



Land and Environment Court New South Wales

Medium Neutral Citation:

**Madrid Capital Group Pty Ltd v Liverpool City Council
[2026] NSWLEC 1011**

Hearing dates:

Conciliation conference on 5 December 2025, further
submissions 12 December 2025.

Date of orders:

09 January 2026

Decision date:

09 January 2026

Jurisdiction:

Class 1

Before:

Porter C

Decision:

The Court orders that:

- (1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application, pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW), as agreed or assessed.
- (2) The appeal is upheld.
- (3) Development Application No. DA-596/2024, as amended, for the construction of a 16 storey residential flat building containing 68 apartments (including 26 infill affordable housing units), with basement parking, ancillary civil works, and landscaping work at 36-40 Speed Street, Liverpool is determined by the grant of consent subject to the conditions at Annexure A.

Catchwords:

DEVELOPMENT APPEAL — residential flat building —
conciliation conference — agreement between the parties
— orders

Legislation Cited:

Environmental Planning and Assessment Act 1979 (NSW),
ss 4.15, 8.7, 8.15

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

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

Liverpool Local Environmental Plan 2008, cll 2.3, 4.3, 4.4, 7.31
State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6, ss 6.6-6.11
State Environmental Planning Policy (Housing) 2021, Ch 2, 4, ss 144, 147, Sch 7A, s 8(2A), Sch 9
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6
State Environmental Planning Policy (Sustainable Buildings) 2021, s 2.1
State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.98, 2.99, 2.100

Cases Cited:	<i>Al Maha Pty Ltd v Huajun Investments Pty Ltd</i> (2018) 233 LGERA 170; [2018] NSWCA 245 <i>McMillan v Taylor</i> (2023) 111 NSWLR 634; [2023] NSWCA 183
Category:	Principal judgment
Parties:	Madrid Capital Group Pty Ltd (Applicant) Liverpool City Council (Respondent)
Representation:	Counsel: P Sek (Solicitor) (Applicant) J Garcia (Solicitor) (Respondent) Solicitors: Mills Oakley (Applicant) Liverpool City Council (Respondent)
File Number(s):	2025/155577
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 deemed refusal of DA-596/2024. The DA, as amended, seeks consent for the construction of a 16-storey residential flat building containing 68 apartments (including 26 infill affordable housing units), comprising of 13 x 1-bedroom units, 22 x 2-

bedroom units, 30 x 3-bedroom units, and 3 x 4-bedroom units, roof terrace, with basement parking for 64 vehicles, ancillary civil works, and landscaping work at 36-40 Speed Street, Liverpool NSW (Lots 1 and 2 in Deposited Plan 83255) (site).

2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (NSW) (LEC Act) between the parties on 5 December 2025. I presided over the conciliation conference.

3 The Respondent, as the relevant consent authority, has agreed under s 38 of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Reg) to the Applicant amending DA-596/2024 in accordance with the documents listed in Annexure B.

4 As part of the conciliation conference process, 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 for the amended application and granting development consent to the amended DA subject to conditions of consent.

Jurisdictional Prerequisites

5 As part of the s 34 agreement, the parties have submitted a jurisdictional statement setting out how the proposal has satisfied the jurisdictional requirements and other matters.

6 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.

7 In considering if the agreement is a decision that could be made by the Court, the obligation is limited to being satisfied that there 'are no jurisdictional constraints on the power of the Court which would preclude an order of the kind reached in the agreement' and not an evaluative decision: *McMillan v Taylor* (2023) 111 NSWLR 634; [2023] NSWCA 183 at [60] to [65].

8 I have carried out the required jurisdictional check: *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 at [202]. For the reasons set out below, 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.

Owners consent

9 Owner's consent accompanied the DA as required by s 23 of the EPA Reg. The Applicant is the registered proprietor of the site.

Community notification and objections

- 10 The Respondent notified the DA between 23 December 2024 and 28 January 2025. One submission was received.
- 11 As the parties have reached agreement, the Court is not able to consider the merits of the DA. The parties have advised the Court that they considered the concerns raised in the written objection.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- 12 Chapter 6 applies as the site is located in the Georges River Catchment. The amended DA is accompanied by the following information addressing Ch 6:
- (1) Stormwater Operation and Maintenance Plan prepared by Wehbe Consulting dated 30 May 2024 (Stormwater Report).
 - (2) Stormwater Plans, Civil Works plans and Erosion and Sediment Control plans, all prepared by Wehbe Consulting with various dates (Stormwater and Civil Plans).
 - (3) DRAINS model.
 - (4) Statement of Environmental Effects dated June 2024 and updated Statement of Environmental Effects, both prepared by Mecone (SEE's)
- 13 I accept the parties' agreement on the basis of the above information and detailed in the jurisdictional statement, that ss 6.6 – 6.11 have been satisfied.

