

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2015/0120
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Responsible Officer:	Tony Collier
Land to be developed (Address):	Lot 1 DP 830423 , 22 - 26 Albert Street FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2012/1235 granted for Demolition works and Construction of a mixed use development comprising commercial and residential
Zoning:	LEP - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	T & T Merillo Holdings Pty Ltd T & F Holdings Pty Ltd
Applicant:	FW Projects Pty Limited

Application lodged:	16/06/2015
Application Type:	Local
State Reporting Category:	Other
Notified:	03/07/2015 to 04/08/2015
Advertised:	04/07/2015
Submissions:	1
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

Warringah Development Control Plan - Appendix 1 Car Parking Requirements

SITE DESCRIPTION

Property Description:	Lot 1 DP 830423 , 22 - 26 Albert Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Albert Street and at the intersection of Lawrence Street. The site is legally known as Lot 1 in DP 830423, No. 22 - 26 Albert Street, Freshwater.</p> <p>The site is generally triangular in shape with a frontage of 77.27m along Albert Street. The consistency of the front boundary is broken by the presence of the Bendigo Bank which is located at the south-western part of the site. The site has a surveyed area of 2,283m². The northern boundary is irregular due to the variable lot depths of neighbouring residential properties along Marmora Street.</p> <p>The site accommodates the Harbord Growers Market, a bakery and associated open hard-stand car park which accommodates 29 parking spaces. The car park is accessed/egressed via two (2) driveways and crossovers at the northern and southern sides of Albert Street. Delivery to the market is via a separate 4.0m wide driveway and crossover off Albert Street (near the Lawrence Street intersection).</p> <p>The site gradually slopes from the south-western corner to the north-eastern corner by approximately 3.37m.</p> <p>The site accommodate low level landscaping along the northern boundary and, in part, within the front setback facing Albert Street.</p> <p>The site is located within the B2 Local Centre zone which consists of an established commercial/mixed use area. The B2 Local Centre zone is surrounded by the larger R2 Low Density Residential zone which predominantly consists of low density residential uses interspersed with residential flat buildings. Consequently, the site is immediately surrounded by mixed use retail, commercial and restaurant uses to the east, south and west, and by low density residential uses to the north.</p>

The B2 Local Centre zone is serviced by both public and private customer car parking. Two public car parking areas are located within the zone and provide a total of 56 spaces. This together with available timed on-street car parking equates to approximately 90 spaces. Private customer parking is currently provided at the subject site (29 spaces), at the Freshwater Village Plaza (87 spaces) and at No. 10 Lawrence Street (18 spaces). Therefore, the total available public and private customer car parking within the B2 Local Centre zone equates to 224 spaces.

Map:



SITE HISTORY

The site accommodates one (1) building which was constructed in the 1970's.

The building has been used continuously for commercial purposes since its construction.

The site has been the subject of the following Development Application:

DA2012/1235

This application was lodged on 18 October 2012 for demolition works and the construction of a mixed use development comprising commercial and residential.

The application was approved by the Warringah Development Assessment Panel at its meeting on 13 February 2013.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent to modify DA2012/1235 in the following manner:

Level	Carparking		Retail		Residential	
	Approved	Proposed	Approved	Proposed	Approved	Proposed
Basement 2 (FFL 9.200)	Commercial: 17 Residential: 31	Commercial: 18 Residential: 32				
Basement 1 (FFL 12.100)	Commercial: 40 Residential: 0	Commercial: 40 Residential: 0				
Ground Floor (FFL 16.300 to FFL 16.900)			1,258m ²	1,315.8m ²		
Level 1 (FFL 20.375 to FFL 21.275)					1 Bed: 6 2 Bed: 5 3 Bed: 1	1 Bed: 7 2 Bed: 6 3 Bed: 0
Level 2 (FFL 23.425 to 34.09)					1 Bed: 6 2 Bed: 4 3 Bed: 1	1 Bed: 6 2 Bed: 4 3 Bed: 1
Totals	88	90	1,258m²	1,315.8m²	23	24

AMENDMENTS

Following initial referral comments made by Council's Development Engineer, the applicant provided additional information on 5 August 2015 which amended the stormwater provisions of the proposal. The letter accompanying the amended plan (Plan No. S9803 (Issue H) dated 2015 as prepared by Jack Taylor Architects Pty Ltd) states:

"On behalf of our Client, FW Projects Pty Ltd, we wish to amend the current modification to the development application in respect of the above-mentioned properties by deleting the proposal to amend the onsite stormwater detention for the project.

