

JOINT REGIONAL PLANNING PANEL
Sydney East Region

JRPP No	2014SYE120
DA Number	DA2014/1062
Local Government Area	Warringah LGA
Proposed Development	Demolition works and construction of a residential care facility with associated car parking, internal roads and landscaping
Street Address	Lot1113 / 752038 Oxford Falls Road FRENCHS FOREST
Owner: Applicant:	A Spaliviero City Plan Services
Number of Submissions	39
Regional Development Criteria (Schedule 4A of the Act)	Development Application
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> • Assessment Report • Reasons for Refusal • All documents including architectural Plans and Statement of Environmental Effects • All other documentation supporting the DA • Public submissions
Recommendation	Refusal
Report by	Malcolm Ryan, Deputy General Manager Environment

ASSESSMENT REPORT AND RECOMMENDATION

Assessment Officer:	Lashta Haidari
Application Lodged:	3 October 2014
Plans Reference:	DA.0.00, 01 - 0 -04, DA2.01 -07, DA3.01 -03, DA4.01 – 4.10 (Revision A – dated 20/06/2014) prepared by Marchese Partners.
Amended Plans:	No
Owner:	A Spaliviero
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Locality:	B2 Oxford Falls Valley
Category:	Category 2 – Housing for older people or people with

	disability
Variations to Controls (CI.20/CI.18(3)):	Yes – Front & Side Boundary Setbacks
Referred to JRPP:	Yes – Cost of Works greater than \$20 Million
Land and Environment Court Action:	None Pending

SUMMARY

Submission Issues:

- Environmental Impacts
- The development is inconsistent with the character of the locality
- The development does not satisfy the relevant controls of *Warringah Local Environment Plan 2000 (WLEP 2000)* and *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD) 2004)*
- Increased Traffic, Traffic Conflict and Traffic Congestion
- The site is not suitable for the development due to bushfire impacts
- The development will adversely impact on the amenity of the adjoining property such as acoustic and privacy
- Social Isolation of the site
- The development is going towards a larger proposal, which was already refused
- Previous concerns have not been addressed
- Bulk and Scale
- Planning Minister's 10 year moratorium on development
- Undesirable precedent
- Cost of the development

Assessment Issues:

- Use of public and private land
- Inconsistency with the Desired Future Character statement of the B2 Oxford Falls Valley locality
- Inconsistency with a number of the General Principles of Development Control
- Inconsistency with Council's Policy No. PL 740 Waterways (Protection of Waterways and Riparian Land Policy)
- Insufficient information to satisfactorily assess the application

Recommendation:

Refusal

DP 846099

DP 824283

1336-1337

1091

1093

1336

1337

BARNES RD

RD

DP 846099

DP 824283

1336-1337

1091

1093

1336

1337

BARNES RD

RD

Public Exhibition: The subject application was publicly exhibited in accordance with the *Environmental Planning and Assessment Regulation 2000 (EPA Regulation 2000)*, *WLEP 2000* and *Warringah Development Control Plan (WDCP)*. The application was notified to 156 adjoining land owners and occupiers for a minimum period of 30 calendar days commencing on 17 October 2014 and being finalised on 13 November 2014.

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SITE DESCRIPTION

The site is located on the northern side of Barnes Road and is legally known as Lot 1113, DP 752038, Oxford Falls Road, Frenchs Forest. Barnes Road is only a partially constructed road. The site is bordered to the east by Oxford Falls Road.

The site is located within an area identified as “*Deferred Lands*” under the Clause 1.3(1A) of the *Warringah Local Environmental Plan 2011*. The site is located within the B2 Oxford Falls Valley locality under *Warringah Local Environmental Plan 2000*.

The site is irregular in shape and has a total area of 33,710m² or 3.371 hectares.

The site accommodates a detached dwelling-house and associated outbuildings. An internal driveway provides access to the property from the small section of constructed road in the Barnes Road reserve.

Topographically, the site is separated into two halves. The steeper southern half is elevated between RL110 and RL90 and accommodates a dwelling house, landscaped garden areas, outbuildings and internal driveways. The northern half is situated at a lower level of between RL90 and RL84 and accommodates a large open grassed area. The site has a fall of 26m from the south-western corner to the north-eastern corner.

The southern part of the site has been partly cleared to support the dwelling, outdoor spaces and the paddock area to the north-east. A large grouping of trees is located in an east-west alignment across the centre of the site (adjacent to the internal central roadway). A smaller grouping of trees is also located to the south of the dwelling.

Surrounding development consists of low density residential dwellings in the suburb of Frenchs Forest to the west and semi-rural lands with dwelling houses and ancillary development and recreational facilities to the north and south.

SITE HISTORY

Previous Related Applications

Part 3A Application No. MP 05 -0113 For Seniors Living Resort

The subject site was part of a larger site that was the subject of a Part 3A Application, which was lodged with the NSW Department of Planning on 23 October 2008.

That application sought consent for a Concept Plan to develop multiple sites for the purposes of a Seniors Living Resort and Associated Services and Facilities. The proposal consisted of the following:

- Use of the site for Seniors Living, office, retail, recreational and open space purposes and adaptive reuse of existing buildings on site for ancillary services;
- Construction of 20 buildings ranging in height from 3 – 4 storeys comprising 393 self-care dwellings, 100 serviced apartment dwellings and 80 bed high care (nursing home) facility;
- 607 car parking spaces comprising 547 residents and 60 visitor spaces; and
- Total Gross Floor Area of 63,550m².

The application was refused by the Minister for Planning on 14 February 2011.

Development Application No. 2004/0585

The Development Application was lodged with Council on 12 May 2004.

This application sought consent for a Master Plan for a Seniors Living Development and Stage 1 construction works. The application proposed the following:

- 1500 to 1650 Residents in buildings up to 6-7 storeys in height;
- 750 Self Care units;
- 60 bed nursing home;
- 75 bed assisted care units;
- Medical centre;
- Pharmacy;
- Serviced offices;
- Overnight accommodation for up to 20 Visitors;
- Mini market & shops;
- Licensed restaurant;
- Several clubs with bars;
- Gymnasium;
- Heated pool and craft workshops;
- Two tennis courts and bowling green; and
- Nine hole pitch & putt golf course.

The application was withdrawn by the applicant on 27 July 2004.

Development Application No. 2004/1402

This Development Application was lodged with Council on 5 November 2004.

The application sought consent for a Concept Plan for a Seniors Living Development. The application proposed the following:

- 700 to 850 residents in a range of self-care apartments;
- 60 bed nursing home;
- 60 assisted care units;
- Medical centre;
- Pharmacy;
- Serviced office facility;
- Overnight visitor accommodation;
- Mini market;
- Beauty hair and diet centre;
- Multiple use service stores;
- Licensed restaurants;
- Bistro and barbeque areas;
- Internet coffee shop;
- Lounges;
- Libraries;
- Card rooms;
- Lecture theatre;
- Games room;
- Clubs with bars;

- Gymnasium;
- Indoor-outdoor pool and spa;
- Craft workshop;
- Two and a half tennis court;
- Hothouse and greenhouse;
- Croquet and bowling greens; and
- Nine hole pitch and putt golf course.

The application was referred to the Independent Hearing and Assessment Panel (IHAP) on 9 March 2005 with a recommendation for refusal. At that meeting, the IHAP resolved to refuse the application.

Development Application No. DA2013/0575

This Development Application was lodged with Council on 15 May 2013.

The application sought consent for an Alterations and Additions to a Dwelling-house and Change of Use to a Residential Care Facility for 10 beds and construction of an extension to a road, internal access road, carpark and recreation facilities.

This application relied upon the use of the Barnes Road road reserve and a portion of the neighbouring allotment to the south (Lot 1336 in DP 752038, No. 1336 -1337 Oxford Falls Road, Beacon Hill) to accommodate inner and outer Asset Protection Zones (APZ's).

The application was referred to the Warringah Development Assessment Panel (WDAP) on 2 October 2013 with a recommendation for refusal. At that meeting, the WDAP resolved to defer the matter to allow Council time to review the legal argument put forward with regards to the use of the Road Reserve to accommodate the APZ's.

On review, Council formed the opinion that the use of the road reserve for the purposes of allowing the APZ was acceptable on the basis that it would improve the existing situation in terms of access to the site. The application was referred back WDAP on 13 November 2013 with the recommendation for approval.

The application was approved by WDAP on 13 November 2013 subject to conditions which included a condition requiring the applicant to obtain consent under Section 138 of the *Roads Act 1993* (as necessary), in relation to any works associated with the APZ within the Barnes road reserve.

The Current Development Application (DA2014/1062)

The current application was lodged with Council on 3 October 2014. No pre-lodgement meeting was carried out for this proposal.

Assessment of the proposal found the following key issues:

- Owners consent and the provision of APZ on public and private land;
- Issues raised within referral comments;
- Inconsistency with the requirement of *WLEP 2000*;
- Inconsistency with the requirement of *SEPP (HSPD) 2004*; and
- Provision of insufficient information to enable a comprehensive assessment of the application.

The Applicant was requested by letter dated 12 January 2015 to withdraw the application due to the concerns identified. The applicant was advised in that letter that failure to withdraw the application would result in Council determining the application based upon the information provided at lodgement.

The applicant responded by letter dated 21 January 2015 with the following:

- A response letter, prepared by City Plan Services, addressing the individual issues raised by Council;
- A response from Travers Bushfire and Ecology, dated 17 January 2015 addressing the requirement of APZ on riparian zones and the environmental issues; and
- New quantity Surveyors letter confirming the cost of the development.

The additional information submitted has been taken into consideration in the assessment of the application.

PROPOSED DEVELOPMENT

The applicant seeks consent for demolition works, clearing of vegetation, additions and alterations to an existing building and construction of five new buildings as a residential care facility for 45 beds with the associated car parking, construction of internal roads, and landscape works.

