

3.4	56A Consul Road, North Narrabeena.- Subdivision of 1 Lot into 2 Lots & Construction of a Single Dwelling
------------	---

SECTION 82A REVIEW OF DETERMINATION

Assessment Officer:	Andrew Cowan
Address / Property Description:	Lot 2 in DP 831677, 56A Consul Road, North Narrabeena.
Proposed Development:	Subdivision of 1 Lot into 2 Lots & construction of a single dwelling
Application No:	Rev2010/0010
Development Application No:	DA2009/0991
Application Lodged:	03 August 2009
Plans Reference:	Drawing 1 - Subdivision/Site Plan, Drawing 2 - Access way Plan, Drawing 3 - Titled: Access way Section, Drawing 4 - Titled: Landscape Plan, Drawing 5 - Titled: Site Analysis Drawing 6 - Environment Analysis, Drawing 7 - Fire Access Drawing 1 – 7 Drawn By: John Lukins Drawing E1 – E4 Drawn By: John Lukins/R.J. Goodall
Applicant:	J R Lukins
Owner:	J R Lukins, J E Lukins
Locality:	F4 – Brookvale Valley Locality
Category:	Category 1 – Housing Category 2 – Subdivision
Draft WLEP 2009 Permissible or Prohibited Land use:	Permissible – subject to development consent
Variations to Controls (Cl.20/Cl.18(3)):	Front Setback Built Form Control
Referred to ADP:	YES
Referred to WDAP:	N/A
Land and Environment Court Action:	No action has been taken in the Land & Environment Court in relation to this application.
SUMMARY	
Notification Period:	30 April 2010 to 17 May 2010
Submissions:	Eight (8) submissions received in objection to the proposed development
Submission Issues:	Traffic Generation, Landslip, Access, Solar Access, Garbage Bins, Stormwater, Geotechnical Stability, Privacy, Impact on Property Values, Notification Process.
Assessment Issues:	Stormwater Management, Driveway Design, Geo – Technical Stability, accuracy of submitted documentation.
Attachments	Site and Elevation plans
Recommendation:	Refusal

LOCALITY PLAN (not to scale)



Subject Site: Lot 2 in DP 831677, 56A Consul Road, North Narrabeena.

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 109 adjoining land owners and occupiers for a period of 14 calendar days commencing on 30 April 2010 and being finalised on 17 May 2010.

SITE DESCRIPTION

The property is located on the western side of Consul Road in the Brookvale Valley Locality. The subject site is identified as 56A Consul Road North, Narrabeena. The site is a battleaxe lot with a driveway frontage to Consul Road (east), a southern boundary of 97.37, a northern boundary of 92.585m, and a diagonal rear boundary of 37.95m and a total area of 2419m².

The site has an east west orientation with vehicle access from Consul Road via a 2.6m wide driveway. Currently an existing two storey dwelling is located on a level platform close to the north eastern corner of the site. The site slopes steeply away from the platform (RL 69.12) to the rear boundary (RL 40.17) with the steepest change in levels being centrally located where a sandstone rock ledge runs along diagonally across the site below the existing dwelling. The subject site provides significant vegetation cover including a number of examples of common native tree species.

Surrounding development to the west, north and east of the site consists of residential uses of mixed scale and design. To the north and above (No. 58A Consul Road) is a three (3) storey brick dwelling located midway down the site approximately 1m off the common side boundary. No. 58B and adjoining dwellings to the north are served by a 4.5m wide Right of Way running adjacent to part of the northern boundary of the subject site. To the east is the dwelling associated with No. 56 Consul Road.

To the south of the site adjoining the driveway access, the subject site is bounded by a lot orientated east west containing a single dwelling. Two battleaxe lots located midway along the southern boundary and which have a north south orientation, also contain single dwellings located between 6m and 12m off the common boundary, with the rear yards facing the subject site.

To the west and below is the Brookvale Brickworks site which has recently been redeveloped for residential purposes. The closest neighbouring dwellings within this development are approximately 20m from the western boundary of the subject site. The unmade Northcliffe Avenue abuts the site close to the north western corner of the site.

SITE HISTORY/BACKGROUND

Council granted development consent No.193/1993 for subdivision of the existing lot into two (2) separate lots on 14 May 1993. This consent was not enacted upon and has now lapsed.

An application was lodged on 16 June 1997, for subdivision of the subject lot but was subsequently withdrawn by the applicant 5 September 1997 after preliminary advice from Council indicating the relevant planning controls did not allow for the subdivision as proposed.

An application was lodged on 21 November 2005, for subdivision of the subject into three (3) lots and a proposed dwelling on Lot 2. This application was refused on 8 May 2008.

Development consent was sought under Development Application DA2009/0991 for the subdivision of the existing single allotment into two (2) lots and a proposed dwelling on Lot 2. The application was refused on 21 December 2009 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 provisions of Clause 21 as the proposal is not consistent with Schedule 7 - Matters of consideration in a subdivision of land.*
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 the development on proposed lot 2 does not comply with the Front Building Setback Development Standard of 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 following provisions of Warringah Local Environmental Plan 2000;*
 - *Clause 52 – Development Near Parks, Bushland Reserves & other public Open Spaces*
 - *Clause 56 – Retaining Unique Environmental Features on Site*
 - *Clause 58 – Protection of Existing Flora*
 - *Clause 59 – Koala Habitat Protection*
 - *Clause 63 – Landscaped Open Space*
 - *Clause 72 – Traffic access & Safety*
 - *Clause 76 – Management of Stormwater*
4. *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 does not comply with Schedule 5 – Bushland in Urban Areas*
5. *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 does not comply with Schedule 7 - Matters of consideration in a subdivision of land in terms of:

- 1) Environmentally sensitive/ constrained land*
 - 2) Design and Construction*
 - 3) Access*
 - 4) Drainage*
6. *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 does not comply with Schedule 8 – Site Analysis as:*
- 5) The subdivision may not be developed in accordance with the Warringah Local Environmental Plan 2000.*
7. *Pursuant to Section 79C (1) (b) of the Environmental Planning and Assessment Act 1979 the proposed development is not acceptable in terms of the likely impacts on visual amenity from the public domain and the impacts upon the existing topography.*
8. *Pursuant to Section 79C (1) (b) of the Environmental Planning and Assessment Act 1979 has failed to show consistency with the Threatened Species Conservation Act 1995 as the proposal did not provide sufficient information to ascertain the likely impact of the development on any communities of threatened species that may exist in the immediate vicinity.*
9. *Pursuant to Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979 the proposed development is not suitable for the development in terms of topography and the resultant constraints related to vehicular access.*
10. *Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979 the proposed development is considered to not be in the public interest as the development does not comply with the relevant plans, policies and controls of Council and the relevant consent authorities.*
11. *Pursuant to Section 91 of the Environmental Planning and Assessment Act 1979 the proposed development has not been issued with a Bushfire Safety Authority as required for subdivision of bushfire prone land for a residential purpose under Section 100B of the Rural Fires Act 1997.*

PROPOSED DEVELOPMENT

The applicant seeks a review of the determination with respect to development application DA2009/0991 for the:

- Subdivision of land; and
- Construction of a new dwelling.

The proposed site areas are as follows:

- Lot 1 – 898m²
- Lot 2 –1520m²

Access to the newly created site and residence will be via the existing access handle servicing the existing lot known as 56A Consul Road. Lot 1 will accommodate the existing dwelling whilst Lot 2 is proposed to accommodate a new detached dwelling. The proposed access way is 3.5m with the building footprint of the proposed dwelling 97.3sqm.

The proposal also includes elevated driveway works to be undertaken on the existing access way to allow access to the newly created site and dwelling. Removal of existing vegetation on-site is proposed to facilitate construction of the dwelling and achieve adequate Asset Protection Zones.

SECTION 82A REVIEW OF DETERMINATION

Section 82A of the Environmental Planning and Assessment Act, 1979 enables an applicant to request a review of determination of an application. The following heads of consideration are discussed below:

- “(1) If the consent authority is a council, an applicant may request the council to review a determination of the applicant’s application, other than:*
- (a) a determination to issue or refuse to issue a complying development certificate, or*
 - (b) a determination in respect of designated development, or*
 - (c) a determination in respect of integrated development, or*
 - (d) a determination made by the council under section 116E in respect of an application by the Crown.”*

Comment:

The proposed review of determination does not comprise any of the above types of determinations; therefore the Council has the ability to determine the subject review.

- “(2) A request for a review may be made at any time, subject to subsection (2A).*

(2A) A determination cannot be reviewed:

- (a) after the time limited for the making of an appeal under section 97 expires, if no such appeal is made against the determination, or*
- (b) after an appeal under section 97 against the determination is disposed of by the Court, if such an appeal is made against the determination.”*

Comment:

The review has been made with the time frame specified under Section 97. The period for appeal expires on 16 February 2011.

- (3A) In requesting a review, the applicant may make amendments to the development described in the original application, subject to subsection (4) (c).*

Comment:

The review makes amendments to the original design.

- (4) The council may review the determination if:*
- (a) it has notified the request for review in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations, and*
 - (b) it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan, as the case may be, and*
 - (c) in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the*

development, as amended, is substantially the same development as the development described in the original application.

Comment:

The application has been notified, in accordance with the provisions of Part 1 of the Warringah DCP. No submissions have been received.

