



Land and Environment Court
New South Wales

Case Name: The Trust for the Alda Industrial Properties Trust No. 2
v Northern Beaches Council

Medium Neutral Citation: [2025] NSWLEC 1722

Hearing Date(s): Conciliation conference held 20 June, 15 July, 13 and
21 August 2025

Date of Orders: 03 October 2025

Decision Date: 3 October 2025

Jurisdiction: Class 1

Before: Pullinger AC

Decision: The Court orders that:
(1) Leave is granted to the Applicant to amend
Development Application DA 2024/1003 and rely upon
the amended plans and documents referred to in
Condition 1 at Annexure A.
(2) Pursuant to s 8.15(3) of the Environmental
Planning and Assessment Act 1979 (NSW), the
Applicant is to pay the Respondent's costs thrown
away as a result of amending the Development
Application in the agreed sum of \$6,500 within 28
days of the date of these orders.
(3) The appeal is upheld.
(4) Consent is granted to Development Application DA
2024/1003 (as amended) for demolition works and
construction of shop top housing development at 1-5
Rickard Road, North Narrabeen, subject to the
conditions of consent at Annexure A.

Catchwords: DEVELOPMENT APPLICATION — shop top housing
development — cl 4.6 written request — height of
buildings — agreement between the parties — orders

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 27, 29, 37, 38 Pittwater Local Environmental Plan 2014, cl 2.1, 2.3, 4.6, 5.21, 7.1, 7.2, 7.10 State Environmental Planning Policy (Housing) 2021 Ch 4, s 147, Sch 9 State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 4, s 4.6 State Environmental Planning Policy (Sustainable Buildings) 2022, s 2.1 State Environmental Planning Policy (Transport and Infrastructure) 2021, s 2.48
Texts Cited:	NSW Department of Planning, Apartment Design Guide, July 2015
Category:	Principal judgment
Parties:	The Trust for Alda Industrial Properties Trust No. 2 (Applicant) Northern Beaches Council (Respondent)
Representation:	Counsel: T Sattler (Solicitor) (Applicant) A Gough (Solicitor) (Respondent) Solicitors: Sattler and Associates (Applicant) Storey and Gough Lawyers (Respondent)
File Number(s):	2025/1161
Publication Restriction:	Nil

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act), brought by The Trust for Alda Industrial Properties Trust No. 2 (the Applicant), against the deemed refusal of Development Application DA 2024/1003 (the DA) by Northern Beaches Council (the Respondent).

- 2 At the date of its lodgement on 2 August 2024, the DA sought consent for the demolition of three existing houses and the construction of a four-storey shop top housing development comprising a ground and first-floor carpark, commercial suites and common courtyard, and sixteen apartments across two floors at 1, 3 and 5 Rickard Road North Narrabeen (the site).
- 3 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 20 June, 15 July, 13 and 21 August 2025. I presided over the conciliation conference.
- 4 During the conciliation conference, the parties reached agreement as to the terms of a decision in these proceedings that would be acceptable to the parties. The agreement involves the Court upholding the appeal and granting development consent to an amended DA, subject to conditions.
- 5 Of particular note, the proposal has been amended by agreement between the parties to resolve the contentions raised by the Respondent. These contentions included issues of excessive building height and associated impacts of building form, bulk and scale upon the character of the local area, an inappropriate mix and density of commercial and residential uses, inadequate amenity for future residents, including inadequate communal open space, inadequate solar access, inadequate cross ventilation, and unmitigated cross viewing and privacy impacts, amongst other contentions.
- 6 Agreed, design amendments have now been made to improve the proposed building's relationship to the site and its context. Changes have been made to reduce the bulk of the proposal, particularly the alignment of the building and its balconies as they present to the site's northern and eastern boundaries along Rickard Road and Minarto Lane respectively. Other issues such as the configuration and amenity provided to communal open space, and the extent of the southern boundary wall have been refined. Additionally, cross viewing and visual privacy concerns have been resolved.
- 7 As a consequence of these design changes, the amended DA now comprises four commercial tenancies, one retail tenancy and fourteen residential apartments.

- 8 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 amended DA.
- 9 There are jurisdictional prerequisites that must be satisfied before this function can be exercised.
- 10 In that regard, I am satisfied the DA was made with the consent of the owner of the land, evidenced within the Class 1 Application accompanying this matter.
- 11 The DA was publicly notified in accordance with the Respondent's Community Participation Plan between 12 and 26 September 2024. A total of ten submissions were received by the Respondent, with five in support of the DA and five raising concerns, including in summary:
- (1) Incompatibility with the existing and desired future character of the locality.
 - (2) Built form non-compliances particularly, bulk and scale.
 - (3) Flooding impacts.
 - (4) Traffic, car parking and pedestrian safety impacts.
 - (5) Excessive density and the capacity of existing infrastructure.
 - (6) Amenity impacts, including privacy, overshadowing and loss of outlook.
 - (7) Construction phase impacts on traffic and amenity, noting the cumulative impacts of other approved developments in the vicinity.
- 12 At the site view on the morning of 20 June 2025, one submitter addressed the Court to offer support for the DA. Points of support included the increased supply of housing, the DA's contribution to renewal within the locality, and the general appropriateness of the proposed bulk and scale.
- 13 During the adjourned conciliation conference, with the agreement of the parties, amended plans were informally re-notified to objectors. One further submission in support was received by the Respondent in response to this re-notification.
- 14 The parties agree, and I am satisfied, that the amended DA and conditions of consent have been finalised giving appropriate consideration to matters raised

