

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2015/0215
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 1 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 3 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 4 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 2 DP 7022, 29 Moore Road FRESHWATER NSW 2096 Lot 5 DP 7022, 29 Moore Road FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2015/0061 granted for Alterations and additions to existing commercial building (hotel)
Zoning:	LEP - Land zoned R2 Low Density Residential LEP - Land zoned R2 Low Density Residential LEP - Land zoned R2 Low Density Residential LEP - Land zoned R2 Low Density Residential LEP - Land zoned R2 Low Density Residential LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Patricia Mary King John Thorpe
Applicant:	Patricia Mary King Harbord Beach Hotel John Thorpe

Application lodged:	18/09/2015
Application Type:	Local
State Reporting Category:	Other
Notified:	06/10/2015 to 21/10/2015
Advertised:	Not Advertised, in accordance with A.7 of WDCP
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 - D3 Noise

Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	<p>Lot 1 DP 7022 , 29 Moore Road FRESHWATER NSW 2096</p> <p>Lot 3 DP 7022 , 29 Moore Road FRESHWATER NSW 2096</p> <p>Lot 4 DP 7022 , 29 Moore Road FRESHWATER NSW 2096</p> <p>Lot 2 DP 7022 , 29 Moore Road FRESHWATER NSW 2096</p> <p>Lot 5 DP 7022 , 29 Moore Road FRESHWATER NSW 2096</p>
Detailed Site Description:	<p>The subject site consists of five (5) allotments located on the corner of Moore Road and Charles Street, Freshwater.</p> <p>The site is regular in shape with an approximate area of 2,222m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a food and drink premises (defined as "pub" in the Warringah Local Environmental Plan 2011), know as the Harbord Hotel and associated drive-through liquor store.</p> <p>Surrounding development consists of residential development, being a combination of detached residential dwellings and residential flat buildings.</p> <p>The site has a northerly aspect and is sparsely vegetated.</p>

Map:



SITE HISTORY

Applications and development consent relevant to the proposed modification include the following:

DA2015/0061: Development consent granted for "Alterations and additions to existing commercial building (hotel)" on 6 May 2015. This consent is the subject of the proposed modification.

Condition No.7 of this consent states:

"7. No Clear Glass on Fence Panels

The glass panels are not to be fitted with clear glazing. In this regard, the panels are to be installed with:

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the installation of the panels.

Reason: In order to maintain acoustic and visual privacy to adjoining / nearby properties.
(DACPLC06)"

This condition was applied to satisfy the objectives and requirements of Part D8 Privacy of *Warringah Development Control Plan 2011*. Specifically, it was to protect the aural and visual privacy of residential dwellings to the north of the subject site, on Moore Road.

PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 96(1A) and proposes a modification to existing development consent DA2015/0061 for alterations and additions to existing commercial building (hotel).

The application seeks to delete Condition No.7 which states:

7. No Clear Glass on Fence Panels

The glass panels are not to be fitted with clear glazing. In this regard, the panels are to be installed with opaque or frosted treatment. The panels are also to be designed and installed as fixed panels which are not capable of being opened in any manner or time.

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

Reason: In order to maintain acoustic and visual privacy to adjoining / nearby properties. (DACPLC06)

Amended plans have been provided, which clarify the panels on the north elevation which are to be fixed. On the north elevation of the fence, a total of 24 panels are proposed, with 12 of these panels to be open-able.

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 DA2015/0061, 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 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	<p>Consideration of the information provided with the application has found that there is sufficient information to determine that there will be no adverse impact on the aural privacy of adjoining residents. Hence there is no sufficient reason to retain the part of Condition No.7 that specifies that all glass panels are to be fixed.</p> <p>However, the part of Condition No.7 that requires that all glass be opaque is still considered valid to ensure</p>

Section 96(1A) - Other Modifications	Comments
	<p>that there is no adverse impact on the visual privacy of adjoining residents.</p> <p>Hence, it is proposed to amend condition No.7 rather than delete the condition in its entirety. In this respect the proposal will be of a minimal environmental impact.</p>
(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 DA2015/061.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	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 (1) (a)(ii) – Provisions of any draft environmental planning	None applicable.

