



STATEMENT OF ENVIRONMENTAL EFFECTS

**Strata Title Subdivision
of existing approved
dual occupancy**

**66 Brighton Street,
Freshwater**

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1 Introduction

1.1 Proposal Overview

This report is a Statement of Environmental Effects (SEE), pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979.

The Development Application (DA) seeks consent for Strata Title Subdivision of the existing approved dual occupancy at 66 Brighton Street, Freshwater.

The development is a long established and approved dual occupancy development. The property benefits from existing used rights under Division 4.11 of the Environmental Planning and Assessment Act 1979 (The Act) and Part 5 of the Regulation, as summarised within Section 4.2 of this report.

The proposal is depicted in the accompanying for subdivision by Pinnacle Land Surveyors. Key aspects of the proposed development summarised within the section below.

1.1.1 Details of the proposed subdivision

The proposed Strata Title Subdivision will have the following configuration:

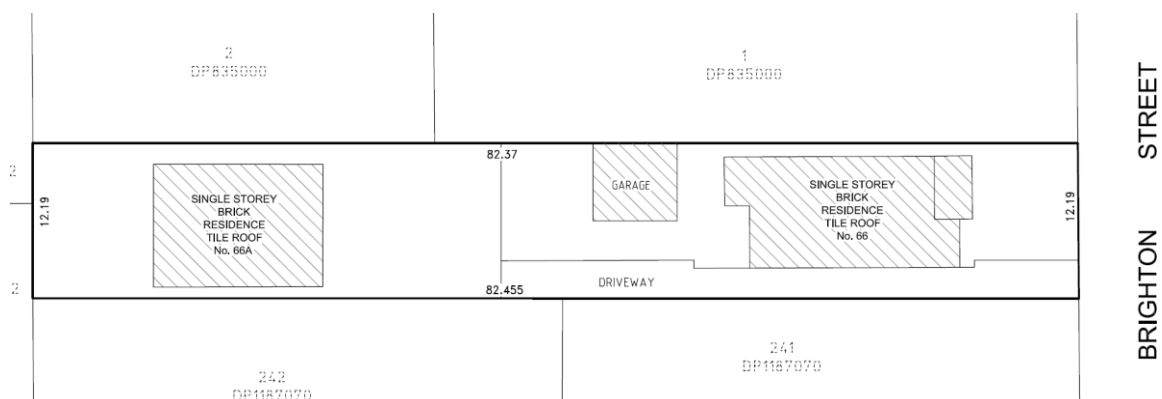


Figure 1 - Configuration of the proposed strata title subdivision

1.2 Pre-DA lodgement application PLM2021/0043

A Pre-DA lodgement application was made and a meeting was held with Council officers on 9 March 2021 in relation to proposed development of the site for Torrens Title land subdivision. The response to the application was that council officers would not support the proposal.

Notably, the development engineers stated:

Non-compliant width of the access way. The Development Engineers recommend a Strata Subdivision in lieu of a Torrens Title Subdivision'

The following concluding remarks were provided:

'The proposed subdivision is not supported in principle.'

A Clause 4.6 Variation is unlikely to be supported as it would be difficult to argue it is unreasonable and/or unnecessary to apply the development standard of 450sqm lots and there don't appear to be any Environmental Planning Grounds to form the basis of a wellfounded Clause 4.6.

Furthermore, the under width access way is problematic and would not be supported at 2.3m as part of a Torrens title subdivision.

It is recommended that you investigate a strata title subdivision as an alternative, as this is not dependent on meeting the minimum lot size and less dependent on meeting the 3.0m access way width.

Finally, the proposed carparking area in the front setback is not supported.

Based on the above, you are advised not to proceed to lodge a DA for the current proposal'.

The application has been prepared in response to the matters raised by Council. The following changes are noted:

- Strata Title subdivision, rather than Torrens Title subdivision, is proposed
- No Clause 4.6 variation is triggered by the proposal
- The proposed carparking area within the front setback is removed; the existing approved carparking and access arrangements are retained
- No building works are proposed.

