

**SYDNEY NORTH PLANNING PANEL
COUNCIL ASSESSMENT REPORT**

Panel Reference	2017SNH024
DA Number	DA2017/0237
LGA	Northern Beaches Council
Proposed Development	Construction of a Residential Care Facility with associated demolition works, car parking and landscaping
Street Address	Lot 8 DP 737255, 169 Forest Way, Belrose
Applicant/Owner	Japara Healthcare Limited (Applicant) Brendan Patrick McNally (Owner) Adrienne Elizabeth McNally(Owner)
Date of DA lodgement	20 March 2017
Number of Submissions	48 Submissions
Recommendation	REFUSAL
Regional Development Criteria (Schedule 4A of the EP&A Act)	Development with a Capital Investment Value (CIV) of more than \$20 million
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy – Infrastructure 2007 • State Environmental Planning Policy – Housing for Seniors or People with a Disability) 2004 • Warringah Local Environmental Plan 2000
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1: Pre-Lodgement Meeting Notes, dated 13 December 2016 • Attachment 2: Draft Conditions of Consent (should the Panel decide to approve the application)
Report by	David Kerr - General Manager Planning, Place & Community
Report date	9 October 2017

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied with a particular matter been listed and relevant recommendations summarized, in the Executive Summary of the assessment report?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes (Clause 20 of WLEP 2000)**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Note: in order to reduce delays in determinations, the Panel prefers that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

This Report is an assessment of a Development Application (DA) made to Northern Beaches Council seeking consent for the demolition of existing structures, tree removal, site preparation works and the construction of a Residential Care Facility (RCF) on the site known as 169 Forest Way, Belrose. The site is rectangular in shape and has a total area of 9,975m².

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

The DA is made pursuant to WLEP 2000 which permits development for the purposes of *housing for older people or people with disabilities* on land within Locality B2 Oxford Falls Valley. The DA is not made pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The proposed RCF comprises 120 rooms and ancillary facilities distributed over five (5) levels. Vehicular access is to be provided via Childs Circuit.

The development is "Integrated Development" and requires separate approval pursuant to Section 91 of the *Water Management Act 2000* and 100B of the *Rural Fires Act 1997*. The project has an estimated Capital Investment Value of \$ 26,529,304 and therefore the Sydney North Planning Panel (SNPP) is the relevant determining authority.

An assessment of the proposal against the relevant planning controls has found that the bulk, scale, built form and character sought by the proposal exceeds that envisaged for the site under WLEP 2000, particularly having regard to the visual impact and streetscape appearance of the proposed building form and the lack of landscaping provided for a development of this scale and configuration at this location.

The proposed development exceeds most of the built form controls that apply to the site under the provisions of WLEP 2000. The proposed development in terms of built form is found not to be sympathetic to the character of the locality and its interface with low-density residential development that surrounds the site.

The DA was publicly exhibited in accordance with Warringah Development Control Plan (WDGP), and a total of 48 submissions were received, all of which objected to the proposal. The issues and concerns raised in the submissions are addressed in this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, it is recommended that SNPP, as the determining authority, refuse this application for the reasons detailed within the "Recommendation" section of this report.

ASSESSMENT REPORT AND RECOMMENDATION

Application Number:	DA2017/0237
Assessment Officer:	Lashta Haidari – Principal Planner
Land to be developed (Address):	Lot 8 DP 737255, 169 Forest Way, Belrose
Proposed Development:	Construction of a Residential Care Facility with associated demolition works, car parking and landscaping
Locality :	B2 Oxford Falls Valley under WLEP 2000
Category:	Category 2 – Housing for older people or people with disability
Consent Authority:	Sydney North Planning Panel
Land and Environment Court Action:	No
Owner:	Brendan Patrick McNally Adrienne Elizabeth McNally
Applicant:	Japara Healthcare Limited
Application lodged:	20 March 2017
Application Type:	Integrated
State Reporting Category:	Seniors Housing
Notified:	31 March 2017 – 2 May 2017
Advertised:	1 April 2017
Submissions:	48 Submissions
Recommendation:	Refusal
Estimated Cost of Works:	\$ 26,529,304.00

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the EP&A Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the EP&A Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979;
- b) Environmental Planning and Assessment Regulations 2000;
- c) State Environmental Planning Policy No. 55 – Remediation of Land;
- d) State Environmental Planning Policy (State and Regional Development) 2011;
- e) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;
- f) State Environmental Planning Policy (Infrastructure) 2007; and
- g) Warringah Local Environment Plan 2000.

NON-STATUTORY CONTROLS

- a) Warringah Development Control Plan No. 1.

RELEVANT PLANNING PRINCIPLES

The following Planning Principles have been considered in this assessment:

- Vigor Master Pty Ltd v Warringah Council [2008] NSWLEC 1128.
- Mete v Warringah Council [2004] NSWLEC 273.
- GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council [2003] NSWLEC 268.
- Project Venture Developments v Pittwater Council [2005] NSWLEC 191.

SITE DESCRIPTION

The site consists of a single allotment located on the eastern side of Forest Way and is legally described as Lot 8 Deposited Plan 737255. The site has an area of approximately 9.975m². The site is a rectangular shaped lot with a two-street frontage, being Forest Way (western alignment) and Childs Circuit (southern alignment).



Figure 1: Site Map

Presently the site accommodates a detached dwelling-house. An internal driveway provides access to the property from Forest Way. The remainder of the property is bushland except for a dilapidated tennis court on the lower slope of the site.

The site is currently within the B2 Oxford Falls Valley locality under the WLEP 2000 which generally allows residential and other urban land uses, whilst seeking to preserve the ecological context of the surrounding environmentally sensitive land.

The site is located within bushfire prone land as indicated in Figure 2 below:

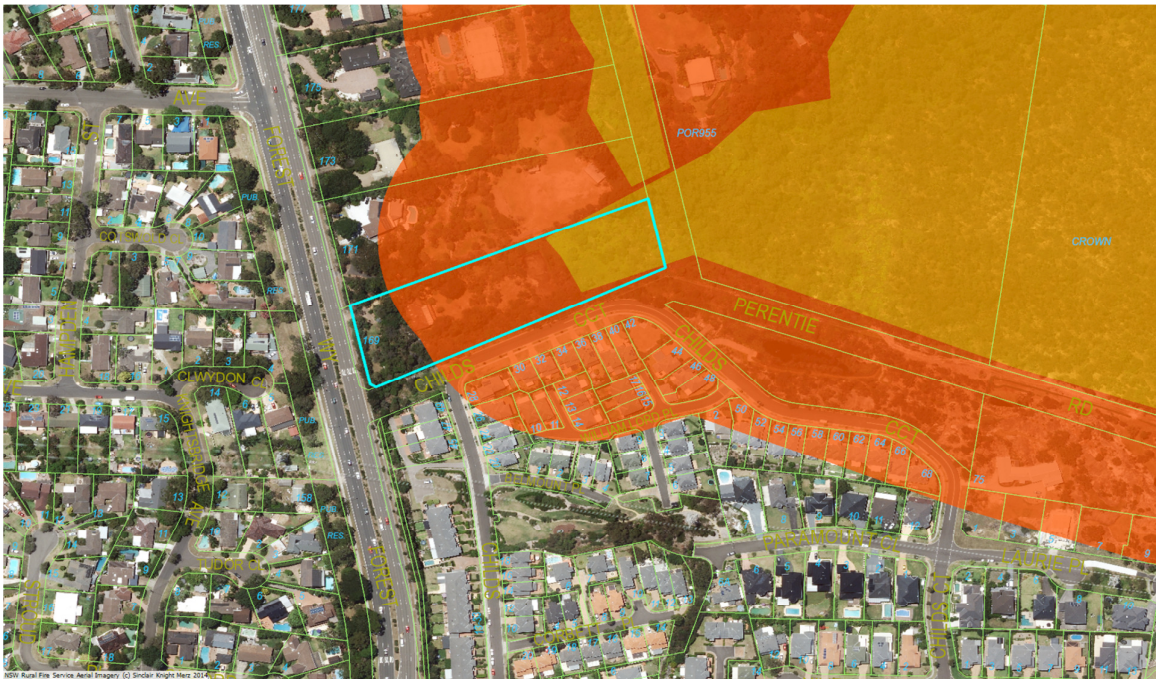


Figure 2: The site in context to bushfire prone land. *Source:* Warringah Council – Bushfire Prone Land Map.

Notes to Figure 2:

1. The dark orange area indicates the 30m and 100m buffer zone.
2. The light orange area indicates a Category 1 Vegetation area (i.e. forests, woodlands, heathlands, pine plantations and wetlands).

The property is intersected by a watercourse which runs from the eastern end (rear) of the site. Figure 3 below shows the location of the watercourse and its associated 40m buffer in relation to the site (highlighted in pink).



Figure 3: The site in context to the watercourse and 40m buffer. *Source:* Warringah Council Natural Drainage (Waterways) Buffer Map.

The site is approximately 190m long (east-west) by about 55m wide. It slopes down moderately eastwards from about RL167m at the western street frontage, to about RL145m at the eastern end beyond which is the heavily vegetated natural gully of Snake Creek.

Surrounding development consists of low-density residential properties to the north and across Forest Way to the west. Childs Crescent is parallel to the southern boundary with medium density residential properties located beyond. Dense bushland is located to the east of the site.

RELEVANT BACKGROUND:

Pre-Lodgement Meeting

Two (2) pre-lodgement meetings were held with Council on 22 October 2015 and 13 December 2016 regarding the proposed development. On both occasions Council raised concerns with the proposal in terms of its built form, vehicular access arrangement, and impacts of the development on the natural built form.

