

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0148
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 1 DP 830423, 22 - 26 Albert Street FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2016/0874 granted for Stratum Subdivision of 1 lot into 5 lots
Zoning:	LEP - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	FW Projects Pty Limited
Applicant:	Linker Surveying Pty Ltd

Application lodged:	08/06/2017
Application Type:	Local
State Reporting Category:	Subdivision only
Notified:	19/06/2017 to 04/07/2017
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	0
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

There are no assessment issues.

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 southwestern 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 gradually slopes from the south-western corner to the north-eastern corner by approximately 3.37m.</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 use to the east, south and west, and by low-density residential uses to the north.</p>

Map:



SITE HISTORY

The site has been the subject of the following applications:

DA2012/1235

Development Application DA2012/1235 was lodged on 18 October 2012 for demolition works and construction of a mixed use development comprising commercial and residential.

The application was referred to the former Warringah Development Assessment Panel (WDAP) on 13 February 2013 where it was approved subject to conditions.

DA2016/0874

Development Application DA2016/0874 was lodged on 23 August 2016 for the subdivision on Lot 1 into 5 x stratum lots to separate the 5 approved uses into separate titles. The 5 proposed lots consist:

- Lot 1 - Residential Use;
- Lot 2 - Supermarket;
- Lot 3 - Retail shop;
- Lot 4 - Retail shops
- Lot 5 - Retail/Commercial Carpark.

The application was approved by Council on 8 November 2016. The conditions of consent issued for this application did not have any requirement for an Occupation Certificate.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent to modify DA2016/0874 by deleting condition No.10 Which currently reads as follows:

10. Release of Subdivision Certificate

To enable the lodgement of the final 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. (DACENH23)

It is noted that the Original Development Consent (2016/0874) did not contain any requirement for obtaining an Occupation Certificate, as the proposed development was for subdivision only. In addition, Condition No. 10 is located under the heading "Conditions to be satisfied prior to the issue of Subdivision Certificate" within the Development Consent, and therefore the wording of Condition No.10 requiring an Occupation Certificate should be deleted and replaced with the following (as per the Development Engineer's recommendation):

"A Certificate is required from a Registered Surveyor to be submitted prior to the issue of the subdivision certificate certifying that all walls, slabs and services that form the approved boundaries and easements have been constructed. An identification survey plans of all structures including services plans over the final plan of subdivision prepared by a registered surveyor shall be submitted to 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 C.

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 DA2016/0874, 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
A consent authority may, on the 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 DA2016/0874.
(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	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.

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Section 96(1A) - Other Modifications	Comments
requires the notification or advertising of applications for modification of a development consent, and	
(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 the 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 a 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 the 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 in the original consent.</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 98</u> of the EP&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&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter</p>

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Section 79C 'Matters for Consideration'	Comments
	has been addressed via a condition in the original consent.
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	(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. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. Generally an OC should be provided before any subdivision is registered to ensure that the development is completed adequately and as per the approved plans. However the Building Certification and Fire Safety Department have no objections to Councils Planning Department deciding if the condition should be removed or not.
Development Engineers	No Development Engineering objection is raised to deletion of conditions 10 subject to the condition being amended to the following:- Revised conditions 10: "A Certificate is required from a Registered Surveyor to be submitted prior to the issue of the subdivision certificate"

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Internal Referral Body	Comments
	certifying that all walls, slabs and services that form the approved boundaries and easements have been constructed. An identification survey plans of all structures including services plans over the final plan of subdivision prepared by a registered surveyor shall be submitted to Council."

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

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.6 Subdivision - consent requirements	Yes
Land Use Table	Yes
5.3 Development near zone boundaries	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

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Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part C Siting Factors	Yes	Yes
C1 Subdivision	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D8 Privacy	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
G5 Freshwater Village	Yes	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

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- 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. Mod2017/0148 for Modification of Development Consent DA2016/0874 granted for Stratum Subdivision of 1 lot into 5 lots on land at Lot 1 DP 830423,22 - 26 Albert Street, FRESHWATER, subject to the conditions printed below:

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

A. Delete Condition <10 - Release of Subdivision Certificate> which read as follows:

To enable the lodgement of the final 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. (DACENH23)

B. Add New Condition < 10 - Registered Surveyor's Certificate> to read as follows:

A certificate is required from a Registered Surveyor to be submitted prior to the issue of the subdivision certificate certifying that all walls, slabs and services that form the approved boundaries and easements have been constructed. An identification survey plans of all structures including services plans over the final plan of subdivision prepared by a registered surveyor shall be submitted to Council.

Reason: Legislative Requirement

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

Lashta Haidari, Principal Planner

The application is determined under the delegated authority of:

NORTHERN BEACHES COUNCIL

Anna Williams, Development Assessment Manager

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ATTACHMENT A

















No notification plan recorded.

ATTACHMENT B

	Notification Document	Title	Date
	Notification Map	19/06/2017	

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ATTACHMENT C

Reference Number	Document	Date
 2017/186144	Owners Consent	02/06/2017
 2017/186152	Report - Original - DA2016/0874	07/06/2017
 2017/186150	Report - Subdivision	07/06/2017
 MOD2017/0148	22-26 Albert Street FRESHWATER NSW 2096 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	08/06/2017
 2017/184310	DA Acknowledgement Letter - Linker Surveying Pty Ltd	08/06/2017
 2017/186142	Modification Application Form	09/06/2017
 2017/186143	Applicants Details	09/06/2017
 2017/186145	Letter - Cover	09/06/2017
 2017/190899	Building Assessment - Fire and Disability upgrades - Assessment Referral - Mod2017/0148 - 22 - 26 Albert Street FRESHWATER NSW 2096 - PR	15/06/2017
 2017/194686	Building Assessment Referral Response	16/06/2017
 2017/193604	Notification Letter - 85	19/06/2017
 2017/193621	Notification Map	19/06/2017
 2017/193661	ARP Map	19/06/2017
 2017/233851	Development Engineering Referral Response	17/07/2017
 2017/288416	Deleted	15/08/2017
 2017/289754	Building Assessment Referral Response	16/08/2017