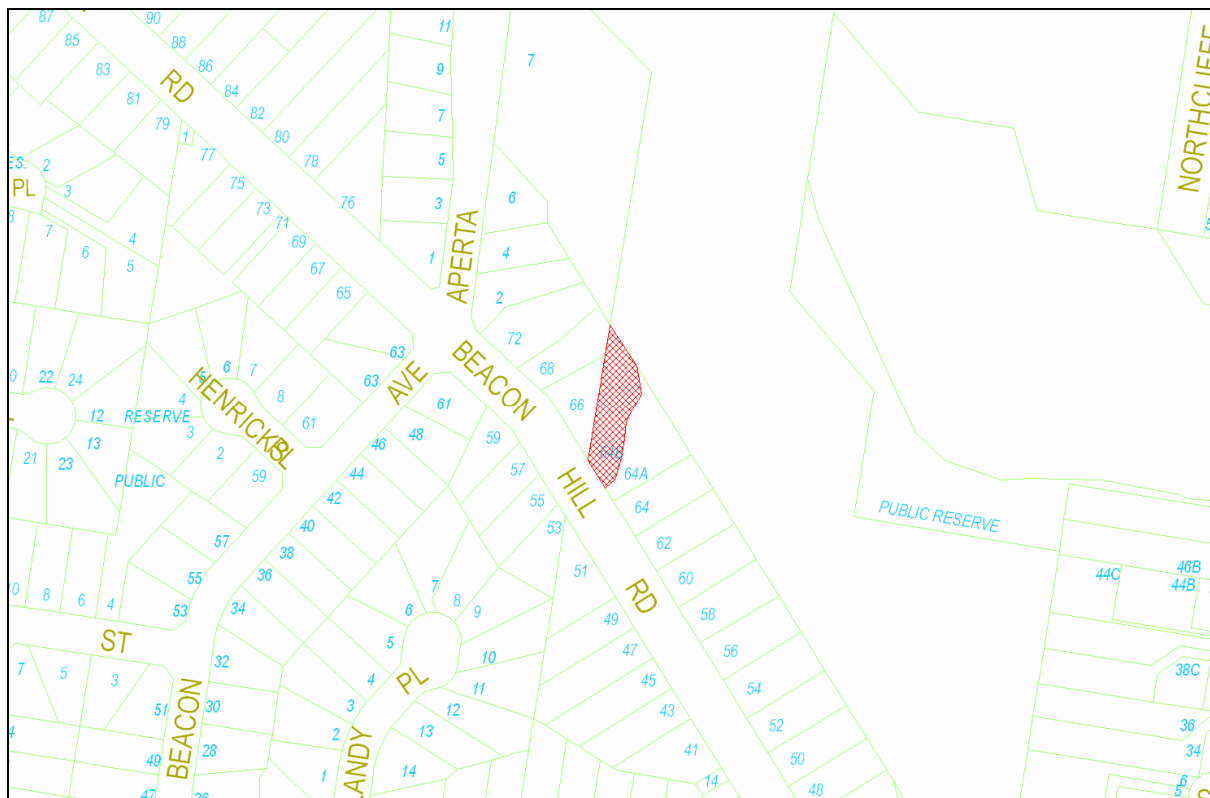


3.1	64B Beacon Hill Road Brookvale - Change of Use of the Premises from a Dwelling to a Boarding House and Ancillary Works
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DEVELOPMENT ASSESSMENT REPORT

Assessment Officer:	Alex Keller
Address / Property	Lot 6 DP 1035344 No. 64B Beacon Hill Road Brookvale
Description:	Change of use of the premises from a dwelling to a boarding house and ancillary works
Development Application No:	DA2010/0715
Application Lodged:	11/05/2010
Plans Reference:	Dwg 3081-1/A to 3081-6/A dated 4/11/2009 drawn by <i>JF Building Consultants</i>
Amended Plans:	No amended plans
Applicant:	J F Building Consultants Pty Ltd
Owner:	Wenhong Ma
Locality:	F4 Brookvale Valley
Category:	Category 2 (Other buildings, works, places or lands uses that are not prohibited or in Category 1 or 3)
Draft WLEP 2009 Permissible or Prohibited Land use:	Permissible with consent
Variations to Controls (Cl.20/Cl.18(3)):	YES – Rear building setback
Referred to ADP:	YES
Referred to WDAP:	NO
Land and Environment Court Action:	YES
SUMMARY	
Submissions:	6
Submission Issues:	Illegal work, car parking & access, noise, privacy, suitability of use, garbage disposal
Assessment Issues:	Desired future character (complimentary & compatible use) Car parking, fire safety, amenity, illegal works, car parking & access, BCA compliance, privacy, accessibility, site suitability.
Recommendation:	Refusal
Attachments:	Site and Elevation Plan

LOCALITY PLAN (not to scale)



Subject Site: Lot 6 DP 1035344
No. 64B 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 27 adjoining land owners. Notification was for a period of 14 calendar days commencing on 18 May 2010. A site notice was placed upon the site during the notification period.

SITE DESCRIPTION

The subject land ("the site") has a registered title of Lot 6 DP 1035344 with a street address of No. 64B Beacon Hill Road, Brookvale, and is located on the eastern side Beacon Hill Road south of the intersection with Aperta Place. The site is irregular in shape having an angular street frontage and variable width. Dimensions of the property are as follows:

- Northern boundary – 21.94 metres
- Southern boundary – 13.77 metres (Beacon Hill Road)
- Western boundary – 46.29 metres
- Eastern boundary – 57.18 metres
- Site area – 844.2 m²

The land has a natural fall of 4.0 metres with a steeper grade towards the eastern boundary. The natural land fall however has been excavated and fill has been placed to level most of the land for building work. The land has a natural eastern outlook due to the elevated position above the Brookvale Valley.