The application, as detailed within the Statement of Environmental Effects, consists of the following:

- Site clearance and removal of trees and undergrowth;
- Demolition of a portion of the existing dwelling;
- The construction of a 45 bed residential care facility;
- On grade car parking spaces for 30 vehicles;
- Landscaping works;
- Construction of internal roads; and
- Site improvement and drainage works.

The applicant has presented the current application as “an expansion of a recent approval being DA2013/0575 for a 10 bed residential care facility” and that it should be considered in conjunction with that approval.

However, each DA is assessed on its individual merits. It is noted that the previous approval on this site related to a 10 bed residential care facility, involving only alterations and additions to the existing dwelling house. The current DA involves the construction of five (5) new buildings on the site, so on the basis of the significant differences with the former approval, this application is assessed as a “stand-alone” application for this site.

STATUTORY CONTROLS

- a) *Environmental Planning and Assessment Act 1979 (EP&A Act 1979);*
- b) *EPA Regulations 2000;*
- c) *State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55);*
- d) *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX);*
- e) *SEPP (HSPD) 2004;*

- f) *State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)*;
- g) *Warringal Local Environment Plan 2000 (WLEP 2000)*; and
- h) *WDCP No. 1.*

PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the *EPA Regulation 2000*, *WLEP 2000* and *WDCP*. The application was notified to 156 adjoining land owners and occupiers for a minimum period of 30 calendar days commencing on 17 October 2014 and finishing on 13 November 2014. Furthermore, the application was advertised in the *Manly Daily* on 18 October 2014 and a notice was placed upon the site.

It is noted that the public exhibition of the DA did not include reference to the fact that the application involves the Barnes Road reserve and the neighbouring private and public property to the south. This was as a result of the applicant not making appropriate references to these properties on the application form.

Therefore, prior to any approval being granted by the JRPP, as per the requirements of the *EPA Regulation 2000*, the application should be re-exhibited, including the property details of the road reserve and the neighbouring property to the south and consideration of any further submissions.

As a result of the public exhibition process, 39 submissions were received. A summary of the issues raised in the submissions and a response is outlined below.

1. Environmental Impacts

Concern has been raised that the proposal will result in adverse impacts on the natural environment in that the proposed development will impact local flora and fauna, given the number of trees required to be cut down as a result of the proposal.

Concerns have also been raised that the proposed development is found to be inconsistent with recommendation of the Planning Assessment Commission (PAC) report.

Comment:

This issue has been addressed under various sections of this report. In summary, the impact of the proposed development on the existing vegetation of the site is found to be unsatisfactory. These issues have been included as reasons for refusal.

2. Inconsistency with the Desired Future Character (DFC) of the B2 Oxford Falls Valley Locality

Concern has been raised that the proposal does not comply with the Oxford Falls Valley Locality statement as in that it is not be in keeping with the local area and will destroy a unique enclave and community on the Northern Beaches.

Comment:

The proposal's consistency with the DFC statement is considered under '*WLEP 2000*' in this report. In summary, the proposed development has been found to be inconsistent with the DFC statement for the B2 locality and this issue has been included as a reason for refusal.

3. Increased Traffic, Traffic Conflict and Traffic Congestion

Concerns have been raised regarding the impact that the development will have on traffic, pedestrians and car parking. The following specific concerns were raised:

- *The construction traffic would be a concern as the affected streets don't even have footpaths for pedestrians who are forced to walk on the roads as nature stripes are uneven.*
- *Barnes Road is absolutely not suited as a primary access road to any form of non-residential property and we question the safety of having elderly people driving motor vehicles down the very steep Myra Street and having to make a tight turn at the bottom to enter Barnes Road.*
- *Myra Street is just not geared for the increases traffic this development would attract with Barnes Road even less suitable.*
- *There will be traffic generated by visitors to the facility plus all the other services that will be generated to support what is an effect a sizable commercial business operating in a low density residential area.*
- *The traffic report has only addressed the intersection between Barnes and Myra.*
- *Development such as the proposal and the hospital combined there will be an overflow of parking onto local streets.*

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.

4. Planning Minister's 10 year moratorium on development

Concerns have been raised over the proposal's inconsistency with the PAC report in that no developments are to occur for 10 years.

Comment:

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 the Oxford Falls locality is concurred with as the proposed development will have unacceptable environmental impacts. However, the PAC report has no determining weight and therefore cannot be used to refuse the application.

5. Bushfire

Concern has been raised over the threat of bushfires to the area and the effect that the proposal will have on neighbouring properties, future residents and the environment.

Comment:

The development is accompanied by a Bushfire Protection Assessment report dated September 2014 as prepared by Travers Bushfire & Ecology. In the report, recommendations are provided to ensure the safety of the residents of the facility is in accordance with the provisions of 'Planning for Bushfire Protection 2006' as published by the NSW Rural Fire Service (NSWRFS).

The application was also referred to the NSWRFS (see referral response from the NSWRFS under the 'Referrals' section in this report), who have also raised no objection to the proposed development based on the bushfire impact.

6. Acoustic Impact

Submissions have raised concern over the level of noise that the proposed development will generate and the effect that it will have on the local neighbourhood. The specific concerns are that the proposal will create increased traffic noise from service and maintenance vehicles, garbage trucks, and ambulances. The facility will also operate 24 hours a day and create additional noise which will have an adverse effect on the local neighbourhood.

Comment:

The acoustic impact of the proposed development is addressed in detail under Clause 43 of the General Principles Section of this report. In summary, although no concern is raised in relation to the operation of the proposed facility, the assessment has found that there is insufficient information submitted with the application to demonstrate that the acoustic impact of the open car park area on the adjoining residential development will be acceptable.

This issue has been included as a reason for refusal.

7. The development forms Stage 1 of a larger proposal

Concerns have been raised over the increase in the size and scale of the development proposal compared to the last application that was submitted *“that each proposal is a stepping stone to the next, to achieve the original outcome planned by Tiffany Developments but by stealth”*.

Comment:

The application has not been lodged as a ‘staged’ development application.

There is no evidence currently before Council to indicate that the subject application forms part of a larger proposal.

In this regard, Council cannot speculate and is obliged to consider the subject application on its own terms and merits and against the relevant legislation, controls and policies in place at the time.

This matter does not warrant the refusal of the application.

8. Bulk and Scale

Concern has been raised over the bulk and scale of the proposed development in that it's not be in keeping with the current housing.

Comment:

This issue has been addressed in detail under the section Clause 66 – Building Bulk, where it is concluded that the proposed development is not in keeping with the character of housing in the surrounding residential locality.

9. Previous concerns not addressed

Concern has been raised that the proposal has not addressed issues that were raised in previous development applications for the site. Issues such as traffic, run-off, wildlife,

bushfire threat, noise, change to the characteristics of the area and other social concerns have not been addressed.

Comment:

As indicated previously, Council has an obligation to consider the subject application on its own terms and merits and against the relevant legislation, controls and policies in place at the time. The assessment of this application has found that there are a number of issues, which warrant the refusal of the application.

10. Undesirable precedent

Submissions raised concern that by approving this development proposal, a precedent would be set that will allow similar or larger developments to occur in the area.

Comment:

Precedent is not a matter for consideration under Section 79C of the *EP&A Act 1979*. However, as the assessment of the application has found it to be unacceptable in relation to its location, character, accessibility, servicing etc., the approval of the Development Application would change the character of the locality which would be undesirable.

11. Social Isolation

Submissions have raised concern that the location of the development will result in social isolation for future residents. The site has poor access to public transport, services and facilities and as a result is likely to cause social isolation and adversely impact on the well-being of future residents.

Comment:

This issue is addressed in detail under Section 79C section of this report. In summary, the assessment has concluded that the site is not suitable for this form of development given its remoteness from the required services and facilities.

This issue has been included as a reason for refusal.

12. State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004.

Concerns have been raised regarding the proposed developments inconsistency with the requirements of the *SEPP (HSPD) 2004*.

Comment:

An assessment of the application against the requirements of *SEPP (HSPD) 2004* is provided in this report. In summary, the proposal is found to be inconsistent with the applicable clauses of the *SEPP (HSPD) 2004* and this issue has been included as a reason for refusal.

13. Statement of Environmental Effects (SEE)

Concerns have been raised that the SEE is inadequate for such a large proposal, it is missing the Clause 15 (1) of *WLEP 2000* for Category 3 Development.

Comment:

The proposed development is not a Category 3 Development Application, and therefore there is no requirement for Clause 15 to be addressed by the applicant. This issue does not warrant the refusal of the application.

14. Cost of Works and the relevant consent authority

Concerns have been raised regarding discrepancies with the cost of works of the development and who the certifying authority is.

Comment:

The applicant has provided a letter from a Quantity Surveyor, which provides a cost summary report. The report indicates that the costs of the development will now be \$23,760,759, this figure is higher than the original cost.

Upon the review of the submitted cost summary, it is noted that the cost summary has not been prepared in accordance with the definition of Capital Investment Value (CIV) as defined within the *EPA Regulation 2000*.

This issue needs to be addressed by the applicant prior to any determination of the application.

15. No Owners consent is provided for the provision and maintenance of APZs on the adjoining private land

Concerns have been raised that owners consent has not be provided and that the APZs on adjoining land may not be able to be maintained.

Comment:

This issue is discussed throughout this report and has been included as a reason for refusal.

MEDIATION

Mediation was requested by the objectors.

LAND AND ENVIRONMENT COURT ACTION

There is no Land and Environment Court action current or pending on this application to date.

REFERRALS

External Referrals

NSWRFS

The application was referred to the NSWRFs as Integrated Development on 9 October 2014.

Section 100B of the *Rural Fires Act 1997* enables the Commissioner of the NSWRFs to issue a Bushfire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that *Rural Fires Act 1997* identifies Seniors Housing (within the meaning of the *SEPP (HSPD) 2004*) as such development.

