



## Land and Environment Court New South Wales

<b>Medium Neutral Citation:</b>	<b>Simmtatown Pty td v Randwick City Council [2026] NSWLEC 1155</b>
<b>Hearing dates:</b>	17 December 2025
<b>Date of orders:</b>	17 December 2025
<b>Decision date:</b>	17 December 2025
<b>Jurisdiction:</b>	Class 1
<b>Before:</b>	Dixon SC
<b>Decision:</b>	The Court orders: <ol style="list-style-type: none"><li>(1) The modification application pursuant to section 4.55(8) of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) is approved.</li><li>(2) Development consent DA/437/2021 granted by Sydney Eastern City Planning Panel on 3 May 2024 (as modified) is modified in the terms in Annexure A.</li><li>(3) Development consent DA/437/2021 as modified by the Court is Annexure B.</li></ol>
<b>Catchwords:</b>	MODIFICATION APPLICATION – modify development consent – use in accordance with ‘Precinct Noise Management Plan’ and ‘Acoustic Masterplan’ – deletion of conditions
<b>Legislation Cited:</b>	<i>Environmental Planning and Assessment Act 1979</i> (NSW), ss 4.55 <i>Land and Environment Court Act 1979</i> (NSW), s 34  <i>Environmental Planning and Assessment Regulation 2021</i> , ss 98, 100 <i>State Environmental Planning Policy (Housing) 2021</i> , Ch 4, ss 146, 147, Sch 9
<b>Texts Cited:</b>	Department of Planning and Environment, <i>Apartment Design Guide 2015</i> Randwick Community Participation Plan 2019
<b>Category:</b>	Principal judgment

<b>Parties:</b>	Simmatown Pty Ltd (Applicant) Randwick City Council (Respondent)
<b>Representation:</b>	Counsel: A Galasso SC w A Khoupongsy (Solicitor)(Applicant) P Hudson (Solicitor)(Respondent)  Solicitors: Mills Oakley (Applicant) Marsdens Law Group (Respondent)
<b>File Number(s):</b>	2025/43370
<b>Publication restriction:</b>	Nil

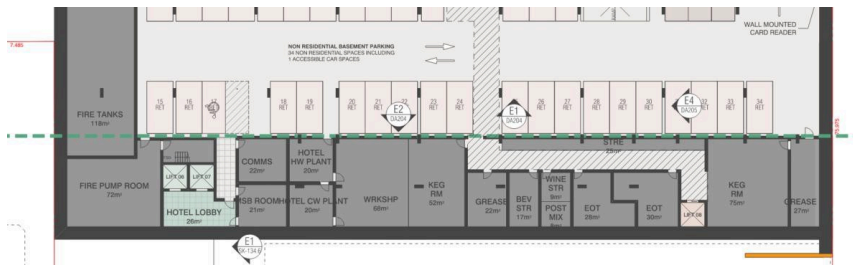
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## JUDGMENT

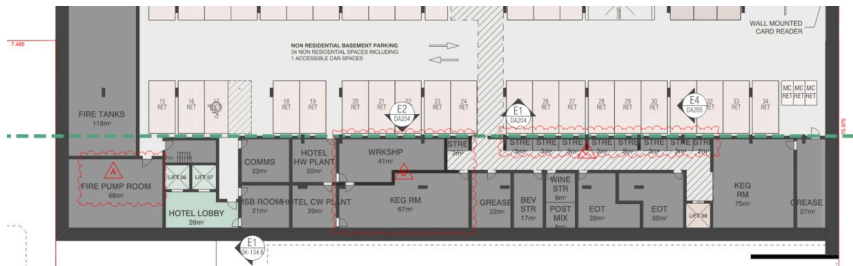
*This decision was given as an extemporaneous decision. It has been revised and edited prior to publication.*

### The Proposal

- 1 These proceedings arise following an appeal by the applicant in respect to the Council's determination to refuse consent to Modification Application No. DA/437/2021/A (as amended) made under s 4.55(2) of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) for the modification of Development Application No. DA/437/2021 (the approved development).
- 2 The site is located at 212 Arden Street, 227-233 Coogee Bay Road, and 5-7 & 15A Vicar Street, Coogee, and comprises the following four allotments:
  - (1) 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.
  - (2) 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.
  - (3) 5-7 Vicar St (Lot B DP 437308) comprising a two-storey residential flat building.
  - (4) 15A Vicar St (Lot A DP 337724) comprising a three-storey residential flat building.
- 3 Specifically, the proposed modifications include:
  - (1) 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 (refer to Figures 1 and 2). No change is proposed to the building height or gross floor area of the approved development.



**Figure 1:** Extract of approved Basement Level 01 plan



**Figure 2:** Extract of proposed Basement Level 01 plan

- (2) 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.”

- (3) Delete the deferred commencement condition (Condition A1), which requires the preparation and implementation of a Noise Masterplan having regard to the submission of the Precinct Noise Management Plan and Acoustic Masterplan. Condition A1 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 (...)

- (4) The modification application (as amended) also seeks to modify various other conditions of the development consent having regard to the submission of the Precinct Noise Management Plan and Acoustic Masterplan.

4 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (NSW) (LEC Act) between the parties, which was held on 17 December 2025. I presided over the conciliation conference. At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would

be acceptable to the parties. 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.

