

SYDNEY NORTH PLANNING PANEL COUNCIL ASSESSMENT REPORT

Panel Reference	2017SNH025
DA Number	DA2017/0206
LGA	Northern Beaches Council
Proposed Development	Construction of a Residential Care Facility with associated demolition, internal roads, car parking and landscaping
Street Address	Lot 1113 DP 752038, 1113 / 752038 Oxford Falls Road, Frenchs Forest
Applicant/Owner	Anita Spaliviero (Owner) Dukor 24 Pty Limited (Applicant)
Date of DA lodgement	10 March 2017
Number of Submissions	47 Submissions plus 2 petitions
Recommendation	REFUSAL
Regional Development Criteria (Schedule 4A of the EP&A Act)	Development with a Capital Investment Value (CIV) of more than \$20 million Total Cost of the Development is \$27,492,888
List of all relevant s79C(1)(a) matters	• 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	• Attachment 1: Pre-Lodgement Meeting Notes • 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	31 July 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 about 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? **Not Applicable**

Special Infrastructure Contributions

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

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
Note: in order to reduce delays in determinations, the Panel prefer 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 on the site known as Lot 1113 Oxford Falls Road, Frenchs Forest. The site is irregular in shape and has a total area of 33,853m².

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 SEPP (Housing for Seniors or People with a Disability) 2004.

The proposed Residential Care Facility (RCF) comprises 72 rooms and ancillary facilities distributed over three (3) building modules, each module containing 2-6 building components which are interconnected and located within the southern upper reaches of the site. Parking is provided for 33 vehicles on an at-grade parking facility. Vehicular access is to be provided via Barnes Road reserve.

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 \$27,492,888.00 and therefore Sydney North Planning Panel (SNPP) is the relevant determining authority.

The site has prior approval for a Residential Care Facility. On 12 August 2015, the former Sydney East Joint Regional Planning Panel (Former JRPP) granted consent to Development Application No. DA2014/1062 for a 45 bed RCF. The panel did not agree with the Council's recommendation that the DA should be refused on environmental impacts, character and other planning grounds, stating in their report that the proposed development should be approved, given the proposal seeks to preserve the northern lower reaches of the site in an undeveloped condition for bushland regeneration and provides a 30m wide biodiversity corridor.

The current scheme has been developed around the fact that former JRPP has already granted approval for a 45 bed RCF on the site and this new development scheme is an expansion to that approval by increasing the intensity by 27 additional beds. However, this report has assessed the merits of this application, and whilst recognising that the previous approval has been granted, the current proposal is a different concept, in terms of the size, scale and the intensity of the development and its associated impacts.

Council's concerns in relation to the overall impact of the development and the location of the site for to this type, form and intensity of development still remains. Accordingly, the assessment concludes that, despite the previous approval on this site, the site is not suitable for this type of development.

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 the 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:	DA2017/0206
Assessment Officer:	Lashta Haidari – Senior Planner
Land to be developed (Address):	Lot 1113 DP 752038, 1113 / 752038 Oxford Falls Road, Frenchs Forest
Proposed Development:	Construction of a Residential Care Facility with associated demolition, internal roads, 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:	Anita Spaliviero
Applicant:	Dukor 24 Pty Limited
Application lodged:	10 March 2017
Application Type:	Integrated
State Reporting Category:	Seniors Housing
Notified:	1 st round of notification 24 March 2017 to 28 April 2017 2 nd round of notification 24 April 2017 to 26 May 2017
Advertised:	25 March 2017
Submissions:	47 Submissions plus 2 petitions
Recommendation:	REFUSAL
Estimated Cost of Works:	\$27,492,888

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.

