

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2015/0288
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<b>Responsible Officer:</b>	Kevin Short
<b>Land to be developed (Address):</b>	Lot 2 DP 1181713, 5 Lawrence Street FRESHWATER NSW 2096
<b>Proposed Development:</b>	Modification of Development Consent DA2007/0856 granted for Construction of a mixed use development and a detached dwelling
<b>Zoning:</b>	LEP - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Warringah Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Frank Minnici
<b>Applicant:</b>	Moorgate Property Pty Ltd

<b>Application lodged:</b>	18/12/2015
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	22/01/2016 to 11/02/2016
<b>Advertised:</b>	23/01/2016
<b>Submissions:</b>	0
<b>Recommendation:</b>	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

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 1181713 , 5 Lawrence Street FRESHWATER NSW 2096
<b>Detailed Site Description:</b>	<p>Due to the subdivision Certificate SC2014/0010 (subdivision of three lots, being Lots A and B, DP 37558 (Nos. 5 and 5A Lawrence Street) and Lot 9, DP 103521 (No. 18 Marmora Street)), into two lots being issued on 5 June 2014, the site description has since legally changed from what was notified to Lot 1, DP 1181713, No. 18 Marmora Street and Lot 2, DP 1181713, No. 5 Lawrence Street.</p> <p>No. 5 Lawrence Street is rectangular in shape located on the northern side of Lawrence Street and is centrally positioned within the Freshwater Village Local Centre. No. 18 Marmora Street is irregular in shape and located adjacent to the northern boundary of 5 Lawrence Street and extends through to Marmora Street.</p> <p>No. 5 Lawrence Street and the western portion of No. 18 Marmora Street are zoned as B2 Local Centre under WLEP 2011 and identified as being within the Freshwater Village under WDCP2011. The eastern portion of No. 18 Marmora Street is zoned as R2 Low Density Residential under WLEP 2011.</p> <p>Existing development at No. 5 Lawrence Street consists of a two storey mixed use retail and residential building fronting Lawrence Street. The rear portion of 18 Marmora Street is occupied by a two storey brick dwelling with driveway access to Lawrence Street and a single storey fibro and weatherboard dwelling with a driveway access to Marmora Street.</p> <p>There is an existing sewer line which dissects the mid portion of the combined sites.</p> <p>The site falls approximately 4.0m towards the north from the Lawrence Street frontage to the Marmora Street frontage. A minor cross slope from west to east of approximately 1.0m also characterises the site.</p>

Map:



## 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.

The current application was accompanied with advice from Trenton Jones (Accredited Certifier) that works, being for stormwater infrastructure, for the original approved development have lawfully commenced. On this basis, the consent is considered to be operative.

Subdivision Certificate SC2014/0010

Subdivision Certificate SC2014/0010 was issued on 5 June 2014 for subdivision of three lots, being Lots A and B, DP 37558 (5 and 5A Lawrence Street) and Lot 9, DP 103521 (18 Marmora Street), into two lots, being Lot 2, DP 1181713 (18 Marmora Street) and Lot 2, DP 1181713 (5 Lawrence Street).

Modification Application MOD2013/0112

MOD2013/0112 was approved on 6 September 2013 and included the following modifications to the original application;

- 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; and
- Change to Description of Development to suit the modification changes proposed.

Modification Application MOD2014/0117

MOD2014/0117 was approved on 10 October 2014 and included the following modifications to the original application;

- Modifications to the residential component of the approved mixed use development (comprising Buildings B, C and D), including an increase in the number of units from 10 to 16;
- Change to the description of the development to reflect proposed modification works;
- Revised BASIX Certificate to suit proposed modifications; and
- Revised Section 94A Contributions to suit amended cost of works for the proposed development.

Modification Application MOD2015/0032

MOD2015/0032 was approved 4 June 2015 and included the following modifications to the original application;

- Deletion and modification to conditions of consent to suit the approved development;
- Consolidation of all conditions of consent to reflect the approved development; and
- Change the description of the development to suit.

**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:

- Provision of three (3) additional windows to Units B02, B05 and C03;
- Increase of the recessed setback on western and eastern boundaries to Building B and Building C;
- Amend window sill heights, include louver windows to the approved stand-alone dwelling (D01); and
- Adjust fixed louver screens along with extension of external walls to the terrace area of Units B01 and B04.

The above works will require the addition of Condition 1B (a) to include the amended plans required for the above.