In their response on 20 November 2014, the NSWRFs issued their Bushfire Safety Authority and General Terms of Approval which are to be included in any consent should the Panel be of the mind to approve this application.

The applicant has submitted a revised Bushfire report, which has been referred to NSWRFs for comment. No comments have been received from the NSWRFs at time of writing this report.

It is noted that the approval from the NSWRFs is reliant upon the fact that the owner's consent being granted by Council to use the Barnes Road reserve for the purposes of an APZ and that an easement is granted by the adjoining owner to the south of the road reserve for the establishment and maintenance of an APZ on their land.

Council's Road Asset section has reviewed the application and raised no objection in this regard, subject to a condition requiring a positive covenant to address the requirement of Bushfire Protection.

However, no owners consent from the owners of the adjoining properties to the south has been provided to date. The applicant responded to this issue on 21 January 2015 indicating that *"the adjoining owner has already provided consent to an 88B easement on his land for the purposes of an APZ for approved DA2013/0575 and this has been provided to Council previously"*.

The owner's consent provided for DA3013/0575 only relates to APZ resulting from that application, which was an existing building that was proposed to be refurbished and used for residential care facility. The current application is proposing five new buildings on site and significantly different both in terms of built form and the extent of the APZ that will be required on the adjoining property. Therefore, the owner's consent provided previously cannot be used for this application and this issue has been included as a reason for refusal.

This issue has also been included as reason for refusal.

Sydney Water

The application was referred to Sydney Water, in their response dated 7 November 2014, and indicated that a Section 73 application for approval prior to commencement of any work on site will be required.

This requirement can be included in any consent should this application be approved.

Ausgrid

The application was referred to Ausgrid on 9 October 2014 for comment.

To date, no response has been received and it is assumed that Ausgrid do not raise any objection nor impose any conditions.

Internal Referrals

Department	Comments Received
Parks, Reserves and Foreshores	No objection is raised to this application on the basis that the development does not affect any area classified as park.
Road Assets	<p>In DA2013/ 0575, Council has requested the applicant to prepare and lodge a positive covenant about the APZ in order to satisfy the requirement of Bush Fire Protection. No positive covenant has been submitted and signed according to with Council's records.</p> <p>This development application shall be considered as an individual proposal. As such, Road Assets requests the</p>

	applicant to prepare and lodge the positive covenant to address the requirement of Bushfire Protection.
Development Engineer	<p>Stormwater management for the development prepared by JMD Development Consultants is acceptable.</p> <p>The proposed driveway would require a vehicular crossing and a low point pit with a lintel is to be provided to reduce flood inundation at the entrance to the development.</p> <p>No objection to approval, subject to conditions as recommended.</p>
Traffic Engineer	<p>The traffic report for the proposed development indicates that 28 parking spaces will be provided on site to cater for staff and resident parking, which complies with the requirements of the <i>WLEP 2000</i>.</p> <p>The proposed parking layout and spaces appear to comply with AS2890 and, on this basis, is considered acceptable. It needs to be confirmed that a service vehicle can enter and exit the loading bay and turn through the roundabout when exiting.</p> <p>There are no objections to the proposed development on traffic grounds.</p> <p><u>Comment:</u></p> <p>The plans submitted with the application indicate that there are 30 parking spaces proposed.</p>
Natural Environment Unit (Riparian)	<p>The core riparian zone width identified in the Waterway Impact Statement does not meet Councils riparian requirements as the core riparian zone width is less than that prescribed in Warringah's Creek Management Study 2004.</p> <p>Currently, some areas of the core riparian zone are not fully vegetated but restoration of these areas are outlined in the Protection of Waterways and Riparian Land Policy:</p> <p>Natural ecological processes of waterways and riparian land shall be maintained and enhanced to the greatest extent possible by:</p> <ul style="list-style-type: none"> • causing no net loss to biodiversity; • improving plant communities through natural area restoration. <p>The Waterway Impact Statement describes Middle Creek Tributary (Throughout the assessment this is referred to by Council as Middle Creek) as a first order stream. The Strahler System describes a second order stream as:</p> <p>If two first order streams join, the stream becomes a second order stream (2)</p> <ul style="list-style-type: none"> • If a second order stream is joined by a first order stream, it remains a second order stream. • Therefore Middle Creek Tributary is a second order stream and requires a 20m riparian zone as per the NSW Office of Water. <p>Addendum Bushfire Protection Assessment by Travers</p>

	<p>Bushfire Ecology has decreased the Outer Protection Zone of the APZ adjoining Barnes Road, and included a 10m riparian zone on both sides of the watercourse up to and including the dam on the adjoining property POR 1336 DP 752038 Oxford Falls Road, Oxford Falls. But the APZ adjoining Barnes Road still encroaches on the core riparian and buffer zones mapped by Councils Creek Management Study 2004.</p> <p>The Protection of Waterways and Riparian Land Policy 2010 does not support APZ being located within riparian land. Riparian land includes core riparian zone and riparian buffers.</p> <p>Recommendation (Not Supported)</p> <p><u>General (including Middle Creek Tributary) - referred by Council throughout the assessment as Middle Creek.</u></p> <p>The core riparian zone widths identified in the Waterway Impact Statement do not meet Councils riparian requirements, as the core riparian zones are less than prescribed in Warringah's Creek Management Study 2004.</p> <p>Even though some areas of the Warringah's Councils core riparian zones are not fully vegetated, the Protection of Waterways and Riparian Lands Policy encourages revegetation of these areas as stated by the following:</p> <p><u>3.1 Protection of Waterways and Riparian Land</u></p> <p>a) Natural ecological processes of waterways and riparian and shall be maintained and enhanced to the greatest extent possible by:</p> <ul style="list-style-type: none"> • Causing no net loss to biodiversity; • Improving plant communities through natural area restoration; • Middle Creek Tributary (referred to by Council as Middle Creek) as referred to in the Waterway Impact Statement is a second order stream and would be given a 20 metre vegetated riparian zone by the NSW Office of Water. <p><u>Drainage Line 2 - referred to by Council throughout the assessment as Middle Creek Tributary.</u></p> <p>The APZ located on site and the adjoining property of POR 1336 DP 752038 encroaches on riparian land (includes core riparian and buffer zones) as mapped by Warringah's Council Creek Management Study 2004. This is not in accordance with Warringah's Protection of Waterways and Riparian Land Policy that states:</p> <p><u>3.1 Protection of Waterways and Riparian Land:</u></p> <p><i>Bushfire asset protection zones shall be located outside of riparian land.</i></p> <p><u>WLEP 2000</u></p>
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	Not in accordance with <i>WLEP 2000</i> - Clause 60 Watercourses and aquatic habitat - Development is to be sited and designed to maintain and enhance natural watercourses and aquatic habitat.
Natural Environment Unit (Biodiversity)	<p>Based on consideration of the likely adverse impacts upon the natural environment, the development application is not supported for the following reasons:</p> <ul style="list-style-type: none"> • Exceptional circumstances for this development to have a bushfire APZ on Council land or adjoining lands have not been demonstrated. <p>The NSWRFs guideline Planning for Bushfire Protection (2006), Section 3.3 states, "the use of adjoining lands for meeting APZ requirements will only be permitted in exceptional circumstances based on the merits of the particular development." The information provided does not demonstrate these exceptional circumstances.</p> <ul style="list-style-type: none"> • Proposed APZ will impact on remnant native vegetation (bushland) that is linked by adjoining wildlife corridors. • The vegetation management plan to manage ongoing habitat resources, weeds, future landscaping and site works to retain mature trees and habitat movement corridors, recommended to be prepared in previous Development Applications, has not been submitted. This document is required to ensure the retention of distinctive environmental features on site and should have been submitted with this Development Application for assessment. <p>The proposal is considered to be inconsistent with the following Clauses within <i>WLEP 2000</i>:</p> <ul style="list-style-type: none"> • Clause 52 – Development near parks, bushland and other public open spaces; • Clause 56 – Retaining distinctive environmental features on site; • Clause 58 - Protection of existing flora; • Schedule 5 – Bushland in urban areas; and • Schedule 6- Preservation of bushland.
Landscape Officer	<p>The application is accompanied by a detailed Landscape Plan. Protection of existing rock outcrops is indicated and replacement tree planting is proposed, with retention of other existing trees.</p> <p>No objections to the proposed landscape plan are raised subject to conditions as recommended.</p>
Waste Officer	The proposal is for an aged care facility, and Waste Services will not be providing it with any domestic waste services.
Environmental Health and Protection (Unsewered Land)	<p>There is insufficient detail supplied with the application on how the development proposes to deal with waste water/sewage generated. It is briefly described in the SEE that they propose to 'introduce a private sewer system' that will then be connected to a Sydney Water man hole. The following information needs to be submitted to council for review so that a full assessment of environmental health issues can be completed:</p> <ul style="list-style-type: none"> • A detailed plan of any proposed waste water treatment system, storage devices, waste water

	<p>disposal systems and/or connections to Sydney Water sewage system.</p> <ul style="list-style-type: none"> Where there is not an immediate connection to the Sydney Water Sewage system (i.e. requiring the provision of a septic treatment or storage system) a waste water report prepared by an appropriately qualified person must be provided that details the following: <ul style="list-style-type: none"> a) Specify a suitable waste water treatment device for the site and specify the acceptable disposal location, design, capacity and dimensions so as not to pose an environmental and health risk taking into consideration topography, soil type and composition, existing vegetation of effluent application areas related to the sewage management system.
Environmental Health and Protection (Contaminated Land)	No objection subject to conditions.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act 1979)

The relevant matters for consideration under Section 79C of the *EP&A Act 1979*, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None Applicable
Section 79C (1) (a)(iii) – Provisions of any development control plan	The application was notified in accordance with <i>WDGP</i> .
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None Applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	<p>The <i>EPA Regulations 2000</i> requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be address via a condition of consent.</p> <p>Clause 92 of the <i>EPA Regulations 2000</i> requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be address via a condition of consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control 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>
Section 79C (1) (c) – the suitability of the site for the development	The site is not considered suitable for the proposed development as the application has been assessed to