(4A) *As a consequence of its review, the council may confirm or change the determination. "*

Comment:

The original determination has been reviewed and the reasons for refusal in the determination have been examined. The reasons for refusal are considered to remain significant and it is confirmed that they carry determining weight to refuse the application.

These are discussed in the table below:

Reason For Refusal	Comment
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 provisions of Clause 21 as the proposal is not consistent with Schedule 7 - Matters of consideration in a subdivision of land.	The revised proposal has been assessed and is inconsistent with Schedule 7 – Matters for consideration in the subdivision of land as follows: Environmentally sensitive land - The geotechnical report dated 21 September 2009 has been assessed and is considered to be unsatisfactory. The report does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. The report states that there are no structural, excavation and fill works for this development in section 10 which is clearly incorrect. The proposal is therefore unsatisfactory in this regard. Drainage - The applicant has submitted a concept OSD design for proposed Lot 1. This design is not in accordance with Council's OSD technical specification and cannot be supported. Access - The geotechnical report dated 21 September 2009 has been assessed and is considered to be unsatisfactory. The report does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. The report states that there are no structural, excavation and fill works for this development in section 10 which is clearly incorrect.
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 the development on proposed lot 2 does not comply with the Front Building Setback Development Standard of the F4 Brookvale Valley Locality	The revised proposal has been assessed in relation to the front building setback built form control of the F4 – Brookvale Locality. Upon review of the submitted plans the proposed front building setback of 6m is conducive to the site given the topography and site constraints. The siting of the proposed dwelling will have no adverse visual impact given that the subject site is not prominent within the streetscape. Notwithstanding, the proposal can not be approved in accordance with Clause 20(1) of the WLEP 2000 as it is inconsistent with the General Principles of Development.
3. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following provisions of Warringah Local Environmental Plan 2000; • Clause 52 – Development Near Parks, Bushland Reserves & other public Open Spaces • Clause 56 – Retaining Unique Environmental Features on Site	The proposal has been assessed having regard to the following Clauses of the WLEP 2000: Clause 52 – The revised proposal has been assessed in relation to Clause 52 and is deemed satisfactory. Council's Landscape Architect and Natural Environment Unit are satisfied that all concerns have been adequately addressed in the revised flora and fauna assessment. Clause 56 – The revised proposal has been assessed in relation to Clause 56 and is deemed satisfactory. The

Reason For Refusal	Comment
• Clause 58 – Protection of Existing Flora • Clause 59 – Koala Habitat Protection • Clause 63 – Landscaped Open Space • Clause 72 – Traffic access & Safety • Clause 76 – Management of Stormwater	revised flora and fauna assessment adequately addresses the concern previously raised by Council's Natural Environment Unit to satisfy the requirements of Clause Clause 58 – The revised proposal has been assessed with regard to Clause 58 and is deemed satisfactory. A revised flora and fauna assessment has been provided and assessed by Council's Natural Environment Unit. Clause 59 – The revised proposal development has been assessed with regard to Clause 59 and is deemed satisfactory. A revised flora and fauna assessment has been provided and assessed by Council's Natural Environment Unit. Clause 63 – The revised proposal has been referred to Council's Landscape Architect and is deemed to be satisfactory subject to conditions of consent. Clause 72 – The revised proposal has been assessed having regard to Clause 72. Whilst the proposal provides for adequate turning and passing areas and has demonstrated an ability to function adequately to service the development, concern is raised with regard to the adequacy of the Geotechnical Report prepared by Jack Hodgson Consultants dated 21 September 2009. In this regard the proposal is unsatisfactory as The report does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. Accordingly this is to be included as a reason for refusal. Clause 76 – The revised proposal has been assessed with regard to Clause 76 and is unsatisfactory. The proposed OSD design is not in accordance with Council's OSD technical specification and cannot be supported. Accordingly this is to be included as a reason for refusal.
4. 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 does not comply with Schedule 5 – Bushland in Urban Areas	The revised proposal has been assessed with regard to Schedule 5 – Bushland in Urban Areas. A revised Flora and Fauna Assessment has been submitted and is deemed satisfactory as it adequately addresses the matters for consideration listed in Schedule 5. Accordingly, the proposal is complies with the requirements of Schedule 5.
5. 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 does not comply with Schedule 7 - Matters of consideration in the subdivision of land in terms of: • Environmentally sensitive/ constrained land • Design and Construction • Access • Drainage	The revised proposal has been assessed in relation to Schedule 7 as follows: Environmentally sensitive land - The geotechnical report dated 21 September 2009 has been assessed and is considered to be unsatisfactory. The report does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. The report states that there are no structural, excavation and fill works for this development in section 10 which is clearly incorrect. The proposal is therefore unsatisfactory in this regard. Design and Construction – The applicant has submitted a revised geo-technical report prepared by Jack Hodgson Consultants dated 21 September 2009. Upon review of the submitted report, Council's Development Engineer has concluded that insufficient information has been provided with regard to the design and construction of the proposed driveway. Accordingly the proposed development is non-compliant with regard to design and construction as stipulated in Schedule 7.

Reason For Refusal	Comment
	Drainage - The applicant has submitted a concept OSD design for proposed Lot 1. This design is not in accordance with Council's OSD technical specification and cannot be supported. Access - The geotechnical report dated 21 September 2009 has been assessed and is considered to be unsatisfactory. The report does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. The report states that there are no structural, excavation and fill works for this development in section 10 which is clearly incorrect.
6. 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 does not comply with Schedule 8 – Site Analysis as: The subdivision may not be developed in accordance with the Warringah Local Environmental Plan 2000.	The revised proposal has been assessed in relation Clause 8 - Site Analysis of the WLEP 2000 and is inconsistent with the provisions stipulated as the proposal can not be developed in accordance with the Warringah Local Environmental Plan 2000.
7. Pursuant to Section 79C (1) (b) of the Environmental Planning and Assessment Act 1979 the proposed development is not acceptable in terms of the likely impacts on visual amenity from the public domain and the impacts upon the existing topography.	The revised proposal has been assessed in relation the impacts on the visual amenity within the public domain and is deemed acceptable. The proposed design is consistent with the residential amenity of the locality and the surrounding built form.
8. Pursuant to Section 79C (1) (b) of the Environmental Planning and Assessment Act 1979 has failed to show consistency with the Threatened Species Conservation Act 1995 as the proposal did not provide sufficient information to ascertain the likely impact of the development on any communities of threatened species that may exist in the immediate vicinity.	The revised proposal has been assessed with regard Threatened Species Conservation Act 1995 and is deemed satisfactory. The revised flora and fauna assessment adequately addresses the concerns previously raised in this regard. Council's Natural Environment Unit raise no objection.
9. Pursuant to Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979 the proposed development is not suitable for the development in terms of topography and the resultant constraints related to vehicular access.	The revised proposal has been assessed in relation to vehicular access. Given the deficiencies in the geo-technical report, the proposed access can not be considered for approval and is therefore unsatisfactory.
10. Pursuant to Section 91 of the Environmental Planning and Assessment Act 1979 the proposed development has not been issued with a Bushfire Safety Authority as required for subdivision of bushfire prone land for a residential purpose under Section 100B of the Rural Fires Act 1997.	The proposal is defined as integrated development under the provisions of Section 91 of the EP&A Act 19179. Accordingly the proposal has been forwarded to the NSW Rural Fire Service seeking General Terms of Approval (GTA s) pursuant to Section 100B of the NSW Rural Fires Act 1997. The NSW Rural Fire Service has responded to the proposal giving their GTA s. (refer to "external referrals" section in this report).
11. Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979 the proposed development is considered to not be in the public interest as the development does not comply with the relevant plans, policies and controls of Council and the relevant consent authorities.	The revised proposal has been assessed in relation to Section 79C(1)(e) of the EP&A Act 1979 and is not in the public interest as it is inconsistent with relevant plans, policies and controls of Council.

Accordingly , it is recommended that the proposed development be refused.

AMENDMENTS TO THE SUBJECT APPLICATION

No amendments were received for this application.

STATUTORY CONTROLS

- a) The Environmental Planning and Assessment Act 1979
- b) The Environmental Planning and Assessment Regulations 2000
- c) The Rural Fires Act 1993
- d) The Threatened Species Conservation Act 1995
- e) State Environmental Planning Policy No. 55 – Remediation of Land
- f) State Environmental Planning Policy - BASIX
- g) Warringah Local Environment Plan 2000
- h) Draft Warringah Local Environment Plan 2009
- i) Warringah Development Control 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. As a result, the application was notified to 98 adjoining land owners and occupiers for a period of 14 calendar days commencing on 30 April 2010 and being finalised on 17 May 2010. As a result of the public exhibition process submissions have been received from:

Date	Respondent	Address
4 May 2010	G R Hodge	50A Consul Road, Brookvale
14 May 2010	J & R Ramirez	54 Consul Road, Narraweena
15 May 2010	G R Hodge	50A Consul Road, Brookvale
14 May 2010	K Galer	56 Consul Road, Narraweena
15 May 2010	L Johnston	50 Consul Road, Narraweena
17 May 2010	Finemore	51 Consul Road, Narraweena
14 May 2010	Robinson	56 Consul Road, Narraweena
13 May 2010	Ross	45 Consul Road Narraweena

The matters raised within the submissions in objection to the proposal are addressed hereunder:

Traffic Generation and Access

The objector states that the development will place unreasonable impacts on the existing street and available parking areas as a result of additional vehicles.