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 DA2007/0856, in full, with amendments detailed and assessed as follows:

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

<b>Section 96(AA) - Modification of a Consent granted by Court</b>	<b>Comments</b>
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 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), and	<p><b>Yes</b></p> <p>The modified development, is assessed as being substantially the same as the original development approved under DA2007/0856.</p>

<b>Section 96(AA) - Modification of a Consent granted by Court</b>	<b>Comments</b>
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, and (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and	<b>Yes</b>  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.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	<b>Yes</b>
(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.	<b>Yes</b>  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:

<b>Section 79C 'Matters for Consideration'</b>	<b>Comments</b>
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)	<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.

Section 79C 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted with the application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000. If additional information is requested the number of days taken in this assessment may be considered in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;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>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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>
<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>	<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. The proposed modifications will not cause are not considered to result in any unreasonable environmental impacts in the area.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. No changes are proposed by the modification to the design and materials and therefore the development will remain consistent with the character of the area.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing approval and proposed modifications. No changes are</p>

Section 79C 'Matters for Consideration'	Comments
	proposed by the modification and therefore a mixture of apartment types will remain and will not cause any detrimental economic impacts.
Section 79C (1) (c) – the suitability of the site for the development	The development has become a prohibited use in relation to the residential flat building components as a result of the introduction of WLEP 2011. However, as discussed in this report, the existing approval was given under WLEP 2000, and that approval remains legally valid. The site is therefore considered suitable for the proposed modifications to the existing approved 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

- **Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?**

Section 106 of the Act defines an existing use as meaning:

*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

*(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and  
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. **Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?**

Comment:

The use of the land was a permissible use under WLEP 2000, and was approved under that planning instrument. The implementation of WLEP 2011 caused the residential flat building components of the development to become a prohibited use in the B2 zoned area of the site.

2. **Was the use of the building / work / land granted development consent before the commencement of a provision of an environmental planning instrument having the**



### **effect of prohibiting the use?**

#### Comment:

The use of the land was lawfully approved by the Land and Environment Court of NSW on 3 April 2009 prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. **Has the use of the building / work / land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?**

#### Comment:

The approved development included subdivision of the site into two allotments. The applicant has carried out the subdivision part of the consent, which had the effect of activating the consent. Additionally, the application was accompanied with advice from Trenton Jones (Accredited Certifier) that works, being for stormwater infrastructure, for the original approved development have lawfully commenced. The previous and current modification applications demonstrate that the applicant is actively working towards constructing the approved works, and the approved consent for the use of the land therefore remains valid.

### **Conclusion**

The use has been approved under a previous EPI (WLEP2000) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (WLEP 2011).

### **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 of the application Council received no submissions.

### **MEDIATION**

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

### **REFERRALS**

<b>Internal Referral Body</b>	<b>Comments</b>
Traffic Engineer	The modification is for changes on the windows and does not have any on the parking and driveway. Therefore, no objection is raised on the proposal on traffic grounds.
Waste Officer	Applicant will need to comply with the waste requirements outlined in DA2007/0856

<b>External Referral Body</b>	<b>Comments</b>
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)

Nil

## 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	Requirement	Approved (WLEP 2000)	Proposed (WLEP 2011)	% Variation	Complies
Height of Buildings:					
Building A	11m	3 Storeys 12.2m (lift over run and service area balustrade) 11.1m (max height of building)	No change	N/A	Yes (no change to approved)
Building B	11m	3 storeys 10.8m	No change	N/A	Yes (no change to approved)
Building C	11m	3 storeys 11.0m	No change	N/A	Yes (no change to approved)
Building D	8.5m	8.4m	No change	N/A	Yes (no change to approved)

## Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes

## Warringah Development Control Plan

### Built Form Controls

#### **R2 Low Density Residential Zone of WLEP 2011**

The north western portion of the site containing Building D (dwelling house) is identified as being within the R2 Low Density Residential Zone of WLEP 2011.

Therefore, the Built Form Controls under the R2 Low Density Residential Zone are applicable to this portion of the site and apply to Building D.

An assessment of Building D is provided in the Table below.

#### **G5 Freshwater Village of WDCP**

The eastern portion of the site is identified as being within the G5 Freshwater Village under the WDCP.

Buildings A (retail/commercial building), B (residential flat building) and C (residential flat building) are located within Freshwater Village under WDCP.