Section 79C 'Matters for Consideration'	Comments
instrument	
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiiia) – 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 clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, permits Council to request additional information and has therefore consider the number of days taken in this assessment in light of this clause within the Regulations. However, 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>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This 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 clause is not relevant to this application.</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	(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

Section 79C 'Matters for Consideration'	Comments
	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	Subject to the amended condition of development consent. 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 Jeffrey Kenneth Bembrick	3 / 27 Moore Road FRESHWATER NSW 2096

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

- The proposed modification will reduce the noise attenuation of the hotel activities and potentially affect the aural privacy of the residence of 3 / 27 Moore Road, Freshwater.*

The matters raised within the submissions are addressed as follows:

- The proposed modification will reduce the noise attenuation of the hotel activities and potentially affect the aural privacy of the residence of 3 / 27 Moore Road, Freshwater.*
Comment:
A more detailed assessment of the impact of the proposed modification on the acoustic privacy of adjoining residents is provided in the section of the report pertinent to Part D3 Noise of WDCP 2011. In summary, the proposed modification is unlikely to have an adverse impact on the visual privacy of adjoining residents in Moore Road.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments		
Building Assessment - Fire and Disability upgrades	No objection to the subject proposal.		
Heritage Advisor	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<p>This modification has been referred as it relates to a listed heritage item. The building on the subject site is listed as Item I74 - Harbord Beach Hotel, 29 Moore Street, Freshwater, in Schedule 5 of Warringah Local Environmental Plan (WLEP) 2011.</p> <p>The subject site is zoned R2 Low Density Residential under the provisions of WLEP 2011.</p>		
	Details of heritage items affected		
	<p>Details of the heritage item, as contained within the Warringah Heritage Inventory are:</p> <p>Item I74 - Harbord Beach Hotel, 29 Moore Street, Freshwater</p> <p>Statement of Significance A rare example of an inter-war hotel building which shows influences of the californian bungalow style. Historically provides evidence of the early development of social & recreational facilities to serve the growing population. Local landmark.</p> <p>Physical Description Two storey building with rendered masonry walls. Tiled hipped, jerkin headed & gabled roof. Terrace on first floor supported by arcaded verandah. A number of modifications include surrounding wall, beergarden, bottle shop extension & window modifications.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	

Internal Referral Body	Comments
	<p>Consideration of Application</p> <p>This application proposes modification of the previous consent 2015/0061, which approved replacement of the existing timber lattice screens around the outdoor areas of the hotel, with glass set into an aluminium frame. This previous consent included a condition that the new glass panels had to be fitted with opaque or frosted treatment and designed and installed as fixed panels, not capable of being opened.</p> <p>This modification requests that this condition be changed to permit the panels to be (in part) clear glass and to permit at least 50% of the panels to open.</p> <p>Issues of noise and visual privacy are not heritage matters. The previous proposal was considered acceptable on heritage grounds and the proposed changes do not impact upon this opinion. Having some clear glass panels may in fact provide a better view of the main heritage building from the public domain.</p> <p>The proposed changes will not impact upon the social and historical significance of this heritage building.</p> <p>Therefore, no objections are raised to this modification on heritage grounds and no conditions are required.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? NO Has a CMP been provided? N/A</p> <p>Is a Heritage Impact Statement required? YES Has a Heritage Impact Statement been provided? YES</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (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 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.

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	Proposed	% Variation	Complies
Height of Buildings:	8.5m	4.3m (fence)	No change	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
5.10 Heritage conservation	Yes
6.4 Development on sloping land	Yes
Schedule 1 Additional permitted uses	Yes
14 Use of certain land at 29 Moore Road, Freshwater	Yes
Schedule 5 Environmental heritage	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	4.2m	No change	Yes
B3 Side Boundary Envelope	5m	No breach	No change	Yes
	5m	No breach	No change	Yes
B5 Side Boundary Setbacks	0.9m	18m (east boundary)	No change	Yes
B7 Front Boundary Setbacks	6.5m	No change	No change	Yes
D1 Landscaped Open Space and Bushland Setting	40%	No change	No change	N/A

