

AUSTRALIA / JUDGMENT

Randwick Accommodation Pty Ltd v Randwick City Council

[2025] NSWLEC 1693**COURT**

Land and Environment Court

DECIDED

25 September 2025

BEFORE

Porter C

CASE / FILE NUMBER

2024/316905

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Land and Environment Court New South Wales

Medium Neutral Citation: Randwick Accommodation Pty Ltd v Randwick City Council [2025] NSWLEC 1693**Hearing dates:** Conciliation conferences on 12 September 2025**Date of orders:** 25 September 2025**Decision date:** 25 September 2025**Jurisdiction:** Class 1**Before:** Porter C**Decision:**

The Court orders:

(1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment pursuant to s 8.15 of the Environmental Planning and Assessment Act 1979 (NSW) in the agreed amount of \$12,000 within 28 days of the orders.

(2) The appeal is upheld.

(3) Development Application DA/225/2024 for a change of use from a boarding house to hotel accommodation and alterations and additions to the existing structure including the removal of the non-heritage enclosure of the first floor balcony, removal of the non-heritage portion of the building at the rear of the site, construction of a new 2-storey building at the rear at 40 The Avenue, Randwick, is determined by a grant of consent subject to conditions contained in Annexure 'A'.

Catchwords: DEVELOPMENT APPEAL – hotel – conciliation conference – agreement between the parties – orders

Legislation Cited:	Environmental Planning and Assessment Act 1979 (NSW), ss 4.15, 8.7, 8.15 Land and Environment Court Act 1979 (NSW), s 34 Environmental Planning and Assessment Regulation 2021 s 38 Randwick Local Environmental Plan 2012 cl 2.3, 3.7, 4.3, 4.4, 4.5, 4.6, 5.10, 6.2, 6.4, 6.10 State Environmental Planning Policy (Housing) 2021, Pt 3, ss 45, 47 State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6
Cases Cited:	Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) 365 ALR 86; [2018] NSWCA 245 McMillan v Taylor [2023] NSWCA 183
Texts Cited:	Department of Planning (NSW), Affordable Rental Housing SEPP: Guidelines for the Retention of Existing Affordable Rental Housing, October 2009
Category:	Principal judgment
Parties:	Randwick Accommodation Pty Ltd (Applicant) Randwick City Council (Respondent)
Representation:	
Counsel:	G Hugo (Solicitor) (Applicant) J Ede (Solicitor) (Respondent)
Solicitors:	Mills Oakley (Applicant) Wilshire Webb Staunton Beattie (Respondent)
File Number(s):	2024/316905
Publication restriction:	Nil

JUDGMENT

COMMISSIONER: This is a Class 1 development appeal pursuant to s 8.7 of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act) against the refusal of development application DA/225/2024. The development application seeks consent for the change of use from a boarding house to hotel accommodation and alterations and additions to the existing structure including the removal of the non-heritage enclosure of the first floor balcony, removal of the non-heritage portion of the building at the rear of the site and construction of a new 2 -storey building at the rear (DA) at 40 The Avenue, Randwick (site).

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 12 September 2025. I presided over the conciliation.

The Respondent, as the relevant consent authority, has agreed under s 38 of the Environmental Planning and Assessment Regulation 2021 (EPA Regulation 2021) to the Applicant amending DA/255/2024 in accordance with the documents contained at Annexure B (amended DA). The changes are summarised by the parties as:

Removal of one accommodation room (from 10 down to 9);

Removal of one basement level and a reduction in the extent of basement excavation on all sides of the basement to set it back from the Site boundaries;

Retention of the existing fire places in the existing building;

Reconfiguration and redesign of:

Room 1 and room 9;

The layout of the service desk;

The layout of the rear garage; and

Basement 1.

The parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal for the amended DA and granting development consent to the amended application subject to conditions of consent.

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.

Jurisdictional Prerequisites

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

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.

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

I have carried out the required jurisdictional check (*Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 365 ALR 86; [2018] NSWCA 245 at [202]). For the reasons set out below, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions as required by s 34(3) of the LEC Act.

I am satisfied that owner's consent accompanied the development application, as the registered proprietor of each property is the Applicant. In addition, accompanying the DA is the consent from the directors of the company.

I note that for the abundance of caution, no works, including building walls, are proposed on adjoining sites, as stated within condition 1A.

Community notification and objections

The Respondent notified the DA between 15 April 2024 to 10 May 2024. 28 submissions were received. The Court heard oral submissions from three objectors at the conciliation conference.

Different from the consideration of the Court at a hearing, as the parties have entered into an agreement, the Court's role is limited to ensuring that there is power to grant consent, and not to considering the merits of the issues raised (*Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 365 ALR 86; [2018] NSWCA 245 at [217]).

In reaching agreement, the parties have advised the Court that they considered the concerns raised in the written and oral objections and where possible, that these have been addressed.