Section 79C 'Matters for Consideration'	Comments
	<p>be inconsistent with provisions of <i>SEPP (HSPD) 2004</i>, the Desired Future Character and a number of general principles of development control as contained in <i>WLEP 2000</i>.</p> <p>Furthermore, the site is not suitable for this form of development given its remoteness from required services and facilities.</p> <p>The proposal also heavily relies upon the use of the public land and a portion of the neighbouring private property to the south to accommodate the APZs for the proposed. The use of other land to support the purposes of a private development is not considered to be appropriate as it will put unreasonable constraints for future of development on these sites.</p>
Section 79C (1) (d) – any submissions made in accordance with the <i>EP&A Act</i> or <i>EPA Regulation 2000</i>	In regards to public submissions refer to the discussion on "Notification & Submissions Received" within this report.
Section 79C (1) (e) – the public interest	<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 public interest as the development has been found to be inconsistent with the provisions of <i>SEPP (HSPD) 2004</i>, and DFC and a number of General Principles of Development Control as contained under <i>WLEP 2000</i>.</p> <p>Particularly, the proposed development is also not in the public interest in that the proposal is dependent upon the use of Council's road reserve and will further alienate public land. The proposal also relies on the adjoining private land, which will impose unnecessary constraints on that property.</p> <p>Accordingly, the proposed development will result in uncontrolled uncoordinated development which is not consistent with the <i>objects</i> of the <i>EP&A Act 1979</i>, 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 (PAC)

The 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 PAC report dated April 2009 concluded that, on the basis of the information available to it for each of the study sites, that none of the sites within the Oxford Falls catchment area are capable of urban development for at least 10 years. This conclusion was reached after assessing the study sites against the sustainability criteria in *Sydney's Metropolitan Strategy – City of Cities: A plan for Sydney's Future* (2005) and against the *Draft North-East Subregional Strategy 2007*. 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 PAC report.

The applicant response to this issue, as prepared by City Plan Services, dated 21 January 2015 notes that:

“The report referred to is not relevant to this site and has no statutory relevance to this assessment. The study examined the development feasibility of 4 very large sites from 11ha to 56ha in size for land release and the cumulative impact such release may have. This site is much smaller than any in the study and is clearly able to be developed on its merits under existing planning controls as evidenced by the recent approval of DA2013/0575 for a 10 room residential care facility”.

It is agreed that the subject site is not directly part of the PAC study area and that the study targeted only four sites. However, its overall recommendation indicates that none of the sites within Oxford Falls catchment area are capable of urban development for at least 10 years.

The subject site is included within the Oxford Falls catchment area and therefore the overall recommendation of this report is relevant to the proposed development. There are no statutory requirements for Council to refuse the application on the outcome of the PAC 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 in this report and therefore the findings of the PAC report are considered to be somewhat relevant to the assessment of this application.

Furthermore, the applicant's argument that the site is suitable for the proposed development based on the approval of DA2013/0575 for 10 bed residential care facility is disputed on the basis that there are significant differences between the two Applications in terms of the size, scale and intensity of the proposal.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)

State Environmental Planning Policies (SEPPs)

Further consideration is required for the following State policies:

State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)

Clause 7(1) (a) of the *SEPP 55*, and Clause 48 of *WLEP 2000*, state that a consent authority must not consent to the carrying out of any development on land unless;

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

Council's records indicate that the site has been used for residential purposes for a significant period of time. It is therefore considered that the site poses no risk of contamination and as such no further consideration is required under Clause 7(1) (b) and (c) of the *SEPP 55*.

State Environmental Planning Policy – BASIX (SEPP BASIX)

A BASIX certificate is not required to be submitted with the subject application.

State Environmental Planning Policy – Infrastructure (SEPP Infrastructure)

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

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

The application was referred to Ausgrid on 9 October 2014 for comments.

To date, no response has been received and it is assumed that Ausgrid do not raise any objection nor impose any conditions.

Roads and Maritime Service (RMS)

With regards to requirements of Clause 104(2) (b) and Schedule 3 of the *SEPP Infrastructure*, the development does not have a capacity for 200 or more motor vehicles. Therefore, the *SEPP Infrastructure* does not apply in this respect and does not require the referral of the application to the RMS.

State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (SEPP (HSPD) 2004)

The subject application has been lodged under the provisions of *WLEP 2000* not the *SEPP (HSPD) 2004*.

The *SEPP (HSPD) 2004* applies to all land within the State of New South Wales. As such, the *SEPP (HSPD) 2004* is relevant to the assessment of this Development Application. However, any clauses within the *SEPP (HSPD) 2004* which are prefaced for their operation with the words ‘*development application made pursuant to this chapter*’ would not be relevant to the application as per the NSW Land and Environment Court decision of Talbot J on 31 May 2004, in *Mete v Warringah Council* (2004 NSWLEC 273).

In accordance with Section 79C of the *EP&A Act 1979*, the assessment of this application has taken into consideration the relevant provisions of the *SEPP (HSPD) 2004* as per the above noted NSW Land and Environment Court decision. As this *SEPP (HSPD) 2004* does apply (in part) to Warringah Council, an assessment is provided with regard to the relevant provisions of *SEPP (HSPD) 2004*, outlined as follows:

Chapter 1 – Preliminary

In relation to the first aim of the policy, whilst the proposed development would increase the supply and diversity of residences within the Warringah Local Government Area, 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 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. Furthermore, the development is heavily relying upon the use of Barnes Road reserve and the adjoining private land to accommodate the required APZ.

When considering the development against the aim of achieving good design, the development must be considered in context with other provisions of the *SEPP (HSPD) 2004*. 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 to respect the amenity of the adjoining properties through physical separation and landscaping screening where required.

However, concerns are raised in relation to the overall impact of the development, particularly, given that the entire built form of the development, being six separate buildings with all the other associated facilities including internal roads, are within the southern portion of the site. In this regard, no analysis has been provided in the application, which demonstrates that, siting of the development on this large site is appropriate and there is no rational as to why the northern portion of the site which is largely cleared and relatively flat land, is not utilised at all.

If the development was more evenly spread across the site, this may assist to some degree in minimising the overall impact of the development on existing vegetation, and may also assist in reducing the non-compliances with the setbacks and need to have APZs on the road reserve as well the adjoining property to the south.

The proposed development has been found to be inconsistent with aims of the *SEPP (HSPD) 2004* and this issue has been included as a reason for refusal.

Chapter 2 – Key concepts

The proposed development is consistent with the key concepts contained within *SEPP (HSPD) 2004*. The proposed development comprises of 45 bed residential care facility, which is to be occupied by seniors, people with a disability, or other persons permitted by the *SEPP (HSPD) 2004*. Appropriate conditions could be recommended to be placed on the development consent to restrict occupation of this building in accordance with the definitions outlined under the *SEPP (HSPD) 2004*.

On this basis, it is considered that the proposed development is consistent with the provisions outlined under Chapter 2 of *SEPP (HSPD) 2004*.

Chapter 3 – Development for seniors housing

Chapter 3 of *SEPP (HSPD) 2004* contains a number of development standards that are applicable only to development applications made pursuant to *SEPP (HSPD) 2004*. However, as the Development Application was made pursuant to *WLEP 2000*, the specific provisions prefaced for their operation with the words “made pursuant to this chapter” of Chapter 3 do not apply. There are no relevant provisions of Chapter 3 applicable to this Development Application.

Chapter 4 – Miscellaneous

The site is not on “*environmentally sensitive land*” and is not affected by amendments to other SEPPs, and the special provisions do not apply to this land.

However, the requirement of Clause 55 is directly applicable to the proposed development, which states

“A consent authority must not grant consent to the carry out of development for the purpose of a residential care facility for seniors unless the proposed development includes a fire sprinkler system”.

The applicant within the SEE indicates that this requirement should be deferred as a condition of consent. However, the requirement under Clause 55 of *SEPP (HSPD) 2004* is clear in that a consent authority must not consent to carry development unless the proposed development includes a fire Sprinkler system.

The proposed development does not include a Fire Sprinkler System as per the requirement of Clause 55, and therefore this issue has been included as a reason for refusal.

Regional Environment Plans (REPs)

There are no REPs applicable to this development.

Local Environment Plans

Warringah Local Environmental Plan 2011 (WLEP 2011)

Clause 1.3(1A) – ‘Land to which Plan applies’ under the *WLEP 2011* states that “...*this plan does not apply to the land identified on the Land Application Map as “Deferred Matter”*”.

The Land Application Map identifies the subject property as a “*Deferred Matter*”. Therefore, *WLEP 2011* (and the current *Warringah Development Control Plan 2011 (WDCP 2011)*) does not apply to this application.

Warringah Local Environment Plan 2000 (WLEP 2000)

The subject site is located in the B2 Oxford Falls Valley locality under *WLEP 2000*.

The DFC statement for the locality states:

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.

Definition and Category of Development

The development is defined under the *WLEP 2000* Dictionary as 'Housing for Older People or People with Disabilities' which means:

*"residential accommodation which is or is intended to be used permanently as housing for the accommodation of older people or people with disabilities, whether or not it is also used to accommodate people who live with older people or people with disabilities, or staff who are employed to assist in the administration of and provision of services to such housing. Housing for older people or people with disabilities may consist of a **residential care facility**, a hostel or a grouping of two or more self-contained dwellings, or a combination of these, but does not include a hospital or a group home".*

Development for the purposes of 'Housing for Older People or People with Disabilities' is classified as a Category 2 development under the B2 Oxford Falls Valley locality statement of the *WLEP 2000*.