SITE DESCRIPTION

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

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

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

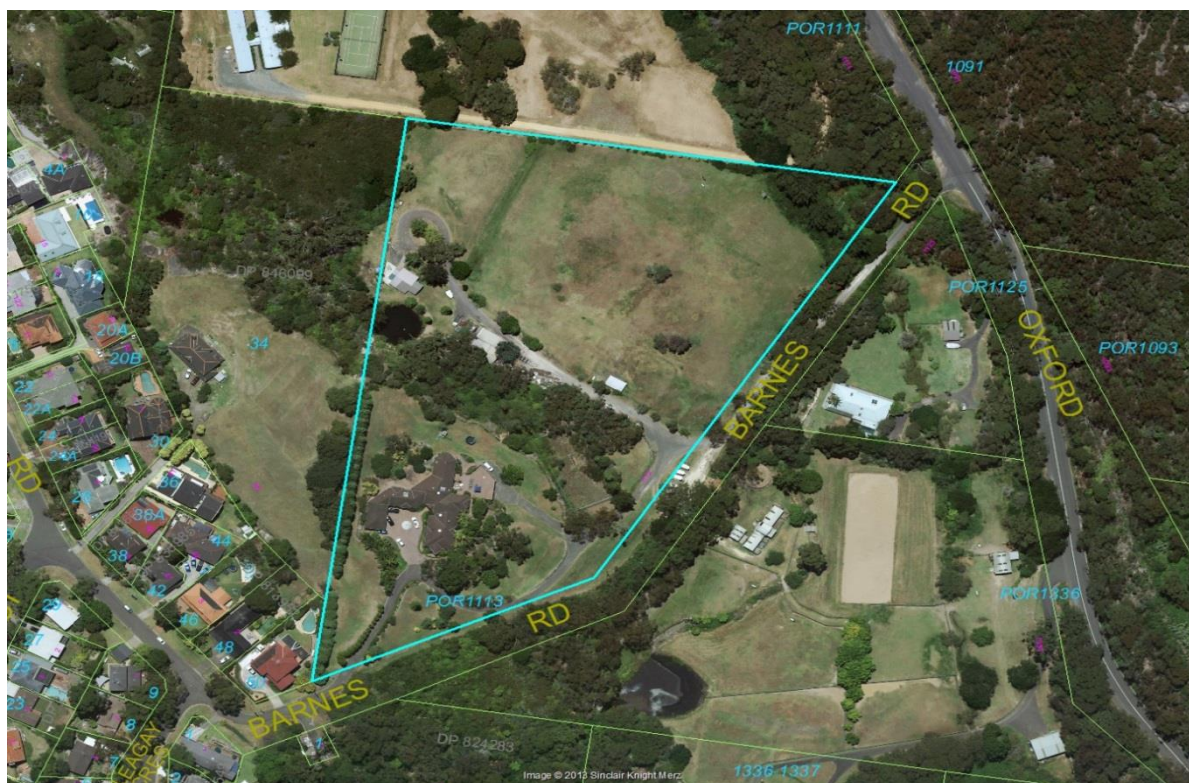


Figure 1 - Site Map

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

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

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

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

RELEVANT BACKGROUND

The following is a brief history of the subject site and the process leading up to the lodgement of the current Development Application:

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

The site formed part of an earlier Part 3A Application which was lodged with the Department of Planning on 23 October 2008 (application No. MP 05-0113).

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

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

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

Development Application No. 2004/0585

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

This application sought consent for a Master Plan for a Seniors Living Development and Stage 1 construction works. The application was withdrawn by the applicant on 27 July 2004.

Development Application No. 2004/1402

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

The application sought consent for a Concept Plan for a Seniors Living Development for approximately 700 to 850 residents in a range of self-care apartments, 60 bed nursing home, and associated facilities.

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

Figure 2 below shows the parcels of land included in each of the proposals listed above.

