WARRINGAH COUNCIL

REPORT TO APPLICATION DETERMINATION PANEL

Meeting held on 07 August 2014

67 Albert Street Freshwater, 69 Albert Street Freshwater - Review of determination of Development Application DA2013/0920 for Demolition works and construction of retail premises and dwellings

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2014/0012

Responsible Officer:	David Auster
Land to be developed (Address):	Lot 2 DP 1105885 , 67 Albert Street FRESHWATER NSW 2096 Lot 1 DP 1105885 , 69 Albert Street FRESHWATER NSW 2096
Proposed Development:	Review of determination of Development Application DA2013/0920 for Demolition works and construction of retail premises and dwellings
Zoning:	LEP - Land zoned R2 Low Density Residential LEP - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Warringah Council Application Determination Panel
Land and Environment Court Action:	No
Owner:	John Ross Jackson
Applicant:	Connor & Solomon Architects

Application lodged:	14/05/2014
Application Type:	Local
State Reporting Category:	Refer to Development Application
Notified:	20/05/2014 to 04/06/2014
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	4
Recommendation:	Approval

Estimated Cost of Works:	$ 798,529

WARRINGAH COUNCIL

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

Environmental Planning and Assessment Act 1979 - Section 82A -
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 2 DP 1105885 , 67 Albert Street FRESHWATER NSW 2096 Lot 1 DP 1105885 , 69 Albert Street FRESHWATER NSW 2096
Detailed Site Description:	The site is comprised of two lots (Lots 1 and 2 in DP1105885) and is known as 67-69 Albert Street. The site is rectangular in shape. Lot 1 has a surveyed area of 272.9sqm and Lot 2 has an area of 274.1sqm. The existing development on site is comprised of two shops at the front (north west) of the site, and two attached dwellings at the rear (attached to the shops and attached to each other). There is currently no car parking provided on site. The site slopes down from north east to south west with a cross fall of approximately 0.5m. To the north east the neighbour at number 3 Evans Street is a residential flat building, with a driveway immediately adjacent to the common boundary. To the southwest at 65 Albert Street is the Harbord Uniting Church which is listed under schedule 5 of the WLEP as a heritage item. To the rear and across the road are single dwellings.

Map:

SITE HISTORY

The site has a long history of use for the current purposes as two shops and semi-detached dwellings at the rear. See discussion under Existing Use Rights section of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves demolition of the existing building over the two lots and construction of a new development including:

Retail Component

- Cafe/shop + Launderette - 43sqm floor space
- General store/shop - 42sqm floor space
- A new footpath awning is proposed to replace the existing awning

Residential Component

- 2 semi detached dwellings (each with 3 bedrooms) above and to the rear of the shops

Car parking

- No parking is proposed.

Tree Removal

- 1 Macadamia tree to be removed.

Proposed Changes Under Current S82A Review from DA2014/0920

- Ground floor reconfigured by removing bedroom and study from each dwelling
- Secondary dwellings removed from ground floor of each dwelling
- Ground floor of each dwelling to comprise media room, larger bathroom, and rumpus room
- First floor level to be setback 2.5m from front boundary and deck proposed in this location with access from main bedrooms
- Number of bedrooms reduced to 3 bedrooms per dwelling
  The application has been called up to the Application Determination Panel for determination due to the Group Manager's discretion.

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 A.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
Section 82A – Review of Determination
In accordance with Section 82A of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 82A of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 24 March 2014 and the notice of determination was issued on 24 March 2014. The review was lodged on 14 May 2014 and is to be considered by the Application Determination Panel (ADP) on 7 August 2014, which is within 6 months of the date of determination (the lapse date is 24 August 2014).

Section 82A(4)(c) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the ‘Detailed Description of Works” section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the S82 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 82A (4) (c) of the Act.

Section 79C “Matters for Consideration

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)(iiia) – 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)	Division 8A 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. Clause 50(1A) 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. Clauses 54 and 109 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. Clause 92 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 of consent. Clauses 93 and/or 94 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. Clause 98 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 of consent. Clause 98 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.

Section 79C 'Matters for Consideration'	Comments
	Clause 143A 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 clause is not relevant to this application.
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) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) 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	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

- **Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the ‘Act”)?**

Section 106 of the Act defines an existing use as meaning:

> *"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*
>
> *(b) the use of a building, work or land:*
> *(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
> *(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. **Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?**

Comment:

The current use of the site for shops with semi detached dwellings at the rear was established, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011. Council has on record previous evidence that the subject building was constructed prior to 1917 (record number 2012/238055 on Council's database).

2. **Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?**

Comment:

There is no record of approval of the original building, as it was likely built prior to 1917. However Council has acknowledged the existing use under DA6000/6994 (record number 2012/238055 on Council's database), and the coming into force of WLEP 2000 made the use a permissible use under that planning instrument. The use became a prohibited use with the gazettal of WLEP 2011.

3. **Has the use of the building been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?**

Comment:

The building appears to have been used since the early 1900s for the current purposes of shops and semi-detached dwellings at the rear. As noted above, the WLEP 2011 made the use a prohibited use and according to available information there has been no abandonment of the use since it was built in the early 1900s. Therefore this provision is not an issue.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2)(b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: "t*hat if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose*".