The property will continue to be used in the same way that it has been since its approval and development for dual occupancy dwellings. No intensification of the use is proposed or facilitated by the proposed Strata Title subdivision.

The proposed development has been revised in response to the matters raised by council to the PreDA application, principally regarding the approved driveway width and concerns about Torrens Title subdivision.

The DA is based on council's response to the PreDA application and proposes Strata Title subdivision.

In these ways the application has addressed the issues raised by Council to the Pre-DA lodgement application.

1.3 Statement of Environmental Effects

This report is a Statement of Environmental Effects (SEE), pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal has been considered under the relevant provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979.

In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act, 1979
- Local Environmental Plan
- Relevant State Environmental Planning Policies
- Development Control Plan

INTRODUCTION

The proposal is permissible and generally in conformity with the relevant provisions of the above planning considerations.

Overall, it is assessed that the proposed development is satisfactory, and the development application may be approved by Council.

2 Site Analysis

2.1 Site description

The site is located 66 Brighton Street, Freshwater It is legally described as Lot 23 in Deposited Plan 14450. The site has an approximate area of 1,006m². The site is rectangular in shape with the following dimensions:

- North - 12.19m
- South - 12.19m
- East – 82.455m
- West – 82.37m

2.2 Site features

- The land is developed with the original dwelling house at the front of the site and a second, dual occupancy dwelling at the rear of the site. The property is set within a developed, predominantly low density residential location.
- Vehicle access is from Brighton Street along the eastern side of the lot with car parking available within the site between the dwelling houses.
- The site and the adjoining properties have a north/ south orientation to Brighton Street.
- The property slopes to the street with a level difference from the rear to the front of approximately 5.4m (approximately RL 18.3 to RL 12.9).
- The property is zoned R2 Low Density under the Warringah Local Environmental Plan 2011 (LEP) as is most of the surrounding land. The site is not affected by key environmental considerations like, for example, heritage, bush fire, biodiversity, flood, waterways, sloping land, threatened species, acid sulfate soils, or riparian land.
- Figures below depict the character of the property and its existing development.

