

<b>JRPP No:</b>	2010SYE076
<b>DA No:</b>	DA2010/1494
<b>PROPOSED DEVELOPMENT :</b>	Construction of a Seniors Living Development made pursuant to SEPP (Housing for Seniors or People with a Disability) 2004 - Lots 808, 809, 812, 813, 817 DP 752038 - 70A Willandra Road, Narraweena.
<b>APPLICANT:</b>	Trustees Sisters Good Samaritan
<b>REPORT BY:</b>	Malcolm Ryan – Director of Strategic and Development Services for Warringah Council

### **Assessment Report and Recommendation**

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<b>Address / Property</b>	Lots 808, 809, 812, 813, 817 DP 752038 - 70A Willandra Road, Narraweena.
<b>Description:</b>	Construction of a Seniors Living Development made pursuant to SEPP (Housing for Seniors or People with a Disability) 2004.

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<b>Development Application No:</b>	DA2010/1494
<b>Application Lodged:</b>	16 September 2010
<b>Plans Reference:</b>	DA01:02 & DA01: 03 -dated 31/08/10, DA02:01 – DA02:24 - dated 28/08/2010, DA03:01 –DA3:02 - dated 25/08/2010, DA04:01 – DA04, DA5:00 – DA05:12 – 25/08/10, DA6.01, DA07:1 – DA07:02 – all dated 25/08/10 and all prepared by Saturday Studio.
<b>Amended Plans:</b>	No amended Plans were submitted as part of this application
<b>Applicant:</b>	Trustees Sisters Good Samaritan
<b>Owner:</b>	Trustees Sisters Good Samaritan

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<b>Locality:</b>	B2 Oxford Falls Valley
<b>Category:</b>	Category 2 (Housing for older people or people with a disability)
<b>Draft WLEP 2009 Permissible or Prohibited Land use:</b>	Prohibited Development
<b>Clause 20 Variations:</b>	Yes – Front Building Setback
<b>Referred to WDAP:</b>	No
<b>Referred to JRPP:</b>	Yes - (Capital investment value over \$10 million)
<b>Land and Environment Court Action:</b>	No

## SUMMARY

### Submissions:

A total of 191 submissions were received, which includes six (6 letters) in support of the application. A petition with 200 signatures (from 130 property addresses) and 55 individual letters of objections were all opposing the proposed development.

### Submission Issues:

Consistency with the Desired future character statement character of the area, overdevelopment, dwellings will not be occupied by 'seniors', traffic, parking, property values. Environmental impacts, bushfire impacts and evacuation plan, previous refusal relating to this site, merit assessment, impact on Narrabeen Lagoon, suitability of the site, and permissibility in accordance with draft LEP.

### Assessment Issues:

NSW Planning Assessment Commission (review of four sites within Oxford Falls Valley for Urban Development) April 2009, Draft WLEP 2009, State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, Strategic Implications, Desired future character statement, stormwater management, Residents Issues (Public Notification)

### Recommendation:

Refusal

### Attachments:

List of the Objectors  
Site Plan and Elevations

### LOCALITY PLAN (not to scale)



**Subject Site:** Lot 808, 809, 812, 813, 817 DP 752038 70A Willandra Road, Narraweena.

**Notification:** The application was advertised and notified in accordance with the Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2000 (WLEP 2000) and Warringah Development Control Plan. 358 adjoining property owners and occupiers were notified of the application by letter for the period of 30 days. The notification period was from 24/09/2010 to 27/10/2010. The application was also advertised in the Manly Daily newspaper on 22 September 2010.

## **SITE DESCRIPTION**

The subject site comprises five (5) parcels of land with a total site area of 17.46ha. The site is legally described as Lots 808, 809, 812, 813 and 817 in DP 752038 known as 70A Willandra Road, Narraweena.

The site is located in the eastern side corner of Lady Penrhyn Drive. It adjoins the Locality B8 - Red Hill locality on the western side of Lady Penrhyn Drive, which comprises residential dwellings with access from Lady Penrhyn Drive. The land to the south west of the site also comprises large residential dwellings on lots approximately 600sqm.

To the east the site adjoins the rear boundaries of 4 lots, each with a frontage to Willandra Road. These lots are currently vacant and are densely vegetated.

The northern and north eastern boundaries of the site are adjacent to four allotments also containing dense vegetation and no buildings. These lots are separated from the site by an unmade road in Crown ownership. Part of this road is currently used as fire trails for access to the single dwelling house located to the north of the site.

Dwelling to the south beyond the unmade road to the west, the site is bounded by two allotments, one with a frontage to Lady Penrhyn Drive. Both allotments are currently vacant and contain dense vegetation. The subject site and its surrounds contains remnant bushland.

## **LAND AND ENVIRONMENT COURT**

No Land and Environment Court action has been taken in relation to this application at the time of writing this report.

## **RELEVANT BACKGROUND**

### **DA1999/2494**

Council's records indicate that a previous Development Application (DA1999/2494) as a staged development for a Retirement Village containing 72 self serviced dwellings on Lot 808, 809, 812 and 817 was lodged with Council on 10 August 1999 under the provisions of the former State Environmental Planning Policy No. 5 (SEPP 5) and was subsequently refused at the Council meeting held on 2 March 2000 for the following reasons:

1. *The draft Warringah LEP 1999 prohibits SEPP 5 on numerous allotments forming part of the proposed DA;*
2. *The subject site only partially adjoins land which is primarily zoned for urban purposes;*
3. *The applicable Planning provisions in Warringah LEP 1985 and Draft Warringah LEP 1999 only permits dwelling houses at a very low density, well below that put forward by the proposed development;*
4. *The information accompanying the DA is not sufficient to satisfy the requirement of Clause 28 of Warringah LEP 1985;*
5. *The proposed development is contrary to the desired future character for Oxford Falls Valley (B2) as specified in the Locality Statement forming part of Draft Warringah LEP 1999;*
6. *Insufficient entry details have been provided to determine the suitability of access;*
7. *The proposed development will be highly conspicuous and will significantly alter the visual quality of the site;*
8. *Detailed landscape plans and surveys are required to clarify the proposed development;*
9. *Further site planning is required to appreciate the impact earthworks will have on the retention of rock platforms, existing slopes and proposed and existing vegetation;*
10. *The proposed development does not give adequate consideration to the potential bush fire threats posed to the development and the provision of fire fighting and mitigation measures to merit support;*
11. *inadequate levels of services provisions have been provided given that the development is for older people or people with a disability in a location distant from support services and with limited transport options apart from the use of the private motor vehicles and the proposed limited shuttle bus service;*
12. *Given the present road transport infrastructure, the increased number of residents will exacerbate existing difficulties experienced in the event of evacuation due to bushfire or other emergencies;*
13. *The DA represents the first stage of a five stage development to develop land zoned Non-urban (a1) and hence approval would set a precedent for future development in a locality which has been zoned to accommodate very limited development;*
14. *inadequate pedestrian access within the development; and*
15. *The public interest.*

A Class 1 Appeal was lodged with the Land and Environment Court against the Council decision but it was subsequently discontinued by the applicant.

### **DA2009/0238**

A previous Development Application No.2009/0238 was lodged with Council on 3 March 2009 for the construction of a seniors housing development comprising 66 self-contained dwellings, a village centre, roads, walking trails, car parking and associated landscaping and infrastructure works at the site.

On 22 May 2009, the applicant lodged a Class 1 appeal in the NSW Land & Environment Court against Council's deemed refusal. The application was reported to the Warringah Development Assessment Panel (WDAP) on 8 July 2009 with a recommendation for refusal. The WDAP Panel endorsed the recommendation of the Council's staff and refused the application.

The application was subsequently dismissed by the Land and Environment Court (Proceedings No. 100322 of 2009) on the 19 January 2010 based on the following contentions as summarised in the Judgement:

- *Suitability of the site in terms of strategic planning considerations and the scale of the proposed development, in terms of the intensity of use and environmental impacts concerning the extent of modification of the natural landform.*
- *The visual impacts of the Development.*
- *An ecological impact in terms of the effect on the threatened species of Rosenberg's Goanna (Heath Monitor) and the Southern Brown Bandicoot (SBB).*
- *Public interest matters.*

In dismissing this Application Commissioner Hussey in his judgement made the following relevant conclusions:

79. *The primary planning control in this matter is the SEPP (HSPD), which permits the retirement type development in the current "zoning" circumstances. The permissibility of this form of development is usually dependent on the specific land zonings in the relevant LEP, which in this case is WLEP 2000. Whilst the format of the current WLEP is different from other LEPs, nevertheless SEPP (HSPD) in cl 8 specifically permits such development in the B8 (Red Hill) area.*
80. *Insofar as WLEP 2000 utilises 'locality statements' to guide future development, the subject site is situated in the 'B2 Oxford Falls Valley Locality' and based on previous Court decisions dealing with the relationship of land zonings to 'locality statements', a suitable retirement village is permissible with consent.*
84. *My determination is based on the current SEPP and WLEP 2000 provisions where cl 29 (2) of the SEPP contains an important link between these controls. It requires the consent authority to take into account certain matters listed in cl 25 (5) (b). Of particular relevance, an assessment of the compatibility of the development with the natural environment is required together with the impacts in terms of the future uses of the land.*
85. *The design principles in Division 2 of the SEPP reinforce this consideration in that cl 33 requires the neighbourhood amenity and streetscape to recognise the desirable elements of the current character, as expressed in local planning controls and the desired future character statements, so that new buildings contribute (presumably in a positive way) to the quality and identity of the area*
86. *In this case then, there is the specific B2 Locality Statement that is relevant in my assessment. This requires the natural landscape to be protected, whilst allowing low intensity and density housing. As I have noted previously, an appropriate 'retirement village' is permissible on the site.*
87. *However it is apparent that this application seeks to optimise the development potential of the site. Whilst the proposal results in a low FSR of approximately 0.07:1, nevertheless this development is concentrated on the more prominent plateaux area. In order to satisfy the RFS conditions for the provision and maintenance of the APZ inner protection area, most of the mature vegetation on the plateaux will be removed. This is not consistent with the DFC.*
88. *The optimisation of the building form by way of the various building clusters and site benching to create the relatively level building platforms involves significant earthworks resulting in a series of retaining walls up to 3m high at the rear of the lower level courtyards.*

*This retaining wall element continues to the edge of the rock embankment where an enclosing wall up to 5m in height over 475m, is required to retain the filling.*
89. *Consequently most of the rock features of the site will be lost. The large-scale site regrading works also necessitate the removal of the hanging swamp, which is an attractive natural feature of the site. Overall the details shown in exhibit H indicate that the development site area on the plateaux will involve some 27000 cu m of cut and 18000 cu m of fill. In the circumstances of this case, I consider this level of earthworks is of a major scale causing significant impacts, which does not minimise disturbance to the landscape and landform as envisaged by the DFC.*



90. *As I have stated, it is my opinion that the proposed elongated form of development appears optimal in the existing bushland setting. From observations at the view, I am then satisfied that the building form from various external observation points will result in the development appearing as continuation of the building clusters along plateaux of an apparent intensity and bulk much greater than the nearby Red Hill estate. Combining this with the significant limitations on replacement landscaping, particularly canopy trees, so as to comply with the inner protection area APZ, it will have a negative visual impact and not positively contribute to the quality and identity of the area.*
92. *With regard to the ecological issues, I am satisfied that the site is ecologically sensitive and due care is required considering the extent of earthworks in effectively transforming the plateaux. Whilst comprehensive site investigations have been undertaken by highly qualified ecologists, significant disagreements still remain about the impacts of this proposed development.*
93. *Having considered the disparate opinions and in light of the diversity of species present, a cautious approach should be taken. I accept that an appropriate Conservation Management Plan can be finalised, which addresses the ongoing care of ecology. But I also accept the evidence that there is a local population of Rosenberg's goannas on the site that is likely to be placed at risk of extinction. Therefore, I rely on Dr. Wotherspoon's evidence that a SIS should be undertaken for this species prior to any development proceeding.*
94. *In the ultimate, I consider this site is not suitable for the proposal as it represents an overdevelopment of the site, which exceeds its environmental capacity. It is apparent that a smaller scale development, which incorporates more single level dwellings, would significantly reduce the extent of earthworks, including the substantial reduction in retaining walls, so as to more reasonably achieve the DFC vision. As such it does not adequately satisfy the provisions of cl 29, 25 (5) (b) and 33 of SEPP (HSPD).*
95. *I also give some weight to precedential considerations because of other similar development opportunities on nearby land. I also think that the PAC findings that further planning investigations are required prior to the intensification of urban development in this particular area should be heeded in terms of possible adverse "nibbling effects", which are contrary to orderly development considerations and the achievement of desirable environmental outcomes.*

The applicant within the Statement of Environmental Effect (SEE) submitted with the application notes that the current application has been designed to respond to the issues raised in the above judgment and has indicated that the current application has been amended with respect to the following:

- *"A reduction in the total number of dwellings from 66 to 51 dwellings (i.e. a reduction of about 22.7%). All 51 dwellings are low profile, freestanding single storey buildings (some of the dwellings have lower level garages).*
- *There are no proposed visible large and long retaining walls within the proposed Balise Eco Village development proposal. Instead, there is proposed to be generally small, battered slopes mostly constructed of sandstone rocks recycled from the site earthworks and with additional native landscape planting species within the Balise Eco Village proposal.*
- *The proposal will involve minimal site regrading with a significant reduction in cut and fill compared with the previous DA No. 2009/0238 - a reduction from about 27,000m<sup>3</sup> to about 9,000m<sup>3</sup> (i.e. a reduction of 66%). Note that about 3,500m<sup>3</sup> of excavated material is to be recycled in the proposal.*
- *The siting and design of the 51 single storey, detached dwellings in the Balise Eco Village proposal will sit lightly on the finished ground levels with suspended slabs and pier foundations, thereby minimising the cut and fill earthworks for the development proposal.*
- *All environmental initiatives in the previous DA No. 2009/0238 for a proposed seniors housing development at the site including flora and fauna mitigation measures, bushfire management, stormwater drainage and WSUD strategy will be implemented using best-practice construction management and maintenance procedures for the Balise Eco Village proposal at the site.*
- *Provision of on-site and off-site support services, adaptability of dwellings and access to community buildings and facilities will be maintained as proposed and accepted by Council in the previous DA No. 2009/0238.*
- *The site layout and design of the proposed 51 single storey, detached dwellings, community building, administration building, internal road layout, pathways, natural landscaping treatment, landscape rock batters and retaining walls, as well as ancillary infrastructure have been designed to ensure a minimal visual impact as viewed from the Oxford Falls Valley Locality including areas surrounding the Narrabeen*

*Lagoon as well as the neighbouring urbanised, low density residential suburbs of Red Hill, Narraweena, Beacon Hill and Cromer.*

- *The Balise Eco Village proposal will not be visible from Narrabeen Lagoon and its surrounds and overall the seniors housing proposal will not have a detrimental visual impact on neighbouring residential properties or surrounding localities as confirmed in the Visual Impact Assessment report prepared by Richard Lamb & Associates”.*

## **PROPOSAL IN DETAIL**

The application seeks consent for the construction of retirement village under the provisions of State Environmental Planning Policy (Housing for seniors and people with a Disability) 2004, comprising:

- Fifty one (51) serviced self care dwellings, containing 2 bedrooms (some dwellings also have a study), livings area, amenities and landscaped private open space including decks as well as a garage or carport (some at a lower level to the dwelling);
- An administration and assembly building with 3 consulting rooms, waiting lounge, accessible WC facilities, decks and 4 visitor staff and emergency parking spaces located on the southern side of the main entry/exit road to the proposal and fronting onto Lady Penrhyn Drive;
- A community building with stairs and a lift, reception lounge, private lounge, open lounge, dining room, bar, kitchen, office, reception, cinema, male and female WC, accessible WC, cleaner and store room, male and female change rooms and WCs, gymnasium, swimming pool at the upper ground floor level;
- The lower ground floor level of the community recreational building consists of an entry/lift lobby, 8 Visitor, staff and bus parking spaces, bin storage, laundry, and cellar and plant room. The community building is located towards the western boundary of the site in a central position within the Balise Eco Village proposal with vehicular access via the main loop road within the development proposal;
- Private access roads and a total parking provision for 63 vehicles consisting of 51 resident spaces and 17 visitor/staff/emergency and bus spaces access points is via Lady Penrhyn Drive;
- Provision of Asset Protection Zones and 2 additional bushfire emergency vehicular access points via Lady Penrhyn Drive;
- Paths and landscaping including retaining walls and stormwater drainage and WSUD and associated infrastructure.