A copy of the notes dated 13 December 2016 is attached to this report (refer to Attachment 2).

DEVELOPMENT APPLICATION HISTORY

The application was lodged with Council on 20 March 2017. The assessment of the proposal found that the application was deficient and unsupportable for a number of reasons including; insufficient information submitted to demonstrate compliance with the relevant planning controls and enable a thorough and accurate assessment of the application.

An opportunity was presented to the applicant by letter dated 24 July 2017 to withdraw the application within seven days from the date of the letter with a view addressing the specific

concerns regarding the bulk and scale of the development and preparing the required information then resubmitting at a later date. The applicant was advised in that letter that failure to withdraw the application would result in Council reporting the application based upon the information provided at lodgement.

The applicant's Planner advised Council via a telephone discussion that the application will not be withdrawn and requested that it proceed to the determination.

PROPOSED DEVELOPMENT

Pursuant to Clause 78A (1) of the EP&A, 1979 (as amended) this application seeks consent for demolition works and construction of a Residential Care Facility (RCF), which consists of:

- Demolition works and the removal of trees including site preparation;
- The construction five level development which include 120-bed RCF;
- Car parking spaces for 34 vehicles;
- Associated Landscaping works and drainage works

Figure 4 below is provided to assist in the identification of the proposed development and the associated car parking within the site.



Figure 4: Site Plan (Source: Adapted by the author from Plan No. DA-100 dated 10 March 2017 and prepared by Thomson adsett)

Further detail of the proposal is provided as follows:

Basement Level (RL 150.950)

- 21 car parking spaces;
- Reception and waiting area;
- Kitchen and laundry;
- Lobby areas (including interview rooms, office, and multi-purpose area);
- Staff training and amenities area
- Lobby, public WC, storage area, and chute room; and
- Ancillary facilities (hair salon and cafe).

Ground Level (RL 154.400)

- 31 single residential care beds;
- Three (3) courtyard areas; and

First Floor Level (RL 157.800)

- 30 single residential care beds

Second Floor Level (RL 161.200)

- 30 residential care beds (8 double beds and 22 single beds)

Third Floor Level (RL 164.600)

- 29 residential care beds (8 double beds and 21 single beds)

Access and Parking

The existing vehicular access to the site via Forest Way will be removed and a new vehicular access and egress point is proposed to be provided from Childs Circuit at the southern property boundary.

The proposal will provide a total of 34 car parking spaces, being 21 spaces within the basement and 13 parking spaces to be provided at grade adjacent to the northern property boundary and east of the proposed RCF.

A drop off bay is proposed to the south of the entry lobby.

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 the 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 WDCP.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None Applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	Clause 92 of the EPA Regulations 2000 requires the consent authority to consider <i>AS 2601 - 1991: The Demolition of Structures</i> . This matter may be addressed via a condition of consent should this application be approved. Clause 98 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. A condition of consent could be included in the consent if the application was worthy of approval that all works to be consistent with the provisions of the Building Code of Australia.
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	(l) 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

Section 79C 'Matters for Consideration'	Comments
	<p>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 therefore not 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	Whilst the site can accommodate a senior's housing development, the site is not considered to be suitable for this type of development which renders the development to be inconsistent with its current and desired future character.
Section 79C (1) (d) – any submissions made in accordance with the EP&A Act or EPA Regulation 2000	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 proposed development is for a Seniors Housing Development which will assist in meeting the demands of Sydney's ageing population.</p> <p>However, as discussed in this report, the overall impact of the proposal is found to be inconsistent with the applicable planning controls for this site. Consequently, it is considered that a development, of this scale is not serving the broader and sectionalised public interest as the development is fundamentally not suited to the site in terms of the built form and access to services.</p> <p>The public benefit of providing seniors living accommodation on this site does not outweigh the concerns in relation to the built form of the proposal and the impacts that the proposal would have on the locality. Accordingly, it is concluded that the proposal is not considered to be in the overall public interest.</p>

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EP&A Regulation 2000, WLEP 2000 and WDCP. As a result, the application was notified for a minimum period of 30 calendar days commencing on 31 March 2017 and being finalised on 2 May 2017. Furthermore, the application was advertised in the Manly Daily on 1 April 2017 and a notice was placed on the site.

As a result of the public exhibition process, a total of 48 individual submissions have been received.

The matters raised in the submissions have been considered and are generally addressed as follows:

Traffic congestion

The majority of submissions raised concern that the traffic produced by the development will exacerbate the already congested Childs Circuit.

In particular, the submissions cite that Childs Circuit is already frequently congested and that the access to the proposed development should be from Forest Way.

Comment

The DA is accompanied by a traffic report prepared by Varga Traffic Planning. The report provides an assessment of the impact of traffic increases resulting from the development based upon the traffic generation rates produced by the Roads and Maritime Services (RMS). The report finds that the development would increase traffic along Childs Circuit by an additional 24 vehicles per hour in the peak periods.

In that report, the applicant's traffic engineer concludes that the proposed development will not have any unacceptable traffic implications in terms of road network capacity.

Council's Traffic Engineer has reviewed the traffic report and has found that the net increase in traffic will not have an adverse impact on the surrounding road system or the operating capacities of nearby intersections. In this regard, the conclusions reached by the consulting Traffic Engineer are generally concurred with by Council's Traffic Engineer.

Therefore, whilst it appears that the existing and proposed numerical traffic flows on Childs Circuit are within the accepted levels as determined by RMS, the potential impacts resulting from sole access/egress along Childs Circuit remains unknown, as site inspections at various times validated the concerns raised in the submissions and found that Childs Circuit is already frequently congested and this may be due to the prevalence of on-street car parking and the narrowness of the street.

The applicant was advised at the pre-lodgement stage on both occasions that Council's preference was that access to and from the site should be from Forest Way. This option should be considered particularly given that there is an un-made road located off Forest Way and Childs Circuit at the south-western corner of the site which could be utilised to provide access to the site. If access was provided from Forest Way, this would satisfy the concerns raised by the residents and reduce the additional impact on Childs Circuit.

The option relating to access off Forest Way has not been considered as part of this application and therefore, the concerns raised cannot be satisfactorily addressed at this stage.

Character of the area

A number of submissions raised concern that the development is not consistent with the current or Desired Future Character (DFC) of the area.

In particular, the submissions cite that the height, built form, scale and density of the development is not in keeping with the low density, traditional character of the area.

Comment

This issue has been discussed at length throughout this report and forms a reason for the refusal of the DA.

In summary, it has been found that the development is inconsistent with the current character of the area as required under the provisions of WLEP 2000 for the B2 Oxford Falls Valley locality.

Insufficient car parking

The submissions raise concern that the development does not provide sufficient on-site car parking and would thereby result in an increase of on-street car parking.

Comment

Clause 40 of WLEP 2000 requires 34 spaces for the proposed development. The DA proposes to provide 34 car parking spaces for the development, which complies with the requirement of Clause 40.

Therefore, the concern raised does not warrant the refusal of the application.

Creation of an undesirable precedent

The submissions raise concern that the approving of the development would create an undesirable precedent for similar types and/or scales of development in the area.

Comment

In accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*, Council is required to assess all development applications that have been lodged with Council on an individual basis and against the relevant planning controls which apply to site at the time of lodgement.

Accordingly, the issue in relation to the precedent does not warrant the refusal of the application.

Impact upon existing infrastructure

The submissions raise concern that the existing infrastructure will not be able to support a development of this scale.

Comment

The provision of infrastructure is managed by the relevant providers (i.e. telecommunications, water, electricity etc.). In this regard, it is unlikely that the development would impose a strain upon the provision of those services. If the application was recommended for approval, conditions would be included which will require approval by Sydney Water for access to Sydney Water's sewerage infrastructure prior to the issuing of a Construction Certificate.

With regards to Council's stormwater drainage infrastructure, Council's Development Engineer has assessed the DA and has noted that the submitted drainage design must be amended to suit Council's on-site-detention (OSD) technical specification prior to further assessment. In this regard, Council's Development Engineer advises that the DA, as proposed, cannot be supported (see Internal Referrals in this report).

Impacts upon neighbouring residential amenity

The submissions raise concern that the development will have an adverse impact upon areas of residential amenity such as visual privacy, acoustic privacy and solar access.

Comment

These issues have been discussed at length throughout this report.

In summary, it has been found that the development has generally satisfied the various requirements to manage visual and acoustic privacy and overshadowing.

In this regard, the concern raised in the submissions does not warrant the refusal of the application.

Non-compliance with the various built form controls

Concerns have been raised that the proposed development does not comply with the applicable built form controls for the site.

Comment

This issue has been discussed at length throughout this report and forms a reason for the refusal of the DA.

In summary, it has been found that the development does not comply with the applicable built form controls and these variations have not been supported.

Access to Support Services and Wheelchair Access

Concerns have been raised that the proposed development does not comply with the requirement of Clauses 16 and 40 of WLEP 2000, which relates specifically to accessibility requirement for senior's housing development.

Comment

This issue has been discussed at length throughout this report and forms a reason for the refusal of the DA.

In summary, it has been found that there is insufficient information provided to determine compliance with the requirement of Clause 16 and Clause 40 of WLEP 2000.

Permissibility of the development

Concern has been raised in relation to the permissibility of the development, because it fails to comply with the building numerical standard with Clause 29 of WLEP 2000.

