



Land and Environment Court New South Wales

Medium Neutral Citation:

**Parform Pty Ltd v Central Coast Council [2026]
NSWLEC 1162**

Hearing dates:

Conciliation conference 1 September 2025, 6 March 2026

Date of orders:

02 April 2026

Decision date:

02 April 2026

Jurisdiction:

Class 1

Before:

Dickson C

Decision:

The Court orders that:

(1) The appeal is upheld.

(2) The Applicant is to pay the Respondent's costs thrown away pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW) in the agreed sum of \$15,000.00.

(3) Development Application No. DA1283/2024, as amended, for the demolition of existing structures and construction of a five-storey mixed use development, including a level of basement parking at 43-46 The Esplanade, Ettalong Beach NSW 2257 is determined by the grant of consent subject to the conditions set out in Annexure A.

Catchwords:

DEVELOPMENT APPLICATION — demolition of existing structures and construction of a five-storey mixed use development — conciliation conference — amended development application — agreement between the parties — orders made

Legislation Cited:

Environmental Planning and Assessment Act 1979 (NSW), ss 4.5, 4.15, 4.16, 8.7

Land and Environment Court Act 1979 (NSW), s 34

Central Coast Local Environmental Plan 2022, cl 2.7, 4.3, 4.4, 5.21, 5.22, 7.1, 7.10

Environmental Planning and Assessment Regulation 2021 (NSW), ss 23, 29, 38, 75

State Environmental Planning Policy (Housing) 2021, Ch 4, ss, 144, 147, Sch 9
State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 2, ss 2.10, 2.11, 4.6
State Environmental Planning Policy (Sustainable Buildings) 2022

Cases Cited:	<i>McMillan v Taylor</i> (2023) 111 NSWLR 634; [2023] NSWCA 183
Texts Cited:	Central Coast Development Control Plan 2022
Category:	Principal judgment
Parties:	Parform Pty Ltd (First Applicant) Pinti Pty Ltd (Second Applicant) Saltnpepper Pty Ltd (Third Applicant) Oxford Steel Pty Ltd (Fourth Applicant) John Moussa (Fifth Applicant) Mark Moussa (Sixth Applicant) Central Coast Council (Respondent)
Representation:	Counsel: J Reid (Applicants) M Ball (Solicitor) (Respondent) Solicitors: Macquarie Lawyers (Applicants) Central Coast Council (Respondent)
File Number(s):	2025/129212
Publication restriction:	Nil

JUDGMENT

- COMMISSIONER:** This is an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) by the Applicants against the deemed refusal of development application DA/1283/2024 by the Respondent, Central Coast Council. The development application, as amended, seeks consent for the demolition of

existing structures and construction of a five-storey mixed-use development (shop top housing), including a level of basement parking. The development is proposed at 43-46 The Esplanade, Ettalong Beach (Lots 117, 118, 119, 120, 121, 122 in DP 10650).

- 2 The Court arranged a conciliation conference between the parties, pursuant to s 34(1) of the *Land and Environment Court Act 1979* (NSW) (LEC Act) between the parties, which was held on 1 September 2025. The conciliation conference was adjourned to provide the parties the opportunity to seek to resolve their dispute, but the conciliation was ultimately terminated on 27 November 2025 and the matter listed for hearing.
- 3 Prior to the commencement of the hearing the parties advised the Court they had reached agreement and the Court arranged a further conciliation conference under s 34(1) of the LEC Act between the parties, which was held on 6 March 2026. I presided over the further conciliation conference. The decision agreed upon is for the grant of development consent to the development application, as amended, subject to conditions of consent pursuant to s 4.16(1) of the EPA Act. This agreement meets the first condition to the exercise of power and obligation of a commissioner to dispose of the proceedings in accordance with the decision of the parties (this being the test applied by s 34(3) of the LEC Act): see *McMillan v Taylor* (2023) 111 NSWLR 634; [2023] NSWCA 183 (*McMillan*) at [51].
- 4 As the presiding Commissioner, I am satisfied that the second condition is met, that being the decision is one that the Court can make in the proper exercise of its functions, see *McMillan* at [51]. I form this state of satisfaction on the basis that:
 - (1) Pursuant to s 23 of the Environmental Planning and Assessment Regulation 2021 (NSW) the development application has been made by the owners of the land which form the site of the proposed development.
 - (2) The Central Coast Regional Planning Panel (CCRPP) is the consent authority pursuant to s 4.5(d) of the EPA Act. The CCRPP has delegated to the Respondent the power to enter into a s 34 agreement with the Applicants.
 - (3) The development application was placed on public exhibition from 11 October to 8 November 2025 in accordance with Chapter 1.2 of the Central Coast Development Control Plan 2022 (DCP 2022). The amended development application was not notified as the Respondent formed the view that the amendments did not result in additional impacts: Clause 1.2.10 of DCP 2022. The amended plans were provided to those persons who had made a submission in the first notification. The Court was also addressed by members of the public at the commencement of the conciliation. Having considered the matters raised in submissions and the amended development application documents filed in the proceedings I am satisfied that the submissions have