## **STATUTORY CONTROLS**

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulation 2000
- c) State Environmental Planning Policy No. 55 – Remediation of Land
- d) State Environmental Planning Policy No. (Housing for Seniors or People with a Disability) 2004
- e) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- f) State Environmental Planning Policy (Infrastructure) 2007
- g) Warringah Local Environment Plan 2000
- h) Warringah Development Control Plan
- i) Warringah Section 94A Development Contributions Plan
- j) Draft Warringah LEP 2009.

## **EXTERNAL REFERRALS**

### **NSW Rural Fire Service**

The NSW Rural Fire Service has provided comments as the integrated authority (as defined by Section 91 of the EP & A Act 1979) and has issued A Bushfire Safety Authority under Section 100B of the Rural Fires Act 1997 along with general terms of approval on 12 November 2010.

However, it is noted that the Asset Protections Zones nominated by the NSW RFS for the western boundary of the subject site appear to encroach onto adjoining private land. Council is seeking further clarification in relation to this issue from the RFS and this advice will be forwarded to the Panel in a separate memo.

### **Aboriginal Heritage**

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

*"The Aboriginal Heritage Office considers that provided the rock outcrop noted in the report for Lot 808 is not impacted, and then there are no further Aboriginal heritage constraints on the proposed development. It should be noted that the Metropolitan Local Aboriginal Land Council recommended an additional walkover of sandstone outcrops after initial vegetation clearing. While it is considered the assessments to date have adequately covered all visible ground surfaces, the inspection of areas there are currently obscured by vegetation is warranted".*

**Comment:** The rock outcrop located on Lot 808 will not be affected by the proposal development and therefore based on the above advice the proposed development is consistent with requirements of Clause 83 of the WLEP 2000.

## **INTERNAL REFERRALS**

<b>Department</b>	<b>Comments Received</b>
<b>Strategy Planning (PDS)</b>	<p>Council's Strategic Planning Department has provided the following comments in relation to the proposed development:</p> <p><b><i>"Draft Warringah (Standard Instrument) LEP</i></b></p> <p><i>The draft Warringah LEP 2009 was certified by the Department of Planning on 9 September 2009 and publicly exhibited between 12 October and 30 December 2009. Council considered the outcomes of the exhibition process at its meeting of 8 June 2010 and forwarded a final draft LEP to the Department of Planning on 25 June 2010 together with Council's request that the Minister make the plan.</i></p> <p><i>Council has not received any formal notice from the Department in relation to the time frame for finalisation of the plan. However, when submitted in June 2010 officers of the Department advised (verbally) that they were seeking to finalise draft LEPs in a time frame of approx. 10 weeks from submission by Councils. This time frame had not been achieved nor has the Department provided any further advice (formal or informal) as to how long this process may take.</i></p>



Department	Comments Received
	<p><b><u>Submissions to the exhibition of the draft LEP</u></b></p> <p>Council received approximately 35 submissions to the draft LEP that made representation about land in the Oxford Falls Valley. Council's consideration of these can be viewed at item 4.1 to the Council meeting of 8 June 2010 – Attachment Booklet 4 Submissions Discussion, Part 5A. These submissions include representations on behalf of the owner of the subject site.</p> <p>In summary, in respect of the subject site, objection was submitted to the E3 Environmental Management zone as the proposed zoning:</p> <ul style="list-style-type: none"> <li>• is not a translation of the existing provisions of Warringah LEP 2000,</li> <li>• effects a down zoning of the land,</li> <li>• is contrary to the Standard (Local Environmental Plans) Order 2006 and Practice Notes issued by the NSW Department of Planning,</li> <li>• is contrary to the recommendations of the Planning Assessment Commission, and</li> <li>• Undermines and contradicts state environmental planning policies (past and current) in relation to provision of housing for seniors.</li> </ul> <p>In relation to this submission (and others relating to land in the B2 Oxford Falls Valley Locality), Council resolved to make no change to the draft LEP and full detail of consideration the issues raised by all submissions about land in the Oxford Falls Valley can be viewed in at the report referenced above.</p> <p><b><u>Strategic Planning team position re draft LEP</u></b></p> <p>The draft LEP remains in the final stage of the plan making process and to this extent it can be regarded as imminent. However, Strategic Planning is unable to provide any clear time frame for its finalisation.</p> <p>As the draft LEP is in its final stages of preparation it must be considered in the assessment process for this DA. The new LEP proposes to zone the land E3 Environmental Management and under the provisions of the SEPP seniors housing is not permitted on land that is environmentally sensitive. The proposed E3 zone is likely to render the land environmentally sensitive for the purposes of the SEPP and, once the LEP is in force, will preclude seniors housing on the land. Having regard to the stage that processing of the draft LEP has reached, the status of the application under the draft LEP must be given due consideration and should the application again come before the Land and Environment Court will have considerable relevance.</p> <p>Further comment in relation to the likely significance of the draft LEP in the assessment process cannot be made until such time as the Department of Planning has provided a response to Council's letter of 6 October 2010. Strategic Planning will provide an update as soon as this is available.</p> <p><b><u>Review of Housing Strategy in Warringah</u></b></p> <p>In May 2010 Council undertook a major community consultation event - Talk of the Town, as an initial tool for community engagement in developing Warringah's strategy to respond to the Metropolitan Strategy dwelling targets.</p> <p>The outcomes of this event were reported to Council on 22 June 2010 (item 9.4) and do not identify release of land in the Oxford Falls Valley for urban purposes as a means of meeting housing targets.</p> <p><b><u>Oxford Falls Regional Crown Reserve</u></b></p> <p>The Oxford Falls Regional Crown Reserve Plan of Management has been completed in draft form and was publicly exhibited between 10 September and 7 October 2010. A significant portion of the OFRCR adjoins the site to the north and through the draft Plan of Management has been identified for 'environmental protection'.</p>

Department	Comments Received
	<p>Hence, potential impacts of development up slope from the OFRCR continue to be relevant in consideration of this DA.</p> <p><b><u>NSW Planning Assessment Commission</u></b></p> <p>The PAC report was released in May 2009 and the accompanying news release by the Minister for Planning advised:</p> <ul style="list-style-type: none"> <li>• The PAC report advises that the relevant sites will not be capable of urban development for at least 10 years and until further studies are undertaken by Council.</li> <li>• The PAC's assessment states these sites do not meet the sustainability criteria, particularly in relation to transport, access, housing diversity and some environmental and land use conflict restraints.</li> <li>• Warringah Council is requested to undertake further studies to determine the cumulative impacts on the entire Oxford Falls Valley catchment area. These studies are to include transport and accessibility, management of bushfire hazard, water quality of the Narrabeen lagoon, flora and fauna protection and visual analysis.</li> </ul> <p>The Minister went on to acknowledge that the Department of Planning advises an additional 10,300 dwellings will be required in Warringah by the year 2031, but can be met mostly through infill development in the existing urban area. The Government's North East Subregional Strategy states that there is no necessity for the development of non-urban lands-that is, lands not already identified on the Metropolitan Development Program.</p> <p>In June 2009, the Minister for Planning wrote to Council advising of the findings of the report and requesting Council to carry out a number of studies in the Oxford Falls Valley catchment. The Minister suggested that the studies be undertaken over the next five years. She further suggested that upon completion of these studies Council would be in a position to determine appropriate areas for environmental protection and, if appropriate, any areas suitable for urban development.</p> <p>In August 2009 Council resolved to support the conclusions and recommendations of the PAC and the carrying out of further studies. In August 2009 Council also wrote to the Minister advising that it cannot commit to completion of the work within five years and requesting NSW Government assistance in resourcing the work. To date no discussion on the issue of resourcing the required work has occurred between the Department of Planning and Council.</p> <p><b><u>Previous Land and Environment Court action</u></b></p> <p>The previous development application (DA2009/0238) was appealed to the Land and Environment Court and the Manager Strategic Planning prepared strategic planning evidence for the Court. Issues addressed in that evidence (updated where appropriate by the above information) remain relevant to consideration of this development.</p> <p>The SEE (under Background, 2.2 Strategic Planning) reiterates the previous applicants (DA2009/0238) concern that the draft LEP is not a translation of Warringah LEP 2000, down zones the subject land and is not consistent with the PAC report. This view is not supported by Strategic Planning. The evidence prepared by the Manager Strategic Planning in respect of the L&amp;E Court appeal of DA2009/0238 addresses these issues and remains relevant to date.</p> <p>The evidence, under the heading Warringah LEP 2000 considers the previous development application against the provisions of Warringah LEP 2000. Whilst numerical data has changed (no. of dwellings, housing density and site cover), the strategic planning position contained in the evidence remains relevant.</p>

Department	Comments Received
	<p><b>Conclusion</b></p> <p><i>Whilst the merits of the development differ to those of the previous proposal, in terms of strategic planning outcomes, the development raises the same concerns. Council's new comprehensive LEP zones land in the Oxford Falls Valley for environmental protection. This is not a new position, rather it is one held by the Council for decades. The fact that seniors housing will be prohibited by the (Standard Instrument) LEP and the SEPP is a product of NSW Government policy in relation to lands identified as environmentally sensitive.</i></p> <p><i>The urban/ non urban fringe has been eroded over the last 3-4 decades by a number of land releases and seniors living developments. Strategic Planning is opposed to on going erosion of the boundary between urban and non urban land as it contrary to orderly development considerations and the achievement of desirable environmental outcomes".</i></p> <p><b>Comments:</b> The comments received from Council's Strategic Planning Department has been addressed throughout this report.</p>
Development Engineer	<p>Council's Development Engineer has reviewed the application with regards to the proposed On-site Stormwater Detention (OSD) and associated drainage design, and provided the following comments in relation to the proposed development:</p> <ol style="list-style-type: none"> <li><i>In order to adequately assess the stormwater drainage proposal, the applicant is required to submit the DRAINS and MUSIC computer model to Council for consideration.</i></li> <li><i>Summary design information is required <u>to be shown on the drawing</u>. The minimum information necessary to assess the application shall include all of the following:</i> <ul style="list-style-type: none"> <li>- total site area</li> <li>- design method</li> <li>- area to be routed through the OSD system</li> <li>- pre and post impervious areas</li> <li>- pre and post development site discharge values for the 5 year, 20 year and 100 year ARI storm event</li> <li>- portion of site to be routed through the OSD system</li> <li>- portion of the site bypassing the OSD system</li> <li>- orifice size and type of control specified</li> <li>- The volume of storage required and the volume of storage provided.</li> </ul> </li> <li><i>At least two (2) complete sections through the detention tank showing all dimensions must be shown on the plan. This is to include all finished surface levels in relation to adjoining properties, proposed and existing buildings, wall details, and the proposed batter treatment at the top end of the tank, etc.</i></li> <li><i>Further design information is required on the stormwater drainage plan. Reference is made to Council's OSD Technical Specification, Appendix 9, Sample Drawing No A4 9070A. The section of the detention tank should include the following:</i> <ul style="list-style-type: none"> <li>• Details of the silt trap, Maximesh screen, etc.</li> <li>• An orifice plate detail showing the centre line level of the outlet pipe and orifice.</li> </ul> </li> <li><i>Comments are to be obtained from Council's Natural Environment Department (NEU) with regards to the required means of stormwater discharge from the development, in light of the stormwater drainage requirements raised by Council in the previous Development Application DA2009/0238.</i></li> </ol>

Department	Comments Received
	<p><i>The stormwater drainage proposal is not satisfactory until the above issues are addressed. Amended stormwater drainage plans are to be submitted to Council for re-assessment, prior to the issue of the Development Consent.</i></p> <p><b><u>Traffic impact</u></b></p> <p><i>Intersection with Lady Penrhyn Drive is to be managed with a Council standard vehicle crossing along the existing eastern kerb alignment of Lady Penrhyn Drive.</i></p> <p><b><u>Water quality assessment</u></b></p> <p><i>Reference is made to the MUSIC computer model received by Council on 13 October 2010. The consultant advised that the brief explanatory note to assist with the interpretation of the model will be submitted to Council for consideration shortly. Council has not received the above documentation, to date.</i></p> <p><i>Council conducted a preliminary review of the MUSIC model and requires the consultant provide supporting evidence of the following for further assessment:</i></p> <p><i>i. Methodology used in the adoption of the input parameters in relation to urban source nodes used in the MUSIC model. The input parameters in the MUSIC model appear higher than expected, which would yield higher levels of pollutants than anticipated in the pre-development condition.</i></p> <p><i>Also, comments are to be obtained from Council's Natural Environment Department (NEU) with regards to the required means of stormwater discharge from the development, in light of the stormwater drainage requirements raised by Council in the previous Development Application DA2009/0238.</i></p> <p><b>Comment:</b> The concerns raised by Council's Development Engineer are further addressed under Clause 76 of this report. It should be noted that the concerns by Council's Development Engineer can readily be addressed by submission of additional information. However, this information was not requested as Council had fundamental planning concerns with the proposal as detailed through-out this report and as result it is recommended for refusal.</p>
<b>Traffic Engineer</b>	Council's Traffic Engineer noted that the development will generate a very low volume of traffic which would have a minimal impact on the road network. No objections were raised on traffic grounds.
<b>Waste Services Officer</b>	Council's waste officer has reviewed the proposal and has raised no objection to the proposed development subject to several conditions to be included in the consent if the application was recommended for approval.
<b>The Natural Environment Unit</b>	Council's Natural Environment section has reviewed the proposal and has raised several objections to the proposal which are discussed in detail under Clause 56 and 58 of the general principle section of this report.
<b>Landscape Officer</b>	<p>Council's Landscape Officer has reviewed the proposal and has provided the following comments:</p> <p><i>"The proposed works are considered to require a considerable and significant alteration to the existing landscape, that that alteration is required to be maintained in perpetuity to accommodate the requirements of Bushfire Protection and that the proposal will subsequently impact negatively in perpetuity on the B2 Locality and surrounding Localities.</i></p> <p><i>It is considered that the proposal fails the following with regard to WLEP 2000:</i></p>

Department	Comments Received
	<ol style="list-style-type: none"> <li>1. <i>Desired Future Character</i></li> <li>2. <i>General Principles of Development Control</i> <ol style="list-style-type: none"> <li>a. <i>Cl. 38 Glare &amp; Reflection</i></li> <li>b. <i>Cl. 56 Retaining Unique Environmental Features on Sites</i></li> <li>c. <i>Cl. 57 Development on Sloping Land</i></li> <li>d. <i>Cl. 58 Protection of Existing Flora</i></li> <li>e. <i>Cl. 66 Building Bulk</i></li> </ol> </li> <li>3. <i>Schedule 6 Preservation of Bushland</i></li> <li>4. <i>Schedule 5 State Policies – Bushland in Urban Areas</i></li> <li>5. <i>Draft WLEP 2009 – It is understood that the proposal would not be permissible under the Draft LEP</i></li> </ol> <p><i>The proposal is not supported in regard to Landscape Issues.”</i></p> <p><b>Comment:</b> The concerns raised by Council's Landscape officer are concurred with for the reasons detailed through out this report and included as a reason for refusal.</p>
<b>Environmental Health &amp; Protection</b>	Council's Health officer has reviewed the proposal and has raised no objection to the proposed development subject to conditions to be included in the consent if the application was recommended for approval.