Response

The existing dwelling and the proposed dwelling both provide adequate parking for the development. Each dwelling has two (2) spaces for resident vehicles in accordance with Schedule 17 – Provision for Car parking contained within the Warringah Local Environmental Plan 2000. The objection does not carry determining weight.

Solar Access

The objector states that the proposed dwelling on Lot 2 will impact upon the solar access of the surrounding dwellings.

Response

A review of the shadow diagrams provided by the applicant indicates that the proposed dwelling allows for in excess of 2hrs of direct sunlight to 50% of the principal private open space of the subject and adjoining dwellings at 21 June. The proposal is compliant in this regard and the objection does not carry a determining weight.

Privacy

The objector states that the new dwelling will impact on the privacy of surrounding residents.

Response

A review of the plans indicates that the proposed dwelling does not have any windows of living areas in close proximity to the adjoining dwellings private living areas. Additionally, any issues of overlooking of private open spaces are negligible and do not carry a determining weight. With regard to the impacts of additional pedestrian and vehicular traffic on privacy, it is considered that these elements of any proposal are not directly related to privacy and are therefore not regarded as critical to this element of the assessment.

The objection does not carry a determining weight.

Garbage Bins

The objector states that the area does not have enough space for additional rubbish and recycling bins.

Response

Site inspection indicates that whilst the area is cluttered and is a narrow street, it is considered the overall impact of additional garbage and recycling bins being left for collection once a week will not cause an unreasonable impact. The objection does not carry a determining weight.

Stormwater

The objector states that the stormwater runoff from the site as it exists, causes damage to their property and the additional works will worsen the effects of stormwater.

Response

The applicant has failed to provide a satisfactory stormwater management plan as the On-site Detention is not in accordance with technical specification and cannot be supported. Accordingly this is to be included as a reason for refusal.

Flora & Fauna

Concern is raised in relation to the removal of vegetation on-site and the adverse impact it will have on wildlife.

Response

The proposal was referred to Council's Natural Environment Unit for assessment to determine the impact of removing vegetation as proposed on-site. Upon review of the flora and fauna assessment, no objection was raised in relation to removal of vegetation as the site does not contain any threatened species as defined under the provisions of the Threatened Species Conservation Act 1995.

Landslip and Geotechnical Stability

The objector states that the site is unstable and there have been rock falls in the past. The objector raises concerns with regard to the increased geotechnical instability of the site resulting from the proposed works.

Response

The geotechnical report dated 21 September 2009 has been assessed and is considered to be unsatisfactory. The report does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. The report states that there are no structural, excavation and fill works for this development in section 10 which is clearly incorrect. Accordingly this is to be included as a reason for refusal.

Impact on Property Values

The objector states that the subdivision will have an impact on the value of properties in the vicinity of the proposal.

Response

Property values are not identified within Section 79C – Heads of Consideration of the Environmental Planning and Assessment Act 1979. The objection is not relevant to the proposal.

Notification Process

The objector states that the application was not adequately notified to the surrounding and nearby residents.

Response

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 98 adjoining land owners and occupiers for a period of 14 calendar days commencing on 30 April 2010 and being finalised on 17 May 2010.

It is considered that the application was notified in accordance with the relevant plans, policies and statutory requirements. The objection does not carry determining weight.

MEDIATION

No mediation was requested for this application.

LAND AND ENVIRONMENT COURT ACTION

No Land & Environment Court action has been commenced for this application.

REFERRALS

External Referrals

NSW Rural Fire Service

The proposal was referred to the NSW Rural Fire Service on 6 May 2010 seeking General Terms of Approval pursuant to Section 100B of the NSW Rural Fires Act 1997. The following GTA s were provided in response to the proposed development and as such the proposal is acceptable in this regard.

Internal Referrals

Natural Environment Unit

The proposal was referred to Council's Natural Environment Unit on 27 April 2010 (See TRIM file No.2010/066231). The following comments were received in relation to the proposed development.

The assessing officer raises No Objection to the proposed development, subject to conditions relating to:

- (a) Landscaping
- (b) Delineation of Asset Protection Zones
- (c) Weeds
- (d) Fertiliser

Assessing Officer Name	Documents Referenced	Date
Nathan Smith	TRIM 2010/061884 – Flora and Fauna Assessment (Eco Logical 2010)	12 May 2010

Clause 52 – Development near parks, bushland and other public open spaces.

Clause 52 of the WLEP 2000 stipulates:

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.

In particular:

- *where appropriate, housing is to front public open spaces,*
- *public access to public open spaces is to be maximised,*
- *buildings are to be located to provide an outlook to public open spaces, without appearing to privatise that space,*
- *development is to provide a visual transition between open space and buildings including avoiding abutting public open spaces with back fences,*
- *views to and from public open spaces are to be protected, and*
- *buffers for bushfire protection are to be provided on private land and not on public land.*

If public open space or land reserved for public open space contains bushland, development on that land is not to threaten the protection or preservation of the bushland.

Note. *The protection or preservation of bushland may be threatened by a number of direct and indirect processes, including the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland.*

Assessment Consideration	Assessment Acceptability	Further Assessment Comment
<i>Is the development acceptable with regard to:</i> • <i>complementing the landscape character and public use and enjoyment of the public open space area?</i>	☒ Not Applicable ☐	<i>If Yes subject to condition stipulate condition requirement:</i>

Assessment Consideration	Assessment Acceptability	Further Assessment Comment
Is the development acceptable with regard to: Providing buffers for bushfire protection on private land and not on public land.	☒ Not Applicable	If Yes subject to condition stipulate condition requirement:
Is the development acceptable with regard to: Not threatening the protection or preservation of the bushland.	☒ Not Applicable ☐	If Yes subject to condition stipulate condition requirement:

Clause 56 – Retaining distinctive environmental features on site

Clause 56 WLEP 2000

Retaining distinctive environmental features on sites

Development is to be designed to retain and complement any distinctive environmental features of its site and on adjoining and nearby land.

In particular, development is to be designed to incorporate or be sympathetic to environmental features such as rock outcrops, remnant bushland and watercourses.

Assessment Consideration	Assessment Acceptability	Further Assessment Comment
Is the development acceptable with regard to: retaining and complementing the distinctive environmental features (rock outcrops / remnant bushland / watercourses) of its site?	☒ Yes subject to condition	If Yes subject to condition stipulate condition requirement: - Subject to Concurrence from the RFS, management of the APZ must retain and enhance locally native trees at the required densities and also native ground covers at the exclusion of exotic species. - All plants used in any landscaping must be locally native species of local provenance. - Sediment and erosion control measures must be implemented before during and after construction until such time as the site is stabilised. - Disturbance to rock outcrops must be avoided in all instances.
Is the development acceptable with regard to: retaining and complementing the distinctive environmental features (rock outcrops / remnant bushland / watercourses) of the adjoining lands?	☒ Yes	If Yes subject to condition stipulate condition requirement:



Clause 58 - Protection of existing flora

<i>Protection of existing flora</i> <i>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 groundcover species.</i>		
Assessment Consideration	Assessment Acceptability	Further Assessment Comment
<i>Is the development acceptable with regard to being:</i> <i>sited and designed to minimise the impact on remnant indigenous flora?</i>	☒ Yes subject to condition	<i>If Yes subject to condition stipulate condition requirement:</i> <i>Subject to Concurrence from the RFS, management of the APZ must retain and enhance locally native trees at the required densities and also native ground covers at the exclusion of exotic species.</i> <i>All plants used in any landscaping must be locally native species of local provenance.</i> <i>Sediment and erosion control measures must be implemented before during and after construction until such time as the site is stabilised.</i>
<i>Is the development acceptable with regard to being:</i> <i>sited and designed to minimise the impact on canopy trees?</i>	☒ Yes subject to condition	<i>If Yes subject to condition stipulate condition requirement:</i> <i>Subject to Concurrence from the RFS, management of the APZ must retain and enhance locally native trees at the required densities and also native ground covers at the exclusion of exotic species.</i> <i>All plants used in any landscaping must be locally native species of local provenance.</i> <i>Sediment and erosion control measures must be implemented before during and after construction until such time as the site is stabilised.</i>
<i>Is the development acceptable with regard to being:</i> <i>sited and designed to minimise the impact on understorey vegetation?</i>	☒ Yes subject to condition	<i>If Yes subject to condition stipulate condition requirement:</i> <i>Subject to Concurrence from the RFS, management of the APZ must retain and enhance locally native trees at the required densities and also native ground covers at the exclusion of exotic species.</i> <i>All plants used in any landscaping must be locally native species of local provenance.</i> <i>Sediment and erosion control measures must be implemented before during and after construction until such time as the site is stabilised.</i>

<i>Is the development acceptable with regard to being:</i> <i>sited and designed to minimise the impact on remnant native ground cover species?</i>	☒ Yes subject to condition	<i>If Yes subject to condition stipulate condition requirement:</i> • Subject to Concurrence from the RFS, management of the APZ must retain and enhance locally native trees at the required densities and also native ground covers at the exclusion of exotic species. • All plants used in any landscaping must be locally native species of local provenance. • Sediment and erosion control measures must be implemented before during and after construction until such time as the site is stabilised.
---	---	---

Clause 59 – Koala habitat Protection

Matter for Consideration

Clause 59 WLEP 2000

Koala habitat protection

This clause applies to parcels of land, being all adjacent or adjoining land held in the same ownership, that are:

- greater than 1 hectare in area, and
- potential koala habitat.