Comment

The site is located within the B2 Oxford Falls Valley Locality. The B2 locality statement makes seniors housing both permissible as a Category 2 development subject to meeting the test of paragraph (c) under the heading "Housing Density" and also as prohibited development (other than on land described in paragraph (c) under the heading "Housing density").

Paragraph (c) under the heading “Housing density” reads as follows:

*“on land that adjoins a locality primarily used for urban purposes and on which a dwelling house is permissible, where there is no maximum housing density if the development is for the purpose of “housing for older people or people with a disability” and the development complies with the **minimum standards set out in clause 29**”.*

In summary, paragraph (c) can be broken down into the following:

- I. land that adjoins a locality primarily used for urban purposes;*
- II. on which a dwelling is permissible;*
- III. where there is no maximum housing density if the development is for the purpose of housing for older people or people with disability; and*
- IV. the development complies with the **minimum standards set out in Clause 29**.*

The proposed development satisfies the first three (3) components of paragraph (c). However, the development does not comply with the requirement of minimum standards of Clause 29 in relation to the building height standard.

Council has obtained legal advice in relation to this issue. The advice confirmed that the non-compliance with the numerical standards under Clause 29 does not operate as a prohibition on development; rather, the development is required to be tested against the matters set out in Clause 12 of WLEP 2000.

In this regard, if the development was found to be consistent with the DFC described in the relevant locality statement, Clause 29 can be varied with reference to Clause 20 of WLEP 2000.

Based on the above advice, it is concluded that the development is not prohibited development, and this issue does not warrant the refusal of the application.

MEDIATION

No requests for mediation were received.

External Referrals

Internal Referral Body	Comments Received
NSW Rural Fire Service (NSW RFS)	<p>The application was referred to the NSW RFS as Integrated Development on 23 March 2017.</p> <p>Section 100B of the <i>Rural Fires Act 1997</i> enables the Commissioner of the NSW RFS to issue a Bushfire Safety Authority for ‘Special Fire Protection Purpose’ development. Section 100B (6) of that <i>Rural Fires Act 1997</i> identifies Seniors Housing (within the meaning of the <i>SEPP (HSPD) 2004</i>) as such development.</p> <p>In their response on 22 August 2017, the NSW RFS issued their Bushfire Safety Authority and General Terms of Approval which are to be included in any consent should the application be worthy of approval.</p>
NSW Roads and Maritime Services (RMS) – Concurrence	<p>The application was referred to the RMS for comment in accordance with SEPP (Infrastructure). The RMS provided their comments on 26 April 2017 in which no objection was raised subject to conditions.</p>

request	The conditions provided by the RMS may be included in a consent should the application be worthy of approval..
NSW Police	The application was referred to the NSW Police for consideration and comment. In their response dated 20 July 2017, NSW Police has provided an assessment of the Crime Risk Assessment and Crime Prevention Through Environmental Design (CPTED). These recommendations should be included as conditions, should the application be worthy of approval.
Department of Primary Industries (DPI)	The application was referred to the DPI as Integrated Development under section 91A (2) of the EP&A Act 1979. The DPI provided comments on 27 April 2017 and has advised that a controlled activity approval is not required for the proposed development.
Aboriginal Heritage	The Aboriginal Heritage Office recommends a preliminary inspection ('due diligence' under the <i>National Parks and Wildlife Act 1974</i>) be undertaken by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required.

INTERNAL REFERRALS

Internal Referral Body	Comments Received
Building Assessment	No objections raised subject to conditions to ensure compliance with the Building Code of Australia.
Development Engineers	<p>Development Engineers have raised the following issues:</p> <ol style="list-style-type: none"> 1. The proposed access will require the relocation of a power pole (high voltage overhead) which appears to be located within the proposed exit driveway to the development. The other option for this issue would be to redesign the driveway with two metres minimum clearance between the pole and the driveway. 2. The development is accessed from Childs Circuit, a low-density residential road, which complies with the design requirements for the proposed increase in traffic loading but was not supported at the pre-lodgement meeting. This option will need to provide parking restrictions on Childs Circuit to prevent issues arising from the parking overflow on the residential street affecting the operations of the through traffic (minimal) and safety around the access driveway and residential driveways opposite the proposed entry. 3. The proposed stormwater drainage, retention, and disposal have raised concerns about the effects this system will have on the downstream EEC including the lack of OSD on the line that runs to the EEC. The stormwater design needs to be modified to reduce the flows to the pre redevelopment flow regime. This may require the flow to be split with the high flow diverted to the road drainage in Childs Circuit. 4. The proposal requires a suitable connection to footpath along the Forest Way frontage to allow full access to residents of the proposed development to route bus services. The plans show access is via a set of stairs to street level with the grades in Childs Circuit not really suitable either for an at grade connection from the main entry point. 5. The car parking provision appears to work based on the traffic report provided with the planner to advice if the number of spaces provided is satisfactory.
Urban Design	The proposal in its current form cannot be supported for the following reasons:

	<ol style="list-style-type: none"> 1. The proposal does not comply with the building height controls of: <ul style="list-style-type: none"> ➤ 8.5m – measured from the topmost point of the building to the natural ground level ➤ 7.2m - 7.2m from natural ground level to the underside of the ceiling on the uppermost floor of the building 2. The proposal does not comply with the front building setback of 20m and the side setbacks of 10m. 3. The main concern is with the scale and design of buildings being not consistent with Desired Future Character Statement (DFCS) in the WLEP 2000. <p>To assist in achieving consistency with the DFCS, adequate articulation and greater 'gaps' should be imposed on parts of the building to improve built form of being "new detached style housing". The proposed built forms read clearly as a 3-storey building especially at the main entrance whereas it should be 2 storeys to be contextually fitting to the surrounding detached houses. It will be more consistent with the DFCS if the built forms are designed as well spaced apart 'pavilions' sitting on solid bases that are well articulated and landscaped – hugging the natural terrain as it steps down the slope.</p>
Landscape Officer	<p>The proposal is not supported in relation to landscape issues as follows:</p> <ul style="list-style-type: none"> • The requirement of the Bushfire Management Plan that the Asset Protection Zone is to be managed as an Inner Protection Area has significant impacts on landscape works able to be undertaken on the site. <p>As a consequence, the Landscape Plan becomes a fire management plan, resulting in a highly restricted, modified and managed landscape in perpetuity.</p> <p>The IPA requirements for the site mean that any vegetation needs to be strictly managed to reduce fuel loads with site tree coverage not to exceed 15% and clumps or islands of vegetation maintaining coverage of no more than 20% of the area. Canopy and patches indicated occupy greater than 15% on plans. (Calculated as 26.5%).</p> <p>The Landscape Plans are unclear as to the treatment of the areas between the retained patches indicated. Presumably, these are grass or mulch, which further indicates the level of modification to the site required to achieve the fire management requirements.</p> <ul style="list-style-type: none"> • Side boundary setback. A significant breach of setback requirements is proposed. This results in negative consequences on vegetation retention either side of the proposed development, resulting in the requirement to remove trees and vegetation in excess of that indicated on the plans. The extent of tree canopy overhang to the building would be contrary to Planning for Bushfire Protection 2006, requiring significant canopy pruning to achieve required fire management standards. Construction of drainage swales and final stormwater pipework as indicated on the plans necessitates excavation within the Structural Root Zone and Tree Protection Zone of trees indicated for retention on the plans (as defined under AS4970-2009 Protection of trees on development sites), resulting in removal of these trees. The non-compliance with

	<p>the setback is not supported.</p> <ul style="list-style-type: none"> • Front landscape setback. A significant breach of the setback is proposed. All trees and existing vegetation will be removed due to levels proposed and terracing/retaining walls as indicated on the plans. IPA requirements restrict the amount of replanting able to be installed. Consequently, the site will be considerably more visible than indicated in SEE and photomontages. The non-compliance with the setback is not supported. • The rear landscape is also affected by drainage works – including construction works sediment basin, final pipework and dispersion trenches which are not reflected in the landscape plans. • The Arborist's Report is in Draft form only and therefore cannot be relied upon and is not considered acceptable. The Survey Plan provided does not pick up the trees indicated in Arborist's Report. • Biodiversity Management Plan refers to Outer Protection Area standards in rear landscape proposals. The Site is indicated in the Bushfire Report to be managed as an Inner Protection Area, requiring higher levels of clearance and maintenance than indicated in the BMP. • The vegetation offsets referred to in the Biodiversity Management Plan indicate that 2430m² of Bloodwood Scribbly Gum Heathy woodland vegetation is to be removed. Whilst weed removal is proposed, this volume of bushland cannot be replaced elsewhere on site due to the restrictions imposed by landscape management as an Inner Protection Area. The IPA requirements for the site mean that any vegetation needs to be strictly managed to reduce fuel loads with site tree coverage not to exceed 15% and clumps or islands of vegetation maintaining coverage of no more than 20% of the area. The figures claimed as vegetation offset are therefore not realistic and the vegetation communities referred to will be highly modified and managed to achieve IPA requirements and altered due to construction activities. <p>The result of the above assessment is that the proposal is considered to be significantly inconsistent with the DFC for the B2 Locality with regard to low intensity, low impact uses and new development on ridgetops. The proposed setback non-compliances and bushfire management requirements result in outcomes which do not protect or enhance the natural landscape nor retain or establish a dense bushland buffer along Forest Way. Consequently, the proposal is not supported with regard to landscape issues.</p>
Natural Environmental Unit (Biodiversity)	<p>Council's Natural Environment and Climate Change, Biodiversity section does not support the proposal.</p> <p>The proposed development requires substantial clearing of the property for special bushfire protection requirements triggered by seniors living developments in bushfire prone areas. Uncertainties remain with regards to the adequacy of proposed Asset Protection Zones and this referral may be subject to further revision following receipt of a final referral response from the NSW Rural Fire Services.</p> <p>The subject property includes the known and potential habitat of threatened species and communities as listed under the <i>NSW Threatened Species Conservation Act 1995</i> and Commonwealth <i>Environment Protection and</i></p>