## NOTIFICATION & SUBMISSIONS RECEIVED

The application was advertised and notified in accordance with the Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2000 (WLEP 2000) and Warringah Development Control Plan. 358 adjoining property owners and occupiers were notified of the application by letter for the period of 30 days. The notification period was from 24/09/2010 to 27/10/2010. The application was advertised in the Manly Daily newspaper on 22 September 2010.

A total of one hundred and ninety one (191) submissions were received in response to the notification period, which includes six (6) letters in support of the application. A petition with 200 signatures (from 130 property addresses) and 55 individual letters of objections were all opposing the proposed development. A list which includes the name and addresses of all the objectors is attached to this report.

The issues raised in the submissions are outlined below. A response to each issue follows:

### Increased Traffic, Traffic Conflict and Traffic Congestion

The following specific concerns have been raised in relation to the impact on traffic on surrounding roads as a result of the proposal:

- Vehicular access during emergencies via Lady Penrhyn Drive would create a bottleneck.
- The narrowness of the existing Lady Penrhyn Drive would create an undesirable situation of increased pedestrian/motorist incidents.
- The newly constructed roundabout at Supply Road and Lady Penrhyn Drive will exacerbate an already congested area and funnel traffic into the surrounding local road network which is considered to be too narrow and steep to cope.
- Pedestrian access/crossings are required on Lady Penrhyn Drive/Willandra Road junction to alleviate traffic conflict.

- Lack of a pedestrian pathway along Lady Penrhyn Drive to the Willandra Road/ Lady Penrhyn Drive roundabout.
- Inaccuracies with regard to motor vehicle volume as contained in the traffic report.

**Comment:** Council's Traffic Engineer has reviewed the proposed development and advised that the development will generate a very low volume of traffic, which would have a minimal impact on the road network. Council's Traffic Engineer raised no objections regarding the impact of the development on pedestrian safety. Based on the advice of Council's Traffic Engineer this issue does not warrant the refusal of the application.

#### **Inconsistency with the DFC of the B2 Oxford Falls Valley Locality**

The following specific concerns have been raised in relation to the inconsistency with the Desired Future Character as a result of the proposal:

- The proposed number of dwellings and design which is out of character with adjoining and surrounding developments.
- The proposal is totally out of character with the locality statement for the area.
- The proposed housing is too dense for this locality.
- The proposal will detrimentally alter the low-density, low impact uses character and atmosphere of the area resulting in an overall loss of amenity.

The proposal will have a significant environmental impact within the site and adjoining catchments

**Comment:** The proposal's consistency with the desired future character statement is considered under 'Warringah Local Environmental Plan 2000' in this report. In summary, the proposed development has been found to be inconsistent with the desired future character statement for the B2 locality and this issue has been included as a reason for refusal.

#### **Housing Density**

Concern has been raised that the development does not comply with the Housing Density Built Form Control under WLEP 2000.

**Comment:** The Housing Density Control does not apply to senior's housing development. Accordingly, this issue does not warrant the refusal of the application.

#### **Front Setback**

Concern is expressed that the buildings fail to provide a consistent setback to Lady Penrhyn Drive as the existing houses along the south-western side of Lady Penrhyn Drive.

**Comment:** This issue has been addressed in detail under 'Built Form Control' within the 'B2 Locality' section of this report. In summary, The non-compliance with the front setback is considered to be consistent with the surrounding development in the street. Accordingly, the concern raised does not warrant the refusal of the application.

#### **Landscaped Open Space**

Concern is expressed that the landscaped open space for the site does not comply with the Built Form Control.

**Comment:** A minimum of 30% of the site area is required to be landscaped open space in accordance with the SEPP (HSPD) 2004. The proposed development provides greater than 30% of the site is proposed to be landscaped open space which complies with the SEPP requirement. Accordingly, the concern raised does not warrant the refusal of the application.

#### **Construction Sites**

Concerns have been raised that the construction process associated with the development will create undue noise, pollution and traffic congestion in the immediate area.

**Comment:** The applicant submitted a Construction Management Plan (CMP) that addresses issues of the construction phase such as noise and dust generation during demolition, excavation and construction. In addition, if the application was recommended for approval suitable conditions could be imposed on any consent in regard to the control and mitigation of noise and dust from demolition, excavation and construction works. The concern raised is noted and could be addressed by way of conditions of the application was recommended for approval. .



**Non-conformity of the DWLEP 2009 zoning**

Concerns have been raised in relation to the proposed land use being described as prohibited under the draft Warringah (Standard Instrument) LEP 2009.

**Comment:** This issue has been addressed under “DWLEP 2009” of this report. In summary, under the provisions of the DWLEP 2009 the proposed development will be prohibited development and this issue has been included as a reason for refusal.

**Natural environment** The following specific concerns have been raised in relation to the impact on the natural environment as a result of the proposal:

- External economic impacts of the proposal would extensively damage the natural areas.
- The unsuitability of the terrain of the land for the proposal.
- Detrimental disturbance of the existing endangered fauna and flora such as the following but limited to the Southern Brown Bandicoot, Pygmy Possum, Australian Brush Turkey and a new species of cicada.
- The unacceptable impact on water quality of South Creek, Wheeler Creek and Narrabeen Lagoon catchments.
- The development would destroy large areas of natural landscape, vegetation communities and flora and fauna species.
- The proposed removal of distinctive environmental features such as rocky outcrops which would significantly alter the natural landscape is unacceptable as the removal of natural vegetation for the proposed development on top of Red Hill would “leave an ugly scar and massive development which will be highly visible on the hill”.
- The proposed replacement of natural land forms of impervious surface and an adverse impact on the natural and cultural landscape and high conservation values of the downstream habitat of Wheeler Creek.
- The proposal’s disregard of Warringah Creek Study recommendation of restricting the proportion of hard surfaces in the catchment of these creeks so that rainwater could soak into the ground and seep gradually through the terrain and then into the creeks is believed to be unacceptable by the respondents.
- Detrimental removal of the rocky outcrop would significantly alter the natural landscape.

**Comment:** This issue has been addressed throughout this report under General Principles 56 (Retaining unique environmental features on sites) and 58 (Protection of Flora and Fauna) of this report. In summary, the impact of the proposed development on the existing vegetation of the site has found to be unsatisfactory. These issues have been included as reasons for refusal.

**Potential Aboriginal heritage areas**

Concerns have been raised that there are a number of potential Aboriginal heritage sites identified in the area where evidence of Aboriginal occupation in the Catchment means that, even though no heritage sites have been formally identified on the subject site, the area has cultural and heritage values associated with this past use.

**Comment:** This issue has been addressed under Clause 83 of this report. In summary, council’s Heritage office has raised no objection to the proposed development. The issue raised in this regard does not warrant the refusal of the application.

**Misleading Information**

Concerns have been raised relating to inadequate and misleading details which include the following issues:

- The vehicular access to the proposed site is via Lady Penrhyn Drive instead of the site address of Willandra Road.
- The Statement of Environmental Effects claims that this development will not be visible from the surrounding area and there is no threatened species on this site.

**Comment:** The supporting documentation submitted with the development application describes the proposed development and provides information for Council to determine whether the proposal complies with all relevant controls. Council undertakes its own assessment of the proposal and considers the expert reports provided by the applicant. In this regard, the information provided by the applicant is not always agreed with or relied upon. Where Council cannot complete the assessment due to insufficient or inadequate information, the applicant may be requested to provide amended or additional details or use that issue as a reason for refusal. It is considered that the information submitted with the application was not adequate to allow for the complete and proper assessment of the application and these issues have been included as a reason for refusal.

<p><b>Planning Minister's 10 year moratorium on development</b></p> <p>Concerns have been raised over the proposal's intent to overturn the NSW Government's report to put a 10 year cessation on adjacent land owned by the Catholic Church.</p>
<p><b>Comment:</b> This issue has been addressed under the 'NSW Planning Assessment Commission' section of this report. In summary, the recommendation made by PAC in relation to this land is concurred with as the proposed development will have unacceptable environmental impacts.</p>
<p><b>Previous Development Application refusal</b></p> <p>Concerns have been raised with regard to the precedent as set out by a similar proposal being refused for similar issues raised in this current Development Application.</p>
<p><b>Comment:</b> In accordance with the provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000, Council is required to assess all development applications that have been lodged with Council on an individual basis and against the relevant planning controls, which applies to sites at the time of lodgement. Accordingly, the issue in relation to the precedent does not warrant the refusal of the application.</p>
<p><b>Devaluation of surrounding property</b></p> <p>Concerns have been raised that the proposed development will result in a devaluation of surrounding property prices due to overcrowding, congestion and a loss of amenity associated with this development.</p>
<p><b>Comment:</b> Property values are not a relevant consideration having regard to the Environmental Planning and Assessment Act 1979 and therefore no comment is provided in relation to this issue.</p>
<p><b>Unacceptable bushfire risk</b></p> <p>Concerns have been raised with regard to an unacceptable bushfire risk which include the following issues:</p> <ul style="list-style-type: none"> <li>• The expected climate change will bring an increase of severe bushfires like that of the 2009 Victorian bushfires.</li> <li>• The high fire risk is particularly unsuitable for seniors living.</li> <li>• The proposal provides inadequate fire evacuation remedies.</li> </ul> <p>The proposed Asset Protection Zone (APZ's) are extensive and would destroy huge areas of good bushland and habitat which would adversely impact on the aquatic habitat and riparian vegetation and further increase evaporation loss.</p>
<p><b>Comment:</b> The development application was referred to the NSW Rural Fire Service as an integrated development. A response was received from RFS granting a Section 100B Bushfire Safety Authority along with general terms of approval. The concerns raised in relation to the bushfire impact are noted, however they are not considered to warrant the refusal of the application given that the RFS have raised no objections to the development subject to conditions being imposed in any consent.</p>

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

Section 79C 'Matters for Consideration'	Comments
<b>Section 79C (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on "State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004", "State Environmental Planning Policy No. 55 – Remediation of Land", "State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004", "State Environmental Planning Policy (Infrastructure) 2007" and "Warringah Local Environmental Plan 2000" in this report.

<b>Section 79C 'Matters for Consideration'</b>	<b>Comments</b>
<b>Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	The proposed development is inconsistent with the requirements of the Draft Warringah Local Environment Plan 2009 (Draft WLEP 2009). This is discussed under the Draft WLEP 2009 section of the report.
<b>Section 79C (1) (a)(iii) – Provisions of any development control plan</b>	The application was notified in accordance with Warringah Development Control Plan.
<b>Section 79C (1) (a)(iia) - Provisions of any Planning Agreement or Draft Planning Agreement</b>	None applicable.
<b>Section 79C (1) (a)(iv) - Provisions of the regulations</b>	Clause 98 of the Environmental Planning and Assessment Regulation 2000 states that a prescribed condition of consent is that the work is to be undertaken in accordance with the Building Code of Australia (BCA). If the application is approved a condition of consent could be included in the recommendation to ensure that the proposal complies with the BCA.
<b>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.</b>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control table in this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable.</p> <p>(ii) The development will provide housing designed specifically for seniors or people with a disability and therefore the development ensures that the housing stock caters for a broad cross section of the community. The proposed development will not therefore have a detrimental social impact on the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p>
<b>Section 79C (1) (c) – The suitability of the site for the development.</b>	<p>The site is not considered suitable for the proposed development as the application has been assessed to be inconsistent with provisions of SEPP (HSPD), the DWLEP 2009, the DFC and several general principles as contained in WLEP 2000.</p> <p>Further, the site is not suitable for this form of development given its remoteness from required facilities. The proposal has:</p> <ul style="list-style-type: none"> <li>• Not readily accessible public transportation available within close proximity of the site; and</li> <li>• Is inappropriate development given the historic and cultural significance of the area and lack of information provided to determine its impacts;</li> </ul>
<b>Section 79C (1) (d) – Any submissions made in accordance with the EP&amp;A Act or EP&amp;A Regulation</b>	In regards to public submissions refer to the discussion on "Notification & Submissions Received" within this report. In summary, the public submissions received raise a number of issues which warrant the refusal of the application.
<b>Section 79C (1) (e) – The public interest</b>	<p>The provision of housing for seniors or people with a disability is generally in the broader public interest.</p> <p>The development is not however in the narrower sectionalised</p>

Section 79C 'Matters for Consideration'	Comments
	<p>public interest as the development has been found to be inconsistent with the provisions of SEPP (HSPD) 2004, Draft WLEP 2009, and DFC and several general principles as contained under WLEP 2000.</p> <p>Particularly, the proposed development is also not in the public interest for the following reasons:</p> <ul style="list-style-type: none"> <li>• Allowing residential development on the site undermines the strategic planning work carried out by Council which has identified the locality as being unsuitable for senior's development as evidenced by the provisions applying to the site under Draft WLEP 2009.</li> <li>• The prohibition of seniors housing development within this site will identify this site as being "Environmental Sensitive" within Schedule 1 of SEPP (HSPD) 2004 and therefore the proposed development will also become prohibited development under provision of the SEPP (HSPD) 2004.</li> <li>• The strategic planning undertaken as part of the Draft WLEP 2009 ensures the growth in the number of development for seniors living within Warringah is controlled, manageable and sustainable. Varying the aims and objectives of the Draft WLEP 2009 without a proper consideration of the strategic plan for the growth of the locality will contribute to uncontrolled and uncoordinated development within the locality.</li> </ul> <p>It is therefore considered the implications of varying the controls within the Draft WLEP 2009 to the extent proposed by this application will result in uncontrolled uncoordinated development which is not consistent with the <i>objects</i> of the EP&amp;A Act, specifically the object in Clause 5(a) (ii) which is '<i>the promotion and co-ordination of the orderly and economic use and development of land</i>'.</p> <p>For the reasons stated above, the proposal is not considered to be in the public interest.</p>

## NSW Planning Assessment Commission

The Planning Assessment Commission (PAC) was appointed by the Minister for Planning in December 2008 to establish if any of the sites in Oxford Falls Valley are capable of urban development. The review states:

*"To establish if any sites in Oxford Falls Valley identified in the map tagged 'A' are capable of urban development and are of sufficient size to function as an urban released area, taking into consideration the sustainability criteria in the Metropolitan Strategy and relationship with existing urban development and current and potential servicing capacity and transport services"*

The subject site, together with the nearby land in the B2 Oxford Falls Valley Locality is included within the defined study area. The PAC report was finalised and provided to the Minister on 30 April 2009 with the following conclusions:

1. *None of the four sites substantially meets the sustainability criteria as required by the Metropolitan Strategy. (The Commission notes that under the Strategy there is no need for any of the sites to be developed for urban purposes in the next 10 years. Although the Strategy Plans to 2030, it will be reviewed in 5 and 10 years.)*
2. *The site fails to meet the sustainability criteria relating to access because of their distance from key centres and from public transport. Furthermore, the sites are too small and dispersed to justify increased public transport and local services and therefore too small to function as release areas.*
3. *The low density housing generally proposed on the sites is not the kind of housing needed in the subregion.*
4. *There is a potential land use conflict with the Earth Satellite station in Oxford Falls West, particularly for Lizard Rock and Oxford Falls West.*
5. *Parts of the four may be able to meet the sustainability criteria related to environmental constraints. However, the cumulative impact of development on the sites must be assessed before any decisions are made to release the land for urban development.*
6. *The assessment of cumulative impact requires an assessment of the impact of future urban releases areas in the whole Oxford Falls Valley area. This requires the update or completion of future studies.*

In summary, the Commission has concluded that on the basis of the information available to it for each site, that none of the sites will be capable of urban development for at least 10 years. This conclusion was reached after assessing the sites against the sustainability criteria in the Metropolitan Strategy and against the Draft NE Subregional Strategy. The issue of sites not substantially meeting the sustainability criteria, particularly in relation to transport, access, housing diversity and some environmental and land use conflict constraints was also raised by the Commission.

