

AUSTRALIA / JUDGMENT

MP Development 10 Pty Ltd v Northern Beaches Council

[2026] NSWLEC 1636**COURT**

Land and Environment Court

DECIDED

29 September 2026

BEFORE

Miller AC

CASE / FILE NUMBER

2026/134233

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Land and Environment Court New South Wales

Medium Neutral Citation: MP Development 10 Pty Ltd v Northern Beaches Council [2026] NSWLEC 1636**Hearing dates:** Conciliation conference on 16 July 2026**Date of orders:** 29 September 2026**Decision date:** 29 September 2026**Jurisdiction:** Class 1**Before:** Miller AC**Decision:****The Court orders that:**

- (1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application, pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 (NSW), in the agreed amount of \$3,100 within 28 days of these orders being made.
- (2) The appeal is upheld.
- (3) Development Application DA2026/0098, as amended, for the consolidation of 2 lots into 1, demolition of existing dwellings and structures, and the construction of a seniors housing development comprising independent living units with landscaping, drainage, car parking and associated works, at 140 and 142 Ocean Street, Narrabeen (Lot 13 in DP 606591 and Lot 12 Section 47 DP 111254) is determined by the grant of consent subject to the conditions at Annexure A.

Catchwords: APPEAL — seniors housing — independent living units — conciliation conference — agreement reached — orders made

Legislation Cited:	Environmental Planning and Assessment Act 1979 (NSW), ss 4.15, 4.16, 8.7, 8.15 Land and Environment Court Act 1979 (NSW), s 34 Environmental Planning and Assessment Regulation 2021 (NSW), ss 23, 27, 29, 38, Sch 7 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 2 State Environmental Planning Policy (Housing) 2021, Chs 3, 4, Pt 5, ss 81, 84, 85, 87, 88, 93, 95, 97, 108, 145, 147, Schs 4, 8, 9 State Environmental Planning Policy (Resilience and Hazards) 2021, s 2.10, 2.11, 4.6 State Environmental Planning Policy (Sustainable Buildings) 2022, s 2.1, Sch 1 State Environmental Planning Policy (Transport and Infrastructure) 2021, s 2.48 Warringah Local Environmental Plan 2011, cl 2.3, 4.3, 4.4, 4.6, 6.1, 6.2, 6.4
Texts Cited:	NSW Department of Planning and Environment, Apartment Design Guide (July 2015) NSW Department of Planning and Environment, Seniors Housing Design Guideline (November 2023)
Category:	Principal judgment
Parties:	MP Development 10 Pty Ltd (Applicant) Northern Beaches Council (Respondent)
Representation:	
Counsel:	A Whealy (Solicitor) (Applicant) M Cottom (Solicitor)(Respondent)
Solicitors:	Mills Oakley (Applicant) Northern Beaches Council (Respondent)
File Number(s):	2026/134233
Publication restriction:	Nil

JUDGMENT

COMMISSIONER: This appeal concerns a Development Application DA2026/0098, as amended, for the consolidation of two lots into one, demolition of existing dwellings and structures, and the construction of a seniors housing development comprising independent living units with landscaping, drainage, car parking and associated works, at 140 and 142 Ocean Street, Narrabeen (Lot 13 in DP 606591 and Lot 12 Section 47 DP 111254) (the site). The applicant lodged an appeal pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) against the deemed refusal of the subject development application on 2 April 2026. The Court arranged a conciliation conference between the parties, pursuant to s 34 of the Land and Environment Court Act 1979 (NSW) (LEC Act). The conciliation conference, which I presided over, was held on 16 July 2026. Outcome At the conciliation conference, an agreement under s 34(3) of the LEC Act was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. The agreement was recorded in a signed agreement filed with the Court on 21 August 2026. The agreement follows the Council's approval of an application for an amendment to the development application pursuant to s 38(1) of the

Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Reg). The key changes made to the application which now make it acceptable to the Council include: The core was shifted, to work with the basement 1 aisle width, throughout the whole development; The ramp was reconfigured in the basement to increase the floor to floor height for basement 2 from 2800mm to 3000mm; The basement was reconfigured to increase the kerb width; An additional fire exit was included at the ground floor; The landscaping was amended with additional trees and planter details provided; The apartments were reconfigured to achieve storage and clearances compliance; The communal open space and enclosed internal communal space were altered; The upper level setbacks were amended; and The number of independent living units was reduced from 18 to 17. The decision agreed upon by the parties is for the grant of development consent, subject to conditions of consent pursuant to s 4.16(1) of the EPA Act. The signed agreement is supported by an agreed Jurisdictional Statement, which sets out the jurisdictional requirements for the making of orders in accordance with the agreement. I have considered the contents of the Jurisdictional Statement, together with the documents referred to therein, the Class 1 Application and its attachments, and the documents that are referred to in Condition 1 of Annexure A. Based on those documents, I have considered the matters required to be considered pursuant to s 4.15(1) of the EPA Act. 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 could have made 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 reasons outlined below. State Environmental Planning Policy (Sustainable Buildings) 2022 The proposal is BASIX development in accordance with Sch 7 of the EPA Reg and accordingly the standards set out in Sch 1 of State Environmental Planning Policy (Sustainable Buildings) 2022 (SB SEPP) apply. A BASIX Certificate was submitted with the application as required by s 27 of the EPA Reg prepared by Eco Certificates Pty Ltd (Cert No 1830125M_02 dated 14 August 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 (Resilience and Hazards) 2021 The site is within the 'coastal use area' and 'coastal environment area', as defined under the State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP). Sections 2.10 and 2.11 provide that development consent must not be granted to development on land that is within the 'coastal use area' and 'coastal environment area' unless the consent authority is satisfied in respect of a range of matters, most notably that the proposal will not result in an adverse impact on the 'coastal use area' and 'coastal environment area'. The parties advise and I accept that the proposal has been designed to avoid impact on the 'coastal use area' and 'coastal environment area', having regard to the Amended Geotechnical Report (Crozier Geotechnical Consultants, 15 May 2026), the Stormwater Plans (Adams Structural and Civil Engineering, 27 July 2026) and conditions of consent. Consideration has also been given as to whether the site is contaminated as required by s 4.6 of the RH SEPP. The parties agree that the site has a long history of residential use therefore contamination is unlikely. Accordingly, the requirements of the RH SEPP are satisfied. State Environmental Planning Policy (Biodiversity and Conservation) 2021 Consideration has been given to Ch 2 of State Environmental Planning Policy (Biodiversity and

Conservation) 2021 (BC SEPP) in respect of vegetation in non-rural areas, and it is noted that the proposal seeks consent for tree removal and therefore the provisions of Ch 2 do not apply. State Environmental Planning Policy (Housing) 2021 Chapter 3, Pt 5 of State Environmental Planning Policy (Housing) 2021 (HSEPP) applies to housing for seniors and people with a disability. In accordance with s 81, the proposal is permissible being for the purposes of seniors housing in a R3 – Medium Density Residential zone under Warringah Local Environmental Plan 2011 (WLEP). The parties advise, and I accept, that the proposal complies with the applicable development standards set out in ss 84 and 85, and Sch 4 of the HSEPP. Section 87 of the HSEPP applies to seniors housing development if development for the purposes of a residential flat building is permitted on the land under another environmental planning instrument. Residential flat buildings are permissible in the R3 - Medium Density Residential zone under WLEP, and the site has an area greater than 1,500m². Where independent living units are proposed, the provision allows up to an additional 15% of the maximum floor space ratio (FSR) if the additional floor space is used for independent living units and a height of not more than 3.8m above the allowable maximum. The proposal has a maximum height of 13.19m where a maximum of 12.3 applies having regard to s 87 of the HSEPP (including height bonus). Accordingly, a cl 4.6 variation request has been submitted which the parties agree, and I accept, is well founded. The parties advise that the development is consistent with the objectives of the height standard and the zone, that compliance with the standard is unreasonable and unnecessary in the circumstances and that sufficient environmental planning grounds exist to justify contravening the standard. In respect of FSR, the proposal has an FSR of 1.44:1. WLEP does not include a maximum FSR for the site, however s 108 of the HSEPP provides a non-discretionary FSR standard of 0.5:1 for independent living units. A further cl 4.6 variation request has been submitted in respect of FSR which the parties agree, and I accept, is well founded in the circumstances of the case. The parties have advised that the development is consistent with the objectives of the FSR standard and the zone, that compliance with the standard is unreasonable and unnecessary in the circumstances and that sufficient environmental planning grounds exist to justify contravening the standard. Section 88 of the HSEPP provides that consent shall not be granted unless the consent authority is satisfied that a development approved under the Part will be occupied by seniors or people with a disability (or otherwise as specified). The parties advise that this requirement is satisfied having regard to proposed Condition 74. Section 93 of the HSEPP provides requirements in respect of location, and access to facilities and services for independent living units. I note that the parties have advised that the site is located within 400m of accessible bus stops on Ocean Street, which provide transport in accordance with the requirements. I am therefore satisfied of the relevant matters. In respect of s 95 of the HSEPP, I am satisfied that the proposal will be connected to reticulated water and sewerage infrastructure as required given existing infrastructure connections and the proposed plans. Section 97 of the HSEPP requires that the consent authority have regard to the Seniors Housing Design Guideline (NSW Department of Planning and Environment, November 2023) in determining a development application for the purposes of seniors housing. Further, it requires that development consent must not be granted unless the consent authority is satisfied the design of the seniors housing demonstrates that adequate consideration has been given to the design principles for seniors

