



## COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

### SYDNEY EASTERN CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSEC-356 – DA/437/2021/A
<b>PROPOSAL</b>	Section 4.55(2) Modification to the approved development to remove deferred commencement condition and amend any further conditions referencing the Noise Masterplan, and minor amendments to Basement Level 01.
<b>ADDRESS</b>	Lot 1 DP 872553 – 212 Arden St, Coogee NSW 2034 Lot A DP 437308 – 227-233 Coogee Bay Rd, Coogee NSW 2034 Lot B DP 437308 – 5-7 Vicar St, Coogee NSW 2034 Lot A DP 337724 – 15A Vicar St, Coogee NSW 2034
<b>APPLICANT</b>	Simmatown Pty Ltd
<b>OWNER</b>	Simmatown Pty Ltd and Cheung Properties Pty Ltd
<b>MOD LODGEMENT DATE</b>	19 December 2024
<b>ORIGINAL DA DETERMINATION DATE</b>	03 May 2024
<b>APPLICATION TYPE</b>	Section 4.55(2) Modification Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 2 Schedule 6 of <i>SEPP (Planning Systems) 2021</i> : General development over \$30 million.
<b>CIV</b>	\$111,710,018.00
<b>CLAUSE 4.6 REQUESTS</b>	N/A
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (Planning Systems) 2021</i>.</li> <li>• <i>State Environmental Planning Policy (Housing) 2021</i>.</li> <li>• <i>Randwick Local Environmental Plan 2012</i>.</li> <li>• <i>Randwick Development Control Plan 2013</i>.</li> </ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS ISSUES SUBMISSIONS KEY IN</b>	<p>Total submissions (in opposition): 28</p> <ul style="list-style-type: none"> <li>• Noise impacts and concerns regarding deletion of Noise Masterplan condition</li> <li>• General objection to redevelopment of the site</li> <li>• Building bulk, scale, and height</li> <li>• Pedestrian and traffic safety concerns</li> <li>• Concerns regarding alcohol consumption and smoke emissions</li> <li>• Loss of low income housing</li> </ul>

	<ul style="list-style-type: none"> <li>Tree removal concerns</li> </ul>
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<ul style="list-style-type: none"> <li>Statement of Environmental Effects for Section 4.55(2) Modification (December 2024)</li> <li>DA099 Basement Level 01 Plan, Rev. 17 (16/12/2024)</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	N/A
<b>RECOMMENDATION</b>	Refusal
<b>DRAFT CONDITIONS TO APPLICANT</b>	N/A
<b>SCHEDULED MEETING DATE</b>	27 March 2025
<b>PLAN VERSION</b>	Revision 17 (dated 16/12/2024)
<b>PREPARED BY</b>	Julia Warren
<b>DATE OF REPORT</b>	5 March 2025

## EXECUTIVE SUMMARY

The modification application has been lodged pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and seeks consent for amendments to a consent granted under DA/437/2021 approved by the Sydney Eastern City Planning Panel ('the Panel') on 03 May 2024. This consent approved the following development at 212 Arden Street, 227-233 Coogee Bay Road, 5-7 & 15A Vicar Street, Coogee ('the site'):

*"Demolition of buildings, works to the Coogee Bay Hotel, including refurbishment to provide for 18 hotel rooms, a new 3 storey building to the southern side of the beer garden with 13 new hotel rooms, construction of a 5/6 storey shop top housing comprising 58 dwellings, 11 retail premises, internal laneway from Coogee Bay Road, basement parking for 159 spaces, subdivision, landscaping and associated works."*

The modification application includes the relevant information required by Clause 100 of the *Environmental Planning and Assessment Regulation 2021* ('EP&A Regulation').

The application is referred to the Panel as the development is 'regionally significant development', pursuant to Section 2.19(1) and Clause 2 of Schedule 6 *State Environmental Planning Policy (Planning Systems) 2021* as it comprises development that has an estimated development cost of more than \$30 million.

The proposed modification satisfies the criteria to be considered by the Panel in accordance with the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents*.

The proposed modification seeks to amend the approved development as follows:

- Amend the cover page of the consent to delete reference to the applicant (Cotton Developments).

- Delete the deferred commencement condition (Condition A1) relating to preparation and implementation of a Noise Masterplan.
- Amend Conditions 26, 32, 33, 127, 129, 130, 144, 145, 146, 148, and 181 relating to acoustic management. The changes seek to replace any reference to 'Noise Masterplan' with 'relevant noise criteria'.
- Minor internal reconfigurations at Basement Level 01 including relocation of door to fire pump room, reconfiguration of workshop and keg room, and reallocation of residential storage.

The application was placed on public exhibition from 13 January 2025 until 11 February 2025, with 28 submissions received. These submissions raised issues relating to acoustic impacts, as well as issues relating to the approved development as a whole. The application was also referred to Council's Senior Environmental Health Officer, who raised objection to the proposed modifications. These issues are considered further in this report.

The key issues associated with the proposed modification relate to acoustic impacts and the requirement for a Noise Masterplan. The proposed deletion of the deferred commencement condition is not supported.

The originally submitted acoustic report and its subsequent addendum, provided during the assessment of the approved development, were deemed inadequate. The applicant did not submit any acoustic 3D modelling data, despite ongoing requests from Council and the Panel.

The deferred commencement condition was imposed to ensure that comprehensive noise mitigation measures are in place to protect the amenity of surrounding residential areas, especially given the mixed-use nature of the site, which includes hotel, pub, retail, and residential components. The requirement for a Noise Masterplan is essential to effectively address and manage potential noise impacts associated with the development.

The subject modification application is not supported by any additional acoustic documentation or data. The proposed deletion of the deferred commencement condition would result in insufficient noise mitigation measures and would compromise the quality of life for noise-sensitive receivers, both within and outside the development.

The proposed modification would result in unreasonable adverse impacts upon the residential amenity of surrounding properties. In view of the above and assessment of the relevant matters for consideration under Section 4.15(1) and 4.56 of the EP&A Act, it is considered that the proposed modification cannot be supported and is recommended for refusal.

It is noted that the applicant commenced a Class 1 appeal against the deemed refusal of the modification application with the Land and Environment Court (LEC) on 03 February 2025.

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## 1. THE SITE AND LOCALITY

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### 1.1 The Site

The site is located on the corner of Arden St, Coogee Bay Rd, and Vicar St, Coogee, and consists of the following properties (refer **Figures 1-2**):

- 212 Arden St (Lot 1 DP 872553) – comprising the three-storey Coogee Bay Hotel on the corner of Arden St and Coogee Bay Rd, 2 x two-storey interwar buildings with ground floor retail including the entrance to the hotel's sports bar and gaming room, and a six-storey heritage-listed hotel fronting Vicar St.

- 227-233 Coogee Bay Rd (Lot A DP 437308) – comprising 2 x two-storey Federation shop front buildings and 1 x three-storey interwar building.
- 5-7 Vicar St (Lot B DP 437308) – comprising a two-storey residential flat building.
- 15A Vicar St (Lot A DP 337724) – comprising a three-storey residential flat building.

The site is located at the eastern end of Coogee Bay Rd and is directly opposite the public foreshore area of Coogee Beach. The site has an overall area of 8,501m<sup>2</sup>, with a frontage to Arden St of approximately 80m; a frontage to Coogee Bay Rd of approximately 100m; and a frontage to Vicar St of approximately 88m. The site currently has vehicular access from both Arden St and Vicar St, along the southern boundary. There is considerable cross fall from the south-west corner to the north-east corner of 7.79m. The Coogee Bay Hotel is a local heritage item identified under RLEP 2012.



**Figure 1:** Locality plan (*Source: Near Map*)

## 1.2 The Locality

The site is located within the E1 Local Centre zone, that extends north-south along Arden St and to the west along Coogee Bay Rd. This E1 zone comprises a mix of commercial and residential (shop top housing) development. Located to the west and south-west of the site is residential zoned land (R3 Medium Density).

The land uses along Arden St include the ten (10) storey Crowne Plaza development at the corner of Carr St. Development then steps down in scale to the north along Arden St, with two (2) to five (5) storey hotel and flat building developments. This height comes down to three (3) storeys at the Coogee Bay Hotel and four (4) storeys further north at Alfreda St.

Vicar St comprises a mix of commercial and shop top housing development, single dwellings, and older residential flat buildings, as well as the six (6) storey Coogee Bay Boutique Hotel. At the north-western corner of Vicar St is a three (3) storey mixed use building which has the Coogee Post Office at ground floor level.

