

AUSTRALIA / JUDGMENT

AB Horizon Developments Pty Ltd v Georges River Council

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Land and Environment Court New South Wales Medium Neutral Citation: AB Horizon Developments Pty Ltd v Georges River Council [2026] NSWLEC 1097 Hearing dates: Conciliation conference held on 27 February 2026 Date of orders: 26 March 2026 Decision date: 26 March 2026 Jurisdiction: Class 1 Before: Espinosa C Decision: The Court orders:

- (1) 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 by reason of the amended plans in the amount of \$9,000 within 28 days of the date of the orders.
- (2) The appeal is upheld.
- (3) Development Application No. DA2025/0068 for Alterations and additions to the approved residential flat building pursuant to Development Consent No. DA2020/0462 granted by the Land and Environment Court on 19 July 2022, including construction of 2 additional storeys, incorporation of 176 - 178 Princes Highway, Beverley Park , various internal reconfigurations and amended façade design resulting in an eight (8) storey residential flat building containing thirty (30) apartments (including six (6) affordable units) over two (2) levels of basement parking spaces on land identified as Lot 1 in DP 798485, also known as 176 Princes Highway, Beverley Park NSW 2217 and Lot 1 in DP 126339, also known as 178 Princes Highway, Beverley Park NSW 2217 is granted development consent subject to the conditions in Annexure A. Catchwords: DEVELOPMENT APPEAL — conciliation conference — agreement between the parties — orders Legislation Cited: Environmental Planning and Assessment Act 1979 (NSW), ss 4.16, 8.7, 8.15 Land and Environment Court Act 1979 (NSW), s 34 Environmental Planning and Assessment Regulation 2021 (NSW), s 38 State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6, s 6.1 State Environmental Planning Policy (Housing) 2021, ss 16, 17, 18, 21 Georges River Local Environmental Plan 2021, cl 2.7, 4.3, 4.4, 4.6, 6.2, 6.3, 6.9 Category: Principal judgment Parties: AB Horizon Developments Pty Ltd (Applicant) Georges River Council (Respondent) Representation: Counsel: R Coffey (Applicant) D Reid (Respondent) Solicitors: Edmond Khoury Solicitors (Applicant) Georges River Council (Respondent) File Number(s): 2025/349363 Publication restriction: Nil

Judgment

COMMISSIONER: This is a Class 1 Development Appeal pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) being an appeal against the refusal of Development Application DA2025/0068 seeking consent for alterations and additions to an approved residential flat building (L&E Court approved DA2020/0462) for layout changes and addition of two storeys (Proposed Development) at 176 and 178 Princes Highway, Beverley Park NSW 2217 legally described as Lot 1 in Deposited Plan (DP) 798485 and Lot 1 in DP 126339 (the Site). The Court arranged a conciliation conference under s 34(1) of the Land and Environment Court Act 1979 (NSW) (LEC Act) between the parties, which has been held on 27 February 2026. I have presided over the conciliation conference. The parties participated in an earlier s 34 Conciliation Conference on 19 December 2025, which was adjourned to enable further amendments and ultimately was terminated. The parties agree that the Proposed Development, as amended, together with the conditions of consent, address the matters arising out of the joint reports and have resolved each of the Respondents' contentions in the Statement of Facts and Contentions (SOFAC) filed 15 October 2025. At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions. The DA was publicly notified on 25 March 2025 for 21 days. 39 submissions were received by Council, and all have been considered by the parties in reaching their agreement. 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. In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application. There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings to be the terms of Georges River Local Environmental Plan 2021 (GRLEP) and State Environmental Planning Policy (Housing) 2021 (Housing SEPP). The parties explained how the jurisdictional prerequisites have been satisfied. The Applicant is the registered owner of the Site. The Site is zoned R4 - High Density Residential under the GRLEP where development for the purposes of a residential flat building is permissible with consent. The Site fronts Princes Highway, which is zoned SP2 - Classified Road under the GRLEP. Demolition may be carried out with development consent in accordance with cl 2.7 of GRLEP. Earthworks may be carried out with development consent in accordance with cl 6.2 of the GRLEP. The Proposed Development is subject to the provisions of the Housing SEPP which provide development standards which override those in the GRLEP. The Site is subject to a maximum height of buildings (HOB) development standard of 21 m pursuant to the Height of Buildings Map referred to in cl 4.3 of GRLEP 2021. However, the Affordable Housing provisions of the Housing SEPP permits a HOB up to 27.3 m: s 18(3) Housing SEPP. The Proposed Development exceeds the HOB development standard as follows: 27.4 m in height excluding the lift core; or 28.7 m including the lift core. The

