

3.3**Lot 8 Beacon Hill Road, Brookvale – Subdivision of One Lot into Two Lots****SUPPLEMENTARY DEVELOPMENT APPLICATION ASSESSMENT REPORT**

Assessment Officer: Lashta Haidari
Address / Property Lot 8 DP 1035344, Beacon Hill Road, Brookvale
Description: Subdivision of one lot into two lots

Development Application No: DA2010/0258
Plans Reference: Job no. DA0810 (Drawing No. DA-00 -02 & ICP -00 – 05), prepared by Vigor Master Pty Ltd – dated January 2010.
Application Lodged: 19/02/2010
Applicant: Vigor Master P/L
Owner: Metropolitan Local Aboriginal Land Council
Amended Plans: No

Locality: F4 Brookvale Valley
Category: Category 2 “Subdivision”
Proposed Clause 20 Variations: Permissible
Land and Environment Court Action: Yes – (proceeding No. 10523 of 2010) The appeal has been discontinued by the applicant.
Referred to WDAP: YES
Referred to ADP: NO

SUMMARY

Recommendation: Refusal
Attachments:
A. Minutes of WDAP Meeting held on 14 July 2010
B. WDAP Report to Meeting held on 14 July 2010.

PURPOSE OF THIS REPORT

At its meeting of 14 July 2010, the Warringah Development Assessment Panel (WDAP) resolved to defend the appeal lodged in the Land and Environment Court against the deemed refusal of Development Application No.2010/0258, for the subdivision of one lot into two lots. The Panel considered the report, the lack of information on vital environmental matters and agreed with the reasons for refusal as contained in the attached assessment report. The Panel's resolution was:

"That Council defend the application in the Land and Environment Court".

The appeal in relation to this application has been discontinued by the applicant therefore this report recommends that the Panel determine the application by way of refusal for the reasons as contained in this report.

Conclusion

The report does not revisit any matter raised in the previous Assessment Officer's report. Therefore it is concluded that the Panel determines the application by way of refusal.

RECOMMENDATION (REFUSAL)

That Development Application DA2010/0258 for the subdivision of the existing lot into 2 lots, at Lot 8, DP 1035344, Beacon Hill Road, Brookvale be refused for the following reasons:

1. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the development is inconsistent with the Desired Future Character Statement of the F4 'Brookvale Valley' Locality.
2. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that there is insufficient information submitted with the application for Council to assess the proposal against the Built Form Controls for the F4 'Brookvale Valley' Locality.
3. Pursuant to Section 79C (1) (a) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the aims and objectives of the 'E3 Environmental Management' zone under the provisions of Draft Warringah Local Environmental Plan 2009.
4. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 insufficient information has been submitted with the application for Council to assess the proposal against the following provisions of Warringah Local Environmental Plan 2000:
 - Clause 56 – Retaining Unique Environmental Features
 - Clause 57 – sloping Land
 - Clause 58 – Protection of Existing Flora
 - Clause 60 - Water Aquatic Habitat
 - Clause 70 – Site Facilities
 - Clause 71 – Parking Facilities (visual impact)
 - Clause 76 – Stormwater Management
 - Clause 77 – Landfill
5. Pursuant to Section 79C (1) (a) of the *Environmental Planning and Assessment Act 1979* the proposed development is not consistent with the requirements of the following Schedules of Warringah Local Environmental Plan 2000:
 - Schedule 5 – Bushland in urban Areas
 - Schedule 7 - Matters for Consideration in a Subdivision of Land
 - Schedule 8 - Site Analysis



6. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 as the applicant failed to pay the appropriate fees for integrated referral to the NSW RFS under section 100B of the Act.
7. Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest.



Minutes of the Warringah Development Assessment Panel Meeting held on 14 July 2010

WARRINGAH DEVELOPMENT ASSESSMENT PANEL MEETING

3.2	Lot 8 Beacon Hill Road, Brookvale - Subdivision of One Lot into Two Lots
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Panel Member

Mary-Lynne Taylor, Chair (Environmental Law)

Steve Kennedy, Urban Design Expert

Marcus Sainsbury, Environmental Expert

Alan Linnell, Community Representative

DA2010/0258

Application Details

Subdivision of one lot into two lots

Site Description

Lot 8 DP 1035344, Lot 8 Beacon Hill Road, Brookvale

Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the WDAP Meeting. A copy of all the objection letters was provided to the Panel who considered the objections on the site visit.

Proceedings in Brief

At this WDAP meeting the Panel advised the persons present that the Development Assessment Officer's report recommendation for refusal was based on failure to submit important and basic information in relation to the impact of the proposed development. A number of persons were present who wished to speak against the application. Councillor Kirsch gave a powerpoint presentation of various environmental assessments showing the manner in which the site had been previously assessed having been affected by endangered species. The Panel was also addressed by Mr Dawson who lived close to the site and who had been a bush regenerator in the area and who expressed concerns about inadequacy of information about run-off, sewerage and in particular provided photographs of the impact that would occur if the fire trail were approved on the site – in its originally proposed position.

The Panel considered the report, the lack of information on vital environmental matters and agrees with the Council's Development Assessment Officer's report's reasons for refusal.

DECISION OF WARRINGAH DEVELOPMENT ASSESSMENT PANEL

That Council defend the application in the Land and Environment Court.

Voting 4/0



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

3.2	Lot 8 Beacon Hill Road, Brookvale - Subdivision of One Lot into Two Lots
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DEVELOPMENT ASSESSMENT REPORT

Assessment Officer:	Lashta Haidari
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Description:	Subdivision of one lot into two lots
Development Application No:	DA2010/0258
Application Lodged:	19/02/2010
Plans Reference:	Job no. DA0810 (Drawing No. DA-00 -02 & ICP -00 – 05), prepared by Vigor Master Pty Ltd – dated January 2010.
Amended Plans:	No
Applicant:	Vigor Master P/L
Owner:	Metropolitan Local Aboriginal Land Council
Locality:	F4 Brookvale Valley
Category:	Category 2 “Subdivision”
Draft WLEP 2009 Permissible or Prohibited Land use:	Permissible
Variations to Controls Referred to ADP:	Not applicable to this application No
Referred to WDAP:	YES (more than 2 unresolved objections)
Land and Environment Court Action:	No
SUMMARY	
Submissions:	A total of 20 submissions were received
Submission Issues:	The agreement to restore and enhance the area, The proposed Subdivision is inconsistent with the WLEP 2000, Environmental impacts, and stormwater management.
Assessment Issues:	Lack of Information; Environmental Issues (including clause 56 & 58 of the General Principles; Desired Future Character; Schedule 7 – Matters for Consideration in a subdivision of land; Draft Warringah LEP 2009; and Residential Issues (notification & submissions).
Recommendation:	Refusal
Attachments:	A - Subdivision Plan B - Pre-lodgement notes



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

LOCALITY PLAN (not to scale)



Subject Site: Lot 8 DP 1035344 Beacon Hill Road, Brookvale

Public Exhibition: The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan (adopted 13 December 2005). As a result, the application was notified to 170 adjoining land owners and occupiers for a period of 30 calendar days commencing on 26 March 2010 and being finalised on 4 May 2010, furthermore, the application has been advertised within the Manly Daily on 27 March 2010 and a notice was placed upon the site.

SITE DESCRIPTION

The site is legally described as Lot 8 within DP 1035344 known as Lot 8 Warringah Road, Beacon Hill. The subject site is located on the south-western corner of the Northcliffe Avenue and Warringah Road intersection at Beacon Hill. The site has street frontage of approximately 128m in length to Warringah Road, and approximately 120m in length to Northcliffe Avenue. The total site area is 9.78 ha (i.e. 97,800m²).

The entire site is currently vacant and covered with dense vegetation. The majority of the subject site is identified within the cross hatched area pursuant to the Warringah LEP 2000, with exception of small area located in the north-eastern corner of the site.

The area surrounding the site is primarily characterised by residential development in the form of detached style housing on approximately 600m² allotments

Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

RELEVANT BACKGROUND

A previous Development Application No. 2006/0698 for the subdivision one lot into seven (7) residential lots and a residual lot and the construction of a new access road was lodged with Council on 25 July 2006 and was subsequently withdrawn on 10 January 2007. The reason for withdrawal was based on number of fundamental concerns raised by Council (by letter dated 21 December 2006.)

Two pre-lodgement meeting were held with Council in relation to the subject proposed development

The first meeting was on the 24/11/2009 and the second meeting was held on 6 April 2010. The advice provided in both pre -lodgement notes was that the site is heavily constrained in terms of its steep topography, dense tree cover, existence of natural watercourses, bushfire prone status, potential for landslip and potential visual and scenic impact. Therefore, comprehensive details, including indicative dwelling designs for the lot fronting Warringah Road are essential and are to be provided with lodgement of any application addressing the site constraints and include the following information in order to determine the viability of the proposed development:

- Cut and fill versus pier and beam type construction,
- Extent of future excavation,
- Construction materials,
- Location of car parking for each lot,
- Location and design of vehicular access for each lot,
- Location of private open space areas for each lot,
- Solar access for the future dwellings and private open space areas,
- Areas on each lot available for ancillary structures.

The recent Pre- DA notes (dated 6 April 2010) are attached to this report.

The subject application was lodged with Council on 19 February 2010.

Following a preliminary assessment of the application by Council staff, Council sent a letter dated 2 March 2010 which identified a number of outstanding information. The option to withdraw the application was put forward to the applicant in this letter.

The applicant responded by a e-mail dated 5 March 2010 stating that Council should complete its assessment on the basis of information to date.

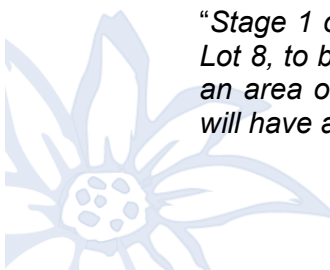
LAND AND ENVIRONMENT COURT

Council has not been advised of any Land and Environment Court action against this Application.