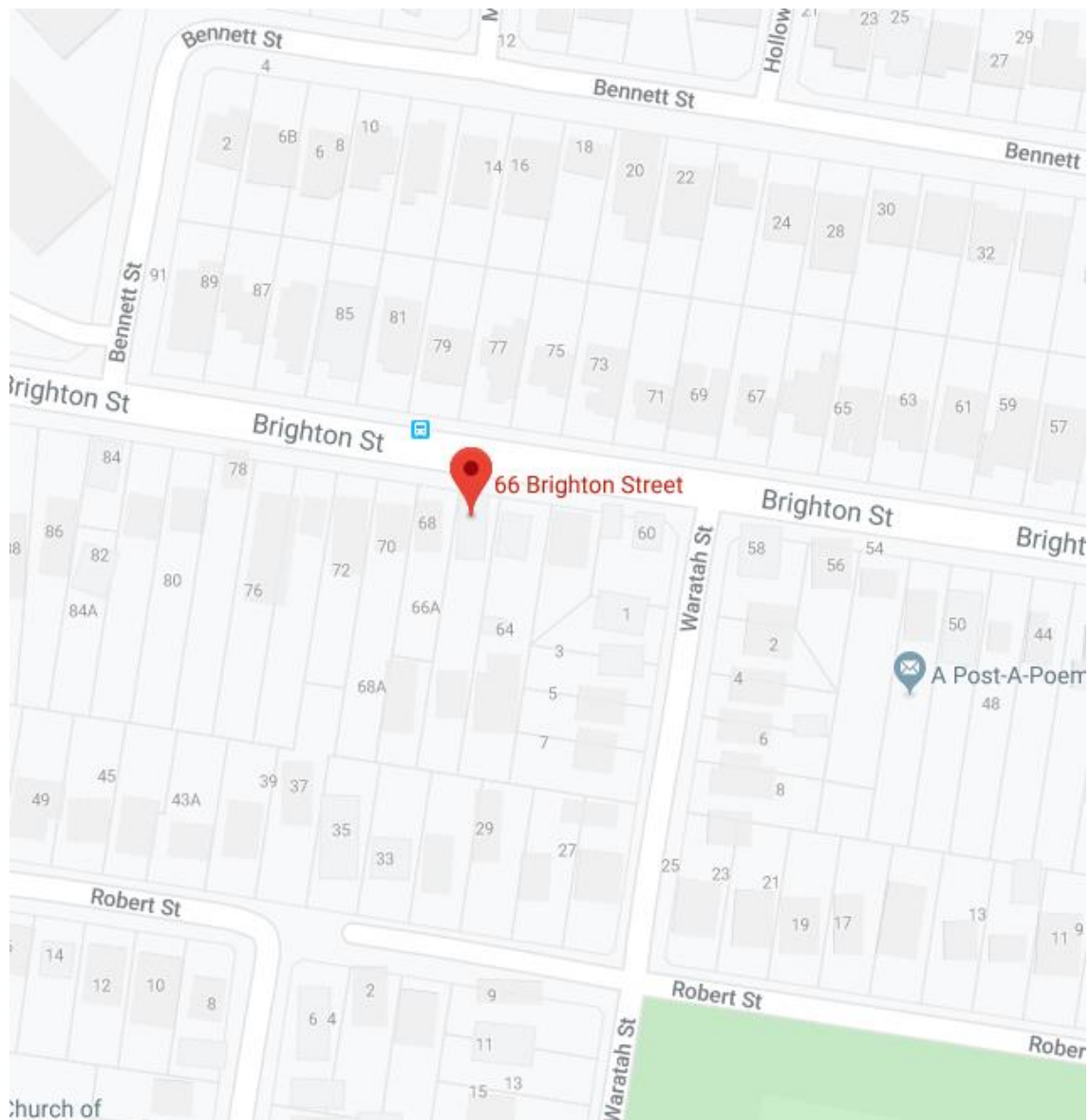


Figure 2 – Location of the site within its wider context (courtesy Google Maps)



Figure 3 – Alignment, orientation and spatial layout of the subject site and adjoining dwellings (courtesy Northern Beaches Council)

EXISTING PROPERTY CHARACTER



Figure 4 – the site's existing streetscape character 66 Brighton St (Google maps Streetview)



Figure 5 – the site's existing streetscape character



Figure 6 – garage and turning area for 66A Brighton Street



Figure 7 – driveway, turning area, and private open space for 66B Brighton Street

3 Environmental Assessment

3.1 Section 4.15 of the Environmental Planning & Assessment Act, 1979

The following section of the report assesses the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 as amended.

Under the provisions of the Environmental Planning and Assessment Act 1979 (the Act), the key applicable planning considerations, relevant to the assessment of the application are:

- Warringah Local Environmental Plan 2011
- State Environmental Planning Policies – as relevant
- Warringah Development Control Plan

The application of the above plans and policies is discussed in the following section of this report.

The application has been assessed against the relevant heads of consideration under Section 4.15 of the Act; a summary of these matters are addressed within Section 5 of this report, and the town planning justifications are discussed below.

4 Section 4.15 (1)(i) the provisions of any environmental planning instrument

4.1 Warringah Local Environmental Plan 2011 – Zoning

As previously noted, the site is zoned R2 Low Density Residential pursuant to the provisions of the Warringah Local Environmental Plan 2011 (LEP).