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land, being Lots 1 and 2, DP1105885, was physically used for the purpose in question (two shops with semi-detached dwellings) and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter**

enlarge or rebuild an existing use?

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

1. How does the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The R2 Low Density Residential zone in this locality has specific development standards applying to it under the Warringah Development Control Plan 2011. It is noted that the proposal is non-compliant with the front setback control and the landscaped open space control. Generally a 6.5m front setback, and 40% landscaped open space would be required for new development on these lots in the R2 zone.

The proposal includes construction on a nil front setback at ground and first floor levels, and provides approximately 30% landscaped open space across the two sites. Additionally, the proposal will not provide any car parking. The applicable control (Schedule 1 of the WDCP2011) requires 10 spaces to be provided for the shops and the dwellings (being 2 spaces per dwelling, and 6 spaces for the proposed shops).

The proposal is therefore non-compliant with a number of planning controls, which would normally apply to development in the R2 zone, particularly with regard to the front setback and parking controls. However, the existing shops are on a nil setback to the front boundary, and the amended plans submitted as part of the S82 application have set the upper floor back from the front boundary by 2.5m. The increased setback of the upper level will provide a visual transition back from the nil setback at ground floor and is considered acceptable.

Given that the front setback is being used (and proposed to be continued to be used) for the shops, the ability of the development to achieve the landscaped open space control is compromised. The immediate neighbours to the north and south include a large residential flat building with substantial paved areas, and a church/pre-school covering most of the site, the proposal is not considered to be unreasonably large in its context.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or

parking provision.

Comment:

The proposal involves demolition of the existing building. The current building does not have any parking provided. It is single storey, with shops at the front and semi-detached dwellings at the rear. The current dwellings include a two bedroom dwelling of approximately 42sqm in floor space and a three bedroom dwelling of approximately 85sqm in floor space, which are proposed to be replaced with two dwellings (2 x 3 bedroom) of approximately 207sqm each. The total commercial floor space will be reduced from approximately 105sqm (30sqm and 75sqm) to approximately 85sqm (43sqm and 42sqm).

The proposed bulk and scale of the building has been reduced from the plans originally refused under DA2013/0920, by the stepping back of the upper level away from the front boundary with the use of a balcony. Parking has still not been provided on site, however, the proposal reduces the intensity of demand for parking on site, despite being a larger building. The commercial space is to be reduced which will mean the existing requirement of 7 car spaces (for 105sqm of shop floor space) to 6 spaces (for 85sqm of shop floor space). The dwellings continue to attract a requirement of two car spaces each. This gives a total of 10 required spaces, down from a total of 11 previously for the existing building.

Further to this, the two proposed secondary dwellings proposed under DA2014/0920 have been deleted from the plans under the current S82 application, and the number of bedrooms reduced to 3 per dwelling (from 5 and 4 bedrooms respectively). The intensity of proposed occupation of the site has been reduced, although secondary dwellings or number of bedrooms in the main dwellings makes no difference to parking demand as measured against Appendix 1 of the WDCP. The development will therefore slightly decrease the demand for parking on site (based on reduction in commercial floor space), compared to the existing building. Given that the development is relying on existing use rights, and the parking demand is to be slightly decreased, the proposal is considered acceptable in this regard.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

As assessed in this report, the proposal will not have any unreasonable impacts on adjoining neighbours in terms of overshadowing or other amenity impacts.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

Internal amenity of the proposed residential component of the development is not unreasonable. The plans

have been altered from what was proposed under DA2014/0920, to now allow for direct access from the dwellings to the private open spaces, which were previously all but cut-off from the dwellings by the proposed secondary dwellings.

Conclusion

The existing use, being the shops and semi detached dwellings at the rear, has been acknowledged by Council in the past and is considered to be a lawful use. The proposal therefore benefits from existing use rights. However, this simply gives the applicant the opportunity of submitting a Development Application under the relevant provisions. Subsequently an assessment of the merits of the proposal must be undertaken.

On merit the proposed development, based on the assessment above and throughout this report, is satisfactory. Therefore, based on a merit assessment of the application against the relevant considerations, the proposal satisfies the principles, objectives and intent of the Existing Use Rights provisions of the EP&A Act and Regulations.

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 process council is in receipt of 4 submission/s from:

Name:	Address:
Withheld	Withheld
Danick Aimee Buskermolen	14A Burrawang Boulvarde TORONTO NSW 2283
Kathryn Barnier	65 Albert Street FRESHWATER NSW 2096
Bruce Jeyers Loudon	5 Wyadra Avenue FRESHWATER NSW 2096

The following issues were raised in the submissions and each have been addressed below:

- Parking and traffic
- Privacy
- View loss

The matters raised within the submissions are addressed as follows:

- **Parking and traffic**
  Comment: Concerns have been raised regarding the lack of parking and traffic impacts in the area. These concerns were raised by both the church pre-school adjoining the site to the south, and by other neighbours in the area. The representatives of the pre-school (Barnier and Loudon) subsequently withdrew their objections after meeting with the owners of the site and viewing the plans in more detail, however, the other objection was maintained (the objector requested to remain anonymous).

This issue is discussed in detail under Clause C3 Parking Facilities in this report. In summary, the proposal will maintain the existing uses on site, but it will slightly reduce the demand for parking, as measured against Appendix 1 of the WDCP, by reducing the amount of commercial floor space compared to the existing building.