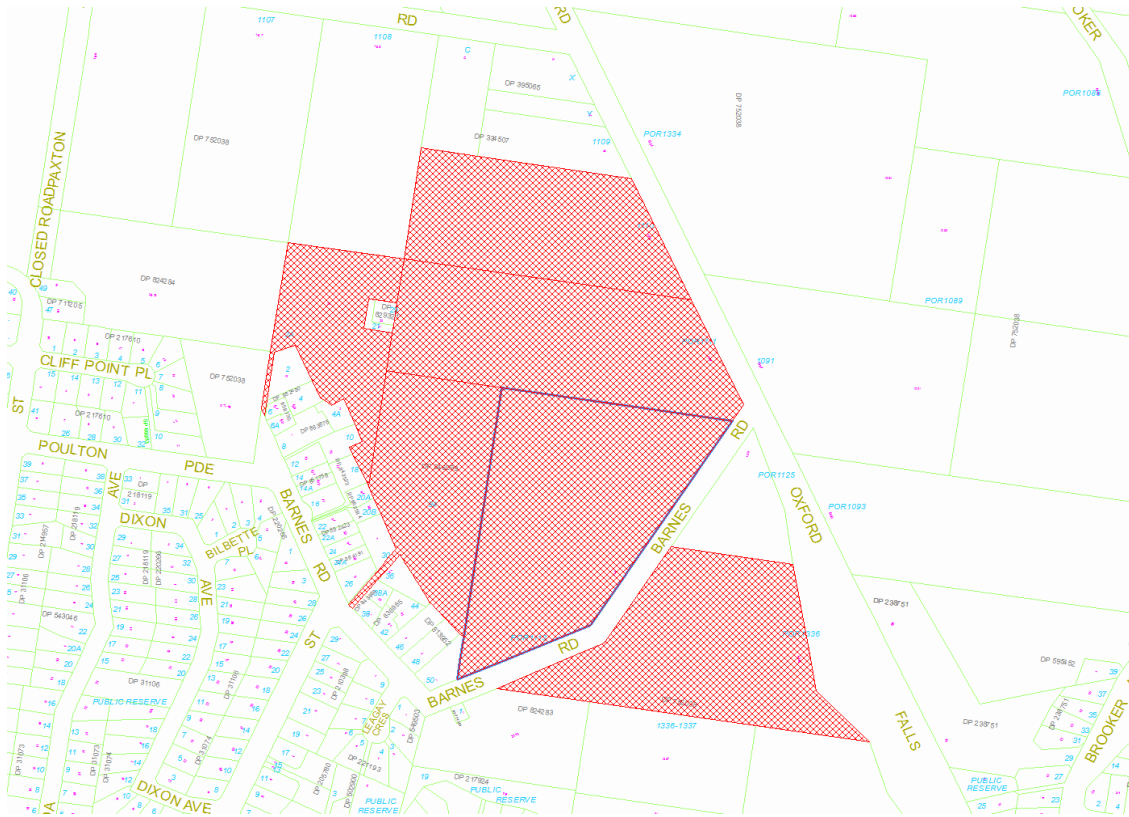


Figure 2 - Land included in DA2004/0585, DA2004/1402 and the Part 3A Application for a Seniors Living Resort and Associated Services and Facilities (NB : The subject site is outlined in blue)

The following Development Applications directly relate to the subject site:

Development Application No. DA2013/0575

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

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

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

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

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

The application was approved by the former WDAP on 13 November 2013 subject to conditions which included a condition requiring the applicant to obtain consent under Section

138 of the *Roads Act 1993* (as necessary), in relation to any works associated with the APZ within the Barnes road reserve.

Development Application (DA2014/1062)

This Development Application was lodged with Council on 3 October 2014.

The application sought consent to demolish the existing dwelling and construct a new 45 bed residential care facility with associated works.

The application was referred to the former JRPP Panel on 12 August 2015 with a recommendation for refusal.

The application was approved by the Panel on 12 August 2015.

Development Application (DA2016/0897)

This Development Application was lodged with Council on 26 August 2016.

The application sought consent to demolish the existing dwelling and construct a new 70 bed residential care facility, thus increasing the intensity of the development from 45 to 70 beds.

The application was subsequently withdrawn by the applicant on 23 December 2016, following advice from the Council, that the proposal could not be supported.

Pre-Lodgement Meeting

Prior to lodging DA2016/0897 a pre-lodgement meeting was held with Council on 12 July 2016.

A copy of the notes are attached to this report (refer to Attachment 2).

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 of a 72 bed residential care facility;
- On grade car parking spaces for 33 vehicles;
- Associated Landscaping works and drainage works; and
- Construction of internal roads; and

The facility will employ a maximum of 16 on-site staff at any one time. The application relies upon the use of the Barnes Road road reserve to accommodate an inner and outer fire Asset Protection Zone.

The proposed scheme has been developed around the previously approved for a 45 bed RCF. The applicant states that the additional 27 beds are required in response to the unsuccessful marketing of the approved scheme, which confirmed that a 45 bed facility was not operationally or commercially viable and that at least 70 beds were required to achieve those outcomes.

The applicant argues that “whilst proposing to increase the capacity of DA2014/1062 by 27 beds, the proposed scheme occupies a similar building footprint when compared to the existing approval (whilst modestly) increasing the FSR from 0.2:1 to 0.24:1) and proposed essentially the same revegetation and rehabilitation works. As such, it retained the same attributes as were described by the JRPP above as being appropriate for the site”.

Figure 3 below shows the comparison of the building footprint.



Figure 3 - Building footprint comparison (Source : SEE prepared by City Plan Services)

As the site is located outside the 400m radius to shopping and medical facilities and bus services, the development will also provide for the use of a dedicated mini-bus which will be parked on the site and made available to the residents of the facility for outings, convenience shopping needs or attendance at appointments.

It is noted that the application has not provided any cost breakdown or analysis of the provision of the mini-bus service and it is therefore difficult to confirm the long-term viability of this service.

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

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None Applicable
Section 79C (1) (a)(iii) – Provisions of any development control plan	The application was notified in accordance with WDCP.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None Applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	The <i>EPA Regulations 2000</i> requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be address via a condition of consent. Clause 92 of the <i>EPA Regulations 2000</i> requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be address via a condition of consent.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable. (ii) The development will provide housing designed specifically for seniors or people with a disability and therefore the development ensures that the housing stock caters for a broad cross section of the community. The proposed development will not therefore have a detrimental social impact on the locality. (iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is not considered suitable for the proposed development as the application has been assessed to be inconsistent with provisions of SEPP (Housing for Seniors or People with a Disability) 2004, the Desired Future Character Statement for the R2 Locality and a number of General Principles of Development Control as contained in WLEP 2000. Furthermore, the site is not suitable for this form of development given its remoteness from required services and facilities.
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	The proposed development is for a Seniors Housing Development, which will assist in meeting the demands of Sydney's aging population. 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. The public benefit of providing seniors living accommodation on this site does not outweigh the concerns in relation to the isolated nature 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.