In this regard reference is made to drawing S96 03 Issue G (where a notation on the drawing proposed the OSD tank be relocated to the location annotated as '3'.) is now replaced by drawing s96 03 Issue H.

S96 03 Issue H is consistent with the Stormwater drainage plan approved with the Consent DA2012/1235 in that the onsite stormwater detention (OSD) is located under the proposed arcade and lobby areas of the development and the notated reference to an alternative location is omitted from the drawing.

The Statement of Environmental Effects accompanying our submission states "There is no change to the approved on site detention system and stormwater plans." The drawings now submitted are consistent with this statement.

In summary the status of the modification sought seeks:

- 1. The removal of the travelator and replacement with additional lift and associated works within the basement levels.*
- 2. The internal reconfiguration of the tenancy layout to the retail area to reflect tenant and building code requirements.*
- 3. The internal reconfiguration of 3 bedroom unit 106 to create unit 106A a 1 bedroom unit and 106B a 2 bedroom unit and the provision of a required additional car space.*
- 4. The additional window and some minor internal arrangements to Unit 205 and Unit 209.*
- 5. Roof plant area expanded to meet design requirements and minor corrections to rectify errors in approved drawings.*
- 6. Council amend the Conditions of Consent by deleting and or amending condition No 14. Waterproofing/Tanking of Basement Level – Design, Condition No 36.*

Waterproofing/Tanking of Basement Level – Certification and Condition No 57. Waterproofing/Tanking of Basement Level – Certification by removal of the reference to a “fully tanked or permanently tanked” basement.

The detailed schedule of amended items per drawing and level contained within the Statement of Environmental Effects remain relevant and are consistent with the drawings now before council."

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:

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 DA2012/1235, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(1A) - Other Modifications	Comments
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Section 96(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2012/1235.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Public Exhibition” in this report.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of 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 'Matters for Consideration'	Comments
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 in the original 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 documentation was submitted with the original 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 matter has been addressed via a condition in the original consent.</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 matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p>
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 on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 79C 'Matters for Consideration'	Comments
	(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

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 1 submission/s from:

Name:	Address:
Mr Benjamin Morgan	11 / 26 Undercliff Road FRESHWATER NSW 2096

The following issue was raised in the submission and is addressed below:

- **Traffic impact during construction.**

The submission states:

"My main concern is that traffic will avoid the development and thus be encouraged down Undercliff Road. This is already happening on busy weekends, and the proposed development would only exacerbate this existing problem. Undercliff Road is relatively narrow, parking is limited, and thus making it difficult to park on-street, or pull out of driveways. Furthermore, cars are often in excess of the speed limit, and I have witnessed accidents and near-misses due to this.

This should be addressed by Council, I am sure I am not the first to write about this issue, and furthermore the proposed development should be allowed to contribute to this problem, and solution should not involve the reduction in parking or inconvenience to the residents".

Comment

The subject application is for the modification of a Development Consent (DA2012/1235) which was issued on 13 February 2013. Traffic matters, including the movement of construction vehicles in the area, was

addressed in that application through the provision, and requirement to comply with, a Construction Management Plan which states that "access and exit will be to and from Albert Street; facilitating vehicles will then turn in to Lawrence Street and then to Oliver Street to head back west". Therefore, no routes are approved through Undercliff Road.