Existing development on the property includes a 2 storey dwelling house with a garage outbuilding in front of the dwelling. The cartilage of the dwelling area consists primarily of lawn areas and concrete areas.

Surrounding development consists of single dwelling houses of various architectural styles. The surrounding steep terrain creates a significant variation between adjacent property levels for dwellings fronting Beacon Hill Road. The adjoining property to the north is vacant undeveloped steep bushland above the 'Brookvale Brickworks' site. The subject site is identified as being within a bushfire zone hazard area and potential landslip area.

SITE HISTORY

DA2002/0723 was approved by Council on 17 September 2002 for a dwelling house and garage. Following commencement of work, a number of Orders including Emergency Orders and Court action were taken against the Owner by Council's Compliance Services for unauthorised work and matters relating to conditions of consent. An Occupation Certificate has been issued for the dwelling house and Council has been unsuccessful in achieving the desired outcomes in relation to compliance matters.

MOD2002/0723/1 was rejected by Council on the 16 August 2007 due to inadequate information.

MOD2002/0723/2 was approved by Council on the 20 December 2007 for changes to the approved plans and to address geotechnical matters. A number of anomalies have since been identified with the modification plans dated 14/5/2007 in subsequent work undertaken that is inconsistent with the plans.

On the 21 April 2009, Council commenced legal action against the owner for alleged use of the site for an unauthorised 'boarding house', and non-compliance with the modified conditions of consent.

PROPOSED DEVELOPMENT

The subject development application seeks approval for a change of use of the existing dwelling to a boarding house with 10 double bedrooms, 10 bathroom/ensuite rooms, 2 kitchens & 2 living rooms (Note: double numbering on the plans). Alterations to the dwelling are shown on plans 3081-2/A to 3081-6/A and include the following:

Ground Floor RL98.37 - 99.19

Ramp access, internal wall changes to create bedrooms 4 & 5 with ensuite rooms.
Minor internal changes to door openings, fittings & fixtures.
Selected changes to windows and sliding doors

First Floor RL101.79 - 102.33

Internal wall changes to create bedrooms 1 & 2 with ensuite rooms.
Minor internal changes to door openings, fittings & fixtures.
Balcony extension along the eastern elevation.
Selected changes to windows and sliding doors

Garage building RL 98.6

Conversion of storeroom area to laundry
Provision of 3 carparking spaces (2 parked in tandem)

AMENDMENTS TO THE SUBJECT APPLICATION

No amendments.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979;
- b) Environmental Planning and Assessment Regulations 2000;
- c) Local Government Act 1993;
- d) State Environmental Planning Policy (Infrastructure) 2007;
- e) State Environmental Planning Policy 55 – Remediation of Land;
- f) State Environmental Planning Policy (Affordable Rental Housing) 2009;
- g) Warringah Local Environment Plan 2000 ('WLEP2000');
- h) Draft Warringah Local Environment Plan 2009;
- i) Warringah Development Control Plan;
- j) Warringah Section 94A Contributions Plan.

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 27 adjoining land owners and occupiers. Notification was for a period of 14 calendar days commencing on 18 May 2010. A site notice was placed upon the site during the notification period.

As a result of the public exhibition process 5 submissions have been received from:

Submission	Address
C Stackenburg	66 Beacon Hill Road, Beacon Hill
R Tallarinda	59 Beacon Hill Road, Beacon Hill
B & L Cook	6 Aperta Place, Beacon Hill
(confidential)	Beacon Hill Road, Beacon Hill
(confidential)	Beacon Hill Road, Beacon Hill
F & M Janetz	64A Beacon Hill Road, Beacon Hill

The matters raised within the submissions are addressed hereunder:

i) Concerns regarding the current unauthorized use as a boarding house and subsequent increase in occupancy?

Comment: Council has commenced Class 4 action against the owner of the site in relation to the illegal use of the site as a boarding house without development consent. The matter is being held over pending the determination of this development application. The increase in occupancy of the site has been addressed in the relevant considerations under the heading General Principles. In summary, it is considered that the site is unsuitable for a boarding house on issues relating to privacy, noise, car parking and access, accessibility for disabled persons, and safety.

ii) Increase in noise levels and loss of privacy from high occupancy including disturbances at night?

Comment: The natural topography and close proximity of adjacent dwellings means that adjacent dwellings are susceptible to privacy issues from adjacent windows and overlooking balcony spaces. The occupation of the site as a boarding house is likely to create significant potential for privacy and amenity loss to adjacent neighbours considering that up to 20 persons can be accommodated within the building. At the time of the site inspection, there were both adults and children boarding at the premises, however exact numbers and the duration of occupancy were unclear.

iii) *The proposed use as a boarding house is Category 3 development and is a commercial use within a residential area.*

Comment: Boarding houses are Category 2 development within the F4 Brookvale Valley Locality. In this regard, any proposal for a boarding house must demonstrate consistency with the Desired Future Character and satisfy the requirements of the Warringah LEP and any other relevant Environmental Planning Instruments prior to approval. In summary, the subject development application is considered to be unsupportable on planning grounds.

iv) *The proposed use as a boarding house will create an increase in noise disturbance to neighbours.*

Comment: This issue has been fully considered under the heading "General Principles" within this report. In summary it is considered that the use of the site for a boarding house containing 10 double bedrooms will create an adverse increase in terms of noise disturbance to neighbours either side of the subject land. This issue is considered to have determining weight to warrant refusal.

v) *The site has inadequate parking facilities and the use as a boarding house increase parking problems on Beacon Hill Road.*

Comment: This issue has been fully considered under the heading "General Principles" within this report. In summary, it is concurred that the proposed parking arrangements are unsatisfactory and will create unsafe conditions within the site and on Beacon Hill Road. This issue is considered to have determining weight to warrant refusal.

vi) *The proposed use as a boarding house will devalue surrounding land.*

Comment: This issue is not supported by any empirical evidence to demonstrate any long term permanent impact on land values. This issue is not considered to have determining weight.

