

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2013/0112
Responsible Officer:	Kevin Short
Land to be developed (Address):	Part Lot 394 DP752038 , 5 Lawrence Street FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2007/0856 granted for the demolition of existing buildings and construction of a mixed use development comprising basement car parking, three-storey retail/commercial building, 10 residential apartments in two buildings and a detached dwelling and subdivision into two (2) lots and the staged construction and occupation of the development.
Zoning:	
Development Permissible:	No - Zone B2 Local Centre Yes - Zone R2 Low Density Residential
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Joshua Ross Pangallo Mr Frank Minnici Vincenzina Lucia Minnici
Applicant:	Mr Frank Minnici
Application lodged:	11/07/2013
Application Type:	Local
State Reporting Category:	Mixed
Notified:	26/07/2013 to 13/08/2013
Advertised:	27/07/2013
Submissions:	3
Recommendation:	Approval

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the

- development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 96AA - Environmental Planning and Assessment Act 1979 - Section 96AA

Warringah Local Environmental Plan 2011 - Zone B2 Local Centre

Warringah Development Control Plan - G5 Freshwater Village

SITE DESCRIPTION

Property Description:	Part Lot 394 DP752038 , 5 Lawrence Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The site is identified as Lots A and B, DP 37558, Nos. 5 and 5A Lawrence Street, Freshwater and Lot 9, DP 103521, No. 18 Marmora Street, Freshwater. The total site area of the subject site is 2,782.1 square metres.</p> <p>No. 5 Lawrence Street is a rectangular shaped allotment with a frontage to Lawrence Street of 15.24m. No.5A Lawrence Street is a battleaxe allotment with the main portion of the site located directly to the north of No.5 Lawrence Street. The access handle of No.5A Lawrence Street is located on the eastern side of No.5 Lawrence Street and has a width of 4.8m. The access handle provides vehicular access to both No.5 and No.5A Lawrence Street.</p> <p>Numbers 5 and 5A Lawrence Street combined are rectangular in shape with a frontage to Lawrence Street of 20.1 metres, a depth of approximately 102 metres and a site area of 2048.6 square metres. Numbers 5 and 5A Lawrence Street are relatively flat to gently sloping, falling approximately 3 to 4 metres towards the northern boundary.</p> <p>The existing development at No. 5 Lawrence Street, Freshwater consists of a two storey mixed use retail and residential building fronting Lawrence Street. An open air car parking area and garage is located to the rear of the existing retail/residential building.</p> <p>The northern portion of No.5 Lawrence Street and the southern portion of No.5A Lawrence Street is a vacant grassed area.</p> <p>No.5A Lawrence Street is occupied by a two storey brick dwelling and driveway. The dwelling is located in the northern half of the site. There is an existing sewer line which dissects the southern portion of No.5A Lawrence Street.</p>

No.18 Marmora Street is an irregular shaped lot and has an area of 733.5 square metres. The site adjoins part of the eastern boundary of No. 5A Lawrence Street. No. 18 Marmora Street is improved by a single storey dwelling with a front landscaped garden and a larger rear yard. The topography of No. 18 Marmora Street is characterised by a gentle slope which falls approximately 2 metres from the rear of the site to the northern property boundary.

Map:

Could not link to GIS

SITE HISTORY

Development Application - DA2007/0856

DA2007/0856 for Construction of a 3 Storey Retail/ Commercial Building, 10 Residential Apartments in 2 Buildings, a Detached Dwelling and Stratum Subdivision at 5 - 5A Lawrence Street and 18 Marmora Street, Freshwater was issued development consent by the Land and Environment Court on 3 April 2009.

Specifically, approval was granted for the following works:

- Demolition of all existing structures and removal of all trees on the site
- Construction of a three storey retail and commercial office building fronting Lawrence Street with three levels of basement car parking accommodating of 46 commercial car parking spaces
- Construction of 2 x three storey residential flat buildings which contain 5 dwellings each
- Construction of a two storey detached dwelling
- Construction of a basement car park for the two residential flat buildings and detached dwelling which accommodates 22 resident car parking spaces and 2 visitor car parking spaces
- Stratum subdivision

Previous to the court approval, the development application was refused by the Independent Hearing

and Assessment Panel on 10 June 2008.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Consent No.2007/0856 in accordance with the provisions of Section 96 (AA) of the Environmental Planning and Assessment Act 1979 in the following way:

- enable the staging of the construction and occupation of the proposed mixed use development (via amendments to conditions of consent)
- remove reference to the underground pedestrian access between the commercial building and residential basement carpark level (via the addition of Condition No.1.B - Deletion of Path and Stairs Between the Commercial Building and the Residential Basement Carpark Level)
- remove reference to the consolidation of allotments (via the amendment to the Description of the Development and an additional Plan of Subdivision included in Condition of Consent No.1 - Approved Plans and Supporting Information)
- remove provision for a right of carriageway over the subject property to provide pedestrian access to the adjoining Church property in Marmora Street (via the deletion of Condition of Consent No.115 - Right of Carriageway).
- remove reference to Torrens title subdivision in the description of the development given the removal of the pedestrian tunnel.