been considered in the determination of the development application by either amendment to the application or by the imposition of conditions of consent: s 4.15(1)(d) of the EPA Act.

- (4) Pursuant to Ch 2 of State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP RH) the site is mapped as 'Coastal Environment Area'. The provisions of s 2.10 of SEPP RH apply to land mapped in the Coastal Environment Area. Pursuant to s 2.10 of SEPP RH, development consent must not be granted unless the consent authority has considered the matters listed at s 2.10(1) and is satisfied that:
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
- (5) The parties agree, and I accept, that the proposal is designed, sited and will be managed to avoid an adverse impact on the following matters:
 - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - (b) coastal environmental values and natural coastal processes,
 - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (f) Aboriginal cultural heritage, practices and places,
 - (g) the use of the surf zone.
- (6) In reaching this satisfaction I am assisted by the Statement of Environmental Effects (SEE), the geotechnical reports, acid sulfate soil assessment and management reports, the flood study and the civil design plans that accompany the amended development application.
- (7) Further, pursuant to Ch 2 of SEPP RH the site is mapped as 'Coastal Use Area'. The provisions of s 2.11 of SEPP RH apply to land mapped in the Coastal Use Area. Pursuant to s 2.11 of SEPP RH, development consent must not be granted unless the consent authority has considered the matters listed at s 2.11(1) and is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

- (8) The parties agree, and I accept, that the proposal is designed, sited and will be managed to avoid an adverse impact on the following matters:
- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage
- (9) The requirements of Ch 2 of SEPP RH are satisfied.
- (10) Pursuant to s 4.6 of SEPP RH, a consent authority must not consent to the carrying out of development unless it has considered whether the land is contaminated. The development application is accompanied by a Preliminary Site Investigation, a Detailed Site Investigation and a Remediation Action Plan (RAP). The RAP was also the subject to peer review. The RAP concludes that once the remediation works are completed the site will be suitable for the proposed use. Compliance with the RAP is required by the annexed conditions of consent. I accept the agreement of the parties that s 4.6 of SEPP RH is satisfied.
- (11) Pursuant to s 144 of State Environmental Planning Policy (Housing) 2021 (SEPP Housing), Ch 4 applies as the development application proposes a shop top housing use. Section 147 of SEPP Housing requires consideration of the design principles contained in Sch 9 and the Apartment Design Guide (ADG). Section 29 of the Environmental Planning and Assessment Regulation 2021 (EPA Regulation) requires that residential apartment development must be accompanied by a statement prepared by a qualified designer in relation to the design principles within Sch 9 of the SEPP Housing and Parts 3 and 4 ADG. The amended development application is accompanied by a design verification

statement prepared by a registered Architect satisfying this requirement. With the assistance of the verification statement and the SEE I accept the agreement of the parties that the requirements of Chapter 4 of SEPP Housing are satisfied.