This matter does not 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	<p>Stormwater drainage plan approved with the Consent DA2012/1235 shows the onsite stormwater detention (OSD) located under the proposed arcade and lobby areas of the development.</p> <p>Reference is made to drawing S9603, issue G where the OSD tank is proposed to be relocated to the location annotated as '3'. No stormwater drainage plans are submitted to Development Engineers, where the location of the OSD tank is consistent with the location shown on drawing S9603. In this regard, Development Engineers are unable to adequately assess the stormwater drainage proposal due to lack of information.</p> <p>Not supported for approval due to lack of information to address:</p> <ul style="list-style-type: none"> Stormwater drainage for the development in accordance with clause C4 Stormwater of the DCP <p><u>Further assessment 12/8/2015</u></p> <p>Reference is made to the stormwater drainage plans by Jones Nicholson Consulting Engineers, Job no. 20150270, drawing no. CSK07 dated 17/7/2015.</p> <p>Development Engineers advise the proposal cannot be supported due to the following reasons:</p> <ol style="list-style-type: none"> The OSD tank is designed with a drowned outlet and therefore will not perform hydraulically as per Council's requirements. Proposed stormwater pipeline along and underneath the footpath is not acceptable to Council, due to the high risk of conflict between the pipeline and other underground utility services. <p>Not supported for approval due to lack of information to address:</p> <ul style="list-style-type: none"> Stormwater drainage for the development in accordance with

Internal Referral Body	Comments
	<p>clause C4 Stormwater of the DCP</p> <p><u>Further assessment 17/8/2015</u></p> <p>The applicant has now requested there is no change to the approved on site detention system and stormwater plans. refer to trim no. 2015/239570.</p> <p>In this regard, stormwater management for this development is now acceptable to Council.</p> <p>The applicant proposes to modify conditions 14, 36 and 57 with regards to the removal of the reference to a 'fully tanked or permanently tanked' basement. Reference is made to a referral response from NSW Office of Water's concurrence to modify conditions 14, 36 and 57, subject to General Terms of Approval. see trim no. 2015/198927.</p> <p>In light of the NSW Office of Water's concurrence to relax the requirement to fully tank the basement, Condition 57 related to the maintenance of the pump out will need to be modified to comply with NSW Office of Water's requirements.</p> <p>In this regard, no objections are raised to the following:</p> <ol style="list-style-type: none"> 1. Deletion of Condition 14. 2. Inclusion of the following condition: <p>Waterproofing/Tanking of Basement Level - Design</p> <p>The basement area is to be partially tanked or waterproofed in accordance with the Sydney Coastal Councils Group : Groundwater Management Handbook, A Guide for Local Government, First Edition, dated September 2006 and General Terms of Approval from NSW Office of Water dated 8/7/2015.</p> <p>All requirements of NSW Office of Water must be complied with.</p> <p>Details of the waterproofing/ tanking and certification stating that that the basement level is partially tanked or waterproofed to allow ingress of sub-surface flows / groundwater into the basement area of a maximum of 3 megalitres per year in total, are to be prepared by a suitably practicing and qualified Engineer.</p> <p>Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the</p>

Internal Referral Body	Comments
	<p>NSW Office of Water must be complied with and a copy of the approval must be submitted to the Certifying Authority.</p> <p>Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.</p> <p>Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements. (DACENC14)</p> <p>3. Deletion of Condition 36.</p> <p>4. Inclusion of the following condition:</p> <p>Waterproofing/Tanking of Basement Level - Certification</p> <p>Certification certifying that the basement level is partially tanked or waterproofed to allow ingress of sub-surface flows / groundwater into the basement area. Certification is to be provided by an Accredited Certifier suitably accredited with the Building Professionals Board in the relevant area of expertise.</p> <p>Details demonstrating compliance are to be submitted to the Certifying Authority prior to pouring of concrete for the ground floor level of the building.</p> <p>Reason: To prevent the ingress of sub-surface flows / groundwater into the basement area. (DACENEDW1)</p> <p>5. Deletion of condition 57.</p> <p>6. Inclusion of the following condition:</p> <p>Waterproofing/Tanking of Basement Level - Certification</p> <p>Certification stating that the basement level is partially tanked or waterproofed to allow ingress of sub-surface flows/groundwater into the basement area of a maximum of 3 megalitres per year in total, are to be prepared by a suitably qualified Engineer. Certification is to be provided by an Accredited Certifier suitably accredited with the Building Professionals Board in the relevant area of expertise.</p> <p>Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.</p> <p>Reason: To ensure compliance with State Government Requirements. (DACENFPO1)</p> <p>7. Deletion of condition 54.</p>