Change to Description of Development

The modification application also seeks to change the description of the development given the proposed modifications described above, including the deletion of the pedestrian tunnel and staging of the development. Should the application be approved, the Detailed Description of the Proposal will be modified as shown below (from A to B):

A) Original Description of Proposal

DA2007/0856 granted for the demolition of existing buildings and construction of a mixed use development comprising basement car parking, three-storey retail/commercial building, 10 residential apartments in two buildings and a detached dwelling and stratum subdivision.

to

B) Modified Description of Proposal

for the demolition of existing buildings and construction of a mixed use development comprising basement car parking, three-storey retail/commercial building, 10 residential apartments in two buildings and a detached dwelling and subdivision into two (2) lots and the staged construction and occupation of the development.

Further Documentation Received

The applicant submitted an updated subdivision plan which shows the deletion of the separate allotment for the pedestrian tunnel, including a right of footway. This was not shown on the plan of subdivision which accompanied the modification application when lodged.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This Clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This Clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This Clause is not relevant to this application.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building</p>

Section 79C 'Matters for Consideration'	Comments
	designer prior to the issue of a Construction Certificate. This Clause is not relevant to this application.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development, as modified, on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) The proposed development, as modified, will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development, as modified, will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p> <p>The issue raised in relation to whether the commercial component of the proposal will ever be constructed is dealt with elsewhere in this report. Additionally, the removal of the underground pedestrian access and staircase and right of carriageway will not detract from the public interest as other access routes will remain available for the general public, including local residents.</p>

Environmental Planning and Assessment Act 1979 - Section 96AA

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2007/0856, in full, with amendments detailed and assessed as follows:

1) The development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).

Comment: The modification relates to the revision of conditions of consent only, there is no alteration to the quantum of the development as approved. On this basis, the proposal is considered to be substantially the same development as the development for which the consent was originally granted. Additionally, the proposal as amended is of minor environmental impact and does not generate unacceptable amenity impacts on adjoining and surrounding residents and therefore it is not required to be advertised or determined by IHAP (as occurred in the original application).

2) The application has been notified in accordance with the regulations and development control plan.

Comment: The application was notified in accordance with the regulations and WDCP.

3) Consideration of submissions

Comment: All submissions have been considered in the "Public Exhibition" section of the report.

4) Assessment of matters referred to in section 79C (1) of the Environmental Planning and Assessment Act 1979.

Comment: The assessment matters referred to in Section 79C (1) of the Environmental Planning and Assessment Act 1979 are assessed under the "Environmental Planning and Assessment Act 1979 - Section 79C" Evaluation part of the report.

Having regard to the above, the proposed modification is assessed as being consistent with Section 96AA of the Environmental Planning and Assessment Act 1979.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Friends Of Freshwater Village	PO Box 663 FRESHWATER NSW NSW 2096
Phillip Malcolm Curry	5 Marmora Street FRESHWATER NSW 2096
Ann Sharp	77 Brighton Street CURL CURL NSW 2096

The following issues were raised in the submissions and each have been addressed below:

- deletion of the underground pedestrian access and stairs which connect the commercial development and residential basement carpark
- deletion of Condition of Consent No.95 - Consolidation of Lots
- deletion of Condition No.115 - Right of Carriage Way
- building of residential buildings across the site which is contrary to the intent of the H1 Freshwater Beach and H2 Harbord Village localities under WLEP 2000
- commercial component of the approved development may never be constructed which is contrary to WLEP 2000

- staged demolition and construction process will cause time intense time periods of related impacts on local business, community and streets

The matters raised within the submissions are addressed as follows:

- **Deletion of the underground pedestrian access and stairs which connect the commercial development and residential basement carpark**

The concern is that the deletion of the underground pedestrian access and stairs will remove convenient access between a residential and commercial area.

Comment: The court approved mixed use development included provision for underground pedestrian access from the basement car parking level of the residential development through to the commercial building fronting onto Lawrence Street.

In summary, the location of the sewer main is considered a site constraint to the construction of the underground pedestrian access and stairs and the deletion of the condition is a response to this site constraint.

The application was accompanied with advice from Byrne & Associates (dated 12 June 2013) that the proposed underground pedestrian access would conflict with the existing sewer main linking several properties to the west with the sewer main situated in Marmora Street.

Additionally, the advice concludes that the adjustment of the sewer main to suit the proposed underground pedestrian path is not practical or economically viable.

Whilst this will remove a 'convenient' access route there will be many alternative routes available for the future occupants of the residential buildings to access the commercial component of the development and vice versa and Lawrence Street generally. On this basis, and having regard to the advice from Byrne & Associates, the concerns raised in relation to the removal of the pedestrian pathway do not carry determining weight or warrant the refusal of the application.

Of most importance, the removal of the underground pedestrian access and stairs will not cause any inconsistencies with applicable planning controls, including SEPP 65 - Design Quality of Residential Flat Development, WLEP 2012 and WDCP.

- **Deletion of Condition of Consent No.95 - Consolidation of Lots**

The concern is that adequate justification has not been provided for the deletion of this condition.

Comment: An integral component of the approved development comprises the subdivision of the three (3) subject sites into two (2) allotments. Additionally, a Plan of Subdivision has been provided by the applicant in accordance with the terms and conditions of the modified approval, should it be approved.

Based on the above, Condition of Consent No.95 - Consolidation of Lots which stipulates the consolidation of lots is erroneous and the concerns raised in relation to the deletion of the relevant condition do not carry determining weight or warrant the refusal of the application.