MEDIATION

Has mediation been requested by the objectors?	No
Has the applicant agreed to mediation?	No
Has mediation been conducted?	No

LAND AND ENVIRONMENT COURT ACTION

Class 4 proceedings have been commenced by Council against the owner with regard to the unauthorised use of the site as a boarding house and for illegal site works. The matter has been held over pending the determination of this development application.

REFERRALS

External Referrals

Rural Fire Service (Section 79BA EP&A Act 1979)

The application was referred to the NSW RFS and a response was provided on the 1 July 2010 requiring the submission of additional information for "a complete assessment to be done by a qualified consultant". The applicant advised Council that a further report was being prepared, however the complete fire assessment has not been received in sufficient time to enable referral and comment prior to final reporting of the DA. This issue is considered to have determining weight to warrant refusal of the application due to inadequate information.

Energy Australia (SEPP Infrastructure)

Refer to comments provided under the heading SEPP Infrastructure. In summary, Energy Australia have no objection to the proposed development.

Internal Referrals

Waste Services

The subject proposal does not provide adequate details or a design to satisfy Council's *Code for Waste Handling in Residential Premises*. This issue is considered to have determining weight to warrant refusal of the application due to inadequate information.

Environmental Health & Protection

The application has been reviewed by Environmental Health and Protection with the following comment provided:

A review of the Council's records revealed that there is a history of non-compliance at the site including illegal retaining walls which are considered to be unsafe. Behind the retaining walls is land fill which has not been certified as virgin excavated natural material (VENM). The unknown origin of land fill is considered contaminated.

Accordingly, there are safety and environmental concerns regarding this development, however if approval was to be considered, conditions should be applied as recommended.

Fire Safety (Buildings)

The submitted building fire safety report by *Abate Pty Ltd* dated 12 March 2010 includes the inadequate fire safety audit of measures for a Class 3 building. This issue is considered to have determining weight to warrant refusal of the application due to inadequate information.

Building Assessment & Compliance

A number of elements of the interior of the main dwelling and ancillary work around the building are not in accordance with the approved plans drawn by *JF Building Consultants* under the modified consent conditions for MOD2002/0723/2. This issue has should be re-referred to Council's Building Compliance Services for a site audit to be conducted to determine the nature and extent of variations and any illegal works on the site.

Elements of the building and site works noted as anomalies include (but are not limited too):

- Driveway widening and landfill;
- Construction of retaining walls;
- Landfill on adjacent land;
- Internal wall locations;
- Location of kitchen areas;
- Conversion of garage building; and
- Erection of an outbuilding shed.

In addition to the above, the BCA standard of workmanship throughout the building does not appear to be of a safe or professional standard and it is recommended that Council's Building Inspector/Compliance Officer and Fire Safety Specialist also review the site with regard to general compliance with the BCA, including existing conditions of consent. A number of photos have been recorded to file: TRIM Doc 2010/166281 to illustrate the observed concerns with the building.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on “Draft Environmental Planning Instruments” in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been addressed within this report and due to the identified concerns with the building the proposal is not recommended for approval. Compliance action is recommended and has been referred to Council's Compliance Services for building matters. Clause 93 of the EPA Regulation 2000 requires the consent authority to consider the fire safety upgrade of development. This matter has been addressed within this report and due to the identified concerns with the building the proposal is not recommended for approval. Compliance action is recommended and has been referred to Council's Compliance Services for fire safety matters.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the “General Principles of Development Control” in this report. In summary, the proposed development will have an adverse impact on residential amenity and traffic safety. (ii) The proposed development will have a detrimental social impact in the locality considering the character of the proposal. In summary, the intensification of the use of the site for up to 20 occupants combined with inadequate protection for neighbours from loss of privacy, noise intrusion and related disturbances will have an adverse social impact. (iii) The proposed development will not have a significant detrimental economic impact on the Brookvale Valley locality.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development due to site restrictions with regard to carparking and access, safety, accessibility, visual privacy and noise privacy.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	Five submissions have been received in objection to the proposal identifying issues for neighbouring residents of unauthorised works, privacy, carparking and access and unauthorised land use. Council has been unable to resolve these issues and approval of the application is not considered to be in the public interest. The subject development application does not satisfy the requirements of the WLEP 2000, Draft WLEP 2009 or relevant EPI's. In this regard, approval of the application is not considered to be in the public interest.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Definition: Boarding house

Land Use Zone: R2 Low Density Residential

Permissible or Prohibited: Permissible with Consent

Additional Permitted used for particular land – Refer to Schedule 1:

Principal Development Standards:

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Height of Buildings:	8.5 m	No change	N/A	N/A

The proposed development is consistent with the aims and objectives of the Draft WLEP 2009.

Clause 1.8A contains a savings and transitional provision which says that applications made before the commencement of the plan may regard the plan as not having been made if still not determined after the commencement of the plan.

Local Government Act 1993

Council is empowered under the *Local Government Act* to be the approval authority for this proposal and grant any works or permits required in accordance with Section 68 of that Act as part of the development assessment process. Suitable conditions may be applied to address these matters.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No 55 – Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses.

