

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0209
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 100 DP 1253448, 9 - 15 Lawrence Street FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2017/1294 granted for Demolition works and the construction of a shop top housing development
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Freshwater 2 Pty Ltd
Applicant:	I P M Holdings Pty Ltd

Application lodged:	09/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
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 the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

- groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 100 DP 1253448 , 9 - 15 Lawrence Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of two allotments located on the northern side of Lawrence Street, Freshwater. The site is located within the precinct identified as "<i>Special Area G5</i>" Freshwater Village in the Warringah Development Control Plan 2011.</p> <p>Pursuant to the Warringah Local Environmental Plan 2011 the site is zoned for B2 Local Centre development.</p> <p>The site is irregular in shape in the that the north-western corner of the site is intersected by a Council owned carpark (the Oliver Street carpark) by 7.3m and for a length of 27m.</p> <p>Notwithstanding the irregular intersection as above, the two allotments combined have a street frontage to Lawrence Street of 27.43m and an overall depth of 102m equating to a total surveyed area of 2,608.6m². The boundaries of the site are shown on the aerial image below.</p> <p>Presently both allotments are underdeveloped commensurate to the potential of the site afforded by the current planning controls and accommodate a series of one and two storey brick buildings with a shared driveway that runs centrally down the site from Lawrence Street. The rear portion of the allotments are lawned with several mature trees scattered throughout.</p> <p>Topographically the sites incline towards the south-west by approximately 5.0m. The slope of the land is not steep and is consistent across the site.</p> <p>The site has two easements which traverse it at present; one being an easement to drain water parallel to the rear boundary and the second being a 1.2m wide easement for underground cables which traverses the rear of the site diagonally.</p>

SURROUNDING DEVELOPMENT

The location of the development site is unique by virtue of its eclectic surrounds.

The greater context of Freshwater is predominantly characterised by single detached dwellings houses of varying age, size and construction. The small Freshwater Village area that this site is within is highly desirable and as such, special consideration is given to the developments within the precinct.

Map:



SITE HISTORY

Development Application No. 2017/1294

Demolition works and the construction of a shop top housing development. (Approved 20 June 2018)

Development Application No. 2010/0697

An application for demolition works and construction of a mixed use development was lodged with Council on 10 May 2010. The development site was large and included 5-19 Lawrence Street, 22A Albert Street and 18-22 Marmora Street, with a combined total area of 9,565.6m².

In total the development included 337 car parking spaces, four 3-4 storey mixed use and residential flat buildings, three detached dwellings and seven townhouse style developments.

On 22 June 2010 Council raised a number of concerns regarding the proposal. The application was subsequently withdrawn on 6 August 2010.

Development Application No.2010/1446

Following the withdrawal of DA2010/0697, the applicant revised the proposal to be for demolition of existing buildings and construction of a mixed use retail and residential development comprising of shop top housing buildings, a residential flat building and two levels of basement car parking. The

application was lodged on 9 September 2010. In total, the proposal had 91 apartments, 7 townhouses and 3,415m² of retail space.

The application was heard before the Sydney East Joint Regional Planning Panel for determination on 9 December 2010. The meeting minutes read:

1) The Panel resolves unanimously to refuse the application. The Panel notes that this is not consistent with the recommendation of the first planning assessment report, which the Panel finds thorough and sound. It is simply that the Panel has come to a different planning value judgment.

2) The Panel notes that the supplementary assessment report recommends refusal. The Panel also notes that the recommendation of the Warringah Development Assessment Panel is to defer the application. The Panel believes, however, that deferral would be appropriate only if some new information or amendment were expected, and this is not true in this case.

3) The Panel's reasons for refusal are as follows:

a) The proposal breaches both the eleven-metre and the three-storey height limits.

b) The proposal is inconsistent with the Desired Future Character of the Harbord (Freshwater) Village Locality. That character is best expressed by the words "mix of small retail and business uses with low-rise shop top housing". A four-storey apartment building without retail or business component does not fit this description.

c) The public opposition to the proposal is overwhelming. It includes nearly 2000 objectors as well as the local and State representatives of the community. In some cases objectors represent a private interest; however, in this case the objectors are so numerous and so many of them are not directly affected by the development, that their opposition must be considered to represent the public interest.