in public submissions. Accordingly, I am satisfied that s 4.15(1)(d) of the EPA Act has been appropriately addressed.

- 15 The parties agree, and I am satisfied, that the Pittwater Local Environmental Plan 2014 (PLEP) is the relevant local environmental planning instrument. Pursuant to cl 2.1 of the PLEP, the site is zoned E1 Local Centre. The amended DA - characterised as shop top housing development - is permissible with consent within the E1 zone.
- 16 The parties agree, and I am satisfied, that pursuant to cl 2.3 of the PLEP, the amended DA is consistent with the E1 Local Centre zone objectives.
- 17 Pursuant to cl 4.3 of the PLEP - Height of buildings - the site benefits from a development standard for building height of 8.5m. However, cl 4.3(2A) has the effect of altering this standard since the site is identified as being affected by Medium and High Hazard flooding on the Respondent's Flood Risk Precinct Maps, and since the Comprehensive Flood Information Report issued by the Respondent identifies a Flood Planning Level (FPL) of 4.4m AHD for the site. For these reasons, cl 4.3(2A) of the PLEP establishes a relevant height of building development standard of 8.0m above the FPL, being RL12.4m AHD.
- 18 The amended DA proposes a maximum height of building of RL17.63 AHD, which exceeds the development standard by 5.23m.
- 19 Clause 4.6(3) of the PLEP requires the consent authority (the Court in this instance) to be satisfied the Applicant has demonstrated that compliance with the relevant development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.
- 20 Accordingly, the Applicant has provided a written document seeking to vary the relevant development standard for height of building, prepared by Boston Blyth Fleming and dated 16 July 2025.
- 21 The parties agree, and I am satisfied, that the written document adequately justifies the proposed variance to the height of buildings development standard for the following reasons:

- (1) The amended DA is agreed to be of an appropriate form and scale that is compatible with the existing streetscape and desired future character of the immediate locality.
- (2) The site is flood affected, with an FPL approximately 2.4m above the existing ground level, which has the effect of lifting the proposed building above the site contributing to the height exceedance.
- (3) The amended DA generally presents to the surrounding streetscape as a four-storey building, which is consistent and compatible with nearby development and recent approvals.
- (4) The portion of the building which generates the greatest height exceedance is limited to a relatively small area of the upper-most floor, providing communal open space receiving good solar access, and is generally set towards the centre of the site receding from view as it presents to the streetscape.
- (5) The proposed height exceedance does not give rise to unreasonable adverse visual impacts, overshadowing, disruption to views or loss of privacy to neighbouring properties.
- (6) The relevant objectives of the PLEP E1 Local Centre land use zone include to provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area; to encourage investment in local commercial development that generates employment opportunities and economic growth; to enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area; to encourage business, retail, community and other non-residential land uses on the ground floor of buildings; to ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse, and functional streets and public spaces; and to create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment. I am satisfied the amended DA is consistent with these objectives.
- (7) The relevant objectives of cl 4.3 of the PLEP - Height of buildings - include to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality; to ensure that buildings are compatible with the height and scale of surrounding and nearby development; to minimise any overshadowing of neighbouring properties; to allow for the reasonable sharing of views; to encourage buildings that are designed to respond sensitively to the natural topography; and to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items. I am satisfied the amended DA meets these objectives.

22 Consequently, I am satisfied the Applicant's cl 4.6 written document adequately justifies the proposed variation to the relevant height of building development standard, and I find to uphold the written request.