- (12) State Environmental Planning Policy (Sustainable Buildings) 2022 applies to the development application. The amended development application is accompanied by an updated BASIX certification which, along with the annexed conditions, satisfies the requirements of s 75 of the EPA Regulation.
- (13) Pursuant to the Central Coast Local Environmental Plan 2022 (LEP 2022) the site is zoned E1- Local Centre. The proposed use of the site as shop top housing and commercial premises are uses that are permissible with consent in the zone. In determining the development application, I have given consideration to the objectives of the zone.
- (14) Demolition is permitted with consent pursuant to cl 2.7 of LEP 2022.
- (15) The amended development application is compliant with the development standards for building height and floor space ratio at cl 4.3 and 4.4 of LEP 2022.
- (16) Clause 5.21 'Flood planning' of LEP 2022 applies to the site as it is located within a flood planning area. The parties agree that the site is affected by flooding as follows:
 - (a) The 1% AEP flood level is RL 4.02 AHD within the Site
 - (b) The 1% AEP flood level in Picnic Parade is RL 3.99 AHD
 - (c) The Probable Maximum Flood (PMF) level within the northern part of the site varies from RL 4.26 AHD to RL 4.27 AHD; and
 - (d) The PMF level within the southern part of the site varies from RL 4.20 AHD to RL 4.26 AHD.
- (17) The amended development application is accompanied by a Flood Study prepared by SGC Consultants which models the 1% AEP event, with an allowance for climate change. That study confirms that there is no change to flood levels to land outside the site as a result of the development. Pursuant to cl 5.21(2) of LEP 2022 development consent must not be granted to development on land within a flood planning area unless the consent authority is satisfied that:
 - (a) is compatible with the flood function and behaviour on the land, and
 - (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
 - (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
 - (d) incorporates appropriate measures to manage risk to life in the event of a flood, and

(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

- (18) Further, in determining the development application the consent authority must consider the factors listed at cl 5.21(3) of LEP 2022. The parties submit that the flood study concludes that the proposed development does not displace flood waters in such a manner as to impact on the flooding behaviour in terms of loss of flood storage, increases in velocity or risk. With the assistance of the flood study, the SEE, geotechnical reports and the stormwater engineering plans I have considered the matters and cl 5.21(3) and I accept the agreement of the parties that cl 5.21(2) is satisfied.
- (19) Clause 5.22 'Special flood considerations' applies to the site as evacuation of the site will be required in minor or major storm events. I accept the agreement of the parties that such evacuation of pedestrians and vehicles can be accommodated and in larger events, such as the PMF, and that shelter in place has been considered in the flood study. To the extent that cl 5.22 of LEP 2022 applies to the proposed development, I accept the agreement of the parties that the requirements are met.
- (20) Pursuant to the Acid Sulfate Soils Map and cl 7.1 of LEP 2022, the site contains class 3 and 5 soils. The amended development application includes an Acid Sulfate Soils Assessment (ASSA) and an Acid Sulfate Soils Management Plan (ASSMP). Further, the Applicant has undertaken a peer review of the ASSA. The parties agree, and I accept, that the results of the ASSA, supported by the peer review, is that it is unlikely acid sulfate soils are present on the site. Notwithstanding this the annexed conditions include conditions requiring the management of such soils in a manner consistent with the ASSMP if they are found during construction. I am satisfied that the requirements of cl 7.1 are met.
- (21) Pursuant to cl 7.10 'Essential Services' of LEP 2022, development consent must not be granted to a development unless the consent authority is satisfied that certain services that are essential to the development are available, or that adequate arrangements have been made to make them available when required. The existing site is serviced by the listed services. The parties agree, and I accept, that the essential services required for the development are available, or adequate arrangements have been made for them to be available when required for the development.
- (22) DCP 2022 applies to the site. The documents filed with the application detail the compliance of the proposed development with the relevant provisions of the DCP 2022. In determining the development application, I have considered the provisions of the development control plan: s 4.15(1) of the EPA Act.

5 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 decisions'. The LEC Act also requires me to

“set out in writing the terms of the decision”. (s 34(3)(b))

- 6 In making the orders to give effect to the agreement between the parties, the parties have not raised, and I am not aware of any jurisdictional impediment to the making of these orders. Further, I was not required to, and have not made, any assessment of the merits of the development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.