A section of land has been filled at the front of the site (along eastern side of the driveway) and at the rear of the site (north of the dwelling on adjacent land) without Council approval. It is unknown if this illegal fill contains any contaminated materials or what the quality of fill was that has been used.

As a result, this assessment is unable to determine if the landfill made is safe or if any remediation action plans must be prepared and implemented or how certification is to be provided that all site fill works have been completed/checked by an appropriately qualified person (EPA Registered). This issue is considered to have determining weight and as such the proposal is not recommended for approval.

State Environmental Planning Policy - BASIX

A BASIX certificate is not required to be submitted with the subject application. The building was constructed prior to the implementation of BASIX.

State Environmental Planning Policy - Infrastructure

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
- immediately adjacent to an electricity substation,
- within 5m of an overhead power line
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line

The proposal is not within or immediately adjacent to any of the above electricity infrastructure and does not include a proposal for a swimming pool; as such the development application is not required to be referred to the electricity supply authority. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

State Environmental Planning Policy (Affordable Rental Housing) 2009

The proposal has been lodged pursuant to the Warringah LEP 2000 and was not lodged under the provisions of SEPP (Affordable Rental Housing) 2009. Brochure information has been provided with the application from the Department of Planning website however no assessment made within the statement of environmental effects to relate the provisions of the SEPP.

Notwithstanding this, the proposal is assessed for compliance with the SEPP for boarding houses as per the following requirements listed within the SEPP:

Development control	Compliance
Standards that cannot be used to refuse consent	
CI 29(1) Floor Space Ratio Residential or non-residential RFB permitted zones	Complies – No maximum FSR applies Not applicable
CI 29(2) (a) Building height: 8.5 metres above existing ground level	Does not comply – existing dwelling structure with no change to external height.
(b) Landscaped area Landscape treatment of front setback area	Complies
(c) Solar access Communal living area to receive min. 3 hours direct sunlight between 9am & 3pm mid-winter	Does not comply – approx 2.5 hrs 9am to 11:30 Ground floor living room overshadowed by balcony.
(d) Private open space Area of 20 sqm and 3.0m wide not within the front setback. Area of 8 sqm for onsite manager with minimum dimension of 2.5 m	Does not comply – available area at rear of side 67 sqm, however this is also directly accessible from on-site manager's room (Bedroom 1). The balcony above has adequate area but a dimension width of only 1.2m if this room (Bedroom 6) was used for the Manager. The balcony is also joined to the communal living room.

Development control	Compliance
(e) Parking 1 parking space for each 10 boarding rooms, plus 1 parking space per on-site employee	Complies – 2 spaces Complies – 1 space
(f) Accommodation size (excluding bathroom or kitchen) 12 sqm for single room 16 sqm for double room	Does not comply – all rooms shown as double rooms. Rooms 5 & 1 are 9.1 sqm and undersized.
CI 29(3) Kitchen facilities	Complies
Standards for boarding houses	
1 communal living room for 5 or more bedrooms	Complies
No boarding room of 25m² GFA excluding kitchen/bathrooms	Does not comply
No more than 2 adults per boarding room	Complies
Adequate bathroom and kitchen facilities for each lodger	Does not comply – No suitable access for disabled persons to the bathroom or kitchen.
On site manager for more than 20 lodgers	N/A
On land zoned for RFB's no new car parking	N/A
On land zoned for commercial purposes no residential purposes on the ground floor.	N/A
On parking space for a bicycle and 1 motorbike per 5 boarding rooms	Does not comply - not specified on the plans (2 bicycle and 2 motorbike)

Regional Environment Plans (REPs)

None applicable

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character (DFC)

The subject site is located in the F4 Brookvale Valley Locality under Warringah Local Environmental Plan 2000.

The Desired Future Character Statement for this locality is as follows:

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.

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.

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, 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.

The proposed development is defined as a “boarding house” under the WLEP 2000 dictionary. Boarding houses are identified as Category 2 development in this locality being “Other buildings, works places or land uses that are not prohibited or in Category 1 or 3”.

CATEGORY 2 DEVELOPMENT

Clause 12(3)(a) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality’s DFC statement.

Accordingly, an assessment of consistency of the proposed development against the relevant elements of the locality’s DFC is provided hereunder:

Requirement: “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”

Comment: Complementary and compatible uses must demonstrate that they will “maintain or enhance the amenity of the locality” and that activities for accommodation are “low intensity, low impact” as required by the definition within the LEP. The subject development site has an extensive record of unresolved compliance action and complaints from neighbouring properties in relation to impacts on residential amenity and the impact of illegal works on the landscape amenity of the site and streetscape. The proposed use of the site for a boarding house with capacity for 20 persons is not considered to be conducive to “low intensity and low impact” for the site having regard to difficulties of carparking access, issues of overlooking, potential privacy and noise disturbance to adjacent neighbours. The development application has not demonstrated that the proposal would realistically be able to maintain or enhance the amenity of the locality and address any site sensitivities identified. It is considered that the proposed use on the subject site is not consistent with the DFC having regard to an assessment of merit.

Requirement: “Outside the “medium density areas”, future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality.”

Comment: The subject development does not propose any significant change to the existing scale of the subject building. The existing building is considered to be consistent with detached style housing.

Requirement: The streets will be characterised by landscaped front gardens and consistent front building setbacks.

Comment: The existing front setback is occupied by a driveway and garage building with landscaping between the garage and the dwelling house. The landscaping within the front setback is consistent with adjacent dwelling houses due to the steep topography along Beacon Hill Road.

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

Comment: The subject development proposes no significant change to the existing tree planting on the site. The extent of surface rock on the site allows very limited opportunity for the indigenous tree canopy to be enhanced by new tree planting.