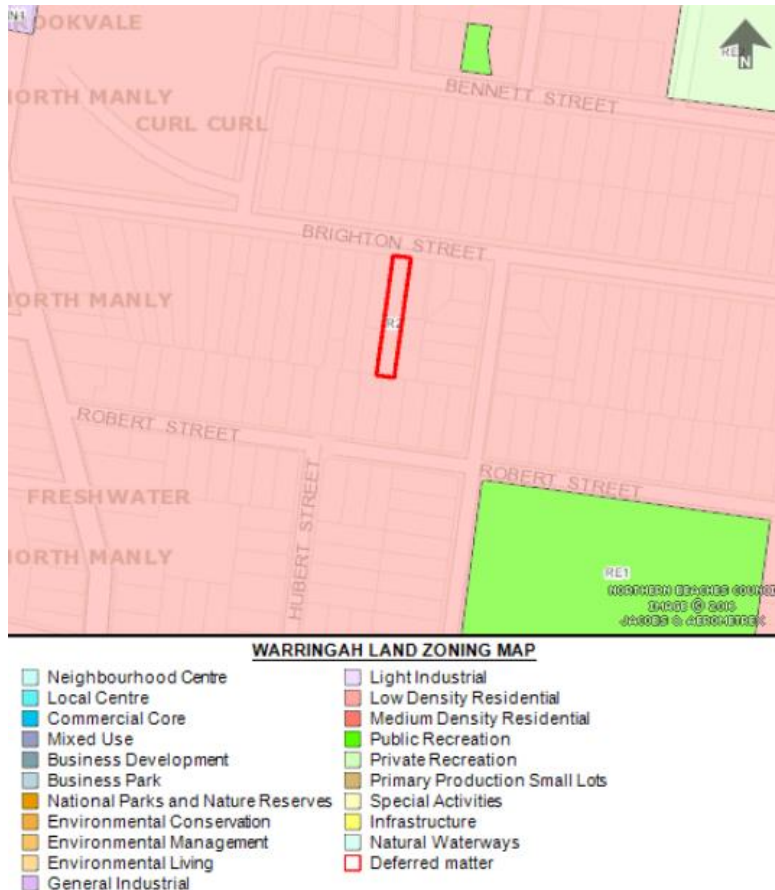


Figure 8 – zone excerpt (Northern Beaches Council)

The proposal constitutes Strata Title subdivision of the existing building containing flats. The proposal is permitted with development consent, as addressed within sections 4.2 and 4.3 below.

Clause 2.3(2) of the LEP requires the consent authority to 'have regard to the objectives for development in a zone' in relation to the proposal. The objectives of the zone are stated as follows:

To provide for the housing needs of the community within a low density residential environment.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah

It is assessed that the proposed development is consistent with the zone objectives as it will provide for the housing needs of the community and facilitate the orderly development of the land without disrupting the established residential amenity.

Accordingly, the proposal has had sufficient regard to the zone objectives and there is no statutory impediment to the granting of consent.

4.1.1 LEP Clause 2.6 Subdivision—consent requirements

Clause 2.6 Subdivision—consent requirements is applicable to the land and its proposed subdivision. It states:

(1) Land to which this Plan applies may be subdivided, but only with development consent.

In response, the proposed subdivision is permitted with development consent.

4.2 Existing use rights

The property benefits from existing use rights. The current development on the property is lawful and benefits from previous approvals, namely:

- Development Consent 91/193 was approved by Warringah Council on 24 May 1991 for 'erection of a second dwelling house to create a dual occupancy'.
- DA2000/4502 - was approved by Warringah Council for Alterations & Additions on 15/11/2001 (Submitted: 20/06/2000)
- DA1999/3208 - was approved by Warringah Council for a swimming Pool - Hardman B A (Submitted: 11/11/1999)

Under the Warringah LEP 2011, dual occupancy development is prohibited within the R2 zone. The use of the property for dual occupancy development has continued without lapsing since its time of development. In these circumstances, the property benefits from existing use rights as of December 2011 when WLEP 2011 came into effect.

4.2.1 Flexibility in the application of the numerical controls is appropriate in circumstances


The NSW Land and Environment Court's planning principle established in Fodor is applicable, wherein it states that planning controls that limit the size of a proposal have no application when existing use rights apply. It states:

'15 Thus the consequence of preserving existing use rights is that zone objectives and planning controls that limit the size of a proposal (ie floor space ratio, height and setback) have no application'.