Internal Referral Body	Comments
	<p>8. Inclusion of the following condition:</p> <p>Positive Covenant for the Maintenance of Stormwater Pump-out Facilities</p> <p>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 in accordance with the General Terms of Approval from NSW Office of Water dated 8/7/2015.</p> <p>NSW Office of Water shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. NSW Office of Water's delegate shall sign these documents prior to the submission to the Land & Property Information Department.</p> <p>Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.</p> <p>Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard. (DACENF11)</p>
Health and Protection (Food Premises)	No additional comments or conditions , the existing DA conditions can remain
Landscape Officer	<p>No objections in relation to soft landscape issues.</p> <p>It is noted that the Arcade width to the Retail Market space is reduced to 2.5 metres and public toilets have been removed, resulting in a reduction in public amenity from the approved plan.</p> <p>Inclusion of lifts to the Albert Street frontage of the site appears to have a potential impact on the streetscape presentation of the building. Whist the elevations are not clear, presumably there will be a need to extend the wall along the width of the lifts fronting Albert Street, previously indicated as glazed retail space.</p> <p>It is suggested that the impact of these elements affects the overall urban design outcome in terms of user comfort and streetscape address, which may form part of you consideration of the merits of the Modification.</p>
Traffic Engineer	The proposed modification to the development is for changes in floor areas for the retail portion, and conversion of a previously approved three bedroom unit to a one bedroom unit and a two bedroom unit. The number of proposed basement parking spaces has been increased from 88 to 90 as a result of the changes.

Internal Referral Body	Comments
	<p>There is no objection to the proposed modifications to the parking on traffic grounds.</p> <p>It is noted that there is the potential for access to the storage areas on the northern side of the Basement Level 2 parking to be blocked as they are enclosed by parking spaces for the retail part of the development. This may lead to these storage areas being inaccessible when the retail car park area is full.</p>
Waste Officer	<p>Waste Management Comments</p> <p>Waste arrangements contained within Mod2015/0120 are acceptable to Waste Mgt dept.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No objection has been raised with regards to the proposal subject to the following conditions.</p> <ul style="list-style-type: none"> <i>"Ausgrid substation S.16800 is located within the proposed development site. The development will therefore need to comply with the requirements of our Network Standards NS141 Site Selection and Site Preparation Standards for Kiosk Type Substations (available at our website at: www.ausgrid.com.au). In particular, action should be taken to ensure compliance with the fire segregation requirements relating to the placement of any proposed windows, building ventilation systems, gas reticulation systems, and fire hydrant installations, as stated within this document.</i> <i>Ausgrid requires unimpeded access to the substation, 24 hours per day, 7 days per week. The substation easement area is to be kept clear at all times for the duration of the proposed construction works, so that all substation doors are fully operable and not blocked off by construction fencing / hoarding, construction materials or any other associated items. Following the completion of construction the substation easement area is to then remain clear on a permanent and ongoing basis and is not to be subject to vegetation plantings, fencing installations around the substation, or the placement of any other obstructions, without the written approval of Ausgrid.</i> <i>The future supply of electricity to the proposed development will be dependant upon the proposed maximum demand of the development and the existing electrical loading of the surrounding area, and should not be assumed to be available until confirmed by Ausgrid. The developer is advised to submit a Connection Application for the development as soon as their maximum</i>