The site has good access to public transport in the form of bus services which operate along Coogee Bay Rd and Arden St. The commercial centre of Coogee provides for a wide range of services including restaurants/cafes, retail stores, local supermarkets, and health services.





The site along Arden St (eastern elevation) showing driveway access.



The site along Arden St (eastern elevation) looking towards the north-west.



The Coogee Bay Hotel (on left) at the corner of Arden St and Coogee Bay Rd.



The northern elevation of the block along Coogee Bay Rd, between Arden St and Vicar St.



The corner of Coogee Bay Rd and Vicar St (site is on left).



The western elevation of the site along Vicar St.



The Boutique Hotel along Arden St.



The southern end of the site along Vicar St, showing the second driveway access.

**Figure 2:** Photographs of the site and surrounds (Source: GAT & Associates)

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## 2. THE PROPOSAL AND BACKGROUND

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### 2.1 Details of Current Approval

DA/437/2021 was approved by the Panel on 03 May 2024 for the following development:

*“Demolition of buildings, works to the Coogee Bay Hotel, including refurbishment to provide for 18 hotel rooms, a new 3 storey building to the southern side of the beer garden with 13 new hotel rooms, construction of a 5/6 storey shop top housing comprising 58 dwellings, 11 retail premises, internal laneway from Coogee Bay Road, basement parking for 159 spaces, subdivision, landscaping and associated works.”*

The consent was subject to a deferred commencement condition, which reads as follows:

#### **“COOGEE BAY HOTEL NOISE MASTERPLAN (Noise Masterplan)**

- A1. A Noise Masterplan must be developed and implemented for the proposed development to effectively mitigate and manage noise associated with the development and to ensure an appropriate level of amenity for residents.

*The Noise Masterplan must be in accordance with the following requirements and relevant noise conditions specified in this consent and must be submitted and approved by Council’s Director of City Planning prior to the activation of this consent.*

- a) *The Noise Masterplan shall be prepared by a suitably qualified Acoustic Consultant and shall include full details of the acoustic assessment, measurements and calculations, including 3D modelling.  
Following the engagement of a suitably qualified acoustic consultant Council’s Director City Planning (or a Council delegate) can provide additional guidance on the assessment methodology for the Noise Masterplan.*
- b) *The Noise Masterplan shall set the parameters for all development of the site in terms of the building compliance and operation noise (excluding those matters which are regulated by the Liquor Act 2007).*
- c) *All future land uses within the site will be required to comply with the Noise Masterplan.*
- d) *Once approved, the Noise Masterplan will form part of this consent, subject to approved variations by Council (in writing).*
- e) *The operational outcomes of the Noise Masterplan shall be incorporated into the comprehensive Plan of Management as required under Condition 130.*
- f) *The assessment shall consider and address the noise sources identified below and their impacts on relevant residential receivers:*
  - *Noise emissions from the function/wine bar and pre-function rooms.*
  - *Noise emissions from each tenancy in Selina’s Lane (Eat Street).*
  - *Noise emissions from the Level 1 terrace and the outdoor dining area.*
  - *All new and existing mechanical plant noise sources such as HVAC units, and exhaust fans serving the kitchens and car park.*
  - *Noise produced by heavy vehicles, motorcycles and cars with loud exhausts in the basement carpark.*
  - *Structure-borne noise produced in the gymnasium on Level 1 by the dropping of weights and the use of weight-based equipment.*

- g) *The Noise Masterplan must be prepared in accordance with the following policies and procedures:*
- *NSW EPA Noise Policy for Industry 2017 (NPfI). Note the LAeq 15 min amenity level shall be calculated as 2 dB below the LAeq period amenity level.*
  - *The Association of Australasian Acoustical Consultants (AAAC) Licensed Premises Guideline V3.0*
  - *NSW Environmental Protection Authority Approved methods for the measurement and analysis of environmental noise in NSW 2022*
  - *Australian Standard (AS 1055:2018) Acoustics – Description and measurement of environmental noise*
- h) *The noise modelling shall show that the design and construction of the building will ensure that the following internal noise levels will be met:*
- 1) *The Coogee Bay Hotel building, apartments, commercial premises and associated structures shall be constructed so that the cumulative noise from the development will meet the following requirements:*
- i. *Residential apartments within the development shall be constructed so that, when windows are closed, the repeatable LA10-1 minute noise from intermittent or fluctuating noise sources inside habitable rooms does not exceed:*
    - *Between 7:00 am and 12:00 midnight, the internal background noise level in any octave band centre frequency (31.5Hz – 8kHz inclusive).*
    - *Between 12:00 midnight and 7:00 am, a level that is 10 dB below the internal background noise level in any octave band centre frequency (31.5Hz – 8kHz inclusive).*
  - ii. *The level LA1 Fast-15 min of structure-borne noise transmitted from the gymnasium on Level 1 to any apartment shall not exceed the LA90 background noise in any room.*
- i) *In addition to point (h) above, residential apartments within the development shall be constructed so steady noise sources such as mechanical plant and traffic inside habitable rooms does not exceed:*
- i. *In naturally ventilated spaces – the repeatable maximum LAeq (1 hour) does not exceed:*
    - *35 dB(A) between 10.00pm and 7.00am and 8 am Sunday in sleeping areas when windows are closed,*
    - *40 dB(A) in sleeping areas when windows are open (24 hours),*
    - *40 dB(A) in living areas when windows are closed (24 hours),*
    - *45 dB(A) in living areas when windows are open (24 hours).*
  - ii. *Where permitted, in mechanically ventilated spaces – the repeatable maximum LAeq (1 hour) when the mechanical ventilation system is operating, and doors and windows are closed does not exceed:*
    - *38 dBA in sleeping areas between 10.00pm and 7.00am,*
    - *42 dBA in sleeping areas between 7.00am and 10.00pm,*
    - *45 dBA in living areas (24 hours).*
- j) *All recommendations and requirements included in the approved Noise Masterplan, shall be included in the relevant Construction Certificate for the development.*

**NOTES:**

- i. *A suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustical Consultants at the grade of member.*
- ii. *Calculations of the outside-to-inside reduction of noise level from external sources through an open window in a residential room shall be made from first principles and not use the common assumption of a 10dB attenuation of noise level.*
- iii. *To ensure that noise levels in the as-built residences will not exceed the noise criteria, all calculations shall include a safety margin of 5dB.*
- iv. *To ensure that low frequency room modes in the residential apartments do not result in excessive internal noise levels from music with strong bass content, room modes shall be assumed to increase the level of low- frequency sound in the 63Hz and 125Hz bands by 5dB.*

***Evidence required to satisfy the above conditions must be submitted to Council within 12 months of the date of this consent.”***

## 2.2 The Proposal

The proposal seeks to modify the approved development in the following manner:

- Amend the cover page of the consent to delete reference to the applicant (Cotton Developments) and replace with the following wording:

*“Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.”*

- Delete deferred commencement condition (Condition A1) relating to preparation and implementation of a Noise Masterplan.
- Amend conditions relating to acoustic management, as outlined in red text in **Table 1**.

