

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0324
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 34 DP 7912, 184 Wyndora Avenue FRESHWATER NSW 2096 Lot 2 DP 7912, 184 Wyndora Avenue FRESHWATER NSW 2096 Lot 1 DP 7912, 184 Wyndora Avenue FRESHWATER NSW 2096 Lot 33 DP 7912, 184 Wyndora Avenue FRESHWATER NSW 2096 Lot 35 DP 7912, 184 Wyndora Avenue FRESHWATER NSW 2096
Proposed Development:	Modification of consent to DA2016/0550 granted for demolition works construction of attached dwellings and subdivision of land
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Peninsular 1 Pty Ltd
Applicant:	I P M Holdings Pty Ltd
Application lodged:	16/12/2017

Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	0
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

Warringah Development Control Plan - C1 Subdivision

SITE DESCRIPTION

Property Description:	Lot 34 DP 7912 , 184 Wyndora Avenue FRESHWATER NSW 2096 Lot 2 DP 7912 , 184 Wyndora Avenue FRESHWATER NSW 2096 Lot 1 DP 7912 , 184 Wyndora Avenue FRESHWATER NSW 2096 Lot 33 DP 7912 , 184 Wyndora Avenue FRESHWATER NSW 2096 Lot 35 DP 7912 , 184 Wyndora Avenue FRESHWATER NSW 2096
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Detailed Site Description:

184 Wyndora Avenue, Freshwater (the subject site) currently consists of five separate allotments and is bound by Wyndora Avenue to the north, Coles Road to the south and McDonald Street to the west, where the site has its predominant and largest frontage.

The site is presently in a state of construction of 14 attached dwellings with basement carparking and associated landscaping.

The site is upon land zoned for R2 Low Density Residential Development, but is subject to *Additional Permitted Uses* under Schedule 1 of the Warringah Local Environmental Plan 2011 which permits the development taking place on site, which would otherwise be prohibited.

The site has an overall surveyed area of 2,759m² and is surrounded by detached residential dwellings of varying age, size and construction.

Map:



SITE HISTORY

PEX2014/0005

This application was a Planning Proposal submitted to Council to add an additional permitted use on the land to allow the development of 14 townhouses with a common basement car park. The Planning Proposal was subject to community consultation conducted through two formal notification periods (14 July 2014 to 28 July 2014 and 4 January 2016 to 3 March 2016). The Planning Proposal was reported to the Warringah Development Assessment Panel who conducted a public meeting and recommended the proposal proceed

to a gateway determination. The Planning Proposal was also reported to an Ordinary Council Meeting.

The Planning Proposal was made on 13 May 2016 to amend Schedule 1 to permit subdivision of the site into no more than 14 lots but only in conjunction with the erection of no more than 14 attached dwellings and basement car parking. The Planning Proposal was accompanied by a Voluntary Planning Agreement that set out a series of planning controls and "Site Development Plans" to guide the future detailed development of the site.

(Extract from DA2016/0550 Assessment Report by Northern Beaches Council).

Development Application No. DA2016/0550

Application for demolition works, construction of attached dwellings and subdivision of land, lodged with Council on 6 June 2016.

This application (the parent application of the subject s96 application) is subsequent of PEX2014/0005 as above and proposed the demolition of the existing hospital on site, construction of 14 townhouses with a common basement carpark and then the stratum subdivision of the development into 14 separate allotments. The use of the land for this purpose is not expressly permitted in the R2 zone via WLEP 2011, however the site had a planning proposal approved which amended Schedule 1 of the WLEP 2011 to allow for the subdivision of the site into no more than 14 lots but only in conjunction with the erection of no more than 14 attached dwellings and basement car parking.

The application was determined by way of approval on 19 October 2016 by the Northern Beaches Independent Assessment Panel.

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979 seeks Council to amend Condition no. 60 of the approved consent no. DA2016/0550 to align with the Voluntary Planning Agreement (VPA) for the site (PEX2014/0005).

Condition no. 60 - Release of Subdivision Certificate - of the development consent reads as follows:
To enable the lodgement of the final plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until the Final Occupation Certificate for the approved development.