External Referral Body	Comments
	<p><i>demand has been determined."</i></p> <p>The referral response will be included under a modified Condition No. 2 in the Notice of Determination.</p>
NSW Roads and Maritime Services - (SEPP Infra. Traffic generating dev)	<p>The proposal was referred to the RMS on 22 June 2015. In their response dated 13 July 2015, the RMS stated:</p> <p><i>"Roads and Maritime has reviewed the subject application and raises no objection to the Section 96(IA) modification to Development Consent DA2012/1235 for internal modifications".</i></p>
NSW State Transit (Bus stops)	<p>The proposal was referred to the STA on 22 June 2015. 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.</p>
NSW Police - Local Command (CPTED)	<p>The proposal was referred to the NSW Police Force on 22 June 2015. The following comments have been provided:</p> <p><i>"Given the nature of the modification for the already consented development, we do not believe a Crime Risk Assessment and CPTED (Crime Prevention through Environmental Design) assessment is required".</i></p>
Integrated Development – NSW OFFICE OF WATER (Site Dewatering)	<p>The original application (DA2012/1235) was referred to NSW Office of Water for consideration under the relevant provisions of the Water Management Act 2000 with respect to dewatering.</p> <p>The NSW Office of Water advised by letter dated 22 November 2012 that a controlled activity approval is not required and that no further assessment is necessary as the development does not occur on waterfront land.</p> <p>Notwithstanding, the NSW Office of Water also advised that temporary dewatering of an amount above 3 ML may require a water licence to be obtained before construction commences. This advice was included as a condition in the Notice of Determination for DA2012/1235.</p> <p>The NSW Office of Water has since provided the following response via email dated 8 July 2015 with respect to MOD2015/0120:</p> <p><i>"Reference is made to recent correspondence regarding the above development. The Department of Primary Industries, Water (DPI Water) has reviewed additional information provided by the project manager for the development which suggests that, provided appropriate engineering measures are utilised, the groundwater inflow to the proposed basement can be constrained to be less than 2.5 megalitres per year in total.</i></p> <p><i>Subject to the implementation of engineering measures during construction to achieve the predicted inflow or less, DPI Water considers</i></p>

External Referral Body	Comments
	<p><i>that the requirement for the basement to be made entirely watertight can be relaxed from a groundwater management perspective. In accordance with our current policy relating to on-going groundwater take in small amounts, certain conditions of approval are still required in such circumstances and impose an on-going responsibility on the building's owner/s for the life of the building. These Conditions are attached.</i></p> <p><i>However, Council may wish to retain the basement tanking requirement as provided for in the existing consent for other reasons. For example; to prevent human exposure to potentially contaminated groundwater where remediation activities have not completely removed all pollution beneath a site. DPI Water has no objection to Council reiterating such a requirement for its own purposes."</i></p> <p>The response also includes General Terms of Approval for sites exempt from a Construction Dewatering Licence which are included in the Notice of Determination for MOD2015/0120.</p>

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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.

This matter was considered under DA2012/1235 which was accompanied by a letter from Environmental Investigation Services (EIS) dated 5 October 2012. The letter confirmed that it is appropriate to re-issue the Preliminary Environmental Assessment dated 5 March 2010 for DA2012/1235 (originally issued for DA2012/1446) due to the investigation work already carried out on the site to determine any existence of contaminants. In support of this rationale, the letter noted that a review of the plans indicated that:

- *"The proposed land-use remained unchanged;*
- *The depth of excavation [two basement levels] remained unchanged; and*
- *There were no major changes to the NSW EPA guideline documents referenced within the EIS 2010 report since 2010."*

Therefore, the letter advised that *"the conclusions, recommendations and limitations outlined in the EIS 2010 report remain unchanged"*.

Furthermore, consideration was given in the assessment of DA2012/1235 with respect to:

- Soil contamination;
- Groundwater contamination and
- Presence of asbestos.

Appropriate conditions were imposed in DA2012/1235 to address these considerations.

The subject application does not alter or affect those conditions.

SEPP 65 - Design Quality of Residential Flat Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Flat Development (SEPP 65) stipulates that SEPP 65 only applies to the erection of new residential flat buildings, substantial redevelopment/refurbishment of existing residential flat buildings and the conversion of an existing building to a residential flat building.

The development involves minor changes to the approved development such that further assessment against the provisions of the SEPP and the Residential Flat Design Guideline are not necessary.