**Table 1: Proposed Condition Amendments**

Condition	
26	<p><b>Maximum number of patrons</b></p> <p>The designated patron capacity for each area/tenancy and referenced control measure shall be submitted to and approved by Council's Director of City Planning.</p> <p>The maximum number of patrons to be accommodated within each area/tenancy within the development, shall be determined based on the more restrictive of the following controls:</p> <ul style="list-style-type: none"> <li>The BCA report prepared by: Charbel Gabriel/Dean Goldsmith of Blackett Maguire and Goldsmith, Dated: 22 February 2023, Ref: 200089 Revision 5, Titled: BCA Assessment Report Coogee Bay Road, Coogee, Council Ref: D04898012; Or</li> </ul>



	<ul style="list-style-type: none"> <li><del>• The maximum capacity specified in the approved Noise Masterplan;</del></li> <li><del>Or</del></li> <li>• A specific condition contained in this consent.</li> </ul> <p>Once approved the designated area/tenancy capacity must be consistently reflected in all subsequently submitted documentation. Any proposed variation to the specified patron numbers for each area/tenancy will require written approval from the Director of City Planning, prior to the variation being implemented.</p> <p>A sign is to be placed above the entry/front door of each area/tenancy indicating the maximum patron capacities.</p>
32	<p><b>Additional Acoustic Reporting Required - Mechanical Plant</b></p> <p>Prior to the issue of any relevant construction certificate, a suitably qualified acoustic consultant must be engaged to undertake and report on the predicted noise levels from all mechanical plant selected at the detailed design stage and included on relevant construction certificate plans.</p> <ol style="list-style-type: none"> <li>The design shall be developed to the extent that all noise-attenuating devices such as acoustic louvres, inline attenuators and barriers are selected to be consistent with the <del>relevant noise criteria approved Noise Masterplan</del>. The addition of these devices to the structure shall not exceed the approved height envelopes of the building.</li> <li>A mechanical engineer shall certify that this design of the mechanical system and the attenuation devices is capable of meeting the as-built air-handling requirements of the entire site.</li> <li>Noise from commercial plant and industrial development must not exceed a project amenity/intrusiveness noise level or maximum noise level in accordance with relevant requirements of the NSW EPA Noise Policy for Industry 2017 (NPfI).</li> <li>The acoustic report must be submitted to the Director of City Planning for review and written approval prior to the issue of any relevant construction certificate.</li> </ol> <p>Notes: The stricter of the amenity/intrusiveness criteria becomes the prevailing criteria for the development. A Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.</p>
33	<p>Prior to the issue of any relevant Construction Certificate, the final construction drawings and final construction methodology must be assessed and reported to be in accordance with the requirements of the <del>relevant noise criteria approved Noise Masterplan</del>, with reference to relevant documentation. This must be done by a Suitably Qualified Acoustic Consultant. This work will be to the satisfaction of the accredited certifier.</p>
127	<p><b>Commercial/Industrial Use of the Development and Plant/Equipment</b></p> <p>A report, prepared by a suitably qualified and experienced consultant in acoustics, shall be submitted to the Principal Certifier and Council, which</p>

	<p>demonstrates and certifies that noise and vibration from the development satisfies the relevant provisions of the Protection of the Environment Operations Act 1997, NSW Environment Protection Authority Noise Policy for Industry 2017, <del>the approved Noise Masterplan</del> and conditions of this development consent (including any relevant approved acoustic report and recommendations), to the satisfaction of Council.</p>
129	<p><b>Noise - Installation, Setup, Testing and Calibration Of limiter/s</b></p> <p>Prior to the issue of an Occupation Certificate, a Suitably Qualified Acoustic Consultant* is to provide a Noise Limiter/s Verification Report to the written satisfaction of the Principal Certifying Authority that the development complies with the requirements of relevant <del>noise criteria and</del> acoustic condition requirements set out in this development consent <del>and the approved Noise Masterplan</del>.</p> <p>The limiters shall be installed in locked cabinets located in a secure area. Access to limiter post-calibration shall be restricted to the contractor servicing the limiter and made available to Council officers upon request.</p> <p>The limiter settings must be set and certified by the Project Acoustical Consultant to ensure compliance with noise criteria for the residential accommodation both inside and outside the development. The operation of the limiters shall be checked and re-calibrated by the Project Acoustic Consultant every two years.</p>
130	<p><b>Comprehensive Plan of Management</b></p> <p>A comprehensive plan of management must be submitted to and approved by the Council's Director of City Planning prior to the issue of an occupation certificate <del>for each allotment that is, or is to be, created under this development consent</del>.</p> <p>This plan shall outline the specific measures and controls to be implemented to:</p> <ul style="list-style-type: none"> <li>• Ensure full compliance with the relevant conditions of the development consent and approved acoustic reports, <del>in particular the approved Noise Masterplan</del>.</li> <li>• Comply with the relevant noise criteria and minimise noise emissions and associated disturbances.</li> <li>• Minimise potential environmental and amenity impacts on neighbouring residents.</li> <li>• Effectively minimise and manage any instances of anti-social behaviour.</li> <li>• Establish an effective system to manage and address resident complaints.</li> <li>• Ensure responsible service of alcohol and prioritise harm minimisation.</li> <li>• Provide adequate security and surveillance measures (e.g. CCTV).</li> <li>• Ensure that the maximum number of patrons does not exceed the authorised capacity, as per the Council's consent.</li> </ul>

	The use and operation of the development must be implemented in accordance with the approved Plan of Management and conditions of this consent. In the event of any inconsistency, the conditions of consent shall prevail over the Plan of Management.
144	<del>Any modifications to the Noise Masterplan requires written approval from Council's Director of City Planning prior to implementation. Once approval is provided, the revised Masterplan becomes the prevailing noise criteria and must be complied with at all times.</del>
145	<b>Structure Borne Noise Criteria – Gym Operation</b> <del>Structure borne noise emanating from the use of the gym is not to exceed the following criterion (when doors and windows are closed):</del> <ul style="list-style-type: none"> <li><del>Commercial premises – LA1, Slow 15 minute <math>\leq</math> LA90, 15 minute + 3 dB(A)</del></li> <li><del>Residential premises – LA1, Slow 15 minute <math>\leq</math> LA90, 15 minute + 0 dB(A)</del></li> </ul>
146	<b>Noise from Residential Air Conditioners</b> The air conditioning <del>condenser unit plant and equipment</del> shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations: <ul style="list-style-type: none"> <li>Before 8.00am or after 10.00pm on any Saturday, Sunday or public holiday; or</li> <li>Before 7.00am or after 10.00pm on any other day.</li> </ul>
148	<b>Additional Acoustic Report after Initial Occupation</b> A suitably qualified and experience acoustic consultant shall be engaged to assess, monitor and report on the noise from the development and compliance with <del>the Noise Masterplan and</del> relevant noise criteria and the report must be provided to Council within 6 months of the issuing of an occupation certificate, for the Coogee Bay Hotel, Eat Street Activation and /or completion of both, which demonstrates and confirms that the relevant provisions of the Protection of the Environment Operations Act 1997 and the noise criteria and requirements contained in this consent has been satisfied, including the Noise Masterplan. The assessment and report must include all relevant fixed and operational noise sources.
181	The noise associated with the entire development including any future land uses (i.e. retail tenancies) must comply with the <b>relevant noise criteria approved Noise Masterplan</b> (including any amendments) at all times.

- Minor internal reconfigurations at Basement Level 01 (refer **Figures 3-4**), including:
  - Relocation of door to fire pump room.
  - Reconfiguration of workshop and keg room.
  - Reallocation of residential storage.



**Figure 3:** Extract of approved Basement 01 Plan (Source: Fender Katsalidis)



**Figure 4:** Extract of proposed Basement 01 Plan (Source: Fender Katsalidis)

No change is proposed to the gross floor area (GFA), floor space ratio (FSR), building height, or building envelope of the approved development. Additionally, no change is proposed to the approved number of hotel rooms, apartments, or car parking spaces.

## 2.3 Background

### Development Application

The original development application (DA) was lodged on 22 July 2021. A chronology of relevant events relating to the DA is outlined in **Table 2**.

**Table 2: Chronology of the Development Application**

Date	Event
<b>22 July 2021</b>	DA lodged.
<b>29 July 2021</b>	Exhibition of application. A total of 356 unique submission received.
<b>21 October 2021</b>	Panel briefing.
<b>12 November 2021</b>	LEC – commencement of Class 1 proceedings.

<b>16 December 2021</b>	<p>Panel determination meeting, with recommendation for refusal.</p> <p>The determination was deferred to allow the applicant to submit amended plans and documentation, including (but not limited to) <i>“an acoustic report which addresses onsite operations in particular the impact of cars entering and leaving the basement carpark, the impact of acoustic walls and the late night functioning of the proposed eat street”</i>.</p>
<b>22 December 2021</b>	Request for Information (RFI) letter issued to applicant, including (but not limited to) a request for information relating to acoustic impacts from the Coogee Bay Hotel use and proposed ‘Eat Street’ area.
<b>17 March 2022</b>	Deferred Panel determination date. The meeting did not proceed due to absence of any amended plans or documents.
<b>23 March 2023</b>	Council receipt of amended plans and documents.
<b>30 March 2023</b>	Exhibition of amended application. A total of 138 unique submissions received.
<b>14 June 2023</b>	Delegation granted by the Panel for Council to enter into a section 34 agreement with the applicant, subject to outstanding matters being resolved.
<b>19 December 2023</b>	LEC – termination of section 34 conciliation
<b>07 March 2024</b>	Panel briefing. The applicant’s acoustic modelling was requested; however, this was not provided.
<b>03 May 2024</b>	Final Panel determination meeting, with recommendation for approval, subject to deferred commencement condition relating to preparation and implementation of a Noise Masterplan.
<b>25 July 2024</b>	LEC – hearing and subsequent discontinuation of appeal.