- **Deletion of Condition No.115 - Right of Carriage Way**

The concern is that the removal of the Right of Carriage Way (ROW) will remove a convenient access route to the church, increase parking congestion in Marmora Street and cause inefficient use of the Oliver Street Council Carpark.

Comment: The applicant has provided advice that the adjoining landowner will not grant a right of way from the public carpark to access the adjoining Church site at No.9 Lawrence Street due to concerns regarding the 'unlocked' gate, crime, security and safety issues.

Based on the above, the terms of the condition cannot be satisfied and cannot be justified as a reasonable cause to warrant the refusal or redesign of the application. Therefore, the concerns raised in relation to the deletion of the condition do not carry determining weight or warrant the refusal of the application.

- **Building of residential buildings across the site which is contrary to the intent of the H1 Freshwater Beach and H2 Harbord Village localities under WLEP 2000**

The concern is that the residential component of the mixed development is contrary to the H1 Freshwater Beach and H2 Harbord Village localities under WLEP 2000.

Comment: The mixed use development, including the residential component, was approved by the Court and found to be satisfactory against the requirements of WLEP 2000 on merit. The modification proposal relates to the revision of conditions of consent only and there is no alteration to the quantum of the development as approved.

As noted previously in the report, WLEP has been superseded by WLEP 2012. The modification application has been assessed against all relevant requirements of WLEP 2012, including the Principle Development Standards, and found to be consistent with the current planning instrument. On this basis, no matters have arisen that would justify the refusal of the application in the public interest. Therefore, the concerns raised in relation to the inconsistency with WLEP 2000 do not carry determining weight or warrant the refusal of the application.

- **The commercial component of the approved development may never be constructed which is contrary to WLEP 2000**

Comment: As discussed above, the residential component of the mixed development was approved by the Court and found to be satisfactory against the requirements of WLEP 2000 on merit. The modification proposal relates to the revision of conditions of consent only and there is no alteration to the quantum of the development as approved.

The construction of the approved mixed use development is a matter for the Applicant to decide upon, including the timing for the construction of the residential or commercial components of the development.

Based on the above, the concerns raised in relation to the timing of the residential or commercial components of the development do not carry determining weight or warrant the

refusal of the application.

- **Staged demolition and construction process will cause time intense time periods of related impacts on local business, community and streets**

The concern is that a staged demolition and construction process will cause greater adverse residential, business and community amenity impacts than a non-staged demolition and construction process. Adverse impacts cited in the submission include an increase in overall construction times, an increase in adverse traffic, access and parking conditions, increase in truck movements through residential areas and dilapidation of local roads,.

Comment: The court approved consent was not conditional for the residential and commercial components of the development to be built concurrently. In this case, the conditions of consent are such that the residential component of the development can be constructed independently of the commercial component. As to the timing of the two stages, this will be a matter for the applicant. However, it is likely that the commercial component will proceed, as a valid consent will exist which allows for the increased development potential of the site within a developed commercial centre. The commercial reality is that the staging of the development will assist in the completion of the whole development in accordance with the court approval.

Additionally, the staging of the mixed development is not inconsistent with applicable planning controls, including SEPP 65 - Design Quality of Residential Flat Development, WLEP 2012, WLEP 2000 and WDCP.

The staging of the proposal will enable separate Construction Certificates and Occupation Certificates for multiple buildings to be issued under the one development consent. Additionally, it will also allow for greater regulatory control of building processes, which in turn, would enable residential, business and community amenity impacts to be monitored in greater detail.

Further, conditions of consent were included in the original consent to address and reduce the impacts of construction and demolition works on the adjoining properties such as restricted construction hours, requirements for sediment and erosion control, a construction management program, waste management plan and a requirement for traffic control during road works. These conditions of consent have been modified to reflect the proposed staging of the development should the application be approved.

It is expected that should a local road or roads be damaged during construction that it would be reported either by a community member or worker.

Based on the above, the concerns raised in relation to the staging of the development do not carry determining weight or warrant the refusal of the application.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Development Engineers	The application was referred to Council's Development Engineer for assessment and no concern was raised in relation to the proposal.
Landscape Officer	The application was referred to Council's Landscape Officer for assessment and no concern was raised in relation to the proposal.
Traffic Engineer	The application was referred to Council's Traffic Engineer for assessment and no concern was raised in relation to the proposal subject to conditions of consent.
Waste Officer	The application was referred to Council's Waste Management Officer for assessment and no concern was raised in relation to the proposal.
Building Assessment - Fire and Disability upgrades	The application was referred to Council's Building Assessment Officer for assessment and no concerns were raised in relation to the proposal. It is noted that the original development application was approved with a condition of consent (No.98) requiring an annual fire safety certificate to be submitted for the development.
Natural Environment (Drainage Assets)	The application was referred to Council's Natural Environment Officer for assessment and no concern was raised in relation to the proposal.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 65 - Design Quality of Residential Flat Development

The proposed development, as modified, does not alter or create any changes to the previous assessment of the original development application which was found to satisfy the requirements of the 10 Design Quality Principles contained in Clauses 9-18 of SEPP 65 and the matters contained in the Residential Flat Design Code (RFDC).