NSW Planning Assessment Commission (PAC)

The PAC was appointed by the Minister for Planning in December 2008 to establish if any of the sites in the Oxford Falls Valley are capable of urban development. The PAC report dated April 2009 concluded that, on the basis of the information available to it for each of the study sites, that none of the sites within the Oxford Falls catchment area are capable of urban development for at least 10 years. This conclusion was reached after assessing the study sites against the sustainability criteria in *Sydney's Metropolitan Strategy – City of Cities: A plan for Sydney's Future* (2005) and against the *Draft North-East Subregional Strategy 2007*. The issue of sites not substantially meeting the sustainability criteria, particularly in relation to transport, access, housing diversity and some environmental and land use conflict constraints was also raised by the PAC report.

Although, the subject site is not part of the PAC study area and that the study targeted only four individual sites, the subject site is located within close proximity to the area addressed within the report and its overall recommendation indicates that this general locality within the Oxford Falls catchment area is not capable of urban development for at least 10 years.

The subject site is included within the Oxford Falls catchment area and therefore the overall recommendation of this report is relevant to the proposed development. There are no statutory requirements for Council to refuse the application on the outcome of the PAC report. It is however relevant to note that based on the PAC report, the Oxford Falls Valley Locality is not deemed suitable for this form and intensity of development, and will contribute to the incremental loss of the existing dominate and semi- rural/residential character of the valley as identified by the PAC.

Furthermore, the proposed development does not meet the sustainability criteria set out within the PAC report, due to the isolation of the site and distance to public transport and services. To rely solely on services provided in the development for the day-to-day needs of residents and staff, and rely on a privately owned and operated shuttle bus for access to other services (including access to the nearest bus stop located approximately 650m away in Iris Street to the south-east), would set an undesirable precedent for other development on similarly located sites.

Accordingly, the findings of the PAC report are considered to be somewhat relevant to the assessment of this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The DA has been publically exhibited twice in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan No.1.

Public Exhibition 1

The DA was notified to 129 land owners and occupiers for a minimum period of 30 calendar days commencing on 24 March 2017 and ending on 28 April 2017. Furthermore, an advertisement was placed in the Manly Daily on 25 March 2017 and notices were placed upon the site.

Public Exhibition 2

The DA was re-notified to 14 additional land owners and occupiers who objected in relation to the previous DAs on this site. The notification period was for a minimum period of 30 calendar days commencing on 24 April 2017 and ending on 26 May 2017.

As a result of the public exhibition process, Council is in receipt of 47 individual submissions including two (2) petitions, 1 with 16 signatures and 1 with 48 signatures, all objecting to the proposed development.

The following issues were raised in the submissions received to this application. A comment on each issue is provided in the following discussion.

1. The development will encourage traffic congestion and reduce safety on the local road network

Concern is raised that the development will increase traffic congestion on the local road network and reduce safety, particularly with regards to Barnes Road and Myra Road which, it is claimed, are used by children who play in the street.

Comment:

Council's Traffic Engineer has reviewed the application and concludes that *"traffic movements generated by this development will not have an adverse impact on the existing road network"*.

With regards to the impact of construction traffic on the local road network, a Construction Management Plan will be required to be submitted to Council which is to include details on truck movements and the frequency of those movements to minimise any impact upon the local road network and the amenity of the local residents in the area. This would be included as a condition should the application be approved.

This matter does not warrant the refusal of the application.

2. Inconsistency with the SEPP (HSPD) 2004

Concern is raised that the development does not satisfy the relevant controls for seniors living and/or people with a disability. In particular, the submissions identify that the development is not located within easy walking distance to shops and/or medical facilities.

Comment:

The application is made under the relevant provisions of the WLEP 2000 and not SEPP (HSPD) 2004.

However, Clause 40 of WLEP 2000 requires this type of development to be located within 400m of a shopping centre or bus stop; or be serviced by a transport service that is located not more than 400m from the site and is available both to and from the development during daylight hours at least once per day from Monday to Friday (inclusive). The proposed development does not comply with the requirements of Clause 40, and this issue has been included as a reason for refusal.

3. Environmental Impacts

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

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

Comment:

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

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

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

Comment:

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

5. The development stepping towards a larger proposal

Concerns have been raised over the increase in the size and scale of the development proposal compared to the last application. The objector notes *"that each proposal is a stepping stone to the next, to achieve the previous proposals"* refused on the site (see the 'Site History' section in this report).