State Environmental Planning Policy (Housing) 2021

- 14 The proposal seeks to provide in-fill affordable housing pursuant to Ch 2. I accept the parties' agreement that all the development standards and non-discretionary development standards are all complied with as set out in the SEE's.
- 15 Chapter 4 of the Housing SEPP applies to the amended DA in accordance with Sch 7A, s 8(2A) and s 144. Section 147 requires consideration of the design principles contained in Sch 9 and the Apartment Design Guide (ADG).
- 16 Relevantly, s 29 of the EPA Reg 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 Housing SEPP and Parts 3 and 4 ADG. The parties agree and I accept that the amended DA meets the provisions of the Housing SEPP on the basis of the Design Verification Statement completed by the nominated qualified designer Victor Schneider (registered architect number 11157).

State Environmental Planning Policy (Resilience and Hazards) 2021

- 17 Section 4.6 of SEPP RH applies to the site. The amended DA is accompanied by the following reports, which confirm that the site can be made suitable for the proposed use:
- Preliminary Site Investigation prepared by Geotechnique Pty Ltd, dated 10 April 2024.
 - Further Site Investigation and Remediation Action Plan, prepared by Geotechnique Pty Ltd, dated 12 July 2024.
- 18 The parties agree and I accept, that the provisions of s 4.6 of SEPP RH have been satisfied.

State Environmental Planning Policy (Sustainable Buildings) 2021

- 19 State Environmental Planning Policy (Sustainable Buildings) 2021 applies to the proposed development. The amended DA is accompanied by an amended BASIX Certificate. I accept the parties' agreement that the provisions of SEPP BASIX have been met, including s 2.1(5) embodied emissions.

State Environmental Planning Policy (Transport and Infrastructure) 2021

- 20 Due to the site's proximity to a rail corridor, ss 2.98, 2.99 and 2.100 apply. I accept the parties' agreement that the provisions have been satisfied on the basis of:
- (1) Concurrence from Sydney Trains has been granted and all conditions have been included in Annexure A.
 - (2) The Acoustic Report prepared by PKA Acoustic Consulting dated 4 June 2024 demonstrates that the development can comply with the acoustic levels subject to mitigation measures, which have been included in Annexure A.

Liverpool Local Environmental Plan 2008

- 21 The subject site is zoned R4 High Density Residential and the proposal for a residential flat building is permissible with consent. Pursuant to cl 2.3, I accept that regard has been had to the objectives of the zone.
- 22 Clause 4.3 height permits a maximum building height of 45m. Pursuant to the Housing SEPP, the maximum height is 58.5m. The proposal complies, at 53.2m.
- 23 Clause 4.4 floor space ratio (FSR) permits a maximum FSR of 2.88:1. Pursuant to the Housing SEPP, the maximum is 3.78:1. The proposal complies, at 3.77:1.
- 24 Clause 7.31 earthworks applies. The parties' set out their consideration of the provisions, supported by three Geotechnical Reports prepared by Geotechnique Pty Ltd with various dates.

Heads of consideration

- 25 On the basis of the material accompanying the Class 1 appeal and the jurisdictional statement, I accept that the relevant matters for consideration pursuant to s 4.15(1) of the EPA Act have been adequately considered.

Conclusion

- 26 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.
- 27 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.
- 28 I have considered the jurisdictional prerequisites and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.

Orders

- 29 The Court orders that:
- (1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application, pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW), as agreed or assessed.
 - (2) The appeal is upheld.
 - (3) Development Application No. DA-596/2024, as amended, for the construction of a 16 storey residential flat building containing 68 apartments (including 26 infill affordable housing units), with basement parking, ancillary civil works, and landscaping work at 36-40 Speed Street, Liverpool is determined by the grant of consent subject to the conditions at Annexure A.

S Porter

Commissioner of the Court

[Annexure A.964 KB.pdf](#)

[Annexure B.207 KB.pdf](#)

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