

AUSTRALIA / JUDGMENT

Railway 8 Pty Ltd v Georges River Council

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Land and Environment Court New South Wales Amendment notes Medium Neutral Citation: Railway 8 Pty Ltd v Georges River Council [2025] NSWLEC 1695 Hearing dates: Conciliation conference held on 18 September 2025 Date of orders: 25 September 2025 Decision date: 25 September 2025 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 costs of the Respondent that are thrown away as a result of amending the Development Application in the agreed amount of five thousand dollars (\$5,000.00) to be paid within 28 days of the date of these orders.
- (2) The appeal is upheld.
- (3) Development Application DA2023/0434 for Demolition of two dwellings and construction of a residential flat building with basement parking over two levels, and a five-storey building containing 22 apartments, tree removal and associated work, at 2-4 Vaughan Street, Blakehurst NSW 2221 is determined by the grant of consent subject to conditions contained in Annexure A. Catchwords: DEVELOPMENT APPEAL – residential flat building - conciliation conference – agreement between the parties - orders Legislation Cited: Contaminated Land Management Act 1997 (NSW) Environmental Planning and Assessment Act 1979 (NSW), ss 4.16, 4.46, 4.47, 8.7, 8.15 Land and Environment Court Act 1979 (NSW), s 34 Protection of the Environment Operations Act 1997 (NSW) Water Management Act 2000 (NSW), ss 89, 90, 91 Georges River Local Environmental Plan 2021, cl 4.3, 4.6, 5.21, 6.3 Environmental Planning and Assessment Regulation 2021 (NSW), ss 23, 27, 38 State Environmental Planning Policy (Biodiversity and Conservation) 2021, ss 6.6, 6.7, 6.8, 6.9 State Environmental Planning Policy (Housing) 2021, s 147 State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6 State Environmental Planning Policy (Transport and Infrastructure) 2021, s 2.48 Texts Cited: NSW Government, Apartment Design Guide, July 2015 Category: Principal judgment Parties: Railway 8 Pty Ltd ACN 621 893 749 (Applicant) Georges River Council (Respondent) Representation: Counsel: Dr J Smith (Applicant) J Reid (Respondent) Solicitors: Boskovitz Lawyers (Applicant) Georges River Council (Respondent) File Number(s): 2024/343928 Publication restriction: No

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 DA2023/0434 lodged on 16 October 2023 seeking consent for the demolition of existing structures and construction of a five-storey residential flat building containing 22 residential apartments, above two levels of basement which includes parking for 32 vehicles at 2 – 4 Vaughan Street, Blakehurst NSW, legally described respectively as Lots 22 and 21 in DP 15830. (the Site). The proceedings were listed for hearing on 18 and 19 September 2025 however, following the preparation of joint reports in the disciplines of town planning, arboriculture, landscape design and traffic engineering, the Applicant prepared further amended plans and documents. The amended development now seek consent for the demolition of existing structures and construction of a residential flat building comprising 7 x 1 bed, 11 x 2 bed and 4 x 3 bed units with 32 car parking spaces and 11 bicycle parking spaces (Proposed Development). During the site view at the commencement of the hearing on 18 September 2025, the parties advised the Court that they had reached an agreement in principle as to the terms of a decision in the proceedings that would be acceptable to the parties. Subject to the imposition of conditions, the parties agree that the Proposed Development warrants development consent. 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 18 September 2025. I presided over the conciliation conference. 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. 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 cl 4.6 of the applicable Georges River Local Environmental Plan GRLEP to vary a development standard. The parties explained how the jurisdictional prerequisites have been satisfied in an agreed jurisdictional note provided to the Court. The Site is owned by the Applicant: s 23, Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Regulation). The Site is zoned R4 High-Density Residential under the GRLEP. The proposed residential flat building is a permissible development, subject to consent. The Proposed Development also seeks consent for the demolition of the existing dwellings on the Site pursuant to cl 2.7 of the GRLEP. The Proposed Development falls within the meaning of 'integrated development' pursuant to s 4.46 of the EPA Act because approvals under ss 89, 90 and 91 of the Water Management Act 2000 (NSW) are likely to be required as a result of the proposal to dewater during the construction phase as set out in Construction Management Plan at para 14.10, filed