Comment:

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

In this regard, Council cannot speculate on the future intentions of the Applicant / land owner and is obliged to consider each application on its own terms and against the relevant legislation, controls and policies in place at the time.

This matter does not warrant the refusal of the application.

6. Bushfire

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

Comment:

The development is accompanied by a Bushfire Protection Assessment report dated June 2016 as prepared by Travers Bushfire & Ecology. In the report, recommendations are provided to ensure the safety of the residents of the facility is in accordance with the provisions of 'Planning for Bushfire Protection 2006' as published by the NSW Rural Fire Service (NSWRFS).

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

This matter does not warrant the refusal of the application.

7. Notification

Concerns have been raised that Council did not notify the residents that made submissions against the previous applications on this site.

Comment:

This issue has been resolved by re-notifying the application and sending notification letters to these residents who made submissions to the previous applications.

This matter does not warrant the refusal of the application.

MEDIATION

Mediation was not requested.

INTERNAL REFERRALS

Internal Referral Body	Comments Received	Recommendation
Traffic Engineer	<i>The parking provisions are considered acceptable. The southern carpark would need a blind aisle extension by 1m to comply with Australian Standards AS2890.1:2004.</i> <i>The impact to the existing road network is not considered significant.</i> <i>There are no objections to this development on traffic and parking grounds subject to conditions.</i>	Approval (subject to conditions)
Road and Assets	<i>In the previous Development Applications on this site, Council requested the applicant to prepare and lodge a positive covenant about the Asset Protection Zone in order to satisfy the requirement of Bush Fire Protection. No positive covenant has been submitted and signed in accordance with Council's record.</i> <i>This development application shall be considered as an individual proposal.</i> <i>As such, Road Assets requests the applicant to prepare and lodge the positive covenant to address the requirement of Bush Fire Protection, and this requirement is included as condition of consent.</i>	Approval (subject to conditions)
Development Engineers	Development Engineers have reviewed the additional information submitted and raise no objections subject to conditions.	Approval (subject to conditions)

Urban Design	<i>The proposal in its current form cannot be supported for the following reasons:</i> <i>1. The main concern is with the scale and design of buildings being not consistent with Desired Future Character Statement in the LEP 2000.</i> <i>2. The proposed bulk and scale of the built forms appear much denser in appearance with the effect of 12 pavilions located close together rather than 6 pavilions well-spaced apart in the approved DA.</i> <i>3. The proposed built forms read clearly as a 3 storey building whereas the approved DA has the appearance of pavilions sitting on solid bases which are well articulated and landscaped.</i>	Refusal
Landscape Officer	No objections subject to conditions.	Approval (subject to conditions)
Water Management	<i>The previous Development Application was approved prior to the adoption of the Water Management Policy which supersedes the stormwater quality targets identified in the Northern Beaches Stormwater Management Plan. As advised in the Pre-Lodgement meeting in July 2016, the stormwater quality measures were to be updated to reflect the targets provided in section 8.1 of the Water Management Policy.</i> <i>The Stormwater Report prepared by JMD dated July 2014 and subsequent cover letters fails to address the stormwater quality requirements of Water Management Policy and still refers to the superseded Northern Beaches Stormwater Management Plan.</i> <i>However, given the proposed treatment measures would likely require minimal modification to achieve the stormwater quality targets with the Water Management Policy, this can be addressed by conditions of consent as recommended.</i>	Approval (subject to conditions)
Natural Environmental Unit (Biodiversity)	<i>The previous development application DA2014/1062 was approved by the Joint Regional Planning Panel.</i> <i>As the proposed development is fundamentally unchanged Council's natural environment, biodiversity section raises no objections to the proposal subject to conditions.</i>	Approval (subject to conditions)
Natural Environmental Unit (Riparian)	<i>The previous Development Application DA2014/1062 was approved by the Joint Regional Planning Panel. As the proposed development is fundamentally unchanged from a waterway and riparian lands perspective, many</i>	Approval (subject to conditions)

	<i>conditions from the previous approval have been transferred and modified where appropriate. Conditions within the previous consent requiring additional information in relation to the instream works have been omitted as this detail will be required to be submitted to DPI Water as part of the Controlled Activity Permit application.</i>	
Waste officer	<i>No objections subject to conditions.</i>	Approval (subject to conditions)
Environmental Investigations (Contaminated Lands)	<i>No objections subject to conditions.</i>	Approval (subject to conditions)
Building Assessment	<i>No objections subject to conditions to ensure compliance with the Building Code of Australia.</i>	Approval (subject to conditions)

External Referrals

Internal Referral Body	Comments Received	Recommendation
NSW Rural Fire Service (NSW RFS)	The application was referred to the NSW RFS as Integrated Development on 21 March 2017. 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. In their response on 21 June 2017, the NSW RFS issued their Bushfire Safety Authority and General Terms of Approval which are to be included in any consent should the Panel be of the mind to approve this application	Approval (subject to Conditions)
Department of Primary Industries (DPI)	The application was referred to the DPI as Integrated Development under s.91A (2) of the EP&A Act 1979. The DPI provided comments on 28 April 2017, and has issued their General Terms of Approval (GTA) which are to be included in any consent should the Panel be of the mind to approve this application	Approval (subject to Conditions)
Aboriginal Heritage	<i>Reference is made to the proposed development at the above area and Aboriginal heritage.</i> <i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i>	Approval

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)

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 capital investment value 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 \$27,492,888.00. As such, the consent authority for the application will be the SNPP.

