



*Kingfisher Properties Pty  
Limited v Northern Beaches  
Council [2025] NSWLEC 39*

**KINGFISHER PROPERTIES PTY LIMITED V NORTHERN  
BEACHES COUNCIL [2025] NSWLEC 39**

In class 6 proceedings in the Land and Environment Court (**Court**), Kingfisher Properties Pty Ltd (**Appellant**) challenged the severity of a fine imposed in the Local Court for failing to comply with the terms of a Development Control Order (**DCO**) issued by Northern Beaches Council (**Council**) under the *Environmental Planning and Assessment Act 1979* (**EPA Act**).

Given the fine imposed by the Local Court was \$100,000.00, it does not come at a great surprise that the appeal was upheld and the fine was reduced to \$9,000.00.

However the reasoning of his Honour Chief Justice Preston (and discussion as to the validity, or otherwise, of the DCO) contains some important reminders for Councils.

The background to this matter was as follows:

- In August 2020 the Appellant constructed a carport at his residential property in Palm Beach.
- The Appellant was the owner of the property.
- The size and location of the carport was such that development consent was required under the EPA Act. No such consent was obtained and in force.

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**DISCLAIMER**

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- On 25 January 2021 Council issued the DCO.
- The DCO was an order no. 11 (Compliance Order) under schedule 5 of the EPA Act.
- A class 1 appeal was lodged by the Appellant against the DCO.
- On 11 February 2022, the Appellant and Council agreed upon terms as to the resolution of the proceedings.
- The Court (in the Class 1 appeal) upheld the appeal and substituted a different Order (being a Demolish Works Order) in place of the Compliance Order.
- The terms of the Demolish Works Order included:
  - removing the roof;
  - constructing a replacement roof;
  - submitting a survey plan; and
  - compliance with additional conditions (including the payment of a security bond and undertaking stormwater drainage works).
- A period of 120 days was provided to comply.
- Whilst the Appellant complied with the timeframes to remove the roof and install a replacement roof, it did not comply with the requirement to install guttering and the eaves were higher than required.
- On 21 April 2023 Council issued a Penalty Notice to the Appellant in the sum of \$6,000.00.
- On 16 August 2024 the Appellant was convicted and fined \$100,000.00 (following a guilty plea on the day of the hearing).
- The Court held in the Class 6 proceedings, as follows:
  1. The terms of the Compliance Order were outside the scope of the power contained in the EPA Act, on two bases. Firstly the circumstances which needed to exist to be able to issue a Compliance Order did not exist.
  2. The circumstances which need to exist to issue a Compliance Order under schedule 5 of the EPA Act relevantly include:
    - (a) a planning approval has not been complied with.
    - (b) Building has been unlawfully erected and does not comply with relevant development standards.
  3. In this matter there was no planning approval. Furthermore the development standards under the *State Environmental Planning Policy*

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*(Exempt and Complying Development Codes) 2008 (SEPP 2008)*, as they related to carports in s 2.20 did not apply. This is because such development standards only regulate the carrying out of development which is exempt development.

4. Secondly as the terms of the DCO required compliance with subdivision 10 of SEPP 2008, this was (for the reasons detailed above) also found to be beyond power.
5. The Demolish Works Order was within power (to the extent to which it required the roof of the carport to be removed) however was beyond power (to the extent to which it required a replacement roof to be constructed).
6. The requirement to pay a security bond and undertake stormwater drainage works (with accompanying certification) were matters that could not be required under a Demolish Works Order.

The Court held that the offending was at the very low range of objective seriousness, remorse had been shown, there was compliance with most terms of the DCO and that the Appellant had no prior convictions.

The fine of \$100,000.00 was set aside and instead a fine of \$9,000.00 was imposed.

This case provides an important reminder for councils to carefully consider the requirements of Schedule 5 of the EPA Act when issuing development control orders.

A Compliance Order (order no. 11) cannot be issued to require compliance with development standards under the SEPP 2008. Furthermore, when unauthorised development has been undertaken a demolish works order can be issued, however additional terms (such as requiring replacement works etc to be undertaken) may fall foul of the legislative requirements under Schedule 5 of the EPA Act.

Furthermore, it is not uncommon for councils to include additional conditions when issuing an order. Careful consideration needs to be given as to whether such "conditions" are within the scope of the power to issue that particular type of order.

**For more information about this update, please contact Tom Ward.**

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