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment: The proposed modification application will not impact on any of the electricity infrastructure described above in Clause 45

Warringah Local Environment Plan 2011

Is the development permissible?	Zone B2 : No Zone R2 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

As this modification relates to the revision of conditions of consent only, there is no alteration to the quantum of the development as approved under WLEP 2000. As noted previously in the report, WLEP has been superseded by WLEP 2012.

The modification application has been assessed against all relevant requirements of WLEP 2012, including the Principle Development Standards, and found to be consistent with the current planning instrument. On this basis, no matters have arisen that would justify the refusal of the application in the public interest.

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
4.3 Height of buildings	Yes

Detailed Assessment

Zone B2 Local Centre

The original development application, DA2007/0856 was issued development consent by the Land and Environment Court on 3 April 2009.

WLEP 2011 came into force on 9 December 2011 and one of the approved land uses, being the residential apartment component of the mixed use development, subsequently became prohibited.

This application seeks to modify a development consent which has not yet lapsed nor been activated. On this basis, the proposed land uses are permissible under the terms and conditions of the original development consent.

Warringah Development Control Plan

Built Form Controls

This modification relates to the revision of conditions of consent only, there is no alteration to the quantum of the development as approved. Notwithstanding, the modification application has been assessed against all the relevant requirements of WDCP, including relevant Built Form Controls for the residential component of the development (dwelling house). In summary, the modification application has been found to be consistent with the relevant controls under WDCP, and therefore, no matters have arisen that would justify the refusal of the application in the public interest.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
F1 Local and Neighbourhood Retail Centres	Yes	Yes
G5 Freshwater Village	Yes	Yes

Detailed Assessment

G5 Freshwater Village

This modification relates to the revision of conditions of consent only, there is no alteration to the quantum of the development as approved. Notwithstanding, the modification application has been assessed against all the relevant requirements of WDCP, including Clause G5 Freshwater Village. In summary, the modification application has been found to be consistent with the relevant controls under this clause and no matters have arisen that would justify the refusal or redesign of the modified development.

The underground access to be deleted was intended for access within the development itself, and was not proposed as a 'through link' for general public access. Therefore, the deletion of the underground access will not cause inconsistencies with WDCP, including Clause G5 Freshwater Village, Part 17 - Active travel links.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Section 94 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 79C of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects specified in S.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval Modification Application No. Mod2013/0112 for Modification of Development Consent DA2007/0856 granted for the demolition of existing buildings and construction of a mixed use development comprising basement car parking, three-storey retail/commercial building, 10 residential apartments in two buildings and a detached dwelling and subdivision into two (2) lots and the staged construction and occupation of the development. on land at Part Lot 394 DP752038,5 Lawrence Street, FRESHWATER, subject to the conditions printed below:

A. Modify Condition No.1 - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DP 1181713 – Plan of Subdivision of Lots A & B in DP 375558 and Lot 9 Sec. 2 in SP 10321	7 December 2012	Rob Kiprovich Surveyor

Issue A Plans: DA02, DA03, DA04, DA05, DA06, DA10, DA15, DA16, DA17	5 September 2007	Blackmore Design Group
Issue B Plans: DA01, DA14, DA18, DA19	19 March 2008	Blackmore Design Group
Issue C Plans: DA08, DA09, DA11, DA12, DA13	27 February 2009	Blackmore Design Group
Issue: D Plans: DA07, DA20	27 February 2009	Blackmore Design Group

b) No construction works (including excavation) shall be undertaken prior to the release of a Construction Certificate for each stage of the development.

Note: Further information on Construction Certificates can be obtained by contacting Council's Call Centre on 9942, 2111, Council's website or at the Planning and Assessment Counter.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans (DACGBapasd)

B. Modify Condition No.8 - Acceptable form of Security Bonds to read as follows:

8. Acceptable form of Security Bonds

Council will accept a bank guarantee in lieu of cash for the purpose of any security bond imposed by these conditions of consent. Such bank guarantee shall be in a form acceptable to Council and shall not have an expiry date. The bank guarantee shall be in place prior to the issuing of Construction Certificate for the staged construction for Lot 1 DP 1181713 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173 and shall remain in place until the submission of the Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 1181713 or termination of any maintenance period.

Reason: Information, Protection of infrastructure and the environment. (DACECasb)

9. Bond for Construction, Excavation and Associated Works

A bond of \$10,000 shall be deposited with Council prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

Reason: To ensure adequate protection to Council infrastructure. (DACECbceaw)

10. Provision of Electricity

Prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173, evidence is to be submitted to the Certifying Authority that notification has been received from Energy Australia of electricity supply requirements for the development.

Reason: To ensure that services have been provided as required by this Consent. (DACECPe)

11. Pump-Out System Design for Stormwater Disposal

The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with all relevant Australian Standards and Codes by a suitably qualified professional.

Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practicing hydraulic engineer shall be provided to the Certifying Authority prior the issue of

the Construction Certificate for the staged construction and occupation of the development on Lot 1 DP 118173.

Note: The following Standards and Codes applied at the time of determination:

- Australian/New Zealand Standard AS/NZS 3500.3:2003 – Plumbing and drainage – Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3:2003/Amdt 1:2006 – Plumbing and drainage – Stormwater drainage
- National Plumbing and Drainage Code
-

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site. (DACECpsdsd)

12. Shoring of Adjoining Property

If it is proposed to provide shoring to support an adjoining property or Council land, owner's consent for the encroachment from the affected property owner shall be provided with the engineering drawings that are to be submitted prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173. Council approval is required if temporary rock anchors are to be used within Council land.