with the Class 1 Application and the Geotechnical Report at paras 4.4 and 4.5. Accordingly, as set out at para 4.21 in the Amended Statement of Facts and Contentions (ASOFAC) filed by the Respondent on 20 August 2025, and as required by s 4.47(3) of the EPA Act, the matter was referred to Water NSW by the Council and Water NSW provided a referral response on 17 November 2023 in support of the Application subject to General Terms of Approval (GTA) conditions. The agreed conditions include a requirement to comply with the GTAs. Also, at para 4.21 in the ASOFAC, the Development Application was referred externally to Ausgrid pursuant to s 2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021 because the Proposed Development is within 5m of an exposed overhead electricity power line. Ausgrid advised on 28 November 2024 by an undated letter that there were no issues with the DA subject to conditions which have been included in the conditions of consent. The Site is subject to a height of building (HOB) development standard pursuant to cl 4.3 of the GRLEP which is a maximum HOB development standard of 15m. The Proposed Development contravenes that HOB development standard by 1.65m obtaining a maximum height of 16.65 m and the Applicant relies on a written request prepared by BMA Urban dated 18 September 2025 (Written Request) seeking to justify the contravention of the HOB development standards in cl 4.3 of the GRLEP pursuant to cl 4.6 of the GRLEP. The parties' town planning experts agree in the Town Planning Joint Expert Report at page 6, and the Court is satisfied that the Written Request adequately addresses the matters required to be demonstrated by cl 4.6(3) of the GRLEP and demonstrates that there are a number of site-specific environmental planning grounds that adequately justify the contravention of the HOB development standard in cl 4.3 of the GRLEP. Pursuant to cl 4.4(2) of the GRLEP, the maximum Floor Space Ratio (FSR) for the Site is 1.5:1 (1,992.6m² GFA). The Proposed Development has a complying FSR of 1.48:1 (1,966.2 GFA). For the purposes of cl 5.21 of the GLEP, the Class 1 Application includes a Flood Impacts Assessment Report dated 12 April 2023 prepared by EI Australia (Flood Impact Report). In this regard, the parties explain that although only a small percentage of the Site is affected by the 1% AEP flood, the Applicant has undertaken DRAINS and TUFLOW modelling for the Proposed Development the results of which demonstrate that the 1% AEP flood hazard is classified as: "low" according to the Floodplain Development Manual (2005); and "H1" which is generally safe for people, cars and buildings. At section 6 page 25 of the Flood Impact Report, the duration of the overland flooding is otherwise generally short, the residents can shelter in place, the flood depths across the site are shallow and the Site is also outside the overland flow-path affection. Accordingly, the Court is satisfied of the relevant flood planning matters pursuant to cl 5.21 of the GRLEP. The Site is identified as Class 5 on the Council's Acid Sulfate Soils (ASS) Planning Map. EI Australia, as part of the Preliminary Site Investigation (PSI) dated 16 May 2023 concludes that the potential for ASS to be present on the Site was low. Nevertheless, in circumstances where greater than 1 tonne of soil is expected to be excavated, and groundwater will occur within the depth of the proposed basement, an acid sulfate soils management plan has been prepared by EI Australia dated 17 September 2025 to satisfy the terms of cl 6.1(3) of the GRLEP Clause 6.3(2) of the GRLEP relates to stormwater management and contains a number of provisions to achieve the objective of minimising the impacts of urban stormwater on the Site and on adjoining properties, native bushland and receiving waters. The amended set of stormwater plans dated 12 July 2025 and the

