

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2016/0975
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Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 1 DP 1181713, 18 Marmora Street FRESHWATER NSW 2096
Proposed Development:	Strata subdivision of an approved residential development
Zoning:	LEP - Land zoned R2 Low Density Residential LEP - Land zoned B2 Local Centre
Development Permissible:	Yes - Zone R2 Low Density Residential Yes - Zone B2 Local Centre
Existing Use Rights:	
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Moorgate Finance Pty Ltd
Applicant:	Moorgate Finance Pty Ltd

Application lodged:	21/09/2016
Application Type:	Local
State Reporting Category:	Subdivision only
Notified:	28/09/2016 to 13/10/2016
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	0
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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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

SITE DESCRIPTION

Property Description:	Lot 1 DP 1181713 , 18 Marmora Street FRESHWATER NSW 2096
Detailed Site Description:	<p>No 18. Marmora Street in Freshwater is an irregular shaped allotment located on the northern side of Lawrence Street, southern side of Marmora Street and western side of Albert Street. The allotment comprises of both land zoned for R2 Low Density Residential and B2 Local Centre. North and east of the side is similarly zoned R2, and south and west of the site is zoned B2.</p> <p>Currently the site has two residential flat buildings and a detached dwelling house under construction, as detailed in Site History within this report. No landscaping is present on site and no topographical features are present.</p> <p>Development surrounding the allotment consists of dwellings to the east, a large construction site to the south-east, commercial premises to the south and south west, a car park to the west and St Peters Uniting Church to the north.</p>

Map:



SITE HISTORY

Development Application No. 2007/0856

DA2007/00856 for construction of a 3 storey retail/commercial building, 10 residential apartments through 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 of NSW 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 3 storey retail and commercial office building fronting Lawrence Street with 3 levels of basement car parking accommodating 46 commercial car parking spaces;
- Construction of 2 x 3 storey residential flat buildings which contain 5 dwellings each;
- Construction of a two storey detached dwelling;
- Construction of a basement car park for the 2 residential flat buildings and detached dwellings which accommodates 22 residential car parking spaces and 2 visitor car parking spaces; and
- Stratum subdivision.

Previous to the court approval, the development application was refused by the Independent Hearing and Assessment Panel (IHAP) on 10 June 2008.

Evidence provided by Trenton Jones (Accredited Certifier) demonstrates that the works (stormwater infrastructure) for the original development was lawfully commenced and as such, the consent is considered to be operative.

Subdivision Certificate No. 2014/0010

Subdivision Certificate SC2014/0010 was issued on 5 June 2014 for the 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 Lot 2, DP 1181713 (No. 18 Marmora Street) and Lot 2, DP1181713 (No. 5 Lawrence Street).

Modification Application No. 2013/0112

MOD2013/0112 was approved on 06 September 2013 and included the following modifications to the parent 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 the Description of Development to suit the modification changes proposed.

Modification Application No. 2014/0117

MOD2014/0117 was approved on 10 October 2014 and included the following modification to the parent 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 the Description of Development to reflect proposed modifications proposed;
- Revised BASIX Certificate to suit proposed modifications; and
- Revised Section 94A Contributions to suit amended cost of works for the proposed development.

Modification Application No. 2015/0032

MOD2015/0032 was approved 04 June 2015 and included the following modifications to the parent 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 the works proposed.

Modification Application No. 2015/0288

MOD2015/0288 was approved 25 February 2016 and included the following modifications to the parent application:

- Provision of 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 detached dwelling (D01);
- Adjust fixed louver screens along with extension of external walls to the terrace areas of Units B01 and B04; and
- Modification of Condition 1.B - *Modification of Consent - Approved Plans and supporting Documentation.*

PROPOSED DEVELOPMENT IN DETAIL

This development application is for the Strata subdivision of the two residential flat buildings and a dwelling house that have been approved and are currently under construction at Lot 1 DP 1181713.

Specifically, the proposal is to Strata subdivide Lot 1 DP 1181713 into 17 new allotments.

The history of the site has been reviewed in detail and the proposed subdivision plans are consistent with that of the approved plans and associated conditions, referenced within Site History of this report.

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:

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 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)(iia) – 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 of consent.

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Section 79C 'Matters for Consideration'	Comments
	<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 clause is not relevant to this application.</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 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 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 of 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> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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

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
Development Engineers	No Development Engineering objection for the strata subdivision with no conditions.

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)

Nil

Warringah Local Environment Plan 2011

Is the development permissible?	Zone R2 : Yes Zone B2 : 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

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	450sqm	Strata	-	N/A
Rural Subdivision:	N/A	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.2A Minimum subdivision lot size for strata subdivision of residential or tourist and visitor accommodation in certain zones	N/A

Detailed Assessment

2.6 Subdivision - consent requirements

The present and past applications for the subject site (detailed in Site History) have been reviewed and the proposed subdivision plans are consistent with that of the approved stamped plans.

Warringah Development Control Plan

Built Form Controls

This application proposes no amendment to the approved built form controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

The subject allotment and development presently under construction has an extensive history with a range of applications and modifications. Detailed assessment has been done by Council on the built form, amenity impacts and Existing Use Rights of this development, however as this subject development application is for strata subdivision only, this assessment report should be viewed in conjunction with that detailed within Site History as a detailed assessed has not been included within this report on the above-listed items.

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 Development Consent to DA2016/0975 for Strata subdivision of an approved residential development on land at Lot 1 DP 1181713, 18 Marmora Street, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Sheet 1 of 5	15 August 2014	Gregory Jon Frith
Sheet 2 of 5	15 August 2014	Gregory Jon Frith
Sheet 3 of 5	15 August 2014	Gregory Jon Frith
Sheet 4 of 5	15 August 2014	Gregory Jon Frith
Sheet 5 of 5	15 August 2014	Gregory Jon Frith

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

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Conflict of Interest.

Signed

Adam Mitchell, Planner

The application is determined under the delegated authority of:

Rodney Piggott, Development Assessment Manager

ATTACHMENT A











No notification plan recorded.

ATTACHMENT B

Notification Document	Title	Date
 2016/323040	Notification Map	28/09/2016

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ATTACHMENT C

Reference Number	Document	Date
 2016/318561	Report - Statement of Environmental Effects	21/09/2016
 DA2016/0975	18 Marmora Street FRESHWATER NSW 2096 - Development Application - Subdivision	21/09/2016
 2016/315482	DA Acknowledgement Letter - Moorgate Finance Pty Ltd	21/09/2016
 2016/318562	Strata Plan Administration Sheet	23/09/2016
 2016/318563	Plans - Strata Subdivision	23/09/2016
 2016/318545	Development Application Form	23/09/2016
 2016/318549	Applicant Details	23/09/2016
 2016/322880	Notification Letter - 128	28/09/2016
 2016/323040	Notification Map	28/09/2016
 2016/331822	Development Engineering Referral Response	07/10/2016