PROPOSAL IN DETAIL

The applicant seeks Council consent to subdivide the existing Lot into 2 Lots. The Statement of Environmental Effect (SEE) submitted with the application has indicated the subdivision of Lots will be as follows:

"Stage 1 of the proposed subdivision will involve the creation of a two lot subdivision of Lot 8, to be known as Lots 1 and 2 and is the subject of this application. Lot 1 will have an area of 10, 946m² (including a 6548m² bushfire asset protection zone), whilst Lot 2 will have an area of 86854m².



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

Lot 1 will subsequently be further subdivided in a stage 2 application to create 6 residential dwelling house allotments (ranging in size 720m² to 760m²) and a residual lot upon which development will be prohibited (i.e. a bushfire asset protection zone).

The Lot 2 created in the original stage 1 subdivision (which is the subject of this application will also become a residual lot, upon which development will also be prohibited”.

It is also noted that the development application makes no mention of what type of subdivision is being proposed, whether it is a community title subdivision or a Torrens title subdivision.

AMENDMENTS TO THE PLAN

There are no amended plans for this application.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulations 2000
- c) SEPP No. 55 – Remediation of Land
- d) State Environmental Planning Policy (Infrastructure) 2007
- e) Warringah Local Environment Plan 2000
- f) Threatened Species Conservation Act 1995;
- g) Environment Protection and Biodiversity Conservation Act 1999;
- h) Policy Control; and
- i) Draft Warringah LEP 2009

REFERRALS

Integrated Referrals

The proposed development constitutes *Integrated Development* under Section 91 of the EPA Act, 1979. In this regard, the proposal involves subdivision of bushfire prone land to two separate allotments and requires a Bushfire Safety Authority under Section 100B of the Rural Fires Act.

The application was not referred to the NSW Rural Fires services as applicant failed to pay the integrated fees (i.e. \$250) as required by the Act and therefore a Bushfire Safety Authority cannot be obtained. This issue has been included as reason for refusal.

External Referrals

Aboriginal Heritage

The Aboriginal Heritage office has reviewed the proposal and has provided the following comments:

“Reference is made to the proposed development at the above area and Aboriginal heritage.

There are known Aboriginal sites in the Brookvale area. No sites are recorded in the current subdivision, however the general area contains an important association of engraving sites.

As this application is a subdivision of the property with no significant works the Aboriginal Heritage Officer considers that there are no Aboriginal heritage constraints for the current proposal.

Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

Given the proposed development of residential lots in an area with in situ sandstone outcrops, the Aboriginal Heritage office would recommend a preliminary inspection by a qualified Aboriginal heritage professional on any future development applications which impact such sandstone outcrops"

Comment: If the application was recommended for approval, a condition would be included to reflect the comments made by the Aboriginal Heritage Office.

Internal Referral

Landscape Officer

Council's Landscape Officer has reviewed the proposal and has provided the following comments in relation to this proposal:

"An assessment has been made for the proposed subdivision of one Lot into two in relation to landscape impacts and assessment.

The information provided with this application indicates that the dimensions of proposed Lot 1 have been calculated by the combination of

- An area of land where development could be permissible (subject to future application) and*
- An additional area of land where Asset Protection Zones for fire management purposes would be located if a certain type of development was approved.*

The difficulty in assessing the application is that whilst there is no development applied for in Lot 1, Asset Protection Zones have been calculated for a 6 Lot subdivision within this Lot in the Bushfire Protection Assessment provided by Australian Bushfire Protection Planners dated 11.2.2010. (The sub division plans indicate an 8 Lot subdivision).

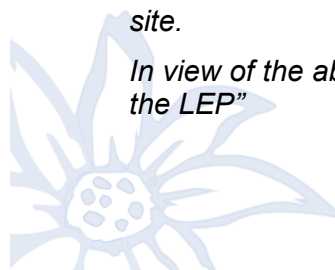
APZs and the constructed fire trail indicated on the plans will require the removal of local native species and modification to the landscape. There is no detail provided in regard to the amount of clearing required for APZs or construction of the fire trail. The plans indicate a Crushed Sandstone Fire trail extending for in excess of 100m across the site. The fire trail is required in the Bushfire Protection Assessment to be a minimum of 4m carriage way with a minimum 6m clearance. The impact of constructing this element on a steeply sloping site has not been addressed and no details or sections or elevations have been provided.

It is considered that the proposed Lot 1 should not be supported as the required Asset Protection Zone which has been used to calculate the Lot 1 size, will vary depending on the intensity and nature of use of an actual proposal on the site. The application seeks permission for the implementation of the APZ and fire trail over proposed Lot 1 without the approval of a specific development relating to that APZ.

Insufficient information has been provided in regard to the expected level of disturbance that development would necessitate on this steeply sloping site. Building platforms and site layout do not address the topography and it is anticipated that there are implications for site alteration in terms of vegetation removal, rock removal, altered drainage regimes and visual impacts resulting from development on the site.

In view of the lack of detail, no certainty can be given to the potential for the site to be developed as a result of subdivision. It is recommended that the application should address the level of disturbance that is acceptable on the site and how this sits within the landscape specific to this site.

In view of the above, it is considered that the application does not address the following matters in the LEP"



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

Desired Future Character outlined in the Locality Statement:

The spread of indigenous tree canopy will be protected throughout the locality and enhanced where possible.

As well as the following Principles of Development Control

Clause 56 - Retaining unique environmental features on sites;

Clause 57- Development on sloping land;

Clause 58- Protection of existing flora;

Clause 60- Watercourses and aquatic habitat; and

Schedule 5 State policies - Bushland in urban areas”

Comment: The comments made by Council’s Landscape officer have been included as reasons for refusal.

Development Engineer

Council’s Development Engineer has reviewed the proposal and has provided the following comments:

“The proposal cannot be supported due to insufficient information submitted by the Applicant. In order to adequately assess the proposal, the following must be provided to Council:

- 1. The stormwater drainage plans and access road plan need to be coordinated. Details must be submitted demonstrating that all paved and roof areas of the development are collected and directed to the Onsite Stormwater Detention (OSD) system. A kerb and gutter system may need to be provided along the southern side of the proposed road to collect stormwater runoff and appropriate surface inlet pits installed to collect and direct stormwater to the OSD system.*
- 2. A survey plan detailing dimensions, inverts level and surface levels of the existing public stormwater drainage system fronting Warringah Road and Northcliffe Avenue and within the site (if any), is to be submitted to Council. Drainage easements must be created over any piped or surface stormwater runoff traversing the subject site from Warringah Road and Northcliffe.*
- 3. There appears to be insufficient information demonstrating that the development can replicate the existing hydrology of the site due to the environmentally sensitive bushland located downstream of the subject site. In this regard, the applicant is required to submit details addressing the above matter. It may be necessary for the applicant to provide level spreaders incorporating onsite stormwater detention systems across the downstream boundaries of each lot to comply with the above requirement.*
- 4. A stormwater quality management plan complying with the requirements of the Northern Beaches Stormwater Management Plan is to be submitted to Council.*
- 5. Details are to be provided demonstrating all civil engineering works for the development are located wholly within Zone R2 Low Density Residential and not located within Zone E2 Environmental Conservation as referred to in Draft Warringah Local Environmental Plan 2009”.*

Comment: The concerns raised by Council’s Development Engineer have been included as reason for refusal.



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

Natural Environment Section

Council's Natural Environment has reviewed the proposal and has recommended refusal of the application on the basis that the proposed development has been found to be inconsistent with the requirement of WLEP 2000.

Comment: The specific issues raised by Natural Environment Section are addressed under Clause 56 and 58 of the general principle section and under Schedule 5 of this report.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan (adopted 13 December 2005). As a result, the application was notified to 170 adjoining land owners and occupiers for a period of 30 calendar days commencing on 26 March 2010 and being finalised on 4 May 2010, furthermore, the application has been advertised within the Manly Daily on 27 March 2010 and a notice was placed upon the site.

A total of 20 submissions were received in response to the application. Submissions were received from the following:

Name	Address
C. Davies	76 Consul Road, North St, Narrabeena
C. Kirsch	76 Consul Road North St, Narrabeena
F. Crombach	21 Health Street, Mona Vale
L. Thornton	102 Lawrence Street, Freshwater
L. Johnson	50 Consul Road, Brookvale
C. Eager	53 Suffolk Ave, Collaroy
C. Bowyer	64 Beacon Hill Road, Beacon Hill
M. Millar	12 Plateau Road, Collaroy
M. Kerr	13 Orana Rd, Mona Vale
I. Hehir	Quirk Street, Dee Why
G. Dawson	7 Northcliffe Ave, Narrabeena
K. Milner	E-mail Address only
Y. Flynn	37 Consul Road, Brook
M & H Sheriff	1 Northcliffe Ave, Narrabeena
E. Hassell	E- mail Address
R. Melville	136 Warringah Road, Beacon Hill
Curl Curl Lagoon Friends	PO Box 463, Brookvale
M. Fisher	37 King Street, Manly Vale
K. Milner on behalf of Brookvale Community Group	E-mail address only
Northern Beaches Envirolink Inc	PO Box 563, Dee Why

The issues rose in the submissions and the manner which they have been addressed are as follows:

The agreement to restore and enhance the area

Concerns have been raised that there was a signed agreement between the Metropolitan Aboriginal Land Council, Brookvale community group and Warringah Council to restore and enhance the area and this development. The objectors have stated that regardless of who bought the land all original undertaken by the MLALC should be honoured. One of the objectors has noted "that no thoughts are given to Historic significance of the site or public access as agreed under the tripartite agreement".

Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

Comment: The MLALAC had undertaken to protect this site under the tripartite agreement with Warringah Council and the Brookvale Community Group on the 23 February 2004. However, the MLALAC has now sold the site to a private developer and therefore given that one party has pulled out from the tripartite agreement, the agreement is therefore not relevant to the assessment of this application pursuant to Clause 32 of WLEP 2000. The concerns raised are noted but does not warrant the refusal of the application.

The proposed Subdivision is inconsistent with the WLEP 2000

Concerns have been raised that the proposed subdivision is inconsistent with the DFC for the F4 locality as well several general principles as contained in the WLEP 2000.

Comment: The proposal's consistency with the desired future character statement and the applicable general principles is considered under 'Warringah Local Environmental Plan 2000' in this report. In summary, the proposed development has been found to be inconsistent with the desired future character statement for the F4 locality as well several general principles and these issues has been included as a reason for refusal.

Environmental impacts

All of the submissions received have raised significant concerns in relation to the environmental impacts of the proposed. The following specific concerns have been raised in the submissions:

- The proposed development encroaches into the environment conservation zone;
- The proposed development will destroy more than a hectare of natural bushland to provide bushfire protection zones;
- The required "Fire Asset Protection Zones" for housing in a bushfire prone area would mean that huge areas of sensitive bushland would have to be cleared if housing development proceeded.

Comment: This issue has been addressed throughout this report under General Principles 56 (Retaining unique environmental features on sites) and 58 (Protection of Flora and Fauna). In summary, there is insufficient information submitted with the application to adequately assess the impact of the proposed development on remnant bushland. These issues have been included as reasons for refusal.

Stormwater Management

Concern was raised that the developing this land will cause major concern with stormwater drainage as it is already a problem in this area with heavy rain.

Comment: Council's Development Engineer has reviewed the proposal and raised a number of issues regarding the stormwater drainage design which has been detailed in the referral section of this report. As inadequate stormwater details have been submitted, compliance with the requirements of Clause 76 – Management of stormwater has not been achieved. These issues have been included as reasons for refusal.



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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 the relevant SEPP's and "Warringah Local Environmental Plan 2000" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See comments under the Draft Warringah LEP 2009 of this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	The application was notified in accordance with Warringah Development Control Plan.
Section 79C (1) (a)(iia) - Provisions of any Planning Agreement or Draft Planning Agreement	None applicable.
Section 79C (1) (a)(iv) - Provisions of the regulations	Clause 98 of the Environmental Planning and Assessment Regulation 2000 states that a prescribed condition of consent is that the work is to be undertaken in accordance with the Building Code of Australia (BCA). This issue can be addressed by conditions, if the application was recommended for approval.
Section 79C (1) (b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control table in this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable.</p> <p>(ii) The proposed development will not have a detrimental social impact on the locality considering the proposal involves additional lots which are capable of accommodating permissible land uses.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the demand for additional lands in the area.</p>
Section 79C (1) (c) – The suitability of the site for the development	The applicant has not adequately demonstrated that the site is suitable for the proposed development as there are insufficient information submitted with the application to demonstrate that that proposed lots can be developed in manner that is consistent with the DFC, general principles, and the relevant Schedules under WLEP 2000.
Section 79C (1) (d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	In regards to public submissions refer to the discussion on "Notification & Submissions Received" within this report. In summary, the public submissions received raise a number of issues which warrant the refusal of the application.
Section 79C (1) (e) – The public interest	The proposed development is not in the public interest as the proposed has been found to be inconsistent with DFC, several general principles and a number of Schedules under WLEP 2000.



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

The public exhibition of the draft Warringah Local Environmental Plan 2009 (the draft LEP) commenced on 12 October 2009 and ended on 30 December 2009. The draft LEP 2009 was adopted by Council at its meeting held on 8 June 2010. The Draft LEP is therefore a relevant matter for consideration under Section 79C of the EP&A Act.

The subject site is located within the two different zoning under the DWLEP 2009. Part of the site being the portion of the site that is located at north eastern corner is proposed to be zoned 'R2 Low Density Residential' and the remaining of the site is proposed to be zoned 'E2 Environmental Conservation'. The development being the Subdivision of the land is permissible within both of the zoning,

Despite the permissibility of the development, the proposed subdivision does not conform to the zoning boundaries and therefore the proposed subdivision encroaches into the "E3 -Environmental Management" which has restriction on certain type of development and have specific objectives that any development on that zoning will need to be consistent with. There is insufficient information provided the application to demonstrate on how the future development on this zone will be consistent with the underline objectives. Therefore the proposed development not consistent with the requirement of this Clause and this issue has been included as reason for refusal.

The only Principal Development Standard in Part 4 of the draft LEP relevant to the proposed development is 'Height of buildings'. The draft Height of Buildings Map referred to in Clause 4.3(2) of the draft LEP shows that an 8.5m height limit applies to the site.

Based on the above the proposed development is Inconsistent with the aims and objectives of the Draft WLEP 2009 and this issue has been included as reason for refusal.

Clause 6.16 'Development on sloping land' also applies to the proposed development as the majority of the site is located within the Land Slip Risk Area B and C and a small portion of the northern eastern corner of the site is located within the Land Slip Risk Area A. Clause 6.16(3) of the draft LEP sets out the following requirements for development on sloping land;

'Development consent to development on land to which this clause applies must not be granted unless the consent authority is satisfied that:

- a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
- b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- c) the development will not impact on or affect the existing subsurface flow conditions.'*

A Geotechnical Assessment (Ref 20151VB2let) prepared by Jeffery and Katauskas Pty Ltd (8 February 2010) has been submitted with the application. The report states that based on the fact that proposed development is only for subdivision, the development can proceed subject to recommendations which would require further Geotechnical Assessment to be done for all further development that will occur on the subject site.



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

State Environmental Planning Policies

Further consideration is required for the following State policies:

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7(1)(a) of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) and Clause 48 of WLEP 2000 state that a consent authority must not consent to the carrying out of any development on land unless;

- It has considered whether the land is contaminated, and
- If the land is contaminated, it is satisfied that the land is suitable in its contaminated state for the purpose for which the development is proposed to be carried out, and
- If the land requires remediation to be made suitable for the development proposed to be carried out, it is satisfied that the land will be remediated before the development is carried out.

Council records indicate that the site has historically been vacant for a significant period of time. Based on a site inspection and a desktop investigation into the site's land use history there is no evidence to suggest that the site is contaminated. Accordingly, no further consideration is required pursuant to the provisions of Clause 48 of Warringah LEP 2000 or SEPP 55.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 of *State Environmental Planning Policy (Infrastructure) 2007* (SEPP Infrastructure) requires the consent authority to give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given, for development comprising or involving any of the following;

- a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
- b) *development carried out:*
 - I. *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - II. *immediately adjacent to an electricity substation, or*
 - III. *within 5m of an exposed overhead electricity power line,*
- c) *installation of a swimming pool any part of which is:*
 - i) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
 - ii) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
- d) *Development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*

The proposed development does not involve any of the works described in Clause 45(1). The EA has provided a list of recommended conditions for the works listed in Clause 45(1). These conditions are not relevant to the proposed development.

Clause 106 'Traffic generating development' of the SEPP requires the application be referred to the RTA within 7 days, and take into consideration any comments made within 21 days, if the development is specified in Schedule 3 of the SEPP. Column 3 of the table within Schedule 3 does not apply as the site is seeking to have direct vehicular access to Warringah Road. As such, the development is not required to be referred to the RTA pursuant to the SEPP.

Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

STATUTORY CONTROLS

Warringah Local Environmental Plan 2000

Desired Future Character

The subject site is located in the F4 Locality under Warringah Local Environmental Plan 2000. The Desired Future Character Statement for this locality is as follows:

LOCALITY F4- Brookvale Valley

The Brookvale Valley locality will remain an area characterised by a mixture of detached style housing and apartment buildings interspersed with a range of complementary and compatible uses. In order to protect the bushland and scenic quality of the Valley and to maintain the water quality of Greendale Creek, the head of the Brookvale Valley, as shown cross-hatched on the map, will remain as undeveloped bushland except for the land at Lot 7 DP 236335 where a maximum of one dwelling may be erected provided the design and construction of that development has regard to the topography, potential slip and sensitive visual character of the land as well as potential loss of views to adjoining or nearby properties. The development of further apartment buildings will be confined to the "medium density areas" as shown on the map.

Outside the "medium density areas" future development will maintain the visual pattern and predominant scale of existing detached housing in the locality. The streets will be characterised by landscaped front gardens and consistent front building setbacks. The spread of indigenous tree canopy will be protected throughout the locality and enhanced where possible. Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.

Any redevelopment of the Brookvale Brickworks is to assess the structural integrity of built elements of the Brickworks and their potential and viability for adaptive reuse and integration with future development. Any redevelopment of the site will contain meaningful interpretation of the heritage significance of the site. Such interpretation is to influence the design of future development.

Redevelopment of the Brickworks site will include the rehabilitation of Greendale Creek (where it passes through the site) and will regard the Creek to be an important landscape feature and focal point of the development. The maintenance and restoration of riparian zones of the creek will be required as part of any development of the Brickworks site. This riparian zone is required to adequately filter sediment, prevent bank erosion, ensure a sustainable mix of different plant species for genetic diversity, and provide unique habitats and to act as a corridor function linking larger areas of remnant vegetation. The sitting and design of buildings and landscaping treatment of the Brickworks site is to achieve a transition between development and surrounding bushland. In this regard, canopy trees and other landscaping used on the site is to predominantly be of species found on the bushland slopes shown cross-hatched on the map.

Pursuant to Clause 14(2) of WLEP 2000 subdivision is to be identified as Category 2 development notwithstanding the classification under the relevant locality. Clause 12(3)(b) of WLEP 2000 states that prior to granting consent for development identified as Category 2 the consent authority must be satisfied that the development is consistent with the desired future character described in the relevant Locality Statement.