As detailed above the proposed development is considered to be inconsistent with the Locality's DFC statement which will comprise a reason for refusal. This issue is considered to have determining weight.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Compliance Table F4 Brookvale Valley				
Built Form Standard	Required	Approved Development	Proposed Modification	Compliance
Housing density	1 per 450 sqm	1 per 844	N/A	N/A
Building Height: Maximum height Ceiling height	8.5 metres 7.2 metres	8.6 metres 7.6 metres	No change No change	NO - Existing NO - Existing
Front building setback	6.5 metres	9.0 metres	No change	YES - Existing
Rear building setback	6.0 metres	2.8 metres	300 mm	NO - Wrap around balcony extension Clause 20 for rear building setback is addressed below.
Side boundary envelope and side setback	45 degrees above 5 metres 900 mm	No change to envelope East elevation 1.2m West elevation 2.0m	No change 1.2 m 2.0 m	YES - Existing YES - Existing
Landscape open space	40% of site area	45%	45% (385 sqm) As per the submitted plans	YES – As per the submitted plans

Clause 20(1) stipulates:

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal is inconsistent with the General Principles of Development Control and accordingly, cannot be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is inconsistent with the Locality’s Desired Future Character Statement and accordingly, cannot be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered against the applicable State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’).

Notwithstanding the information provided by the applicant with respect to the variations shown on the plans, the following merit consideration is applied to the rear building setback built form control:

Rear Building Setback (900mm)

As detailed in the compliance table above, the proposal does not comply with the rear building along the northern boundary. In this regard, the wrap-around balcony proposed for Level 1 will encroach into the rear setback to 300mm from the northern boundary.

The variations to the 6.0 metre rear setback control are assessed against the following merit considerations:

- i. *Create a sense of openness in rear yards;***
The elevated nature of site above the Brookvale Valley and surrounding steep topography maintains a sense of openness. The balcony is not enclosed and therefore the existing building creates the dominant visual impact of building bulk within the rear setback area. The balcony therefore would not have a substantial impact on the sense of openness.
- ii. *Preserve the amenity of adjacent land;***
The proposed rear balcony area on level 1 creates a new location for the benefit of occupants of the boarding house to congregate. Therefore, potential impacts of noise and visual privacy will not be preserved for the amenity of adjacent land.
- iii. *Maintain the visual continuity and pattern of buildings, rear gardens and landscape elements;***
The extension of the balcony around the rear of the building is not consistent with the visual continuity and pattern of buildings on adjacent land. The average rear setback for properties either side of the subject site (from 62 to 72 Beacon Hill Road) is 9.5m. The addition of the proposed rear balcony within the rear setback area is a substantial variation to both the 6.0m

setback and the existing average rear setback for adjacent dwellings (despite variation in the pattern of adjacent buildings).

iv. Provide opportunities to maintain privacy between dwellings.

The wrap around balcony will create an additional vantage point to look both east and west over adjacent rear properties and thus create a potential negative impact on privacy. At present overlooking opportunities to the west are limited to the window spaces within the existing dwelling.

The encroachment into the rear boundary by the addition of the wrap-around balcony on level 1 is considered to be an unsatisfactory encroachment of the rear building setback control and will create additional issues of privacy and amenity for adjacent land. For these reasons, the proposed variation to the rear building setback is not supported. This issue is considered to have determining weight.

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	YES	No significant changes are proposed to the external glazing areas or roofing of the building. In this regard, the proposal is satisfactory with regard to considerations of glare and reflection under Clause 28 of the Warringah LEP 2000.	YES
CL39 Local retail centres	NO	No comment	N/A
CL40 Housing for Older People and People with Disabilities	YES	While the proposal is not specifically proposed for older person or persons with a disability the boarding house can have boarders who may be elderly or have disabilities. The proposal includes the provision of a room for disabled persons. The proposed boarding house includes ramped access to the ground floor with a bedroom and bathroom for disabled persons. The ramp gradients and design of the bathroom have insufficient details to determine compliance with AS1428. In addition, the site is situated on Beacon Hill Road with no suitable grade access to the nearest bus stop (Warringah Road). The site also has no suitable carparking space for disabled persons and therefore only a taxi may provide a transport option. However, taxi services generally pick up from the public road. As stated the Beacon Hill Road has a substantial gradient unsuitable for disabled persons. The development proposal fails to meet the requirements of Clause 40 (including the requirements of Schedule 16) under the WLEP 2000 and this issue is considered to have determining weight to warrant refusal of the application.	NO
CL41 Brothels	NO	No comment	N/A
CL42 Construction Sites	YES	The site has satisfactory access for delivery of materials and suitable area for construction work to be undertaken. A waste management plan has been submitted with the development application for the proposed demolition, construction and domestic waste for the proposed work. In this regard, the proposal is satisfactory with regard to considerations of construction sites walls under Clause 42 of the Warringah LEP 2000.	YES
CL43 Noise	YES	The proposed use of the site will create a significant potential increase in noise due to the increased occupancy of the site by up to 20 persons, plus visitors. A management plan has been prepared for the proposed use of the boarding house.	NO