- 23 The parties agree, and I am satisfied, that all remaining principal development standards of the PLEP have been met by the amended DA.
- 24 The parties agree, and I am satisfied, that pursuant to cl 5.21 of the PLEP - Flood planning - the site is situated within a flood planning area and is affected by medium and high hazard flood water. The amended DA is supported by a Flood Management Report, prepared by ACOR Consultants, which provides recommendations concerning flood storage, building components and structural soundness, habitable floor levels and parking floor levels, and flood evacuation. Accordingly, the parties agree, and I am satisfied that the amended DA satisfactorily addresses those matters of consideration set out at cl 5.21(2) and 5.21(3) of the PLEP.
- 25 The parties agree, and I am satisfied, that pursuant to cl 7.1 of the PLEP - Acid sulfate soils - the site is situated within a Class 3 area as mapped in the PLEP. The amended DA is accompanied by an acid sulfate management plan prepared by Crozier Geotechnical Consultants. Agreed conditions of consent are imposed to require compliance with this report and incorporates protocols for unexpected finds during the construction phase.
- 26 The parties agree, and I am satisfied, that the amended DA proposes excavation works forming a matter for consideration pursuant to cl 7.2 of the PLEP - Earthworks. The parties agree, and I am satisfied, that the matters set out at cl 7.2(3), have been given appropriate consideration. Agreed conditions of consent are imposed to regulate excavation and construction phase works.
- 27 The parties agree, and I am satisfied, that pursuant to cl 7.10 of the PLEP - Essential services - the site is supplied with water and electricity services, and has access to the main sewer system. The amended DA proposes a stormwater management system and appropriate vehicular access to parking levels.
- 28 The parties agree, and I am satisfied, that State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience) is an additional relevant environmental planning instrument.

- 29 Chapter 4 of SEPP Resilience deals with remediation of land. Pursuant to s 4.6 of SEPP Resilience, the Applicant has provided a Preliminary Site Investigation (PSI) and Stage Two Detailed Site Investigation (DSI), prepared by EBG Environmental Geoscience, which concludes that the site can be made suitable for the proposed use. Agreed conditions of consent are imposed requiring compliance with the recommendations in the PSI and DSI.
- 30 The parties agree, and I am satisfied, that the amended DA is subject to the provisions of State Environmental Planning Policy (Sustainable Buildings) 2022 (SEPP Sustainable Buildings). Consistent with s 2.1 of SEPP Sustainable Buildings and pursuant to s 27 of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Reg), a BASIX certificate, No 1756422M_02, dated 13 August 2025, has been provided with the amended DA.
- 31 Further to s 2.1(5) of SEPP Sustainable Buildings, the parties agree and I am satisfied the BASIX certificate quantifies the embodied emissions attributable to the proposed development have been quantified. Agreed conditions of consent are imposed to ensure compliance with the BASIX certificate.
- 32 The parties agree, and I am satisfied, that State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Infrastructure) is an additional relevant environmental planning instrument.
- 33 Section 2.48 of SEPP Infrastructure applies to the amended DA since the site is situated within 5m of overhead power lines. The DA was referred to the electricity supply authority, Ausgrid, which did not object to the proposed development, subject to the imposition of conditions, which have been adopted by the parties.
- 34 The parties agree, and I am satisfied, that State Environmental Planning Policy (Housing) 2021 (SEPP Housing) is an additional relevant environmental planning instrument.
- 35 Chapter 4 of SEPP Housing deals with the design of residential apartment development.
- 36 Pursuant to the relevant provisions set out at Ch 4 of SEPP Housing and the EPA Reg, the Applicant's architect, Gartner Trovato Architects (and its

nominated architect Mr Luke Trovato - NSW registered architect 7094) has prepared a Design Verification Statement, fulfilling the requirements of s 29 of the EPA Reg and confirming that the amended DA achieves the Design principles set out in Sch 9 of SEPP Housing. This statement also sets out how the objectives of Parts 3 and 4 of the Apartment Design Guide have been achieved in the design of the final amended DA. Accordingly, I am satisfied the amended DA meets the requirements of s 147 of SEPP Housing.

37 The parties agree, and I am satisfied, that those remaining relevant matters set out at s 4.15 of the EPA Act have been taken into consideration, and that the amended DA warrants the grant of consent, subject to conditions.

38 Having considered each of the preceding jurisdictional requirements and having formed the necessary view required by s 34(3) of the LEC Act, I find it is appropriate to make the orders agreed to by the parties and now dispose of the matter.

39 The Court notes that:

- (1) Pursuant to ss 37 and 38 of the Environmental Planning and Assessment Regulation 2021 (NSW), the Applicant has amended the DA with the approval of the Respondent.
- (2) The Applicant has lodged the amended DA with the Court on 20 August 2025.

Orders

40 The Court orders that:

- (1) Leave is granted to the Applicant to amend Development Application DA 2024/1003 and rely upon the amended plans and documents referred to in Condition 1 at Annexure A.
- (2) Pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW), the Applicant is to pay the Respondent's costs thrown away as a result of amending the Development Application in the agreed sum of \$6,500 within 28 days of the date of these orders.
- (3) The appeal is upheld.
- (4) Consent is granted to Development Application DA 2024/1003 (as amended) for demolition works and construction of shop top housing development at 1-5 Rickard Road, North Narrabeen, subject to the conditions of consent at Annexure A.

M Pullinger

Acting Commissioner of the Court

Annexure A (383 KB, pdf)

Archictectural Plans (26.0 MB, pdf)

Amendments

03 October 2025 - Formatting error corrected

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