Reason: Council owners consent for ancillary works, and to ensure the protection of adjoining properties and Council land. (DACECsap)

13. Bond for Engineering Construction Works – Stormwater

A Bond of \$5,000 shall be deposited with Council prior to the issue of any Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173 against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure. (DACECbecs)

14. Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Warringah Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Policy Building Over or Adjacent to Constructed Council Drainage Systems and Easements. Structural details prepared by a suitably qualified Civil Engineer are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: Protection of Council's Infrastructure. (DACECslajp)

15. Sub-Soil Seepage

All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being [INSERT]. Details of all plans compliant with the provisions of Australian/New Zealand Standard AS/NZS 3500.3.2003 Plumbing and drainage – Stormwater drainage and Australian/New Zealand Standard AS/NZS 3500.3.2003 / Amdt 1:2006 Plumbing and drainage – Stormwater drainage are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: To ensure appropriate drainage and stormwater management on site to protect amenity of residents. (DACECsss)

16. Vehicle Crossings Application – Formwork Inspection

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: To facilitate suitable vehicular access to private property. (DACECvcafi)

17. Vehicle Crossings Application – Formwork Inspection

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: To facilitate suitable vehicular access to private property. (DACECvcafi)

18. Bond for Engineering Construction Works – Kerb and Gutter, Footpath and Vehicular Crossings

A Bond of \$10 000 shall be deposited with Council prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173 against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure. (DACECbekgf)

19. Bond for Silt and Sediment Control

The payment of \$10 000 shall be deposited with Council prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173 as security to ensure that there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems.

Reason: To ensure appropriate security against environmental damage. (DACECbssc)

20. Car parking Details

Vehicular access and the internal layout of the car parks is to comply with Australian/New Zealand Standard AS/NZS 2890.1:2004 Parking facilities – Off-street car parking and Australian Standard AS2890.2.:2002 Parking facilities – Off-street commercial vehicular facilities where relevant. Plans demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: To ensure the adequate provision of car parking. (DACECcpd)

21. Development/Construction Security Bond

A bond (determined from cost of works) of \$5 000 must be deposited with Council and an inspection fee paid of \$200 prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173. This bond is to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

Reason: To ensure adequate protection to Council infrastructure. (DACECdcsb)

22. Damage to Public Infrastructure

The applicant shall bear the cost of all restoration works to Council's property damaged during the course of this development. The applicant shall advise Council, in writing, of any existing damage to Council property. A dilapidation survey of Council's assets, including photographs and written record, must be prepared by a suitably qualified person and submitted to Council prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicant's interest for it to be as full and detailed as possible.

Reason: To ensure the protection of existing built public infrastructure. (DACECdpi)

23. BASIX Certificate

The development shall fully comply with the schedule of BASIX Commitments specified within BASIX Certificate No. 188829M. Plans and specifications that reflect those commitments identified on the BASIX Certificate to be satisfied prior to the issue of the Construction Certificate for the staged construction for Lot 1 in DP 118173, shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure the development complies with the requirements of the SEPP (Building sustainability index: BASIX 2004). (DACGCbc)

24. Parking for People with Disabilities

Of the required number of car parking spaces at least one car-parking space must be provided for use by persons with a disability in both the retail/commercial component of the development and the residential component of the development.

The car parking spaces and access from the car parking spaces to other areas within the building are to comply with the Disability Discrimination Act 1992 and Australian/New Zealand Standard AS/NSZS 2890.1:2004 Parking facilities Part 1: Off-street car parking and the relevant provisions of Australian Standard AS 1428.2-1992 Design for Access and Mobility – Enhanced and additional requirements – Buildings and facilities. Details demonstrating compliance with these requirements are to be submitted prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation. (DACGCppd)

25. Reflectivity Index of Glazing

The reflectivity index (expressed as a percentum of the reflected light falling upon any surface) of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%. Written confirmation of the reflectivity index of materials is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Note: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development. (DACGCrig)

26. Roofing Materials – Reflectivity

The external finish to the roof shall have a medium to dark range in order to minimize solar reflections to neighbouring properties. The metal roof shall not be of light colours such as off white, cream, silver or light grey colours. Details are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development. (DACGCrnr)

27. Section 94A Contribution

\$ 102,500 is to be paid to Warringah Council as a Section 94A levy prior to the issue of the Construction Certificate for the staged construction for Lot 1 in DP 1181713.

\$ 87,730 is to be paid to Warringah Council as a Section 94A levy prior to the issue of the Construction Certificate for Lot 2 DP in 1181713.