Consideration of the development against the DFC statement

Before granting consent, Clause 12(3)(b) of *WLEP 2000* requires that the consent authority must consider the DFC described in the locality statement and the proposal being Category 2, must demonstrate consistency with the DFC statement. As such, the following provides consideration of the development against the various parts of the above DFC statement:

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.

Comment:

When the DFC refers to the 'present character', it is intending that the character should not be altered from the character exhibited at the time the instrument was gazetted (being that stipulated above). From the time the 'DFC' was set land is to be developed in accordance with the future directions stipulated within the DFC statement.

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 detached dwelling houses (with associated ancillary structures).

The assessment has concluded that the proposed development does not adequately provide for the preservation of this character for the reasons provided in the following sections of the DFC discussions. In summary, 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.

The DFC statement indicates that the character of Oxford Falls Valley can only be altered, through new housing which is to be limited to new detached style housing confirming to housing density and low intensity, low impact uses.

Detached Style Housing

'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.

In a broader context, the present character of the Oxford Falls Valley locality is generally characterised by large scale open allotments which have a semi-rural to rural appearance. This open semi-rural to rural appearance is accentuated by the heavily vegetated natural valleys of Middle Creek and the GARIGAL National Park.

In a local context, the site is situated within the more developed southern-most part of the locality which is characterised by a mix of residential, commercial and recreational development, all of which extend along the western side of Oxford Falls Road.

Specifically, the site accommodates a detached dwelling, a timber cottage, a tennis court and an assortment of small outbuildings on a landscaped 33,710m² allotment (3.371 hectares).

The future development retains the existing detached building, which has previously been approved as a residential care facility for 10 beds. This consent has not been acted upon. The proposed development seeks the expansion of the existing building and the construction of five new buildings, all to be located on the southern half of the site. The development also includes site works to facilitate associated recreation uses, open car parking areas, internal access road and landscape works.

The proposed development includes buildings which are not 'detached style'. Furthermore, the development does not maintain the visual pattern and predominant scale of detached housing in the locality. The buildings are not considered to be within an adequate landscaped setting. The proposed development is therefore not consistent with the DFC statement.

The development must also comply with the statement which relates to "low intensity and low impact uses".

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 an 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 following assessment provides a detailed planning assessment of the proposal against the terms of “low intensity” and “low Impact”.

Is the proposed development a “low intensity” use?

Further to the background information above, a “low intensity use” is a use which would be typified by having a low level of activities associated with it. The extent of activities associated with the operation of a particular use is largely determined by the following:

- The amount of traffic movements (cars, delivery and service vehicles);
- The number of pedestrian movements (internal and external);
- The physical size of the operation (floor space, height, scale, building footprint amount of landscaping);
- The hours of operation of a activity; and
- The light emitted by the activity (internal, floodlighting and signage).

The level of intensity associated with a use such as housing for seniors or people with a disability is generally the traffic that is generated. 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 can be defined as a low intensity form of development.

Is the proposed development a “low impact” use?

Further to the background information above, a “low impact use” is a use which would be typified by having a minimal, minor or negligible level of the impact and unlikely to significantly change the amenity of the locality and can largely be determined by the following:

- The amenity of adjoining properties (in terms of privacy, solar access, and visual and acoustic amenity);
- The bulk and scale of the development and how it relates to the streetscape and adjoining properties; and
- The removal of any existing vegetation from the site as result of the proposed development (taking into consideration any proposed landscaping).

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

- The built form of the proposed development and its location of having six buildings with the associated facilities all within the southern portion of the site 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 proposed development will result in a significant impact upon the site including its natural drainage features, vegetation and topography through the removal of approximately 120 trees and the modification of approximately 0.142ha of the site as a result of the proposed development and provision of APZs within the site, as well as over the adjoining private and public properties;
- 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. In regard, all of the proposed works are located on the southern portion of the site, which is partly covered in existing vegetation. The concentration of buildings where established landscaping must be removed is an unacceptable impact on the site and locality;
- Insufficient details have been provided with the application to determine the acoustic impact on the proposal (particularly from the open car park area) on the adjoining residential properties; and
- Insufficient information has been submitted with the application to determine the impact of the proposed development on the vegetation that is located within the road reserve and the adjoining private property.

The proposed development is therefore not consistent with the DFC statement of the locality relating to the requirement for the development to be a low impact use.

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.

Comment:

The site is characterised by extensive landscaping which, according to the Flora and Fauna Assessment, dated September 2014, as prepared by Travers Bushfire and Ecology, includes up to 728 trees of which a significant number are located within the Barnes Road reserve.

Of those trees, the SEE submitted with the Development Application indicates that 120 trees are required to be removed from the site. However, inadequate details have been provided with the application to indicate the extent of impact on vegetation that is required to be removed or modified in the road reserve and the adjoining residential property, which are proposed to be used for purposes of APZs.

As indicated previously, given the entire development is located on the southern portion of the site, where the impact on vegetation is much greater, it is considered that the development has not been designed or grouped in areas that will minimise the impact on vegetation.

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

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.

Comment:

This part of the DFC statement is not applicable as the site is not located on or near to Forest Way or Wakehurst Parkway.

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.

Comment:

As noted by the Riparian Section of Council's Natural Environment Unit, the application proposes works which are located within the 40m buffer zone to a water course. In this regard, the proposed development will have an unacceptable impact on riparian and buffer zones and is found to be inconsistent with Warringah Protection of Waterways and Riparian Land Policy.

Conclusion on the DFC

Therefore, the development is not considered to satisfy this element of the DFC statement.

Based upon the above considerations, the development is considered to be inconsistent with the DFC statement for the B2 Oxford Falls Valley locality.

Built Form Controls for Locality B2 Oxford Falls Valley

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

Built Form Standard	Required	Proposed	Compliance
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	8.5m	All buildings are below the 8.5m height limit	Yes

Built Form Standard	Required	Proposed	Compliance
Front Building Setback	20m	Buildings – well in excess of 20m	Yes
		Car parking areas – minimum of 1.4m	No*
Rear Building Setback	10m	In excess of 10m	Yes
Side boundary setback	10m (Western Boundary)	Approximately 10m from the proposed building	Yes
		Car parking areas – minimum of 4.6m	No*
Landscaped Open Space (LOS)	30% of the site area.	In excess of 30% of the site will remain as LOS	Not Applicable

(*) These non-compliances are addressed below.

Clause 20 Variation

A Clause 20 variation is required for the proposed variations to the front building setback, and side setback built form controls.

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.”

In assessing these non-complying elements of the proposal, consideration must be given to its consistency with the following:

(i)	General Principles of Development Control 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)	DFC of the Locality The proposal is not consistent with the DFC statement as detailed earlier in this report.
(iii)	Relevant SEPPs The proposed development has not been found to be consistent with the provisions of <i>SEPP (HSPD) 2004</i> . The proposal does however comply with <i>SEPP Infrastructure</i> and <i>SEPP 55</i> .

Based on the above assessment, the proposed development cannot be considered for a variation to the front building setback and side building setback built form controls.

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

It is important to note that the applicant has not provided Clause 20 variations or justification for variations to the built form controls.

Front Building Setback

In accordance with the front building setback built form control, development is to maintain a minimum front building setback of 20m. The front building setback area is to be landscaped and generally free of any structures, car parking or site facilities other than driveways, letterboxes and fences.

The plans submitted with the application show the carpark areas will encroach into the front setback. The setback of the car park to the front boundary varies from 1.4m to 6.6m for the eastern carpark and 6.5m for the western carpark area.

There are no site constraints which prevent compliance with the front setback built form control. The non-compliance does not achieve a better design outcome and prevents suitable landscaping being provided within the front setback area. Given that no justification has been provided for the proposed variation and considering the overall scale of the development, a greater setback should be provided. Accordingly, the proposed variations are not supported and this issue has been included as a reason for refusal.

Side Building Setback

In accordance with the side boundary setback control for the B2 locality, the minimum setback from a building to a side boundary is 10m.

The SEE submitted with the application does not address the proposal's compliance with the side boundary setback control.

The development does not comply with the side setback built form control on the western boundary with regards to the car parking area, which are located a minimum of 4.6 metres from the western boundary.

It is acknowledged that the car parking area on western side of the site, it is informally used as parking area at present and the approval has been granted (under DA2013/0575) to formalise this parking area for 19 parking spaces in association with a 10 bed facility. However, the proposed development seeks consent for 23 parking spaces within this area to accommodate the 43 bed proposed development, which will increase the intensity of use and so the impact (particularly acoustic impact) on the adjoining residential development to the west.

As indicated previously, the proposed development is located entirety on the southern half of the site, leaving the northern half of the site as undeveloped, level and cleared land. As there is no adequate justification provided by the applicant, there are no site constraints which prevent compliance with the side setback built form control and there is insufficient information submitted with the application to adequately assess the acoustic impact of this area, the proposed variations are not supported and this issue has been included as a reason for refusal.

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

Clause 29 of *WLEP 2000* provides controls to establish on what grounds an application for housing for older people or people with disabilities cannot be refused.