### Land & Environment Court

On 12 November 2021, the applicant commenced Class 1 proceedings in the LEC against the deemed refusal of DA/437/2021.

The section 34 conciliation conference was adjourned on several occasions to allow the applicant to provide amended plans and documents, including 3D noise modelling.



Following termination of the section 34 conciliation on 19 December 2023, the hearing came before Senior Commissioner Dixon on 25 July 2024.

With respect to the contention relating to the deferred commencement condition, the applicant argued that the status quo of five (5) years should be imposed and that if the five (5) years was not to be imposed, then the Council has the obligation to convince the Court that the reduced period should be imposed. The applicant also submitted that the applicant's position with respect to their financial situation was a relevant matter for the Court to take into consideration.

The applicant had sought to utilise the existing appeal (which was in respect of the whole DA) but to confine the matter to the condition in dispute. The Court, however, has an obligation to consider the whole of the DA in order to be satisfied that the development can be approved in circumstances where the appeal has been brought under Section 8.7 of the EP&A Act.

The Senior Commissioner was taken to the assessment report provided to the Panel. That report stated that there was a lack of evidence in respect of the acoustic issue. The Senior Commissioner was alert to the need for her to be satisfied as to the merits of the whole application and it would appear that the comments in the assessment report caused her concern, being a matter about which she would need to be satisfied, and she stated her requirement to be so satisfied to the parties.

The applicant's solicitor requested to discontinue the appeal and Council agreed. The Senior Commissioner confirmed that the appeal was discontinued.

#### Extension of Lapse Date

On 03 December 2024, Council granted a request made pursuant to section 4.54 of the EP&A Act for a one (1) year extension to the timeframe for the deferred commencement condition. As such, the lapse date to satisfy the deferred commencement matters (at Condition A1) has been extended to 03 May 2026, being 24 months from the date of the original consent.

#### Modification Application

The proposed modification application was lodged on 19 December 2024. A chronology of the modification application since lodgement is outlined below in **Table 3** including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 3: Chronology of the Modification Application**

Date	Event
19 December 2024	Modification application lodged.
13 January 2025	Exhibition of the application.
03 February 2025	LEC – commencement of Class 1 proceedings.
27 February 2025	Panel briefing.

## 2.4 Site History

There have been numerous development applications and modification applications relating to the subject site. Those of most relevance to the subject application include:

- DA/405/1988 – approved in 1989 for demolition of existing hotel and construction of a new 329 room hotel (part 5, part 6 storeys) with three levels of basement. Council records show that the consent lapsed without commencement.
- 1994 (DA number unknown) – approved for demolition of a drive-in bottle shop and two dwellings on Vicar St, and construction of a new drive-in bottle shop, three-storey car park for 73 spaces, and three-storey hotel with 24 rooms.
- DA/599/1995 – approved in 1996 for a boutique hotel (four levels of hotel rooms over three levels of parking), an entertainment/convention centre and other additions to the site including new hotel rooms. The consent was acted upon however the conference centre in the middle of the site was not constructed.
- December 2009 – a Concept Plan was submitted to Department of Planning for a 7 level residential building, 3 levels of hotel over 2 levels of retail (including supermarket), and a 4 level function and conference facility. The heritage building (Coogee Bay Hotel) was to be retained and refurbished. The concept plan was revoked and not considered under Part 3A. The project did not proceed.
- DA/437/2021 – approved (by way of deferred commencement consent) by SECPP on 03 May 2024 for refurbishment of the Coogee Bay Hotel to provide for 18 hotel rooms, a new 3 storey building to the southern side of the beer garden with 13 new hotel rooms, construction of a 5/6 storey shop top housing comprising 58 dwellings, 11 retail premises, internal laneway from Coogee Bay Road, basement parking for 159 spaces, subdivision, landscaping and associated works.
- DA/437/2021/B – approved by Council on 3 February 2025 for section 4.55(1A) modification to the approved development to amend conditions relating to EV charging systems.

## 3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in Section 4.55(2) of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the EP&A Regulation in relation to information requirements and notification. These matters are considered below.

### 3.1 Section 4.55 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was*

*originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)), and*

In order to establish if development is substantially the same as what was granted consent, reference is made to the case of *Moto Projects (No.2) v North Sydney Council [1999] NSW LEC 280*, which provides the following judgement:

*“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified.....*

*....The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development is granted).”*

Consideration is also given to the rulings of *Realize Architecture Pty Ltd v Canterbury-Bankstown Council [2023] NSWLEC 1437* and *Canterbury-Bankstown Council v Realize Architecture Pty Ltd [2024] NSWLEC 31*, where the consent authority must undertake a ‘balanced’ approach through the application of a 3 step formula, being (1) finding the primary facts, (2) interpreting the law, and (3) categorising the facts found.

The proposed modifications are considered to result in a development that will fundamentally alter the originally approved development. Importantly, the proposed modification seeks to change the consent type from a deferred commencement consent to an operational consent.

The conditions which are proposed to be deleted were originally imposed to address issues raised by the community, Council’s technical officers, Council’s acoustic expert, and the Panel relating to noise impacts. Deletion of these conditions would result in additional adverse noise impacts to residential properties, which were not accepted in the granting of the deferred commencement consent.

In view of the above, it is considered that the consent authority cannot be satisfied that the proposed modification is substantially the same development as originally approved.

- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and*

Not applicable.

- (c) *it has notified the application in accordance with—*  
 (i) *the regulations, if the regulations so require, or*  
 (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and*

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).*

The modification application was notified between 13 January 2025 and 11 February 2025 and 28 submissions were received. The issues raised in these submissions are considered in Section 4 of this report.

- (e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).*

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

### Reasons for Grant of Consent

The Panel granted deferred commencement consent to the original development in a notice of determination dated 3 May 2024.

An extract from the Statement of Reasons for this decision is provided below:

*“The Panel considered that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting. The Panel notes that in addressing these issues appropriate conditions have been imposed.”*

The conditions which are proposed to be deleted were originally imposed by the Panel to address issues raised by the community, Council’s technical officers, Council’s acoustic expert, and the Panel relating to noise impacts. Deletion of these conditions would be inconsistent with the reasons for granting consent to the original development.

Additionally, the proposed modification is inconsistent with the reasons for granting consent to the original development in that it seeks to delete the deferred commencement condition. The proposed modification seeks to change the consent type from a deferred commencement consent to an operational consent.

### **3.2 Section 4.15(1) of the EP&A Act**

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.55(3), which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*  
(i) *any environmental planning instrument, and*

- (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
  - (c) *the suitability of the site for the development,*
  - (d) *any submissions made in accordance with this Act or the regulations,*
  - (e) *the public interest.*

### 3.2.1 **Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations**

The relevant provisions under Section 4.15(1)(a) are considered below.

#### (a) **Environmental planning instruments (s4.15(1)(a)(i))**

The following Environmental Planning Instruments are relevant to this application

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021.*
- *State Environmental Planning Policy (Sustainable Buildings) 2022.*
- *State Environmental Planning Policy (Housing) 2021.*
- *State Environmental Planning Policy (Industry and Employment) 2021.*
- *State Environmental Planning Policy (Planning Systems) 2021.*
- *State Environmental Planning Policy (Resilience and Hazards) 2021.*
- *Randwick Local Environmental Plan 2012.*

A summary of the key matters for consideration arising from these State Environmental Planning Policies (SEPPs) are outlined in **Table 4** and considered in more detail below.