Following this determination by way of refusal, the applicant lodged a Class 1 Appeal with the Land and Environment Court of NSW on 15 December 2010. The matter of *Freshwater Village Developments Pty Ltd v Warringah Council* was heard before the court on 4, 5 and 6 April 2011, with a decision date of 24 May 2011. The decision was to dismiss the appeal in its entirety.

This development scheme was not further pursued upon the subject site.

Prelodgement Meeting PLM2015/0094

On 27 August 2015 Council met with a developer to discuss a preliminary concept proposal for demotion works, construction of shop top housing, two residential flat buildings, basement car parking and landscaping works.

In principle, Council raised no fundamental concerns regarding the application subject to design modifications and further analysis of the critical issue of the reclassification of the Oliver Street carpark. A follow-up prelodgement meeting was held on 8 October 2015 to further discuss the proposal and revisions made in light of the comments made in PLM2015/0094.

Prelodgement Meeting PLM2017/0100

Prior to the lodgement of this current development application, the applicant met with Council on 5 September and 24 October 2017 to discuss the design scheme. A number of design amendments were discussed, and the formal non-verbatim minutes of the meeting highlight the primary areas of discussion in its conclusion as follows:

The proposal to obtain vehicular access of Lawrence Street is not preferred; however Council

acknowledges the attempts made by the Applicant to amalgamate with the adjoining property to the west to reduce the number of crossings, in lieu of obtaining access over the Oliver Street Carpark to the rear of the site. Council acknowledges that the re-classification of the public carpark has not occurred and that the landowner has waited a significant time period for that to happen.

As discussed later in this report, the issue of vehicular access is a fundamental consideration in the assessment of this application.

Following the favourable comments from Council in the prelodgement meeting, the application proceeded to lodge the current development application on 20 December 2017.

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979 seeks to modify the the approved DA access report under DA2017/1294. The modified report seeks to amend the report to recognise adaptable units not being a requirement of the Warringah DCP.

The modification works proposed above will require the modification of the following condition of consent:

2. 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
10524_DA-001 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-002 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-101 Issue C	26 April 2018	Nettleton Tribe Partnership Pty Ltd
10524_DA-102 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-103 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-104 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-201 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-202 Issue C	26 April 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-203 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-301 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd

2416 LP-01 Issue B	5 December 2017	John Lock & Associates Landscape Architecture
2416 LP-02 Issue B	5 December 2017	John Lock & Associates Landscape Architecture
2417 LP-03 Issue B	5 December 2017	John Lock & Associates Landscape Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment and Tree Management Plan (ref:2911)	3 November 2017 (amended)	Redgum Horticultural
BCA Assessment Report - Rev. 01(170401)	5 December 2017	Concise Certification
BASIX Certificate No. 881423M	11 December 2017	Eco Certificates Pty Ltd
DA Access Report	18 December 2017	Wall to Wall Design and Consulting Pty Ltd
Electromagnetic Field Survey	27 November 2017	EMR Surveys Pty Ltd
Stage 1 Preliminary Environmental Site Assessment (Ref:E30969Krpt)	16 November 2017	EIS (Environmental Investigation Services)
Geotechnical Investigation (Ref:22337SYrpt5)	9 November 2017	JK Geotechnics
NatHERS Certificate No. 0002271760	11 December 2017	Eco Certificates Pty Ltd
Assessment of Traffic, Transport and Parking Implications - Rev E (REF:17067)	December 2017	Transport and Traffic Planning Associates

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

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Report Title	Dated	Prepared By
Operational Waste Management Plan Revision C	5 December 2017	Elephants Foot Recycling Solutions

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.