The existing approved dual occupancy development does not meet various LEP and DCP requirements, No building works are proposed. The property will continue to be used in the same way that it has been since its approval and development for dual occupancy dwellings. No intensification of the use is proposed or facilitated by the proposed Strata Title subdivision.

Under clause (3A)(b) of Section 4.15 of the Act, the consent authority is to be flexible in applying DCP controls when the objectives of those controls have been satisfied. The above circumstances provide justification for applying flexibility to the driveway width control.

BA 16026
COS 27/5/91 *NLD*
1D0081

 **THE COUNCIL OF THE
SHIRE OF WARRINGAH**

File No: PF 0672/66 RM.CM/3341D Telephone: (02) 982 0333
Enquiries:

CONSENT NO: 91/153

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

NOTICE TO APPLICANT OF DETERMINATION

OF A DEVELOPMENT APPLICATION

Applicant's Name and Address: Ms Ruth Loudon, 66 Brighton Street,
Harbord, NSW, 2096

Being the applicant in respect of Development Application
No. 1990/76.

Pursuant to section 92 of the Act, notice is hereby given of the
determination by the Council of the Shire of Warringah, as the
consent authority, of the Development Application No. 1990/76
relating to the land described as follows:-

Lot 23, DP 14450, No 66 Brighton Street, Harbord

For the following development:-

Erection of a second dwelling house to create a detached dual
occupancy

The Development Application has been determined by granting of
consent subject to the following conditions:-

Figure 9 – excerpt from the Notice of Determination of Development Consent 91/193 erection of a second dwelling house to create a dual occupancy'

4.3 Other relevant provisions of the LEP

Other provisions of the LEP that are relevant to the assessment of the proposal are noted and responded to as follows:

LEP Provision	Response	Complies
Part 2 of LEP - Permitted or prohibited development		
LEP Clause 2.6 Subdivision—consent requirements <i>(1) Land to which this Plan applies may be subdivided, but only with development consent.</i>	The proposed subdivision is permitted with development consent, and such is sort by this development application.	Yes

LEP Provision	Response	Complies
Part 4 of LEP – Principal Development Standards		
LEP Clause 4.1 Minimum subdivision lot size –	The proposed development involves Strata Title subdivision. LEP Clause 4.1 Minimum subdivision lot size does not apply to Strata Title subdivision and therefore has no role in the assessment of the DA.	NA
LEP Clause 4.3 – Height of Buildings – 8.5m	No change	Yes
LEP Clause 4.4 – Floor space ratio	NA	NA
LEP Clause 4.6 – Exceptions to development standards	NA	NA
Part 5 of LEP – Miscellaneous Provisions		
LEP Clause 5.4 Controls relating to miscellaneous permissible uses	NA	NA
LEP Clause 5.10 Heritage Conservation	NA	NA
Part 6 of LEP – Additional Local Provisions		
LEP Clause 6.1 Acid sulfate soils	No works are proposed by the application and considerations under clause 6.1 are satisfied by the proposal.	NA
LEP Clause 6.2 Earthworks	No earthworks are proposed by the application and considerations under clause 6.2 are satisfied by the proposal.	NA
LEP Clause 6.3 Flood planning	Council's maps do not identify the site as being flood affected.	NA
LEP Clause 6.4 Development on sloping land	The property is within Area A on the LEP maps. No geotechnical report is required, and the application satisfies this LEP provision.	Yes

4.4 State Environmental Planning Policy - BASIX

The proposed alterations and additions is not BASIX affected development as prescribed and therefore a BASIX assessment report does not accompany the application.

4.5 SEPP (Vegetation in Non-Rural Areas) 2017

Vegetation is prescribed under Part E1 of WDCP 2011 for the purposes of SEPP (Vegetation in Non-Rural Areas) 2017. The proposal does not involve the removal of ten any designated trees and therefore the provisions of this policy are satisfied by the proposal.