Additionally, the secondary dwellings originally proposed under DA2013/0920 have been deleted from the plans, and the number of bedrooms per dwelling reduced to 3 (from the 1 x 4 and 1 x 5 bedroom dwellings originally proposed). Given that the development relies on existing use rights, and will slightly improve the existing parking non-compliance, the objections are not supported in this case.

- **Privacy**
  Comment: Privacy was originally raised as a concern by the Church pre-school neighbouring the site to the south. However, these objections were subsequently withdrawn after the representatives of the pre-school had met with the owners of the subject site and examined the plans more fully.

  Privacy impacts have been examined as part of the assessment, and the proposal is not considered to result in any unreasonable impacts towards the pre-school, or any other neighbours.

- **View loss**
  Comment: Concerns have been raised regarding view loss from the residential flat building to the north, looking south over the subject site. This issue has been addressed in detail under Clause D7 Views in this report. In summary, the proposal is not considered to have an unreasonable impact on views, and the objection is not supported in this regard.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Recommend approval with no conditions
Development Engineers	I have assessed the stormwater management plans submitted with the review application. The drainage connection is to be modified to have single connection to the kerb as per the conditions of consent. No development engineers objection is raised to the proposed development subject to conditions.
Environmental Health and Protection (Food Premises)	Approval recommended subject to conditions.
Landscape Officer	The landscape open space in the rear of the proposed development is noted. It is also noted that onsite parking is not provided in the proposal. If the rear landscape area is to be amended to provide parking, a re-

Internal Referral Body	Comments
	assessment of the proposal will be required in relation to landscape issues. No objection to approval subject to conditions as recommended.
Traffic Engineer	Following comments are to be read in conjunction with previous traffic comments dated 17/9/2013 with reference number 2013/272176. There is no provision for on-site parking or vehicle access from the street with the proposed development. The WLEP required provision of access and parking for both dwellings and shops but none are proposed. Accordingly subject to further consideration and concurrence of development assessment, there is no objections for the lack of car parking to be included as grounds for refusal. <u>Previous Comments dated 17/9/2013 in relation to DA2013/0920</u> There is no provision for on-site parking or vehicle access from the street with the proposed development. The WLEP provides that the proposed development is required to provide 1.5 spaces per unit and 1 visitor space, giving a total of 4 spaces on-site. In addition, the on-site parking requirement for the laundromat and general store is estimated at 5 spaces. Based on these factors the proposed development is not supported. <u>Planner's Comment:</u> Council's Traffic Engineer's have recommended refusal of the application based on lack of parking. The development relies on existing use rights, and will slightly reduce the demand for parking (as measured against Appendix 1 of the Warringah DCP2011) compared to the existing development. Therefore the proposal is considered acceptable with regard to parking, despite the recommendation for refusal by Council's Traffic Engineers. See assessment under Existing Use Rights, and under clause C3 Parking in this report.
Waste Officer	Waste Services has no issues with the proposed revisions.

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)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for the present residential / commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential / commercial land use.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certificates have been submitted with the application (see Certificate No. 492757S_02 and 492685S_02). The BASIX Certificates indicate that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	40	40

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificates.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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.

Warringah Local Environment Plan 2011

Is the development permissible?	No
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:	N/A	N/A	N/A	N/A
Height of Buildings:	8.5m	8.2m	N/A	Yes
Rural Subdivision:	N/A	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

Land use definition: WLEP 2011	Permitted or Prohibited
Two shops and two semi-detached dwellings	Prohibited

The underlying objectives of the R2 Low Density Residential zone:

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

  Comment:

  Although the type of housing proposed is a prohibited type of residential accommodation in the zone, the development will still only involve one dwelling per lot, consistent with the expected density of single detached dwellings in the zone. The development relies on existing use rights (see discussion under Existing Use Rights in this report) to maintain two shops and two dwellings on site.

  It is considered that the development satisfies this objective.

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

  Comment:

  The development will not prevent other land uses from taking place in the area. It may be expected that the two shops will help to provide for the day to day needs of residents in the area.

  It is considered that the development satisfies this objective.

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

  Comment:

  The development will maintain approximately the same amount of landscaped area on site as currently exists. The location of the shops on a nil setback to the front boundary is to be retained.

  It is considered that the development satisfies this objective.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.1m	N/A	Yes
B3 Side Boundary Envelope	5m	No breach	N/A	Yes
B5 Side Boundary Setbacks	0.9m	900mm both sides	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Nil	100%	No
B9 Rear Boundary Setbacks	6m	10m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	30%	25%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3 Side Boundary Envelope	Yes	Yes
R2 Side Boundary Envelope Exceptions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	Yes	Yes
Side Setbacks - R2	Yes	Yes
Side Setback Exceptions - R2	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
R2 - All other land in R2 Zone	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
All other land under R2	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Residential accommodation - one or two dwellings	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

The proposal will have a nil front setback at ground floor level, and a 2.5m setback at first floor level. An awning over the street is also proposed. The plans previously proposed under DA2014/0920 included a nil setback at both ground and first floor level.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense openness.*

  Comment:

  The development relies on existing use rights, and will replace the existing uses which are currently on a nil setback to the street. The upper level has now been stepped back through the use of decking, and this will help to create a more open development than the previously proposed nil front setback at first floor level.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

  Comment:

  There is very little continuity between properties in this section of Albert Street, with the existing shops and semi detached dwellings on the subject site being neighbour to a residential flat building to the north, and a church pre-school to the south. The residential flat building is setback from the street by approximately 5.5m, and the pre school to the south is setback by approximately 4m-5m, but includes shade sail structures on a nil setback. The existing shops on the subject site are on a nil setback. The proposed development is therefore considered to maintain the existing visual continuity and pattern of building in the area.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

  Comment:

  The existing buildings are very old and in need of repair. It may be expected that the new development will provide an attractive addition to the streetscape.