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 DA2017/1294, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(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	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 DA2017/1294.
(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 requires the notification or advertising of applications for modification of a development consent, and	Warringah DCP (A7 Notification) allows at the discretion of Council Staff an application which is of a minor nature and impact to not be required to be notified. The proposal proposes a minor correction and as such is not required to be notified.
(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.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into

consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (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, 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 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 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 matter has been addressed via a condition</p>

Section 4.15 'Matters for Consideration'	Comments
	in the original consent.
Section 4.15 (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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (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 was not notified.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>

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 65 - Design Quality of Residential Apartment Development

DESIGN QUALITY PRINCIPLES

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The approved design of the development remains unchanged. The provision of a mix of one, two and three bedroom apartments in this location is considered reasonable due to the site's close proximity to public transport, commercial facilities and opportunities within Freshwater Village.

APARTMENT DESIGN GUIDE

The Apartment Design Guide considered as part of the original assessment of SEPP 65- *Design Quality of Residential Apartment Development* includes provisions in regards to Universal Design (*Cl. 4Q Universal Design- Apartment Design Guide*). The guide notes that the Universal design is separate to adaptable housing which is covered by *Australian Standard AS 4299-1995 Adaptable Housing*.

The development is considered against the underlying Objectives of the Control as follows:

Objective 4Q-1

Universal design features are included in apartment design to promote flexible housing for all community members.

Design Guidance- Developments achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features

Comment:

Notwithstanding the amendments to the access report the proposal will still maintain at least 20% of the total apartment incorporating silver level universal design features.

Objective 4Q-2

A variety of apartments with adaptable designs are provided.

Design Guidance- Adaptable housing should be provided in accordance with the relevant council policy.

Comment:

The Warringah DCP 2011 does include any requirement for compliance with *Australian Standard AS 4299-1995 Adaptable Housing* and provision of adaptable units. As such, adaptable housing is not required in this circumstance and the amended access report is acceptable in deleting any reference to *Australian Standard AS 4299-1995 Adaptable Housing*.

Objective FQ-3

Apartment layouts are flexible and accommodate a range of lifestyle needs.

Design Guidance- Apartment design incorporates flexible design solutions which may include:

- *rooms with multiple functions*
- *dual master bedroom apartments with separate bathrooms*
- *larger apartments with various living space options*
- *open plan 'loft' style apartments with only a fixed kitchen, laundry and bathroom*

Comment:

Both floors (first floor level and second floor level) of the residential apartments incorporate innovative design features to ensure different lifestyles needs are provided. As noted in the original assessment report the development provides for mix of single, two and three bedroom units that provide housing diversity and flexibility.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of SEPP 65 including the Universal Design Guide, WDCP 2011 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Warringah Local Environmental 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
Land Use Table	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes
G5 Freshwater Village	Yes	Yes

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 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 to Modification Application No. Mod2019/0209 for Modification of Development Consent DA2017/1294 granted for Demolition works and the

construction of a shop top housing development on land at Lot 100 DP 1253448,9 - 15 Lawrence Street, FRESHWATER, subject to the conditions printed below:

A. Modify Condition No. 2 - Approved Plans and supporting Documentation - to read as follows:

2. 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
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Report No. / Page No. / Section No.	Dated	Prepared By
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Management Plan (ref:2911)	(amended)	
BCA Assessment Report - Rev. 01(170401)	5 December 2017	Concise Certification
BASIX Certificate No. 881423M	11 December 2017	Eco Certificates Pty Ltd
DA Access Report	8 May 2019	Wall to Wall Design and Consulting Pty Ltd
Electromagnetic Field Survey	27 November 2017	EMR Surveys Pty Ltd
Stage 1 Preliminary Environmental Site Assessment (Ref:E30969Krpt)	16 November 2017	EIS (Environmental Investigation Services)
Geotechnical Investigation (Ref:22337SYrpt5)	9 November 2017	JK Geotechnics
NatHERS Certificate No. 0002271760	11 December 2017	Eco Certificates Pty Ltd
Assessment of Traffic, Transport and Parking Implications - Rev E (REF:17067)	December 2017	Transport and Traffic Planning Associates

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

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Report Title	Dated	Prepared By
Operational Waste Management Plan Revision C	5 December 2017	Elephants Foot Recycling Solutions

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.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Maxwell Duncan, Planner

The application is determined on 07/08/2019, under the delegated authority of:





Steven Findlay, Manager Development Assessments