4.6 State Environmental Planning Policy No 55 – Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.

Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to carrying out of any development on that land. In this regard, the likelihood of encountering contaminated soils on the subject site is low given the following:

- Council's records indicate that site has only been used for residential uses.
- The subject site and surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.
- The subject site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Given the above factors no further investigation of land contamination is warranted. The site is suitable in its present state for the proposed residential development. Therefore, pursuant to the provisions of SEPP 55, Council can consent to the carrying out of development on the land.

5 Development Control Plan

5.1 Warringah DCP 2011

In response to Section 4.15 (1)(iii) of the Act, the Warringah Development Control Plan (DCP) is applicable to the property. Relevant provisions of the Warringah DCP are addressed below.

5.1.1 Part B - Built Form Controls

No physical external changes are proposed to the building envelope and therefore the DCP's built form controls are not relevant to the assessment of the DA.

5.1.2 Parts C, D, & E - DCP Compliance Assessment

A table demonstrating compliance with the relevant provisions of the DCP is detailed as follows. Where a numerical non-compliance is identified, this is addressed separately below the table.

Clause	Compliance with Requirement	Consistent with aims and objectives
Part C - Siting Factors		
<p>C1 Subdivision</p> <p>The objectives of the control are:</p> <p><i>To regulate the density of development.</i></p> <p><i>To limit the impact of new development and to protect the natural landscape and topography.</i></p> <p><i>To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.</i></p> <p><i>To maximise and protect solar access for each dwelling.</i></p> <p><i>To maximise the use of existing infrastructure.</i></p> <p><i>To protect the amenity of adjoining properties.</i></p> <p><i>To minimise the risk from potential hazards including bushfires, land slip and flooding.</i></p> <p>In response</p> <p>The proposed development is for Strata Title subdivision of the existing development and no external works are proposed to the existing development upon the property. Therefore, the provisions of the control have limited application to the proposal. Notwithstanding the proposal satisfies the objectives of the control noting that:</p>	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
<ul style="list-style-type: none"> ▪ The density of development will not change as a result of the proposal; ▪ The intensity of the land use is in no way increased by the proposal. ▪ The number of dwellings on the property is not increased by the proposed development. ▪ There will be no reduction in the existing landscaping, private open space, drainage, utility services and vehicular access to and from the site. All being characteristics of the DA that has been approved by council. ▪ There will be no reduction in the amenity of adjoining properties. ▪ The proposal will not result in any increased demand for the use of existing infrastructure; ▪ No works are proposed and therefore there will be no additional exposure to risk from potential hazards. <p>Based on the above, it is assessed that the proposal satisfies section C1 of the DCP.</p>		
C2 Traffic, Access and Safety	Yes	Yes
<p>C3 Parking Facilities</p> <p>2 car parking spaces for each dwelling exist and will be maintained on the property.</p> <p>No increase in density is proposed, and as previously documented, the property benefits from an existing use right.</p> <p>Therefore, the existing circumstance is maintained by the proposal which is assessed as appropriate in the circumstances.</p>	Yes	Yes
<p>C4 Stormwater</p> <p>No physical external works are proposed.</p> <p>No increase in impervious area is proposed.</p> <p>No changes to stormwater disposal are proposed or triggered by the proposal.</p>	Yes	Yes
<p>C5 Erosion and Sedimentation</p> <p>No physical external works are proposed.</p>	Yes	Yes
C6 Building over or adjacent to constructed Council	Yes	Yes

Clause	Compliance with Requirement	Consistent with aims and objectives
drainage easements		
C7 Excavation and landfill	Yes	Yes
C8 Demolition and Construction No external physical works are proposed by the DA.	Yes	Yes
C9 Waste Management No external physical works are proposed by the DA. Existing operational waste management arrangements will be maintained and no changes are proposed nor warranted.	Yes	Yes
Part D - Design		
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space No changes proposed to the existing approved dwellings.	Yes	Yes
D3 Noise	Yes	Yes
D4 Electromagnetic radiation	Yes	Yes
D5 Orientation and energy efficiency	Yes	Yes
D6 Access to Sunlight No physical changes are proposed to the existing building envelope. Therefore, the proposal will not reduce the available sunlight to the adjoining properties and the provisions of the control are satisfied.	Yes	Yes
D7 Views – No physical changes are proposed to the existing building envelope. The proposal will not impede any established views from surrounding residential properties or public vantage points.	Yes	Yes
D8 Privacy – No physical changes are proposed to the existing building envelope. The proposal will not affect the visual privacy of the neighbouring properties.	Yes	Yes
D9 Building Bulk	NA	NA
D10 Building Colours and Materials	NA	NA