SEPP 55 - Remediation of Land

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

The SEPP 55 states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when land has been at risk.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development if it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

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

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 102 - Roads and Maritime Service (RMS)

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

SEPP (Housing for Seniors or People with a Disability) 2004 (SEPP (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 residential care facilities 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

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

The proposed development is inconsistent with the second aim which requires that development is to make efficient use of the existing infrastructure and services. The proposal fails to achieve this aim given the level of infrastructure that is needed to be constructed to cater for the development including internal roads and site facilities given that such facilities are not readily available to residents within the required 400m distance. This is evident as the applicant is proposing to provide a private bus service for the residents to commute to the larger centres such as Dee Why and Warringah Mall. Furthermore, the development is heavily relying upon the use of Barnes Road reserve to accommodate the required APZ.

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, it is acknowledged that the applicant has made a considerable effort to provide a design that provides high levels of amenity to residents through good cross ventilation, solar access and to respect the amenity of the adjoining properties through physical separation and landscaping screening where required.

However, concerns are raised in relation to the overall impact of the development and the location of the site to be conducive to this type, form and intensity of development and are therefore not considered to be located and designed in a manner particularly suited to seniors housing in this locality.

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 SEPP. The proposed development comprises a 72 bed residential care facility, which is to be occupied by seniors, people with a disability, or other persons permitted by the SEPP. Appropriate conditions can be placed on the development consent to restrict occupation of this building in accordance with the definitions outlined under the SEPP.

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

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP contains a number of development standards that are applicable only to DAs made pursuant to SEPP. As this DA was made pursuant to WLEP 2000, the specific

provisions prefaced for their operation with the words “made pursuant to this chapter” of Chapter 3 do not apply. There are no relevant provisions of Chapter 3 applicable to this DA.

Chapter 4 – Miscellaneous

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

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

“A consent authority must not grant consent to the 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 the Warringah Local Environmental Plan 2011 (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 and the proposed development, being development for the purposes of housing for older people or people with disabilities, is classified as a Category 2 Development.

Pursuant to clause 12 of WLEP 2000, before granting consent for development, the consent authority must be satisfied that the development is consistent with any relevant General Principles of Development Control in Part 4 of WLEP 2000, and any relevant State Environmental Planning Policy described in Schedule 5 (State Policies).

Furthermore, clause 12 indicates that before granting consent for development, the consent authority must be satisfied that the development will comply with the relevant requirements

made by Parts 2 and 3, and the development standards for the development set out in the Locality Statement for the locality in which the development will be carried out.

Finally, clause 12 states that before granting consent for development classified as Category Two or Three, the consent authority must be satisfied that the development is consistent with the Desired Future Character (DFC) described in the relevant Locality Statement.

The DFC statement for the B2 locality states:

B2 Oxford Falls Valley Locality

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.

Each relevant element of the desired future character statement is discussed as follows

- ***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, 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 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 development which is to be limited to new detached style housing confirming to housing density and low intensity, low impact uses.

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

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

The proposed development seeks to construct the buildings in a series of rows and three modules that are broken into five buildings, all to be located on the southern upper reaches (and southern half) of the site. The development also includes site works to facilitate associated recreation uses, open car parking areas, internal access road and landscape works.

Figure 4 shows the footprint of the proposed development and Figure 5 shows the north-east elevation of the proposed development.