Therefore the G5 Freshwater Village Built Form Controls of WDCP are applicable to these components of the development.

Building A is not proposed to be altered as part of the modifications. An assessment of Buildings B, C and D is provided in the Table below.

<b>Applicable Built Form Controls within the B2 Local Centre (Buildings B and C), and R2 Low Density Residential Zone (Building D)</b>				
<b>Control</b>	<b>Requirement</b>	<b>Approved (WLEP 2000)</b>	<b>Proposed</b>	<b>Complies</b>
<b>Wall Height</b>				
Building B and C	N/A	N/A	N/A	N/A
Building D	7.2m	5.2m to 8.2m	no change	No (as approved)
<b>Side Boundary Envelope</b>				
Building B and C West	N/A	N/A	N/A	N/A
Building D East	5m projecting from 45 degrees	East elevation projects outside of envelope	No change	No (as approved)
<b>Side Boundary Setback</b>				
Building B West	Merit assessment	Nil	Nil	Yes
Building C West & north	Merit assessment	West: Nil North 3m	No change	Yes Yes
Building D East	0.9m	> 0.9m	No Change	Yes
<b>Front Boundary Setbacks</b>				
Building B & C	N/A	N/A	N/A	N/A

Building D	6.0m	22.1m	No change	Yes
<b>Rear Boundary Setbacks</b>				
Building B	Merit Assessment	3.5m	No change	Yes
Building D	6.0m	2.0m	No change	No (as approved)
<b>Landscaped Open Space and Bushland Setting</b>				
Buildings B & C	N/A	N/A	N/A	N/A
Building D	40%	37.7%	No change	No (as approved)
<b>Applicable Built Form Controls within the G5 Freshwater Village Area (Buildings A, B and C)</b>				
<b>Requirements</b>		<b>Comment</b>	<b>Complies</b>	
<b>1. Built Form in Freshwater</b>  <b>R2</b> Buildings, including balconies and carpark entry points, fronting any public place must not contain any utility service pipe or conduit that is visible from the public place.  Utility services including service structures, plant and equipment are to be located below ground or be designed to be an integral part of the development and suitably screened from public places including streets.  <b>R3.</b> Locate residential uses so that noise, odour and any other adverse impacts are minimised from loading bays, garbage disposal and other service areas.		No change is proposed to existing retail/commercial building and associated carpark entry point.  Utility services of apartment buildings cannot be seen from public places.  Impacts from loading bays, garbage disposal and other service areas will remain acceptable on the apartment buildings.	Yes	
<b>2. Number of storeys</b>  <b>R1</b> Buildings on land shown coloured on the DCP Map Number of Storeys must comply with the maximum height measured in storeys identified on the map.		No change All buildings are three storeys in height.	Yes	
<b>3. Street Activation</b>  <b>R6</b> Buildings are designed to overlook the street.		No change is proposed to the street activation.  No change is proposed to the vehicle entrance from Lawrence Street	Yes	

<b>R7</b> Minimise the extent and visual impact of vehicle entrances and other building entries not associated with active uses.		
<b>4. Street Facades and Shopfront Design</b>  <b>R4</b> No blank walls are to be presented to any public domain area.  <b>R5</b> Building fronts and entries are to be clearly visible from the street.  <b>R6</b> Air conditioning units, exhaust vents, aerials, clothes lines, water heaters etc are not to be visible from streets or public areas.	No change is proposed to the approved three storey retail/commercial building (Building A) with frontage to Lawrence Street.  The apartment buildings, as modified, are of a high architectural quality and well articulated to avoid large areas of continuous wall planes and provide visual relief.  Air conditioning units, exhaust vents, aerials, clothes lines, water heaters and the like are located so that they will not be visible from streets or public areas.	Yes
<b>7. Safety and Security</b>  <b>R1</b> Proposed development must incorporate the principles of Crime Prevention Through Environmental Design (CPTED).  <b>R2</b> Development is to maximise casual observation of open space areas, access ways, car parks, entries, driveways and the like.	The proposal, as modified, is assessed as being satisfactory against the Crime Prevention Through Environmental Design (CPTED) principles.  Open space areas, access ways car parks, entries, driveways and the like will continue to be overlooked by numerous units and living areas.	Yes
<b>10. Front Setback</b>  <b>R1</b> Ground Floor (Nil) and Level 1 (Second Storey - Nil)  <b>R2</b> Level 2 (Third Storey - Minimum 5.0m from front boundary)	No change is proposed to the approved three storey retail/commercial building (Building A) with frontage to Lawrence Street.	Yes
<b>11. Side and Rear Setbacks</b>  <b>R1</b> 2.0m adjoining residential development	No change	Yes (no change to approved)
<b>12. Other Side and Rear Setbacks</b>	No change	Yes (no change to