General Principles	Applies	Comments	Complies
		The plan is ambiguous in a number of issues and therefore likely to be ineffective. The management plan is not satisfactory to be included as a condition of consent due to the anomalies and ambiguities within the plan. Noise disturbance on the adjacent neighbours is likely to be substantially increased by the use of the premises as a boarding house due to the close proximity of adjacent windows. In addition, the steep topography creates a false sense of acoustic privacy in that while adjacent dwellings are on substantially different site levels, noise is still easily transferred between dwellings. This issue has been identified by neighbouring owners to be a significant problem in the current use of the site	
CL44 Pollutants	NO	No comment	N/A
CL45 Hazardous Uses	NO	No comment	N/A
CL46 Radiation Emission Levels	NO	No comment	N/A
CL47 Flood Affected Land	NO	No comment	N/A
CL48 Potentially Contaminated Land	YES	Unauthorised fill has been used in the construction of land filling behind retaining walls on the site and on adjacent land. It is unknown if any containment material is within the unauthorised fill areas on the site and the extent of any risk to future occupants of the site if used as a boarding house. No contamination validation for the works that have been undertaken for the fill areas has been submitted. This issue is considered to have determining weight to warrant refusal of the application.	NO
CL49 Remediation of Contaminated Land	YES	Validation for the landfill works is required to determine if the illegal fill used on the site contains any contaminated material and requires remediation.	NO
CL49a Acid Sulphate Soils	NO	No comment	N/A
CL50 Safety & Security	YES	At the time of inspection it was noted that children were boarding within the premises. A number of the internal balustrades and external balustrades did not comply with the BCA for safety, including stair construction. The building is constructed on a steep site with cliff edges and retaining walls around the surrounds of the building that are not suitably protected for the safety of children (or adults). Further to this, the site is fronted by a busy road and the car parking area is unprotected from children with regard to vehicle manoeuvring/reversing. Other obvious dangers to children at the site include limited observation of outdoor recreation areas, drainage (slip hazard), retaining walls and cliffs, BCA non-compliance of stairs, balustrades, electrical wiring and the like. In this regard, it is considered that the site contains significant risk factors for the safety of both boarding adults and their children. This issue is considered to have determining weight to warrant refusal of the application.	NO
CL51 Front Fences and Walls	NO	The front fencing was approved under MOD2002/0723/2. No change is proposed the existing front fencing. In this regard, the proposal is satisfactory with regard to considerations front fencing and walls under Clause 51 of the Warringah LEP 2000.	N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	NO	It is noted that the adjacent bushland to the north (Lot 8 DP 103534) was formerly Crown Land and owned by the Metropolitan Local Aboriginal Land Council. The land was sold to a private owner in 2010. No works are proposed as part of this application that would impact on the adjoining bushland.	N/A

General Principles	Applies	Comments	Complies
CL53 Signs	NO	No comment.	N/A
CL54 Provision and Location of Utility Services	YES	Essential utility services are available to the site. Refer to considerations made under the heading SEPP Infrastructure previously in this report. In this regard, the proposal is satisfactory with regard to considerations of utility services under Clause 54 of the Warringah LEP 2000.	YES
CL55 Site Consolidation in 'Medium Density Areas'	NO	No comment	N/A
CL56 Retaining Unique Environmental Features on Site	YES	The site is bordered by rock outcrops and cliffs that have been subject to modification by landfill and retaining walls constructed along the upper edge of the rock formations. Part of the unauthorised work is on adjacent land of (Lot 8 DP 103534 - northern boundary). This matter has been referred to Council's Compliance Services for action to remove the illegal landfill works.	NO
CL57 Development on Sloping Land	YES	The site is within a potential land slip area. Unauthorised fill and retaining walls have been constructed on the site. The landfill and retaining works on the site are generally confined along steep sections on the eastern boundary and adjacent the northern boundary. The subject works are currently subject to court action to determine the safety and extent of any rectification works required. Issues relating to the existing development of the site on sloping land remain unresolved and therefore the proposal is not satisfactory having regard to clause 57 of the WLEP 2000.	NO
CL58 Protection of Existing Flora	NO	No removal of trees is proposed by the application.	N/A
CL59 Koala Habitat Protection	NO	No comment	N/A
CL60 Watercourses & Aquatic Habitats	NO	No comment	N/A
CL61 Views	YES	The subject site and adjacent land have substantial coastal views. However, no significant alterations or additions are proposed to the exterior bulk and scale of the building. Therefore, the proposal will have no significant impact on views. In this regard, the proposal is satisfactory with regard to considerations of views under Clause 61 of the Warringah LEP 2000.	YES
CL62 Access to sunlight	YES	The site complies with the requirements of the Warringah LEP 2000 for solar access between 9am and 3pm on the 21 June. In this regard, the proposal is satisfactory with regard to considerations of access to sunlight under Clause 62 of the Warringah LEP 2000.	YES
CL63 Landscaped Open Space	YES	The change of use to the building for a boarding house accommodation proposes no significant change to the existing landscaped open space area. The proposal includes 45% landscaped open space as per the submitted plans. Overall, the proposal is satisfactory with regard to considerations of landscaped open space under Clause 63 of the Warringah LEP 2000.	YES
CL63A Rear Building Setback	YES	The proposal includes the erection of a garden shed within the rear setback and the rear setback is also partly encroached by the north eastern corner of the dwelling house by a wrap around balcony. The rear building setback non-compliance is assessed under the "built form controls" section within this report. In this regard, the proposal is considered to	NO

