

AUSTRALIA / JUDGMENT

Harris v Randwick City Council

[2026] NSWLEC 1620**COURT**

Land and Environment Court

DECIDED

22 September 2026

BEFORE

Sherry AC

CASE / FILE NUMBER

2026/122540

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Land and Environment Court

New South Wales

Medium Neutral Citation: Harris v Randwick City Council [2026] NSWLEC 1620**Hearing dates:** Conciliation conference on 16 June 2026**Date of orders:** 22 September 2026**Decision date:** 22 September 2026**Jurisdiction:** Class 1**Before:** Sherry AC**Decision:****The Court orders that:**

- (1) The applicant's written request made pursuant to cl 4.6 of the Randwick Local Environmental Plan 2012 (NSW) (RLEP) seeking a contravention of the maximum floor space ratio standard in cl 4.4 of the RLEP is approved.
- (2) The appeal is upheld.
- (3) Development Application DA/20/2026, as amended, proposing alterations to existing approved backpackers' accommodation at 171 Arden St, Coogee NSW 2034, is determined by the grant of consent subject to the conditions in Annexure A.

Catchwords: ENVIRONMENT AND PLANNING — consent — appeal — conciliation conference — s 34 agreement — conditions of consent — cl 4.6 written request**Legislation Cited:** Environmental Planning and Assessment Act 1979 (NSW), ss 4.15, 4.16, 4.17, 8.7
Land and Environment Court Act 1979 (NSW), s 34
Environmental Planning and Assessment Regulation 2021 (NSW), ss 23, 38
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6
Randwick Local Environmental Plan 2012 (NSW), cll 2.3, 4.3, 4.4, 4.6, 5.10, 6.4, 6.7**Texts Cited:** Randwick Development Control Plan 2013**Category:** Principal judgment

Parties:	Daniel Harris (Applicant) Randwick City Council (Respondent)
Representation:	
Counsel:	B Salon (Solicitor) (Applicant) S Patterson (Solicitor) (Respondent)
Solicitors:	The Law Salon (Applicant) Finn Roache Lawyers (Respondent)
File Number(s):	2026/122540
Publication restriction:	Nil

JUDGMENT

COMMISSIONER: These proceedings arose from an appeal, pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act), against a deemed refusal of development application DA/20/2026 (DA) by Randwick City Council. The development application seeks consent for alterations to an existing backpackers' accommodation on Lot 1 in DP 949449, known as 171 Arden St, Coogee (Site), including internal demolition, internal layout changes and reconfiguration works, along with changes to external openings and façade presentation. Pursuant to s 34(1) of the Land and Environment Court Act 1979 (NSW) (LEC Act) a conciliation conference was arranged between the parties, which I presided over on 16 June 2026. This was adjourned to allow the parties further time to resolve the contentions. Negotiations led to amended and additional architectural drawings, additional structural engineering materials, additional fire safety material and an amended plan of management, along with proposed conditions of consent. The Council is now satisfied the amended materials resolve the contentions and has reached an agreement with the applicant as to the terms of a decision in the proceedings that would be acceptable. The decision involves the Court exercising the functions under s 4.16 of the EPA Act to grant development consent to the DA, as amended and subject to the agreed conditions in Annexure A. Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' signed agreement if the decision is one that the Court "could have made in the proper exercise of its functions". That requires the Court to be satisfied of a number of pre-conditions. Based on the parties' submission and the evidence before me I am satisfied that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions for the following reasons. The development application was lodged by the registered proprietor of the land, Mr Harris, complying with the Environmental Planning and Assessment Regulation 2021 (NSW) (the EP&A Regulation), s 23(1) (a). Pursuant to s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, a consent authority may not grant consent for development unless it has considered whether the land is contaminated. The Statement of Environmental Effects, prepared by Planning Ingenuity, dated 12 January (SEE) indicates that the site has been used long-term for residential purposes and that contamination is unlikely. I am satisfied of the relevant matters in s 4.6. The land is zoned E1-Local Centre under the Randwick Local Environmental Plan 2012 (NSW) (RLEP). As