housing set out in Sch 8 of the HSEPP. These matters include neighbourhood amenity and streetscape; visual and acoustic privacy; solar access and design for climate; stormwater; crime prevention, accessibility and waste management. I am satisfied that the relevant matters have been considered in the proposed design, on the basis of the parties' agreement and the amended plans. Section 108 of the HSEPP includes non-discretionary development standards for independent living units. The parties agree and I accept that the proposal complies with all relevant standards. Chapter 4 of the HSEPP applies to residential apartment development and accordingly the proposed development, being for the purposes of seniors housing development comprising independent living units in the form of a residential flat building of at least 3 storeys and containing at least 4 dwellings. Section 145 requires that the consent authority refer the subject application to the design review panel for the local government area for advice. The application was referred to the Northern Beaches Design and Sustainability Advisory Panel for advice on 26 March 2026. Having regard to the amended plans and the agreement of the parties I am satisfied that, as required by s 147 of the HSEPP, consideration has been given to the design principles for residential apartment development set out in Sch 9 of the HSEPP, the Apartment Design Guide (NSW Department of Planning and Environment, July 2015) and the comments of Council's Design and Sustainability Advisory Panel. State Environmental Planning Policy (Transport and Infrastructure) 2021 The application was referred to Ausgrid in accordance with s 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP) (now repealed). Ausgrid provided its comments on the application on 21 February 2026 stating that it is acceptable. Accordingly, I am satisfied that this provision has been addressed. Warringah Local Environmental Plan 2011 The site is zoned R3 Medium Density Residential under WLEP. Development for the purposes of a residential flat building is permissible with consent in the R3 zone under WLEP. Further, regard has been had to the zone objectives, and the parties agree that the proposal is consistent with those objectives in accordance with cl 2.3 of WLEP. The maximum permissible building height applying to the land in accordance with cl 4.3 of WLEP is 8.5m. However, the development application relies on s 87 of the HSEPP which provides for a maximum height of 12.3m for seniors housing independent living units on land zoned R3 Medium Density Residential. The proposed development, as amended, has a maximum height of 13.19m as outlined above and relies on a cl 4.6 variation request which the parties advise, and I accept, is well founded. There is no maximum permissible FSR applying to the land in accordance with Clause 4.4 of WLEP. However, pursuant to s 108 of the HSEPP the maximum permissible FSR is 0.5:1 for independent living units. The proposed development, as amended, has an FSR of 1.44:1 as outlined above and relies on a cl 4.6 variation request which the parties advise, and I accept, is well founded. The site is mapped as having Class 4 Acid Sulfate Soils however, having regard to the Amended Geotechnical Report (Crozier, 15 May 2026) I am satisfied that acid sulfate soils will not be encountered and that, therefore, an acid sulfate soils management plan is not required in accordance with cl 6.1 of WLEP. I am further satisfied that the amended proposal will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land and is in accordance with the requirements of cl 6.2 Earthworks of WLEP, having regard to the Amended Geotechnical Report (Crozier, 15 May 2026) and the conditions of consent. The site is

identified as being in Area A (Slope <5o) on the landslip risk map under WLEP and accordingly, cl 6.4 Development on sloping land applies. The provision provides that development consent must not be granted unless the consent authority is satisfied that:

- (a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and
- (b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and
- (c) the development will not impact on or affect the existing subsurface flow conditions. I am so satisfied on the basis of the parties' agreement, the Amended Geotechnical Report (Crozier, 15 May 2026) and the conditions of consent. Other Matters The development application is accompanied by owners' consent in accordance with s 23 of the EPA Reg. Further the proposal, being a residential apartment development, is accompanied by a statement from a qualified designer (Plus Studio, 8 September 2026) in accordance with s 29 of the EPA Reg, which addresses the design principles for residential apartment development and the objectives of Parts 3 and 4 of the Apartment Design Guide (NSW Department of Planning and Environment, July 2015). The application was notified from 27 February to 13 March 2026, with a total of 25 submissions being received during the exhibition period. The Court notes that Northern Beaches Council, as the relevant consent authority, agreed under section 38(1) of the EPA Reg to an amendment to Development Application No. DA2026/0098 in accordance with the following documents: DOCUMENT DATE Clause 4.6 Variation Request prepared by Willowtree Planning - FSR 6 August 2026 Clause 4.6 Variation Request prepared by Willowtree Planning – Height of Building 6 August 2026 Operational Waste Management Plan (Rev E) prepared by Elephants Foot Consulting 29 July 2026 Revised Geotechnical Investigation prepared by Crozier 15 May 2026 Construction Waste Management Plan - Traffic Response Letter prepared by Genesis Traffic 2 July 2026 Architectural Design Response prepared by Plus Studio 2 July 2026 Amended Architectural Plans (Rev D) prepared by Plus Studio:

- PLA-LEC-0000 – Coversheet
- PLA-LEC-0001 – Existing Plan
- PLA-LEC-0002 – Demolition Plan
- PLA-LEC-0003 – Proposed Site Plan
- PLA-LEC-10B2 – General Floor Plans – Basement 02
- PLA-LEC-10B1 – General Floor Plans – Basement 01
- PLA-LEC-1000 – General Floor Plans - Ground
- PLA-LEC-1001 – General Floor Plans – Level 01

- PLA-LEC-1002 – General Floor Plans – Level 02
- PLA-LEC-1003 – General Floor Plans – Level 03
- PLA-LEC-1004 – General Floor Plans - Roof
- PLA-LEC-2000 – Elevation Sheet 01
- PLA-LEC-2001 – Elevation Sheet 02
- PLA-LEC-3000 – Section Sheet 1
- PLA-LEC-3001 – Section Sheet 2
- PLA-LEC-3002 – Section Sheet 3
- PLA-LEC-3003 – Section Sheet 4
- PLA-LEC-4000 – Sun Eye Views – Sheet 1
- PLA-LEC-4001 – Sun Eye Views – Sheet 2
- PLA-LEC-4002 – Sun Eye Views – Sheet 3
- PLA-LEC-4100 – Shadow Diagram Sheet 01
- PLA-LEC-4200 – Solar Access Diagram Sheet 01
- PLA-LEC-4300 – Cross Ventilation Diagram Sheet 01
- PLA-LEC-5000 – GFA Diagram Sheet 1
- PLA-LEC-5001 – Landscape [sic] Calculation Sheet 1
- PLA-LEC-5002 – Deep Soil Sheet 1
- PLA-LEC-5003 – Cos Solar Access Calculation Sheet 1
- PLA-LEC-5004 – Site Coverage Sheet 1
- PLA-LEC-6000 – Liveable and DDA Typologies Sheet 01
- PLA-LEC-6001 – Liveable and DDA Typologies Sheet 02
- PLA-LEC-7000 – Material Schedule Sheet 01
- PLA-LEC-8000 – Perspectives Sheet 01
- PLA-LEC-8001 – Perspective Sheet 02
- PLA-LEC-8002 – Perspective Sheet 03 10 August 2026 Amended Stormwater Plans (Rev E)
prepared by Adams Structural and Civil Engineering:
- C000 – Civil Cover Sheet and Drawing List

- C001 – Civil Notes and Details Sheet 1
- C002 – Civil Notes and Details Sheet 2
- C003 – Civil Notes and Details Sheet 3
- C005 – Basement 2 Drainage Plan
- C006 – Basement 1 Drainage Plan
- C007 – Ground Floor Drainage Plan
- C020 – Site Catchment Plan
- C025 – Sediment & Erosion Control Plan
- C026 – Sediment & Erosion Control Details 27 July 2026 Landscaping Plan (Rev 02) Prepared by Wyer & Co
- DA_001 – Cover Page and Content
- DA_005 – Landscape Installation & Maintenance Specification
- DA_006 – Landscape Controls & Schedules
- DA_007 – Landscape Controls & Schedules
- DA_105 – Landscape Master Plan
- DA_106 –Ground Floor
- DA_107 – Level 01
- DA_108 – Level 02
- DA_109 – Level 03
- DA_201 – Landscaped Area and Deep Soil
- DA_301 – Details - Typical 30 July 2026 Bulk and Scale Height Diagram prepared by Plus Studio - BASIX Certificate No. 1830125M_02 issued by Eco Certificates Pty Ltd 14 August 2026 NatHERS Certificate No. HR-EZ8UFC-01 issued by Eco Certificates Pty Ltd 14 August 2026

Conclusion

Having reached the state of satisfaction that the decision is one that the Court could make in the exercise of its functions, s 34(3)(a) of the LEC Act requires me to “dispose of the proceedings in accordance with the 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.

Orders

The orders of the Court are: The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application, pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 (NSW), in the agreed amount of \$3,100 within 28 days of these orders being made. The appeal is upheld. Development Application DA2026/0098, as amended, for the consolidation of two lots into one, demolition of existing dwellings and structures, and the construction of a seniors housing development comprising independent living units with landscaping, drainage, car parking and associated works, at 140 and 142 Ocean Street, Narrabeen (Lot 13 in DP 606591 and Lot 12 Section 47 DP 111254) is determined by the grant of consent subject to the conditions at Annexure A. H Miller Acting Commissioner of the Court

Annexure A (650 KB, pdf) DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated. Decision last updated: 29 September 2026

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