Furthermore, the Commission noted that none of the sites are of sufficient size to function as an urban release area. They are too small and dispersed to justify the increased public transport and local services required to meet the sustainability criteria.

Of relevance to consideration of the subject application, the report acknowledges the catchment importance of the valley in its role as land for the Narrabeen Lagoon and expresses concern about the cumulative impacts of multiple limited land release before further appropriate strategic assessment is undertaken.

Council has been advised that the PAC has provided its final report to the Minister. However, Council has not been advised of the content of the report and there are no statutory requirements in relation to timing or outcome of the Minister's consideration of the review. The site is the subject of the PAC review, however this application has been lodged prior to the outcome of the review. There are no statutory requirements for Council to refuse the application on the outcome of this report. It is however pertinent that the environmental impacts and cumulative impacts of the proposal on the subject site is assessed to be unacceptable for the reasons outlined through out this report and therefore the findings of this report are considered to be relevant in the assessment of this application.

## **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:**

### **Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)**

The public exhibition of the draft WLEP 2009 commenced on 12 October 2009 and ended on 30 December 2009. The draft LEP was adopted by Council at its meeting held on 8 June 2010. The draft WLEP 2009 is therefore a mandatory matter for consideration under Section 79 C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979.

**Definition:** Seniors Housing

**Land Use Zones:** E3 Environmental Management

**Permissible or Prohibited:** Prohibited Development

**Additional Permitted uses for particular land (Refer to Schedule 1):** No

Under the provisions of the DWLEP 2009 the subject site is located within the E3 Environmental Management zone. Within this zone, the proposed development (being Seniors Housing) will be prohibited development. The prohibition of senior's housing development within this site will also identify this site as being "Environmental Sensitive" within Schedule 1 of SEPP (HSPD) 2004 and therefore the proposed development will become prohibited development under the provisions of SEPP (HSPD).

The applicant within the SEE has acknowledged the fact that seniors housing development will be prohibited development under the provisions of the DWLEP 2009 as well the SEPP (HSPD) and has provided the following statement in support of the application.

*"Notwithstanding, (the current status of the draft LEP) we have been informed by the Department of Planning that DWLEP 2009 is still under review in respect to several matters and that the site along with other nearby properties in this locality are likely to be a deferred matter and, accordingly, will not be zoned E3 – Environmental Management Zone under DWLEP 2009."*

On 6 October 2010 Council wrote to the Department seeking clarification of the above statement provided by the applicant.

The Department responded by letter dated 15 October 2010, with the following advice:

*"The Minister has received a number of submissions in relation to land at Oxford Falls Valley which has objected to the E3 – Environmental Management zoning of the land and have requested that either all or part of the Valley be deferred from the LEP pending the outcome of the Planning studies recommended to be undertaken by the Planning Assessment Commission."*

*As part of the LEP process, the Department will consider all representations made concerning the draft Plan in its report to the Minister. The Department will consider options to resolve the issues raised in the submissions. One option may include deferral of Oxford Falls Valley from the draft Plan until the recommended studies have undertaken."*



*However, I can confirm that no decision, nor recommendation, with regard to land at Oxford Falls Valley has yet been made.*

*The draft LEP is currently with Parliamentary Counsel. Once the Department has received the final version of the draft plan from Parliamentary Counsel, this will be forwarded to Warringah Council for Consultation”.*

According to the above advice from the Department, the DWLEP is still considered both imminent and certain in relation to this particular site and therefore must be taken into consideration. The relevance of a draft LEP and the weight to be given to it relies on the facts of the particular case and circumstances which have been highlighted by numerous Land and Environment Court cases including *Mathers v North Sydney Council* [2000] NSWLEC 84, *Haywood and Bakker Pty Ltd v North Sydney Council* [2000] NSWLEC 138 *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279).

In summary, the primary principles arising from Land and Environment Court cases are that the weight to be placed upon a draft LEP, when determining a development application depends on:

1. The imminence of the draft LEP and the degree of certainty that it will come into force;
2. The extent of conflict between proposed development and planning objectives contained in the draft LEP; and
3. The existence and applicability of savings provisions in the draft LEP.

### **Council's Assessment**

1. **The imminence of the draft LEP and the degree of certainty that it will come into force.**

Comment: The draft WLEP 2009 has completed the public exhibition process, adopted by Council and subsequently forwarded to the Department of Planning for gazettal. In this regard, the plan is considered both imminent and certain. On this basis, the draft WLEP 2009 is required to be given weight in the consideration under Section 79C of the EP & A Act, 1979.

2. **The extent of conflict between the proposed development and the planning objectives contained in the draft LEP.**

Assessments of the proposed development in relation to the objectives of the E3 zones are as follows:

- ***To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.***

**Comment:** The proposed development will result in significant impacts upon site vegetation and topography which has significant cultural and aesthetic value. The proposed development will result in removing and modifying approximately 50% of the development site to accommodate the proposed development along with the associated infrastructure and provision of asset protection zones. Accordingly, the proposed development is found to be inconsistent with this objective.

- ***To provide for a limited range of development that does not have an adverse effect on those values.***

**Comment:** The proposed development will result in removal and modification of approximately 50% of the natural bushland area, which is considered to be significant value in the locality in order to accommodate the proposed development. The proposal will have adverse impacts on the vegetation of the site and therefore the proposal is found to be inconsistent with this objective.

- ***To ensure that development by way of its character, design, location and materials of construction is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.***

**Comment:** The proposed development along with most visibly prominent the infrastructure needed to support the development will be located at the highest point of the site and therefore the visual impact of the proposed development along the ridgeline will be unacceptable and would not fit within the context of the surrounding development when viewed from various vantage points. Accordingly, the proposed development is found to be inconsistent with this objective.

- ***To protect and enhance the natural landscape by preserving remnant bushland and rock outcrops and by encouraging the spread of indigenous tree canopy.***

**Comment:** The proposal is inconsistent with this objective as the development will result in an unacceptable environmental impact. In this regard, the natural landscape of the site is distinctive with significant environmental features such as rock outcrops, natural drainage features and remnant bushland which are not retained or complemented by the development. This is the result of the proposed building footprint and associated works including the level of excavation, vegetation and topographical variation and the provision of the asset protection zones required for bushfire protection. Accordingly, the proposed development is found to be inconsistent with this objective.

- ***To protect and enhance visual quality by promoting dense bushland buffers adjacent to major traffic thoroughfares."***

**Comment:** The development has not been designed in order for buildings and works to be integrated into the site to minimise disturbance of vegetation and landforms due to a high level of impact upon site vegetation and topography through the removal and modification through significant levels of excavation, fill, construction, under-scrubbing, tree removal of approximately 50% of the development site as a result of the proposed development and provision of asset protection zones. The proposed development is therefore found to be inconsistent with this objective.

### **3. The existence and applicability of savings provisions in the draft LEP.**

**Comment:** In relation to the third principle, the draft WLEP 2009 contains a savings provision under Clause 1.8A which states:

*"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced".*

Reference is made to the Land and Environment court case, *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279, where the judgement

summarises the weight to be given to a draft LEP, particularly in the circumstance when the document was a draft when the application was lodged and has since been gazetted with a transitional provision.

*“49 The fact that LEP 2010 has been made ensures that the plan is certain and imminent and accordingly, that plan must be given significant weight in the determination of the application. However, due to the savings provision, the inquiry does not stop there. In Blackmore at [30], Lloyd J states:*

*30. Whether one applies the test of “significant weight”, or “some weight”, or “considerable weight” or “due force” or “determining weight” to the later instrument is not, however, the end of the matter. The savings clause still has some work to do. The proposed development is a permissible development by dint of the savings clause. In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith. Various expressions have been used to define this concept, but the approach which has been favoured in the Court of Appeal is to ask whether the proposal is “antipathetic” thereto (Coffs Harbour Environment Centre Inc v Coffs Harbour City Council [1991] 74 LGRA 185 at 193).”*

Comment: The draft WLEP 2009 is currently a draft document (at the time of writing this report) and has not commenced. Therefore, in accordance with the above judgement the proposed development cannot be supported as it is found to be inconsistent with the aims and objectives of the E3 Environmental Management zone.

### **Principal Development Standards:**

The only development standard under the Draft WLEP 2009 that is relevant to the assessment of this application is the building height control. The proposed development achieves compliance with the development standard in relation to building height as demonstrated in the table below:

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Building Height	8.5m	All buildings are below 8m height limit.	Yes	Not Applicable

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)**

### **State Environmental Planning Policies (SEPPs)**

Further consideration is required for the following State policies:

#### **State Environmental Planning Policy No. 55 – Remediation of Land**

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

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

A preliminary Stage 1 Environmental Site report prepared by Environmental Investigation Services (EIS), dated August 2010 was submitted with the application.

The report concludes the following;

*“The preliminary Stage 1 environmental site screening undertaken for the proposed retirement village at 70A and Lot 817 Willandra Road, Beacon Hill, NSW, was designed to assess the risk of contamination of the sub-surface soils.*

*The site assessment included performance of a site inspection, review of historical site use, including examination of regional aerial photographs and review of geology and groundwater conditions.*

*Based on the scope of work undertaken for this assessment EIS considers that the risk of widespread significant contamination of the site is low. The investigation indicates the site to have been undeveloped bushland since 1930. Traces of asbestos cement fragments were observed on the surface at a number of locations across the site. However, this appeared to have associated with small scale tipping rather than major dumping of filling activity .EIS are of the opinion that the site can be made suitable for the proposed development provided that:*

- i) An asbestos management plan (including OH&S) is prepared by a suitably qualified consultant that addresses removal of asbestos fragments from the site. The plan should also include a contingency plan that can be implemented if further asbestos containing materials are encountered during clearing of the site.*
- ii) All asbestos removal works should be undertaken by an AIS licensed asbestos removal contractor;*
- iii) In the event that any unexpected buried materials are encountered during site clearing or development EIS are notified immediately so that the material can be inspected and assessed.”*

Council’s Environmental Health Officer has reviewed the report prepared by EIS and raised no objections subject to EIS recommendations in relation to safe removal of asbestos materials from the site as conditions of any consent.

As the land will be suitable for the proposed development, the requirements of SEPP 55 have been addressed.

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) applies to the development.

A BASIX Certificate has been submitted with the plans. The certificate confirms that the proposed development meets the NSW government's requirements for sustainability. The development meets the water and energy performance targets and achieves a pass for thermal comfort. Conditions should be included in any consent if the application is approved to ensure compliance with the commitments listed in the BASIX certificate.

### **State Environmental Planning Policy (Infrastructure) 2007**

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; or*
- *Within 5m of an exposed overhead electricity power line.*

The application was referred to Energy Australia to determine if the subject site was within or immediately adjacent to any of the above electricity infrastructure. Energy Australia, by letter dated 21 September 2010 stated that the subject site was not affected by any of the above electricity infrastructure. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

### **State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

The development application has been made pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD). An assessment of the proposed development against the provisions of SEPP (HSPD) 2004 is as follows:

#### **Chapter 1 – Preliminary**

The aims of the Policy are set out in Clause 2 and are as follows;

*'This Policy aims to encourage the provision of housing (including residential care facilities) that will:*

- a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- b) make efficient use of existing infrastructure and services, and*
- c) be of good design.'*

In relation to the first aim of the policy, whilst the proposed development would increase the supply and diversity of residences within the Warringah LGA, the location of the proposed development is considered to be such that it will not meet the needs of seniors or people with a disability given its difficult access to the required facilities and to the public transport.

The proposed development is inconsistent with the second aim which requires that development is to make efficient use of the existing infrastructure and services. The proposal fails to achieve this aim given the level of infrastructure that is needed to be constructed to cater for the development including internal roads and site facilities given that

such facilities are not readily available to residents within the required 400m distance. This is evident as the applicant is proposing to provide a private bus service for the residents to commute to the larger centres such as Dee Why and Warringah Mall. If the development was to appropriately make use of existing infrastructure and services the necessity to create private transport links for residents would not be required as the development would link into the existing public transport system which in turn would then make those systems more effective and more cost efficient.

When considering the development against the aim of achieving good design, the development must be considered in context with other provisions of the SEPP. In this regard, it is acknowledged that the applicant has made a considerable effort to provide a design that provides high levels of amenity to residents through good cross ventilation, solar access and it also respects the amenity of the adjoining properties through physical separation and screening where required. However, concerns are raised in relation to the visual impact of the development and how it will fit with its context, particularly when viewed from the public domain in areas such as Narrabeen Lake and various other vantage points in Warringah/Pittwater LGA.

Accordingly, the proposed development has been found to be inconsistent with aims of this policy and this issue has been included as a reason for refusal.

## **Chapter 2 – Key concepts**

Clause 15 limits the type of housing that can be provided under the provision of SEPP (HSPD) 2004 on land that adjoins land zoned primarily for urban purposes. This includes 'Serviced Self Care Housing' and this application has been lodged under the definition of 'Services Self Care Housing'.

The definition of the 'Serviced Self Care Housing' is provided within Clauses 3, 13 and 42 of the SEPP (HSPD) policy, which requires that a range of services must be provided for residents in order for the development to be considered under the definition of 'Services self-care housing'.

Clause 42 "Serviced Self Care Housing' of SEPP (HSPD) states the following:

*A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of Services self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have reasonable access to:*

- a) *Home delivered meals, and*
- b) *Personal care and home nursing, and*
- c) *Assistance with housework.*

The Applicant within the Statement of Environmental Effects stipulates the manner in which it proposes to provide reasonable access to these services. However, the Applicant has not included any documentation, correspondence or draft contracts for services with any service providers or a servicing management plan to support this statement.



This issue was raised by Council in the assessment of the previous DA (DA2009/0238) for this site. However, during the appeal, the applicant provided the required service agreement and the issue was not a contention at the hearing of that application.