required by cl 2.3(2) of the RLEP, I have had regard to the objectives for development in the zone. Under cl 4.3 of the RLEP, the maximum height of buildings in the zone is 12m and the proposed development complies (Architectural Drawings, Drawing A-12 Long Section, prepared by Mostaghim, dated 29 May 2026). The proposed development does not comply with the maximum floor space ratio for the Site under cl 4.4 of the RLEP, and the parties rely on a written request under cl 4.6 of the RLEP, (Annexure B to the SEE). On the basis of the written request, the Court is satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. The Site is not a heritage item, and it is not within a heritage conservation area. However, it is in proximity to two local heritage items. Based on the SEE and Drawing A-21 – Materials and Finishes (Architectural Drawings, prepared by Mostaghim, dated 29 May 2026), the parties agree, and I accept, that the proposed development will not have any adverse impact on these heritage items. I have considered the matters that are required to be considered under cl 5.10 of the RLEP. Based on the Stormwater Management Plans, prepared by Partridge dated 19 December 2025, I am satisfied of the matters in cl 6.4(3) of the RLEP. The Site falls within a foreshore scenic protection area. The Site is surrounded by substantial buildings and based on the site inspection during the s 34 conciliation conference and the SEE, I am satisfied of the matters in cl 6.7(3) of the RLEP. Remaining matters in s 4.15(1) of the Environmental Planning and Assessment Act 1979 (NSW) Under the EPA Act, s 4.15(1), in determining a development application, a consent authority must take into consideration a number of matters. From 27 January 2026 to 10 February 2026, the DA was publicly notified. Two submissions were received, which have been considered. There were no submissions onsite at the s 34 conciliation conference. I have also considered the relevant parts of the Randwick Development Control Plan 2013, along with the other matters in s 4.15(1). Conditions of consent Conditions of consent were sought by the respondent and agreed to by the applicant. The parties agree, and I accept, that the conditions of consent are lawful having regard to the provisions of ss 4.16 and 4.17 of the EPA Act and relevant legal principles.

Conclusion

The parties advise, and I accept that the approval of the DA does not result in any contravention of the EPA Act, any environmental planning instrument or the EP&A Regulation. As such, the Court may exercise its function under s 4.16(1) of the EPA Act and grant consent to the DA. As the parties' decision is within the Court's power under s 34(3) of the LEC Act, I now dispose of the proceedings in accordance with that decision. In forming that view, I am not required to make, and have not made, any assessment of the merits of the DA against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act. The Court notes that Randwick City Council as the relevant consent authority, has approved under s 38(1) of the Environmental Planning and Assessment Regulation 2021 (NSW) the applicant amending Development Application DA/20/2026 in accordance with the following documents: Item Date Architectural Drawings (21010), prepared by Mostaghim:

- A-00 – Cover Page, Drawing List & Project Summary, Rev K;
- A-01 – Existing / Demolition Ground Floor Plan, Rev H;
- A-02 – Existing / Demolition Level 1 Plan, Rev H;
- A-03 – Existing / Demolition Roof Plan, Rev H;
- A-04 – Proposed Ground Floor Plan, Rev J;
- A-05 – Proposed Level 1 Plan, Rev J;
- A-06 – Proposed Level 2 Plan, Rev J;
- A-07 – Proposed Roof Plan, Rev J;
- A-08 – Proposed West Elevation, Rev H;
- A-09 – Proposed South Elevation, Rev H;
- A-10 – Proposed North Elevation, Rev B;
- A-11 – Proposed East Elevation, Rev I;
- A-12 – Long Section, Rev I;
- A-13 – Cross Section, Rev I;
- A-14 – Existing GFA Plans. Rev G; and
- A-15 – Proposed GFA Plans, Rev J. 29 May 2026 Structural Engineering Report, prepared by Partridge 18 June 2026 Brick Tie Investigation Report (BTI-171AS-2026), prepared by Abacorp 12 May 2026 Fire Engineering Support Letter, prepared by Core Engineering 1 June 2026 Plan of Management (Ref M210280), prepared by Planning Ingenuity 22 June 2026 Materials and Finishes, A-21, Rev G prepared by (21010), prepared by Mostaghim 21 July 2026

Orders

The Court orders that: The applicant's written request made pursuant to cl 4.6 of the Randwick Local Environmental Plan 2012 (NSW) (RLEP) seeking a contravention of the maximum floor space ratio standard in cl 4.4 of the RLEP is approved. The appeal is upheld. Development Application DA/20/2026, as amended, proposing alterations to existing approved backpackers' accommodation at 171 Arden St, Coogee NSW 2034, is determined by the grant of consent subject to the conditions in Annexure A. C Sherry Acting Commissioner of the Court

Annexure A (437 KB, pdf) 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: 22 September 2026

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