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

An assessment of the proposal having regard to the relevant elements of the DFC has been undertaken as follows:

The Brookvale Valley locality will remain an area characterised by a mixture of detached style housing and apartment buildings interspersed with a range of complementary and compatible uses.

Comment: The proposed subdivision is for one Lot into two, the applicant has indicated that Lot 1 will be further subdivided to provide 6 residential lots at later stage. The further subdivision of the proposed lot 1 will be the subject of a separate application at which time issues relating to detached style housing will need to be addressed.

Given that the above, this component of the DFC is not applicable to the proposed development.

In order to protect the bushland and scenic quality of the Valley and to maintain the water quality of Greendale Creek, the head of the Brookvale Valley, as shown cross-hatched on the map, will remain as undeveloped bushland.

Comment: The site contains significant area of bushland and the majority of the site is shown in the cross hatched on the map, the application is proposing the subdivision line (i.e. the proposed Lot 1) to be over the cross hatched area as shown on the map. The applicant has provided no indication as how the cross hatch area will be restricted from future development.

Further to the above, there is also insufficient information provided to enable Council to properly assess the impact of the proposal on the bushland and watercourses that are running through the site. Owing to the location of the site, the visual impact of development has the potential to be significant and measures to mitigate such impact would need to be considered as part of the subdivision application. Accordingly, Council is unable to assess the proposal against this component of the DFC.

The spread of indigenous tree canopy will be protected throughout the locality and enhanced where possible.

Comment: The proposed development along with the APZ requirement and the associated roads and the construction of crashed sandstone fire trail for the APZ will require the removal of approximately 4, 800m² of natural bushland. The proposed development will also result in the modification of approximately 6, 400m² of bushland for bushfire protection (APZ).

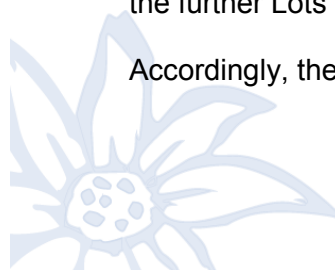
Further to the above, there is also insufficient information for Council to determine the extent of disturbance that will occur to the bushland as result of the excavation and construction process.

For the above reasons, the proposed development is therefore inconsistent with this component of the DFC as it does not protect and enhance the current vegetation on site.

Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.

Comment: The proposed subdivision achieves compliance with housing density in this locality. This application is proposing subdivision of 1 Lot into 2 Lots, the proposed Lot 1 (which is 1.1ha) will be the subject of separate application that will seek to subdivide this lot into 6 residential Lots in the future. Issues relating to consistency with the predominant pattern, size and configuration of the further Lots will be addressed as part of separate application.

Accordingly, the subdivision as proposed is consistent with this component of the DFC.



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

Built Form Controls

The proposal does not involve the construction of any new buildings on the proposed lots. However, owing to the topographical and vegetation constraints on the future development of Lot 1, the applicant was requested to furnish details of building designs and access requirement to ascertain whether a reasonable development could occur on the proposed lot 1 in conformity with the development standards under WLEP 2000.

The applicant has not provided the above information and therefore Council is unable to determine whether the proposed lot are capable of being developed in accordance with the provisions of Warringah Local Environmental Plan 2000 (WLEP 2000).

The application documentation and plans are deficient in this respect and this issue has been included as a reason for refusal.

Built Form Controls for Locality F4 Brookvale Valley

The following table outlines compliance with the only relevant built form control for the above locality statement:

Built Form Standard	Required	Proposed	Compliance
Housing Density	1 dwelling per 600m ² of site area	Lot 1 – 10,946m ² Lot 2 – 86854m ²	YES

Clause 20 Variations

No Clause 20 Variations are applicable to this development.

Clause 21 Can Land be subdivided?

Comment: Clause 21 provides that land can be subdivided with Council consent subject to being able to be developed in accordance with the provisions of WLEP 2000, including the F4 locality statement and the provisions Schedule 7. A Schedule 7 assessment is provided below:

Matters for consideration in a subdivision of land (Schedule 7)

Schedule 7 of WLEP 2000 requires Council to consider matters relating to environmentally sensitive/constrained land, drainage, general site restrictions, and access, design, construction and lot dimensions. The specific matters raised under Schedule 7 are addressed as follows:

Control	Comments	Compliance
Environmentally sensitive/constrained land (Schedule 7 stipulates that in areas subject to constraints (flooding, tidal inundation, subsidence, slip, bushfire or any other risk) an adequate safe area for development is to be provided within an allotment where the risk from hazard is minimal.	The site is identified as being highly sensitive as it is heavily constrained in terms dense tree cover, bushfire prone status, and potential visual and scenic impact. The application documents provides no indicative or schematic building designs to determine whether the proposed lots (particularly Lot 1) is capable of being developed in a manner that is consistent with the DFC and general principles of development control under WLEP 2000. Accordingly, in the absence of these comprehensive details, Council is unable to assess the impact of the proposal on the site constrains.	No

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Control	Comments	Compliance
Drainage (The provisions of Schedule 7 adequate drainage for subdivisions)	Councils Development Engineer has raised a number of concerns in relation to the method of stormwater disposal. The specific comments provided by Council's Development Engineer are addressed under Clause 76 of this report and have been included as a reason for refusal.	No
Restrictions (Schedule 7 requires that Council be nominated in any easement, right-of-way, or other restriction that is placed on the title.)	This matter can be addressed via appropriate conditions if the application was recommended for approval.	YES, subject to conditions.
Access	The applicant has not provided detailed designs for the road and access to proposed Lot 1.	NO
Bushfire (Schedule 7 provides that new subdivisions should be designed to minimise the risk of potential bushfire)	The site is identified as Bushfire prone land and therefore the proposed development constitutes <i>Integrated Development</i> under Section 91 of the EPA Act, 1979. The application was not referred to the NSW Rural Fire Service under Section 100B of the Act. As the applicant failed to pay the appropriate fees for integrated referral to the NSW RFS. This issue has been included as reason for refusal.	No
Design and Construction (Schedule 7 provides that all design and construction is to be in accordance with the Council's Specification for Engineering Works and on site stormwater detention policy and technical specification.)	Councils Development Engineer has raised a number of concerns in relation to the method of stormwater disposal. The specific comments provided by Council's Development Engineer are addressed under Clause 76 of this report and have been included as a reason for refusal.	NO
Lot dimensions (Schedule 7 provides minimum lot dimension requirements.)	The proposed Lots achieve compliance with minimum width of 13 and the minimum depth of 27m.	YES

As detailed above table, the proposed development does not comply with the requirement of Schedule 7 and this has been included as reason for refusal.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	NO	The application is for subdivision only and the construction of the subsequent buildings will be subject of separate applications.	Not Applicable
CL39 Local retail centres	NO	No Comment	Not Applicable
CL40 Housing for Older People and People with Disabilities	NO	No Comment	Not Applicable
CL41 Brothels	NO	No Comment	Not Applicable
CL42 Construction Sites	No	The proposed development is for subdivision only and there are no new works proposed as part of this application.	Not Applicable
CL43 Noise	NO	No Comment	Not Applicable
CL44 Pollutants	NO	No Comment	Not Applicable

Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

General Principles	Applies	Comments	Complies
CL45 Hazardous Uses	NO	No Comment	Not Applicable
CL46 Radiation Emission Levels	NO	No Comment	Not Applicable
CL47 Flood Affected Land	NO	The site is not flood affected.	Not Applicable
CL48 Potentially Contaminated Land and	YES	See comments under 'State Environmental Planning Policy No.55'	YES
CL49 Remediation of Contaminated Land	NO	No Comment	Not Applicable
CL49a Acid Sulfate Soils	NO	Council's mapping system does not identify the site to contain Acid Sulphate Soils (ASS).	Not Applicable
CL50 Safety & Security	NO	No comment	Not Applicable
CL51 Front Fences and Walls	NO	No Comment	Not Applicable
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	YES	The subject site does not directly adjacent to parks, bushland reserves, and other public open space and therefore the provision this Clause is not applicable to the proposed development.	Not Applicable
CL53 Signs	NO	Not Applicable	Not Applicable
CL54 Provision and Location of Utility Services	YES	Water, sewer, stormwater, gas, telecommunications and electricity can be made available for the proposed allotments.	YES
CL55 Site Consolidation in 'Medium Density Areas'	NO	Not Applicable	Not Applicable
CL56 Retaining Unique Environmental Features on Site and CL58 Protection of Existing Flora	YES	<p>Clause 56 requires development to be designed to retain and complement any distinctive environmental features of the site and on adjoining and nearby land and designed to incorporate or be sympathetic to environmental features such as rock outcrops, remnant bushland and watercourses. Additionally, Clause 58 of WLEP 2000 states that development is to be sited to minimise the impact on remnant indigenous flora.</p> <p>As stated previously, there is insufficient information submitted with the application for Council to determine how the subdivision design can be designed to incorporate or be sympathetic to significant rock outcrops, remnant bushland, and watercourses.</p> <p>Council's Natural Environment section has reviewed the proposal and has indicated that the proposed development is inconsistent with the requirement of these Clauses due to the fact that the site contains good conditions remnant indigenous canopy trees that will be removed or modified by the proposed subdivision, associated works and APZ.</p> <p>For the above reasons, the application is found to be inconsistent with the requirement of this Clauses and this issue has been included as reason for refusal.</p>	NO
CL57 Development on Sloping Land	YES	<p>This Clause requires that on sloping land, the height and bulk of development, particularly on the downhill side, is to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope.</p> <p>The subject site is identified as landslip area therefore any future development on the proposed lots will need to be consistent with the requirements of this Clause.</p>	NO