	<p><i>Biodiversity Conservation Act 1999</i>. The Endangered Ecological Community (EEC) Coastal Upland Swamp has been identified in the lower south-east corner of the site. The proposal would likely result in direct and indirect impacts upon the local occurrence of this EEC such that the long-time viability of the EEC on site is subject to doubt. Furthermore, the endangered Angus's Onion Orchid has been recorded in areas directly abutting the subject development. It is acknowledged that the status of this species is subject to review, however, it remains listed as an Endangered species with its future legal status unresolved.</p> <p>On the basis of the above, it is considered that a Species Impact Statement (SIS) is required to more thoroughly address likely impacts of the proposal on threatened species and communities occurring on and adjoining the site. The proposal is considered to be inconsistent with the Warringah LEP 2000 clauses 56 <i>Retaining distinctive environmental features on sites</i> and 58 <i>Protection of existing flora</i>.</p>
Natural Environmental Unit (Riparian) and Water Management	<p>The site is approximately 1.0ha in area and is located on the eastern side of Forest Way, directly adjoining bushland that is part of the Oxford/Snake Creek Catchment.</p> <p>A tributary of Snake Creek extends into the site (north east corner) and an Endangered Ecological Community Coastal – Upland Swamp of the Sydney Basin Bioregion has been identified near the lower south-east corner of the site.</p> <p>Natural Environment Staff recommends refusal due to inadequate stormwater quantity and quality treatment measures which will lead to detrimental downstream impacts particularly on the EEC and as such fails to satisfy the requirements of clauses 44 56, 58, 60, 76 and 78 of the Warringah Local Environmental Plan and Water Management Policy. Detailed reasons for refusal are provided below:</p> <p>MUSIC Modelling Review</p> <ul style="list-style-type: none"> • The total developed portion of the site is not included in the model (approx. 0.64ha). All developed site area located upstream of the upland swamp is required to be included in the model (i.e. including pervious areas) to accurately simulate the sites hydrology and treatment measure performance. • The baseline case for the pre-development model should simulate natural conditions (% impervious no greater than 5% and Forested Catchment EMCs) • The Urban node should not be used to model pre-development conditions. • The adopted monthly evapotranspiration values are incorrect and do not vary with seasonal conditions. The model provides for a consistent monthly rate of approx. 96mm throughout the year, whereas values in Sydney vary from approximately 180mm per month in summer to 45mm per month in winter. • The total flow volume discharged from the site under post development conditions increase by approximately 167% compared to natural conditions (i.e. from 2.4ML/yr. to 6.4ML/yr.) and 100% compared with existing conditions i.e. (3.2ML/yr. to 6.4ML/yr.). • The Storm Erosion Index following development increases significantly.

	<ul style="list-style-type: none"> • The average annual frequency of runoff events discharge from the site following the proposed development increases significantly compared with natural conditions i.e. from approximately. • The treatment rates predicted/modelled in the proposed SPEL hydro system are ambitious. Independent scientific certification of the predicted treatment rates needs to be provided; and • No natural WSUD treatment systems or rainwater tanks are proposed. • No assessment of the potential groundwater impacts and method of maintaining the existing groundwater regime/hydrogeology have been included within the DA report (i.e. with regard to the proposed basement and loss of pervious input surfaces. <p>Drains Modelling Review</p> <ul style="list-style-type: none"> • The total developed portion of the site is not included in the consultant's model (i.e. approx. 0.64ha). All site area upstream of the upland swamp/proposed OSD tank is required to be included in the model (i.e. including pervious areas) to accurately simulate the sites hydrology and OSD performance. • The proposed OSD has been modelled as two split basins when the engineering designs show a single below ground OSD tank. The model basin should align with the proposed design. <p>In addition, there are uncertainties regarding the adequacy of the Asset Protection Zone as the RFS has requested additional information.</p>
Waste officer	No objection to the proposed development subject to conditions.
Health and Protection	Additional information required to ascertain whether the development can be connected to Sydney Water.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)

All, EPIs (State Environmental Planning Policies (SEPPs), Regional Environment Plans (REPs) and Local Environment Plans (LEPs)), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each EPIs (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs)

A further consideration is required for the following State policies:

SEPP (State and Regional Development) 2011

The proposed development does not constitute State Significant Development under State Environmental Planning Policy (State and Regional Development) 2011.

Of more relevance, Clause 20 of this policy cross-references Schedule 4A of the EP&A Act 1979, which identifies a range of developments that either due to their nature, scale, value, impact or location are deemed to be of regional significance and which, as a result, require that the SNPP become the consent authority.

In this regard, Schedule 4A (3) indicates that development that has a CIV of more than \$20 million is of regional significance. As indicated on the DA form and as confirmed by a quantity surveyors report accompanying the application, the proposed development has a capital investment value of \$26 million. As such, the consent authority for the application will be the SNPP.

SEPP 64 - Advertising and Signage

SEPP 64 applies to all signage and requires that development consent must not be issued unless the consent authority has had regard to the matters for consideration.

The DA does not include any proposed signage although indicative signage zones relating to the building have been shown on the final photo montages. In this regard, if the application was worthy of approval, a condition will be included in consent requiring that any signage will require a separate DA.

SEPP 55 - Remediation of Land

The SEPP establishes State-wide provisions to promote the remediation of contaminated land.

Clause 7(1)(a) of SEPP and Clause 48 of WLEP 2000 states 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;*
- *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.*

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Assessment (Phase 1) dated 11 January 2017 and prepared by Environmental Investigation Services.

The methodology of the investigation included soil sampling from one (1) bore location within the site at depths of 1.0m below ground level. The assessment concludes that there is a moderate potential for site contamination as the site has been used for agricultural/horticultural purposes which are listed in Table 1 of the SEPP 55 Planning Guidelines as an activity that may cause contamination. In this respect, the report advises that a Phase 2 Investigation is required to ascertain whether the site is suitable for the proposed development.

Based on the above recommendation, the applicant has failed to submit the information required (i.e. a Phase 2 Investigation Report) to demonstrate that the land is suitable in its current state, or will be suitable after remediation, for the purpose for which the development is proposed to be carried out, as required by SEPP 55 and Clause 48 and 49 of WLEP 2000. Accordingly, consent cannot be granted for the proposed development and this issue has been included as a reason for refusal.

SEPP (Infrastructure) 2007

Clause 45 – Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any DA (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 under clause 45(2) of SEPP Infrastructure.

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

Clause 103 - Roads and Maritime Service (RMS)

The DA was referred to the RMS for approval under the provisions Section 138 of the *Roads Act, 1993* and Schedule 3 of *State Environmental Planning Policy (Infrastructure) 2007* as a traffic generating development.

The RMS has provided their concurrence to the development under Section 138(2) of the *Roads Act, 1993* subject to Council approval. The letter of concurrence includes conditions which are to be imposed in the Notice of Determination should this application be approved.

SEPP (Housing for seniors or People with a Disability) 2004 (HSPD) 2004

SEPP (HSPD) 2004 commenced on 31 March 2004 and aims to increase the supply and diversity of housing for aged or disabled persons, to make efficient use of existing infrastructure and to encourage the provision of RCF that will be of good design.

The DA is made pursuant to WLEP 2000 which permits development for the purposes of *housing for older people or people with disabilities* on land within Locality B2 Oxford Falls Valley. The DA is not made pursuant to SEPP (HSPD) 2004.

Notwithstanding, clause 12(1)(b) of WLEP 2000 states that before granting consent for development the consent authority must be satisfied that the development is consistent with any relevant State Environmental Planning Policy described in Schedule 5 (State policies). State policies pertaining to housing for older people or people with a disability are nominated in Schedule 5.

In addition to the above, the Land and Environment Court decision of Talbot J on 31 May 2004 in *Mete v Warringah Council [2004] NSWLEC 273*, states that if a DA is made pursuant to WLEP 2000, then only certain clauses of the SEPP are relevant to the assessment of the application. Specifically, clauses which are prefaced with the words “*development application made pursuant to this chapter*” are not relevant to the application.

Taking the approach of the Court, an assessment of the proposal has taken into consideration the relevant provisions of the SEPP outlined as follows:

Chapter 1 – Preliminary

Chapter 1 of the SEPP lists under Clause 2(1) the Aims of the Policy as follows:

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

The above Aims are considered as follows:

- a) Increase the supply and diversity of residences that meet the needs of seniors or people with a disability.*

The proposed development is considered to be consistent with the aims of the policy, in that the proposed development will increase the supply and diversity of residences to meet the needs of seniors or people with a disability.

- b) Make efficient use of existing infrastructure and services*

In terms of the availability of infrastructure, public transport, community facilities and environmental quality, the site is located within an established residential area and would be supported by the required infrastructure (pending approval from Sydney Water). The site abuts Forest Way and is adequately serviced by continuous bus routes. Community facilities (including Forestway Shopping centre, Glenrose shopping centre, Belrose Hotel and Bowling Club and medical practitioners) are located within close proximity of the site.

The proposed development is considered to be consistent with the aims of the policy

- c) Be of good design*

When considering the development against the aim of achieving good design, the development must be considered in context with the other provisions of the SEPP. In this regard, in the context of the built environment, the development proposes the construction of 5-storey development which will introduce a high density/mid-rise development into an area currently characterised by predominantly natural landforms that is on medium to large allotments and rural character.