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 proposal was referred to Ausgrid. No objection has been raised with regards to the proposal subject to the following conditions.

"Ausgrid substation S.16800 is located within the proposed development site. The development will therefore need to comply with the requirements of our Network Standards NS141 Site Selection and Site Preparation Standards for Kiosk Type Substations (available at our website at: www.ausgrid.com.au). In particular, action should be taken to ensure compliance with the fire segregation requirements relating to the placement of any proposed windows, building ventilation systems, gas reticulation systems, and fire hydrant installations, as stated within this document.

Ausgrid requires unimpeded access to the substation, 24 hours per day, 7 days per week. The substation easement area is to be kept clear at all times for the duration of the proposed construction works, so that all substation doors are fully operable and not blocked off by construction fencing / hoarding, construction materials or any other associated items. Following the completion of construction the substation easement area is to then remain clear on a permanent and ongoing basis and is not to be subject to vegetation plantings, fencing installations around the substation, or the placement of any other obstructions, without the written approval of Ausgrid.

The future supply of electricity to the proposed development will be dependant upon the proposed maximum demand of the development and the existing electrical loading of the surrounding area, and should not be assumed to be available until confirmed by Ausgrid. The developer is advised to submit a Connection Application for the development as soon as their maximum demand has been determined."

The referral response will be included under a modified Condition No. 2 in the Notice of Determination.

Warringah Local Environment Plan 2011

Is the development permissible?	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

Development Standard	Permitted	Approved	Proposed	% Variation	Complies
4.3 Height of Buildings	11.0m	10.4m to 12.3m	No change	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.6 Exceptions to development standards	N/A
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
1. Built Form in Freshwater				
R4 - Separation of Retail Premises (Maximum)	10.0m	Nil to 5.2m	No change	Yes
R4 - Retail Floor to Ceiling Height (Minimum)	3.3m	3.7m	No change	Yes
R5 - Residential Floor to Ceiling (Minimum)	2.7m	2.7m	No change	Yes
			No	

			change	
2. Number of Storeys	3	3	No change	Yes
4. Street Facades and Shopfront Design R2 - Length of Shopfronts (Maximum unless broken into smaller vertical elements)	5.0m to 10.0m	10.0m to 13.5m	No change	Yes
9. Awnings R3 - Height to the Underside of Awnings above Footpath (Minimum) R8 - Setback of Awnings from Kerb (Generally)	3.2m 0.6m	3.6m to 4.4m Nil to 3.2m	No change No change	Yes As approved
10. Front Setbacks R1 - Ground Floor R1 - Level 1 (Second Storey) R2 - Level 2 - (Third Storey) (Minimum)	Nil Nil 5.0m	Nil Nil 3.7m to 5.0m	No change No change No change	Yes Yes As approved
11. Side and Rear Setbacks R1 - <i>To Residential (North)</i> <ul style="list-style-type: none"> Basement (Basement Levels 1 & 2) (Minimum) Ground Floor (Minimum) Level 1 (Minimum) Level 2 (Minimum) 	2.0m 2.0m 2.0m 2.0m	Nil Nil to 6.0m 5.4m to 7.2m 4.8m to 6.0m	No change No change No change No change	As approved As approved Yes Yes
12. Other Side and Rear Setbacks R1 - <i>To Commercial (West)</i> <ul style="list-style-type: none"> Basement (Basement Levels 1 & 2) Ground Floor Level 1 Level 2 <i>To Commercial (South - Bendigo Bank)</i> <ul style="list-style-type: none"> Basement (Basement Levels 1 & 2) Ground Floor Level 1 Level 2 	Merit Merit Merit Merit Merit Merit Merit Merit	Nil Nil 3.2m to 6.0m 3.2m to 6.0m Nil Nil Nil to 3.0m Nil to 3.0m	No change No change No change No change No change No change No change No change	Yes Yes Yes Yes Yes Yes Yes Yes