Reason: To ensure that the plans relate to approved development. (DACENH23)

The staging requirements of the release of the Subdivision Certificate differ from that of the VPA requirements and therefore, the application seeks to amend the above wording to reflect that of the VPA in section 6 (Restriction on subdivision) which currently reads as follows:

6.1. The Developer must achieve practical completion of the whole of the Development (that is, including basement car park, walls of dwellings and roofs but excluding linings and fixtures) before a Subdivision Certificate is issued in respect of the subdivision of the Land in connection with the Development.

The application poses no physical changes to the approved development.

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:
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 DA2016/0550, 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	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 DA2016/0550.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	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.

Section 96(1A) - Other Modifications	Comments
(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	
(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.	The modification application pursuant to s96 of the Environmental Planning and Assessment Act 1979 was not notified in accordance with cl. A7 of the Warringah Development Control Plan 2011 as the modifications sought are of a minor technical nature which results in nil physical changes to the development and are considered to be of no impact upon any adjoining residents, properties or the environment.

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 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 in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of

Section 79C 'Matters for Consideration'	Comments
	days taken in this assessment in light of this clause within the Regulations. No Additional information was requested. <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. <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 matter has been addressed via a condition in the original consent. <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.
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) 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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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	The modification application pursuant to s96 of the Environmental Planning and Assessment Act 1979 was not notified in accordance with cl. A7 of the Warringah Development Control Plan 2011 as the modifications sought are of a minor technical nature which results in nil physical changes to the development and are considered to be of no impact upon any adjoining residents, properties or the environment.
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

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

MEDIATION

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineers have reviewed the proposal and raise no objections to the proposed MOD subject to: 1.Deletion of condition 60 2.Include the following condition: Release of Subdivision Certificate To enable the lodgement of the final plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until Practical Completion of the whole of the Development (that is, including basement car park, walls of dwellings, roofs, stormwater drainage system incorporating on-site stormwater detention system, services but excluding linings and fixtures) is issued in respect of the subdivision of the Land. Reason: To ensure that the plans relate to approved development. (DACENH23)

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 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
2.5 Additional permitted uses for particular land	Yes
2.6 Subdivision - consent requirements	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C1 Subdivision	Yes	Yes

Detailed Assessment

C1 Subdivision

The application does not seek to change the approved subdivision of the site, rather it seeks to amend at what stage of construction the Subdivision Certificate can be released. Thereby, given that no physical changes are proposed, a detailed assessment against the provisions of this clause are not applicable.

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. Mod2017/0324 for Modification of consent to DA2016/0550 granted for demolition works construction of attached dwellings and subdivision of land on land at Lot 34 DP 7912,184 Wyndora Avenue, FRESHWATER, Lot 2 DP 7912,184 Wyndora Avenue, FRESHWATER, Lot 1 DP 7912,184 Wyndora Avenue, FRESHWATER, Lot 33 DP 7912,184 Wyndora Avenue, FRESHWATER, Lot 35 DP 7912,184 Wyndora Avenue, FRESHWATER, subject to the conditions printed below:

A. Modify Condition no. 60 - Release of Subdivision Certificate - to read as follows:

The enable the lodgement of the final plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until the Practical Completion of the whole Development (that is, including basement car park, walls of dwellings and roofs but excluding linings and fixtures) is issued in respect to the subdivision of the land.

Reason: To ensure that the plans relate to the approved development.

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

Signed



Adam Mitchell, Planner

The application is determined under the delegated authority of:



Rodney Piggott, Manager Development Assessments

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2017/528464	Owners Consent	12/12/2017
 2017/528466	Letter - Cover	12/12/2017
 2017/528467	Report - Statement of Environmental Effects	12/12/2017
 MOD2017/0324	184 Wyndora Avenue FRESHWATER NSW 2096 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	16/12/2017
 2017/525573	DA Acknowledgement Letter - I P M Holdings Pty Ltd	16/12/2017
 2017/528459	Modification Application Form	18/12/2017
 2017/528461	Applicant Details	18/12/2017
 2017/528797	delete	19/12/2017
 2017/530831	Request for Further Information - Mod2017/0324	19/12/2017
 2017/530936	? DA Acknowledgement Letter (not integrated) - I P M Holdings Pty Ltd	19/12/2017
 2018/123840	Development Engineering Referral Response	20/02/2018