- *To achieve reasonable view sharing.*

  Comment:

  This issue is discussed in detail under Clause D7 Views in this report. In summary, the proposal is considered to maintain a reasonable sharing of views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C3 Parking Facilities

Description of non-compliance

The development would normally be required to provide 10 car spaces, based on 85sqm of commercial area, and two dwellings. There are no spaces provided. The proposal is relying on existing use rights to maintain the existing two shops at the front of the lots, with the two semi detached dwellings at the rear of the lots.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

  Comment:

  The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Shops	1 space per 16.4 m2 GLFA (6.1 spaces per 100 m2 GLFA).	6	0	-6
Dwellings	2 per dwelling	4	0	-4
Total		10	0	-10

  The proposal will reduced the amount of shop floor space on site from approximately 105sqm (existing) to 85sqm (proposed), therefore reducing the demand for parking from 7 spaces for the shops to 6. The dwellings were previously proposed under DA2014/0920 to be 1 x 4 bedroom dwelling, and 1 x 5 bedroom dwelling, plus two secondary dwellings, to replace the existing 1 x 2 bedroom dwelling and 1 x 3 bedroom dwelling. The current proposal has reduced this to 2 x 3 bedroom dwellings, with no secondary dwellings. This reduction does not technically alter the number of car spaces required/demanded per dwelling under the parking provisions in Appendix 1. However, it will generally maintain the existing intensity of use in terms of housing. Therefore, given that the proposal relies on existing use rights, and will slightly reduce the existing intensity of development and demand for parking, the proposal is considered acceptable, despite providing no parking.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

  Comment:

  No parking facilities are proposed.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

  Comment:

  No parking facilities are proposed.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal will provide for approximately 30% landscaped open space.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To enable planting to maintain and enhance the streetscape.*

  Comment:

  The existing building is on a nil front setback, and the proposal will maintain this. There is therefore no opportunity to provide landscaping in the front setback area. Given that the proposal is relying on existing use rights, this is considered acceptable.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

  Comment:

  The proposal will not impact on any significant indigenous vegetation, topographical features and habitat for wildlife.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The rear landscaped area is sufficient to allow for establishment of various levels of planting, which may be expected to screen the development and mitigate the height, bulk and scale over time.

- *To enhance privacy between buildings.*

  Comment:

  The proposal is not considered to result in any unreasonable privacy impacts. The rear landscaped areas will allow for planting which over time may be expected to improve privacy.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

  Comment:

  The landscaping provided is wholly devoted to private open spaces at the rear of the site. It is sufficient to accommodate outdoor recreation for the occupants.

- *To provide space for service functions, including clothes drying.*

  Comment:

  Sufficient space for service functions is provided in the rear landscaped area.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

  Comment:

  Council's Development Engineers have assessed the proposed stormwater provisions and are satisfied subject to conditions of consent. The landscaped area proposed is sufficient to allow for infiltration of stormwater. Stormwater falling on the hard surface area of the site is to be piped to Albert Street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

One submission was received from the neighbouring residential flat building regarding view loss.

Merit consideration

With regard to the consideration for view sharing, the development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"*The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured*".

Comment to Principle 1:

The view affected is a relatively short distance district view of the the freshwater valley, looking from the northern side of the valley towards the south. The view does not include any water. Nor does it include any particularly distinctive or iconic features. Although highly valued by the owner of the unit, the view is not considered to be very valuable in the context of the Tenacity principles.

2. What part of the affected property are the views obtained

"*The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic*".

Comment to Principle 2:

The view affected is from a unit on the first floor of the residential flat building at 3 Evans St. The view is obtained from sitting and standing positions in the open plan living/kitchen/dining area and the bedroom, and from standing in the bathroom. The views are directly across the side boundary.

3. Extent of impact

"*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating*".

Comment to Principle 3:

The highest part of the new development is the middle sections of roofing at RL22.9, while the remainder of the roof line will be at RL21.8. The survey shows that the church to the south (number

65 Albert Street) has a roof height of 21.41, which gives a convenient measuring stick as it sits immediately behind where the new building is proposed. The proposed new building will be between 390mm and 1.49m higher than the existing church roof. It is clear therefore that the impact on the view from the objector's unit will not be severe or devastating. A large proportion of the view will be retained above and to the front and rear of the development, including the southern ridgeline/skyline of the valley. The development will however cut out a significant portion of the 'centre' of the view, and the view loss from this unit is therefore considered to be moderate.