This amount has been calculated using the Warringah Section 94A Development Contributions Plan. The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney -0 All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

The basis for the contributions is as follows:

Warringah Section 94A Development Contributions Plan

Stage 1 contribution based on total residential development cost of \$10,250,000

Contribution – all parts Warringah	Levy Rate	Contribution Payable	Council Code
Total S94A Levy	0.95%	\$ 97,375.00	6923
S94A Planning and Administration	0.05%	\$ 5,125.00	6924
Total	1.0%	\$ 102,500.00	

Warringah Section 94A Development Contributions Plan

Stage 1 contribution based on total residential development cost of \$10,250,000

Contribution – all parts Warringah	Levy Rate	Contribution Payable	Council Code
Total S94A Levy	0.95%	\$ 83,343.50	6923
S94A Planning and Administration	0.05%	\$ 4,386.50	6924
Total	1.0%	\$ 87,730.00	

28. Structural Adequacy of Adjoining Buildings A certificate from an appropriately qualified and practicing Structural Engineer, certifying the structural adequacy of the adjoining properties numbers 16 and 20 Marmora Street, 22-26 Albert Street and 9 Lawrence Street and their ability to withstand the proposed excavation works, shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate for the staged construction and occupation of the development on Lot 1 in DP in 1181713. The certificate shall detail any measures required to be incorporated into the work to ensure that no damage will occur to adjoining premises during the course of the works, and that the completed works will be structurally adequate.

Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognized. (DACGCsaab)

29. Structural Design Certificate

Structural drawings and certificate from a qualified structural engineer, certifying that the design is in accordance with all relevant Australian Standards and design codes shall be submitted to the Certifying Authority prior to issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: To ensure the safety and structural adequacy of the approved development and compliance with the appropriate Australian Standards. (DACGCsdc)

30. Construction Management Program

A Construction Management Program shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173. The program shall detail:

- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimizing traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- (b) Arrangements for truck access and anticipated number of truck movements;
- (c) The proposed phases of construction works on the site, and the expected duration of each construction phase;
- (d) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- (e) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process.
- (f) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- (g) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- (h) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- (i) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certificate by an appropriately qualified and practicing Structural Engineer, or equivalent;
- (j) Proposed protection for Council and adjoining properties;
- (k) The location and operation of any on site crane.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community. (DACGCcmp)

31. Design for Access & Mobility – Retail and Commercial Component

The development must be designed to comply with the requirements of Australian Standard AS1428.2-1992 Design for Access and Mobility – Enhanced and additional requirements – Buildings and facilities and the access requirements of the Building Code of Australia. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: To ensure equitable access to members of the community to all public facilities (DACGCdam)

32. Design for Access & Mobility – Residential Component

Building C must be designed to comply with the requirements of the Australian Standard AS1428.2-1992 Design for Access and Mobility – Enhanced and additional requirements – Buildings and facilities and Units 7 and 9 must be designed to comply with the requirements of AS4299 – Adaptable Housing. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: To ensure equitable access to members of the community to all public facilities (DACGCdam)

33. Dilapidation Survey

A dilapidation survey of adjacent buildings must be conducted prior to any site work. The lateral extent of the survey must cover the likely “zone of influence” of any excavation or construction induced vibration. The survey must be properly documented. The dilapidation report must be submitted to Council and the Certifying Authority prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Reason: Proper management of records (DACGCds)

34. Long Service Levy

Payment of the Long Service Levy is required prior to the release of the Construction Certificate for the staged construction of the development of Lot 1 or Lot 2 in DP 118173. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction works.

Reason: Prescribed – Statutory. (DACGCIsI)

35. Exhaust Fumes from Car Park

Any exhaust ventilation from the car park is to be ventilated away from the property boundaries of the adjoining dwellings in accordance with the provisions of the relevant Australian Standards. Details demonstrating compliance are to be submitted prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Note: The following Australian Standard applied at the time of determination:

- Australian Standard AS1668.1:1998 – The use of ventilation and air-conditioning in buildings – Fire and smoke control in multi-compartment buildings.

Reason: To preserve community health and ensure compliance with acceptable standards. (DACHCefcp)

36. High Quality Lighting

External lighting is to be provided for security that complies with the relevant Australian Standard. Details are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173.

Note: The following Australian Standard at the time of determination:

- Australian Standard AS4282-1997 Control of the obtrusive effects of outdoor lighting.

Reason: To ensure lighting provides security and amenity. (DACHChql)

37. Noise from Plant

A certificate from an appropriately qualified Acoustic Engineer is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate for the staged construction for Lot 1 DP 118173 and prior to the issue of the separate Construction Certificate for the staged construction for Lot 2 DP 118173 certifying that the development and all sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level during the day and evening and not exceeding the background level at night (10.00pm-6.00am) when measured at the boundary of the property, and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.

Reason: To comply with best practice standards for residential acoustic amenity. (DACHCnp)

75. Easement for Drainage

An easement for drainage (under the provisions of Section 88B of the Conveyancing Act) is to be created on the title to ensure all Council drainage infrastructure is located within the appropriate easement(s), prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 DP 1181713. Dimensions and location of the easement for drainage shall be in accordance with Council's "Building Over or Adjacent to Constructed Council Drainage system and Easements" Policy, PAS-PL 130. The terms of such easement, (available from Warringah Council), are to be prepared by a registered surveyor to Warringah Council's standard requirements at the applicant's expense. Warringah Council shall be nominated as a party to release, vary or modify such restriction.

Reason: To comply with Council's standards and Statutory requirements of the Conveyancing Act 1919.