			change	
14. Building Massing R2 - Length of Buildings without Separate Cores and Entry Points (Maximum)	20.0m	N/A	No change	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E10 Landslip Risk	Yes	Yes
1. Built form in Freshwater	Yes	Yes
2. Number of storeys	Yes	Yes
3. Street activation	Yes	Yes
4. Street facades and shopfront design	Yes	Yes
5. Access and loading	Yes	Yes
6. Lighting	Yes	Yes
7. Safety and security	Yes	Yes
8. Signage	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
9. Awnings	Yes	Yes
10. Front setback	Yes	Yes
11. Side and rear setbacks	Yes	Yes
13. Roofs and building form	Yes	Yes
14. Building massing	Yes	Yes
15. Building sustainability	Yes	Yes
16. Materials and colours	Yes	Yes
17. Active travel links	Yes	Yes
Appendix 1 Car Parking Requirements	Yes	Yes

Detailed Assessment

Appendix 1 Car Parking Requirements

The development provides the following on-site car parking:

Use (as modified)	Appendix 1 Calculation	Required	Approved	Provided	Compliance
Residential 1 Bedroom x 13 2 Bedroom x 10 3 Bedroom x 1	1 space/dwelling 1.2 spaces/dwelling 1.5 spaces/dwelling	13 spaces 12 spaces 1.5 spaces	12 spaces 11 spaces 3 spaces	12 spaces 11 spaces 3 spaces	Yes Yes Yes
Market (1,075m ²)	4.2 spaces/100m ² GLFA	44 spaces	38.9 spaces	44 spaces	Yes
Retail Premises (221m ²)	6.1 spaces/100m ² GLFA	13.5 spaces	17.9 spaces	15 spaces	Yes
Visitors (Residential)	1 space/5 dwellings	4.8 (5) spaces	5 spaces	5 spaces	Yes
Total		89 spaces	87.8 (88) spaces	90 spaces	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

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.

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 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. Mod2015/0120 for Modification of Development Consent DA2012/1235 granted for Demolition works and Construction of a mixed use development comprising commercial and residential on land at Lot 1 DP 830423,22 - 26 Albert Street, FRESHWATER, subject to the conditions printed below:

A. Add Condition No. 1A - 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
S9602 (Issue C) - Basement 2 & Basement 1 Plan	2015	Jack Taylor Architects Pty Ltd
S9603 (Issue H) - Ground Floor & Level 1 Plan	2015	Jack Taylor Architects Pty Ltd
S9604 (Issue E) - Level 2 & Roof Plan	2015	Jack Taylor Architects Pty Ltd
S9613 (Issue A) - Urban Elevations	2015	Jack Taylor Architects Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Additional Groundwater Modelling (Ref: 22337VYrpt3rev2)	27 May 2015	JK Geotechnics

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

B. Add Condition No. 2A - Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with the following:

Other Department, Authority or Service	eServices Reference	Dated
Ausgrid	Referral Response - Ausgrid	30 July 2015
NSW Office of Water	Referral Response - NSW Office of Water	8 July 2015

(Note: For a copy of the above referenced document/s, please see Council's 'E-Services' system at www.warringah.nsw.gov.au).

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

C. Modify Condition No. 14 to read as follows:

Waterproofing/Tanking of Basement Level - Design

The basement area is to be partially tanked or waterproofed in accordance with the Sydney Coastal Councils Group : Groundwater Management Handbook, A Guide for Local Government, First Edition, dated September 2006 and General Terms of Approval from NSW Office of Water dated 8/7/2015.

All requirements of NSW Office of Water must be complied with.

Details of the waterproofing/ tanking and certification stating that the basement level is partially tanked or waterproofed to allow ingress of sub-surface flows / groundwater into the basement area of a maximum of 3 megalitres per year in total, are to be prepared by a suitably practicing and qualified Engineer.

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water must be complied with and a copy of the approval must be submitted to the Certifying Authority.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements. (DACENC14)

D. Modify Condition No. 36 to read as follows:

Waterproofing/Tanking of Basement Level - Certification

Certification certifying that the basement level is partially tanked or waterproofed to allow ingress of sub-surface flows / groundwater into the basement area. Certification is to be provided by an Accredited Certifier suitably accredited with the Building Professionals Board in the relevant area of expertise.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to pouring of concrete for the ground floor level of the building.