However, the principle requires that view loss be judged for the whole of the property, not just the view affected. Access could not be gained to other units, however, the unit owned by the objector is the one which is directly adjacent to the proposal, and at first floor level, and it will be the most affected of all the units in the residential flat building. Given the moderate impact to this unit, it must be assumed that impacts on other south facing units will be minor to negligible. Taking into account the unit most affected, combined with the rest of the property, the view loss for the property as a whole is therefore considered to be minor.

4. Reasonableness of the proposal that is causing the impact

"*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable*."

Comment to Principle 4:

The development is under existing use rights, and as such, the built form controls do not strictly apply. However, the building is beneath the 8.5m height limit (it will have a maximum height of 8.2m), and will remain within the side and rear setbacks and building envelope. It does not comply with the front setback control, but it is the central part of the building where the roof is highest that is causing the bulk of the view loss. Given that the view is not considered to be very valuable, is obtained across a side boundary, will only be affected in a minor way from the whole site, and that the development is below the 8.5m height limit, it is not considered reasonable to force the applicants to redesign. The development as proposed will maintain a reasonable sharing of views.

- *To encourage innovative design solutions to improve the urban environment.*

  Comment:

  Given the above assessment, the development is considered to maintain a reasonable sharing of views. The proposal is therefore considered to be sufficiently innovative.

- *To ensure existing canopy trees have priority over views.*

  Comment:

  The proposal does not involve removal of canopy trees to obtain views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan Contribution based on a total development cost of $ 798,529		
Contributions	**Levy Rate**	**Payable**
Total Section 94A Levy	0.95%	$ 7,586
Section 94A Planning and Administration	0.05%	$ 399
Total	1%	$ 7,985

Hours of Operation
Previously approved hours of operation for the shops was 6am to 9pm, 7 days per week. The application has applied for the same hours. Given the proposal relies on existing use rights, these hours are considered acceptable.

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 REV2014/0012 for Review of determination of Development Application DA2013/0920 for Demolition works and construction of retail premises and dwellings on land at Lot 2 DP 1105885, 67 Albert Street, FRESHWATER, Lot 1 DP 1105885, 69 Albert 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**
DA01 Rev Section 82A Review	May 2014	Connor + Solomon Architects
DA02 Rev Section 82A Review	May 2014	Connor + Solomon Architects
DA03 Rev Section 82A Review	May 2014	Connor + Solomon Architects
DA04 Rev Section 82A Review	May 2014	Connor + Solomon Architects
DA05 Rev Section 82A Review	May 2014	Connor + Solomon

		Architects
DA06 Rev Section 82A Review	May 2014	Connor + Solomon Architects
DA07 Rev Section 82A Review	May 2014	Connor + Solomon Architects
DA08 Rev Section 82A Review	May 2014	Connor + Solomon Architects
DA09 Rev Section 82A Review	May 2014	Connor + Solomon Architects
DA010 Rev Section 82A Review	May 2014	Connor + Solomon Architects
DA015 Rev Section 82A Review	May 2014	Connor + Solomon Architects

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

c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
DA016 Rev Section 82A Review	May 2014	Connor + Solomon Architects

Waste Management Plan		
Drawing No.	**Dated**	**Prepared By**
DA018 Rev Section 82A Review	May 2014	Connor + Solomon Architects

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
(iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
(i) in the case of work for which a principal contractor is required to be appointed:
A. the name and licence number of the principal contractor, and
B. the name of the insurer by which the work is insured under Part 6 of that Act,
(ii) in the case of work to be done by an owner-builder:
A. the name of the owner-builder, and
B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
(i) protect and support the adjoining premises from possible damage from the excavation, and
(ii) where necessary, underpin the adjoining premises to prevent any such damage.
(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

3. **General Requirements**
(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) Smoke alarms are to be installed throughout all new and existing portions of any Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected
ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
iii) Building/s that are to be demolished
iv) For any work/s that is to be carried out
v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.warringah.nsw.gov.au

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**
Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan Contribution based on a total development cost of $ 798,529		
Contributions	**Levy Rate**	**Payable**
Total Section 94A Levy	0.95%	$ 7,586
Section 94A Planning and Administration	0.05%	$ 399
Total	1%	$ 7,985

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

Reason: To provide for contributions in accordance with the Warringah Section 94A Development Contributions Plan 2012.

5. **Bonds**
(a) Security Bond
A bond (determined from cost of works) of $2000.00 and an inspection fee in accordance with Councils Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

(b) Construction, Excavation and Associated Works Bond (footpath)
A Bond of $5000.00 as security against any damage or failure to complete the construction of road

pavement/shoulder reconstruction works as part of this consent.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection)

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate protection of Councils infrastructure. (DACENZ01)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. **Submission of Engineering Plans for Civil Works in the Public Road Reserve**
Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.The submission is to include four (4) copies of Civil Engineering plans for the design of full width concrete footpath and proposed drainage connection to the kerb & gutter which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with Council's specification for engineering works. (DACENC08)

7. **On-site Stormwater Detention**

An On-site Stormwater Detention system must be designed and constructed in accordance with Council's current On-site Stormwater Detention Technical Specification, and generally in accordance with the concept drainage plans prepared by AJ Whipps Consulting Group, drawing number HDA01/P2, HDA02/P3, HDA03/P3, HDA04/P3, HDA05/P2 HDA06/P2, dated Sept 2013.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

i. Discharge to the street gutter must be via a box section over the footpath area from the development sites. Extension of stormwater pipe along the footpath as shown for No69 Albert Road is not permitted. The pipe line must be contained within the development site via a drainage

easement and thence connected to the kerb.