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
R2 - All other land in R2 Zone	Yes	Yes
Front Boundary Exceptions - R2	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes

Detailed Assessment

D3 Noise

An acoustic report has been provided with the application, prepared by The Acoustic Group, dated 25 August 2015. This report makes several salient points in respect to the operation of the existing premises including the fact that previous acoustic testing undertaken on both the premises and adjoining residences in 1997, 1998 and 2002 indicated no adverse impact. In the intervening period between these tests and the subject application, there has been no significant change in the existing operation of premises.

The approved glass panels would in effect improve the acoustic privacy of adjoining residents by providing a solid barrier to attenuate noise, in contrast with the existing lattice, which is ineffectual in restricting noise. Permitting open-able panels in the fence glazing would therefore have no worse effect than the noise that is already generated from the premises.

Hence deleting the aspect of Condition No.7 which requires all glazing to be fixed is considered

acceptable and will comply with the objectives and requirements of Part D3.

D8 Privacy

The aspect of Condition No.7 which requires that all the glass panels to be opaque is still considered necessary to maintain the visual privacy of adjoining residents in Moore Road.

Whilst it is conceded that 50% of the total number of panels on the north elevation will be open-able, it is likely that these panels will only be open during daytime hours and closed in evening periods. Assuming that the evening period is the more sensitive time for the visual privacy of adjoining dwellings, this part of the proposed modification is not considered adverse.

Therefore the complete deletion of Condition No.7 is not considered acceptable and the condition will therefore remain, to at least ensure a reasonable level of visual privacy to adjoining dwellings.

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. Mod2015/0215 for Modification of Development Consent DA2015/0061 granted for Alterations and additions to existing commercial building (hotel) on land at Lot 1 DP 7022,29 Moore Road, FRESHWATER, Lot 3 DP 7022,29 Moore Road, FRESHWATER, Lot 4 DP 7022,29 Moore Road, FRESHWATER, Lot 2 DP 7022,29 Moore Road, FRESHWATER, Lot 5 DP 7022,29 Moore Road, FRESHWATER, subject to the conditions printed below:

A. Modify Condition No.7 - No Clear Glass on Fence Panels to read as follows:

7. No Clear Glass on Fence Panels

The glass panels are not to be fitted with clear glazing. In this regard, the panels are to be installed with opaque or frosted treatment.

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

Reason: In order to maintain acoustic and visual privacy to adjoining / nearby properties. (DACPLC06)

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

Nick England, Planner


The application is determined under the delegated authority of:

Steven Findlay, Development Assessment Manager

















ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

Notification Document	Title	Date
 2015/292959	Notification map	06/10/2015

ATTACHMENT C

Reference Number	Document	Date
 MOD2015/0215	29 Moore Road FRESHWATER NSW 2096 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	18/09/2015
 2015/277234	DA Acknowledgement Letter - John Thorpe - Patricia Mary King - Harbord Beach Hotel	18/09/2015
 2015/278848	Modification Application Form	21/09/2015
 2015/278865	Applicant Details	21/09/2015
 2015/278868	Report Statement of Environmental Effects	21/09/2015
 2015/278874	Report - Acoustic	21/09/2015
 2015/278878	Report - Heritage	21/09/2015
 2015/278885	Plans - Architectural	21/09/2015
 2015/283276	File Cover	24/09/2015
 2015/283290	Referral to AUSGRID - SEPP - Infrastructure 2007	24/09/2015
 2015/292954	Notification letter 38	06/10/2015
 2015/292959	Notification map	06/10/2015
 2015/298624	Online Submission - Bembrick	11/10/2015
 2015/298658	Building Assessment Referral Response	12/10/2015
 2015/319791	Concerns Regarding Mod2015/0215 - Gabby Timbs - 29 Moore Road FRESHWATER	28/10/2015
 2015/361247	Heritage Referral Response - Mod2015/0215 - 29 Moore Road, Freshwater - Harbord Beach Hotel	04/12/2015