Applicant relies on, and the Council accepts, a cl 4.6 Variation Request prepared by BMA Urban filed at Tab 11 of the Class 1 Application. The Court is satisfied that the applicant's written request seeking to justify the contravention of the development standard in s 18 of the Housing SEPP has adequately addressed the matters required to be demonstrated by cl 4.6(3) of the GRLEP. The Site is subject to a maximum floor space ratio of 2:1 on the Floor Space Ratio Map referred to in cl 4.4 of the GRLEP however the Affordable Housing provisions of the Housing SEPP permits a bonus allowing a maximum allowable FSR of 2.6:1. The Proposed Development proposes a compliant FSR of 2.17:1 as depicted in Dwg A-5000 Issue S. The parties rely on condition 67 to satisfy the terms of s 21(1)(b) of the Housing SEPP requiring that for a period of at least 15 years commencing on the day the occupation certificate is issued for the development: the development will include the affordable housing component required for the development under ss 16, 17 or 18; and the affordable housing component will be managed by a registered community housing provider. The Site is located within the Georges River Catchment: s 6.1 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP). Accordingly, the terms of Ch 6 of the BC SEPP require satisfaction of a number of jurisdictional prerequisites relating to the impacts of the Proposed Development on water quality, aquatic ecology, flooding and recreation and public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation. Similarly, cl 6.3 of the GRLEP 2021 in relation to stormwater management, requires satisfaction that the development—

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and
- (b) includes, if required by the Georges River Stormwater Management Policy, on-site stormwater detention or retention to minimise stormwater runoff volumes and reduce the development's reliance on mains water, groundwater or river water, and
- (c) avoids significant adverse impacts of stormwater runoff on adjoining properties, native bushland, receiving waters and the downstream stormwater system or, if the impact cannot be reasonably avoided, minimises and mitigates the impact, and
- (d) is designed to minimise the impact on public drainage systems. I reach the requisite state of satisfaction required by Ch 6 of the BC SEPP and cl 6.3 of the GRLEP having considered the following: Stormwater Engineering Plans at Tab 27 of the Class 1 Application and listed in the Annexure A conditions of consent; Sediment and Erosion Control Plan and Details Sheet No SW35 Rev B, at Tabs 15 and 27 of the Class 1 Application and listed in the Annexure A conditions of consent; and Conditions 35 (Erosion & Sedimentation Control), 36 (On Site Detention), 37 (Stormwater System), 38 (Stormwater Systems with Basement), 39 (Protection of basement from inundation of stormwater waters) and 40 (Pump-out System Design for Stormwater Disposal). As the Proposed Development seeks alterations and additions to an already approved development for a residential flat building, I am satisfied that the essential services specified in cl 6.9 of the GRLEP are either available or that adequate arrangements have been made to make them available when required. The SOFAC confirms that the

Proposed Development was referred externally to Ausgrid which consented to the development subject to conditions relating to compliance with Ausgrid standards. I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act. I adopt the reasons given by the parties as set out in this judgment. As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision. Notations: The Court notes that the Respondent has approved, pursuant to s 38 of the Environmental Planning and Assessment Regulation 2021 (NSW), the amendment of Development Application No. DA2025/0068 in accordance with the following plans: A-0200 Site Plan Loucas Architects V 30/01/2026 A-0800 Basement 2 Floor Plan Loucas Architects V 30/01/2026 A-0900 Basement 1 Floor Plan Loucas Architects V 30/01/2026 A-1000 Ground Floor Plan Loucas Architects V 30/01/2026 A-1100 First Floor Plan Loucas Architects V 30/01/2026 A-1200 Second Floor Plan Loucas Architects V 30/01/2026 A-1300 Third Floor Plan Loucas Architects V 30/01/2026 A-1400 Fourth Floor Plan Loucas Architects V 30/01/2026 A-1500 Fifth Floor Plan Loucas Architects V 30/01/2026 A-1600 Sixth Floor Plan Loucas Architects V 30/01/2026 A-1700 Seventh Floor Plan Loucas Architects V 30/01/2026 A-1800 Communal Roof Top Loucas Architects V 30/01/2026 A-1900 Roof Plan Loucas Architects V 30/01/2026 A-2000 North-West Elevation Princes Hwy Loucas Architects V 30/01/2026 A-2100 South-West Elevation Loucas Architects V 30/01/2026 A-2200 South-East Elevation Loucas Architects V 30/01/2026 A-2300 North-East Elevation Loucas Architects V 30/01/2026

Orders:

The Court orders: 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 by reason of the amended plans in the amount of \$9,000 within 28 days of the date of the orders. The appeal is upheld. Development Application No. DA2025/0068 for Alterations and additions to the approved residential flat building pursuant to Development Consent No. DA2020/0462 granted by the Land and Environment Court on 19 July 2022, including construction of 2 additional storeys, incorporation of 176 - 178 Princes Highway, Beverley Park , various internal reconfigurations and amended façade design resulting in an eight (8) storey residential flat building containing thirty (30) apartments (including six (6) affordable units) over two (2) levels of basement parking spaces on land identified as Lot 1 in DP 798485, also known as 176 Princes Highway, Beverley Park NSW 2217 and Lot 1 in DP 126339, also known as 178 Princes Highway, Beverley Park NSW 2217 is granted development consent subject to the conditions in Annexure A. E Espinosa Commissioner of the Court

Annexure A (501 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: 26 March 2026

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Prepared on 26 October 2026 · Esheria