General Principles	Applies	Comments	Complies
		be unsatisfactory with regard to the rear building setback considerations under Clause 63A of the WLEP 2000.	
CL64 Private open space	YES	Considerations under this Clause 64 are applied as a “rule of thumb” as the LEP only makes provision for dwellings or apartments and no specific allowance for boarding houses. Notwithstanding this clause 64 requires private open space to be: • Provided for all housing, and • Clearly set apart for private use, • Directly accessible from a living area and capable of serving as an extension of the dwelling for relaxation, dining, entertainment, recreation and children’s play, and • Capable of receiving 2 hours of sunlight between 9am – 3pm on June 21. Applying this clause as a guideline the site does not have adequate open space to comply with the requirements of Clause 64 for dwellings containing 3 or more bedrooms. In this regard, the private open space (POS) at the rear of the property is not directly accessible from the living area of the dwelling and the POS at the front of the site is encroached upon by carparking, retaining walls and ramp structures. Therefore the proposal is not satisfactory with regard to considerations of private open space under Clause 64 of the Warringah LEP 2000.	NO
CL65 Privacy	YES	Development is not to cause unreasonable direct overlooking of habitable rooms and principal private open spaces of other dwellings under the WLEP 2000. In this regard, it is noted that the change of use of the site to a boarding house does not include any substantial change to the external appearance and issues relating to window locations are dependant on the existing structure. The common areas and living areas within the proposed boarding house have wide opening doors and windows, however privacy impacts from overlooking into neighbouring dwellings is limited. In this regard, the proposal is unsatisfactory with regard to considerations of visual privacy under Clause 65 of the Warringah LEP 2000.	NO
CL66 Building bulk	YES	The proposal involves minor changes to the exterior of the building including the extension of the east facing balcony above level 1 and alteration to selected windows and doorways. No substantial additional bulk is proposed to be added to the building therefore the proposal is satisfactory with regard to considerations of building bulk under Clause 66 of the Warringah LEP 2000.	YES
CL67 Roofs	YES	No change to the existing roof structure or materials. In this regard,, the proposal is satisfactory with regard to considerations roofs under Clause 67 of the Warringah LEP 2000.	YES
CL68 Conservation of Energy and Water		The site has sufficient open space to enable open air clothes drying and fittings and fixtures may be adapted for water saving and electrical savings. In this regard, the proposal is satisfactory with regard to considerations of energy and water conservation under Clause 68 of the Warringah LEP 2000.	
CL69 Accessibility – Public and Semi-Public Buildings	NO	The premises are not a public or semi-public building	N/A
CL70 Site facilities	YES	The proposal includes provision of a common laundry area by conversion of part of the garage outbuilding. Sufficient open area exists on the site for open air clothes drying. Insufficient details have been provided by the applicant to provide a suitable garbage storage room for the sorting and servicing of the required garbage bins for the site. In this regard, the	NO

General Principles	Applies	Comments	Complies
		proposal is not satisfactory with regard to considerations of site facilities under Clause 70 of the Warringah LEP 2000 and this matter is considered to have determining weight for refusal of the development application.	
CL71 Parking facilities (visual impact)	YES	The existing and proposed car parking facilities are not readily visible to Beacon Hill Road due to the existing masonry fence and steep topography of the streetscape. In this regard, the proposal is satisfactory with regard to considerations of visual impact of parking facilities under Clause 71 of the Warringah LEP 2000.	YES
CL72 Traffic access & safety	YES	The subject site has a partly concealed driveway access from Beacon Hill Road due to a road embankment and the existing masonry fencing. Insufficient details have been submitted to demonstrate safe pedestrian sight lines for the footpath crossing. In addition to the above, due to the tandem parking arrangements vehicles cannot readily enter and leave the site in a forward direction. In this regard, any cars parked in tandem would require the car behind to reverse onto Beacon Hill Road to allow the car that was parked-in to leave the site. The complication of this arrangement would apply to visitors and is considered to increase the safety risk of a vehicle accident in association with the high traffic activity on Beacon Hill Road. In this regard, the proposal is not satisfactory with regard to considerations of traffic access and safety under Clause 72 of the Warringah LEP 2000 and this matter is considered to have determining weight for refusal of the development application.	NO
CL73 On-site Loading and Unloading	YES	Limited space exists on the site for loading and unloading of items, however vehicles cannot enter and leave the site in a forward direction without a difficult turnaround manoeuvre on the site. The submitted plans are not consistent with the existing parking provisions on the site and the plans do not demonstrate how a vehicle can turn around on the site in accordance with Australian Standard 2890. In this regard, the proposal is not satisfactory with regard to the considerations of on-site loading and unloading under Clause 73 of the Warringah LEP 2000 and this matter is considered to have determining weight for refusal of the development application.	NO
CL74 Provision of Carparking	YES	The submitted plans do not show the adequate provision for visitor parking or disabled persons carparking. Based on similar approvals for boarding houses in Warringah, a ratio of 1 space per 8 rooms, plus a manager's space, plus a visitor space and including a disabled person's car space, has been applied. However, it should be noted that these approvals were for site's with level road access and close to major public transport. Ancillary to this the SEPP (Affordable Rental Housing) 2009 also requires the provision of bicycle and motorbike parking. The plans also do not show adequate details of a continuous path of travel from the parking area to the disabled persons accommodation within the site. In this regard, the proposal is not satisfactory with regard to the considerations of the provision of carparking under Clause 74 of the Warringah LEP 2000 and this matter is considered to have determining weight for refusal of the development application.	NO
CL75 Design of Carparking Areas	YES	No details of parking arrangements for disabled persons parking on the site has been provided. Inadequate details are provided for dedicated visitor parking on the site. In this regard, the proposal is not satisfactory with regard to the considerations of the design of carparking areas under Clause 75 of the Warringah LEP 2000 and this matter is considered to have determining weight for refusal of the development application.	NO

