

AUSTRALIA / JUDGMENT

APPWAM PTY LTD v Inner West Council

[2026] NSWLEC 1642**COURT**

Land and Environment Court

DECIDED

29 September 2026

BEFORE

Swan AC

CASE / FILE NUMBER

2026/00129657

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Source record

Land and Environment Court

New South Wales

Amendment notes

Medium Neutral Citation: APPWAM PTY LTD v Inner West Council [2026] NSWLEC 1642**Hearing dates:** Conciliation Conference on 12 June, 11 September and 24 September 2026**Date of orders:** 29 September 2026**Decision date:** 29 September 2026**Jurisdiction:** Class 1**Before:** Swan AC**Decision:****The Court orders that:**

- (1) The appeal is upheld.
- (2) Development Consent No. REV/2021/0024 (DA/2020/1022) is modified in the terms in Annexure A.
- (3) Development Consent No. DA/2020/1022, as modified by the Court, is Annexure B.

Catchwords: MODIFICATION APPLICATION – erection of a building for 103 boarding rooms – conciliation conference – agreement reached – orders made**Legislation Cited:**

Environmental Planning and Assessment Act 1979 (NSW), ss 4.15, 4.55, 8.9
Land and Environment Court Act 1979 (NSW), s 34
Environmental Planning and Assessment Regulation 2021 (NSW), ss 23, 100, 113
Environmental Planning and Assessment Regulation 2021 (NSW), s 27 (Repealed)
Inner West Local Environmental Plan 2022, cll 4.3, 4.4
State Environmental Planning Policy (Affordable Rental Housing) 2009, cll 29, 30
State Environmental Planning Policy (Housing) 2021, Sch 7A

Category: Principal judgment

Parties:	APPWAM PTY LTD (Applicant) Inner West Council (Respondent)
Representation:	
Counsel:	B Salon (Solicitor) (Applicant) S Turner (Solicitor) (Respondent)
Solicitors:	The Law Salon (Applicant) Inner West Council (Respondent)
File Number(s):	2026/00129657
Publication restriction:	Nil

JUDGMENT

COMMISSIONER: This appeal relates to an application to modify a development consent issued for construction of a building containing 93 boarding rooms at 55, 57-59 and 61-63 Smith Street, Summer Hill (Lot 13 in Section 1 DP 560, Lot 1 DP 796910, Lot 1 DP905473) (the site). The modification application also applies to the existing boundary wall between the site and 51-53 Smith St, Summer Hill (Lot 12 in Section 1 DP 560) (the Neighbouring Land). The modification application seeks an increase in the number of boarding rooms, an increase in gross floor area (GFA), a reduction in car parking and motorcycle spaces, an increase in bicycle spaces and modifications to the approved building footprint, building envelope and boundary fencing/walls. Following the expiry of the period after which a modification application is deemed to be refused, the Applicant (APPWAM PTY LTD) lodged an appeal pursuant to s 8.9 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act). The Court was required to arrange a conciliation conference between the parties, pursuant to s 34(2)(a) of the Land and Environment Court Act 1979 (NSW) (LEC Act). The conciliation conference commenced on 12 June 2026. I presided over the conciliation conference. Additional conciliation conferences were held on the 11 September and 24 September 2026 to discuss the Jurisdictional Statement and the modified Conditions of Consent. At the initial conciliation conference, an in principle agreement under s 34(3) of the LEC Act was reached between the parties, relating to amendments that could be made to the modification application that would be acceptable to the parties. The conciliation conference was adjourned to allow the Applicant time to prepare amended plans, for the Council to review those amended plans and for the Applicant to liaise with the adjoining landowner at 51-53 Smith Street, Summer Hill, regarding the proposed amendments to the boundary fencing/walls. The signed s 34 agreement was filed with the Court on 27 August 2026. Following the approval by the Council of an amendment to the modification application, pursuant to s 113(4) of the Environmental Planning and Assessment Regulation 2021 (NSW) (EPA Regulation), the modification application seeks approval for: An increase in the number of boarding rooms from 93 to 103 rooms, An increase in the gross floor area (GFA) by 344.72m², A reduction on the number of car parking spaces from 46 spaces to 23 spaces, An increase in the number of bicycle spaces from 42 spaces to 55 spaces, A reduction in the number of motorcycle spaces from 18 spaces to 12 spaces, and Modification to the approved building footprint, building envelope and