In this regard, the proposed building alignment, proportion, and type of building is appropriate for the purpose of providing residential accommodation on a site within a medium density area. However, the site is located within a rural setting area consisting of generous front setbacks which are enhanced by sufficient building separation to promote open streetscapes.

Therefore, given the above comments, in particular pertaining to the built features and the DFC of the area, the design of the development cannot be considered to contextually contribute favourably to the quality and identity of the area.

For the above reasons, the proposed development has been found to be inconsistent with aims of the SEPP 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 the SEPP.

The proposed development comprises the redevelopment of the site to accommodate a RCF which includes the following:

- Meals and cleaning services;
- Personal care or nursing care or both; and
- Appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care.

Accordingly on this basis, it is considered that the proposed development is consistent with the provisions outlined in Chapter 2 of the SEPP.

Chapter 3 – Development for seniors housing

Chapter 3 of the SEPP contains a number of development standards that are applicable only to development applications made pursuant to the SEPP. 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.

Accordingly, the provisions outlined in Chapter 3 of the SEPP are not applicable to the assessment of this 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 applicable to the proposed development, which states

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

The SEE indicates that this requirement should be deferred as a condition of consent. Accordingly, this requirement can be addressed by way of conditions should the application be approved.

STATE REGIONAL ENVIRONMENTAL PLANS

There are no SREPs applicable to the site.

LOCAL ENVIRONMENTAL PLANS

Warringah Local Environmental Plan 2011 (WLEP 2011)

The WLEP 2000, B2 Oxford Falls Valley and C8 Belrose North Localities (which cover the land subject to this application) were proposed to be zoned E3 Environmental Management in the draft 2009 version of Warringah's standard instrument. This was based on a detailed translation methodology that was applied to all land within the former Warringah LGA.

In December 2011, the Minister for Planning and Infrastructure deferred land in the Oxford Falls Valley and Belrose North areas from WLEP 2011 in response to stakeholder concern regarding the adequacy of consultation during the preparation of WLEP 2011.

Accordingly, WLEP 2011 and the current Warringah Development Control Plan 2011 do not apply to this application.

Warringah Local Environment Plan 2000 (WLEP 2000)

WLEP 2000 applies to the subject land and the development application is made pursuant to this instrument. Under WLEP 2000, the subject site is within the B2 Oxford Falls Valley Locality.

The DFC statement for the B2 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 by 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 2 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 Desired Future Character statement (DFC)

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.***

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, the land is to be developed in accordance with the future directions stipulated within the DFC statement.

The character of the Oxford Falls Valley in 2000 is best 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 bulk and scale of the development and 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 environment.

The DFC statement indicates that the character of Oxford Falls Valley can only be altered through new developments which are consistent with the following sections of the DFC.

Accordingly, the relevant components of the DFC statement are 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.***

It is noted that '*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.

The term '*detached style housing*' does not necessarily mean that each building only contains one dwelling. This has been established by the Land and Environment Court on a number of occasions including in *Freedom Health and Happiness Pty Ltd v Warringah Council* [2004] NSWLEC 579. Whilst the building may contain more than one dwelling, the building should appear to be one dwelling from surrounding areas (unlike a residential flat

building).

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 an area that adjoins on its southern boundary an R3 Medium Density Residential zone, which is categorised by semi-attached style dwellings of between one and two stories in height and of a traditional style with pitched roof forms on landscaped allotments which have an average area of 300m² - 500m². The existing character along Childs Circuit (refer to Figure 5 below) is best described as low density/low rise residential interspersed with landscape settings.

The proposed development seeks to construct a five (5) storey development (refer to Figure 6 below). The development also includes site works to facilitate associated recreation uses, open car parking areas, internal access road and landscape works.

Figure 5 shows the existing character on Childs Circuit and Figure 6 shows the southern elevation of the proposed development as viewed from Childs Circuit.



Figure 5: Existing streetscape on Childs Circuit (*Source:* Statement of Environmental Effect prepared Planning Ingenuity)

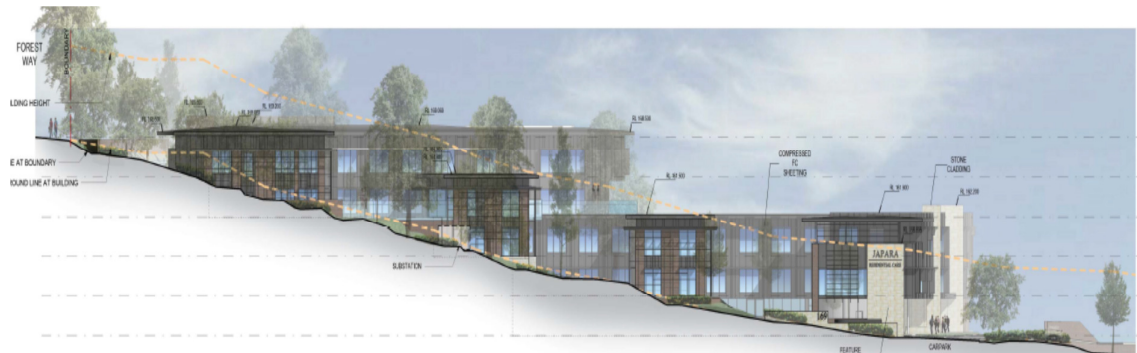


Figure 6: Southern Elevation (*Source:* Adapted by the author from Plan No. DA-300 dated 10 March 2017 and prepared by Thomson Adsett)

Caselaw in Relation to Compatibility

In *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, a Planning Principle was developed to assist in assessing the visual impact of a new development and

its compatibility with the existing streetscape. The Planning Principle emphasises the importance of the relationship of built form to surrounding spaces, with the relationship created by building height, setbacks, landscaping and in some locations, architectural style and materials. Further guidance is provided in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council [2003] NSWLEC 268*, whereby the court found that in circumstances where a seniors housing development is larger than other buildings in the street, it should be broken up so that it does not appear as one building and sections of the building should be separated by generous breaks and landscaping.

As evidenced by the proposed elevation in Figure 6 above, the proposed development is one large building that is not broken up and does not have the appearance of 'detached style housing'. The proposed development is designed in the form that resembles a residential flat building. The lengths, width, and height of the proposed development is not similar to other development within the area.

The proposed development is therefore assessed as not being consistent with this component of the DFC statement.

- **Low intensity, 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 [2008] 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".

To achieve consistency with the DFC statement in the B2 Locality under WLEP 2000, a development is also required to be of a low intensity and low impact. Each element is described in turn below:

Is the proposed development a "low intensity" use?

Size and Scale

As indicated previously, the size and scale of the development is not considered to be in keeping with the size and scale of existing development in the area. The visual pattern of the development is inconsistent with the visual pattern of the area, especially when viewed from the public domains of Childs Circuit and Forest Way and from the adjoining properties to the north, where a horizontal and vertical scale more attributed to a residential flat development conflicts with the scale of a single dwelling development.

Extent of the activities associated with the proposal

The activities associated with the proposed RFC, while different to those associated with detached style housing, are considered to satisfy the low-intensity test. In particular, the

Traffic and Parking Assessment was undertaken in relation to this proposal confirm that the RCF yields a traffic generation potential of approximately 24 peak hour vehicle trips, indicating that this increase will have no unacceptable traffic implications in terms of road network capacity. Further, subject to obtaining an acoustic report and with appropriate design and operation will ensure that impacts associated with noise and glare from lighting is mitigated and managed to acceptable levels.

Therefore, whilst the activities associated with the development can be defined as low-intensity development, it is concluded that the proposed development is not defined as a low-intensity form of development due to the size and scale of the development.

Is the proposed development a “low impact” use?

As indicated through this report, the proposed development is not considered to be low impact for the following reasons:

- The built form of the proposed development is found to be visually inconsistent with the dominant non-urban character of B2 Oxford Falls Valley Locality that surrounds the site. The character of the development is also at odds with the adjoining R3 Medium Density Residential zone to the south which is characterised by semi attached dwellings in landscaped settings.
- The proposed development will result in a significant impact upon the site including its natural drainage features, vegetation and topography through the removal of significant number of trees and the modification of approximately 3302m² of the site area as a result of the provision of APZs within the site.
- The proposed buildings and associated works including access roads and services have not been designed that will minimise disturbance of vegetation and landforms.

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 intensity and low impact use.

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

The development will not disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway and is therefore consistent with this aspect of the DFC.

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

A large proportion of the site is currently occupied by native vegetation that is in varying condition. This layout effectively forms an interface between the adjacent semi-rural areas to the north, east and west and the more urbanised residential areas to the south.

As noted in the referral section of this report, by Council's Natural Environment Unit (Biodiversity Section) and the Landscape Officer, the proposed development will result in a significant impact upon the site including its natural drainage features, vegetation and topography through the removal of significant number of trees and the modification of

approximately 3302m² of the site area for the provision of APZs within the site. The proposed also proposes significant excavation into the site.

The proposed development is therefore not consistent with the DFC statement of the locality relating to the requirement of protecting natural landscaping.

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

The proposal incorporates external finishes with natural textures and neutral colours to ensure the development is visually compatible with the natural landscape in which it is situated. In particular, the proposed combination of feature stone bricks and brown face-cladding creates a natural yet contemporary aesthetic that responds to the scenic qualities of the site and the locality more broadly. A schedule of colours and finishes is included with the architectural plan set submitted with the application.