Clause	Compliance with Requirement	Consistent with aims and objectives
D11 Roofs	NA	NA
D12 Glare and Reflection	NA	NA
D13 Front fences and front walls	NA	NA
D14 Site facilities	Yes	Yes
D15 Side and rear fences	NA	NA
D16 Swimming Pools and Spa Pools	NA	NA
D17 Tennis courts	NA	NA
D18 Accessibility	Yes	Yes
D19 Site consolidation in the R3 and IN1 zone	NA	NA
D20 Safety and security	Yes	Yes
D21 Provision and location of utility services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E - The Natural Environment		
E1 Private Property Tree Management - NA	Yes	Yes
E2 Prescribed Vegetation	NA	NA
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	NA	NA
E4 Wildlife Corridors	NA	NA
E5 Native Vegetation	NA	NA
E6 Retaining unique environmental features	NA	NA
E7 Development on land adjoining public open space	NA	NA
E8 Waterways and Riparian Lands	NA	NA
E9 Coastline hazard	NA	NA
E10 Landslip Risk	NA	NA
E11 Flood Prone Land	NA	NA

6 Section 4.15 the Environmental Planning and Assessment Act 1979

The proposal has been assessed having regard to the matters for consideration pursuant to S.4.15 of the Act and to that extent Council can be satisfied of the following:

- There will be no significant or unreasonable adverse built environment impacts arising from the proposed physical works on the site.
- The site is appropriate for accommodating the proposed development. The proposal has sufficiently addressed environmental considerations. There will be no significant or unreasonable adverse environmental impacts arising from the proposal.
- The proposal will result in positive social and economic impacts, noting:
 - Employment during the construction phase of the works;
 - Economic benefits, arising from the investment in improvements to the land;
 - Social (and environmental) benefits arising from the orderly development (Strata Titling) of the dwelling houses.
- The proposal is permissible and consistent with the objectives of the zone, pursuant to the LEP. The proposal satisfies the provisions of the relevant provisions of the council's DCP.
- It is compatible with the current and likely future character of development within the local context.
- It will not result in any significant unacceptable offsite impacts that limit the use or enjoyment of nearby or adjoining land.
- The proposal will have an acceptable impact when considering key amenity issues such as visual impact, views, overshadowing, noise and privacy.
- Given the site's location and established function, the site is assessed as being entirely suitable for the proposed development.
- The public interest is best served through the approval of the application.

7 Conclusion

The application seeks development consent for Strata Title subdivision to the existing dual occupancy dwellings at 66 Brighton Street, Freshwater.

This report demonstrates that the circumstances are appropriate for the Strata Title subdivision of the property given it contains an approved dual occupancy development and benefits from existing use rights. The proposed Strata Title subdivision to the existing development is permissible with development consent.

The property will continue to be used in the same way that it has been since its approval and development for dual occupancy dwellings. No intensification of the use is proposed or facilitated by the proposed Strata Title subdivision.

The proposed development has been revised in response to the matters raised by council to the PreDA application, principally regarding the approved driveway width and concerns about Torrens Title subdivision. The DA is based on council's response to the PreDA application and proposes Strata Title subdivision. In these ways the application has addressed the issues raised by Council to the Pre-DA lodgement application.

Approval of the DA will facilitate the orderly Strata Title subdivision of the existing dwellings in a manner that is anticipated by the relevant planning considerations. There will be no external physical changes or adverse impacts on the surrounding amenity.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 and should be granted development consent.

BBF Town Planners



Michael Haynes
Director