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's current On-site Stormwater Detention Technical Specification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. (Special condition) (DACENC20)

8. **Design, construction and fit out**
The design construction and fit out of the kitchen shall comply with Australian Standard AS 4674 – 2004 – 'Design, Construction and fit-out of food premises". Such details are to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with the Australian Food Standards Code. (DACHPCPCC1)

9. **Garbage and Recycling Facilities**

An appropriate area shall be provided within the premises for the storage of garbage bins and recycling
containers and all waste and recyclable material generated by this premises. All internal walls of the garbage storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.
Reason: To prevent pollution of the environment and to protect the amenity of the area (DACHPCPCC2)

10. **Trees and / or Landscaping**
In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) Construction Certificate Plans
Where applicable the Construction Certificate plans must include reference to:
(i) Trees to be removed coloured or shaded in the colour red
(ii) Trees to be retained coloured or shaded in the colour green
(iii) Trees to be pruned coloured or shaded in the colour blue
(iv) Trees to be transplanted coloured or shaded in the colour yellow

(b) Existing trees which must be retained
All trees not indicated for removal on the approved plans.

(c) Tree protection
i) No tree roots greater than 50mm diameter belonging to trees to be retained are to be cut unless authorised by a qualified Arborist on site.
ii) All structures are to bridge or tunnel bore under tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.

iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites.
iv) All tree protection measures are to be in place prior to commencement of works

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

11. **Compliance with Standards**
The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

(a) AS2601.2001 - Demolition of Structures**
(b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
(c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
(d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
(e) AS 4970 - 2009 'Protection of trees on development sites'**
(f) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New building work**
(g) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**
(h) AS 4674 Design, construction and fit out of food premises
(i) AS1668 The use of mechanical ventilation

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website
http://www.humanrights.gov.au/disability_rights/buildings/good.htm
**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)

12. **Sewer / Water Quickcheck**
The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website www.sydneywater.com.au for:
- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **Public Liability Insurance - Works on Public Land**
Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of $20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **Footpath Construction**
The applicant shall construct a full width concrete footpath along the full frontage of the development site. The works shall be in accordance with the following:

(a) All footpath works are to be constructed in accordance with Council's minor works policy
(b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of footpath works with Council's specification for engineering works. (DACENE07)

15. **Maintenance of Road Reserve**
The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety. (DACENE09)

16. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with Council's Minor Works Policy and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: Public Safety. (DACENE11)

17. **Trees Condition**
During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

(a) A general decline in health and vigour.
(b) Damaged, crushed or dying roots due to poor pruning techniques.
(c) More than 10% loss or dieback of roots, branches and foliage.
(d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
(e) Yellowing of foliage or a thinning of the canopy untypical of its species.
(f) An increase in the amount of deadwood not associated with normal growth.
(g) An increase in kino or gum exudation.
(h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
(i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLAE03)

18. **Installation and Maintenance of Sediment Control**
Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Warringah Council Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACPLE02)

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

19. **Authorisation of Legal Documentation Required for On-site Stormwater Detention**
The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land. (DACENF01)

20. **Registration of Encumbrances for On-site Stormwater Detention**
A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF02)

21. **On-Site Stormwater Detention Compliance Certification**
Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

22. **Positive Covenant for On-site Stormwater Detention**
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Warringah Council's delegate prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)

23. **Creation of Positive Covenant and Restriction as a User**
Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Warringah Council for authorisation.

A certified copy of the documents shall be provided to Warringah Council after final approval and registration has been affected by the "Department of Lands".

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF14)

24. **Stormwater Drainage Easement**
The stormwater drainage easement is to be created under Sections 88B, and/or 88K of the Conveyance Act 1919 over lot 2 DP 1105885 to benefit Lot 1 DP 1105885.

Reason:To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties. (DACENFPO1)

25. **Kitchen Design, construction and fit out of food premises certification**
Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a

person who is eligible as a 'Member' of Environmental Health Australia (EHA) that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure that the kitchen complies with the design requirements. (DACHPFPOC3)

26. **Required Planting**
The tree/s listed in the following schedule shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Pot Size
All trees	As indicated on Landscape Plan Dwg. No. DA16 Rev. Section 82A Review dated May 2014 prepared by Connor + Solomon Architects	As indicated on the Landscape Plan	As indicated on the Landscape Plan

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity. (DACLAF01)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

27. **Air emissions from coffee roaster activites**
The shop must take all appropriate steps to prevent smoke and/or odour caused by roasting of coffee from getting into the atmosphere causing air pollution nuisance.
Reason: To ensure compliance with the Protection of Environment Operations Act 1997. (DACHPGOG1)

28. **Amenity**

The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the Protection of the Environment Operations Act 1997.