**Table 4: Summary of Applicable SEPPs (Preconditions in bold)**

<b>EPI</b>	<b>Matters for Consideration</b>	<b>Comply (Y/N)</b>
State Environmental Planning Policy (Biodiversity and Conservation) 2021	<p><b>Chapter 2: Vegetation in non-rural areas</b></p> <p>Since lodgement of the original DA, the relevant provisions of <i>SEPP (Vegetation in Non-Rural Areas) 2017</i> were consolidated into Chapter 2 of <i>SEPP (Biodiversity and Conservation) 2021</i>.</p> <p>The SEPP provisions were considered in the assessment of the DA and relevant conditions were included in the approved</p>	Y



	consent. Noting the scope of proposed modifications, further consideration is not required.	
State Environmental Planning Policy (Sustainable Buildings) 2022	<p>Since lodgement of the original DA, the relevant provisions of <i>SEPP (BASIX) 2004</i> were consolidated into <i>SEPP (Sustainable Buildings) 2022</i>.</p> <p>The SEPP provisions were considered in the assessment of the DA and relevant conditions were included in the approved consent. Noting the scope of proposed modifications, further consideration is not required.</p>	Y
State Environmental Planning Policy (Housing) 2021	<p><b>Chapter 2: Affordable Housing</b>          Since lodgement of the original DA, the relevant provisions of <i>SEPP (Affordable Rental Housing) 2009</i> were consolidated into Chapter 2 of <i>SEPP (Housing) 2021</i>.</p> <p>The SEPP provisions were considered in the assessment of the DA and relevant conditions were included in the approved consent. Noting the scope of proposed modifications, further consideration is not required.</p> <p><b>Chapter 4: Design of Residential Apartment Development</b>          Since lodgement of the original DA, the relevant provisions of <i>SEPP 65</i> were consolidated into Chapter 4 of <i>SEPP (Housing) 2021</i>.</p> <p>The proposed modifications are inconsistent with the design principle relating to amenity. The proposal is also inconsistent with Objectives 4B, 4H, and 4J of the Apartment Design Guide (ADG) relating to acoustic privacy and noise.</p>	N
State Environmental Planning Policy (Industry and Employment) 2021	<p><b>Chapter 2: Infrastructure</b>          Since lodgement of the original DA, the relevant provisions of <i>SEPP (Infrastructure) 2007</i> were consolidated into Chapter 2 of <i>SEPP (Industry and Employment) 2021</i>.</p> <p>The SEPP provisions were considered in the assessment of the DA and relevant conditions were included in the approved consent. Noting the scope of proposed modifications, further consideration is not required.</p>	Y
State Environmental Planning Policy (Planning Systems) 2021	<p><b>Chapter 2: State and Regional Development</b>          Since lodgement of the original DA, the relevant provisions of <i>SEPP (State and Regional Development) 2011</i> were consolidated into Chapter 2 of <i>SEPP (Planning Systems) 2021</i>.</p> <p>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as the estimated development is more than \$30 million.</p> <p>The Panel is the relevant consent authority for the subject S4.55(2) modification application noting that it proposes to</p>	Y

	amend conditions recommended in the Council assessment report, but which was amended by the Panel.	
State Environmental Planning Policy (Resilience & Hazards) 2021	<p><b>Chapter 2: Coastal Management</b> Since lodgement of the original DA, the relevant provisions of <i>SEPP (Coastal Management) 2018</i> were consolidated into Chapter 2 of <i>SEPP (Resilience and Hazards) 2021</i>.</p> <p>The SEPP provisions were considered in the assessment of the DA and relevant conditions were included in the approved consent. Noting the scope of proposed modifications, further consideration is not required.</p> <p><b>Chapter 4: Remediation of Land</b> Since lodgement of the original DA, the relevant provisions of <i>SEPP 55</i> were consolidated into Chapter 4 of <i>SEPP (Resilience and Hazards) 2021</i>.</p> <p>The SEPP provisions were considered in the assessment of the DA and relevant conditions were included in the approved consent. Noting the scope of proposed modifications, further consideration is not required.</p>	Y
Randwick Local Environmental Plan 2012	<p>Clause 2.3 – Permissibility and zone objectives</p> <p>Clause 4.3 – Height of buildings (NB: no change)</p> <p>Clause 4.4 – Floor space ratio (NB: no change)</p>	N
Randwick Development Control Plan 2013	<p>Part B – General Controls</p> <p>Part C2 – Medium Density Residential</p> <ul style="list-style-type: none"> <li>The proposed modifications are inconsistent with Section 5.4 relating to acoustic privacy.</li> </ul>	N

### State Environmental Planning Policy (Housing) 2021

#### *Chapter 4: Design of Residential Apartment Development*

Since lodgement of the original DA, the relevant provisions of *SEPP 65* were consolidated into Chapter 4 of *SEPP (Housing) 2021*.

The proposed modifications are inconsistent with the design principle relating to amenity. The proposal is also inconsistent with Objectives 4B, 4H, and 4J of the ADG relating to natural ventilation, acoustic privacy, and noise. The ADG includes the following relevant objectives:

- *Objective 4B-1: All habitable rooms are naturally ventilated.*
- *Objective 4B-2: The layout and design of single aspect apartments maximises natural ventilation.*
- *Objective 4H-1: noise transfer is minimised through the siting of buildings and building layout.*
- *Objective 4H-2: noise impacts are mitigated within apartments through layout and acoustic treatments.*
- *Objective 4J-1: in noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.*
- *Objective 4J-2: appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.*

As discussed at the Key Issues section of this report, the proposed deletion of the deferred commencement condition would result in insufficient noise mitigation measures and would compromise the quality of life for noise-sensitive receivers (within and outside the development).

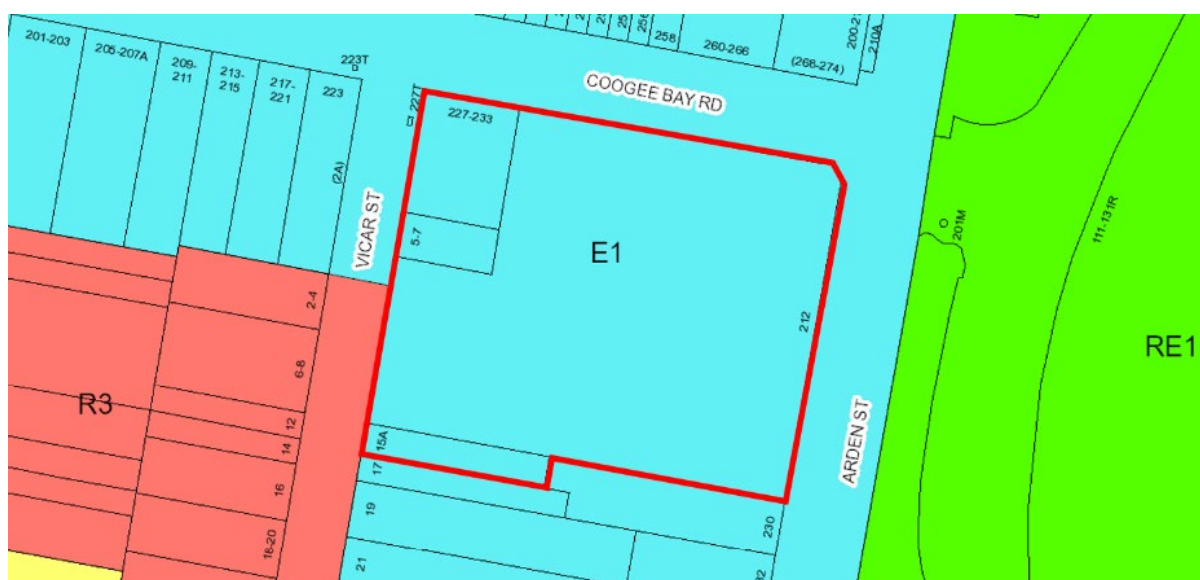
Achieving natural ventilation and protection from noise are not mutually exclusive, however this does require innovation. Compliance with both natural ventilation and internal noise levels must be demonstrated concurrently, as each has influence over the other and needs to be considered in unison when assessing a development application.

In this regard, Council is not satisfied that the proposed modification is consistent with the relevant ADG objectives.

### Randwick Local Environmental Plan 2012

#### *Zoning and Permissibility (Part 2)*

The site is located within the E1 Local Centre zone pursuant to clause 2.3 of Randwick Local Environmental Plan 2012 (RLEP) (refer **Figure 5**).



**Figure 5:** Extract of Land Zone map (Source: Randwick City Council)

No change is proposed to the approved land uses, being *commercial premises, pub, hotel or motel accommodation, and shop top housing*.

According to the definitions in clause 1.4 (contained in the Dictionary), the proposal satisfies the definition of the approved land uses which are permissible uses with consent in the Land Use Table in clause 2.3.

The zone objectives include the following (pursuant to the Land Use Table in clause 2.3):

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*
- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*
- *To facilitate a safe public domain.*
- *To support a diverse, safe and inclusive day and night-time economy.*

The proposed modification is inconsistent with the objectives of the E1 zone in that it does not adequately minimise the impact of development or protect the amenity of residents in the zone and in the adjoining and nearby residential zones.