Heritage Act 1977

The site is a state heritage item, listed as item I454 and forming part of the Avonmore Terrace Group. The amended DA was referred to Heritage NSW and General Terms of Approval were issued on 6 August 2025. These have been accepted by the parties and included at Annexure A as conditions of consent.

Randwick Local Environmental Plan 2012

I accept the parties' agreement that the identified preconditions to grant consent have been satisfied as detailed below.

The site is zoned R3 Medium Density Residential. The proposed development for hotel or motel accommodation is permissible in the zone. Pursuant to cl 2.3, I accept that the parties have had regard to the objectives of the zone as set out in the jurisdictional statement.

Clause 2.7 permits demolition with consent.

Clause 4.3 height of buildings applies to the site, with a maximum height of 12m. The existing building has a height of 14.4m, however the proposed works are below the building height limit.

Clause 4.4 floor space ratio (FSR) applies a maximum FSR of 0.9:1. The amended DA seeks an FSR of 0.96:1. In response to concerns raised by residents, the parties confirmed that the site area for the purposes of calculating FSR pursuant to cl 4.5 includes the right of way. This is due to the proposed development being permissible in the land use table, and therefore not characterised as prohibited development as defined by cl 4.5(4). There are no other provisions that require exclusion of the right of way area for the purposes of calculating site area or FSR.

The variation to cl 4.4 relies on a written request prepared by ABC Planning dated August 2025 (written request) pursuant to cl 4.6. I accept the parties' agreement that the written request satisfactorily addresses all the preconditions in cl 4.6 and consequently, the variation to cl 4.4 has been adequately justified by the Applicant.

Clause 5.10 heritage conservation applies as the site is part of a state heritage item and is also within the St Jude's Heritage Conservation Area. I accept that the parties' have adequately considered the provisions as demonstrated by the suite of heritage reports prepared by qualified heritage consultants that form part of the amended DA.

Clause 6.2 earthworks applies to the proposal and its provisions have been addressed by the parties in considerable detail in the jurisdictional statement. The DA is accompanied by a Geotechnical Investigation Report prepared by Crozier Geotechnical Consultants, Excavation and Vibration Monitoring Report prepared by Crozier Geotechnical Consultants, Construction Management Plan prepared by Hi-Pac Constructions, Stormwater Plans prepared by Deboke Engineering Consultants (Stormwater Plans), amended Waste Management Plan prepared by Dickens Solutions Pty Ltd dated February 2025, and other civil plans prepared by M&G Consulting dated 19 May 2025 which address the relevant provisions of cl 6.2. Conditions of consent have been included at Annexure A relating to excavation works, dilapidation reports and the like.

Clause 6.4 stormwater management applies to the development. On the basis of the documentation accompanying the amended DA, including the architectural plans, stormwater plans and the jurisdictional statement, I accept the parties' agreement that the provisions have been satisfied.

Clause 6.10 essential services applies to the amended DA. The site is currently serviced by the requisite essential services and will continue to be under the amended DA.

State Environmental Planning Policy (Housing) 2021

The amended DA is for the change of use from an existing boarding house to another use, and therefore triggers Part 3 of State Environmental Planning Policy (Housing) 2021 (Housing SEPP). The parties agree that the existing use is defined as a low rental residential building (s 45).

As set out in the jurisdictional statement and demonstrated by the documentation accompanying the amended DA, the parties agree, and I accept that s 47 of the Housing SEPP and the Affordable Rental Housing SEPP: Guidelines for the Retention of Existing Affordable Rental Housing, October 2009 have been adequately considered. The parties agree that the proposal does result in a loss of affordable house, that sufficient comparable accommodation is available, that financial assistance will be provided to current tenants to find comparable accommodation, that there will not be a significant adverse impact and that the existing boarding house has poor financial viability that is below the stated thresholds.

State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of s 4.6 apply to the site. The amended DA is accompanied by a Remediation Action Plan that provides recommendations for offsite disposal of contaminated fill to make the site suitable, amongst other conditions. These have all been incorporated into the conditions at Annexure A. On this basis, the parties agree' and I accept that s 4.6 has been satisfied.

Heads of consideration

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

Conclusion

In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.

As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.

Orders:

The Court orders:

The Applicant is to pay the Respondent's costs thrown away as a result of the amendment pursuant to s 8.15 of the Environmental Planning and Assessment Act 1979 (NSW) in the agreed amount of \$12,000 within 28 days of the orders.

The appeal is upheld.

Development Application DA/225/2024 for a change of use from a boarding house to hotel accommodation and alterations and additions to the existing structure including the removal of the non-heritage enclosure of the first floor balcony, removal of the non-heritage portion of the building at the rear of the site, construction of a new 2-storey building at the rear at 40 The Avenue, Randwick, is determined by a grant of consent subject to conditions contained in Annexure 'A'.

S Porter

Commissioner of the Court

Annexure A (479 KB, pdf)

Annexure B (138 KB, pdf)

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Decision last updated:

25 September 2025

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