With regards to this particular issue, reference is made to a Land and Environment Court Case (Information Gateways Pty Limited v Hornsby Shire Council [2005] NSWLEC 242), this particular issue was addressed at paragraph 27, where the court held:

*[27] "While the Court accepts that it would be unreasonable to require the Applicant to provide a signed contract with a service provider for a development that has not yet been approved, letters to the effect that a service provider is able to provide services are insufficient. To be satisfied in respect of clause 2(1), 15 and 75 of SLSEPP the consent authority requires evidence that a particular service provider will provide the services, that the detailed terms under which the services are to be provided have been agreed, and that the services will be provided for the life of the development. The consent authority therefore requires:*

*Draft contracts with service providers together with evidence that both parties agree to the terms of the draft contract;*

*A Servicing Management Plan that will be part of the consent and that provides for the continuation of the services for the life of the development.*

The judgement within paragraph 28 states that *"the servicing arrangements comprise an essential ingredient of the development. In their absence, the development would be prohibited. The Court must be satisfied of the servicing arrangements when the application is determined. The application can therefore not be approved in its current form. "*

In the current application, where the Applicant has at best provided a vague description of available options for service providers in the Statement of Environmental Effects, Council is not satisfied that reasonable access will be provided to the facilities and services in the absence of documents as required by this Clause.

In this regard, having regard to the form of housing to be provided and the manner in which it proposes to deliver services to residents, Council is not satisfied that the proposed development meets the criteria of Clause 15 (b) of SEPP (HSPD) and therefore this issue has been included as a reason for refusal.

### ***Chapter 3 – Development for seniors housing***

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP (HSPD). Clause 18 of SEPP (HSPD) outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people who can occupy the development. If the application is approved the required condition would need to be included in the consent.

### **Part 1A Site Compatibility Certificates**

Clause 24 (1) specifies that a site compatibility certificate is required for a development application, made pursuant to this Chapter in respect of development for the purposes of seniors housing (other than dual occupancy) if:

i) Land that adjoins land zoned primarily for urban purposes.

However subclause 1A states:

*“Despite subclause (1), this clause does not apply to a development application made pursuant to the chapter in respect of development for the purposes of seniors housing if the proposed development is permissible with consent on the land concerned under the zoning of another environmental planning instruments”.*

The proposed development notwithstanding that it is on land that adjoins land zoned primarily for urban purposes is permissible with consent under the provision of WLEP 2000 (as Category 2 development) and therefore a site compatibility certificate is not required and therefore the requirement of Clause 24 is not applicable to this development.

## **Part 2 Site related requirements**

### **Clause 26 Location and access to facilities Centre**

Clause 26(1) Location and access to facilities states the following;

*‘A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:*

- a) shops, banks service providers and other retail and commercial services that residents may reasonably require, and*
- b) community services and recreation facilities, and*
- c) The practice of a general medical practitioner.’*

If all the facilities and services are not located within 400 metres from the site by means of a suitable access path, the site is to be located at a distance of not more than 400 metres from a public transport service which will take residents to a place that is not more than 400m from the required facilities and services. The bus service is to be available to and from the site at least once between 8am and 12pm and at least once between 12pm to 6pm Monday to Friday.

The subject site is neither 400m from a public bus stop nor is it 400m from the required facilities. The SEE submitted with the application indicates that the site does not meet the statutory requirements of this Clause. The closest public transport is located approximately 550m from the site on Willandra Road and given the existing road infrastructure and the local area topography render pedestrian access to the closest public facilities difficult for senior people and people with a disability.

For the above reason, the applicant has proposed the creation of a private transport service from the site and has relied on the provisions of Clause 43 of the SEPP which applies only to development applications for serviced self care housing on land adjoining land zoned primarily for urban purposes and requires that access is to be provided to the same facilities and services for the residents referred to in clause 26(1) by a private bus capable of carrying at least 11 passengers to provide residents with access to all essential retail, commercial and other support services and facilities in the local area on a regular basis as required under Clause 26 of SEPP (HSPD) 2004 including travel to and from local retail and commercial centres such as Warringah Mall, Dee Why Town Centre and Forestway Shopping Centre.

A SEPP No.1 objection to vary the requirements of Clause 26 of SEPP (HSPD) 2004 (prepared by Don Fox Planning) has also been submitted with the application. The applicant's primary submission within the SEPP 1 objection is that as the proposal includes the provision of a private Village bus service capable of carrying 11 passengers so that residents of the proposed development will have regular access to all essential support services and facilities. The applicant has indicated that the proposed development satisfies the requirements of Clause 43 of SEPP (HSPD) 2004. Accordingly, consistent with the decision of Justice Cowdroy in *Information Gateways Pty Ltd -v- Hornsby Council* (2005) NSW LEC 242 and legal advice received from Council's Solicitor in respect to the previous application (D2009/0238) for a seniors housing development at this site, Clause 43 of SEPP (HSPD) 2004 operates to exclude Clause 26 of the Policy so long as the requirements of Clause 43 for the provision of a private bus service is made available to the residents of proposed development to provide regular access to all essential support services and facilities such as shops, bank service providers, commercial services, community services and recreational facilities, medical services and the like on a regular basis.

Accordingly, the applicants argument within the SEPP 1 is concurrent with and the non-compliance in relation to the requirement of Clause 26 is supported in this instance. However, if the application was worthy of approval, a condition of development consent should be included which requires that a private Village bus service with a minimum seating capacity of 11 persons to be provided to the residents with access to shops and commercial facilities as well as all other essential support services in the local area for the life of the development.

#### **Clause 27 Bush fire prone land**

The subject site is located on land identified as bush fire prone land in accordance with Warringah Council mapping 2003.

Accordingly, pursuant to clause 27(1) of the SEPP the Council as the consent authority must be satisfied that the development complies with the requirements of *Planning for Bushfire Protection 2006*. The development application was referred to the RFS on 21 September 2010 and a response was received granting a Section 100B Bushfire Safety Authority along with general terms of approval on 12 November 2010.

#### **Clause 28 Water and sewer**

Pursuant to clause 28(1) of the SEPP the consent authority must not consent to the Development Application unless satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage. As the water and sewage services will not be provided by Council, but by Sydney Water, clause 28(2), requires the consent authority to consider the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.

The Applicant has provided an Engineering and Water Cycle Management report prepared by Cardno which advises that Sydney Water was consulted in 2009 with regards to the servicing of the development for reticulated sewer and water services. This also includes Sydney Water "Feasibility letter" dated 16 March 2009 in relation to the provision of water and sewer services to a senior's housing development at the site.

Accordingly, the applicant has demonstrated compliance with the requirements of Clause 28.

**Clause 29 Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply.**

Clause 29 requires consideration to be given as to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(ii), and 25(5)(b)(v):

- (i) *The natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,*
- (ii) *The impact that the proposed development is likely to have on the use that, in the opinion of the Director- General, are likely to be the future uses on that land,*
- (v) *Without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the*

The DA proposes the establishment of serviced self care housing being 51 dwellings, an administration and assembly building and a community building along with all the infrastructure required to support the proposed development.

The desired future character statement for the locality seeks to limit development to detached style housing and low intensity low impact uses. Further, it seeks to protect and enhance the natural landscape, landform and vegetation. Amongst other matters, it seeks to ensure that new development is not located on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

In response to the above requirement, the applicant has submitted a visual impact assessment prepared by Richard Lamb and Associates. The report concludes:

*"On the basis of the detailed assessment presented above, it is concluded that there are no unreasonable visual, streetscape and related amenity effects of the proposed development. It has been determined that the proposed development would not unacceptably affect the existing district and background views and the character of those views from the distant viewing locations in Cromer, Cromer Heights, Wheeler Heights, Collaroy Plateau, Collaroy, Dee Why and North Narrabeen .....*

*The individual detached buildings would respond positively to the low density residential character of parts of the surroundings of the site and the architecture, articulation, forms, materials, colours and landscaping are considered to be appropriate for the proposed use and within the context in which it would be located. The proposed removal and thinning of vegetation for the APZs is not assessed to increase the potential visual impacts of the development to any significant extent.*

*The retaining wall which was one of the main concerns by the Council and the Commissioner for the previous DA is now proposed to be in two sections totalling to only 45 metres in length and 1200mm or less high (as opposed to about 455 metres long and 0.57-4.98 metres high retaining wall in the previous design. It will have negligible visibility from the external viewing locations and would not result in any significant specific or cumulative visual impacts.*

*The proposed development is consistent with the character of the immediate and wider visual context of the site and is assessed to be consistent with the provisions of SEPP (HSPD) and not inconsistent with the Desired Future Character of B2 Oxford Falls Valley Locality under WLEP (2000) on the factors of compatibility with the site, streetscape, surrounding built and natural character, surrounding developments, built forms, scale, visual and related amenities."*

The visual impact assessment provided by the applicant is not concurred with as it is considered that the built form of the proposed development and its location along a ridgeline will be visually inconsistent with the dominant non urban character of the built and natural environment of the B2 Oxford Falls Valley Locality that surrounds the site. The photomontages provided by the applicant indicate large canopy trees on the subject site and shows that all of the proposed buildings will be located below the canopy when viewed from various vantage points. However, there are significant concerns raised in relation to the accuracy of these photomontages, given the applicant has not adequately demonstrated that the landscaping as shown on these montages will be feasible on this site taking into account the APZ requirements and whether the site is cable of sustaining such large trees in consideration of soil depth and the existing vegetation conditions.

Accordingly, the applicant's proposition that the proposal is compatible with existing and future land uses in the local area is not concurred with and this issue has been included as a reason for refusal.

### **Part 3 - Design Requirements**

#### **Clause 30 Site Analysis**

In accordance with Clause 30 a consent authority must not consent to a development application made pursuant to Chapter 3 of SEPP HSPD unless the consent authority is satisfied that the applicant has taken into consideration a site analysis prepared by the applicant in accordance with this Clause. A site analysis plan and the Statement of Environmental Effects submitted with the application satisfactorily addresses the requirements of this Clause.

#### **Clause 31 Design of in-fill self-care housing**

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources dated March 2004.

The proposed development is not an Infill development and therefore the requirements of Clause 31 are not applicable.

#### **Clause 32 Design of residential development**

In accordance with Clause 32 of SEPP (HSPD) a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following outlines compliance with the principles set out in Division 2, Part 3 of SEPP (HSPD).

### Clause 33 Neighbourhood amenity and streetscape

Clause 33 within SEPP SL requires that development should recognise the desirable elements of the locations current character (including the desired future character) so that new buildings contribute to the quality and identity of the area. In doing so the SEPP indicates that development should maintain reasonable neighbourhood amenity and appropriate residential character. An assessment of the proposed development against the requirement of Clause 33 is provided below:

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	<p>Clause 33 requires that an assessment of the desirable elements of current character of the area be undertaken. The desired elements of the locations current character can be found within the Desired Future Character statement for the B2.</p> <p>The desirable elements of the locations (in brief) are to maintain the present character, only allowing new development which is low impact and low intensity, protect the natural environment and to not to pollute the lagoon.</p> <p>An assessment of the proposed development against the requirement of the DFC for the B2 locality is addressed under the DFC component of this report, in summary the proposed development has been found to be inconsistent with the DFC and therefore the proposal is inconsistent with the requirement of this Clause. This issue has been included as a reason for refusal.</p>	<b>NO</b>
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	<p>The development site is neither within any Heritage Conservation Area nor adjacent to any heritage items.</p> <p>The issue in relation to the Aboriginal Heritage value of the site has been addressed under clause 83 of General Principle's table of this report. In</p>	<b>Not Applicable</b>



Control	Requirement	Proposed	Compliance
		summary, the application has been found to be satisfactory with respect to this Clause.	
	<p>c. maintain reasonable neighbour amenity and appropriate residential character by;</p> <ul style="list-style-type: none"> <li>• providing building setbacks to reduce bulk and overshadowing</li> <li>• using building form and sitting that relates to the site's land form, and</li> <li>• adopting building heights at the street frontage that are compatible in scale with adjacent development,</li> <li>• And considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.</li> </ul>	<p>The proposed development has been setback from Lady Penrhyn Drive to maintain a vegetated edge to the street.</p> <p>The sitting and location of buildings within the site has regard to the front building line, side setback and rear building line of the adjoining dwelling at 8 Lady Penrhyn Drive in order to preserve the amenity of the adjoining properties in terms of privacy, solar access, and view line.</p> <p>However, as discussed under Clause 29 of this report, the built form of the proposed development and its location along a ridgeline will be visually inconsistent with the dominant non urban character of the built and natural environment.</p> <p>The development is therefore not consistent with the requirements of the Clause.</p>	<b>No</b>
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	<p>The proposed development is setback between 6.5m – 45m from Lady Penrhyn Drive. The proposed setback is consistent with housing on both sides of the street.</p>	<b>YES</b>
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	<p>The landscape plans submitted with the application indicates that the site will be predominantly vegetated by large trees.</p> <p>However, as discussed under Clause 29 of this report, the applicant has not adequately demonstrated that the proposed landscaping as shown will be feasible</p>	<b>NO</b>

Control	Requirement	Proposed	Compliance
		on site in consideration with the APZ requirements and the exiting soil conditions.	
	f. retain , wherever reasonable, major existing trees, and	<p>The proposed development will result in the removal and modification of approximately 8.2ha which includes the APZ requirements. The Construction and excavation may cause further disturbance to the bushland.</p> <p>It is noted that approximately 12.92 ha of the subject site will be retained in its natural state by the proposal.</p> <p>Council's Natural environment section has advised some of the 8.2ha represents significant habitat values, including rocky outcrops, dead wood and is part of a large area of contiguous bushland with mixed tenure and also contains an area of Sandstone Swamp identified as Threatened and High Conservation Value Habitat on Council's mapping system.</p> <p>In this regard, Councils Natural Environment Section has indicated that more information including an amended Species Impact Statement (SIS) is required in order to adequately assess the application and the potential impacts of the proposed development on the natural environment.</p> <p>In this regard the proposal has failed to adequately demonstrate the impact of the proposal on the current vegetation and is therefore unacceptable in this regard.</p>	<b>No</b>

Control	Requirement	Proposed	Compliance
	g. be designed so that no building is constructed in a riparian zone.	The building will not be constructed in a riparian zone.	<b>YES</b>
<b>CL 34 Visual and acoustic privacy</b>	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:  (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and	This assessment has found that the proposed development will provide acceptable levels of visual privacy for residents and adjoining property owners. The proposed development has provided landscaping, screening devices, and site planning that allow for acceptable levels of visual privacy for residents and adjoining property owners.	<b>YES</b>
	(b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The driveway has been located away from the bedroom windows of the dwellings within the development and the bedroom windows of the adjoining properties.	<b>YES</b>
<b>CL35 Solar access and design for climate</b>	The proposed development should:  (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and  (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	The proposed development will allow for adequate levels of daylight to living areas of residents and neighbours as required by the SEPP. Private open space areas will receive solar access. The development has been orientated on the site to take advantage of the north eastern aspect.	<b>YES</b>
<b>CL 36 Stormwater</b>	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	Council's Development Engineer reviewed the on-site stormwater detention and associated drainage design and advised there is inadequate information submitted with the application for Council to assess the on site stormwater issue.	<b>NO</b>

Control	Requirement	Proposed	Compliance
		Council's Development Engineer also identified a number of details which are required to be shown on the plans prior to the approval of the application. As inadequate stormwater details have been provided, compliance with the requirements of Clause 36 has not been achieved. This issue has therefore been included as a reason for refusal.	
<b>CL 37 Crime prevention</b>	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:	The applicant has advised that this aspect of the SEPP is addressed as the design does not allow for random access to the site. Access to each of the dwellings will be via a common entryway that would contain an intercom system. Occupants of the development will be provided with casual surveillance.	<b>YES</b> (subject to condition)
	(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and		
	(b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and	Surveillance of the street, with private open space areas and living room windows orientated towards the street.	
	(c) Providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	Should the development application be approved a condition is recommended for inclusion requiring that each dwelling be designed to allow residents to see who approaches their dwelling entry without the need to open the front door.	
<b>CL 38 Accessibility</b>	The proposed development should:	An Access report prepared by Accessibility Solutions (NSW) Pty Ltd has been submitted with the application in relation to the requirement of this Clause.	