- 5 The parties' decision involves the Court exercising the function under s 4.55(2) of the EPA Act to modify Development Consent No. DA/437/2021. There are pre-conditions which must be satisfied before the modification application can be approved. The parties have addressed these jurisdictional pre-requisites in in their jurisdictional statement.
- 6 After review I am satisfied on the documents filed in the appeal and the documents in Ex C, attached to the signed agreement that I have power to make the orders sought.
- 7 In relation to s 4.55(2)(a) of the EPA Act I accept that the development to which the consent to be 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).
- 8 Relevantly, none of the conditions proposed to be modified were imposed as a requirement of a concurrence to the consent or in accordance with any general terms of an approval, so accordingly, no consultation is required under s 4.55(2)(b) of the EPA Act.
- 9 The modification application was notified in accordance with the EPA Act and the Randwick Community Participation Plan, satisfying s 4.55(2)(c) of the EPA Act. Between 13 January 2025 and 10 February 2025, 28 submissions were received and those submissions relevant to the modification were considered by the Council and addressed to Council's satisfaction by the agreed conditions.
- 10 The Environmental Planning and Assessment Regulation 2021 (EPA Regulation) sets out certain requirements, and the application has addressed all relevant matters. In that regard it is to be noted that:

*Section 98(1) – Modification application for development*

- 11 Owner's consent has been obtained for the proposed modification as required by s 98(1) of the EPA Regulation. The owner's consent letter dated 12 November 2024 is located at Tab 4 of the Class 1 Application.

*Section 100 – Content of modification application*

- 12 The materials forming part of the modification application includes the relevant information set out under s 100(1) of the EPA Regulation, in particular:
- (1) The name and address of the applicant is located on the amended Class 1 Application form (required by s 100(1)(a));
  - (2) A description of the development that will be carried out under the development

consent is set out on page 6 of the modification report (required by s 100(1)(b));

- (3) The address and folio identifier of the land on which the development will be carried out is set out on page 5 of the modification report (required by s 100(1)(c));
  - (4) A description of the modification to the development consent is set out on page 8 of the modification report (required by s 100(1)(d));
  - (5) The intention of the modification application is set out on pages 1-5 of the modification report (required by s100(e));
  - (6) A description of the expected impacts of the modification is set out on pages 39-40 of the modification report (required by section 100(1)(f));
  - (7) The modified development will remain substantially the same as the development originally approved as confirmed on page 15 of the modification report (required by s 100(1)(g));
  - (8) The owner's consent has been obtained for the proposed modification (required by s 100(1)(i)); and
  - (9) The modification application was made to the Council under s 4.55(2) of the EPA Act as described on the pre-lodgement development application form at Tab 1 of the Class 1 Application (s 100(1)(j)).
- 13 The modification application does not propose any changes to the residential portion of the development consent that constitutes a BASIX development. Accordingly, the application is accompanied by the original BASIX certificate (as per s 100(3) does not arise). This appears at Tab 3 of Exhibit AMK-2.

*Section 102 – Modification applications for residential apartment development consents'*

- 14 A design verification statement has been prepared by a qualified designer. This document is dated 12 December 2025 and appears at Tab 4 of Exhibit AMK-2 (the design verification statement).
- 15 The design verification statement:
- (1) Verifies that the qualified designer directed the design of the development.
  - (2) Verifies that the qualified designer did not direct the design of the development for which the original development consent was granted.
  - (3) Explains how the development addresses:
    - (a) The design principles for residential apartment development, and
    - (b) The objectives in the Apartment Design Guide.
  - (4) Verifies that the modification does not:
    - (a) Diminish or detract from the design quality of the original development; or
    - (b) Compromise the design intent of the original development.
- 16 This is confirmed in the design verification statement.

**State Environmental Planning Policy (Housing) 2021**

- 17 The modification application is subject to Chapter 4 'Design of Residential Apartment Development' of the State Environmental Planning Policy (Housing) 2021 (the Housing SEPP).
- 18 A qualified designer has verified that he did design, or directed the design of, the original development. Therefore, it is not necessary for the consent authority to refer the modification application to a design review panel for advice and consequently s 146(2) of the Housing SEPP does not apply.
- 19 Section 147(1) of the Housing SEPP requires a consent authority to take into consideration specified matters, namely:
- (1) The quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9;
  - (2) The Apartment Design Guide; and
  - (3) Any advice received from a design review panel within 14 days after the consent authority referred the modification application to the panel.
- 20 The Council is satisfied that the design verification statement provides sufficient information for the consent authority to consider the matters set out in paragraphs [19(1)] and [19(2)] above. No advice has been received from a design review panel under [19(3)] above.

## Conclusion

21 As the decision acceptable to the parties is a decision that the Court could have made in the proper exercise of its functions, I make the following orders in accord with their executed s 34 agreement.

## Orders

22 The Court orders:

- (1) The modification application pursuant to section 4.55(8) of the *Environmental Planning and Assessment Act 1979* (NSW) is approved.
- (2) Development consent DA/437/2021 granted by Sydney Eastern City Planning Panel on 3 May 2024 (as modified) is modified in the terms in Annexure A.
- (3) Development consent DA/437/2021 as modified by the Court is Annexure B.

## S Dixon

### Senior Commissioner of the Court

43370.25 Annexure A

43370.25 Annexure B

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Decision last updated: 25 March 2026