Before granting consent to development on land to which this clause applies, the consent authority, on information obtained from a person with appropriate qualifications and experience in biological science and fauna survey and management, must be satisfied as to whether or not the land is core koala habitat.

Development within land that is core koala habitat must be consistent with a plan of management for that habitat prepared in accordance with Schedule 11 (Koala feed tree species and plans of management).

For the purposes of this clause:

core koala habitat consists of an area of land with a resident population of koalas, evidence of which includes breeding females (that is, females with young) and recent sightings of and historical records of a population.

potential koala habitat consists of areas of native vegetation where the trees of the types listed in Schedule 11 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.

Assessment Consideration	Assessment Acceptability	Further Assessment Comment
<i>Is the land to be developed greater than 1 hectare?</i>	☐ Yes ☒ No	
<i>Is the land potential Koala Habitat?</i> <i>Does the site include any of plan / site contain any of the following Feed Tree Species?</i> Scientific name Common name <i>Eucalyptus Forest red gum</i> <i>tereticornis</i> <i>Eucalyptus Tallowwood</i> <i>microcorys</i>	☐ Yes ☒ No	

<i>Eucalyptus punctata</i>	Grey gum	
<i>Eucalyptus viminalis</i>	Ribbon or manna gum	
<i>Eucalyptus camaldulensis</i>	River red gum	
<i>Eucalyptus haemastoma</i>	Broad leaved scribbly gum	
<i>Eucalyptus signata</i>	Scribbly gum	
<i>Eucalyptus albens</i>	White box	
<i>Eucalyptus populnea</i>	Bimble box or poplar box	
<i>Eucalyptus robusta</i>	Swamp mahogany	

Schedule 5 – Bushland in urban areas

Schedule 5 State policies

Bushland in urban areas

It is State policy to protect and preserve bushland within urban areas because of:

- (a) its value to the community as part of the natural heritage; and*
- (b) its aesthetic value; and*
- (c) its value as a recreational, educational and scientific resource and, specifically;*
 - i. to protect the remnants of plant communities which were once characteristic of land now within an urban area, and*
 - ii. to retain bushland in parcels of a size and configuration which will enable the existing plant and animal communities to survive in the long-term, and*
 - iii. to protect rare and endangered flora and fauna species, and*
 - iv. to protect habitats for native flora and fauna, and*
 - v. to protect wildlife corridors and vegetation links with other nearby bushland, and*
 - vi. to protect bushland as a natural stabiliser of the soil surface, and*
 - vii. to protect bushland for its scenic values, and to retain the unique visual identity of the landscape, and*
 - viii. to protect significant geological features, and*
 - ix. to protect existing landforms, such as natural drainage lines, watercourses and foreshores, and*
 - x. to protect archaeological relics, and*
 - xi. to protect the recreational potential of bushland, and*
 - xii. to protect the educational potential of bushland, and*
 - xiii. to maintain bushland in locations which are readily accessible to the community, and*
 - xiv. to promote the management of bushland in a manner which protects and enhances the quality of the bushland and facilitates public enjoyment of the bushland compatible with its conservation.*

Assessment Consideration	Assessment Acceptability	Further Assessment Comment
Is the development consistent with the objectives within Schedule 5?	☒ Yes subject to condition	If Yes subject to condition stipulate condition requirement: - Subject to Concurrence from the RFS, management of the APZ must retain and enhance locally native trees at the required densities and also native ground covers at the exclusion of exotic species. - All plants used in any landscaping must be locally native species of local provenance. - Sediment and erosion control measures must be implemented before during and after construction until such time as the site is stabilised.

Schedule 6- Preservation of bushland

Note to Assessing Officer – this portion is only Applicable to Public Open Space and Reserved Land:

Schedule 6 Preservation of bushland

(Clauses 17 (5) and 36 (3))

The need to preserve and protect bushland should be considered in the context of:

- its value to the community as part of the natural heritage; and
- its aesthetic value; and
- its value as a recreational, educational and scientific resource; and
- the following specific aims;
 - (a) to protect the remnants of the plant communities which were once characteristic of land now within an urban area,
 - (b) to retain bushland in parcels of a size and configuration which will enable the existing plant and animal communities to survive in the long-term,
 - (c) to protect rare and endangered flora and fauna species,
 - (d) to protect habitats for native flora and fauna,
 - (e) to protect wildlife corridors and vegetation links with other nearby bushland,
 - (f) to protect bushland as a natural stabiliser of the soil surface,
 - (g) to protect bushland for its scenic values, and to retain the unique visual identity of the landscape,
 - (h) to protect significant geological features,
 - (i) to protect existing landforms, such as natural drainage lines, watercourses and foreshores,
 - (j) to protect archaeological relics,
 - (k) to protect the recreational potential of bushland,
 - (l) to protect the educational potential of bushland,
 - (m) to maintain bushland in locations which are readily accessible to the community,
 - (n) to promote the management of bushland in a manner which protects and enhances the quality of the bushland and facilitates public enjoyment of the bushland compatible with its conservation.

Assessment Consideration	Assessment Acceptability	Further Assessment Comment
Is the development located within Public Open Space and Reserved Land?	☐ Yes ☒ No	

Assessment for Significant effect on threatened species, populations or ecological communities, or their habitats (Section 5A EPA Act 1979)

For the purposes of this Act and, in particular, in the administration of sections 78A, 79B, 79C, 111 and 112, the following has been taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats:

Species, Community, Population	Is the assessment adequate?	Significant Impact?
Narrow-leaf Finger fern	YES	☒ Unlikely – report conclusion
Eastern Bentwing Bat		
Eastern Freetail Bat		☒ Unlikely – Council conclusion
Greater Broad-nosed Bat		
Grey-headed Flying-fox		
Powerful Owl		
Red-crowned Toadlet		

Species, Community, Population	Is the assessment adequate?	Significant Impact?
EPBC Act Assessment <i>Grey-headed Flying-fox</i> <i>Large-eared Pied Bat</i> <i>Rainbow Bee-eater</i>	YES	☒ Unlikely – Council conclusion
Was the level of survey effort employed and techniques used adequate for the site and proposal? ☒ Yes ☐ No	Comment:	
Is a Species Impact Statement Required? ☐ Yes ☒ No		

Conclusion / General Comments

- Subject to Concurrence from the RFS, management of the APZ must retain and enhance locally native trees at the required densities and also native ground covers at the exclusion of exotic species.
- All plants used in any landscaping must be locally native species of local provenance.
- Sediment and erosion control measures must be implemented before during and after construction until such time as the site is stabilised.
- Disturbance to rock outcrops must be avoided in all instances.

Recommendation

- ☐ NO OBJECTION
 - Unlikely Significant Impact
 - No Conditions
- ☒ NO OBJECTION
 - Unlikely Significant Impact
 - Conditions

The relevant Natural Environment Unit assessment is provided as follows:

- Subject to Concurrence from the RFS, management of the APZ must retain and enhance locally native trees at the required densities and also native ground covers at the exclusion of exotic species.
- All plants used in any landscaping must be locally native species of local provenance.
- Sediment and erosion control measures must be implemented before during and after construction until such time as the site is stabilised.
- Disturbance to rock outcrops must be avoided in all instances.

Development Engineer

The proposal was referred to Council's Development Engineering Officer on 27 April 2010 (TRIM referral No.2010/071635). The following comments were provided in relation to the proposed development:

Geotechnical report

The geotechnical report dated 21 September 2009 has been assessed and is considered to be unsatisfactory. The report does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. The report states that there are no structural, excavation and fill works for this development in section 10 which is clearly incorrect. The report must be amended to include recommendations for the dwelling and driveway construction.

Stormwater drainage

The applicant has submitted a concept OSD design for proposed Lot 1. This design is not in accordance with Council's OSD technical specification and cannot be supported. The applicant must submit an OSD design including calculations and drawings in accordance with Council's OSD technical specification.

Landscape Officer

The proposal was referred to Council's Landscape Officer for assessment on 27 April 2010 (TRIM referral No.2010/159280). The following comments were provided in response to the proposed development:

No objection is raised in relation to the proposed development subject to the imposition of the following conditions relating to:

- (a) Trees
- (b) Landscaping
- (c) Existing trees which must be retained

Heritage Officer

The proposal was referred to Council's Heritage Officer for assessment as the site is in the vicinity of the Brookvale Brickworks site (TRIM referral No.2010/159437). The following comments were provided in response to the proposed development:

No.56A Consul Road is not a listed item of heritage significance under WLEP 2000, however adjoins the old Brookvale Brickpit site which is a listed item of heritage significance.

The Warringah Heritage Inventory identifies the site as being:

'Remnants of a series of industrial brick buildings with tall brick chimney stack retained in a group of modern residential flats. Corrugated iron gabled roof on large industrial building.

The kilns, industrial buildings and equipment have been retained in a new residential building complex completed in 2006. This serves to showcase the historical brick making purposes, equipment and uses while providing new residential accommodation in Brookvale.'