Control	Requirement	Proposed	Compliance
	(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and	<p>The proposed development does not comply with the requirement of Clause 38(a), as no provision has been made in accordance with the SEPP for obvious and safe pedestrian links to public transport services or local facilities. This issue has been addressed under Clause 26 of this report.</p> <p>In summary, the application is satisfactory subject to provision of a village bus service at site.</p> <p>The proposal has made for convenient access to parking for residents and other facilities such as the community building.</p> <p>The proposed development is therefore supported in relation to the non-compliance with the requirements of this Clause.</p>	<b>Yes</b>
	(b) Provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	<p>The access report submitted with the application notes that the proposed development will comply with the requirement of Clause 38 (b) in that the development will provide a principle pedestrian entry from vehicular/pedestrian entrance from Lady Penryhn Drive.</p> <p>Based on the above assessment the application is satisfactory with regards to Clause 38(b).</p>	<b>Yes</b>
<b>CL 39 Waste management</b>	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	Each dwelling will be specified to incorporate waste recycling division units integrated into the kitchens, with a separate large bin kept outside each dwelling. The applicant has advised that the waste collection will be done by private contractors.	<b>YES</b>

Control	Requirement	Proposed	Compliance
		<p>Council's Waste officer has reviewed the proposal and has raised no objection to the proposed development in relation to the proposed waste facilities.</p> <p>For the above reasons, the proposed development has satisfactorily addressed the requirement of Clause 39.</p>	

#### **Part 4 - Development standards to be complied with**

##### **Clause 40 – Development standards – minimum sizes and building height**

Pursuant to Clause 40(1) of SEPP (HSPD) a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
<b>Site Size</b>	1000 sqm	174,601.79m <sup>2</sup> or 17.46HA	<b>YES</b>
<b>Site frontage</b>	20 metres	530.74m	<b>YES</b>
<b>Building Height</b>	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	All buildings are below the 8m height limit	<b>YES</b>
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	The building is no more than two storeys in height.	<b>YES</b>
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	No building is located in the rear 25% area of the site.	<b>YES</b>

##### **Clause 41 Standards for hostels and self contained dwellings**

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
<b>Wheelchair Access</b>	(a) If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road.	The site does not have a gradient less than 1:10, therefore subclause (b) applies.	
	(b) If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	The access report submitted with the application notes that the development will provide a wheelchair accessible entrance path from Lady Penrhyn Drive to the intrasite pathways and shared accessways to all dwellings and communal facilities in a manner that will comply with AS1428.1.  The proposed development is therefore satisfactory in relation to this Clause.	<b>YES</b>
<b>Security</b>	Pathway lighting: (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	No pathway lighting details have been submitted with the application however compliance with these requirements could be included as a condition of consent if the application is approved.	<b>YES (subject to condition)</b>
<b>Letterboxes</b>	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry.	The plans indicate that letterboxes will be installed adjacent to the main site entrance. The access report notes that the letterboxes are located at a location that achieves compliance with this requirement.  If the application is approved a condition could be included to require the letterboxes to be lockable.	<b>YES (subject to condition)</b>
<b>Private car accommodation</b>	(a) Carparking space must comply with AS2890  (b) One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and  (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power=operated door to be installed at a later date.	The access report that the internal circulation arrangements including ramp grades, aisle widths, bay dimensions will be in accordance with the requirements of AS2890.1.  A condition of consent could be included if the application was approved to require any garage to have a power operated roller door, or for there to be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	<b>YES (subject to condition)</b>

Control	Required	Proposed	Compliance
<b>Accessible entry</b>	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	The access report submitted with the application states that <p>"A 1: 8 ramped doorway threshold (56mm max rise x 450mm length threshold ramp) at the entrances in accordance with AS1428. These levels and other aspects of door hardware will be provided at construction certificate".</p> <p>A condition of consent could be included if the application was approved to require compliance with this requirement.</p>	<b>YES</b> (subject to condition)
<b>Interior general</b>	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	The access report notes that all internal corridors will achieve compliance with the requirement of this clause. <p>A condition of consent could be included if the application was approved to require compliance with this requirement.</p>	<b>YES</b> (subject to condition)
<b>Bedroom</b>	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	The access report notes that the proposed development will achieve compliance with the requirement of this clause. <p>A condition of consent could be included if the application was approved to require compliance with this requirement.</p>	<b>YES</b> (subject to condition)
<b>Bathroom</b>	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	The access report notes that proposed development will achieve compliance with the requirement of this clause. <p>A condition of consent could be included if the application was approved to require compliance with this requirement.</p>	<b>YES</b> (subject to condition)
<b>Toilet</b>	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	The access report notes the proposal is capable of achieving compliance with the requirement of this clause. <p>A condition of consent could be included if the application was approved to require compliance with this requirement.</p>	<b>YES</b> (subject to condition)



Control	Required	Proposed	Compliance
<b>Surface finishes</b>	Balconies and external paved areas must have slip resistant surfaces.	This matter could be conditioned if the application is approved.	<b>YES</b> (subject to condition)
<b>Door hardware</b>	Door handles and hardware for all doors must be provided in accordance with AS4299.	Requirement may be conditioned if the application were to be approved.	<b>YES</b> (subject to condition)
<b>Ancillary items</b>	Switches and power points must be provided in accordance with AS4299.	Requirement may be conditioned if the application were to be approved.	<b>YES</b> (subject to condition)
<b>Living &amp; dining room</b>	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	The requirement for a telephone adjacent to a general power outlet and for illumination levels of at least 300 lux in the living room and dining room can be conditioned if the application were to be approved.	<b>YES</b> (subject to condition)
<b>Kitchen</b>	The kitchen must comply with the requirements of Clause 16 of Schedule 3	The access report notes the proposal is capable of achieving compliance with the requirement of this clause.  A condition of consent could be included if the application was approved to require compliance with this requirement.	<b>YES</b> (subject to condition)
<b>Access to kitchen, main bedroom, bathroom &amp; toilet</b>	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	The kitchen, main bedroom, bathroom and toilet are located on the entry level of each unit.  A condition of consent could be included if the application was approved to require compliance with this requirement.	<b>YES</b> (subject to condition)
<b>Laundry</b>	The laundry must comply with the requirements of Clause 19 of Schedule 3.	The access report notes the proposal is capable of achieving compliance with the requirement of this clause.  A condition of consent could be included if the application was approved to require compliance with this requirement.	<b>YES</b> (subject to condition)
<b>Storage</b>	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	The access report notes the proposal is capable of achieving compliance with the requirements of this clause.  A condition of consent could be included if the application was approved to require compliance with this requirement.	<b>YES</b> (subject to condition)
<b>Garbage</b>	A garbage storage area must be provided in an accessible location.	The access report notes the proposal is capable of achieving compliance with the requirements of this clause.  A condition of consent could be included if the application was approved to require compliance with this requirement.	<b>YES</b> (subject to condition)

## ***Part 5 Development on land adjoining land zoned primarily for urban purposes***

### **Clause 42 Serviced self-Care housing**

The requirement of Clause 42 has been addressed under Chapter 2 of this report. In summary, there is insufficient information submitted with the application to demonstrate that the proposed development meets the definition of Serviced self – care housing and therefore this issue has been included as a reason for refusal.

### **Clause 43 – Transport Services to local Centre**

Clause 43 states:

*“A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that a bus capable of carrying at least 10 passengers will be provided to the residents of the proposed development”*

The applicant has advised that an 11 seat village bus will be purchased for the benefit of the village occupants by the operator of the village. The bus will provide transport for occupants who require it to local facilities.

The SEE has indicated that at a minimum the bus will travel to Warringah Mall and back at least once between the hours of 8am and 12pm and again at least once between the hours of 12pm and 6pm each day. Additional bus trips to facilities may be available at the request of residents.

The proposed development is therefore satisfactory in addressing the requirements of this Clause.

### **Clause 44 - Availability of facilities and services**

Clause 44 states that:

*“A consent authority must be satisfied that any facility or service provided as a part of a proposed development to be carried out on land that adjoins land zoned primarily for urban purposes will be available to residents when the housing is ready for occupation”.*

This issue has been addressed under Chapter 2 of this report. In summary, the Applicant has provided a description of available options for service providers in the Statement of Environmental Effects and therefore Council is not satisfied that reasonable access will be provided to the facilities and services. This issue has been included as a reason for refusal.

## ***Part 6 Development for vertical villages***

This part is not applicable to the proposed development.

## **Part 7 Development standards that cannot be used as grounds to refuse consent**

### **Clause 46 Inter relationship of Part with design principles in Part 3**

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

### **Clause 47 Part does not apply to certain development applications relating to heritage affected land**

The site is not identified as heritage affected land and therefore this Clause is not applicable to the subject site.

### **Clause 48 Standards that cannot be used to refuse development consent for residential care facilities**

This Clause is not applicable to the proposed development.

### **Clause 49 Standards that cannot be used to refuse development consent for hostels**

This Clause is not applicable to the proposed development.

### **Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings**

In accordance with Clause 50 of SEPP (HSPD) a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling (Serviced Self Care Housing) on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

<b>Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Building height</b>	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Max height 8m to all buildings have been achieved	<b>YES</b>
<b>Density and scale</b>	0.5:1	0.07: 1 (13,008sqm)	<b>YES</b>
<b>Landscaped area</b>	30% of the site area is to be landscaped	A total of 54% of the site will be either landscaped or maintained in its natural state.	<b>YES</b>
<b>Deep soil zone</b>	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	Over 54% of deep soil planting are been provided.	<b>YES</b>

Control	Requirement	Proposed	Compliance
<b>Solar access</b>	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	The sun study diagram submitted with the application indicates that the majority of the dwellings (i.e. more than 70%) achieves a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter, whilst the remaining receives in excess of this amount.	<b>YES</b>
<b>Private open space</b>	15sqm of private open space per dwelling not less than 3 metres long and 3 metres wide	Each dwelling has access to 15sqm or more of private open space.	<b>YES</b>
<b>Parking</b>	0.5 spaces per bedroom	The proposed development provides 51x 2 bedroom dwellings providing a total of 102 bedrooms. A total of 63 car spaces are therefore required.  The proposed development provides 68 car spaces incorporating 51 resident spaces and 17 visitor/staff spaces.	<b>YES</b>
<b>Visitor parking</b>	1 parking space for each 5 dwellings	The proposed provides 51 dwellings and therefore requires a total of 10 spaces for visitors.  The proposed development provides for 17 spaces for visitors.  The proposed development is satisfactory in relation to the number visitor's spaces.	<b>YES</b>

## STATUTORY CONTROLS

### Warringah Local Environmental Plan 2000

#### Desired Future Character

The subject site is located in the B2 Oxford Falls Valley Locality under Warringah Local Environmental Plan 2000. The Desired Future Character Statement for this locality is as follows:

*The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.*

*Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.*

*The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

*A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.*

*Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its Catchment and will ensure that ecological values of natural watercourses are maintained.*

The proposed development is identified as a Category 2 development within B2 locality. Clause 12(3)(b) of WLEP 2000 states that prior to granting consent for development identified as Category 2 the consent authority must be satisfied that the development is consistent with the desired future character described in the relevant Locality Statement.

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

***The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows Future development will be limited to new detached style housing conforming to the housing density standards set out below and low intensity, low impact uses.***

The DFC requires that new housing within this locality is to be limited to new detached style housing confirming to housing density *and low intensity, low impact uses*.

‘Detached style housing’ is not defined in the dictionary of WLEP 2000.

In order to understand and give meaning to the term ‘detached style housing’, consideration must be given to the form and scale of development which would be considered to be detached style housing. Any definition of detached style housing should therefore reflect the scale of development permitted by the relevant built form controls.

The form, character and style of surrounding residential development is generally of 2/3 storey brick and tile roofed detached dwellings. The design of the proposed development appears in the form of 51 single storey buildings that are mainly attached by the inclusion of garages between buildings. The buildings are grouped together generally containing 5 – 7 dwellings in each row.

The proposed buildings generally appear as attached style housing by virtue of their limited physical separation. Therefore, Council is not satisfied that the proposal is consistent with this element of the DFC which relates to detached style housing.

The remaining component of the DFC requires that new development should be limited to low intensity and low impact uses. It is considered the statement “low intensity, low impact uses” is directly applicable to such uses, other than “housing” that may be permissible in the locality, such as housing for older people and people with a disability.

The terms "low impact and "low intensity" are not defined in WLEP 2000. However, in the matter of Vigor Master P/L v Warringah Council [NSWLEC 1128], Commissioner Hussey gave weight to the evidence of the Council Planner who sought to give meaning and understanding to the terms "intensity" and "impact". In this regard, the following characterisation was given:

***"Intensity":** is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore, "low intensity" would constitute a development which has a low level of activities associated with it."*

***Impact** - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore 'low impact' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality.*

Further, the Commissioner made the important observation that *"any development must also satisfy a qualitative assessment as well as the quantitative controls so as to achieve a reasonable degree of consistency with the DFC for the locality".*

The level of intensity associated with the use such as housing for seniors or people with a disability is generally the traffic impacts. In this regard, Council's Traffic Engineer has indicated that the proposed development would have minimal impact on the traffic flow and capacity of the surrounding road network. Therefore, it can be concluded that the proposed development will be of low intensity.

However, the proposed development is not considered to be low impact for the following reasons:

- The built form of the proposed development and its location along a ridgeline will be visually inconsistent with the dominant non urban character of the built and natural environment of the B2 Oxford Falls Valley Locality that the site is located within;
- The proposed development will result in a significant impact upon site including its natural drainage features, vegetation and topography through the removal and modification of the majority of the subject site as a result of the access road/driveways, 51 dwellings and community buildings, footpath areas, platforms throughout the development, and provision of asset protection zones;
- The proposed buildings and associated works including access roads and services have not been designed or grouped in areas that will minimise disturbance of vegetation and landforms.

The present character of the Oxford Falls Valley can be described as:

- Predominantly natural landforms (which can include ridgetops and rock outcrops), remnant bushland (remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species), habitat for fauna, natural drainage lines and watercourses (including the catchments); and
- Interspersed dwellings (with associated ancillary structures);

When the DFC discusses the 'present character', it is reflective of the character that should not be altered from the time the instrument was gazetted (being that stipulated above). At which point a 'Desired Future Character' was set (being land to be developed in accordance with the future directions stipulated within the DFC statement).