- ***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.***

This component of the DFC envisages the retention of bushland buffer along Forest Way, which is consistent with the built form control for the locality which requires that 20m setback be provided to development along the Forest Way frontage.

The proposed development is setback 8m from the Forest Way. In this regard, the non-compliance with the built form control will not allow the establishment of dense landscape buffer to occur along Forest Way as required by the DFC.

The proposed development is therefore not consistent with the DFC statement

- ***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.***

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 waterway. Although the application was referred to the NSW Office of Water as Integrated Development, sufficient information was not provided with the application.

In this respect, insufficient information has been provided with the application to enable Council to assess and ascertain what, if any, impacts would occur as a result of the development.

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

Conclusion on the DFC

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, 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 (Overall)	12.6m	No*
	7.2m (Floor to upper ceiling)	Refer to Clause 29	Not Applicable
Front Building Setback	20.0m (Forest Way) 10.0m (Child Circuit)	8m 4.5m -6m	No* No*
Rear Building Setback	10.0m	Not Applicable	N/A
Side boundary setback	10.0m (Northern) 10.0m (Eastern)	3.9m – 7.9m In excess of 10m	No* Yes
Landscaped Open Space (LOS)	30% of the site area.	Approximately 57 % of the site will remain as LOS	Yes

The proposed development fails to satisfy the Locality's Building Height, Front Setback, and Side Boundary Setback Built Form Controls. Accordingly, further assessment is considered against the applicability of Clause 20(1).

Clause 20(1) stipulates:

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the General Principles of Development Control, the Desired Future Character of the locality and any relevant State Environmental Planning Policy.”

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

(i) General Principles of Development Control

The proposal fails consistency with several General Principles of Development Control and accordingly, fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See the discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is inconsistent with the B2 Oxford Falls Locality's DFC Statement and accordingly, fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered to be inconsistent with applicable State Environmental Planning Policies. (Refer to earlier discussion under 'State Environmental Planning Policies') Accordingly, the proposal fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Notwithstanding, in order to fully consider the application the following provides an assessment of the non-compliances to the Building Height, Front and side setbacks Built Form Controls (note: in accordance with Clause 20(1) of WLEP 2000, the following assessment does not constitute any consideration for variations to the respective Built Form Controls).

Building Height

The building height control for the B2 locality states that buildings are not to exceed 8.5 metres in height, where height is the distance measured vertically between the topmost point of the building and the natural ground level below.

In addition to the above, Clause 29 states that development for seniors housing development are not to exceed 8 metres in height, where height is the distance measured from natural ground level to the underside of the ceiling on the uppermost floor of the building.

Area of non-compliance

The development is non-compliant in the following areas as shown in red in Figure 7 and in blue in Figure 8 below:



Figure 7: View of non-compliant building height (marked in red). (Source: Adapted by the Author from Plan no. DA-310 dated 10 March 2017 and prepared by Thomson Adsett)

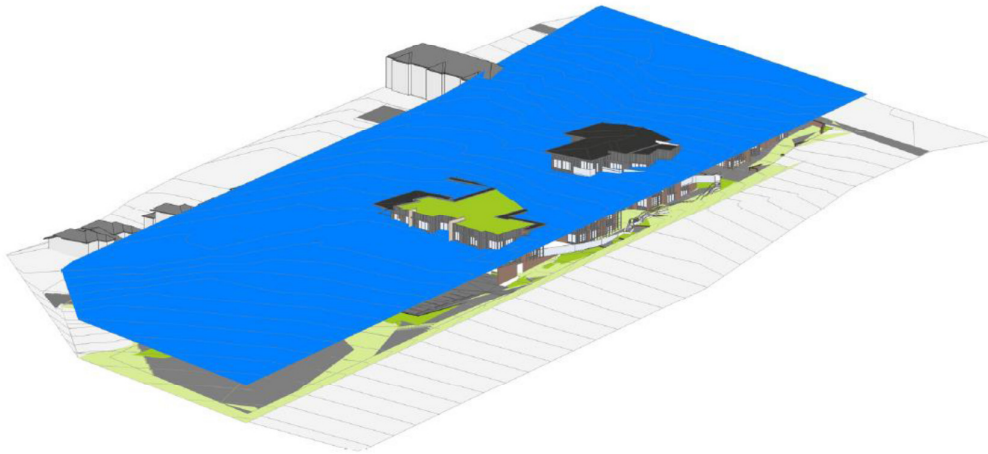


Figure 8: Building Height diagram (Source: Statement of Environmental Effects prepared Planning Ingenuity)

Merit consideration of non-compliance

In assessing this element of the proposal, it is necessary to consider the merit considerations of the Building Height built form control. Accordingly, consistencies with the merit considerations are addressed below:

- *Ensure that development does not become visually dominant by virtue of its height and bulk*

The proposed height is considered excessive and will set an undesirable precedent for the locality that envisages low-density residential. Accordingly, the height of the proposed development is not compatible and would be excessive in terms of its scale as compared to other housing developments in the surrounding locality.

The combination of the vertical and horizontal massing of the side elevations of the building in conjunction with the proposed side setbacks results in visually dominant building bulk that has no sympathy or relationship to the bulk of surrounding residential development.

The non-compliant building height is further indicative of the visual dominance of the development and, given the proposed side setbacks, could result in an unreasonable sense of enclosure to established neighbouring dwellings.

- *Preserve the amenity of the surrounding land.*

The non-compliance with the height standard will not result in inconsistencies with this objective as adjoining and nearby development which overlooks the subject site will not experience adverse impacts with regards to views, privacy and loss of solar access. However, it is noted that the impacts associated with this proposal have not been “minimised” and a compliant building would achieve greater consistency with this objective.

The visual impact of the development is found to be unacceptable in its current form.

- *Ensure that development responds to site topography and minimises excavation of the natural landform;*

The development has been stepped down the site from Forest Way to follow the topography of the land. In this regard, despite the scale of the proposal, it is considered that the development responds to the topography and therefore satisfies this objective

Conclusion on Building Height Variation

The development is not considered to be consistent with the objectives underlying the Building Height built form control. In this respect, the variation to the Building Height built form control would not be supported.

Front Building Setback

In accordance with the front building setback built form control, development is to maintain a minimum front building setback of 20m to Forest Way (primary frontage) and 10m to Childs Circuit (secondary street frontage). 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.

Area of Non-compliance

Built Form Standard	Required	Proposed	Compliant
Front Building Setback	20.0m (Forest Way) 10.0m (Child Circuit)	8m 4.5m -6m	No* No*

Merit consideration of non-compliance

In assessing this element of the proposal, it is necessary to consider the merit considerations of the Front Setback Built Form Control. Accordingly, consistencies with the merit considerations are addressed below:

- *Create a sense of openness.*

Forest Way

The non-compliance involves the introduction of building elements within the established front setback area of Forest Way. The vertical scale of the development results in a vertical mass which is inconsistent with the character of developments on this part of Forest Way.

Childs Circuit

The non-compliance involves the introduction of building elements within the established front setback area of Childs Circuit, which has an average front setback of 6.5m. The combination of the vertical scale and the horizontal scale of the development results in a street wall development which is inconsistent with the character of development on Childs Circuit.

The proposed development adds significant continuous building mass to an otherwise open streetscape which is characterised by traditional dwelling house built forms on single allotments which provide substantial building separation.

- *Provide opportunities for landscaping.*

Forest Way

The non-compliance facing Forest Way occurs from the 2nd level of the development and according to the design the subject of this assessment, there is no opportunity for landscaping.

Child Circuit

At ground level, the development achieves a front setback of 4.5m -6m to the main building line. The intrusion of the courtyards does not prohibit opportunities for landscaping.

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

Forest Way

As indicated previously, the development adds to the vertical bulk of the building when viewed from Forest Way which will maximise the visual impact of the development on the streetscape.

Childs Circuit

The non-compliance occurs along the full frontage of the development which faces Childs Circuit. The combination of the length of the building results in a building mass which will have a significant visual impact upon the streetscape.

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

Forest Way

The vertical bulk of the building when viewed from the street, the non-compliance is not considered to preserve the visual continuity and pattern of buildings along this particular part of Forest Way.

With respect to front gardens, the development does not provide an appropriate level of landscaping within the front setback area which does not maintain the landscaped character of the streetscape.

Childs Circuit

The average street setback along Child Circuit is 6.5m. In this regard, as indicated previously, given the size and scale of the development, the development will not maintain the visual continuity and pattern of buildings given the occurrence of the non-compliance over the entire length of the development.

With respect to front gardens and landscaped elements, the development proposes enclosed front gardens within variable height side walls which enclose the landscape elements of the development. This is not consistent with the front gardens and landscape elements of existing development along Child Circuit which consist of open front gardens which contribute towards the open perspective of the streetscape.

Conclusion on Front Setback Variation

The development is not considered to be consistent with the objectives underlying the Front Setback Built Form Control. In this respect, the variation to the Front Setback Built Form Control would not be supported.