(DACHPGOG2)

29. **Storage and collection of waste**

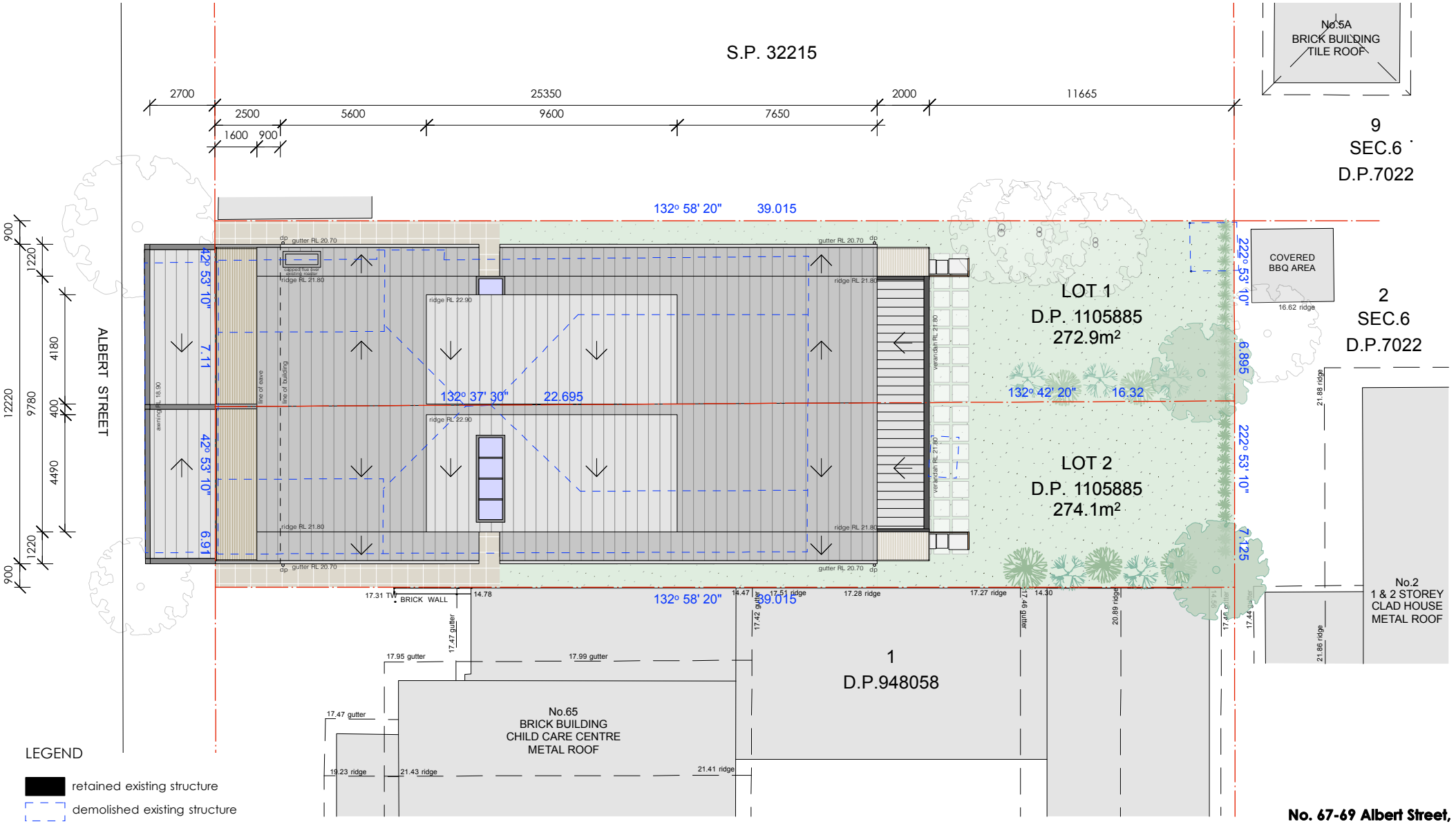
Waste must be stored on site in appropriate bins in a manner that does not cause pollution or create risks and be adequately serviced.

Reason: prevent pollution and protect health and amenity (DACHPGOG2)

30. **Hours of Operation**
The hours of operation for the shops are to be restricted to 6am to 9pm, Monday to Sunday (inclusive).

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)



LEGEND

- retained existing structure
- demolished existing structure
- new masonry walls
- new timber walls
- timber decking
- metal roofing
- tiles

No. 67-69 Albert Street, Freshwater
Lot 1 + 2
D.P 1105885

Lot 1 Site Area: 272.9m²
Lot 2 Site Area: 274.1m²
Total Site Area: 547m²

connor + solomon ARCHITECTS
abn 52011715077 nominated architects
Paul Connor BArch.hons MFA.hons #7055 Anthony Solomon BArch #5684
Studio 4.04 "The Cooperage" 56 Bowman St. Pyrmont NSW
ph + 61 2 8096 2890 fax + 61 2 9566 2889
www.coso.com.au