It is considered that the proposed development does not adequately provide for the preservation of this character. The nature of this proposal's impact on the natural landscape of the site significantly erodes the landscape qualities via the further encroachment of typically urban forms and the creation of a managed landscape, created at the expense of the natural as discussed above and the following sections of the DFC.

***There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.***

The visual impact study submitted with the application indicates that the proposed development does not disrupt the skyline when viewed from Narrabeen Lagoon and Wakehurst Parkway as the site cannot be seen from those vantage points.

The applicant's position is not concurred with, as the site is clearly viewable from Narrabeen Lake in its current condition and any development on this site will be further visible from this location and other vantage points within the Local Government Area. In this regard, the proposed development is inconsistent with this component of the DFC.

***The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.***

The proposed development along with the APZ requirements and the associated road infrastructure will require the removal of approximately 8.2ha of natural bushland. It is further noted that the proposal may impact on significant threatened species on site and the Species Impact Statement provided by the applicant is not concurred with by Council's Natural Environment section in terms of its impacts.

The proposed development is therefore considered to be inconsistent with this component of the DFC.

***Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.***

The external finish submitted with the application indicates that the proposed development will blend with the natural landscaping. The proposed development is therefore consistent with this component of the DFC.

***Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its Catchment and will ensure that ecological values of natural watercourses are maintained.***

Council's Natural Environment section has indicated there is insufficient information submitted with the application for Council to properly assess the impact of the Development in relation to this component of the DFC. Particularly, the following concerns have been raised by Council's Natural Environment Section:

- *All watercourses and hanging swamps on site need to be clearly mapped and shown with regards to the proposed development and how they will be affected by the development. In addition, the assessment is to include the affect the development will have on the Wetland and tributary of Wheeler Creek down stream of development.*

- *A watercourse is noted in Environment Site Management Plan, Figure 5 APZ Management Units however is not identified in any other documentation provided. Riparian zone identified in above document insufficient. As this watercourse is a Group A watercourse (tributary of Wheeler Creek) a 40metre riparian zone would be required in addition to a 10 metre riparian buffer in accordance with Warringah Council's Protection of Waterways and Riparian Land Policy.*
- *Building 109 between Rock (4) and Street 2A is within 40 metres of the wetland as well as the fire trail and APZ surrounds wetland no buffer zone noted. Warringah Council's Protection of Waterways and Riparian Land Policy requires wetland buffers be 100 metres from the edge of the Wetland.*

For the above reasons, the proposed development is inconsistent with the above component of the DFC.

Overall, the proposal is deemed to be inconsistent with the DFC Statement.

### **Built Form Controls for Locality B2 Oxford Falls Valley**

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

<b>Built Form Standard</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
Housing density	WLEP 2000 states that on land that adjoins a locality primarily used for urban purposes and which a dwelling house is permissible where there is no maximum housing density, if the development is for the purposes of housing for older people or people with a disability and the development complies with the minimum standards set out in Clause 29.	The development being housing for older people or people with a disability is consistent with the floor space ratio provisions of Clause 29 and therefore the housing density is not applicable for this development. (refer to Clause 29 table of this report)	Not Applicable
Building Height	8.5metres	The development is required to comply with the requirements of the SEPP (HSPD) 2004 in relation to building and not WLEP 2000. However, it should be noted that all buildings are below the 8.5m height limit.	Not Applicable
Front building setback	20 metres	6.5m – 44m	NO*
Rear building setback	10 metres	Approximately 209m.	YES
Side boundary setback	10 metres	Approximately 20m on the northern boundary. In excess of over 200m on the southern boundary.	YES
Landscaped open space	30% of the site area.	54% (9.44ha) of the site is landscaped or maintained in its natural state.	YES

(\*) These non-compliances are addressed below.



## Clause 20 Variation

A Clause 20 variation is required for the proposed variations to the Building Height Built Form Control under the F3 locality.

Clause 20 of WLEP 2000 states the following:

*“Consent may be granted to proposed development even if the development does not comply with one or more development standards, providing 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.”*

(i)	<b>General Principles of Development Control</b>  The proposal is not consistent with several General Principles of Development Control as detailed in the ‘General Principles of Development Control’ table as detailed in this report.
(ii)	<b>Desired Future Character of the Locality</b>  The proposal is not consistent with the Desired Future Character Statement as detailed earlier in this report.
(iii)	<b>Relevant State Environmental Planning Policies</b>  The proposed development has not been found to be consistent with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a disability) 2004. The proposal does however comply with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Infrastructure) 2007 and State Environmental Planning Policy No. 55.

Based on the above assessment, the proposed development can not be considered for a variation to the Front Setback Built Form Controls.

Whilst no variations can be granted in accordance with Clause 20 of WLEP 2000, the following assessment of the non-compliance has been included to determine whether the non-compliance could otherwise be supported.

### Front Building Setback

#### Area of inconsistency with control:

The development does not comply with the Front Building Setback Built Form Control in relation to buildings No. 1, 2, and 3 (total of 3 buildings) which are located a minimum of 6.5m from the front setback and the community building, which is located 12.5m from the front setback. The applicant has not provided a Clause 20 variation and has indicated that the provisions of Clause 33 pursuant to SEPP (HSPD) 2004 would prevail over the WLEP 2000.

The SEPP (HSPD) 2004 does not contain a numerical front setback control, Clause 33 of SEPP indicates states that the development *“be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line”*.

In this regard, the SEPP in relation to front setback control would not prevail as it does not contain a numerical front setback control similar to that contained in WLEP 2000 and therefore a Clause 20 variation in relation to the non-compliance is required and addressed below.

#### Merit Consideration of Non-compliance:

The following considerations have been applied in the assessment of the Front Building Setback variation:

- ***Create a sense of openness.***

**Comment:** The non-compliant component of the development only relates to three (3) building as well the community building, which is considered to be minor in the context of the overall development proposed on the subject site. The proposed buildings are design to achieve a minimum of 6.5m setback, which is generally consistent with the other housing on both sides of Lady Penrhyn Drive and therefore retains a sense of openness.

- ***Provide opportunities for landscaping.***

**Comment:** The proposed development as whole provides for significant opportunities within the front setback to Lady Penrhyn Drive to be landscaped. Setbacks of 6.5m to 45m are provided along the Lady Penrhyn Drive.

- ***Minimise the impact of development on the streetscape.***

**Comment:** The extent of non-compliance of the development is considered to be minor and the impact of the development when viewed from Lady Penrhyn Drive will be minimal as the sitting and location of buildings within the site has had regard to the front building line of the adjoining development. The building height of less the 8m also ensures impacts on the streetscape is minimised.

- ***Maintain the visual continuity and pattern of buildings, front gardens and landscape elements.***

**Comment:** The proposed development has been setback from Lady Penrhyn Drive to maintain a vegetated edge to the street and maintain visual continuity and pattern of other buildings within this street.

- ***The provision of corner allotments relates to street corners.***

**Comment:** The Built Form Controls for the B2 Locality do not contain any provisions relating to corner allotments.

As indicated above, the proposed development is found to be consistent with all the objectives for the front setback and the extent of non-compliance with the front setback requirement is supported for the reasons outline above.

#### **Clause 29 - On what grounds can applications for housing for older people or people with a disability not be refused**

Clause 29 states that consent for development for the purpose of housing for older people of people with disabilities cannot be refused on the grounds listed in Clause 29 if the development complies with the requirements listed in this Clause.

The proposal has been assessed against the provisions of Clause 29 as follows:

<b>Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Building Height</b>	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below.)	All of the buildings achieve compliance with the maximum of 8.0m height requirement.	<b>YES</b>
<b>Density and Scale</b>	Self care - 0.5:1	0.059:1	<b>YES</b>
<b>Landscaped Area</b>	35m <sup>2</sup> per dwelling for Self Care Units	Each dwelling provides in access of 35sqm of landscape area.	<b>YES</b>
<b>Parking</b>	0.5 spaces per bedroom	The proposed development provides 51x 2 bedroom dwellings providing a total of 102 bedrooms. A total of 63 car spaces are therefore required.  The proposed development provides 68 car spaces incorporating 51 resident spaces and 17 visitor/staff spaces.	<b>YES</b>
<b>Visitor Parking</b>	1 space per 5 units	The proposed provides 51 dwellings and therefore requires a total of 10 spaces for visitors.  The proposed development provides for 17 spaces for visitors.  The proposed development is satisfactory in relation to the number visitor's spaces.	<b>YES</b>
<b>Landscaped Area</b>	Width x 15% of length	In excess of 15% of the site is retained as landscaped area.	<b>YES</b>
<b>Private Open Space</b>	Ground Floor (15m <sup>2</sup> ) First Floor (6m <sup>2</sup> )	All dwellings comply	<b>YES</b>

As can be seen from the above table, the proposal complies with the development standards under Clause 29, therefore, the proposal cannot be refused on grounds relating to these standards.

## **GENERAL PRINCIPLES OF DEVELOPMENT CONTROL**

The General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development. The relevant general principles are addressed below.

General Principles	Applies	Comments	Complies
CL38 Glare & reflection	YES	<p>Issues of glare and reflection, including building colours and materials, internal and external lighting of the buildings and flood lighting of the site will be the subject of conditions if the application was recommended for approval requiring:</p> <ul style="list-style-type: none"> <li>• Compliance with the approved colours and materials as shown on the submitted sample board which is considered satisfactory,</li> <li>• Full details of lighting in the form of a <b>Lighting Strategy</b> which is to minimise impacts on the nighttimes amenity adjoining residential properties.</li> </ul>	YES (subject to condition)
CL39 Local retail centres	NO	No Comment	Not Applicable
CL40 Housing for Older People and People with Disabilities	NO	The application has been made pursuant to the provisions of SEPP HSPD. Accordingly, no assessment of the proposal against the provisions of Clause 40 is required.	Not Applicable
CL41 Brothels	NO	No Comment	Not Applicable
CL42 Construction Sites	YES	The potential exists for the construction of the proposed development to have an adverse impact upon the amenity of nearby residential properties in terms of traffic, noise, dust, parking, accessibility, sediment and the safety of pedestrians given the nature of the works and length of time for construction. These matters are generally covered in the <b>Construction Management Plan</b> . However, if the application was approved a condition of consent could be included to require compliance with this requirement. Issues to be addressed in the Construction Management Plan include pedestrian movements and safety, stormwater and wastewater disposal, waste management, tree protection, hours of demolition and excavation, air quality, noise management and truck parking.	YES (Subject to conditions)
CL43 Noise	YES	The nature of the proposed use is unlikely to generate significant noise emissions associated with the occupation of the development, with the exception of air conditioning systems. A suitable condition could be imposed if the application was worthy of approval in relation to A/C systems.	YES (subject to condition)
CL44 Pollutants	NO	No Comment	Not Applicable
CL45 Hazardous Uses	NO	No Comment	Not Applicable
CL46 Radiation Emission Levels	NO	No Comment	Not Applicable
CL47 Flood Affected Land	NO	No Comment	Not Applicable
CL48 Potentially Contaminated Land	YES	This issue has been addressed under SEPP 55 of this report. In summary, the site is suitable for the proposed development.	YES
CL49 Remediation of Contaminated Land	NO	No Comment	Not Applicable
CL49a Acid Sulfate Soils	NO	No Comment	Not Applicable

General Principles	Applies	Comments	Complies
CL50 Safety & Security	YES	This issue has been considered in detail under 'Clause 37 Crime Prevention' in the 'State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004' section of this report. In summary, it is considered the development is satisfactory in relation to this Clause.	YES
CL51 Front Fences and Walls	YES	<p>Clause 51 requires fences located within the street set back area to be compatible with the existing streetscape character. The streetscape is generally characterised by low front fences which are often complemented by landscaping.</p> <p>The plan submitted with the application does not show any front fencing. However, the SEE submitted with the application indicates that low level fences will be provided to the street frontages to define the front the front garden areas and provide for casual surveillance together with the definition of public/private domain.</p> <p>In this regard, it is considered that should the application be approved a condition could be included in the consent requiring that any front fencing to be consistent with the requirement of this Clause.</p>	YES (Subject to condition)
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	YES	The proposal will provide adequate separation of the site from the surrounding public open space. The proposal is therefore considered to satisfy the requirements of Clause 52.	YES
CL53 Signs	NO	No signage is proposed as part of this application. A condition has been included to require a separate development application to be lodged for signage where required under the provisions of WLEP 2000.	Not Applicable
CL54 Provision and Location of Utility Services	YES	Conditions could be imposed if the application was approved requiring connection to all utility services including an approved telecommunications provider, energy, water and sewerage.	YES (Subject to condition)
CL55 Site Consolidation in 'Medium Density Areas'	NO	No Comment	Not Applicable
CL56 Retaining Unique Environmental Features on Site & CL58 Protection of Existing Flora	YES	<p>The distinctive environmental features of the site are that the subject site is substantially undisturbed and undeveloped land containing degraded remnant bushland vegetation and escarpment. Council 's Natural Environment Unit has assessed the proposed development and has provided the following advice in relation to the proposed development:</p> <ul style="list-style-type: none"> <li>• <i>"Likely impacts on threatened flora and fauna.</i></li> <li>• <i>Species Impact Statement does not comply with the Director Generals Requirements (see NEU Biodiversity – DECCW DGRs Non Compliance Table).</i></li> <li>• <i>An appropriate buffer accounting for potential indirect impacts of the development should be applied.</i></li> <li>• <i>SIS should be amended to more accurately account for the less secure tenure of habitats within the local area.</i></li> <li>• <i>Surveys for Southern Brown Bandicoot should be conducted in accordance with the Director Generals Requirements.</i></li> </ul>	NO

General Principles	Applies	Comments	Complies
		<ul style="list-style-type: none"> <li>Targeted survey effort should be undertaken for the Eastern Pygmy Possum following recent records of the species within the locality.</li> <li>Impacts on the local population of <i>Tetratheca glandulosa</i> must be considered in the SIS following identification of four individuals of the species by Council biodiversity officers within the study area. In addition to <i>T. glandulosa</i>, other cryptic plant species (e.g. <i>Pimelea curviflora</i> var. <i>curviflora</i> and <i>Persoonia hirsuta</i> subsp. <i>hirsuta</i>) with potential habitat in the study area must be considered as affected subject species and assessed accordingly.</li> <li>Application of the precautionary principle should be applied in that the proposal could have a significant impact on the "local population" of the relatively sedentary threatened species, the Red-crowned Toadlet.</li> <li>Application of the precautionary principle should be applied in that the proposal could have a significant impact on the "local population" of the Heath Monitor.</li> <li>In accordance with DECC (2007) assessment of significance guidelines, the use of unproven mitigation measures should not be used in determining the degree of impacts.</li> <li>An appropriate buffer for potential indirect impacts should be estimated and the biobanking calculator re-run to account for indirect impacts".</li> </ul> <p>Based on the above advice, the application is not consistent with the requirements of Clauses 56 and 58 and this issue has been included as a reason for refusal.</p>	
CL57 Development on Sloping Land	YES	<p>In accordance with Clause 57, the height and bulk of the development is to be minimised on sloping land and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope.</p> <p>The excavation of the landform on this site is considered to be significant based on the number of buildings proposed. In addition to the excavation under a number of building, further excavation is required to accommodate roadways, access way gradients, stormwater management, courtyards and visitor parking and bin bays.</p> <p>The Visual impact of retaining structures is also considered to be unsatisfactory as the development will still require a number of retaining structures to accommodate the development as it is still located along the ridgeline.</p> <p>For these reasons the development is considered to be inconsistent with the requirements of Clause 57.</p>	NO
CL59 Koala Habitat Protection	YES	Council's Natural Environment sections has reviewed the proposed development and has advised the subject site is not identified as Koala Habitat Protection.	YES
CL60 Watercourses & Aquatic Habitats	YES	<p>Council's Natural Environment section has reviewed the proposed development and advised that the application inconsistent with the requirements of this Clause for the following reasons:</p> <ul style="list-style-type: none"> <li>Non-compliance with "Protection of Waterways and Riparian Land Policy" - Policy No. PL 740 Waterways.</li> </ul>	NO