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General Principles	Applies	Comments	Complies
		<p>A geotechnical report has been submitted with the application. The report prepared by Jeffery and Katauskas Pty Ltd (dated 8 February 2010) have provided the following comments:</p> <p><i>"Since the development is currently only at subdivision stage no details of the final proposed structures or development of the individual allotments have been determined.</i></p> <p><i>We consider that the proposed development may proceed provided the specific recommendation of the report is adopted to control the risk of instability. However, the recommendations provided below are in general terms only as the specific details of development have not been determined. These recommendations must be reviewed and amplified once the exact details of the developments are known i.e. building layouts, design levels, building loads".</i></p> <p>The report provides no details in relation to cut and filled required for the proposed subdivision (including access roads). Council's Landscape officer has provided the following specific comments in relation to this issue:</p> <p><i>"Insufficient information has been provided in regard to the expected level of disturbance that development would necessitate on this steeply sloping site. Building platforms and site layout do not address the topography and it is anticipated that there are implications for site alteration in terms of vegetation removal, rock removal, altered drainage regimes and visual impacts resulting from development on the site.</i></p> <p><i>In view of the lack of detail, no certainty can be given to the potential for the site to be developed as a result of subdivision. It is recommended that the application should address the level of disturbance that is acceptable on the site and how this sits within the landscape specific to this site".</i></p> <p>Based on the above comments, the application is found to be inconsistent with the requirement of this Clause and this issue has been included as reason for refusal.</p>	
CL59 Koala Habitat Protection	YES	<p>This clause applies to parcels of land, being all adjacent or adjoining land held in the same ownership, that are:</p> <ul style="list-style-type: none"> • greater than 1 hectare in area, and • Potential koala habitat. <p>The site is greater than 1ha in size and contains the potential koala habitat, accordingly the requirement of this Clause applies to this development.</p> <p>The Flora Fauna report submitted with the application (prepared by GIS Environment Consultants – dated 19/02/2010) has provided the following comments in relation to the requirement of this Clause:</p>	YES

Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

General Principles	Applies	Comments	Complies
		<p><i>"The site is greater than 1ha in size and contains potential Koala habitat due to its abundance of Eucalyptus punctata trees which is one of 10 important food trees for koalas in NSW. No Koalas have been spotted or scats have been found during this survey. The nearest Koala sighting recorded on the NPWS Atlas in 1973 was 1.8km to the north-east. The latest Koala sighting within a 5km radius of the site was in 1994 in Ku-ring-gai Chase National Park, over 3km from the site. The other recorded sightings of Koalas within 5km of this site are from between 1940 and 1967. This property is a relatively isolated patch of bushland. It is unlikely that a koala make its way onto this property due to the urban landscape surrounding. This property is therefore not considered to be core koala habiate as per definition of the Warringah Council LEP".</i></p> <p>Council's Natural Environment section has reviewed the proposal and concurs with the finding of the applicant's flora and fauna report in that the site is not considered to be core koala habitat.</p> <p>Accordingly, the proposed development is consistent with the requirement of this Clause.</p>	
CL60 Watercourses & Aquatic Habitats	YES	<p>Council's Natural Environment section has reviewed the proposed development and advised that the application has not provided a satisfactory Waterway Impact Study taking into consideration the natural watercourse.</p> <p>The Waterway Impact Study is required to provide further detail under the provisions of this Clause and further to ascertain whether the Development constitutes an Integrated development (requiring a water activity approval) under the Water Management Act 2000.</p> <p>The proposed development is therefore not consistent with the requirement of this Clause and this issue has been included as a reason for refusal.</p>	NO
CL61 Views	NO	No Comment	Not Applicable
CL62 Access to sunlight	NO	No Comment	Not Applicable
CL63 Landscaped Open Space	NO	No Comment	Not Applicable
CL63A Rear Building Setback	NO	The site has two street frontages, therefore the provisions of the rear building setback is not applicable to this site.	Not Applicable
CL64 Private open space	NO	No Comment	Not Applicable
CL65 Privacy	NO	No Comment	Not Applicable
CL66 Building bulk and CL67 Roofs	NO	No Comment	Not Applicable
CL68 Conservation of Energy and Water	NO	No Comment	Not Applicable
CL69 Accessibility – Public and Semi-Public Buildings	NO	No Comment	Not Applicable
CL70 Site facilities	YES	<p>The SEE does not provide details of how proposed lots will be provided with facilities such as garbage.</p> <p>This issue has been included as reason for refusal.</p>	NO



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General Principles	Applies	Comments	Complies
CL71 Parking facilities (visual impact)	YES	There are no details provided with the application to demonstrate how carparking facilities will be integrated into the design of the future development and use the topography of the site to achieve such integration for proposed lots. This issue has been included as reason for refusal.	NO
CL72 Traffic access & safety	YES	It should be noted that the development on the proposed Lot 1 will be the subject for separate Development Application, at which the time impact of traffic will be considered.	YES
CL73 On-site Loading and Unloading	NO	No Comment	Not Applicable
CL74 Provision of Carparking	YES	Clause 74 states that car parking must be provided in accordance with Schedule 17 and must be adequate to service the development. The parking provision for the future Lots will be assessed as part of the subsequent applications.	Not Applicable
CL75 Design of Carparking Areas	NO	No Comment	No Applicable
CL76 Management of Stormwater	YES	Council's Development Engineer has reviewed the proposal and raised a number of issues regarding the stormwater drainage design which has been addressed referral section of this report. As inadequate stormwater details have been submitted, compliance with the requirements of Clause 76 – Management of stormwater has not been achieved. These issues have been included as reasons for refusal.	NO
CL77 Landfill	YES	Insufficient information has been submitted to demonstrate that the site can be developed in the manner that is consistent with the requirement of this Clause. This issue has been included as reason for refusal.	No
CL78 Erosion & Sedimentation	YES	Appropriate conditions associated with management of erosion and sedimentation can be included on the consent if the application was recommended for approval.	YES, condition required
CL79 Heritage Control	YES	The subject site is not heritage listed under WLEP 2000.	YES
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service and CL83 Development of Known or Potential Archaeological Sites	YES	The Aboriginal Heritage office has reviewed the proposal and has provided the following comments: <i>"Reference is made to the proposed development at the above area and Aboriginal heritage. There are known Aboriginal sites in the Brookvale area. No sites are recorded in the current subdivision, however the general area contains an important association of engraving sites. As this application is a subdivision of the property with no significant works the Aboriginal Heritage Office considers that there are no Aboriginal heritage constraints for the current proposal. Given the proposed development of residential lots in an area with in situ sandstone outcrops, the Aboriginal Heritage would recommended a preliminary inspection by a qualified Aboriginal heritage professional on any future development applications which impact such sandstone outcrops. Comment: if the application was recommended for approval, a condition should be included within consent requiring compliance with the comments provided by Aboriginal Heritage Office as outlined above.</i>	YES – subject to conditions

Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

General Principles	Applies	Comments	Complies
CL81 Notice to Heritage Council	NO	No Comment	Not Applicable
CL82 Development in the Vicinity of Heritage Items	NO	No Comment	Not Applicable

Schedules

Schedule 5 – Bushland in Urban Areas

Bushland in Urban Areas Schedule 5 requires that Council must be satisfied that the development is consistent with the objectives of SEPP 19 - Bushland in Urban Areas which are adopted by WLEP 2000.

As indicated above, there is insufficient information submitted with application for council to assess the proposal against the aims of SEPP 19. This issue has been included as reason for refusal.

Schedule 7- Matters for consideration in a subdivision of land

Subdivision of Land This matter has been addressed under Clause 21 of this report. In summary, the proposal development is not consistent with requirement of Schedule 7 and this issue has been included as reason for refusal.

Schedule 8 - Site Analysis

Site Analysis Clause 22 of WLEP 2000 requires a site analysis prepared in accordance with Schedule 8 of WLEP 2000. Having regard to the environmental sensitivity of the land comprising the subject site and surrounding land, a detailed graphical and written site analysis is considered essential. However, no site analyses were submitted with the application. This issue has been included as reason for refusal.

Schedule 17 - Carparking Provision

Carparking Provision This matter is addressed under Clause 74 of the general principles of this report.

POLICY CONTROLS

Warringah Section 94A Development Contribution

The provision of Section 94A contribution is not applicable to this development as the cost of the development is less \$100, 001.

MEDIATION

Mediation was not requested for this development application.

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No.55 – Remediation of Land, Warringah Local Environmental Plan 2000, Draft Warringah LEP 2009, Warringah Development Control Plan and the relevant codes and policies of Council.

The assessment of the application has revealed that the application is deficient and unsupportable for a number of reasons including that the information submitted with application do not contain all the required information to properly assess the application. Owing to the environmentally sensitive characteristics of the land to be subdivided, the level of information required is greater than if the land was not as environmentally sensitive.

Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

The applicant has indicated that the development on proposed Lot 1 will be the subject of a separate development application and that such applications will be required to address the specific design of the development, provision of access, retaining walls and ground level private open space, etc. However, the outstanding details as stated throughout this report are necessary at the subdivision stage in order for Council to determine whether the site is suitable for subdivision, how the subdivision will be carried to determine the extent of environmental impacts and also to ensure that subdivision can be carried out in manner in which is consistent with requirement of WLEP 2000 and provision of the Draft WLEP 2009.

The proposal has also been found to be inconsistent with DFC of the F4 locality in that there is insufficient information submitted to enable Council is determine the impact of proposal on the bushland.

Twenty (20) individual submissions were received to the proposed development. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the proposal is therefore recommended for refusal.