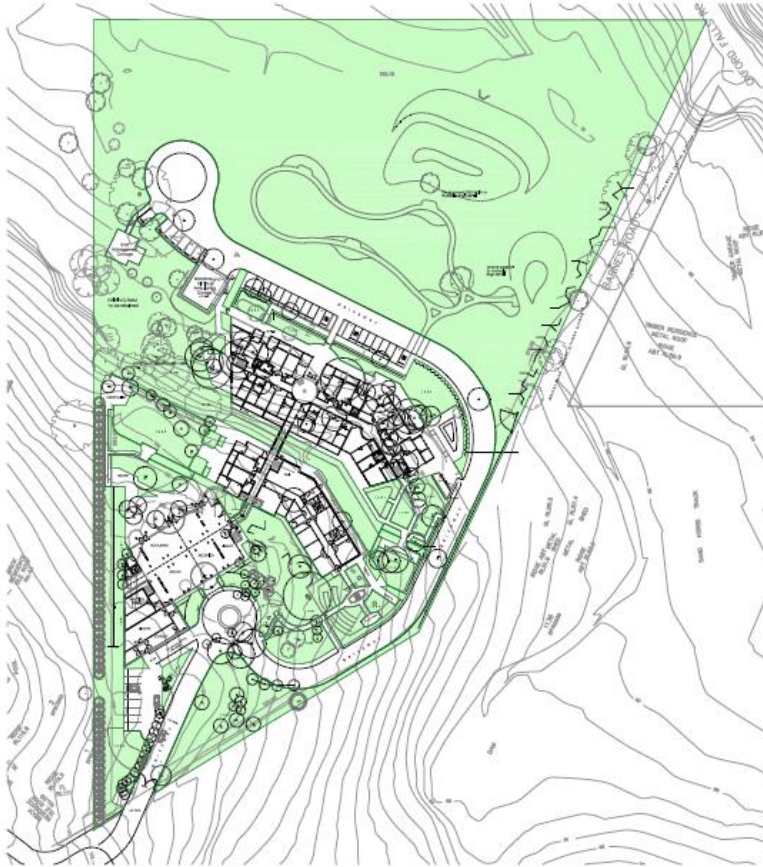


Figure 4 - Footprint of the proposed development. (Source: Plans as prepared by Marchese Partners Architects)



Figure 5 - South East Elevation. (Source: Plans as prepared by Marchese Partners Architects)

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 5 above, the proposed development includes buildings that do not have the appearance of 'detached style housing'. The proposed development has the appearance of a residential flat building, albeit stepping down the slope and is viewed as one continuous building when viewed from the adjoining properties and surrounding areas.

The proposed development is therefore assessed as not being consistent with 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".

It is commonly accepted that the term 'intensity' in the context of development assessment relates to the general extent of activities associated with a proposal while the term 'impact' relates bulk and scale and the relationship of a proposal with its surroundings. 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?

The activities associated with the proposed residential care facility, while different to those associated with detached style housing, are considered to satisfy the low intensity test. In particular, the Traffic and Parking Assessment undertaken in relation to this proposal confirms that the residential care facility yields a traffic generation potential of approximately 15 peak hour vehicle trips, indicating that this increase will have no unacceptable traffic implications in terms of road network capacity. Further, appropriate design and operation will ensure that impacts associated with noise and glare from lighting is mitigated and managed to acceptable levels.

Therefore, it is concluded that the proposed development is defined as a low intensity form of development.

Is the proposed development a "low impact" use?

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

- The built form of the proposed development, including its tightly clustered arrangement, large building envelopes and minimal building separation and

interspersed landscaping, all within the southern portion of the site will be visually inconsistent with the dominant non-urban character of B2 Oxford Falls Valley Locality that surrounds the site. The character of the buildings is also at odds with the adjoining low density R2-Zone to the west, which is characterised by detached 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 approximately 127 trees and the modification of approximately 0.142ha of the site as a result of the proposed development and provision of APZs within the site, as well as over the adjoining public land;
- The proposed buildings and associated works including access roads and services have not been designed or grouped in areas that will minimise disturbance of vegetation and landforms. In this regard, all of the proposed works are located on the most sensitive part of the site, as this is where the majority of the vegetation is situated and the slopes are the greatest. The concentration of buildings where established landscaping must be removed is not a desirable outcome and will have the greatest impact on the site and locality.

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

- ***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.***

The property currently accommodates significant areas of cleared bushland within the northern half of the site and a mix of bushland, landscaped lawn areas and the main buildings within the southern half of the site. This layout effectively forms an interface between the adjacent semi-rural areas to the north, east and south and the more urbanised residential areas to the west.

Therefore, in terms of the provision of natural landscape, the site has been extensively modified to create a landscape character that fits within its semi-rural/urban setting.

The site is characterised by extensive landscaping which, according to the Flora and Fauna Assessment dated May 2013 as prepared by Travers Bushfire and Ecology, includes up to 728 trees of which a significant number are located within the Barnes Road reserve and on the neighbouring property to the south.

The proposed development will result in a significant impact upon the site including its natural drainage features, vegetation and topography through the removal of approximately 127 trees and the modification of approximately 0.142ha of the site as a

result of the proposed development and provision of APZs within the site, as well as over the adjoining public land.

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 cladding and brown face-brick 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 part of the DFC statement is not applicable as the site is not located on or near to Forest Way or Wakehurst Parkway.

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

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. The application was referred to the NSW Office of Water as Integrated Development and a Waterway Impact Statement was provided with the application.