General Principles	Applies	Comments	Complies
		<ul style="list-style-type: none"> <li>• All watercourses and hanging swamps on site need to be clearly mapped and shown with regards to the proposed development and how they will be affected by the development. In addition, the assessment is to include the affect the development will have on the Wetland and tributary of Wheeler Creek down stream of development. There is insufficient information submitted in relation to this issue.</li> <li>• A watercourse is noted in Environment Site Management Plan, Figure 5 APZ Management Units however is not identified in any other documentation provided. Riparian zone identified in above document insufficient. As this watercourse is a Group A watercourse (tributary of Wheeler Creek) a 40metre riparian zone would be required in addition to a 10 metre riparian buffer in accordance with Warringah Council's Protection of Waterways and Riparian Land Policy.</li> <li>• Appendix 18 – Landscape Report from disk LC05 Landscape: Master Plan – South. Building 109 between Rock (4) and Street 2A is within 40 metres of the wetland as well as the fire trail and APZ surrounds wetland no buffer zone noted. Warringah Council's Protection of Waterways and Riparian Land Policy requires wetland buffers be 100 metres from the edge of the Wetland.</li> <li>• Report by Ecological Australia Environmental Site Management Plan page 12 – needs clarification of what is an "offline base retention" that is proposed within 40 metres of the hanging swamp ("1" hanging swamp) to the East of the Development.</li> <li>• Pg. 4 of the Cardno Engineering and Water Cycle Report states "A new Hanging Swamp 6 was created based on a visual assessment of vegetation as disclosed by Google Earth. It was estimated to be of a similar size to Hanging Swamp 1". - Further detail as to the location of this hanging swamp is to be provided in addition to the assessment of impact.</li> <li>• The Hanging Swamp as identified on the Figure No. 3 of the Geotechnical Assessment prepared by Jeffery and Katauskas Pty Ltd dated 19 February 2009 to the northern boundary, has been omitted from the subsequent Geotechnical Assessment dated 20 August 2010. This change must be justified.</li> <li>• The Music Model parameters used for this development strays from the Base and Storm Flow Concentration Parameters for NSW (Fletcher et al, 2004), however no justification has been given as to why these parameters were chosen. The concern is that the pre-development model values for TSS and nutrient levels are higher than the generally accepted baseline parameters, therefore influences the stormwater treatment levels and the certification thereof, in order to mimic to existing stormwater flows. Due to this discrepancy, it is considered necessary for the applicant to provide commentary and justification of the values that have been used.</li> </ul> <p>The proposed development is therefore not consistent with the requirement of this Clause and this issue has been included as a reason for refusal.</p>	

General Principles	Applies	Comments	Complies
CL61 Views	YES	<p>The proposed development has been assessed in relation to view loss impacts in relation to view principles outlined within the Land and Environment Court Case Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140.</p> <p>It is considered that due to the topography of the land and the fact that the buildings within the proposed development is well the 8.5m height limited that will be no reasonable view loss.</p> <p>Accordingly, the proposed development will allow for the reasonable sharing of views consistent with the requirements of this Clause</p>	YES
CL62 Access to sunlight	YES	The shadow diagrams submitted with the application indicates that the proposed development will achieve compliance with the requirement of this Clause.	YES
CL63 Landscaped Open Space	YES	<p>In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 of the SEPP on the grounds of landscaped area, if a minimum of 30% of the site is landscaped. The development complies with the SEPP requirement.</p> <p>Whilst the development complies with the numeric requirement insufficient information has not been submitted to demonstrate appropriate plantings can be provided which are commensurate with the height and scale of the development in consideration of the APZ requirements and the existing soil conditions.</p> <p>As such the development is not considered to be consistent with the requirements of Clause 63.</p>	NO
CL63A Rear Building Setback	YES	The building is setback in access of 10m from the rear boundary which more than complies with the required 10m. Adequate landscaped open space is proposed within the rear building setback to meet the objectives of the rear building setback control.	YES
CL64 Private open space	YES	In accordance with Clause 62 Private open space of WLEP 2000, private open space is not to be located within the street setback area unless the site is a corner allotment or the applicable Locality Statement provides otherwise. The private open space provided for each dwelling is satisfactory in addressing the requirements of this Clause.	YES
CL65 Privacy	YES	This issue has been discussed under 'CL34 Visual and acoustic privacy' in the 'State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004' section of this report. In summary, the proposed development will not cause unreasonable direct overlooking of habitable rooms and the principal private open spaces of other dwellings.	YES
CL66 Building bulk	YES	<p>Clause 66 requires buildings to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land.</p> <p>The proposed development complies with the building height and floor space ratio controls which apply to development for seniors or people with a disability.</p> <p>The varied front setbacks and roof form and the reduced size of the second storey assists in reducing the visual</p>	NO



General Principles	Applies	Comments	Complies
		<p>bulk of the development by breaking up the massing if the building as viewed from Lady Penthyrn Drive.</p> <p>However, as stated in the previous section of the report concern is raised in relation to the bulk and scale of the development when viewed from Narrabeen Lagoon and the various other vantage points.</p> <p>For the reasons given it is not considered that the proposed development does not meets the requirements of Clause 66 Building Bulk. This issue has been included as a reason for refusal.</p>	
CL67 Roofs	YES	The proposed roof form is considered to be satisfactory and is integral to the style of the building.	YES
CL68 Conservation of Energy and Water	YES	A BASIX Certificate has been submitted with the application. The development achieves the target for water, thermal comfort and energy use. Conditions should be included in the consent if the application is approved to ensure the commitments identified on the BASIX certificate are implemented.	YES (subject to conditions)
CL69 Accessibility – Public and Semi-Public Buildings	YES	The proposed development is required to comply with all the relevant accessibility provisions of SEPP HSPD.	YES
CL70 Site facilities	YES	<p>Each dwelling will be specified to incorporate waste recycling division units integrated into the kitchens, with a separate large bin kept outside each dwelling. The applicant has advised that the waste collection will be done by private contractors.</p> <p>Council 's waste officer has reviewed the proposal and has raised no objection in relation waste facilities for the development.</p>	YES (Subject to conditions)
CL71 Parking facilities (visual impact)	YES	The parking facilities are sited and designed to not dominate the street frontage or other public spaces and is satisfactory in addressing the General Principle.	YES
CL72 Traffic access & safety	YES	<p>The Driveway is clearly separated from the pedestrian entrances to the development and the development will not interfere with any public transport facilities.</p> <p>Council's Traffic Engineer has reviewed the proposal and has raised no objection in relation to this issue.</p>	YES
CL73 On-site Loading and Unloading	YES	All loading and unloading will occur within the boundaries of the subject site and therefore considered to be satisfactory in relation to this Clause.	YES
CL74 Provision of Carparking	YES	The carparking requirements for this development are imposed under Clause 29 of WLEP 2000. The carparking provision complies with Schedule 17 of WLEP 2000, which adopts the requirements of Clause 29(d)).	YES
CL75 Design of Carparking Areas	YES	Traffic Report prepared by Halcrow was submitted with the application. The report states that the internal circulation arrangements including ramp grades, aisle widths and bay dimensions will accord with the requirements of AS2890.1, Council's code and the SEPP (HSPD) guidelines. The proposal is therefore consistent with the requirements of Clause 75.	YES
CL76 Management of Stormwater	YES	Council's Development Engineer has reviewed the proposal and raised a number of issues regarding the stormwater drainage design which has been addressed referral section of this report. As inadequate stormwater	NO

General Principles	Applies	Comments	Complies
		details have been submitted, compliance with the requirements of Clause 76 – Management of stormwater has not been achieved. These issues have been included as reasons for refusal.	
CL77 Landfill	YES	Insufficient information has been submitted to demonstrate that the site can be developed in the manner this is consistent with the requirements of this Clause.	NO
CL78 Erosion & Sedimentation	YES	Appropriate conditions associated with management of erosion and sedimentation can be included on the consent if the application is approved.	YES (subject to conditions)
CL79 Heritage Control	NO	No Comment	Not Applicable
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	No Comment	Not Applicable
CL81 Notice to Heritage Council	NO	No Comment	Not Applicable
CL82 Development in the Vicinity of Heritage Items	NO	No Comment	Not Applicable
CL83 Development of Known or Potential Archaeological Sites	YES	The Aboriginal Heritage office has reviewed the proposal and has raised no objection to the proposed development as detailed in the referral section of this report.  The proposed is therefore found to be consistent with the requirement of this Clause.	Yes

## SCHEDULES

### Schedule 5 - State Policies

In accordance with Clause 12(1) (b) of WLEP 2000 before granting consent for development the consent authority must be satisfied that the development is consistent with any relevant state environmental planning policy described in Schedule 5. Schedule 5 outlines the state policy for housing for older people or people with a disability. The proposal has been assessed in detail against the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 elsewhere in this report. The proposal has not been found to be consistent with State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and therefore the application has been recommended for refusal.

### Schedule 8 - Site analysis

Adequate site analysis documentation has been submitted with this application.

## **Schedule 16 - Principles and Standards for Housing for Older People or People with Disabilities**

The application has been lodged under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The provisions in the SEPP prevail in the event of an inconsistency with another environmental planning instrument. As the provisions in Schedule 16 compete with the provisions of the SEPP, no further assessment of the proposal against the provisions in Schedule 16 is required.

## **Schedule 17 – Carparking Provision**

For further details please refer to 'Clause 74 Provision of car parking' in the General Principles of Development Control table in this report.

## **POLICY CONTROLS**

### **Warringah Section 94A Development Contributions Plan**

The proposal is subject to the application of Council's Section 94A Development Contributions Plan. The following monetary contributions are required to provide for additional infrastructure generated from this development;

<i>Warringah Section 94A Development Contributions Plan</i>		
Contribution based on total development cost of		\$32,562,820.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	309,346.79
S94A Planning and Administration	0.05%	16,281.41
Total	1.0%	\$325,628

If the application is approved a condition of consent can be included to ensure the required contributions are paid prior to the issue of the Construction Certificate.

## **MEDIATION**

Mediation was not requested for this development application.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No.55 – Remediation of Land, Warringah Local Environmental Plan 2000, Warringah Development Control Plan and the relevant codes and policies of Council.

It is acknowledged that significant design changes have been made to the proposal and additional supporting documents have been lodged in an attempt to address the issues raised in the judgment of the Land and Environment Court relating to the refusal of the previous Development Application (DA2009/0238). It is considered that the proposed development does not go far enough and the proposed changes do not satisfactorily address

this important issue in that the proposed development has not responded to the desirable elements which are identified under the provisions of the SEPP (HSPD) 2004 and WLEP 2000 in that the proposed development will result in an unacceptable environmental and visual impact. In this regard, the natural landscape of the site is distinctive with significant environmental features such as rock outcrops, natural drainage features and remnant bushland which are not retained or complemented by the development. This is the result of the proposed size of the proposal layout and building footprint and associated works including level of excavation, vegetation and topographical variation and the provision of the asset protection zones required for bushfire protection.

As detailed in the report, the Draft WLEP 2009 is a mandatory matter for consideration under Section 79C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979 and given the fact that the Plan has been through public exhibition and has been adopted by Council the plan is considered both imminent and certain. Therefore, the draft planning instrument must be given significant weight in the determination of the application. In particular, the subject site is located within the E3- Environmental zone in which the proposed development (i.e. seniors housing development) is a prohibited land use. Importantly, the prohibition of seniors housing development within this site will identify this site as being "Environmental Sensitive" within Schedule 1 of SEPP (HSPD) 2004 and therefore the proposed development will also become prohibited development under the provisions of the SEPP (HSPD) 2004.

Further, the proposed development was found to be inconsistent with the aims and objectives of this zone and cannot be supported on this basis as the subject site is unsuitable for senior's housing development.

The proposal would be also inconsistent with the recommendations contained within the Planning Assessment Commissions report into the capabilities of land within Oxford Falls Valley for urban development.

The proposed does not meet the criteria of Clause 15(b) and Clause 42 of the SEPP (HSPD) and that there is insufficient information submitted with the application to demonstrate that reasonable access will be provided to the facilities and services to the residents of the retirement village. The proposed development will also found to be inconsistent with Clauses 29 and 33 of the SEPP and also several general principles as contained with WLEP 2000.

One hundred and ninety one (191) submissions were received to the proposed development, which includes six (6) letters of support. The majority of the submissions raised concerns with the environmental impact, bushfire impact, traffic and parking impacts of the proposed development, the inconsistency of the design with the desired future character statement and the inappropriate design of the development for seniors or people with a disability. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report.

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

## RECOMMENDATION

That the Joint Regional Planning Panel (JRPP) as the consent authority refuse Development Application No: DA2010/1494 for the construction of Seniors Development made pursuant to SEPP (SEPP (Housing for Seniors or People with a disability) 2004 at Lots 808, 809, 812, 813, 817 DP 752038, 70A Willandra Road, Narraweena for the following reasons:

1. Pursuant to Section 79C (1) (a) (ii) of the Environmental Planning and Assessment Act, 1979, the proposed development is inconsistent with the objectives of the E3 - Environmental zone under the provisions of the Draft Warringah Local Environmental Plan 2009 in that the subject site is unsuitable for the proposed development.
2. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 15 (b) and Clause 42(1) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 as the development has not provided sufficient evidence to demonstrate that reasonable access will be provided to facilities and services.
3. Pursuant to Section 79C (1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 29 "*Certain site compatibility criteria for development applications to which Clause 24 does not apply*" of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 as the built form of the proposed development and its location along a ridgeline will be visually inconsistent with the dominant non urban character of the built form and natural environment of the B2 Oxford Falls Valley Locality.
4. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 33 Neighbourhood amenity and streetscape (namely Clauses 33(a), 33(c), 33(c), 33(e) and 33(f) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
5. Insufficient information has been submitted to demonstrate compliance with the following provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;
  - Clause 36 Stormwater;
  - Clause 77 Landfill
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 inconsistent with the Desired Future Character of B2 Oxford Falls Valley locality statement.
7. 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 following 'General Principles of Development Control'.
  - Clause 56 Retaining Unique Environmental Features
  - Clause 57 Development on sloping Land
  - Clause 58 Protection of Existing Flora

- Clause 60 Watercourses & Aquatic Habitats
  - Clause 63 Landscaped open space
  - Clause 66 Building Bulk
  - Clause 76 Management of Stormwater
8. Pursuant to Section 79C (1) (e) of the *Environmental Planning and Assessment Act 1979* the site is not suitable for the proposed development given its remoteness from the required facilities and public transport.
  9. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979* the proposed development is not considered to be in the public interest as the development results in adverse impacts on the natural environment.