The following table details compliance of the development against the various provisions of Clause 29:

Development Standard	Required	Proposed	Compliance
(a) Density and Scale	0.5:1 or less	0.20:1	Yes
(b) Building Height	8.0m (overall)	8m (maximum)	Yes
(c) Landscaped Area	25m ² per residential care facility bed. Total required = 1,125 m ²	Total provided = 29,790m ²	Yes

Development Standard	Required	Proposed	Compliance
(a) Density and Scale	0.5:1 or less	0.20:1	Yes
(d) Parking	1 space per 10 beds, 1 space per 2 employees on duty at any one time, 1 ambulance space And 0.5 spaces per bedroom where the application is made by a person other than the Department of Housing or a local government or community housing provider. Total required = 11 spaces	Total provided = 30 spaces	Yes
(e) Visitor Parking	In the case of development that comprises 8 or more dwellings or is situated on a clearway, visitor parking is required Total required = Not specified	Total provided = 5 spaces	Yes
(f) Deep Soil Area	(a) Site width (W) = 199.9m (b) Site length (L) = 225.5m (c) W x 15% of L Total required = 6,756.6m ²	Total provided = 29.790m ²	Yes

Therefore, the application cannot be refused for reasons that relate to the standards under Clause 29.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of *WLEP 2000* are applicable to the proposed development:

General Principle	Applies	Comments	Complies
Clause 38 Glare & Reflections	Yes	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: <ul style="list-style-type: none"> • Compliance with the approved colours and materials as shown on the submitted sample board which is considered satisfactory; • Full details of lighting in the form of a Lighting Strategy which is to minimise impacts on the night time's amenity adjoining residential properties. 	Yes (subject to condition)
Clause 39 Local Retail Centres	No	The site is not located within a Local Retail Centre.	Not Applicable

Clause 40 - Housing for Older People or People with Disabilities

The following table details compliance of the development against the access provisions of Clause 40 under the *WLEP 2000*:

Control	Required	Proposed	Compliance
Support Services	The site within 400m of a shopping centre or bus stop; or The development is serviced by a transport service that is located not more than 400m from the site and is available both to and from the development during daylight hours at least once per day from Monday to Friday (inclusive).	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 requirements of this Clause and has indicated that a private bus will be provided to the residents from the site to the required facilities. However, no details are provided with the application, to demonstrate the on-going cost associated with private bus to ensure that such a service is financially sustainable and will be provided in perpetuity. Therefore, Council is not satisfied that the requirement of this Clause is satisfactory addressed.	No
	Reasonable access to home delivered meals, personal care and home nursing and assistance with housework.	These facilities are proposed to be provided on the site.	Yes
Wheelchair access	<u>(a) Site Gradient</u> (i) if the whole of the site has a gradient of less than 1:10, 100% of the hostel or residential care facility beds and 100% of the dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is accessible to all residents, or (ii) if the whole of the site does not have a gradient of less than 1:10, a percentage (which is not less than the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and which in this subparagraph is called <i>the specified minimum percentage</i>) of any hostel or residential care facility beds and the specified minimum percentage of any dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is accessible to all residents.	The whole of the site has a gradient of 8.5% which equates to a gradient of 1:12, therefore (i) applies. The development provides for a continuous path of travel for 100% of wheelchair bound residents of the facility to the driveway and adjoining public road.	Yes
	<u>(b) Road Access</u> At least 10% of any hostel or residential care facility beds and at least 10% of any	The development provides for a continuous path of travel for 100% of wheelchair bound residents of the facility to the driveway and adjoining	Yes

Control	Required	Proposed	Compliance
	dwellings which meet the requirements of paragraph (a) must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road.	public road.	
	<u>(c) Common Areas</u> Access must be provided so that a person using a wheelchair can use common areas and common facilities associated with the development.	The development includes level access paths to the nearby common areas located adjacent to the building and inclinator to the bowling greens and put-put course, which is located on the lower part of the site to the north-east. Accessibility to these areas have been designed to satisfy AS1428.1 and AS1428.2 as well as the DDA.	Yes
	<u>(d) Adaptability</u> 10% of any hostel or residential care facility beds and 10% of any dwellings which meet the requirements of paragraph (a) must also have, or be capable of being modified so that they have, wheelchair access by a continuous path of travel (within the meaning of AS 1428) to all essential areas and facilities inside the hostel, residential care facility or dwellings, including a toilet, bathroom, bedroom and a living area.	The Access Report notes that the development will achieve compliance with the requirement of this Clause	Yes

Further assessment is provided under Schedule 16 – ‘Principles and Standards for Housing for Older People or People with Disabilities’ later in this report.

Control	Required	Proposed	Compliance
Clause 41 Brothels	No	No further assessment required.	Not Applicable
Clause 42 Construction Sites	Yes	<p>The potential exists for the future demolition, excavation and construction to have an adverse impact upon surrounding locality to the west in terms of traffic, noise, dust, parking, accessibility and sediment.</p> <p>Therefore, comprehensive conditions of consent will be required to be imposed for Construction Management Plan to be submitted, should this application be approved. Issues to be addressed include stormwater and wastewater disposal, waste management, air quality, noise management and truck movement, frequency and parking.</p> <p>Subject to addressing the imposed conditions, the application is considered capable of satisfying the provisions of this General Principle.</p>	Yes (Subject to conditions)
Clause 43 Noise	Yes	The nature of the proposed use is unlikely to generate significant noise emissions associated with the occupation of the	No

Control	Required	Proposed	Compliance
		<p>development.</p> <p>However, it is noted that the development includes a new car parking area which is located approximately 4.5m from the nearest neighbouring residential property to the west. While the development provides a landscaped area between the western side of the carpark and the property boundary, it is considered that an adverse impact could result on the residential properties immediately adjacent to the site of the carpark. In this regard, the applicant has not provided sufficient information or grounds for Council to be satisfied that the proposed open car parking will have a reasonable impact on the adjoining residential properties.</p> <p>Accordingly, this issue has been included as reason for refusal.</p>	
Clause 44 Pollutants	Yes	<p>The proposed use increases the population density of the site and introduces medical facilities. Therefore, the development has the potential to introduce new pollutants into the local environment through increased laundry use, the disposal of grey water and through the possible discarding of medical waste.</p> <p>In this regard, appropriate conditions could be imposed, should this application be approved, to address these additional impacts of the proposed development to ensure that the operation of these facilities does not have any adverse impact upon the environment.</p>	Yes (Subject to conditions)
Clause 45 Hazardous Uses	No	No further assessment required.	Not Applicable
Clause 46 Radiation Emission Levels	No	No further assessment required.	Not Applicable
Clause 47 Flood Affected Land	No	No further assessment required.	Not Applicable
Clause 48 Potentially Contaminated Land	Yes	This issue has been addressed under <i>SEPP 55</i> of this report. In summary, the site is suitable for the proposed development.	Yes
Clause 49 Remediation of Contaminated Land	No	No further assessment required.	Not Applicable
Clause 49a Acid Sulphate Soils	No	No further assessment required.	Not Applicable
Clause 50 Safety & Security	Yes	<p>The development consists of a managed Residential Care Facility and does not require a formal assessment under the provisions of Crime Prevention through Environmental Design.</p> <p>It is noted that the nature of the proposed use and the provision of on-site management will provide an enhanced level of passive</p>	Yes

Control	Required	Proposed	Compliance
		surveillance to the adjoining roadway.	
Clause 51 Front Fences and Walls	No	The plan submitted with the application does not show any front fencing.	Not Applicable
Clause 52 Development Near Parks, Bushland Reserves & other public Open Spaces	Yes	<p>The subject site is within the close proximity of the Garigal National Park which is located approximately 1.2km to the north.</p> <p>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.</p>	Yes
Clause 53 Signs	No	No signs are proposed as part of this application.	Not Applicable
Clause 54 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 conditions)
Clause 55 Site Consolidation in 'Medium Density Areas'	No	The site is not located within a medium density area.	Not Applicable
Clause 56 Retaining Unique Environmental Features on Site	Yes	<p>The character of the site are that the subject site is substantially undisturbed and undeveloped land on the northern portion of the site, whilst the southern portion is more developed and is currently occupied by the existing dwelling house building with the associated car parking with, roads, and other ancillary building. Notably, the southern portion of the site contains a significant land of vegetation approximately through the middle of the site, which will be impacted by the proposed development.</p> <p>Insufficient information has been submitted with the application to demonstrate the extent of impact on the vegetation to accommodate the APZ on the adjoining reserve and adjoining private property. It is considered that the visual impact upon the semi-rural character of the surrounding area will be significantly impacted upon as result of the proposed development.</p> <p>The development also proposes excavation works to accommodate the proposed development and its associated road and infrastructure. The application is not accompanied by an accurate Geotechnical Report addressing the proposed development, which would ascertain the presence of rock outcrops on the site.</p> <p>There is insufficient information submitted with the application that addresses the likely impact upon any unique environmental features such as the topography of the land</p>	No

Control	Required	Proposed	Compliance
		and adjoining effected lands. The issue has been included as reason for refusal.	
Clause 57 Development on Sloping Land	Yes	<p>Clause 57 requires that the geotechnical stability of sloping land to support development is to be demonstrated.</p> <p>Clause 57 specifically indicates that <u>consent must not be granted</u> for development involving the erection of a structure, including additions to an existing structure, on land identified as being potentially subject to landslip on the Landslip Hazard Map unless the consent authority has considered a report from a suitably qualified engineer as to the geotechnical stability of the land to support such development and an assessment of stormwater prepared by a suitably qualified hydraulic engineer.</p> <p>The site generally slopes downwards from the south-western corner to the north-eastern corner by 27m over a distance of 280m. This represents a slope of 9.6% which is considered to be gradual.</p> <p>The Geotechnical report submitted with the application, as prepared by GeoEnviro Consultancy, dated 18 January 2004 refers to a number of sites and a different and significantly larger development that incorporates other sites.</p> <p>Therefore, a Geotechnical report that addresses the proposed development within the subject site has not been prepared or submitted with the application and therefore Council is unable to confirm the geotechnical stability of the land and the proposed development.</p> <p>This issue has been included as reason for refusal.</p>	No
Clause 58 Protection of Existing Flora	Yes	<p>The application, which includes a 'Flora and Fauna Assessment' dated September 2014 as prepared by Travers Bushfire & Ecology, was referred to Council's Biodiversity Section of the Natural Environment Unit whom have raised a number of concerns with the proposed development.</p> <p>The specific comments received are included within the referrals of section of this report. In summary, the proposed development is found to be inconsistent with the requirement of this Clause based on insufficient information submitted with the Application.</p> <p>This issue has been included as reason for refusal.</p>	No
Clause 59 Koala Habitat Protection	Yes	The site has a total area of 33,710m ² and therefore is subject to the provisions of this clause and Schedule 11 under <i>WLEP 2000</i> (Schedule 11 includes a list of feed tree species). Note: as per Clause 5 of <i>WLEP</i>	Yes

