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**Sent:** 11/08/2014 11:55:46 AM  
**Subject:** Fwd: Submission Acknowledgment

Hi,

As discussed on the phone this morning, here is the Submission Acknowledgement for the online submission I made on 4 August re. Mod2014/0117.

As I said, for some reason it's not on the council's website even though submissions that have been made after mine are.

I have also included a clean version of the submission for you to copy and paste from here:

04/08/2014

MR Matthew Gavin Wear  
9 / 9 - Waine ST  
Freshwater NSW 2096

**RE: Mod2014/0117 - 5 Lawrence Street FRESHWATER NSW 2096**

I would like to officially lodge an objection to MOD2014/0117. This application has been submitted under **Section 96AA Modification to a consent issued by the Land & Environment Court.** Therefore very specific provisions apply.

Firstly, allow me to reproduce a Section from Sect 96 here for our convenience (the bold and underline is not in the original but applied here to draw attention to the specifics):

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 96AA

Modification by consent authorities of consents granted by the Court

96AA Modification by consent authorities of consents granted by the Court

(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development 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

(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

(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

(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.

Considering the words “substantially the same”; it does not state “not substantially different” it states: “substantially the same”. Here is the original description, versus the new description below:

Original description of: DA2007/0856: Converted DA –

Demolition of the Existing Buildings on the Site,

Construction of a Mixed Use Development Comprising Basement Car Parking,

3 Level Retail/ Commercial Building,

10 Residential Apartments in Two Buildings and a Detached Dwelling

Description now: “Section 96 (AA) Court Consent - Modification of Development Consent DA2007/0856 granted by the Land and Environment Court (Proceedings No. 11108 of 2008) for

Demolition of the existing Buildings and

Construction of a Mixed Use Development comprising Basement Car Parking,

three (3) storey Retail/Commercial Building,

10 Residential Apartments in Two Buildings and a Detached Dwelling

**and subdivision into two (2) Lots and the Staged Construction and Occupation of the Development at Lots 394 DP 752038, 5 and 5A Lawrence Street, Freshwater and Lot 9, DP 103521, 18 Marmora Street, Freshwater”**

It is very clear that this cannot be considered a modification under Section 96AA as it is no longer a ‘**mixed development**’, it is a ‘**sub-division into two lots and a staged construction occupation of the development**’ – with a second stage which may not proceed at all. **These**

**are very different things.** It is seeking approval to build the residential part only, not the substantial commercial component which may never go ahead. Therefore, it cannot be argued that these developments are: “**substantially the same development**”.

Many thanks,

Matt Gavin-Wear

Begin forwarded message:

**From:** <[DASUB@warringah.nsw.gov.au](mailto:DASUB@warringah.nsw.gov.au)>  
**Subject:** Submission Acknowledgment  
**Date:** 4 August 2014 10:17:02 pm AEST  
**To:** <[mattg-w@bigpond.com](mailto:mattg-w@bigpond.com)>

04/08/2014

MR Matthew Gavin Wear  
9 / 9 - Waine ST  
Freshwater NSW 2096

**RE: Mod2014/0117 - 5 Lawrence Street FRESHWATER NSW 2096**

Dear Sir/Madam,

Thank you for your submission in respect of the above-mentioned property. Please be reminded that under provision of the Government Information Public Access Act, all submissions will be posted on Council's Website against the application.

The matters that you have raised will be noted and taken into consideration in the assessment of the proposal process. However, please note as previously stated in the notification letter, Council will not enter into correspondence in respect of any submission due to the large number of submissions Council receives annually.

Should you wish to monitor the progress of this development application, please feel free to visit the Planning and Development section of Council's Website at [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au) .

We thank you for your submission and should you have any queries, please do not hesitate to contact Council on 9942 2111.

Yours faithfully

Di Smith  
Technical Planning Coordinator  
Environment

For your reference please find below a copy of your submission:

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SECT 96AA**

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96AA Modification by consent authorities of consents granted by the Court**

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Description now: "Section 96 (AA) Court Consent - Modification of Development Consent DA2007/0856 granted by the Land and Environment Court (Proceedings No. 11108 of 2008) for Demolition of the existing Buildings and Construction of a Mixed Use Development comprising Basement Car Parking, three (3) storey Retail/Commercial Building, 10 Residential Apartments in Two Buildings and a Detached Dwelling and subdivision into two (2) Lots and the Staged Construction and Occupation of the Development at Lots 394 DP 752038, 5 and 5A Lawrence Street, Freshwater and Lot 9, DP 103521, 18 Marmora Street, Freshwater"

It is very clear that this cannot be considered a modification under Section 96AA as it is no longer a 'mixed development', it is a 'sub-division into two lots and a staged construction occupation of the development' - with a second stage which may not proceed at all. These are very different things. It is seeking approval to build the residential part only, not the substantial commercial component which may never go ahead. Therefore, it cannot be argued that these developments are: "substantially the same development".