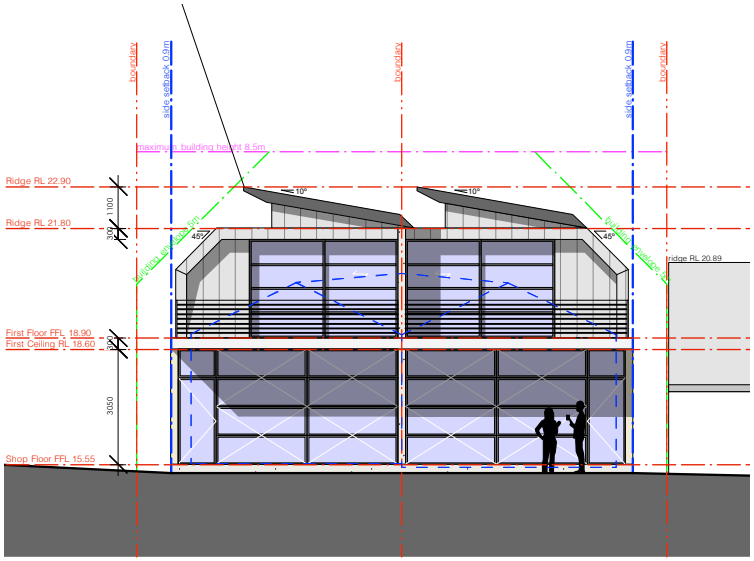
DEVELOPMENT APPLICATION | 67-69 albert street freshwater | august 2013

NOTE: All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian Building Standards. Builder to ensure compliance with all Work Cover requirements. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. When proprietary products are referred to, install in accordance with the manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

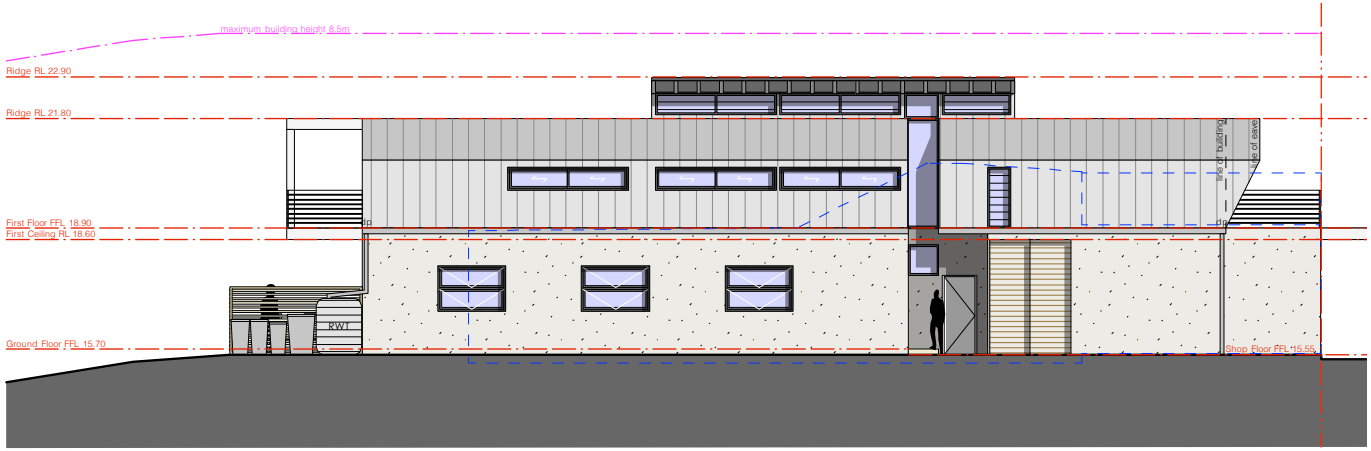
AMENDMENTS:

NOTIFICATION PLAN
SITE PLAN
1:200

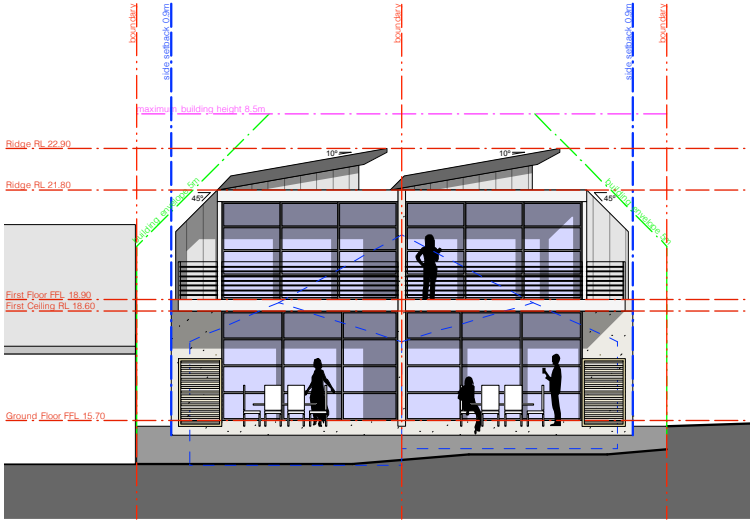
DRAWING NO: NP 01
Rev: Section 82A Review



WEST ELEVATION



NORTH ELEVATION



EAST ELEVATION

SOUTH ELEVATION

connor + solomon
ARCHITECTS
abn 52011715077 nominated architects
Paul Connor BArch.hons MFA.hons #7055 **Anthony Solomon** BArch #5684
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DEVELOPMENT APPLICATION | 67-69 albert street freshwater | july 2013

NOTE: All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian Building Standards. Builder to ensure compliance with all Work Cover requirements. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. When proprietary products are referred to, install in accordance with the manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

AMENDMENTS:

NOTIFICATION PLAN
ELEVATIONS
1:200

DRAWING NO: NP 02
Rev: Section 82A Review