1) and 4.17 of the EPA Act. Pursuant to s 7.7(3), this power extends to the imposition of the condition of consent that requires the developer to enter into a VPA in the terms of the offer made by the developer.
- 123 As I consider that the proposed VPA meets the requirements of s 7.4 of the EPA Act, I am satisfied that the Court has power to require that the proposed VPA be entered into as a condition of consent, pursuant to s 7.7(3)(a) of the EPA Act.

### **Conclusion**

- 124 Notwithstanding the parties' agreement to consent orders in determining this matter, I have carefully considered the evidence before me as required by s 4.15 of the EPA Act.
- 125

I have considered all of the evidence against the statutory framework, including the public submissions made in both oral and written form and, as indicated, I am satisfied that all relevant contentions have been satisfactorily addressed in the amendments proposed by the relevant experts and the agreed conditions of consent. For these reasons I have decided to make the orders proposed by the parties by consent.

## Orders

126 The Court orders that:

- (1) Leave is granted to the Applicant to rely on the amended plans and supplementary documents referred to in Condition 2 of Annexure A.
- (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* as a result of the amendment to the development application allowed by Order (1) above, as agreed or assessed.
- (3) The Applicant's written request required under cl 4.6 of the Sydney Local Environmental Plan 2012 for the approval of the development application D/2019/649 in relation to the variation to the 27m height development standard that applies to the land under cl 4.3 of the Sydney Local Environmental Plan 2012 is upheld.
- (4) The appeal is upheld.
- (5) Development application D/2019/649 seeking approval of a concept proposal comprising demolition of the existing buildings, removal of trees, and a mixed-use development compromising residential, commercial, childcare and recreational uses at the land at 14-26 Wattle Street, Pyrmont and contained in Lot 200 DP1224234 is approved subject to the conditions set out in Annexure A.
- (6) All exhibits are returned, except for Exhibits A, C, D, 7, 14 and 15.

.....

**T Horton**

**Commissioner of the Court**

**[Annexure A \(322078, pdf\)](#)**

**[Plans \(46957729, pdf\)](#)**

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## Amendments

24 May 2021 - Corrected representation details.

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Decision last updated: 24 May 2021