<b>R1</b> Merit Basis to adjoining commercial development  <b>R2</b> Setback areas to be landscaped		approved)
<b>13. Roofs and Building Form</b>  <b>R1</b> Roof forms are to be an integral response to the building design.  <b>R2</b> Step building and roof forms with the topography.  <b>R4</b> Light roof colours are preferred.	No change	Yes (no change to approved)
<b>14. Building massing</b>  <b>R1</b> Ensure that the scale, massing and proportions respond to the narrow lot pattern of Freshwater.  <b>R2</b> Buildings are not to exceed a maximum building length of 20m without the provision of separate cores and entry points	No change  The site is not considered narrow, particularly the northern portion of the site. No building elements exceed 20.0m in length which promotes modulation of the built form and responds to the narrow lot pattern of Freshwater.	Yes
<b>15. Building sustainability</b>  <b>R2</b> The principles and properties of thermal mass, glazing, insulation and solar energy are to be incorporated into the design of the development	A BASIX certificate (539768M_02 dated 22 December 2015) was submitted with the application.	Yes
<b>16. Materials and colours</b>  <b>R1</b> Use textures, tones and different natural materials  <b>R2</b> Materials and colours should relate to the context of the proposed development.	No change	Yes

<b>R3</b> Heavier materials such as stone should be mainly located at the base of buildings		
<b>R4</b> Painted surfaces must be mid-tone or darker		

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
G5 Freshwater Village	Yes	Yes

#### 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. Mod2015/0288 for Modification of Development Consent DA2007/0856 granted for Construction of a mixed use development and a detached dwelling on land at Lot 2 DP 1181713,5 Lawrence Street, FRESHWATER, subject to the conditions printed below:

### A. Add Condition No.1B (a) - 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	
A-0100 Issue A	Dec 15	E
A-0101 Issue A	Dec 15	E
A-0102 Issue A	Dec 15	E
A-0200 Issue A	Dec 15	E
A-0203 Issue A	Dec 15	E
A-0205 Issue A	Dec 15	E
A-0207 Issue A	Dec 15	E
A-0221 Issue A	Dec 15	E

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

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**

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**Kevin Short, Planner**

The application is determined under the delegated authority of:

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**Steven Findlay, Development Assessment Manager**

**ATTACHMENT A**

No notification plan recorded.

**ATTACHMENT B**

No notification map.



**ATTACHMENT C**

<b>Reference Number</b>	<b>Document</b>	<b>Date</b>
 2015/388355	Plan - Survey	01/05/2015
 2015/388367	Report - BCA Assessment	16/12/2015
 2015/388371	Report - Fire Safety Measures	16/12/2015
 2015/388358	Report Statement of Environmental Effects	17/12/2015
 MOD2015/0288	5 Lawrence Street FRESHWATER NSW 2096 - Section 96 Modifications - Section 96 (AA) Court Consent	18/12/2015
 2015/377677	DA Acknowledgement Letter - Moorgate Property Pty Ltd	18/12/2015
 2015/388857	Report BASIX Certificate	22/12/2015
 2015/388361	Plans - External	29/12/2015
 2015/388363	Plans - Internal	29/12/2015
 2015/388394	Plans - Master Set	29/12/2015
 2015/388343	Modification Application Form	29/12/2015
 2015/388344	Applicant Details	29/12/2015
 2015/388350	Plans - Notification	29/12/2015
 2016/006867	File Cover	11/01/2016
 2016/006894	Referral to AUSGRID - SEPP - Infrastructure 2007	11/01/2016
 2016/007759	Development Application Advertising Document & Exhibition Notice for Manly Daily - 16-1-2016	11/01/2016
 2016/010030	Waste Referral Response	13/01/2016
 2016/012018	Notification Letters - 98 - posted 15-1-2016	14/01/2016
 2016/015586	Re-advertisement Development Application Advertising Document & Exhibition Notice for Manly Daily - 23.1.16	19/01/2016
 2016/033289	Traffic Engineer Referral Response	02/02/2016