A Statement of Significance also identifies the significance of the site as being:

'One of the original industries which were set up in the area and which has continued as an operational brickworks from 1914 to its closure in 1998. Historically, it was significant for its use of original brick making machinery to make dry-pressed bricks, thought to be the last in

Sydney. However, as a result of a Development Application approved by Warringah Council in 2002 for residential and multi-unit housing to be incorporated into the buildings at the site, the existing land uses at the site have altered the original use of the site for manufacturing and processing industries. While much of the heritage has been protected, adapted and re-used, the fabric of the original items has been much altered by the development.'

Consideration of the proposed development:

The following considerations (adapted from the Heritage Manual of the NSW Heritage Branch) have been applied in assessing the impact on the heritage significance of the listed item:

- **How is the impact of the new development on the heritage significance of the item or area to be minimised?**

The proposed subdivision and construction of a new dwelling is confined within the boundaries of No.56A Consul Road and will not physically encroach into the former Brickpit Site.

As identified within the Statement of Significance, the former Brickpit Site has been subjected to substantial alterations and additions since the approval of a Development Application in 2002 for residential dwellings on the site. Notwithstanding, a substantial amount of original fabric remains, (chimneys, baking chambers etc). These key architectural elements will not be physically impacted by the development.

- **How does the new development affect views to, and from, the heritage item? What has been done to minimise negative effects? Will the additions visually dominate the heritage item? Is the new development sympathetic to the heritage item?**

The proposed work is sympathetic to the heritage item insofar as it does not result in any physical impacts on the significant fabric and is located at a far enough distance so as to not result in any visual impacts by virtue of building bulk, scale and encroachment of development. The chimneys are visually dominant architectural features of the former Brickpit site and can be seen from many vantage points within the locality.

The location of the proposed works at No.56A Consul Road will not unreasonably restrict views to and from the heritage item.

- **Will the public and users of the item, still be able to view and appreciate its significance?**

The subject site is located on a hillside and will still enable important views and vistas to the Brickpit site. As the proposed works are confined to No.56A Consul Road and do not encroach with the Brickpit site, there is sufficient separation between the subject site and the location of the proposed works that there will be no alteration to the public's ability to obtain visual or physical access to the Brickpit site.

Conclusion:

The proposed works at No.56A Consul Road do not physically impact on the identified heritage significance of the former Brickpit site. While the works are located on a hillside and will be visible from afar, the proposed development is considered satisfactory on heritage grounds.



Conditions recommended:

There are no conditions recommended.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPA 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	The proposed development achieves consistency with the following EPI's: - State Environmental Planning Policy No. 55 – Remediation of Land. - State Environmental Planning Policy (Infrastructure) 2007 The proposal is consistent with the Desired Future Character of the F4 – Brookvale Locality. Notwithstanding, it fails consistency with the General Principles of development and the variation to the Front Setback Built Form Control cannot be considered pursuant to Clause 12(b).
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on “Draft Environmental Planning Instruments” in this report. The proposed development is defined as a dwelling house and subdivision under the provisions of the Draft Warringah Local Environmental Plan 2000. Both are permissible subject to development consent.
Section 79C (1) (a)(iii) – Provisions of any development control plan	This application was notified in accordance with the 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 7 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. Accordingly, appropriate conditions of consent are recommended for imposition should this application be considered worthy of 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	(i) The proposed subdivision and dwelling house does not provide for development that will have minimal impact on the surrounding environment. Insufficient information has been provided to demonstrate compliance with the following: Clause 7 – matters for consideration in the subdivision of land. (ii) The proposed development will not have a detrimental social impact in the locality considering the residential character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use.
Section 79C (1) (c) – The suitability of the site for the development	The subject site is currently a single residential allotment within an established residential locality. The lot features limited access and steep topography causing constraints with regard to vehicle access. Whilst the proposal may comply numerically in terms of area, and regard has been shown for these two (2) key constraints, the

Section 79C 'Matters for Consideration'	Comments
	proposal fails to provide adequate engineering solutions for the Geo Technical Stability for the dwelling house and driveway and On – Site – Detention. Despite maintaining an appropriate land use, the site constraints do not allow the proposal in its current form to function as two (2) separate lots and therefore the proposal is not supported in terms of site suitability.
Section 79C (1) (d) – Any submissions made in accordance with the EPA Act or EPA Regs	See discussions on “ submissions” in this report.
Section 79C (1) (e) – The public interest	The proposal is not in the public interest due to its inappropriate nature in terms of the geo-technical constraints for the dwelling house and driveway and on-site detention. The location and topographical constraints of the subject site are such that the proposal will adversely affect the surrounding properties if the above matters are not compliant with the provisions of the WLEP 2000. In this regard appropriate on-site stormwater detention measures are to be provided and the geo-technical report is to provide recommendations for the construction of the driveway and dwelling house. On balance the proposal is not satisfactory in this regard as it will adversely affect the locality, in particular the surrounding properties immediately adjacent. Accordingly the proposal is to be refused on the basis that it is not in the public interest.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Under the provisions of the Draft Warringah Local Environmental Plan 2009 the proposed development is defined as follows:

“Dwelling House” - a building containing only one dwelling, and

“Subdivision” - the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition”. (The Environmental Planning and Assessment Act 1979, Section 4B)

Land Use Zone: *R2 Low Density Residential*

Permissible or Prohibited: *Permissible with consent (Clause 2.6 Subdivision—consent requirements)*

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
Minimum Subdivision Lot Size:	600m ²	Lot 1 - 698m ² Lot 2 - 1320m ²	YES	Not applicable
Rural Subdivision:	Not applicable	Not applicable	Not applicable	Not applicable
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	Not applicable	Not applicable	Not applicable	Not applicable

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

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. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the land use.

State Environmental Planning Policy – BASIX

A BASIX certificate has been submitted with the application. All required BASIX commitments have been noted on the application plans. Furthermore, if approval is granted, a condition of consent will be imposed requiring compliance with the requirements of the applicable BASIX certificate.

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 as a result the application was referred to Energy Australia who have provided conditions.

Warringah Local Environment Plan 2000 (WLEP 2000)

F4 – Brookvale Valley

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 proposal is defined within The Environmental Planning and Assessment Act 1979, Section 4B as a "Subdivision" being:

"The division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition".

The proposed development is identified as Category 2 – "Subdivision" in accordance with the Warringah Local Environmental Plan 2000 Clause 14(2) which states:

"Notwithstanding subclause (1), subdivision, other than when exempt development, is Category Two development".

The proposed development is also identified as Category 1 – "Housing" in accordance with the Warringah Local Environmental Plan 2000.

Housing is defined as follows:

"development involving the creation of one or more dwellings whether or not used as a group home"

As such, the proposal is permissible subject to development consent. The following is an assessment of the proposal against the relevant requirements of the desired future character statement for the F4 Brookvale Valley Locality.

The proposed development is considered to satisfy the applicable DFC statement for the reasons detailed hereunder:

- The proposed dwelling on the proposed lot 2, and the retention of the existing dwelling on the proposed lot 1 will maintain the detached style housing
- The proposal will maintain the established pattern and predominant scale of detached style housing characterised by landscaped front gardens and consistent front setbacks.
- The spread of indigenous tree canopy will be maintained where possible with replacement planting on-site to enhance the visual amenity.
- The proposal complies with the required housing density for the locality with surrounding allotments being regular in pattern with variations in site areas and battle-axe block configurations.

Built Form Controls (Development Standards)

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

Proposed Lot 1 (Existing Dwelling)

Built Form Standard	Required	Proposed	Compliance
Building Height	8.5m	As Existing	YES – As Existing
Upper ceiling	7.2m	As Existing	YES – As Existing
Front Setback	6.5m	8m	YES – As Existing
Rear Setback	6.0m	6m minimum	YES

Built Form Standard	Required	Proposed	Compliance
Side Setback	North 0.9m	1m	YES – As Existing
	South 0.9m	15m	YES – As Existing
Housing Density	1 dwelling per 600m ²	1 dwelling per 698m ² Not including access	YES
Landscaping	40% (279.2m ²)	46% (324m ²)	YES
Side Boundary Envelope	North 4m @ 45°	Complies	YES – As Existing
	South 4m @ 45°	Complies	Complies

Proposed Lot 2 (Proposed Dwelling)

Built Form Standard	Required	Proposed	Compliance
Building Height	8.5m	7.2m	YES
Upper ceiling	7.2m	5m	YES
Front Setback	6.5m	6m	NO – Refer to Clause 20
Rear Setback	6.0m	46m	YES
Side Setback	North 0.9m	1m	YES
	South 0.9m	17m	YES
Housing Density	1 dwelling per 600m ²	1 dwelling per 1320m ² Not including access	YES
Landscaping	40% (528m ²)	88% (1162 m ²)	YES
Side Boundary Envelope	North 4m @ 45°	Complies	YES
	South 4m @ 45°	Complies	YES

Clause 20(1) of WLEP 2000 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 not generally consistent with the General Principles of Development Control and does not qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is consistent with the Locality’s Desired Future Character Statement. Notwithstanding as the proposal fails to show consistency with the General Principles of Development Control the proposal fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1)

(iii) Relevant State Environmental Planning Policies

The proposal is considered to be consistent with all applicable State Environmental Planning Policies. Notwithstanding as the proposal fails to show consistency with the General Principles of Development Control the proposal fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1)

Summary

The proposal fails to show consistency with the General Principles of Development Control and therefore in accordance with Clause 20(1) of the Warringah Local Environmental Plan 2000 does not qualify to be considered for a variation to the Front Building Setback, Built Form Control development standard. Therefore the proposed non compliance is not able to be supported.