RECOMMENDATION (REFUSAL)

That Warringah Development Assessment Panel refuse Development Application DA2010/0258 for the subdivision of the existing lot into 2 lots, at Lot 8 DP 1035344, Beacon Hill Road, Brookvale for the following reasons:

1. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the development is inconsistent with the Desired Future Character Statement of the F4 'Brookvale Valley' Locality.
2. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that there is insufficient information submitted with the application for Council to assess the proposal against the Built Form Controls for the F4 'Brookvale Valley' Locality.
3. Pursuant to Section 79C (1) (a) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the aims and objectives of the 'E3 Environmental Management' zone under the provisions of Draft Warringah Local Environmental Plan 2009.
4. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 insufficient information has been submitted with the application for Council to assess the proposal against the following provisions of Warringah Local Environmental Plan 2000:
 - Clause 56 – Retaining Unique Environmental Features
 - Clause 57 – sloping Land
 - Clause 58 – Protection of Existing Flora
 - Clause 60 - Water Aquatic Habitat
 - Clause 70 – Site Facilities
 - Clause 71 – Parking Facilities (visual impact)
 - Clause 76 – Stormwater Management
 - Clause 77 – Landfill
5. Pursuant to Section 79C (1) (a) of the *Environmental Planning and Assessment Act 1979* the proposed development is not consistent with the requirements of the following Schedules of Warringah Local Environmental Plan 2000:
 - Schedule 5 – Bushland in urban Areas
 - Schedule 7 - Matters for Consideration in a Subdivision of Land
 - Schedule 8 - Site Analysis



Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

6. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 as the applicant failed to pay the appropriate fees for integrated referral to the NSW RFS under section 100B of the Act.
7. Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest.



Attachment A

Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

Attachment B



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Notes of Pre-DA meeting

Planning and Development Services

Application No: PLM2010/0022

Meeting Date: 6 April 2010

Property Address: Lot 8/ Beacon Hill Road BROOKVALE NSW 2100

Proposal: Community title subdivision comprising six (6) residential lots and one (1) community lot.

Note: To be read in conjunction with PLM2009/0097.

Attendees Council: for Rod Piggott - Team Leader, Development Assessments
Robert Barbuto - Team Leader, Business Development Engineering
Vivien Howard - Senior Environment Officer - Biodiversity
Adrian Turnbull - Senior Environment Officer - Water Cycle Mgmt
Dean McNatty - Assets Officer - Drainage
Ray Creer - Waste Services Officer

Attendees applicant: for Michael Wil
Hogarth Jiang

General Comments:

All applications are assessed on individual merit, however a failure to comply with Council or a State Planning controls will generally indicate an over development of the site and may result in adverse impacts upon adjoining and nearby land and the streetscape.

You are advised to carefully read these notes. If there is an area of concern or non-compliance, you are strongly advised to review and reconsider the appropriateness of the design of your development for your site and the adverse impacts that may arise as a result of your development prior to the lodgement of any development application.

Council will seek to ensure that the development of land meets all provisions of all legislation and the relevant Environmental Planning Instrument/s, in addition to providing appropriate levels of amenity to surrounding and nearby lands.

Failure to achieve this may ultimately lead to the refusal of any application lodged without notice.

Note: No pre-application meeting nor this letter can provide an authoritative statement as to the likely outcome of an application. A determination can only be made following the lodgement of an application and the completion of the assessment process.

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Consideration of proposal against Warringah Local Environment Plan 2000

'The fundamentals'	
Definition of proposed development: (ref. WLEP 2000 Dictionary)	Subdivision (Community Title Subdivision)
Locality:	F4 Brookvale Valley
Category of Development:	Pursuant to Clause 12(2) of WLEP 2000, subdivision is identified as Category Two (2) development. Any future housing on the site would be Category One (1) development. Note: Any development on land shown cross hatched other than for the purposes of bushfire hazard reduction are a Category 3 Land Use and would not be supported.

Desired Future Character
<p>The Desired Future Character Statement for this locality is as follows:</p> <p>F4 Brookvale Valley</p> <p><i>The Brookvale Valley locality will remain an area characterised by a mixture of detached style housing and apartment style housing interspersed with a range of complementary and compatible uses. In order to protect the bushland and scenic quality of the Valley and to maintain the water quality of Greendale Creek, the head of the Brookvale Valley, as shown cross-hatched on the map, will remain as undeveloped bushland except for the land at Lot 7 DP 236335 where a maximum of one dwelling may be erected provided the design and construction of that development has regard to the topography, potential slip and sensitive visual character of the land as well as potential loss of views to adjoining or nearby properties. The development of further apartment style housing will be confined to the "medium density areas" shown on the map.</i></p> <p><i>Outside the "medium density areas" future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality. The streets will be characterised by landscaped front gardens and consistent front building setbacks. The spread of indigenous tree canopy will be protected throughout the locality and enhanced where possible. Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.</i></p> <p><i>Any redevelopment of the Brookvale Brickworks is to assess the structural integrity of built elements of the Brickworks and their potential and viability for adaptive reuse and integration of the heritage significance of the site. Such interpretation is to influence the design of future development.</i></p> <p><i>Redevelopment of the Brickworks site will include the rehabilitation of Greendale Creek (where it passes through the site) and will regard the Creek to be an important landscape feature and focal point of the development. The maintenance and restoration of riparian zones of the creek will be required as part of any development of the Brickworks site. This riparian zone is required to adequately filter sediment, prevent bank erosion, ensure a sustainable mix of different plant species for genetic diversity, provide unique habitats and to act as a corridor function linking larger areas of remnant vegetation. The siting and design of buildings and landscaping treatment of the Brickworks site is to achieve a transition between development and surrounding bushland. In this regard, canopy trees and other landscaping used on the site is to predominantly be of species found on the bushland slopes shown cross-hatched on the map.</i></p> <p>Comment: In accordance with Clause 14(2) of WLEP 2000 subdivision is identified as Category Two development. In accordance with Clause 12(3) (b) of WLEP 2000, before granting consent for development classified as Category Two development, the consent authority must be satisfied that the development is consistent with the desired future character statement for the relevant locality statement.</p> <p>Significant concern is raised with the proposed residential lot configurations and associated access road and fire trail, which do not have regard to the existing vegetation and topography which would result in excessive vegetation removal,</p>

Note: No pre-application meeting nor this letter can provide an authoritative statement as to the likely outcome of an application. A determination can only be made following the lodgement of an application and the completion of the assessment process.

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Report to the Warringah Development Assessment Panel Meeting on 14 July 2010

Desired Future Character
<p>significant cut and fill and therefore an unsatisfactory visual impact.</p> <p><i>"Outside the "medium density areas" future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality. The streets will be characterised by landscaped front gardens and consistent front building setbacks. The spread of indigenous tree canopy will be protected throughout the locality and enhanced where possible. Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality".</i></p> <p>The proposal is not consistent with the above component of the DFC, particularly the provision that states: <i>"The spread of indigenous tree canopy will be protected throughout the locality and enhanced where possible"</i>. The applicant is required to demonstrate that the lots can be developed in accordance with the development standards under WLEP 2000, will have a satisfactory visual and scenic impact, can be provided with practical and suitable vehicular access, can be provided with appropriate stormwater and water quality control and can provide suitable amenity for future residents.</p> <p>Further, DA2006/698 which proposed a subdivision at the subject site was withdrawn by the applicant based on a number of fundamental concerns with the proposal. Council's letter dated 21 December 2006 contains relevant information in relation to this latest proposed subdivision and a copy is attached for your reference.</p> <p>The proposal is therefore not consistent with the Desired Future Character Statement.</p>

Built Form Control	Requirement	Comment
Housing Density	1 dwelling per 600sqm	<p>The proposal needs to demonstrate the site area (which does not include the area of any access corridor, whether such access corridor is to be created or is in existence at the time of application for development consent) is divided by the number of dwellings proposed on the site, including any existing dwellings which are to be retained, is consistent with the 1 dwelling per 600sqm requirement.</p> <p>Note: In calculating housing density, the area of any access corridor (including any right-of-carriageway, access handle, accessway or other area that provides for vehicle access) is to be excluded, whether that access corridor is to be created or is in existence at the time of application for subdivision.</p>
Building Height Metres	8.5m	The proposal does not involve the erection of any dwellings therefore no details were provided at the pre-lodgement meeting. Future dwellings are capable of complying with building height controls.
Building Height: Natural ground to upper ceiling (metres)	7.2m	
Front Setback	6.5m	The building footprints provide compliance.
Landscape Open Space	40%	The proposal appears to provide compliance. Additional details are required to demonstrate compliance.
Rear Setback	6.0m	The building footprints provide compliance.
Side Boundary Envelope	4m with inward projecting planes at 45 degrees	The proposal does not involve the erection of any dwellings therefore no details were provided at the pre-lodgement meeting. Future dwellings are capable of complying with building height controls.
Side Setbacks	0.9m	The building footprints provide compliance.

General Principles of Development Control

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General Principles of Development Control	
Division 1 General 38 Glare and reflection 39 Local retail centres 40 Housing for older people or people with disabilities 41 Brothels 42 Construction sites	Clause 42 Construction Sites The applicant is required to demonstrate how construction is to take place on site. This is to minimise any potential impacts on roads, pedestrian and traffic movement and surrounding residents. The applicant is required to demonstrate compliance with the above mentioned Clause.
Division 2 Health and safety 43 Noise 44 Pollutants 45 Hazardous uses 46 Radiation emission levels 47 Flood affected land 48 Potentially contaminated land 49 Remediation of contaminated land 49A Acid sulfate soils	Not Applicable
Division 3 Public domain 50 Safety and security 51 Front fences and walls 52 Development near parks, bushland reserves and other public open spaces 53 Signs	Clause 52 – Development near parks, bushland reserves and other public open spaces Development adjacent to parks, bushland reserves and other public open spaces, including land reserved for public open space, is to complement the landscape character and public use and enjoyment of that land. The applicant is required to demonstrate compliance with the above mentioned Clause. A flora and fauna Assessment would be required to accompany any Development Application.
Division 4 Site planning and building design 54 Provision and location of utility services 55 Site consolidation in “medium density areas” 56 Retaining distinctive environmental features on sites 57 Development on sloping land 58 Protection of existing flora 59 Koala habitat protection 60 Watercourses and aquatic habitat 61 Views 62 Access to sunlight 63 Landscaped open space 63A Rear building setback 64 Private open space 65 Privacy 66 Building bulk 67 Roofs 68 Conservation of energy and water 69 Accessibility—premises available to the public 70 Site facilities	Clause 54 – Provision and Location of Utility Services Utility services must be provided to the site of the development, including provision for the supply of water, gas, telecommunications and electricity and the satisfactory management of sewage and drainage. Utility services including service structures, plant and equipment are to be located below ground or to be designed to be integral part of the development and suitably screened from public places or streets. A services plan should be submitted with any development application for the subdivision of the site identifying the provision and location of services and any easements required over the site. A Section 73 Certificate would be required from Sydney Water. It is advised that a “Notice of Requirements” be requested from Sydney Water prior to progressing to Development Application stage. Clause 56 – Retaining Unique Environmental Features on sites The site contains sensitive bushland, rock outcrop / shelves and natural drainage features. Any development is to be designed as to incorporate these features and their significance on the subject land. Development is to be sympathetic to any environmental features. Any roads and/or access to the site ways are to be located as to not impact on the sensitive vegetation areas and must comply with this Clause. The applicant should prepare and submit a Flora and Fauna Assessment that includes: 1. Assessments of Significance (Seven Part Tests) for all