Side Boundary Setback Built Form Control

Built Form Standard	Required	Proposed	Compliant
Side boundary setback	10.0m (Northern) 10.0m (Eastern)	3.9m – 7.9m In excess of 10m	No* Yes

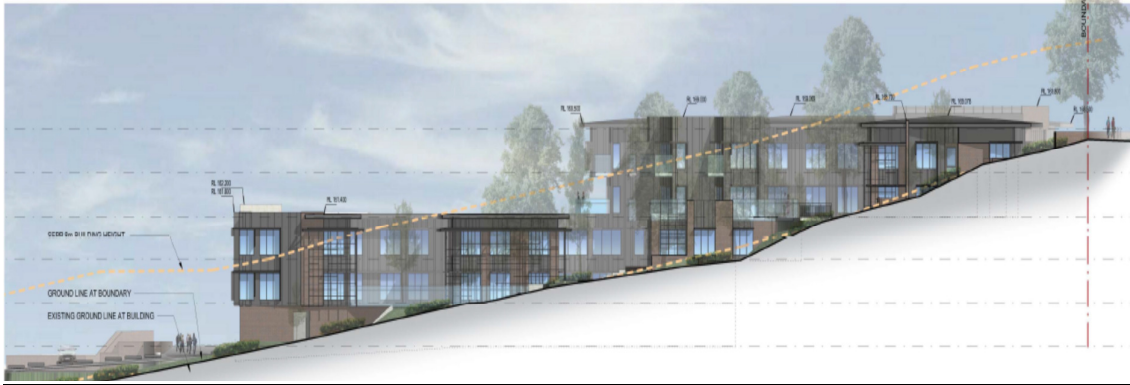


Figure 8: North Elevation (Source: Adapted by the Author from Plan no. DA-301 dated 10 March 2017 and prepared by Thomson Adsett)

Merit consideration of non-compliance

In assessing this element of the proposal, it is necessary to consider the merit considerations of the Side Boundary Setback Built Form Control. Accordingly, consistencies with the merit considerations are addressed below:

- *Ensure that development does not become visually dominant by virtue of its height and bulk.*

The non-compliances occur through the entire length of the north elevation (see Figure 8 above) and will have a visual impact on the height and bulk of the development when viewed from the adjoining properties to the north.

- *Preserve the amenity of the surrounding land.*

The north facing non-compliance abuts the side boundary to No. 171 Forest Way. Whilst, the extent of the non-compliance will not significantly impact on the view loss, privacy, or solar access of the adjoining property to the north, the visual impact of the development is unacceptable in its current form.

- *Ensure that development responds to site topography.*

The proposed side setbacks respond to the topography of the site.

- *Provide separation between buildings.*

Given the size and scale of the development, there is insufficient separation to the property to the north. If the development was design to achieve compliance with the DFC statement for the B2 locality and was broken up to minimise the building bulk of the northern elevation, then this could be considered a sufficient mitigation to warrant some variation to the side boundary setback.

- *Provide opportunities for landscaping.*

Given the non-compliance through the entire length of the development, the non-compliant side setbacks are considered to have any significant impact on the provision of landscaping for the site.

- *Create a sense of openness.*

The non-compliant building height indicates unreasonable massing within close proximity to the side boundary to the north. This could impact on the visual amenity of surrounding land by imposing an unreasonable sense of enclosure and, given the general lack of articulation to the side elevation, a visually restricted outlook.

Conclusion on Side Setback Variation

The development is not considered to be consistent with the objectives underlying the Side Boundary Setback Built Form Control. In this respect, the variation to the Side Boundary Setback Built Form Control would not be supported.

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	072:1 (7,217m ²)	Yes
(b) Building Height	8.0m (Floor to upper ceiling)	11.3m (maximum)	No* (Refer to discussion under Clause 20 above)
(c) Landscaped Area	25m ² per residential care facility bed. Total required =4,200m ²	Total provided = 5,586m ²	Yes
(d) Parking	1 space per 10 beds, 1 space per 2 employees on duty at any one time, 1 ambulance space	120 bed = 12 spaces 44 Employees = 22 spaces Ambulance space = 1 space Total Required= 34 Total provided = 34 spaces (including an ambulance space)	Yes
(f) Deep Soil Area	(a) Site width (W) = 51 (b) Site length (L) = 194.4m (c) W x 15% of L Total required = 1,377m ²	Total provided = 5,586m ²	Yes

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	<p>A standard condition may be included in the consent, should this application be approved, to ensure that the reflectivity index of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%.</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 condition)

Clause 40 - Housing for Older People or People with Disabilities

Comment:

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).	<p>Whilst the site is located within 400m to the bus stops, there is no detail provided with the application to indicate how the accessible (pedestrian) access will be provided from the site to Forest Way.</p> <p>In this regard, it is unclear whether the gradient of the site would allow wheelchair access to Forest Way. Accordingly, the application does not satisfy the requirement of this Clause.</p>	No*
	Reasonable access to home delivered meals, personal care and home nursing and assistance with housework.	The site is located within the reasonable access to the required facilities.	Yes
Wheelchair access	<p><u>(a) Site Gradient</u></p> <p>(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</p> <p>(ii) if the whole of the site does not have a gradient of less than 1:10, a percentage</p>	Insufficient information submitted with the application to determine compliance with the requirement of this Clause.	No*

Control	Required	Proposed	Compliance
	(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.		
	<u>(b) Road Access</u> At least 10% of any hostel or residential care facility beds and at least 10% of any 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.	Insufficient information submitted with the application to determine compliance with the requirement of this Clause	No*
	<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 Access Report notes that the development will achieve compliance with the requirement of this Clause.	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.	Insufficient information submitted with the application to determine compliance with the requirement of this Clause	No*

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 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 a 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	<p>The nature of the proposed use is unlikely to generate significant noise emissions associated with the occupation of the development, with the exception of air conditioning systems. A suitable condition could be imposed if the application was worthy of approval in relation to A/C systems.</p>	Yes (Subject to conditions)
Clause 44 Pollutants	Yes	<p>The proposed use increases the population density of the site and introduces a medical feature (nursing).</p> <p>These two additional features of the development have 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>The DA does not acknowledge the potential for additional environmental impact resulting from the use, nor does it include any details with respect to how these additional features would be managed. Notwithstanding, appropriate conditions could be imposed, should this application be approved, to address these additional features and to ensure that the operation of the facility does not have any adverse impact on the environment.</p>	Yes (Subject to conditions)
Clause 47 Flood Affected Land	No	The site is not located within, or near to, any identified flood affected land.	Not Applicable
Clause 48 Potentially Contaminated Land	Yes	This issue has been addressed under SEPP 55 of this report. In summary, there is insufficient information (i.e. a Phase 2 Report) submitted with the application to demonstrate that this site is suitable for the proposed development.	No
Clause 49 Remediation of Contaminated Land	Yes	Refer to assessment under SEPP 55 and Clause 48.	No
Clause 49a Acid Sulphate Soils	No	The site is not located within, or near to, any land categorised as containing acid sulphate soil.	Not Applicable

Control	Required	Proposed	Compliance
Clause 50 Safety & Security	Yes	<p>NSW Police have assessed the Development Application under the provisions of <i>Crime Prevention through Environmental Design</i> (CPTED) and raise no objections.</p> <p>In addition to the above, It is noted that the nature of the proposed use and the provision of on-site management will provide an enhanced level of passive surveillance to the adjoining roadway.</p>	Yes
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>With exception to the Perentie Road reserves which abut the site on eastern and southern boundaries, the site is a privately owned property which is surrounded by private properties.</p> <p>Accordingly, the application is considered capable of satisfying the provisions of this General Principle.</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	Appropriate conditions may be imposed, should this application be approved, to ensure that the development is connected to required utilities.	Yes (subject to conditions)
Clause 56 Retaining Unique Environmental Features on Site	Yes	<p>The development proposes excavation works up to about 8m below the existing ground level, as indicated by the Geotechnical Report, dated 24 January 2017, as prepared by JK Geotechnics.</p> <p>The Geotechnical Report submitted does not provide sufficient details which would ascertain the presence of rock outcrops on the site. Furthermore, the Aboriginal Heritage Office has requested additional information to ascertain whether any potential Aboriginal heritage issues exist on the land and recommendations for any further action if required</p> <p>Accordingly, there are insufficient details submitted with the application to determine compliance with the requirement of this clause.</p>	No Insufficient information provided
Clause 57 Development on Sloping Land	Yes	<p>Clause 57 states that on sloping land, the height and bulk of development, particularly on the downhill side, are to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. The clause also states that excavation of the landform is to be minimised.</p> <p>The site falls gradually from Forest Way towards Perentie Road Reserve (rear of the site).</p> <p>The proposed development has been stepped to respond to the topography of the land.</p> <p>Excavation is proposed to accommodate the basement level and given the type of</p>	Yes

Control	Required	Proposed	Compliance
		<p>development proposed, is not considered to be unreasonable.</p> <p>Accordingly, the proposed development has been designed to achieve compliance with the requirement of this Clause</p>	
Clause 58 Protection of Existing Flora	Yes	<p>The distinctive environmental features of the site are that the subject site is substantially undisturbed and undeveloped land containing degraded remnant bushland vegetation and escarpment.</p> <p>Council's Natural Environment Unit has assessed the proposed development and has indicated that the proposed is not supported as the proposal does not provide adequate protection of the existing flora on site.</p>	No
Clause 59 Koala Habitat Protection	Yes	<p>The site has a total area of 9,975m² 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 2000</i>, <i>State Environmental Planning Policy No. 44 – Koala Habitat Protection</i> 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 DA 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>	Yes
Clause 60 Watercourses & Aquatic Habitats	Yes	<p>The application was referred to the Riparian Section of Council's Natural Environment Unit who advises (see 'Internal Referrals' in this report) that insufficient information has been submitted with the application to determine compliance with the requirement of this Clause.</p>	No
Clause 61 Views	Yes	<p>Due to the topography and location of the site, it is unlikely that the proposed development will affect any significant views.</p> <p>In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, were applied to the proposal. While no objections regarding view loss were received, the view assessment has been undertaken to have regard to all surrounding properties and the proposal is satisfactory in providing reasonable view sharing.</p>	Yes