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	The proposal will not generate any excessive glare or reflection. If approval were to be granted a condition would be imposed in this regard.	YES – Subject to Conditions
CL39 Local retail centres	NO	Not Applicable	N/A
CL40 Housing for Older People and People with Disabilities	NO	Not Applicable	N/A
CL41 Brothels	NO	Not Applicable	N/A
CL42 Construction Sites	YES	If approval were to be granted a condition would be imposed to control the impacts associated with the construction of the proposed dwelling.	YES – Subject to condition
CL43 Noise	NO	Not Applicable	N/A
CL44 Pollutants	NO	Not Applicable	N/A
CL45 Hazardous Uses	NO	Not Applicable	N/A
CL46 Radiation Emission Levels	NO	Not Applicable	N/A
CL47 Flood Affected Land	NO	Not Applicable	N/A
CL48 Potentially Contaminated Land	YES	The site has been occupied by a residential land use. It is considered that the site will remain suitable for residential land uses and that no further investigation is required.	YES
CL49 Remediation of Contaminated Land	NO	Not Applicable	N/A
CL49a Acid Sulphate Soils	NO	Not Applicable	N/A
CL50 Safety & Security	NO	Not Applicable	N/A
CL51 Front Fences and Walls	NO	Not Applicable	N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	YES	The proposal has been referred to the both the Natural Environment Unit and Councils Landscape Officer. The information is considered to be satisfactory as it adequately addresses the provisions of the general principle and the legislative requirements of the Threatened Species Conservation Act 1995. No objection is raised to the proposed development subject to the imposition of conditions.	YES – Subject to conditions
CL53 Signs	NO	Not Applicable	N/A
CL54 Provision and Location of Utility Services	YES	Separate water sewer and electricity and telecommunications services would be required for the newly constructed dwelling. The provision of these services would be subject to condition were the proposal to achieve consent.	YES – Subject to Condition

General Principles	Applies	Comments	Complies
CL55 Site Consolidation in 'Medium Density Areas'	NO	No Applicable	N/A
CL56 Retaining Unique Environmental Features on Site	YES	The proposal has been referred to the Natural Environment Unit for assessment as the site contains native vegetation which is to be cleared to facilitate construction of the dwelling. The proposal is deemed to be satisfactory and is consistent with the provisions of the general principle. No objection is raised subject to conditions of consent	YES – Subject to condition
CL57 Development on Sloping Land	YES	The subject site is bisected by a large rock escarpment which is considered to be the dominant environmental feature of the site. The vehicular access for the proposed lots is to be along the ridgeline of this rock escarpment and shows regard for the slope and features of the existing site. The geo-technical report submitted to Council for assessment is deemed unsatisfactory as it does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. The report states that there are no structural, excavation and fill works for this development in section 10 which is clearly incorrect. Accordingly this is to be included as a reason for refusal.	NO
CL58 Protection of Existing Flora	YES	The proposal has been referred to the both the Natural Environment Unit and Councils Landscape Officer for assessment. The revised flora and fauna assessment is considered to be satisfactory as it addresses the provisions of the general principal and provides adequate measures for replacement planting on-site. If approval is granted conditions of consent are to be imposed in this regard.	YES – Subject to condition
CL59 Koala Habitat Protection	YES	The proposal has been referred to the Natural Environment Unit for assessment. The revised flora and fauna assessment is considered to be satisfactory as it addresses the provisions of the general principal and provides adequate measures for replacement planting on-site. If approval is granted conditions of consent are to be imposed in this regard.	NO
CL60 Watercourses & Aquatic Habitats	NO	Not Applicable	N/A
CL61 Views	YES	Clause 61 of the WLEP 2000 stipulates <i>"Development is to allow for the reasonable sharing of views"</i>. The proposal will have no unreasonable impact upon any views enjoyed from adjoining or nearby sites. Existing view corridors will be maintained as the proposal upholds the residential amenity of the locality.	YES
CL62 Access to sunlight	YES	The proposed dwelling allows for in excess of 2hrs of direct sunlight to 50% of the principle private open space of the subject and adjoining dwellings on 21 June. The proposal is compliant in this regard.	YES
CL63 Landscaped Open Space	YES	The proposal has been referred to Councils Landscape Officer. The information is considered to be satisfactory subject to conditions of consent. In this regard replacement planting is required on site to compensate for the removal of existing vegetation.	YES – Subject to condition

General Principles	Applies	Comments	Complies
CL63A Rear Building Setback	YES	The proposed lots and the proposed dwelling on lot 2 are sited and designed so as to allow for a sense of openness within the rear yards and to allow the establishment (and retaining of) native trees, maintain the amenity of adjacent land and maintain adequate levels of privacy between dwellings. The proposal is consistent with the General principle of Development Control.	YES
CL64 Private open space	YES	The proposal allows for areas of private open space greater than 60m ² on each lot and is compliant with this General Principle of Development Control.	YES
CL65 Privacy	YES	Clause 65 of the WLEP 2000 stipulates “ <i>Development is not to cause unreasonable direct overlooking of habitable rooms and principal private open spaces of other dwellings</i> ”. A review of the plans indicates that the proposed dwelling does not have any windows servicing living areas that result in overlooking of surrounding properties. The proposal is therefore satisfactory in this regard.	YES
CL66 Building bulk	YES	The proposed dwelling on lot 2 is 7.2m in height and compliant with the 8.5m height controls for the locality. The design of the dwelling presents as four separate levels and has the majority of the built form sited above the existing escarpment which is a landscape feature of the site. It is considered that the design results in the dwelling visually integrating with the escarpment. The dwelling proposed is considered appropriate in terms of bulk and scale, for the proposed lot.	YES
CL67 Roofs	YES	The proposed roof form will complement the local skyline and is integral to the style of the dwelling. The proposal will satisfy the objective of the General Principle.	YES
CL68 Conservation of Energy and Water	YES	A BASIX certificate has been supplied with the application, fulfilling the requirements of the General principle of Development Control in this regard.	YES – Subject to condition
CL69 Accessibility – Public and Semi-Public Buildings	NO	Not Applicable	N/A
CL70 Site facilities	NO	Not Applicable	N/A
CL71 Parking facilities (visual impact)	YES	All parking facilities are to be provided to the rear of the existing dwelling. The garage for the existing dwelling is to continue to service proposed lot 1, whilst the car parking areas for lot 2 are to be constructed as part of the works proposed. The parking area for proposed lot 2 is to the south of the proposed dwelling and is acceptable in terms of visual impact from the public realm.	YES
CL72 Traffic access & safety	YES	The proposed works will not substantially change the existing traffic access within the site. The proposal provides for adequate turning and passing areas and has demonstrated an ability to function adequately to service the development. Councils Development Engineers however have outstanding concerns with regards to the design of the driveway.	NO

General Principles	Applies	Comments	Complies
		The submitted geotechnical report by Jack Hodgson Consultants P/L dated 21 September 2009 does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. The report states that there are no structural, excavation and fill works for this development in section 10 which is clearly incorrect. This inconsistency is considered fatal to the application and carries sufficient determining weight to refuse the application.	
CL73 On-site Loading and Unloading	NO	Not Applicable	N/A
CL74 Provision of Carparking	YES	Both the existing dwelling and the proposed dwelling provide two (2) vehicle parking spaces on – site, compliant with the General principle of Development Control and the provisions of Schedule 17 Car parking.	YES
CL75 Design of Carparking Areas	NO	Not Applicable	N/A
CL76 Management of Stormwater	YES	The submitted geotechnical report has been assessed and is considered to be unsatisfactory. The report does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. The report states that there are no building plans for the lot which is clearly incorrect. The report must be amended to include recommendations for the dwelling and driveway construction. The applicant has also submitted an OSD design for proposed Lot 1. This design is not in accordance with Council's OSD technical specification and cannot be supported. This inconsistency therefore warrants refusal of the application.	YES
CL77 Landfill	NO	Not Applicable	N/A
CL78 Erosion & Sedimentation	YES	Development is to be sited and designed and related construction work carried out, so as to minimise the potential for soil erosion. If approval were granted appropriate conditions associated with management of erosion and sedimentation for the duration of works on the site.	YES – Subject to Condition.
CL79 Heritage Control	NO	Not Applicable	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	Not Applicable	N/A
CL82 Development in the Vicinity of Heritage Items	YES	This application has been referred as it is within the vicinity of an item of regional heritage significance, being the Austral Brickworks at 48A Consul Road. The brickworks site was listed as it was one of the original industries of the area and was still operating as a brickworks factory when assessed and listed. The proposed new dwelling will be located some distance from any buildings on the Austral Brickworks site and as such, there will be no impact from this application upon the remaining heritage significance of this site.	YES

General Principles	Applies	Comments	Complies
CL83 Development of Known or Potential Archaeological Sites	NO	Not Applicable	N/A

Other Relevant WLEP 2000 Clauses

Clause 21 provides that land can be subdivided with consent subject to the qualifying statements addressed as follows:

Can the resulting allotments be developed in accordance with the requirements of WLEP 2000?