MUSIC model and letter dated 24 April 2025 prepared by EI Australia provide for an on-site stormwater detention consistent with Georges River Stormwater Management Policy and is otherwise designed to minimise the impact on public drainage systems. The Proposed Development also provides sufficient landscaped area to maximise the use of water permeable surfaces on the land. As required by cl 6.9 of the GRLEP, the Court is satisfied that the relevant essential services are available for the Proposed Development because the Site contains two existing dwelling houses and is in a long established urban area. It has an existing supply of water, electricity and sewerage. The Applicant submits that stormwater management can be undertaken on the Site and that parking access by way of suitable vehicular access can be provided. In circumstances where the Proposed Development is located in the R4 Zone and involves a building with 3 or more storeys or has a height of 12 metres or greater above ground level, cl 6.10 of the GRLEP requires the Court to consider that the development exhibits design excellence. The Applicant relies on the Statement of Environmental Effects filed with the Class 1 and the Design Verification Statement. Further, the purposes of cl 6.10(5) the parties explain as follows: The proposed building design and materials complement the existing developments in the streetscape, providing a well separated building mass, of muted tones and colours, that is supported by functional landscaped areas for communal open space. The proposed building is well set back in the streetscape, both in horizontal and vertical dimension, with front and rear setbacks sufficiently landscaped. The proposed design of the building does not cause adverse impact on views, public domain or landmarks. The proposed design has considered and adopted the relevant sustainable design principles, as described in the Apartment Design Guideline (ADG). Having considered the explanation above, the information provided in the Statement of Environmental Effects filed with the Class 1 and the Design Verification Statement, I consider that the Proposed Development exhibits design excellence in accordance with cl 6.10 of the GRLEP. For the purpose of consideration whether the Site is contaminated as required by s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP), a Preliminary Site Investigation (PSI) was undertaken by EI Australia dated 16 May 2023 and filed with the Class 1 Application. The PSI concludes that a review of the available history for the Site gives no indication that the land associated with the development is contaminated. The PSI also notes that the Site has no notices pursuant to the Contaminated Land Management Act 1997 (NSW) or Protection of the Environment Operations Act 1997 (NSW) and otherwise had no other indicators of contamination and the associated risk was considered to be “very low”. Accordingly, the Court is satisfied, in accordance with s 4.6 of the Resilience and Hazard SEPP, that the land is suitable for the Proposed Development. The Pursuant to s 27 of the EPA Regulation, BASIX Certificate 1353259M_02 was submitted with the development application and filed with the Class 1 Application at Tab 25. A condition of development consent has been imposed requiring the BASIX certificate to be updated as required by the amended plans. The State Environmental Planning (Housing) 2021 (Housing SEPP) applies to the Proposed Development and s 147(1) provides as follows:

- (1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—
- (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,
 - (b) the Apartment Design Guide,
 - (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel. The parties explain that adequate regard to both the design quality principles and the relevant design criteria has been given because although the Georges River Local Government Area does not have a design review panel, the following documents were prepared and filed with the Class 1 Application: a detailed ADG compliance table is provided in Appendix A to the Addendum Statement of Environmental Effects dated April 2024 which lists each of the relevant design principles for the Proposed Development and provides commentary on how each are satisfied; a further assessment against the objectives of the ADG was completed by PBD Architects; and a Design Verification Statement (DVS) had been prepared by Registered Architect Paul Bujevic (No. 7768) dated 27 April 2023. The town planning Joint Expert Report includes at a (DVS) dated 5 September 2025 and assessment against the requirements and objectives of the ADG dated 4 September 2025. A further updated DVS dated 18 September 2025 prepared by Mr Bujevic has also been provided for the final plans for which development consent is sought. The Site is located within the Georges River Catchment but outside the Foreshores and Waterways Area in accordance with the maps associated with the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP). Accordingly, there are jurisdictional prerequisites to be satisfied that relate to the water catchment contained in ss 6.6(2), 6.7(2), 6.8(2) and 6.9(2) of the Biodiversity and Conservation SEPP relating to water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management. To satisfy these jurisdictional prerequisites, the Applicant relies on the amended set of stormwater plans dated 12 July 2025 and the MUSIC model and letter dated 24 April 2025 prepared by EI Australia. Consistent with this material the Court is satisfied that the stormwater plans which includes provisions for an appropriately sized onsite detention system, water treatment system and rainwater harvest system that the proposed development ensure that there will be no impact on water flow and a beneficial effect on the quality or water entering any natural waterbodies due, in part, to the existing lack of filtration or any other treatment mechanisms on the Site in comparison to those proposed by the development. The Proposed Development also keeps to a minimum any direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation, will not have a direct, indirect or cumulative adverse impact on aquatic reserves or wetlands and otherwise minimises the erosion of land or the creation of sedimentation impacts. Further, the Site is not located within immediate proximity of a natural waterbody and is therefore unlikely to impact on