Additionally, the proposed modification is inconsistent with clause 6.22 of RLEP, which states:

- “(1) The objectives of this clause are as follows—*
- (a) to ensure the scale and function of development in local centres are appropriate for the location,*
  - (b) to ensure development in local centres is compatible with the desired future character and amenity of surrounding residential areas.*
- (...)*
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered—*
- (a) the impact of the development on—*
    - (i) the amenity of surrounding residential areas, and*
    - (ii) the desired future character of the local centre, and*
  - (b) whether the development is consistent with the hierarchy of centres.”*

The requirement for a Noise Masterplan (as per Condition A1) is essential to address and manage potential noise impacts associated with the approved development. The condition was imposed to ensure that comprehensive noise mitigation measures are in place to protect the amenity of residents, especially given the mixed-use nature of the site, which includes hotel, pub, retail, and residential components.

The proposed modification seeks to remove the requirement for a Noise Masterplan. This would result in insufficient noise mitigation measures and would compromise acoustic amenity for residents of the subject and neighbouring properties.

#### *General Controls and Development Standards (Part 2, 4, 5 and 6)*

RLEP also contains controls relating to development standards, miscellaneous provisions, and local provisions. These controls were considered in the assessment of the DA and relevant conditions were included in the approved consent. Noting the scope of proposed modifications, which do not involve any change to the approved building height or gross floor area, further consideration of RLEP is not required.

#### **(b) Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))**

Nil applicable.

(c) **Provisions of any Development Control Plan (s4.15(1)(a)(iii))**

The following Development Control Plan is relevant to this application:

- *Randwick Development Control Plan 2013 (RDCP)*

Part C2, Section 5.4 of RDCP includes the following objectives:

- *To ensure a high level of amenity by providing for reasonable level of acoustic privacy for dwellings and neighbouring properties.*
- *To ensure dwellings are designed so that its occupants enjoy acoustic privacy, whilst maintaining the existing level of privacy of adjoining and nearby properties.*
- *To ensure dwellings are designed to minimise impacts from significant exterior noise sources such as arterial roads, flight paths, industries and ports.*
- *To design buildings with adequate separation within the development and from adjoining properties.*

As discussed at the Key Issues section of this report, the proposed deletion of the deferred commencement condition would result in insufficient noise mitigation measures and would compromise the quality of life for noise-sensitive receivers (within and outside the development). In regard, Council is not satisfied that the proposed modification achieves the objectives of Part C2, Section 5.4 of RDCP.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *S7.11 Development Contributions Plan (Randwick Section 94A Development Contributions Plan 2015)*

This Contributions Plan was considered in the assessment of the DA and relevant conditions of consent were imposed.

(d) **Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iiia))**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) **Provisions of Regulations (s4.15(1)(a)(iv))**

Section 61 of the EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. The relevant provisions were addressed through conditions of consent in the approved development.

**3.2.2 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered.

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and in the Key Issues section of this report below. It is considered that the proposed modification will result in significant adverse acoustic impacts on the locality and surrounding residential properties. The proposed deletion of the deferred



commencement condition would result in insufficient noise mitigation measures and would compromise the quality of life for noise-sensitive receivers.

### **3.2.3 Section 4.15(1)(c) - Suitability of the site**

In view of the issues discussed in this report, the proposed development is not considered suitable for the subject site.

### **3.2.4 Section 4.15(1)(d) - Public Submissions**

The submissions are considered in Section 4.3 of this report.

### **3.2.5 Section 4.15(1)(e) - Public interest**

The proposal is not in the public interest given the impacts resulting from the development. Insufficient information has been submitted to address and mitigate potential acoustic impacts.

The deferred commencement condition was imposed to ensure that comprehensive noise mitigation measures are in place to protect the amenity of surrounding residential areas, especially given the mixed-use nature of the site, which includes hotel, pub, retail, and residential components. The requirement for a Noise Masterplan is essential to effectively address and manage potential noise impacts associated with the development.

The subject modification application is not supported by any additional acoustic documentation or data. The proposed deletion of the deferred commencement condition would result in insufficient noise mitigation measures and would compromise the quality of life for noise-sensitive receivers (within and outside the development).

The vast number of submissions received opposing the development demonstrates that the proposal is not in the public interest.

## **3.3 Part 5 of the EP&A Regulation 2021**

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the EP&A Regulation. The subject application is consistent with the relevant provisions of the EP&A Regulation.

## **4. REFERRALS AND SUBMISSIONS**

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### **4.1 Agency Referrals and Concurrence**

The modification application does not require referral to any external agencies. No changes are proposed to extent of basement excavation or to the General Terms of Approval issued by WaterNSW for the approved development.

### **4.2 Council Referrals**

The modification application was referred to various Council officers for technical review as outlined **Table 5**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

**Table 5: Consideration of Council Referrals**

Officer	Comments	Resolved
Environmental Health	Council's Senior Environmental Health Officer has reviewed the proposal and raised concerns in relation to the deletion of the Noise Masterplan condition. These issues are considered in more detail in the Key Issues section of this report.	Refer to key Issues

### 4.3 Notification and Community Consultation

The modification application was notified in accordance with the Randwick Community Engagement Strategy from 13 January 2025 until 11 February 2025. The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties; and
- Notification on the Council's website.

The Council received a total of 28 unique submissions, comprising 28 objections. The issues raised in these submissions are considered in **Table 6**.

The issues raised in the community submissions have been addressed in this report.

**Table 6: Community Submissions**

Issue	No of submissions	Council Comments
<b>Noise impacts and concerns regarding deletion of Noise Masterplan condition</b>	22	Council agrees with the concerns relating to noise impacts and the proposed deletion of the Noise Masterplan condition. Refer to discussion at Key Issues section of this report.  <b>Outcome:</b> The subject modification application is recommended for refusal.
<b>General objection to redevelopment of the site</b>	6	In the assessment of DA/437/2021, the subject site was considered suitable for the approved development, subject to the preparation and implementation of a Noise Masterplan.  <b>Outcome:</b> The subject modification application is recommended for refusal.
<b>Building bulk, scale, and height</b>	2	The modification application does not involve any changes to the approved building bulk, scale, or height.  This issue was considered in the assessment of the approved DA and is not relevant to the subject modification application.

<b>Pedestrian and traffic safety concerns</b>	1	<p>The modification application does not involve any changes to the approved pedestrian and/or vehicular traffic arrangements.</p> <p>This issue was considered in the assessment of the approved DA and is not relevant to the subject modification application. Suitable conditions are included in the approved consent.</p>
<b>Concerns regarding alcohol consumption and smoke emissions</b>	1	<p>The modification application does not involve any changes to the approved land uses (relative to the approved development).</p> <p>This issue was considered in the assessment of the approved DA and is not relevant to the subject modification application. Suitable conditions are included in the approved consent.</p>
<b>Loss of low income housing</b>	1	<p>The modification application does not involve any additional loss of low income housing (relative to the approved development).</p> <p>This issue was considered in the assessment of the approved DA and is not relevant to the subject modification application. Suitable conditions are included in the approved consent.</p>
<b>Tree removal concerns</b>	1	<p>The modification application does not involve any additional tree removal (relative to the approved development).</p> <p>This issue was considered in the assessment of the approved DA and is not relevant to the subject modification application. Suitable conditions are included in the approved consent.</p>

## 5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

### 5.1 Noise Masterplan

#### **Background**

By way of background, the reasons for imposing the deferred commencement condition, as outlined in the assessment report for DA/437/2021, are reproduced below:

*“It should be noted that the 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023 came into force on 12 December 2023, amending the terms of acoustic assessment for licensed premises under the Liquor Act 2007 (The Coogee Bay Hotel is a licensed premises). From mid-2024, the Vibrancy Reforms will designate Liquor & Gaming NSW as the lead regulator of entertainment sound-related complaints for all licensed premises. The*

*amendments will mean that entertainment sound emanating from licensed premises is solely managed through the Liquor Act 2007 and noise-related conditions of development consent and 'offensive noise pollution' laws will no longer apply when such matters are regulated by the Liquor Act 2007. Accordingly, when this part of the new legislation commences, a condition of a development consent that regulates noise generated from licensed premises will cease to have effect but only to the extent the condition relates to noise arising from how the business of the licensed premises is conducted or the behaviour of persons after they leave the licensed premises.*