The applicant has submitted plans showing the proposed subdivision and the proposed dwelling. The dwelling footprint indicates a non compliance with the front setback built form control. Additionally, as the proposal is not compliant with the General Principles of Development Control, the proposal does not qualify for consideration under the provisions of Clause 20(1) and therefore the proposed allotment may not be developed in accordance with the requirements of WLEP 2000 and therefore fails to achieve compliance with Clause 21. This inconsistency is considered fatal to the application and carries sufficient determining weight to refuse the application

Will the resulting allotments contain buildings of works lawfully created or approved?

Not applicable

Assessment Under Schedule 7.

See discussion on “Schedules – Schedule 7” in this report for consideration

SCHEDULES

Schedule 5 – Bushland in urban areas

The proposal has been referred to the Natural Environment Unit and is considered satisfactory as it adequately addresses the provisions of the schedule. No objection is raised in this regard subject to the imposition of conditions.

Schedule 7 - Matters of consideration in a subdivision of land

Environmentally sensitive/ constrained land

The site has been identified as a risk in terms of landslip. A geotechnical report was submitted, however was found to be unsatisfactory in terms of accuracy of information. The proposal is therefore considered inconsistent with the Schedule in this regard.

Drainage

The application was referred to Council's Development Engineer who provided the following comment.

The applicant has submitted a concept OSD design for proposed Lot 1. This design is not in accordance with Council's OSD technical specification and cannot be supported. The applicant must submit an OSD design including calculations and drawings in accordance with Council's OSD technical specification.

The proposal is considered to not meet the requirements of the Schedule and the proposal is non-compliant in this regard.

Restrictions

The imposition of a positive covenant or like instrument to ensure easements, right-of-way or other restrictions are retained for this purpose would be imposed as a condition of consent should the application be considered worthy of approval.

Access

The application was referred to Council's Development Engineer who provided the following comment.

The geotechnical report dated 21 September 2009 has been assessed and is considered to be unsatisfactory. The report does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2. The report states that there are no structural, excavation and fill works for this development in section 10 which is clearly incorrect. The report must be amended to include recommendations for the dwelling and driveway construction.

The proposal is inconsistent with the provisions of the schedule, accordingly this is to be included as a reason for refusal.

Bushfire

The proposed development is defined as integrated development under Section 91 of the EP&A Act 1979. The proposal was referred to the NSW Rural Fire Service seeking General Terms of Approval pursuant to Section 100B of the NSW Rural Fires Act 1997. The following GTA s have been provided in relation to the proposed development:

Design and Construction

The application was referred to Council's Development Engineer who stated the following:

"The submitted geotechnical report has been assessed and is considered to be unsatisfactory. The report does not provide any recommendations for the construction of the proposed dwelling or driveway to proposed Lot 2.

The report states that there are no building plans for the lot which is clearly incorrect. The report must be amended to include recommendations for the dwelling and driveway construction."

This information was not received by Council. Therefore satisfactory compliance with this requirement of Schedule 7 has not been achieved.

Lot Dimensions

Where housing is Category One development, minimum lot dimensions apply to proposed new lots. The following lot dimension standards apply:

Table 4: Lot Dimensions and Site Densities.

Proposed Lot	Proposed width	Required Width	Proposed Depth	Required Depth	Proposed Density	Compliant
Lot 1	24m	13m	28.4m	27m	1 per 694m ²	YES
Lot 2	13.5m		54m			

NOTE: For densities see "Proposal in Detail"

Accordingly, lots within the proposed subdivision comply with the density controls for the F4 Brookvale Valley Locality and are considered acceptable for subdivision.

Schedule 8 - Site Analysis

the proposal is non compliant with the General principles of Development Control, and therefore does not qualify for consideration under the provisions of Clause 20(1).

In terms of the proposed subdivision for one (1) lot into two (2) allotments, it is considered that the proposal is sympathetic to the natural features of the subject sites' landscape features and shows regard for the significant topographical features of the existing site.

Notwithstanding, the proposed dwelling cannot be approved in its current form pursuant Clause 20(1). As such the proposal is non compliant with the requirements of Schedule 8 – Site Analysis.

Schedule 17 – Car Parking Provision

Lot	Required	Proposed	Compliance
Lot 1	2 spaces per dwelling	2 spaces per dwelling	YES
Lot 2	2 spaces per dwelling	2 spaces per dwelling	YES

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan (adopted 10 June 2008)

Warringah Section 94A Development Contribution Plan (adopted 14 November 2006)

The proposal is subject to the application of Council's Section 94A Development Contributions Plan adopted by Council on 13 June 2006 and became effective on 17 July 2006.

Were the proposal to be approved the following monetary contributions would be applicable:

Warringah Section 94A Development Contributions Plan			
Contribution based on total development cost of \$ 239,573.00			
Contribution - all parts Warringah	Levy Rate	Contribution Payable	Council Code
Total S94A Levy	0.95%	\$2,276	Rams
S94A Planning and Administration	0.05%	\$120	Rams
Total	1.0%	\$2,396	

CONCLUSION

The site has been inspected and the application reviewed in accordance with the provisions of Sections 82A of the Environmental Planning and Assessment Act, 1979 and assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, the provisions of the relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000 and the relevant codes and policies of Council.

Upon review, the revised proposal fails compliance with the General Principles of Development, Schedule 7 –Matters for consideration in the Subdivision of Land, and Schedule 8 – Site Analysis. In particular the proposal fails to provide adequate stormwater and On – Site – Detention provisions to Council Engineers satisfaction and does not incorporate geo-technical considerations for the design and construction of the driveway .

Accordingly, it is recommended that Council as the consent authority refuse the subject application for the reasons detailed within the “recommendations” section of this report.

RECOMMENDATION (REFUSAL)

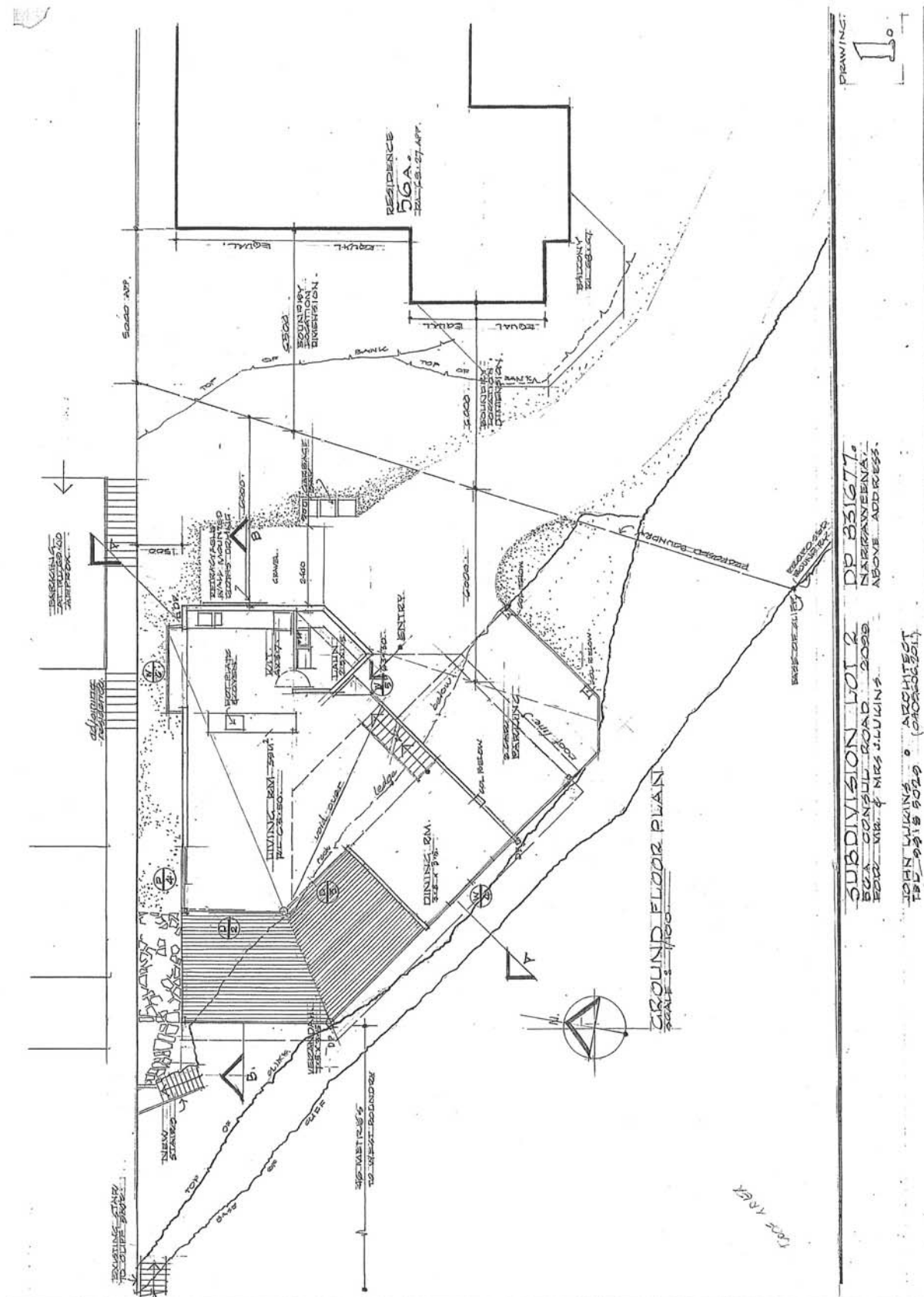
The determination (refusal) of Development Application No: DA2009/0991 (Reviewed under Section 82A review of determination REV2010/0010) for subdivision of 1 into 2 lots and construction of a dwelling house at Lot 2 In DP831677 56a Consul Road Naraweena be refused for the reasons detailed as follows:

- 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 provisions of Clause 21 as the proposal is not consistent with Schedule 7 - Matters of consideration in a subdivision of land.
- 2) Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following provisions of Warringah Local Environmental Plan 2000;
 - Clause 57 – Development on Sloping Land
 - Clause 76 – Management of Stormwater
- 3) 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 does not comply with Schedule 7 - Matters of consideration in a subdivision of land in terms of:
 - Environmentally sensitive/ constrained land
 - Design and Construction
 - Access
 - Drainage
- 4) 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 does not comply with Schedule 8 – Site Analysis as:
 - The subdivision may not be developed in accordance with the Warringah Local Environmental Plan 2000.
- 5) Pursuant to Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979 the proposed development is not suitable for the development in terms of topography and the resultant constraints related to vehicular access.
- 6) Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979 the proposed development is considered to not be in the public interest as the development does not comply with the relevant plans, policies and controls of Council and the relevant consent authorities.

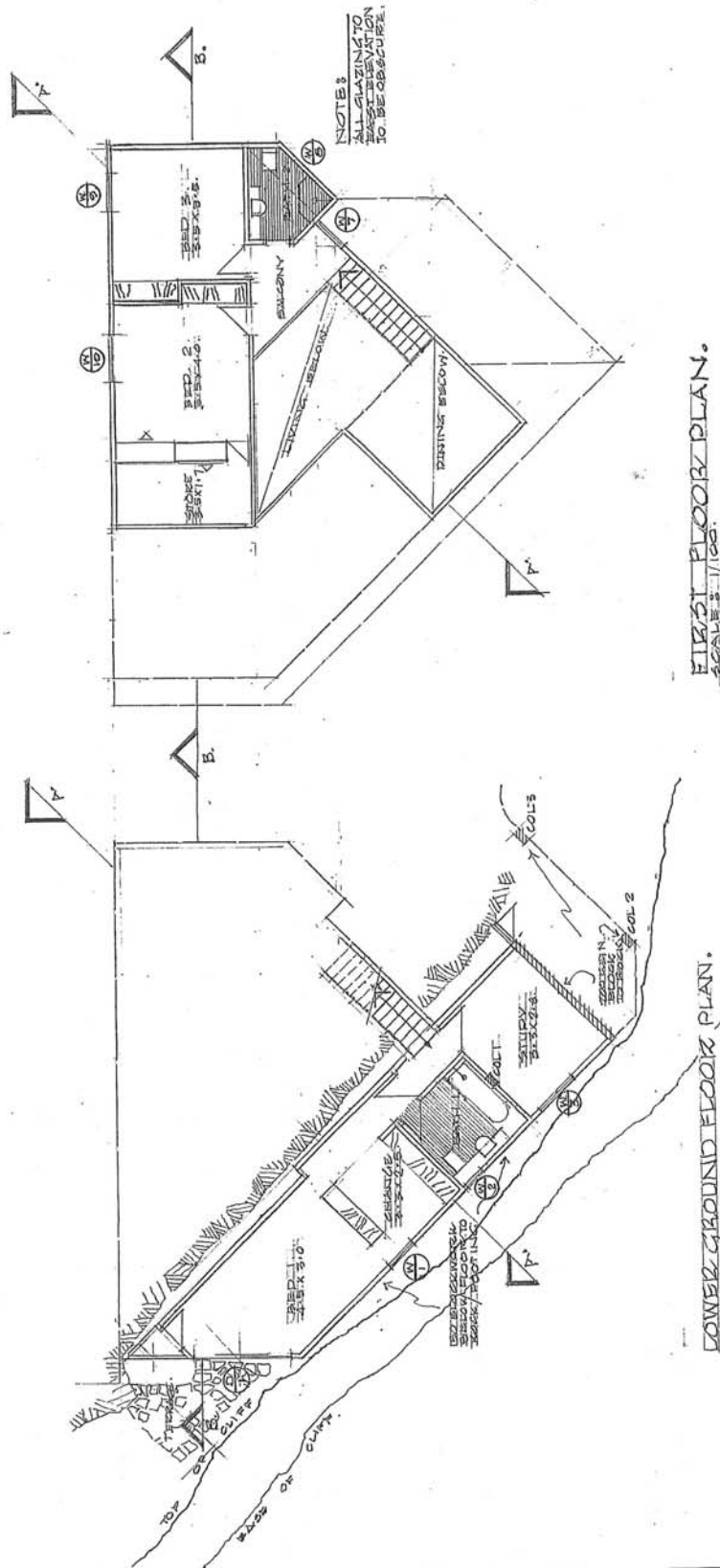


[illegible]

Subdivision, Site and Elevation Plans



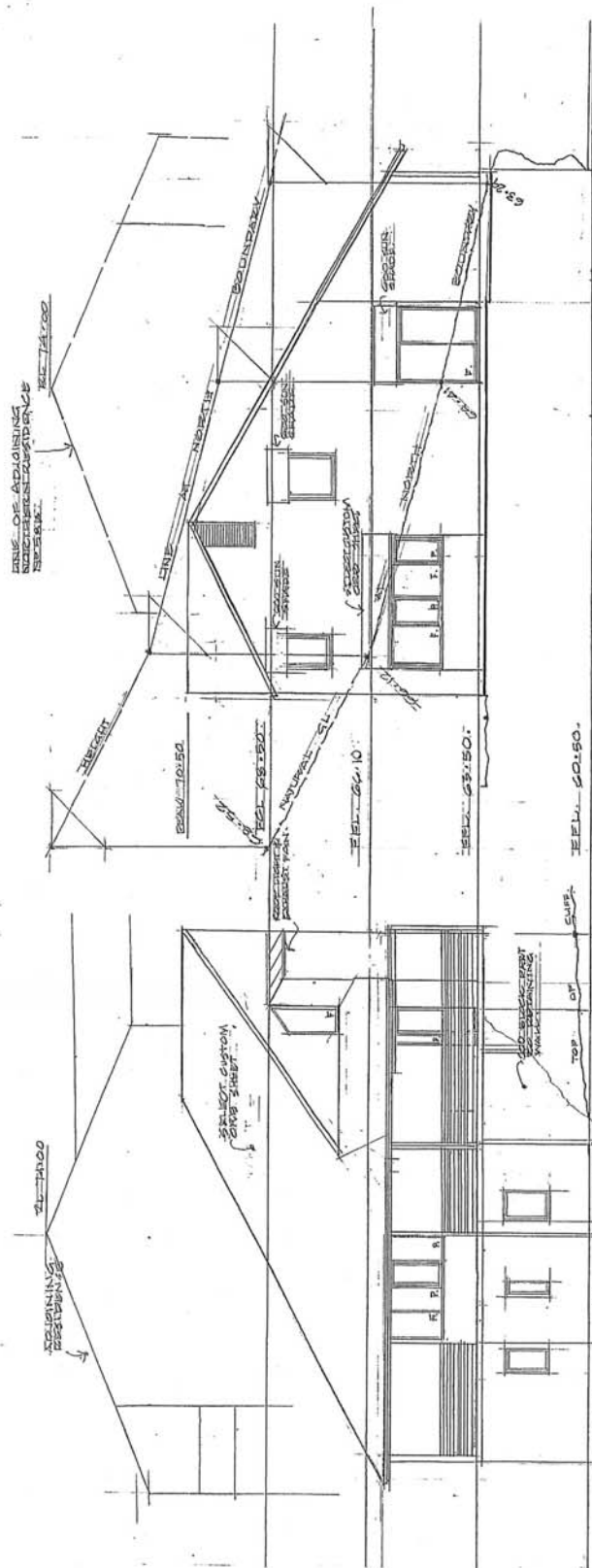
Subdivision, Site and Elevation Plans



20

SUBDIVISION LOT 2 DP 851671
FOR CONSTRUCTION OF A HOUSE
FOR MR & MRS LIVING
JOHN LIVING & MRS LIVING
REV 2010/0010 (2010/0010)

Subdivision, Site and Elevation Plans



NORTH ELEVATION.
SCALE 1/100.

SOUTH ELEVATION.
SCALE 1/100.

LEGEND:
F - FIXED GLASS
P - PARTIAL GLASS
D - DOUBLE GLAZING
TO SECTION

SUBDIVISION LOT 2 DP 83167
50A CONSID ROAD 2009
FOR THE FUTURE
JOHN LIVING 2009
FOR THE FUTURE
FOR THE FUTURE

DRAWING

1

SUBDIVISION LOT 2
EQA CENSIL ROAD 2000
BIO MR & MRS JULIUS Z

DP B31677
NARZANENAT
ACOVE ADDRESS

TOBEN LUKINS - NARZANENAT
TOBEN LUKINS - NARZANENAT
TOBEN LUKINS - NARZANENAT