Reason: To prevent the ingress of sub-surface flows / groundwater into the basement area. (DACENEDW1)

E. Modify Condition No. 54 to read as follows:

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 in accordance with the General Terms of Approval from NSW Office of Water dated 8/7/2015.

NSW Office of Water shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. NSW Office of Water's delegate shall sign these documents prior to the submission to the Land & Property Information Department.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an

appropriate operational standard. (DACENF11)

F. Modify Condition No. 57 to read as follows:

Waterproofing/Tanking of Basement Level - Certification

Certification stating that the basement level is partially tanked or waterproofed to allow ingress of sub-surface flows/groundwater into the basement area of a maximum of 3 megalitres per year in total, are to be prepared by a suitably qualified Engineer. Certification is to be provided by an Accredited Certifier suitably accredited with the Building Professionals Board in the relevant area of expertise.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure compliance with State Government Requirements. (DACENFPO1)

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

Tony Collier, Senior Development Planner

The application is determined under the delegated authority of:

Phil Lane, Development Assessment Manager


ATTACHMENT A










No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2015/172337	Plan - Survey	11/06/2015
 2015/172427	Report - Traffic	12/06/2015
 2015/172340	Report - Statement of Environmental Effects	12/06/2015
 2015/172410	Report - BASIX Certificate	12/06/2015
 2015/172412	Plans - Stamped ABSA	12/06/2015
 2015/172417	Report - Energy Efficiency	12/06/2015
 2015/172434	Letter - Fire Safety	15/06/2015
 MOD2015/0120	22-26 Albert Street FRESHWATER NSW 2096 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	16/06/2015
 2015/171592	Plans - Notification	17/06/2015
 2015/172389	Plans - External	17/06/2015
 2015/172402	Plans - Internal	17/06/2015
 2015/172409	Certification of Shadow Diagrams with Plans	17/06/2015
 2015/172437	Plans - Master Set	17/06/2015
 2015/171582	Modification Application Form	17/06/2015
 2015/171583	Applicant Details	17/06/2015
 2015/172383	Plans - Existing Approved	17/06/2015
 2015/172684	Referral to Health and Protection (Food Premises)	18/06/2015
 2015/177315	File Cover	22/06/2015
 2015/177350	Referral to Ausgrid	22/06/2015
 2015/177355	Referral to NSW Roads and Maritime Services	22/06/2015
 2015/177360	Referral to State Transit Authority	22/06/2015
 2015/177365	Referral to NSW Police	22/06/2015
 2015/177371	Referral to NSW Office of Water	22/06/2015
 2015/185851	Referral Response - Waste Services	29/06/2015
 2015/187178	Referral Response - NSW Police Force	29/06/2015
 2015/188515	Advertising Documents and Exhibition Notice for paper on 04 07 2015	30/06/2015
 2015/190981	Notification Letters Mod - 681 includes all previous submitters	02/07/2015
 2015/190987	Notification Map - Mod	02/07/2015
 2015/192223	Referral Response - Building Assessment	03/07/2015
 2015/196544	Online Submission - Morgan	07/07/2015
 2015/198927	Referral Response - NSW Office of Water	08/07/2015
 2015/200156	Referral Response - Traffic Engineering	09/07/2015

	2015/202789	Referral Response 1 - Development Engineering	13/07/2015
	2015/206697	Referral Response - Roads and Maritime Services	16/07/2015
	2015/213213	Referral Response - Landscape	23/07/2015
	2015/223831	Referral Response - Ausgrid	30/07/2015
	2015/227800	Report - Additional Groundwater Modelling	05/08/2015
	2015/235846	Referral Response 1 - Development Engineering	12/08/2015
	2015/239570	Letter from Applicant - Revision to Application	12/08/2015
	2015/239572	Revised Plan - DA03(G) Floor & Level 1 Plans	12/08/2015
	2015/241327	Referral Response 2 - Development Engineering	18/08/2015