76. Easement to Drain Water – Overland flow path

An easement to drain water shall be created in favour of Council over the overland flow path to encompass the 1 in 100 year recurrence frequency predicted water surface level. The easement is to be created on the title, prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 DP 1181713. The terms of such easement, (available from Warringah Council), are to be prepared by a registered surveyor to Warringah Council's standard requirements at the applicant's expense. Warringah Council shall be nominated as a party to release, vary or modify such restriction.

Reason: To identify flood affected areas on the property title

77. Restriction as to User (Overland flow path)

A restriction as to user shall be created on the title over the overland flow path, restricting any alteration to the levels and/or any construction on the land, prior to issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 DP 118173. The terms of such restriction, (available from Warringah Council), are to be prepared by a registered surveyor to Warringah Council's standard requirements at the applicant's expense. Warringah Council shall be nominated as a party to release, vary or modify such restriction.

Reason: To ensure no modification of the overland flow path without Council's approval.

78. Authorisation of Legal Documentation Required for On-site Stormwater Detention

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173. A copy of

the work-as-executed plan (details overdrawn on a copy of the approved drainage plan) and hydraulic engineer's certification must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council. If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACEFaldsd)

79. Creation of Positive Covenant and Restriction as to User

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as to user, the original completed request forms (Department of Lands standard forms 13PC and/or 13RPA), shall to be submitted to Warringah Council for authorisation. A certified copy of the documents shall be provided to Warringah Council after final approval and registration has been affected by the "Department of Lands" prior to issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 DP 118173.

Reason: To identify encumbrances on land. (DACEFcpcru)

80. Registration of Encumbrances for On-site Stormwater Detention

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted to Council prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173.

Reason: To identify encumbrances on land. (DACEFreosd)

81. Reinstatement of Kerb

Prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173 all redundant laybacks and vehicular crossings on Lot 1 or Lot 2 shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Reason: To facilitate the preservation of on street parking spaces. (DACEFrk)

82. Restriction as to User for On-site Stormwater Detention

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173. The terms of such restriction are to be prepared to Council's standard requirements (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgment with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such restriction.

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval. (DACEFrusd)

83. Stormwater Disposal Certification

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified professional. The certification is to be submitted to the Principal Certifying Authority prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173. Note: The following Standards and Codes applied at the time of determination:

- Australian/New Zealand Standard AS/NZS 3500.3:2003 - Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3:2003/Amdt 1:2006 - Plumbing and drainage - Stormwater drainage
- National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for disposal of stormwater arising from the development. (DACEFsd)

84. Undergrounding of Telecommunications Services

All telecommunications services to the development must be provided underground prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173.

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services. (DACEFuts)

85. On-Site Stormwater Detention Compliance Certification

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans. The Compliance Certificate is to be submitted to the Principal Certifying Authority prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173.

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACEFosdcc)

86. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed. Warringah Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Warringah Council's Authorised Officer shall sign these documents prior to the submission to the Land & Property Information Department. Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard. (DACEFpcmsp)

87. Positive Covenant for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgment with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACEFpcosd)

88. Access for People with Disabilities– Retail and Commercial Component

Prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 2 in DP 118173 provision shall be made for access to and within the retail/commercial building on the site (Building A) for persons with a disability in accordance with the provisions of Australian Standard AS 1428.2-1992 Design for Access and Mobility - Enhanced and additional requirements - Buildings and facilities and the Access requirements of the Building Code of Australia.

Reason: Equitable access for people with a disability. (DACGFapd)

89. Design for Access & Mobility – Residential Component

Prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 in DP 118173 provision shall be made for access to and within Building C for persons with a disability in accordance with the provisions of Australian Standard AS 1428.2-1992 Design for Access and Mobility - Enhanced and additional requirements - Buildings and facilities. Units 7 and 9 shall comply with the requirements of AS4299 – Adaptable Housing.

Reason: To ensure equitable access to members of the community to all public facilities. (DACGCdam)

90. Garbage and Recycling Facilities

Prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 in DP 118173, garbage facilities are to be constructed in accordance with Warringah Council's Code for Waste Handling in Residential Buildings. All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste by collection contractors. (DACGFgrf)

91. House / Building Number

Prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173, the house/building number is to be affixed to the buildings.

Reason: Proper identification of buildings. DACGFhbn)

92. Occupation Certificate Required

An Interim / Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 in DP 118173 shall be obtained in relation to the approved works prior to any use or occupation of those parts of the building. Note: In issuing an Interim / Final Occupation Certificate the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the Environmental Planning and Assessment Act 1979 have been satisfied.

Reason: To ensure compliance with the provisions of the Environmental Planning and Assessment Act. (DACGFocr)

94. BASIX Compliance Certification

Prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 in DP 118173, all the selected BASIX commitments as detailed in the BASIX Certificate, lodged with the Development Application, must be completed.

Reason: To ensure the development complies with the requirements of the SEPP (Building sustainability index: BASIX 2004). (DACGFbcc)

96. Access and Egress from Lawrence Street

Vehicles are not permitted to turn right into, or out of, the driveway on Lawrence Street. Signs shall be erected in this regard prior to the issue of the Interim/Final Occupation Certificate for the staged construction and occupation of the development on Lot 2 in DP 118173.

Reason: To ensure safe vehicular access and egress.