General Principles	Applies	Comments	Complies
CL76 Management of Stormwater	YES	On-site detention is not required for the proposed development. It is unknown if the constructed stormwater management around the existing dwelling is adequate as observations made during the site inspection indicated internal flooding of the building. This issue has been referred to Council's Building Compliance Services for further action.	YES
CL77 Landfill	YES	The subject application proposes no landfill, however unauthorised landfill has been placed on the site and on adjacent land (Lot 8 DP 103534). This issue has been referred to Council's Compliance Services for action. Having regard to the provisions of this clause: - It is unknown if any contaminated material has been used for the illegal landfill on site; - Uncontrolled landfill has been placed on adjacent land without development consent; - The landfill has been used in a potential landslip area and may be at risk of geotechnical instability. In this regard, the proposal is not satisfactory with regard to considerations of landfill under Clause 77 of the Warringah LEP 2000 and this matter is considered to have determining weight for refusal of the development application.	NO
CL78 Erosion & Sedimentation	YES	The subject application proposes no site excavation works. Therefore, no soil erosion and sediment management plan is required.	YES
CL79 Heritage Control	NO	No comment	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	No comment	N/A
CL81 Notice to Heritage Council	Repealed		
CL82 Development in the Vicinity of Heritage Items	NO	No comment	N/A
CL83 Development of Known or Potential Archaeological Sites	NO	No comment	N/A

Other Relevant WLEP 2000 Clauses

SCHEDULES

Schedule 8 – Site Analysis

The proposal has not been provided with a satisfactory site analysis in accordance with the Schedule 8 as required under Clause 22(2)(a) of the WLEP 2000. The purpose of a site analysis is to identify and explain graphically:

- the key influences on the design, and
- the site planning for the proposal and how the development will relate to the immediate locality.



Schedule 17 - Carparking Provision

Refer to assessment of carparking made under clause 74. Schedule 17 provides no car parking rate for boarding houses.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

As the estimated cost of works is less than \$100,000.00 the S94A policy is not applicable to the assessment of this 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, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000, Draft Warringah Local Environmental Plan 2009 and the relevant codes and policies of Council.

The assessment of this application has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and it is considered the proposal results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In summary, the proposal has not satisfied the requirement for Category 2 development to be consistent with the Desired Future Character or to meet the applicable objectives of the General Principles under the WLEP 2000. In this regard, the proposal does not comply with the rear building setback or meet the merit considerations to permit a variation to the control.

Furthermore, the proposal is unsatisfactory having regard to considerations of safety, accessibility, noise, privacy, carparking and access, site facilities and fire hazard. Issues relating to concerns regarding potential site contamination, landfill, retaining natural landforms and works on adjacent land remain unresolved and the proposal does not satisfactorily address these issues.

Surrounding neighbours have identified a series of ongoing issues with the current activities on the site, including any future use as a boarding house, and having regard to the above any approval of the proposal would not be in the public interest. The overall planning assessment of this report, including Council's referrals regarding the proposal, have identified a range of serious concerns with the site and the proposal including the suitability of the existing building to be retrofitted or converted for use as a boarding house.

Finally, the application has been submitted with unclear and ambiguous information in relation to the proposed plans, management of the boarding house and information necessary to enable the above matters to be properly considered by Council and the relevant referral bodies. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

Accordingly it is considered that Council as the consent authority refuse development application DA2010/0715 for the reasons detailed within the "Recommendation" section of this report.

RECOMMENDATION - (REFUSAL)

THAT Council, as the consent authority refuse development consent to development application No DA2010/0715 for the change of use from a dwelling to a boarding house and ancillary works on land at No.64B Beacon Hill Road, Brookvale for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(3)(b) of Warringah Local Environment Plan 2000 (as amended), in that the proposed development is inconsistent with the Desired Future Character Statement for subject site as the proposal does not satisfy the requirements of a “complementary and compatible use” within 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 Clause 12(2)(b) of the Warringah Local Environment Plan 2000 in that the proposal does not comply with the rear building setback development standards for the F4 Brookvale Valley Locality. In this regard, it is considered that the failure to comply with the development standard will:
 - Cause an undesirable precedent of development;
 - Does not preserve the amenity of adjacent land;
 - Does not maintain visual continuity and the pattern of buildings; and
 - Does not maintain privacy between dwellings.
3. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979, and Clause 12(1)(a) and Clause 18(1) of Warringah Local Environment Plan 2000 (as amended) the proposed development is inconsistent with the General Principles outlined under Part 4 of WLEP 2000 as follows:
 - Clause 40 – Housing or older people or people with disabilities;
 - Clause 43 - Noise;
 - Clause 48 – Potentially contaminated land;
 - Clause 50 – Safety and security;
 - Clause 56 – Retaining unique environmental features on site;
 - Clause 57 – Development on sloping land;
 - Clause 63A – Rear building setback;
 - Clause 64 - Private open space;
 - Clause 65 – Privacy;
 - Clause 70 – Site facilities;
 - Clause 72 – Traffic access and safety;
 - Clause 73 – Onsite loading and unloading;
 - Clause 74 – Provision of carparking;
 - Clause 75 - Design of carparking areas;
 - Clause 77 - Landfill
4. Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979 the subject site is considered to be unsuitable for the proposed development in that:
 - The carparking and access proposed is impractical, unsafe and inconvenient with regard to vehicle and pedestrian movements;
 - The site is unsuitable for convenient access to public transport, particularly for elderly and disabled persons;
 - The site may potentially contain contaminated material from previous unauthorised landfill, and
 - The subject building does not provide suitable fire safety for future occupants.
5. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest in that:
 - The proposal does not satisfy the relevant local planning controls of the Warringah Local Environment Plan 2000;
 - The proposal is not consistent with the Desired Future Character for the F4 Brookvale Valley Locality;

- The proposal has not been submitted with adequate information to enable proper consideration and assessment of the application; and
 - The proposal does not meet the requirements of SEPP (Affordable Rental Housing) 2009;
10. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 in that:
- An adequate standard of facilities is not provided;
 - An adequate parking facilities is not provided; and
 - The proposal exceeds the relevant Gross Floor Area standards.



Site and Elevation Plan