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	<p>threatened species/ecological communities as listed under the NSW <i>Threatened Species Conservation Act 1995</i> (TSC Act) for which the site is known or potential habitat. This will include;</p> <ul style="list-style-type: none"> • Specific consideration of the biodiversity related Warringah LEP Clauses and Schedules, including Clauses 56, 58 and Schedule 5 • Consideration of whether the development is likely to have a significant impact on matters of national environmental significance (NES) under the Commonwealth <i>Environment Protection and Biodiversity Conservation Act 1995</i> (EPBC Act). The applicant is advised that the bilateral agreement between NSW and the Commonwealth in relation to environmental impact assessment, applies only to Controlled Actions as determined by the Federal Minister for the Environment and, as such, an address of the relevant Significant Impact Criteria must also be included where matters of NES have the potential to occur in the study area. • A detailed assessment of the specific indirect impacts associated with this type of the development. • An assessment of the key areas of fauna habitat located on the site. I.e. hollow bearing trees, dead wood, etc. <p>The Flora and Fauna Assessment must clearly define:</p> <ul style="list-style-type: none"> • The direct and indirect impacts of the proposal, • The subject site (area of direct impact) and mapped as red outline on a recent aerial photograph of the site, • The study area (area of direct and indirect impact) and mapped, • Key Threatening Processes as listed on the TSC and/or EPBC Acts that maybe exacerbated by the proposal, and • The extent and distribution of any local populations of threatened species and/or the local occurrence of EECs as defined by the DECCW <i>Guidelines for Assessments of Significance</i>. <p>The proposal is not considered to satisfactorily address these provisions based on the information provided.</p> <p>Clause 57- Development on sloping land</p> <p>The site is identified being landslip area and therefore any application is to be accompanied by Geotechnical report (the report is to be prepared by a suitably qualified consultant) and is to address the requirement of Clause 57.</p> <p>Schematic architectural drawings are required to demonstrate that the lots can be developed in accordance with the Desired Future Character Statement, Built Form Controls and General Principles.</p> <p>Clause 58 – Protection of Existing Flora</p> <p>Development is to be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species. In this regard, plans indicating any impact to flora should be submitted. The</p>

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	<p>applicant is required to address the requirement of this Clause.</p> <p>The proposal is not considered to satisfactorily address these provisions based on the information provided.</p> <p>Clause 60 - Watercourses and aquatic habitat</p> <p>Based on the information provided the proposal has not considered the steep topography in the siting and planning, which demonstrates, most clearly in the proposed Lot 8 which straddles a series of contours, which strongly suggests a high water flow area.</p> <p>The 40m buffer zone appears to be referenced based on the constructed pipe system, not the natural waterway (identified within the Warringah Creek Management Study 2004)</p> <p>In addition, Lot 8 (and possibly 7) is sited directly atop the headwaters of the Greendale Creek catchment, any proposed development and alteration within the creek buffer zone must consider downstream impacts including natural flow regimes, and take into account the environmental sensitivity of the site</p> <p>There has been no provision of hydrological mapping of the area prior to development design, raising concerns of concentration of dispersal, possible scouring etc. Any proposed development, including the incorporation of onsite detention/rainwater tanks as appropriate, should mimic as closely as possible predevelopment hydraulic flows</p> <p>Concern is raised over the connection to potable water and sewer lines, to ensure that any connections that occur take into account of downstream environmental sensitivity</p> <p>The proposal is not considered to satisfactorily address these provisions based on the information provided.</p> <p>The subject site contains two natural watercourses which traverse the site, thus development on this site will become an integrated development as it requires a controlled activity approval from the Dept of Environment, Climate Change and Water. A Cheque for the amount of \$250 (payable to the Department of Environment, Climate Change and Water) with an additional set of plans and documentation is to be submitted with the application.</p>
<p>Division 5 Traffic, access and carparking</p> <p>71 Parking facilities (visual impact) 72 Traffic access and safety 73 On-site loading and unloading 74 Provision of carparking 75 Design of carparking areas</p>	<p>Clause 72 – Traffic Access and Safety</p> <p>During the pre lodgement meeting, the applicant indicated that access to the proposal will be via Northcliffe Ave.</p> <p>Council has previously raised concerns in regards to access to the site. This is due to the sensitive and steeply sloping nature of the subject site.</p> <p>The applicant is required to address the concerns raised in the previous application (refer to Council letter dated 21 Dec 2006), PLM2009/0097 and provide detailed information to demonstrate that the proposed access to the new lots will be consistent with planning controls applicable to this site and it will not create any adverse visual impact when from various vantage points (including Warringah Road).</p> <p>Vehicular access off Warringah Road is not supported due to the site topography and Warringah Road being an arterial road.</p> <p>The proposal is not considered to satisfactorily address these</p>

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	<p>provisions based on the information provided.</p> <p>No information was provided to demonstrate access from the access road to the building footprints.</p> <p>Clause 74 Provision of Carparking</p> <p>The applicant is required to demonstrate that any development on the proposed will provide adequate off-street car parking within the subject property boundaries.</p>
<p>Division 6 Soil and water management</p> <p>76 Management of stormwater 77 Landfill 78 Erosion and sedimentation</p>	<p>Clause 76 – Management of Stormwater</p> <p>Concerns is raised with both proposals namely the method of stormwater disposal, firstly the location of the OSD Tanks given the steep topography of the site, the location of the OSD tanks should be within any dwelling structures and also incorporate rainwater-reuse in accordance with Councils policy.</p> <p>House schematics are to be provided to demonstrate this requirement on the steeply sloping blocks.</p> <p>The method of stormwater disposal should not impact on the current hydrological flow regimes and mimic the pre-existing state as close as possible.</p> <p>To demonstrate this requirement a comprehensive stormwater management plan is to be prepared in conjunction with an environmental engineers input.</p> <p>No engineering details were provided in regard to the proposed community private road, full engineering details are to be provided in accordance with Councils Auspec document.</p> <p>The applicant is to provide details on sewerage and water main connection to the development and in particular impacts on Councils existing road and drainage infrastructure.</p> <p>All existing stormwater infrastructure (including open watercourses / drains etc) should be located and shown on the plans.</p> <p>Any proposal to create new stormwater assets to be handed over to Council's care and control or intention to modify / dispose of these existing systems is to be clearly documented.</p> <p>It is Council's preference to not pipe open watercourses.</p> <p>Consideration should be given to Council's policy for building over or adjacent to constructed Council drainage systems and easements when positioning the lots.</p> <p>The proposal is not considered to satisfactorily address these provisions based on the information provided.</p> <p>Clause 77 Landfill</p> <p>Landfill is to have no adverse impact upon the visual and natural environment or adjoining and surrounding properties. Any landfill associated with the driveway to Northcliffe Avenue should be identified. Cross sections are to be provided to Council for consideration. Batter slope is to be detailed and finish/planting of batters nominated.</p> <p>Clause 78 – Erosion and Sedimentation</p> <p>A soil and water management plan which ensures minimum soil</p>

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	erosion and maintenance of downstream water quality that has been prepared in accordance with the Council's "Specification for Erosion and Sediment Control" and "Design and Specification Manuals for Engineering Works" is to be considered by the Council before consent for the relevant development is granted.
Division 7 Heritage 79 Heritage control 80 Notice to Metropolitan Aboriginal Land Council and Department of Environment and Conservation 81 Notice to Heritage Council 82 Development in the vicinity of heritage items 83 Development of known or potential archaeological sites	Clause 79 – Heritage Control The site is not identified as a heritage item, nor adjoins an identified heritage item or is located within a conservation area. Clause - 82 Development in the vicinity of heritage items The SEE shall address any impacts the proposal may have on the Austral Brickworks at 48A Consul Road, Brookvale. Due to the proposals physical separation from the Brickworks site no unreasonable impacts are envisaged. Clause 83 – Development of known or potential archaeological sites Before granting an application for consent to development on an archaeological site or a potential archaeological site (except if such development does not disturb below-ground relics and any above ground relics would not be adversely affected), given the presence of significant rock outcrops and vantage points on the site, any subsequent Development Application may be referred to the Aboriginal Heritage Office for assessment of potential Aboriginal heritage significance.