99. Noise Impact of Plant

All sound producing plant, equipment, machinery or fittings associated with or forming part of the mechanical ventilation system and/or the refrigeration system, shall be sound insulated and/or isolated so that the noise emitted does not exceed 5 dB(A) above the background level (LA90) during the day when measured at the nearest affected residence. For assessment purposes, the above LAeq sound levels are to be adjusted in accordance with Environment Protection Authority's NSW Industrial Noise Policy guidelines for tonality, frequency weighting, and impulsive characteristics where necessary, at any time the plant is in operation, at the boundary of the site.

A report and certification prepared by an appropriately qualified or accredited person shall be submitted to the Principal Certifying Authority demonstrating compliance with this condition prior to the issue of the Interim / Final Occupation Certificate for the staged construction and occupation of the development on Lot 1 or Lot 2 DP 118173. Note: The method of measurement of sound shall be carried out in accordance with Australian Standard AS1055.1 - 1997 Acoustics - Description and measurement of environmental noise - General procedures.

Reason: To ensure that noise generated from the development does not result in offensive noise to any other party. (DACHFnip)

C. Delete Condition No.95 - Consolidation of Lots which reads as follows:

95. Consolidation of Lots

Prior to the issue of an Interim/ Final Occupation Certificate Lots 9 Sec 2 DP 10321, Lot A and B DP 375558 are to be consolidated into one lot and evidence of the registration of the appropriate survey plan by Land & Property Information is to be submitted to the Principal Certifying Authority.

Reason: To ensure the orderly development of land. (DACGFcl)

Delete Condition No.112 - Release of Subdivision Certificate which reads as follows:

112. Release of Subdivision Certificate

To enable the lodgement of the linen plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until the Final Occupation Certificate for the approved development.

Reason: To ensure that the plans relate to approved development. (DACGHrsc)

Delete Condition No.115 - Right of Carriageway which reads as follows:

115. Right of Carriageway

The Applicant agrees to grant Lot 8/1/10321 a right of carriageway over a triangular portion of current Lot 394/752038 measuring approximately 1m x 1m in the north western corner, subject to Lot A/256986 granting a right of way in favour of Lot 8/1/10321

Reason: To preserve neighbour amenity

D. Add Condition No.1B - Deletion of Underground Pedestrian Access and Stairway

The underground pedestrian access involving a path and stairs between the Commercial Building and the Basement Car Park level of Residential Buildings B and C as shown on the approved plans is to be deleted.

Reason: Interference with Sydney Water Infrastructure

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.


Signed

Kevin Short, Development Assessment Officer

The application is determined under the delegated authority of:

Steven Findlay, Development Assessment Manager














ATTACHMENT A





Notification Plan	Title	Date
 2013/209922	plan notification	15/07/2013

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2013/210218	Sydney Water Building Plan Approval Letter from CD	11/06/2013
 2013/210228	Plan A3 - 30975 - Sydney Water Asset Protection from CD	11/06/2013
 2013/210240	Guidelines for Building Over/Adjacent to Sydney Water Assets from CD	11/06/2013
 2013/210247	Appendix H - Uniting Church Right of Way Letter - Peter Davey from CD	05/07/2013
 2013/210254	Revised Building Costs - from CD	05/07/2013
 2013/210261	letter of Revised Building Costs - WT Partnership from CD	05/07/2013
 2013/209922	plan notification	15/07/2013
 2013/210081	plans - site - commercial basement carpark - commercial floor - from CD	15/07/2013
 2013/210092	plan - commercial roof - balcony and terrace privacy screening details from CD	15/07/2013
 2013/210101	plan - commercial section - building A - from CD	15/07/2013
 2013/210120	plan - commercial elevations building A - from CD	15/07/2013
 2013/210134	plans - residential floor from CD	15/07/2013
 2013/210149	plan - residential roof from CD	15/07/2013
 2013/210152	plans - residential section A - buildings B , C , D - from CD	15/07/2013
 2013/210156	plans - residential elevations - buildings B , C , D - from CD	15/07/2013
 2013/211647	Waste Referral Response	16/07/2013
 2013/211701	Natural Environment Referral Response - Drainage	16/07/2013
 2013/212185	File Cover	17/07/2013
 2013/212229	Referral to Development Engineers	17/07/2013
 2013/212237	Referral Traffic Engineers	17/07/2013
 2013/216189	Advertising Documents and Exhibition Notice for paper on 27 07 13	22/07/2013
 2013/219470	Building Assessment Referral Response	25/07/2013
 2013/219493	Building Assessment Referral Response	25/07/2013
 2013/220582	Development Engineering Referral Response	26/07/2013
 2013/224811	5 & 5A Lawrence Street and 18 Marmora Street Freshwater - Section 96AA Submission	31/07/2013
 2013/225791	Referral to Development Engineers	01/08/2013
 2013/236473	Traffic Engineer Referral Response	12/08/2013
 2013/242542	Submission - Friends of Freshwater Inc	19/08/2013

	2013/244934	Submission Acknowledgement Letter - Friends Of Freshwater Village - SA2013/242542	21/08/2013
	2013/244940	Submission Acknowledgement Letter - Ann Sharp - SA2013/243807	21/08/2013
	2013/251067	S96 for 5-7 Lawrence Street, Freshwater	27/08/2013
	2013/253516	Development Engineering Referral Response	29/08/2013