boundary fencing/walls. A plan of management (POM), amended stormwater drawings, an acoustic impact assessment and the provision of owner's consent for the Neighbouring Land is also provided. In exercising the functions of the consent authority on appeal, the Court has the power to determine the modification application pursuant to s 4.55(2) of the EPA Act. The signed agreement is supported by a Jurisdictional Statement provided to the Court on 2 September 2026, which sets out the jurisdictional matters about which the consent authority must be satisfied. An updated Jurisdictional Statement was provided to the Court on 22 September 2026, confirming that a BASIX Certificate is not required to accompany the modification application. I have considered the contents of the Jurisdictional Statement, together with the documents referred to therein, the Class 1 Application and its attachments and the documents that are referred to in Condition 1 (of Annexure B). Based on those documents, I have considered the matters required to be considered pursuant to ss 4.55(3) and 4.15(1) of the EPA Act. The final orders in this appeal, outlined in [18] below, are made as a result of an agreement between the parties that was reached as a result of the conciliation conference. As the presiding Commissioner, I am satisfied that the decision is one that the Court could have made in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I form this state of satisfaction on the basis that the development to which the consent as modified relates is substantially the same as the development for which consent was originally granted. This is based on the parties' agreed position that the approved use remains as originally approved, being for a boarding house with basement parking and that the proposed modification largely retains the approved building envelope, with the selected changes to reflect the proposed internal reconfiguration. I accept the parties' assessment that the proposed changes do not alter the development such as to render it not substantially the same. The modification application was notified by Council between 16 December 2025 to 28 January 2026. In response to the notification of the application, 23 submissions were received. Further, a number of residents and/or their appointed representatives provided oral submissions at the s 34 conciliation conference site view. Following the s 34 conciliation conference, the amended plans were provided to the 23 submission writers, and submissions were received (the parties advise that the substance of the original objections remained) and 1 objection was withdrawn. The plans were then further amended to increase the height of the boundary fence in part from 1800mm to 2100mm. The parties advise that the amendments made to the modification application, as a result of the conciliation conference address a number of concerns raised in the public submissions. The parties advise that the public submissions have been considered in the assessment of the modification application, and that no further amendment or refusal of the modification application is warranted. The parties agree, and I accept, that as required by s 23 of the EPA Regulation, owners consent to the making of the modification application has been given as follows: The Applicant of the modification application is the registered proprietor of the site and owner's consent is provided at Tab 1 of the Class 1 application, with the signed version of the owner's consent provided to the Court on 4 September 2026; and The owner's consent for the Neighbouring Land can be found behind Tab 6 in the Amended and Additional Modification Material provided to the Court. While the State Environmental Policy (Housing) 2021 (Housing SEPP) is now in force, the savings and transitional provisions in schedule 7A of the Housing SEPP apply, such that the modification application is to

be assessed under State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP). The modification application complies with both the height of buildings development standard under Inner West Local Environmental Plan 2022 (IWLEP), and the FSR development standard application under the IWLEP and ARH SEPP, as follows: The site has floor space ratio of 0.7:1 pursuant to Clause 4.4 of the IWLEP. Pursuant to cl 29(1)(c)(i) of the ARH SEPP, additional FSR of 0.5:1 is permitted above the maximum permissible FSR and applies as a non-discretionary development standard. In this case, the maximum FSR permitted is increased from 0.7:1 to 1.2:1. The proposed increase in FSR from the 0.97:1 approved by the original DA, to the 1.1:1 FSR proposed by the modification application is below this maximum permitted FSR and is therefore acceptable; and The site has a building height limit of 12.5 metres pursuant to cl 4.3 of the IWLEP. The proposed increase in building height from the 10.35m approved by the original DA, to the 11.76 metres proposed by the modification application is acceptable. The modification application will result in a development that is compliant with the requirements of cl 30 of the ARH SEPP including compliant sizes for the boarding rooms, the existence of a managers room and by the parking provided. There is therefore no jurisdictional barrier under cl 30 of the ARH SEPP to the granting of approval to the modification application. Under s 100(3)(a) of the EPA Regulation, the modification application is not required to be accompanied by a BASIX certificate. The development is not defined as BASIX development or BASIX optional development under the current EPA Regulation. Further, at the time of determination of the original DA, the development was also not listed as BASIX development or BASIX optional development under s 27 and the Dictionary of the EPA Regulation in force at the time. Having reached the state of satisfaction that the decision is one that the Court could have made in the proper exercise of its functions, s 34(3)(a) of the LEC Act requires me to “dispose of the proceedings in accordance with the decision”. The LEC Act also requires me to “set out in writing the terms of the decision” (s 34(3)(b)). In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any assessment of the merits of the modification application against the discretionary matters that arise pursuant to an assessment under ss 4.55(3) and 4.15(1) of the EPA Act. The outcome The Court notes that Inner West Council, as the relevant consent authority for the purposes of s 113(4) of the EPA Regulation, approves the Applicant’s amendment to Modification Application No. MOD/2025/0440 to rely upon the following amended plans and documents: Item Date Architectural Drawings (Proj 25001), Rev N, prepared by Mostaghim:

- 00 – Cover Sheet, Drawing List and Project Summary;
- 01 – Site/Roof Plan;
- 02 – Basement Level Plan;
- 03 – Ground Level Plan;
- 04 – Level 01 Plan;
- 05 – Level 02 Plan;

- 06 – South & North Elevation;
- 07 – East & West Elevation;
- 08 – Courtyard Elevations;
- 09 – Section;
- 10 – Ramp Section;
- 11 – GFA Diagram;
- 12 – Materials and Finishes Schedule;
- 13 – 3D View – 9M Height Line Sheet 1;
- 14 – 3D View – 9M Height Line Sheet 2;
- 15 – 3D View – Building Envelope Comparison Sheet 1;
- 16 – 3D View – Building Envelope Comparison Sheet 2;
- 17 – Shadow Diagram June 21st 9am;
- 18 – Shadow Diagram June 21st 10am;
- 19 – Shadow Diagram June 21st 11am;
- 20 – Shadow Diagram June 21st 12pm;
- 21 – Shadow Diagram June 21st 1pm;
- 22 – Shadow Diagram June 21st 2pm;
- 23 – Shadow Diagram June 21st 3pm;
- 24 – View from 7&9 Fleet St to the Site;
- 25 – View from 13, 15, 17 & 19 Fleet St from the Site;
- 26 – Sun Eye Views – 9.00 & 9.30am;
- 27 – Sun Eye Views – 10.00 & 10.30am;
- 28 – Sun Eye Views – 11.00 & 11.30am;
- 29 – Sun Eye Views – 12.00 & 12.30pm;
- 30 – Sun Eye Views – 1.00 & 1.30pm;
- 31 – Sun Eye Views – 2.00 & 2.30pm;
- 32 – Sun Eye Views – 3.00pm;
- 33 – NSA Diagram; and

- 34 – 51-53 Smith St Boundary Wall Section & Elevation. 10 Aug 2026 Plan of Management, prepared by Planning Ingenuity 10 Aug 2026 Accessibility Assessment Stormwater Management Drawings (Ref: D25170), rev D, prepared by Danmor Consulting Engineers:
- ST00 – General Notes;
- ST01 – Site Stormwater Drainage Plan;
- ST02 – Site Stormwater Drainage Plan;
- ST03 – Easement Plan for Overland Flow;
- ST04 – Stormwater Drainage Details;
- ST05 – WSUD (Music Modelling and Result); and
- ST06 – Erosion and Sediment Control Plan and Details. 29 May 2026 Noise and Vibration Impact Assessment (260348), Rev 0, prepared by Pulse White Noise 29 May 2026 Owners Consent - 51-53 Smith St Summer Hill NSW 2130 21 Aug 2026 The parties have agreed on the modified conditions of consent to be imposed, as a result of the approval of the modification application. The parties agree, and I accept that assessment, that the amended conditions of consent are appropriate.

Orders

The Court orders that: The appeal is upheld. Development Consent No. REV/2021/0024 (DA/2020/1022) is modified in the terms in Annexure A. Development Consent No. DA/2020/1022, as modified by the Court, is at Annexure B. C Swan Acting Commissioner of the Court

Annexure A (243 KB, pdf) Annexure B (368 KB, pdf) Amendments 30 September 2026 -
Typographical error corrected to the Respondent's legal representative. DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated. Decision last updated: 30 September 2026

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Prepared on 25 October 2026 · Esheria