Notes

- 7 The Court notes that the Central Coast Council as the relevant consent authority, pursuant to s 38(1) of the Environmental Planning and Assessment Regulation 2021 (NSW), has approved the Applicant amending Development Application No. DA/1283/2024 lodged on 2 September 2024 to rely on the amended documents and plans specified below:

8 Architectural Plans prepared by ADG Architects			
Plan No.	Revision	Plan Title	Dated
A100	T	Cover Sheet	28.10.2025
A101	T	Proposed Data & Site Plan	28.10.2025
A102	T	Site Analysis and Demolition Plan	28.10.2025
A200	T	Basement Level Plan	28.10.2025
A201	T	Ground Level Plan	28.10.2025
A202	T	Level 1 Plan	28.10.2025
A203	T	Level 2 Plan	28.10.2025
A204	T	Level 3 Plan	28.10.2025
A205	T	Level 4 Plan	28.10.2025
A206	T	Roof Level Plan	28.10.2025
A300	T	Elevations – Sheet 1	28.10.2025
A301	T	Elevations – Sheet 2	28.10.2025

A302	T	Elevations – Sheet 3	28.10.2025
A400	T	Sections – Sheet 1	28.10.2025
A401	T	Sections – Sheet 2	28.10.2025
A402	T	Sections – Sheet 3	28.10.2025
A403	T	Section – Sheet 4 Roof Call Out	28.10.2025
A500	T	Perspective Views	28.10.2025
A600	T	Shadow Diagrams	28.10.2025
A701	U	Solar Access Diagrams	05.11.2025
A701a	U	Solar Access Diagrams – By Hour	05.11.2025
A701b	U	Solar Access – Sun Eye Views	05.11.2025
A702	U	Natural Ventilation Diagrams	05.11.2025
A703	T	GFA Diagrams	28.10.2025
A704	T	Height Plane Diagram	28.10.2025
A705	T	Cut & Fill Diagram	28.10.2025
A706	T	Landscape & Deep Soil Plan	28.10.2025
A800	T	Waste Diagrams – Sheet 1	28.10.2025
A801	T	Waste Diagrams – Sheet 2	28.10.2025

Civil Plans prepared by Northrop

Plan No.	Revision	Plan Title	Dated
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Geotechnical Reports

Report	Revision	Date
Preliminary Geotechnical Assessment prepared by EI Australia	-	25.06.2024
Preliminary Site Investigation prepared by EI Australia	1	19.07.2024
Acid Sulfate Soils Management Plan of EI Australia	1	19.07.2024
Acid Sulfate Soils Assessment prepared by GSNE Services	0	26.09.2025
Geotechnical Investigation Report prepared by GSNE Services	0	30.09.2025
Detailed Site Investigation prepared by GSNE Services	0	26.09.2025
Remedial Action Plan prepared by GSNE Services	1	28.11.2025
Interim Site Audit Advice (Remedial Action Plan) prepared by Phreatic Consulting	-	28.11.2025
Interim Site Audit Advice (Detailed Site Investigation) prepared by Phreatic Consulting	-	18.11.2025

C1.01	A	Cover Sheet	30.07.2024
C2.01	B	Concept Sediment & Erosion Control Plan	12.12.2025
C2.02	A	Sediment & Erosion Control Details	30.07.2024
C3.01	B	Basement Stormwater Management & Levels Plan	12.12.2025
C3.02	C	Ground Stormwater Management & Levels Plan	12.12.2025
C4.01	B	Long Sections Sheet 1	05.08.2024

Other Reports & Plans		
Description	Issue	Date

Landscape Plans prepared by Conzept Landscape Architects	A	06.08.2024
Flood Study prepared by SGC Consultants	-	01.10.2025
Flood Study Addendum prepared by SGC Consultants	-	03.10.2025
Road and Drainage Design prepared by SGC Consultants	A	01.10.2025
BCA Assessment Report prepared by Credwell	4	19.12.2025
BASIX Certificate by Credwell Energy	1758222M_02	19.12.2025
Section J Report by Credwell	6	18.12.2025
Waste Management Plan prepared by Modus Transport and Traffic Engineering	E	19.12.2025

Orders

8 The Court orders:

- (1) The appeal is upheld.
- (2) The Applicant is to pay the Respondent's costs thrown away pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW) in the agreed sum of \$15,000.00.
- (3) Development Application No. DA1283/2024, as amended, for the demolition of existing structures and construction of a five-storey mixed use development, including a level of basement parking at 43-46 The Esplanade, Ettalong Beach NSW 2257 is determined by the grant of consent subject to the conditions set out in Annexure A.

D Dickson

Commissioner of the Court

[Annexure A \(451 KB, .pdf\)](#)

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Decision last updated: 02 April 2026