*The number of patrons noted in the proposed Plan of Management is 3,468. When this number is combined with the 768 patrons in the Eat Street venues, the Coogee Bay Hotel site could hold 4,168 people. The most recent statement of current patron numbers for the Hotel is 3,250, which was in 2004. An Acoustic Master Plan of Management for the entire Hotel and Eat Street would allow proper planning to determine the impacts on residents living nearby and within the site.*

*The acoustic report submitted with the application states that noise emissions from the refurbished ground floor areas of the Hotel are expected to be essentially the same as existing noise emissions. However, there is no discussion or information from the applicant about the extent to which noise from the ground floor areas currently complies with nearby receivers to confirm this statement. There is a lack of quantitative information provided to enable a comprehensive assessment of the acoustic impact of the proposal. Consequently, recommended conditions of consent, in the form of a deferred commencement, are imposed to ensure acoustic amenity is achieved internally to the site.*

*Council's Environmental Health team have identified the following shortfalls in the data and modelling:*

- *The number of patrons proposed in the applicant's proposed Plan of Management is 3,468. When this number is combined with the 768 patrons in the Eat St venues, the Coogee Bay Hotel (CBH) site could hold 4,168 people. •*
- *The most recent statement of current patron numbers for the Hotel is 3,250, which was in 2004 and appears to represent a de-facto current patron number.*
- *In this situation, noise emissions from the site will consist primarily of music and patron conversation and the level of these noise types is generally proportional to the number of people on that site.*
- *As such, the proposed change in patron numbers from 3,250 to 4,168 represents and intensification of the use of the site. That intensification has not been properly addressed by the applicant's acoustic consultant.*
- *The applicant has not demonstrated using acoustic modelling or calculations that the levels of noise inside apartments with windows open (for natural ventilation) from the Hotel will comply with i) the post-midnight noise criterion issued by the L&G NSW and ii) the internal levels will comply with AS2107 and the internal noise levels set by conditions of consent including the Noise Masterplan.*
- *The provision of natural/passive ventilation for the residential component of the development is feasible but would involve the design of passive ventilation solutions with a high degree of attenuation, which will have an associated cost for the applicant.*
- *Section 4.3.3. of the Applicants Acoustic report 'noise from Eat Street Restaurants to residential receivers onsite' only nominates windows closed criteria and omits natural ventilation requirements. In contrast, Section 4.4.3.5 of the same report states that alternative ventilation should be provided so that residents can close the doors/windows and still receive ventilation but does not nominate a criterion.*
- *The environment in which the proposed residents within the development will live is likely to comprise noise from patron conversations, amplified and live music and*

*occasional shouting. If suitable measures are not provided to attenuate these types of noise, there is strong potential for the noise to become subjectively hostile for resident's internal acoustic comfort.*

- Internal noise goals for entertainment noise need to be nominated for residential premises and hotel rooms (for heritage and new hotel rooms).*
- The target sound levels inside apartments proposed by the applicant's acoustic engineer are too high to ensure satisfactory acoustic amenity for guests and residents when the external noise is from the Hotel.*
- Given the number of uses of the site with the Hotel and the Eat St, an Acoustic Master Plan of Management for the entire Hotel and Eat Street site would allow proper planning and determination of the cumulative impacts of the Hotel's commercial activities and the Eat St venues on residents living within the Hotel site and nearby.*
- Objective data for expected sound levels inside venues is not provided.*
- This is particularly relevant for the Function room as this room could potentially hold a loud rock band, and noise emissions could seriously impact the hotel and residential rooms.*
- The applicant has however, provided objective data for the Pre-Function room, but the assumed sound levels are far below the demands of patrons and management with contemporary music and a younger demographic.*
- The applicant's acoustic report states only that the noise will comply everywhere and provides no objective data showing that compliance at facades and internal rooms. As such we conclude that with this level of information, there is a high risk of non-compliance with the L&G criteria.*
- There are no statements of noise level from each patron area, which would enable assessment of the risks for loss of amenity. The cumulative impact from each area must be assessed concurrently to prevent background creep and resultingly excessive precinct noise levels.*
- The applicant's consultant claims to have undertaken acoustic modelling using the software CadnaA, but has not submitted any of the results or the model and modelling parameters to Council for assessment*
- The applicant's acoustic report states that a small increase of 2 dB above the current noise is predicted at one residential location. However, there is no statement of what the current level is or how it was assessed. The applicant's expert could not state how many patrons were present at the time the noise level in the beer garden was measured, but simply stated that it was "a busy Saturday". Omitting patron capacities for each area renders the assessment inadequate and does not take into account the Lombard effect (i.e. the mechanism whereby patron noise creates more patron noise by speaking louder). Additionally, the level of "background" music that will be played increases according to patron numbers.*
- The acoustic report states that noise emissions from the refurbished ground floor areas of the Hotel are expected to be essentially the same as existing noise emissions. However there is no discussion about the extent to which noise from the ground floor areas currently complies at nearby receivers to confirm this statement. In summary, there is a significant lack of quantitative information that is required to make a comprehensive assessment of the proposals with respect to acoustic amenity.*
- Furthermore, the applicant has not provided their modelling/data for Council to assess."*

### **Extension Request**

It is noted that Council granted a request for a one (1) year extension to the timeframe for the deferred commencement condition. The request was granted on 03 December 2024 (i.e. approx. two (2) weeks prior to lodgement of the subject modification application).



Importantly, the reasons provided by the applicant for the request (as per letter prepared by Urbis, dated 29 August 2024) are reproduced below:

*“The Proponent and project team have commenced the work necessary to satisfy Condition A1. On 31 July 2024, the project team requested additional guidance from Council on the assessment methodology for the Noise Masterplan and ongoing discussions are occurring between relevant technical consultants to satisfy the condition.*

*While it is the proponent’s intention to meet the requirements of Condition A1, it is unlikely that the required works could be completed prior to the lapsing of the consent in May 2025. As such, a one year extension is requested to ensure that a collaborative approach can be maintained between the project team and Council and the condition can be satisfied to meet Council’s requirements.”*

The applicant has clearly indicated an intention to satisfy Condition A1. The extension request was granted in good faith by Council on this basis. As such, it is unclear why the applicant is now seeking to delete Condition A1.

### **Proposed Modification**

Council’s Senior Environmental Health Officer has reviewed the proposed modification and raises the following concerns:

*“Following a review of the submitted Statement of Environmental Effects (SEE), the Health’s team comments are outlined below.*

*The originally submitted acoustic report and its subsequent addendum, provided during the development assessment phase, were not approved by Council and were deemed inadequate. This inadequacy led to the imposition of a deferred commencement condition requiring the submission of a Noise Masterplan via the Sydney East Regional Planning Panel. Therefore, the initial acoustic reports were not referenced in any consent condition, as they failed to meet the necessary standards for acceptance.*

*It is important to note that the applicant did not submit the acoustic 3D modelling data that informed the conclusions and recommendations of these reports, despite ongoing requests from Council. As a result, the submitted documents lacked sufficient detail, making it impossible to draw meaningful conclusions or for Council to be satisfied that a merit based assessment was undertaken. This failure undermined the reliability of the submitted information.*

*Randwick City Council received an email from Renzo Tonin and Associates on 31 July 2024 advising that they have been engaged to prepare a Noise Masterplan for the Coogee Bay Hotel, following this email Council provided the additional technical assessment information guidance as per condition A1 of the consent. It is assumed that the acoustic consultant has done some form of additional noise modelling that should have accompanied the section 4.55(2) modification to support their arguments. However, this information has not been provided to Council.*

*The SEE also frequently refers to “relevant noise criteria” without providing any quantitative details. This ambiguity raises questions about what the applicant deems the “relevant noise criteria” to be. Furthermore, the applicant has not submitted any supporting documentation from their acoustic consultants, Hillary Pearce of Renzo Tonin and Associates, to substantiate their claims. In contrast, the methodology and expert opinion provided by Council’s acoustic expert remains consistent and valid.*

*There is also an argument presented in the SEE that the Noise Masterplan constitutes a change in the "use of land" and thus represents an amendment to the approved development. This is factually incorrect—the intended land use remains unchanged, and no evidence has been provided to substantiate such claims.*

*Council must prioritise the amenity of both future and existing residents. Removing the noise masterplan condition would compromise the quality of life for noise-sensitive receivers (within and outside the development), resulting in insufficient noise mitigation measures.*