Control	Required	Proposed	Compliance
		<p>2000, State Environmental Planning Policy No. 44 – Koala Habitat Protection does not apply due to the inclusion of Clause 59 as a General Principle of Development Control) and Schedule 11.</p> <p>Clause 59 defines potential Koala habitat as consisting of areas of native vegetation where the trees of the types listed in Schedule 11 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.</p> <p>The Development Application includes a Flora and Fauna Impact Assessment, which concludes that no Koala population exists on the site. This assessment is concurred with by Council's Natural Environment unit.</p>	
Clause 60 Watercourses & Aquatic Habitats	Yes	The application was referred to the Riparian Section of Council's Natural Environment Unit who advises (see 'Internal Referrals' in this report) that the development be refused. This was based upon the fact that the development has not been designed to maintain and enhance natural watercourses and aquatic habitat.	No
Clause 61 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 are well below the 8.5m height limit, that there will be no unreasonable 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
Clause 62 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
Clause 63 Landscaped Open Space	Yes	<p>The development includes 88% (29.790m²) of landscaped open space (this is located within the property boundary and does not include the road reserve or adjoining allotment).</p> <p>Whilst the development complies with the numeric requirement, insufficient information has been submitted to demonstrate that appropriate plantings can be provided which are commensurate with the height and scale of the development in consideration of the APZ requirements that extends into the adjoining reserve and private land.</p> <p>As such, the development is not considered</p>	No

Control	Required	Proposed	Compliance
		to be consistent with the requirements of Clause 63.	
Clause 63A Rear Building Setback	Yes	The proposed development is found to be consistent with the requirement of this Clause.	Yes
Clause 64 Private open space	No	No further assessment required.	Not Applicable
Clause 65 Privacy	Yes	The development is located a sufficient distance from other residential properties such that it will not result in any unreasonable direct overlooking into habitable rooms and principle private open spaces. No additional architectural privacy treatments are considered to be required.	Yes
Clause 66 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 assists in reducing the visual bulk of the development by breaking up the massing of the development as viewed from Barnes Road and other distant areas.</p> <p>However, as stated in the previous section of this report, the development is not consistent with structures on adjoining and nearby land and therefore, it is considered that that the proposed development does not meet all of the requirements of this clause.</p> <p>This issue has been included as a reason for refusal.</p>	No
Clause 67 Roofs	Yes	The proposed roof form is considered to be satisfactory and is integral to the style of the buildings.	Yes
Clause 68 Conservation of Energy and Water	Yes	Insufficient information has been submitted with the Application, such as addressing Part J of the Building Code of Australia to demonstrate compliance with the requirement of this Clause.	No
Clause 69 Accessibility – Public and Semi-Public Buildings	Yes	<p>The Development Application includes an Accessibility Report, dated 23 September 2014, as prepared by Accessibility Solutions (NSW) Pty Ltd which concludes that the development satisfies the accessibility provisions of the Building Codes of Australia and the DDA Premises Standards for a Residential Care Facility.</p> <p>The Report includes recommendations which are to be imposed as conditions of consent should this application be approved.</p>	Yes (subject to condition)

Control	Required	Proposed	Compliance
Clause 70 Site Facilities	Yes	<p>The development provides for all required site facilities which may be situated such that they are convenient to the needs of users and have minimal visual impact from public places.</p> <p>The Development Application does not include any details with regards to waste management. However, given the commercial nature of the development, this is arranged through private contract and could be appropriately addressed through the imposition of an appropriate condition should this Development Application be approved.</p>	Yes (subject to condition)
Clause 71 Parking Facilities (visual impact)	Yes	The proposed open car parking areas dominate and detract from the streetscape given the degree of non-compliance with front building setback.	No
Clause 72 Traffic Access & Safety	Yes	The site is accessed via a variable width driveway (between 4.0m and 5.5m in width) which connects via a single crossover to the sealed section of Barnes Road at the south-western edge of the site. The width of the driveway provides sufficient sightlines along the roadway to ensure safety.	Yes (Subject to condition)
Clause 73 On-site Loading and Unloading	Yes	<p>The Development Application involves a commercial use which will require facilities for the loading and unloading of delivery vehicles.</p> <p>The plans indicate two turning areas, one located immediately to the south of the development and the other one in the north western portion of the site. These areas will enable delivery access into the Facility.</p> <p>The turning area will enable vehicles to leave the property in forward direction.</p>	Yes
Clause 74 Provision of Car Parking	Yes	The development includes a provision for the on-site parking of 30 vehicles which is compliant with the requirements of Clause 29 under <i>WLEP 2000</i> .	Yes
Clause 75 Design of Car Parking Areas	Yes	<p>The car parking area is accommodated within an open car parking areas which is incorporated into the design of the development. Access/egress is provided to the variable width driveway.</p> <p>The design of the carpark and driveway will enable safe and convenient pedestrian and traffic movement and will enable vehicles to enter and leave the site in a forward direction.</p>	Yes
Clause 76 Management of Stormwater	Yes	<p>Council's Development Engineer has reviewed the proposal and raised no objection to the proposed development subject to conditions of consent.</p> <p>Should the application be approved, the conditions as recommended by Council's Development Engineers.</p>	Yes (subject to conditions)

Control	Required	Proposed	Compliance
Clause 77 Landfill	Yes	Insufficient information has been submitted to demonstrate that the site can be developed in the manner that is consistent with the requirements of this Clause.	No
Clause 78 Erosion & Sedimentation	Yes	Appropriate conditions associated with management of erosion and sedimentation can be included on the consent should this Development Application be approved.	Yes (Subject to Condition)
Clause 79 Heritage Control	Yes	No further assessment required.	Not Applicable
Clause 80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	The Aboriginal Heritage office has assessed the subject site as part of a previous Development Application (DA2014/0575) and has indicated that due to the disturbance of the existing site conditions, that no significant impact on the sandstone outcrop is expected as result of the proposed development. If the Development Application was recommended for approval, a condition could be included to ensure no sandstone outcrop are effected by the proposed development and during construction works.	Yes (Subject to Conditions)
Clause 82 Development in the Vicinity of Heritage Items	No	No further assessment required.	Not Applicable
Clause 83 Development of Known or Potential Archaeological Sites	No	No further assessment required.	Not Applicable

Other relevant *WLEP 2000* Clauses

Clause 13 - 'To what extent should neighbouring Locality Statements be considered?'

Clause 13 requires that, before granting consent for development within a locality, the consent authority must consider the provisions of a Locality Statement applying to a neighbouring locality, if the extent to which they should be considered is specifically described in the Locality Statement for the locality in which the development is proposed.

The DFC statement of the B2 Oxford Falls Valley locality does not specifically describe the extent to which a neighbouring Locality Statement should be considered. Therefore, no further assessment against the provisions of Clause 13 is required.

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 SEPP described in Schedule 5. Schedule 5 outlines the *SEPP (HSPD) 2004*. The proposal has been assessed in detail against the provisions of *SEPP (HSPD) 2004* elsewhere in this

report. The proposal has not been found to be consistent with *SEPP (HSPD) 2004* and therefore the application has been recommended for refusal.

Schedule 8 - Site analysis

Clause 22(2)(a) of *WLEP 2000* requires that the consent authority must consider a Site Analysis prepared in accordance with the criteria listed in Schedule 8.

It is considered that the submitted Site Analysis, in conjunction with the SEE (as prepared by City Plan Services dated October 2014) adequately addresses how the development responds to its surrounds and the locality.

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

The following is an assessment of the requirement outlined under Schedule 16 of *WLEP 2000*:

Control	Required	Proposed	Complies
1. Identification	If more than one street, street signage incorporating house numbers at each intersection.	The property is well sign posted and the proposal will not introduce new signage.	Yes
2. Security	Pathway lighting to be positioned at a low height and to be a minimum of 50 lux.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
3. Letterboxes in multi-dwelling developments	Must be lockable, located together in a central location adjacent to the street entry and be situated on a hard standing area with wheelchair access.	The development does not propose a multi-dwelling use.	Not Applicable
4. Private car accommodation	Spaces are to be not less than 6m x 3.2m and garages are to have an internal clearance of 2.5m and must have a power operated roller door.	The development includes open carpark areas to accommodate 30 spaces. The designs of the car park areas facilitate ease of manoeuvring through a wide access aisle.	Yes
5. Accessible entry	All entries must have a slope that does not exceed 1: 40 and must comply with Clauses 4.3.1 and 4.3.2 of AS4299 and must have an entry door handle and other hardware that complies with AS 1428.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
6. Exterior – general	All external doors to any one (1) dwelling must be keyed alike.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
7. Interior general	Internal doors must have a clearance of at least 820mm and internal corridors must have a width of at least 1000mm and the width of internal door approaches must be at least 1200mm.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
8. Living & dining	A living room must have a	To be required as a condition	Yes

Control	Required	Proposed	Complies
room	circulation space of at least 2250mm in diameter and as set out in Clause 4.7 of AS 4299 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.	of consent should this application be approved.	(Subject to condition)
9. Kitchen	A kitchen in a self-contained dwelling must have a width of at least 2.7m and a clear space between benches of at least 1450mm, and additional requirements as specified in the schedule.	The development does not include self-contained dwellings.	Not Applicable
10. Main bedroom	The main bedroom must have an area sufficient to accommodate a wardrobe and a queen size bed and a minimum of 1200mm clear space at the foot of the bed, etc.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
11. Bathroom	A bathroom must have an area in compliance with AS 1428 and a slip resistant floor surface and a shower complying with requirements of the schedule.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
12. Toilet	A dwelling must have a toilet that is a visitable toilet within the meaning of Clause 1.4.12 of AS 4299, with a slip resistant floor surface, and additional requirements as per the schedule.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
13. Access to kitchen, main bedroom, bathroom & toilet	Kitchen, main bedroom, bathroom and toilet must be located on the ground floor, etc.	Compliance with this standard will be incorporated as a condition of consent.	Yes (Subject to condition)
14. Laundry	A self-contained dwelling must have a laundry that has provision for the installation of an automatic washing machine, etc.	The development does not include self-contained dwellings.	Not Applicable
15. Storage	Dwelling must have a linen cupboard that is at least 600mm wide and has adjustable shelving.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
16. Doors	Door hardware provided as the means for opening doors must be able to be operated with one hand and located between 900mm and 1100mm above floor level.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
17. Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)