periodic flooding that benefits wetlands and other riverine ecosystems or otherwise affect recreational land use or public access to and from foreshores or natural waterbodies. 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: The Respondent, Georges River Council, as the relevant consent authority, has agreed under section 38(1) of the Environmental Planning and Assessment Regulation 2021 (NSW), to the Applicant amending Development Application DA2023/0492 in accordance with the documents listed below: Approved Plans Description Reference No. Date Rev Prepared by Architectural Plans Project Summary DA001 17/9/25 M PBD Architects Site Plan DA010 15/9/25 L PBD Architects Basement 2 Plan DA100 17/9/25 M PBD Architects Basement 1 Plan DA101 17/9/25 M PBD Architects Ground Floor Plan DA102 17/9/25 M PBD Architects Level 1 Plan DA103 17/9/25 M PBD Architects Typical Level 2-3 Plan DA104 17/9/25 M PBD Architects Level 4 Plan DA105 17/9/25 M PBD Architects Roof Plan DA106 17/9/25 M PBD Architects Section A DA200 17/9/25 M PBD Architects Section B DA201 17/9/25 M PBD Architects Section C & D DA202 17/9/25 M PBD Architects Section E DA203 17/9/25 M PBD Architects Section F DA204 17/9/25 M PBD Architects Driveway and Ramp Section DA210 17/9/25 M PBD Architects Detailed Section DA220 25/07/25 H PBD Architects North and South Elevations DA300 17/9/25 M PBD Architects East and West Elevations DA301 17/9/25 M PBD Architects Materials and Finishes Schedule DA400 17/07/25 H PBD Architects GFA Diagram DA560 17/9/25 M PBD Architects Cross Ventilation Diagram DA510 17/9/25 M PBD Architects Private & Communal Open Space Diagram DA520 15/9/25 L PBD Architects Land scape and Deep Soil Calculation Diagram DA530 15/9/25 L PBD Architects Landscape Plans Hardscape Plan LPS3423-123/1 17.09.25 B Conzept Deep Soil Calculation LPS3423-123/2 15.09.25 A Conzept Landscape Plan GF LPS3423-123/3 17.09.25 B Conzept Landscape Plan – Typical Floor L1-L3 LPS3423-123/4 15.09.25 A Conzept Landscape Plan – L4 LPS3423-123/5 15.09.25 B Conzept Soil Depth Plan – L4 LPS3423-123/6 15.09.25 A Conzept Planting Palettes LPS3423-123/7 15.09.25 A Conzept Details 1 LPS3423-123/8 15.09.25 A Conzept Details 2 LPS3423-123/9 15.09.25 A Conzept Specifications LPS3423-123/10 15.09.25 B Conzept 3 Metre Deep Soil Setback Appendix 17.09.25 B Conzept Documents Relied Upon BASIX Certificate 1353259M_04 18 Sep 2025 04 ESD Synergy Pty Ltd Clause 4.6 Variation Request 18 Sep 2025 BMA Urban Construction Methodologies- Demolition and Subgrade construction 12 Sep 2025 1 The Collective Project Tree Management and Protection Plan H416 12 Sep 2025 A CPS Acid Sulfate Soil Management Plan E25724.E14 17 Sep 2025 0 EI Australia Design Verification Statement 18 Sep 2025 PBD Architects The documents listed at [33] were filed with the Court on 18 September 2025.

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 costs of the Respondent that are thrown away as a result of amending the Development Application in the agreed amount of five thousand dollars (\$5,000.00) to be paid within 28 days of the date of these orders. The appeal is upheld. Development Application DA2023/0434 for Demolition of two dwellings and construction of a residential flat building with basement parking over two levels, and a five-storey building containing 22 apartments, tree removal and associated work, at 2-4 Vaughan Street, Blakehurst NSW 2221 is determined by the grant of consent subject to conditions contained in Annexure A. E Espinosa Commissioner of the Court Annexure A (669 KB, pdf)

Amendments 29 September 2025 - Pursuant to r 36.17 of the Uniform Civil Procedure Rules 2005 (the “slip” rule), Annexure A to the judgment has been amended due to minor typographical error. 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 2025

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Prepared on 26 October 2026 · Esheria