Other Relevant WLEP 2000 Clauses
Clause 21 – Can land be subdivided Any subdivision must demonstrate consistency with Clause 21 of WLEP 2000. Schedule 7 Matters for consideration in a subdivision of land Any subdivision must demonstrate consistency with the requirements of Schedule 7 of WLEP 2000. Environmentally sensitive/constrained land As the site contains sensitive bushland, rock outcrop / shelves and natural drainage features. Any development is to be designed as to incorporate these features and their significance on the subject land. Development is to be sympathetic to any environmental features. 1) Where the site is subject to any environmental risk, a safe area for building is to be provided. 2) Lot boundaries should relate, where possible, to natural land features such as creeks and escarpments. 3) A geotechnical report is to be provided as the land is subject to slip. The proposal does not provide for lot boundaries that relate, where possible, to natural land features such as creeks and escarpments. This should be a fundamental consideration having regard to the natural features of the subject land. Drainage Refer to comments under Clause 76 – Management of Stormwater Restrictions The Council will require that any easement, right-of-way, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party, to ensure that section of the land is retained for the designated purpose. Access Any roads and/or access to the site ways are to be located as to not impact on the sensitive vegetation areas.

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Other Relevant WLEP 2000 Clauses

- 1) All subdivision should be designed to allow vehicular access to each allotment of residential land and all driveways/access corridors created by subdivision should have a gradient not exceeding 1:4 and allow for transitional grades of 1.5 metres at a grade no steeper than 1:10.
- 2) Access should be provided from a constructed and dedicated public road. Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal constructed access to the Council's satisfaction, to a constructed public road.
- 3) The width of a clear constructed accessway will depend on the number of lots to be serviced. For 1 – 5 lots, the width of a clear constructed accessway is 3.5m. For 6-10 lots the required width is 5.0m and in excess of 10 lots, access should be provided by a private or public road constructed with a width that is in accordance with the Council standard specifications for engineering works (AUSPEC 1).
- 4) Subdivisions must provide access for Council service vehicles, emergency vehicles and garbage collection vehicles.

Where the applicant proposes to erect housing, Council requires the applicant to submit details of the proposed lot dimensions as required in Schedule 7 of WLEP 2000.

The visual impact of the access road and fire trail has not been demonstrated and information needs to be provided to ensure a reasonable visual impact.

Design and construction

All design and construction is to be in accordance with the Council's Specification for Engineering Works and On site stormwater detention policy and technical specification.

Lot dimensions

In localities where erection of housing is Category One development, the following standards apply to proposed new allotments (other than new allotments proposed pursuant to clause 21 (1)(b)):

- (a) Minimum width of 13 metres and a minimum depth of 27 metres. This does not apply to development that is not subject to a maximum density standard as outlined in the relevant Locality Statement or development occurring on the Brookvale Brickworks site in Locality F4 Brookvale Valley.
- (b) Minimum building area of 150m². Building area excludes driveways.
- (c) In calculating housing density, the area of any access corridor (including any right of carriageway, access handle, accessway or that provides for vehicular access) is to be excluded, whether such access corridor is to be created or is in existence at the time of application for subdivision.

Schematic architectural drawings are required to demonstrate that the lots can be developed in accordance with the Desired Future Character Statement, Built Form Controls and General Principles.

The proposal is not considered to satisfactorily address these provisions based on the information provided.

Other Relevant Environmental Planning Instruments / Council Policies

Bushfire Prone Land

The subject site is identified as bushfire prone land and is identified as integrated development. In this regard, pursuant to Section 100B of the Environmental Planning and Assessment Act 1979, a Bushfire Authority must be obtained from the Rural Fire Service. The application will need to be referred to the RFS as an integrated application and therefore a Cheque for the amount of \$250 (payable to the RFS) with an additional set of plans and documentation is to be submitted with the application.

The flora and fauna assessment must have regard to the RFS requirements and it is recommended that the environmental consultant undertaking the flora and fauna assessment do so in conjunction with the RFS.

Department of Environment, Climate Change and Water

The subject site contains two natural watercourses which traverse the site, thus development on this site will become an integrated development as it requires a controlled activity approval from the Dept of Environment, Climate Change and Water. A Cheque for the amount of \$250 (payable to the Department of Environment, Climate Change and Water) with an additional set of plans and documentation is to be submitted with the application.

Flora and Fauna Assessment

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Other Relevant Environmental Planning Instruments / Council Policies

The applicant should prepare and submit a Flora and Fauna Assessment that includes:

Assessments of Significance (Seven Part Tests) for all threatened species/ecological communities as listed under the NSW *Threatened Species Conservation Act 1995* (TSC Act) for which the site is known or potential habitat. This will include;

- Specific consideration of the biodiversity related Warringah LEP Clauses and Schedules, including Clauses 56, 58 and Schedule 5
- Consideration of whether the development is likely to have a significant impact on matters of national environmental significance (NES) under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1995* (EPBC Act). The applicant is advised that the bilateral agreement between NSW and the Commonwealth in relation to environmental impact assessment, applies only to Controlled Actions as determined by the Federal Minister for the Environment and, as such, an address of the relevant Significant Impact Criteria must also be included where matters of NES have the potential to occur in the study area.
- A detailed assessment of the specific indirect impacts associated with this type of the development.
- An assessment of the key areas of fauna habitat located on the site. I.e. hollow bearing trees, dead wood, etc.

The Flora and Fauna Assessment must clearly define:

- The direct and indirect impacts of the proposal,
- The subject site (area of direct impact) and mapped as red outline on a recent aerial photograph of the site,
- The study area (area of direct and indirect impact) and mapped,
- Key Threatening Processes as listed on the TSC and/or EPBC Acts that maybe exacerbated by the proposal, and
- The extent and distribution of any local populations of threatened species and/or the local occurrence of EECs as defined by the DECCW *Guidelines for Assessments of Significance*.

The proposal is not considered to satisfactorily address these provisions based on the information provided.

Guidelines for undertaking flora and fauna assessments can be obtained by contacting the Department of Environment, Climate Change and Water.

You are advised of the following (but not limited to all) Council's policies available at www.warringah.nsw.gov.au:

- Applications for Development - Policy for the handling of unclear, non conforming, insufficient and Amended applications: PDS-POL 140
- Stormwater drainage for low level properties PDS-POL 135
- Building over or adjacent to constructed Council drainage systems and easements: PAS-PL 130
- Common vehicular access to multiple properties: LAP-PL 310
- Development Applications relating to trading hours under the Liquor Act 1982: LAP-PL 610
- Onsite stormwater detention rainwater reuse policy for single residential dwellings: PAS-PL 100
- Vehicle access to all roadside development: LAP-PL 315

Draft Environmental Planning Instruments

Draft Warringah LEP 2009

The Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009) was certified by the NSW Department of Planning on 9 September 2009. The Draft WLEP 2009 finished exhibition on 31 December 2010. The Draft Warringah Local Environmental Plan 2009 requires consideration in any application made to Council.

Required Documentation

- All information required to be submitted under Schedule 1 of the Environmental Planning and Assessment Regulation

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Required Documentation

- 2000.
- All information as required on the Development Application form checklist
 - Site Analysis (prepared in accordance with Schedule 8 of WLEP 2000)
 - Site Survey (prepared by a registered Surveyor)
 - Statement of Environmental Effects addressing:
 - Section 79C of EPA Act,
 - all relevant sections of WLEP 2000, including demonstrating consistency with the locality's Desired Future Character Statement, Built Form Controls and General Principles of Development Control;
 - and other relevant Environmental Planning Instruments
 - Visual Impact Assessment
 - BASIX Certificate
 - Geo-technical report
 - Phase 1 Site Contamination Report
 - Bushfire Report
 - Traffic and Parking Report
 - Arborist Report
 - Erosion and Sediment Control Plan
 - Construction/Site Management Plan
 - Landscape Plan
 - Waste Management Plan
 - Stormwater Management Plans

Concluding Comments

In accordance with Clause 12 of WLEP 2000, before granting consent to a development application for a Category Two (2) development, the consent authority must be satisfied that the development is consistent with the Desired Future Character Statement. Subdivision is identified as Category Two (2) development pursuant to Clause 14(2) of WLEP 2000.

There was insufficient information submitted at the prelodgement meeting for Council to provide accurate advice as to whether the proposed lots are capable of being developed in a manner that is consistent with the DFC and general principles of development control under WLEP 2000. The site is heavily constrained in terms of its steep topography, dense tree cover, existence of natural watercourses, bushfire prone status, potential for landslip and potential visual and scenic impact. Therefore, comprehensive details are essential and are to be provided with lodgement of any application addressing the site constraints and include the following information in order to determine the viability of the proposed development:

- Cut and fill versus pier and beam type construction,
- Extent of future excavation,
- Construction materials,
- Location of carparking for each lot,
- Location and design of vehicular access for each lot,
- Location of private open space areas for each lot,
- Solar access for the future dwellings and private open space areas,
- Areas on each lot available for ancillary structures.

Due to the surrounding natural landscape and vegetation, Council's Natural Environment Unit require the submission of a Flora and Fauna Assessment which may trigger the need to obtain a '7 part test'. (See www.decc.nsw.gov.au for further information.)

In conclusion, it is recommended the proposal should not proceed to lodgement until all until the above matters raised in the notes, PLM2009/0097 and Council's letter dated 15 August 2006 (which related to the previous application to this site) have been incorporated into the design plans and supporting documentation.

Other Matters

- **Requirement to Submit Correct, Clear and Accurate Information at Lodgement**

You are advised, that if an application Unclear, NonConforming, provides Insufficient information or if Council requests additional information in accordance with Clause 54 of the EPA Regulations 2000 and it is not provided within the specified

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Other Matters

time frame – your application may be rejected or refused without notice.

The time to discuss and amend your design is prior to lodgement of your Development Application, as there will be no opportunity to do so during the assessment process

- **Privacy and Personal Information**

You are advised that Council is legally obliged to make Development Applications and supporting documents available for public inspection – see section 12 of the Local Government Act 1993. We do this at the Customer Service Centre and by placing copies of the applications and supporting documents on the Council website.

Should this proposal result in a development application being lodged these notes will form part of the development application documentation that will appear on Council's website – DA's online. www.warringah.nsw.gov.au

- **Monitoring DA progress after lodgement**

Once lodged you can monitor the progress of your application through Council's website – DA's online. www.warringah.nsw.gov.au

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