Control	Required	Proposed	Complies
18. Ancillary items	Switches must be located between 900mm and 1100mm above floor level and general purpose outlets must be located at least 600mm above floor level.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
19. Garbage	An outside garbage storage area must be provided in an accessible location.	The proposed development complies with this requirement.	Yes
20. Applications by certain housing providers	Clause 40 of the <i>WLEP 2000</i> and Clauses 7 – 19 of schedule 16 of <i>WLEP 2000</i> can be varied if the Development Application is made by the Department of Housing, or a local government or community housing provider.	Not applicable as the application is not by the Department of Housing.	Not Applicable
21. Neighbourhood amenity and streetscape	a. Contribute to an attractive residential environment with clear character and identity.	The location of the proposal will ensure a clear character and identity.	Yes (Subject to condition)
	b. Where possible, retain, complement and sensitively harmonies with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan.	The proposed development is found to be satisfactory with respect to the impact of the development on items of heritage significance.	Yes
	c. Where possible, maintain reasonable neighbour amenity and appropriate residential character by providing building setbacks that progressively increase as wall heights increase to reduce bulk and overshadowing.	The proposed development has been designed to minimise any visual amenity impact of the development on the adjoining proposed development. However, as discussed in the previous section of this report, concern is raised with regards to the location of the open car parking and its impact in relation to acoustic privacy on the adjoining residential development.	No
	d. Where possible, maintain reasonable neighbour amenity and appropriate residential character by adopting building heights at the street frontage that are compatible in scale with adjacent development.	This issue relating to neighbourhood character is discussed in detail under Desired Future Character section of this report. In summary, the proposed development is found to be inconsistent in relation to maintaining a character that consistent with the adjoining properties.	No
	e. Where possible, maintain reasonable neighbour amenity and appropriate residential character by	The development includes a new car parking area which is located relatively close to residential property to the west	No

Control	Required	Proposed	Complies
	considering, where buildings are located on the boundary, the impact of the boundary walls on neighbor's.	(i.e. 4.5m). Whilst the development provides a landscaped area between the western side of the car park and the property boundary, it is considered that an adverse impact could result on the residential properties immediately adjacent to the western boundary and the carpark. In this regard, insufficient details have been provided by the applicant (i.e. an acoustic report) to demonstrate that the noise from the use of the carpark will be at an acceptable level.	
	f. 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.	As detailed throughout this report, the proposal is not considered to provide a satisfactory front setback as required by the control and that is consistent with the adjoining properties.	No
	g. Embold planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	Insufficient details have been provided with the application to demonstrate compliance with the requirement of the Clause.	No

Schedule 17 – Car parking Provision

The provision of car parking is addressed under Clause 29 of the *WLEP 2000*. Schedule 17 reiterates the requirements of Clause 29 for a Residential Care Facility as follows:

Use	Schedule 17 Calculation	Required	Provided
Residential Care Facility <ul style="list-style-type: none"> 45 x beds 10 staff at any one time 	<ul style="list-style-type: none"> 1 space per 10 beds 1 space per 2 employees on duty at any one time 1 ambulance space And <ul style="list-style-type: none"> 0.5 spaces per bedroom where the application is made by a person other than the Department of Housing or a local government or community housing provider Visitor parking (In the case of development that comprises 8 or more dwellings or is situated on a clearway, visitor parking is required) 	11 spaces	30 spaces
Total		11 spaces	30 spaces

The development, as proposed, complies with the car parking requirement under Clause 29 and Schedule 17 of the *WLEP 2000*.

POLICY CONTROLS

Warringah Section 94 Development Contribution Plan 2001

The applicant has not provided an accurate estimate cost of the development as per the definition of CIV as required by Clause 20 of the *State Environmental Planning Policy (State and Regional Development) 2011 (SEPP (State and Regional Development))*. Therefore, Council is unable to calculate the applicable contribution at this stage.

Should the application be approved, the applicant should be required to provide a CIV in accordance with the requirements of the *SEPP (State and Regional Development)* and an appropriate contribution under Section 94A added as a condition of any approval.

CONCLUSION

This report provides a comprehensive assessment of the Development Application for the redevelopment of the site for the purposes of a 45 bed residential care facility at Lot 1113/752038 Oxford Falls, French Forest.

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- *EP&A Act 1979*;
- *EPA Regulation 2000*;
- All relevant and SEPPs;
- All relevant and draft EPIs;
- *WLEP 2000*;
- *Warringah Development Control Plan*; and
- Codes and Policies of Council.

Community Consultation

The public exhibition of the Development Application resulted in a significant response from the community, which included a total of 39 submissions all of which raised concerns with the proposed development. The concerns were primarily on the basis of 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.

Assessment of the Development Application

The proposed land use is permissible with consent pursuant to the provisions of WLEP 2000 and the proposed development has been assessed in accordance with the prevailing planning controls applying to the site. According to the applicant, the proposed scheme has been developed around the fact that Council has already granted approval for a 10 bed residential care facility on the site and this new development scheme is an expansion to that approval. However, the report has assessed the merits of this application, and whilst recognising that the previous approval has been granted, the current proposal is a significantly different concept, in terms of the size, scale and the intensity of the development and its associated impacts.

Importantly, the entire built form of the proposed development is concentrated on the southern portion of the site, leaving the north portion of the site undeveloped. No justification has been provided with the application to indicate any reasoning behind this scheme which is not understandable considering the northern half of the site is flat land, which is treeless

and so unconstrained. If the development was to utilise the northern portion, it would significantly reduce the impact of the development on the existing vegetation on the site, it would not need to rely so heavily upon the adjoining road and the private property to accommodate the APZ.

The proposed development has not responded to the desirable elements which are identified under the provisions of *WLEP 2000* in that the proposed development will have in an unacceptable environmental and visual impact. In this regard, the natural landscape of the site is distinctive with significant environmental features such as remnant bushland which is not retained by the development. This is due to the proposed building footprints and associated works, including level of excavation, vegetation and topographical variation and the provision of the APZ required for bushfire protection, all being located on the southern half of the site.

The proposed development, with regards to the parking area does not achieve compliance with the built form controls relating to side and front boundary setbacks. There are no site constraints which prevent compliance of the car parking areas with the front and side setback built form controls. The non-compliances do not achieve a better design outcome and given that there are no justifications provided for the proposed variations and considering the overall scale of the development, greater setbacks should be provided.

The proposed development is also found to be inconsistent with several General Principles of Development Control of *WLEP 2000*. The fundamental issue with these inconsistencies is the lack of information provided with the application for Council to accurately assess the proposed development against the requirement of these controls.

Finally, the proposed development is also found to be inconsistent with the aims of *SEPP (HSPD) 2004* and the requirement of Clause 55 of *SEPP (HSPD) 2004* has not been satisfied in that a fire sprinkler system has not been included within the application.

It is concluded 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 (REFUSAL)

THAT the Sydney East Joint Regional Planning Panel, as the consent authority REFUSE Development Consent to Development Application No DA2014/1062 for Demolition works and construction of a residential care facility with associated carparking, internal roads and landscaping on land at, Por 1113/752038, Oxford Falls Road FRENCHS FOREST subject to the reasons outlined as follows:

1. Pursuant to Section 91A(4) of the *Environmental Planning and Assessment Act, 1979*, the NSW Rural Fire Service approval is not valid. In this regard, the approval is subject to owner's consent being obtained from the adjoining private properties to the south for the establishment of the Asset Protection Zones.
2. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979* and Clause 2(1)(c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is not considered to be consistent with aims of the policy.
3. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979* and Clause 2(1)(c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development does not include a fire sprinkler system as required by Clause 55 for Residential Care Facilities.

4. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(3)(b) of *Warringah Local Environment Plan 2000* (as amended), the proposed development is inconsistent with the Desired Future Character statement for the B2 Oxford Falls Valley Locality.
5. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that the proposed development does not comply with the front and side boundary setback controls for the B2 Oxford Falls Valley locality.
6. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000* (as amended), the development is inconsistent with the following General Principles of Development Control as follows:
 - a) Clause 56 Retaining Unique Environmental Features
 - b) Clause 57 Development on sloping Land
 - c) Clause 58 Protection of Existing Flora
 - d) Clause 60 Watercourses & Aquatic Habitats
 - e) Clause 63 Landscaped open space
 - f) Clause 66 Building Bulk
 - g) Clause 71 Parking Facilities
7. Insufficient information has been submitted to demonstrate compliance with the following provisions of *Warringah Local Environmental Plan 2000*:
 - a) Clause 40 Housing for Older People and People with Disabilities (support services)
 - b) Clause 57 Development on Sloping Land
 - c) Clause 43 Noise
 - d) Clause 68 Conservation of Energy and Water
 - e) Clause 77 Landfill
8. 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 proposed development is not consistent with following Schedules:
 - a) Schedule 5 - State Policies
 - b) Schedule 16 - Principles and Standards for Housing for Older People or People with Disabilities (Clause 21 - Neighbourhood Amenity and Streetscape)
9. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act, 1979*, the subject site is considered to be unsuitable for the proposed development.
10. Pursuant to Section 79C (1) (e) of the *Environmental Planning and Assessment Act 1979*, the development is not in the public interest.