Control	Required	Proposed	Compliance
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 57% of landscaped open space (this is located within the property boundary and does not include the road reserve).</p> <p>Whilst the development complies with the numerical requirement of LOS, there is insufficient information that has been submitted to demonstrate appropriate plantings can be provided which are commensurate with the height and scale of the development in consideration of the APZ requirements and the existing soil conditions.</p> <p>In addition to the above, The application was referred to the Landscape officer who advises (see 'Internal Referrals' in this report) that the application is not supported in relation to the landscape issues.</p> <p>As such the development is not considered to be consistent with the requirements of Clause 63.</p>	No
Clause 63A Rear Building Setback	No	The site has dual street frontages, therefore the requirement of this clause is not applicable to the proposed development.	Not Applicable
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 principal 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 vertical and horizontal massing of development, when viewed from the public domains of Forest Way and Childs Circuit, and from the side elevations, results in visually dominant building bulk that has no sympathy or relationship to the bulk of surrounding residential development.</p>	No
Clause 67 Roofs	Yes	The proposed roof form is considered to be satisfactory and is integral to the style of the building proposed.	Yes
Clause 68 Conservation of Energy and Water	Yes	<p>The development includes Stormsacks system which is designed to treat stormwater runoff from landscaped areas and roof. In addition, the development has also been designed to ensure that the roof catchment environmental flows are directed to the swamp via a treatment system and swale drain spreader, bypassing the proposed on-site detention basin.</p> <p>This clause does not include any reference to</p>	Yes

Control	Required	Proposed	Compliance
		<p>the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. Therefore, the provisions of the SEPP are not considered here.</p> <p>The proposed development is found to be consistent with the requirement of this Clause.</p>	
Clause 69 Accessibility – Public and Semi-Public Buildings	Yes	The proposed development is required to comply with all the relevant accessibility provisions of Clause 40.	Not Applicable
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 a minimal visual impact from public places.</p> <p>The DA 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 DA be approved.</p>	Yes (subject to condition)
Clause 71 Parking Facilities (visual impact)	Yes	The proposed open car parking area does not dominate or detract from the streetscape given its relative concealment by the proposed landscaped works along the northern side boundary.	Yes
Clause 72 Traffic Access & Safety	Yes	<p>The application includes a traffic report (see Traffic and Parking Report dated 15 March 2017 prepared by Varga Traffic Planning). The report concludes that <i>“the development would result in a minor increase in traffic on the surrounding road network”</i> which is generally supported by Council's Traffic Engineer (see Internal referrals).</p> <p>However, as noted in the submission section of this report, the applicant has not provided any details on whether vehicular access from Forest Way is a possibility. This specific issue was raised at the pre-lodgement stage with the applicant.</p> <p>In this regard, the development is not consistent with CI 72 Traffic Access & Safety.</p>	No
Clause 73 On-site Loading and Unloading	Yes	All loading and unloading will occur within the boundaries of the subject site and therefore considered to be satisfactory in relation to this Clause.	Yes
Clause 74 Provision of Car Parking	Yes	The development includes a provision for the on-site parking of 34 vehicles which is compliant with the requirements of Clause 29 under <i>WLEP 2000</i> .	Yes
Clause 75 Design of Car Parking Areas	Yes	The car parking layout and internal access arrangements are capable comply with the relevant design requirements in 'AS/NZS 2890.1:2004' and 'AS/NZS 2890.6:2009'.	Yes
Clause 76 Management of Stormwater	Yes	Council's Development Engineer has reviewed the proposal and raised a number of issues regarding the stormwater drainage design, which has been addressed in the referral section of this	No

Control	Required	Proposed	Compliance
		report. As inadequate stormwater details have been submitted, compliance with the requirements of Clause 76 – Management of stormwater has not been achieved. This issue have been included as reasons for refusal.	
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	No	The site is not identified as a heritage item nor is it located within a conservation area.	Not Applicable
Clause 80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	The application was referred to the NSW Aboriginal Heritage Office pursuant to the provisions of Clause 80 of the WLEP 2000 as the site may contain or may be within the vicinity of an Aboriginal place or place of Aboriginal cultural significance. The NSW Aboriginal Heritage Officer has reviewed the application and has requested additional information. As inadequate details have been submitted, compliance with the requirements of Clause 80 has not been achieved. This issue have been included as reasons for refusal	No
Clause 83 Development of Known or Potential Archaeological Sites	Yes	The property is not a known or potential archaeological site	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 Planning Ingenuity) 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 in 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 proposal will not introduce new signage.	Not Applicable
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 basement and open car park areas to accommodate 34 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 room	A living room must have a circulation space of at least	To be required as a condition of consent should this application	Yes (Subject to

Control	Required	Proposed	Complies
	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.	be approved.	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	The 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	To be required as a condition of	Yes

Control	Required	Proposed	Complies
	paved areas must have slip resistant surfaces.	consent should this application be approved.	(Subject to condition)
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
	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.	Yes
	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 <i>Desired Future Character</i> section of this report. In summary, the proposed development is found to be inconsistent in relation to maintaining a character that is consistent with the adjoining and surrounding properties.	No
	e. Where possible, maintain reasonable neighbour amenity and appropriate residential	The proposed development has been designed to minimise any visual amenity impact of the development on the adjoining	Yes

Control	Required	Proposed	Complies
	character by considering, where buildings are located on the boundary, the impact of the boundary walls on neighbor's.	proposed development.	
	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.	The proposed development does not provide a satisfactory front setback as required by the control and that is consistent with the adjoining properties.	No
	g. Embody planting that is in sympathy with, but not necessarily the same as, another planting in the streetscape.	Refer to the Landscape comments (in the referral section of this report)	No

Schedule 17 – Car parking Provision

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

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable, and it will be included as a condition of consent should the application be approved:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$26,529,304.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 252,028.39
Section 94A Planning and Administration	0.05%	\$13,264.65
Total	1%	\$265,293.04

A condition requiring payment of the Section 94A contribution is to be imposed if this application is approved.

CONCLUSION

This report provides a comprehensive assessment of the DA for the redevelopment of the site for the purposes of a 120-bed residential care facility on the site known as 169 Forest Way.

The site has been inspected, the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, the provisions

relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000 and the relevant codes and policies of Council.

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.

The assessment of this application concludes that the proposal has not responded adequately to its context and the elements that make up the existing and desired future character of the site and its locality under the B2 Locality of the WLEP 2000. For these reasons, it is considered the proposal is not an appropriate development for the site insofar as it is unable to satisfactorily reconcile its impact on the semi-rural/residential character of the Oxford Falls Valley.

The assessment of the DA against the provisions of WLEP 2000 found that the proposal did not comply with the Building Height, Front Setback, and Side Setback Built Form Controls such that, because of the inconsistency with state planning policies, the DFC of the locality and the General Principles of Development Control, they could not be considered for variation under Clause 20 of WLEP 2000.

The public exhibition of the DA resulted in a significant negative response from the community, which included a total of 48 individual submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to access to Childs Circuit, the density and scale being inconsistent with the character of the area and traffic congestion. Other issues raised referred to insufficient car parking; wheel chair access to Forest Way, the creation of an undesirable precedent; and the impact upon neighbouring residential amenity. The issues raised in the submissions have been addressed in the “*Public Notification*” section of this report.

The assessment of the DA against the provisions of State Environmental Planning Policy 55 (Remediation of Land) found that there insufficient information submitted with the application to demonstrate that the land will be suitable in its current state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.

Finally, the proposed development is also found to be inconsistent with the aims of SEPP (HSPD) 2004. It is concluded that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

As a direct result of the application and the consideration of the matters detailed within this report, it is recommended that the Sydney North Planning Panel (SNPP), as the determining authority, refuse this application for the reasons detailed within the “*Recommendation*” section of this report.

RECOMMENDATION (REFUSAL)

That the SNPP, as the consent authority, pursuant to Clause 80(1) (a) of the EP&A Act 1979 (as amended), REFUSE Development Consent to Development Application No. DA2017/0237 for the Construction of a Residential Care Facility with associated car parking and landscaping and demolition at Lot 8 DP 737255, 169 Forest Way, Belrose subject to the reasons outlined as follows:

1. 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 the Aims of the policy.
2. Pursuant to Section 79C (1) (c) of the *Environmental Planning and Assessment Act 1979* the site is not considered suitable for the proposed development as insufficient information has been submitted to demonstrate that the land will be suitable in its current state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.
3. Pursuant 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.
4. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that the proposed development is does not comply with the Building Height Built Form Control, Front Setback Built Form Control; and Side Boundary Setback Built Form Control.
5. 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:
 - Clause 48 – Contaminated Land
 - Clause 56 Retaining Unique Environmental Features
 - Clause 58 Protection of Existing Flora
 - Clause 60 Watercourses & Aquatic Habitats
 - Clause 63 Landscaped open space
 - Clause 66 Building Bulk
 - Cause 72 – Traffic and Access and Safety
 - Clause 76 Management of Stormwater
 - Clause 80 - Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service
6. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that the proposed development is not consistent with:
 - Schedule 5 - State Policies;
 - Schedule 16 - Principles and Standards for Housing for Older People or People with Disabilities

7. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that the proposed development is not consistent with requirement of Clause 40.
8. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act, 1979* the site is not considered to be suitable for the development given it's location within an area which renders the development, as proposed, to be inconsistent with its current and desired future character.
9. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act, 1979* the proposed development is not in the public interest as the development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the respective localities.