*Council should maintain its position that the requirement for a Noise Master Plan is essential to effectively address and manage potential noise impacts associated with the development. The deferred commencement condition was imposed to ensure that comprehensive noise mitigation measures are in place to protect the amenity of surrounding residential areas, especially given the mixed-use nature of the site, which includes hotel, pub, retail, and residential components.*

*The Noise Master Plan requirement is consistent with industry best practices for developments of this scale and complexity, particularly those with late-night licensed premises. It ensures that noise management is not only proactive but also enforceable, providing clear guidelines for monitoring, reporting, and mitigating noise levels that exceed permissible limits.*

*(...)*

*Finally, it is noted that neither author of the SEE report have any formal qualifications in acoustics and would not be deemed a subject matter expert. Despite this fact they failed to provide any additional supporting information from the engaged project acoustic consultant Hillary Pearce of Renzo Tonin and Associates.*

*In conclusion, the Environmental Health team does not support the deletion of the deferred commencement condition or the removal of all references to the noise masterplan from the applicable conditions. This is supported by Councils Acoustic Expert.*

**Recommendation:**

*Deletion of the deferred commencement condition A1 requiring the preparation of a precinct noise masterplan is not supported.*

*Council should maintain its position that the requirement for a Noise Master Plan is essential to effectively address and manage potential noise impacts associated with the development. The deferred commencement condition was imposed to ensure that comprehensive noise mitigation measures are in place to protect the amenity of surrounding residential areas, especially given the mixed-use nature of the site, which includes hotel, pub, retail, and residential components."*

Additional comments were provided by Council's Environmental Health Officer, as follows:

*"The Statement of Environmental Effects titled Section 4.55(2) Modification – Coogee Bay Hotel, 212 Arden Street, 227-233 Coogee Bay Road, and 15A Vicar Street, Coogee (Project Code P00131198, Version 2), prepared by Director Jacqueline Parker and Senior Consultant Brigitte Bradley of Urbis Ltd, dated December 2024 (Council Ref: D05558017), contains materially inaccurate and misleading statements.*

*Specifically, the document asserts that the site will be managed in accordance with the Acoustic Assessment Report (including its addendum) prepared by Hillary Pearce of Renzo*

*Tonin & Associates, as well as the accompanying Plans of Management. However, this assertion is factually incorrect and misleading in a material respect, as neither the Acoustic Assessment Report nor the addendum has been approved by Council, nor are they referenced in the conditions of consent.*

*The critical noise assessment data gaps are intended to be addressed through the Noise Masterplan deferred commencement condition.*

*The inclusion of these statements creates a false impression of regulatory compliance to unduly influences the assessment of the modification application.*

*Achieving natural ventilation and protection from noise is not mutually exclusive but does require innovation; compliance with both natural ventilation and internal noise levels must be demonstrated concurrently, as each has influence over the other and needs to be considered in unison when assessing a development application."*

Assessment Officer Comments: The modification application seeks to remove the deferred commencement condition, however no additional acoustic reporting or modelling has been submitted by the applicant since the original determination was made in May 2024.

Pursuant to section 4.15(1)(b) of the EP&A Act, the consent authority must consider the likely impacts of a development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

It is considered that the proposed modifications would adversely impact acoustic amenity and natural ventilation for residents of the subject and neighbouring properties. This is inconsistent with Objectives 4B, 4H, and 4J of the ADG and the objectives of Part C2, Section 5.4 of RDCP.

Council's Senior Environmental Health Officer does not support the proposed deletion of the deferred commencement condition, and the associated amendments proposed to Conditions 26, 32, 33, 127, 129, 130, 144, 145, 146, 148, and 181 (relating to acoustic management).

During the assessment of the original DA, the submitted acoustic report and its subsequent addendum were deemed inadequate by Council and the Panel. The applicant did not submit any acoustic 3D modelling data, despite requests from Council and the Panel.

The deferred commencement condition was imposed to ensure that comprehensive noise mitigation measures are in place to protect the amenity of surrounding residential areas, especially given the mixed-use nature of the site, which includes hotel, pub, retail, and residential components. The requirement for a Noise Masterplan is essential to effectively address and manage potential noise impacts associated with the development.

The Noise Masterplan will require the applicant to address steady noise sources (i.e. traffic, mechanical plant etc.) and fluctuating noise sources (i.e. music, patron noise), detailing relevant criteria for each noise type, which will result in an acceptable amenity planning outcome for all stakeholders.

Despite the *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023*, which came into force on 12 December 2023, consent authorities are still required to consider entertainment noise at DA stage to ensure façades are built fit for purpose, sites are/can be made suitable for their proposed use (i.e. luxury residential apartments, hotel rooms in a subjectively hostile noise environment), and the agent of change principle (i.e. the party introducing a change must be responsible for preventing any harm to neighbouring properties, and must take on any costs associated with making the new development acceptable).

The Acoustic Report submitted by the Applicant with the original DA acknowledges the importance of a precinct-wide assessment methodology (aligning with the deferred commencement condition) yet fails to provide the necessary data or analysis. The current lack of objective data, transparent modelling, or robust mitigation measures creates a high risk of non-compliance with regulatory noise standards. These critical gaps are intended to be addressed through the deferred commencement condition.

The subject modification application is not supported by any additional acoustic documentation or data. The proposed deletion of the deferred commencement condition would result in insufficient noise mitigation measures and would compromise the quality of life for noise-sensitive receivers (within and outside the development).

Resolution: This issue has not been resolved and accordingly, warrants refusal of the application.

## 5.2 Basement Modifications

No concerns are raised regarding the proposed minor modifications at basement level. Notwithstanding, the majority of modifications proposed by way of the subject application are not supported (refer to discussion at Section 5.1 above), which warrants refusal of the application.

## 6. CONCLUSION

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This modification application has been considered in accordance with the requirements of the EP&A Act and the EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

The deferred commencement condition (Condition A1) was imposed to ensure that comprehensive noise mitigation measures are in place to protect the amenity of surrounding residential areas, especially given the mixed-use nature of the site, which includes hotel, pub, retail, and residential components. The requirement for a Noise Masterplan is essential to effectively address and manage potential noise impacts associated with the development.

The subject modification application is not supported by any additional acoustic documentation or data. The proposed deletion of the deferred commencement condition (and associated modifications to conditions relating to acoustic amenity) would result in insufficient noise mitigation measures and would compromise the quality of life for noise-sensitive receivers (within and outside the development).

The proposed modification is not in the public interest given the likely adverse impacts resulting from the development.

## 7. RECOMMENDATION

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It is recommended:

- That the Modification Application DA/437/2021/A for modification to the approved development to remove deferred commencement condition and amend any further conditions referencing the Noise Masterplan, and minor amendments to Basement Level 01 at 212 Arden Street, 227-233 Coogee Bay Road, 5-7 & 15A Vicar Street, COOGEE NSW 2034 be REFUSED pursuant to Section 4.55(2) of the *Environmental*

*Planning and Assessment Act 1979* subject to the reasons for refusal attached to this report at Attachment A; and

- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

- Appendix A: Draft reasons for refusal

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## REASONS FOR REFUSAL

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1. The proposed modification does not comply with the provisions of Chapter 4 of *State Environmental Planning Policy (Housing) 2021* as the proposal is inconsistent with the 'amenity' design principle. Additionally, the proposal does not comply with Parts 4B, 4H, and 4J of the Apartment Design Guide.
2. The proposed modification does not comply with the provisions of Randwick Local Environmental Plan 2012 (RLEP) pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the objectives of the E1 Local Centre zone pursuant to clause 2.3 of RLEP.
3. The proposed modification does not comply with the provisions of Randwick Development Control Plan 2013 (RDCP) pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the objectives at Part C2, Section 5.4 of RDCP.
4. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed modification will result in adverse amenity impacts for noise-sensitive receivers within and outside the development.
5. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the adverse environmental impact of the proposed modification means that the site is not considered to be suitable for the development as proposed.
6. Pursuant to Sections 4.15(1)(d) and (e) of the *Environmental Planning and Assessment Act 1979*, the public submissions raised valid grounds of objection and approval of the proposed modification is considered contrary to the public interest.
7. Pursuant to Sections 4.55(2) and (3) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is not substantially the same development as originally approved and is inconsistent with the reasons given by the consent authority for the grant of the consent that is sought to be modified.