In this respect, the impact of the proposed development is found to be satisfactory and satisfy this element of the Desired Future Character 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
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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	All buildings are below the 8.5m height limit	Yes
Front Building Setback	20.0m (Barnes Road)	20.0m	Yes
Rear Building Setback	10.0m	In excess of 10.0m	Yes
Side boundary setback	10.0m	Approximately 10.0m from the proposed building	Yes
Landscaped Open Space (LOS)	30% of the site area.	Approximately 70% of the site will remain as LOS	Yes

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

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

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

Development Standard	Required	Proposed	Compliance
(a) Density and Scale	0.5:1 or less	0.21:1 (7,763m ²)	Yes
(b) Building Height	8.0m (overall)	8m (maximum)	Yes
(c) Landscaped Area	25m ² per residential care facility bed. Total required = 1,125 m ²	Total provided =23.600m ²	Yes
(d) Parking	1 space per 10 beds, 1 space per 2 employees on duty at any one time, 1 ambulance space And 0.5 spaces per bedroom where the application is	72 bed =15 spaces 16 Employees =7 spaces Visitors = 8 Accessible = 8 Ambulance space= not specified.	Yes (subject to condition, requiring the 1 space for the Ambulance

Development Standard	Required	Proposed	Compliance
(a) Density and Scale	0.5:1 or less	0.21:1 (7,763m ²)	Yes
	made by a person other than the Department of Housing or a local government or community housing provider. Total required = 11 spaces	Total provided = 33 spaces	
(e) Visitor Parking	In the case of development that comprises 8 or more dwellings or is situated on a clearway, visitor parking is required	Total provided = 8 spaces	Yes
(f) Deep Soil Area	(a) Site width (W) = 199.9m (b) Site length (L) = 225.5m (c) W x 15% of L Total required = 6,756.6m ²	Total provided = 23,600m ² (70%)	Yes

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

General Principles of Development Control

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

General Principle	Applies	Comments	Complies
Clause 38 Glare & Reflections	Yes	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%. Subject to addressing the imposed conditions, the application is considered capable of satisfying the provisions of this General Principle.	Yes (subject to condition)
Clause 39 Local Retail Centres	No	The site is not located within a Local Retail Centre.	Not Applicable

Clause 40 - Housing for Older People or People with Disabilities

Comment:

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

Control	Required	Proposed	Compliance
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Control	Required	Proposed	Compliance
Support Services	The site within 400m of a shopping centre or bus stop; or The development is serviced by a transport service that is located not more than 400m from the site and is available both to and from the development during daylight hours at least once per day from Monday to Friday (inclusive).	The subject site is neither 400m from a public bus stop nor is it 400m from the required facilities. The SEE submitted with the application indicates that the site does not meet the requirements of this Clause and has indicated that a private bus will be provided to the residents from the site to the required facilities. However, no details are provided with the application to demonstrate the on-going cost associated with private bus to ensure that such a service is financially sustainable and will be provided in perpetuity. Therefore, Council is not satisfied that the requirement of this Clause is satisfactory addressed.	No
	Reasonable access to home delivered meals, personal care and home nursing and assistance with housework.	The following is a list of medical facilities in proximity to the site: • 1.5kms to the proposed Northern Beaches Hospital on the corner of Warringah Road and Wakehurst Parkway. • 2.0kms to Forestway Medical Centre in the Forestway Shopping Centre. • Notwithstanding the above, the Statement of Environmental Effects notes that the residents of the Facility will have reasonable access to the following: • Meals which are prepared on-site and served in-room or in the communal dining room; • Personal care and on-site nursing; • Assistance with housework as the Facility includes its own cleaning and laundry staff.	Yes
Wheelchair access	<u>(a) Site Gradient</u> (i) if the whole of the site has a gradient of less than 1:10, 100% of the hostel or residential care facility beds and 100% of the dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining	The whole of the site has a gradient of 8.5% which equates to a gradient of 1:12, therefore (i) applies. The development provides for a continuous path of travel for 100% of wheelchair bound residents of the facility to the driveway and adjoining public road.	Yes

Control	Required	Proposed	Compliance
	public road or an internal road or a driveway that is accessible to all residents, or (ii) if the whole of the site does not have a gradient of less than 1:10, a percentage (which is not less than the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and which in this subparagraph is called <i>the specified minimum percentage</i>) of any hostel or residential care facility beds and the specified minimum percentage of any dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is accessible to all residents.		
	<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.	The development provides for a continuous path of travel for 100% of wheelchair bound residents of the facility to the driveway and adjoining public road.	Yes
	<u>(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	The Access Report notes that the development will achieve compliance with the requirement of this Clause.	Yes

Control	Required	Proposed	Compliance
	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.		

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	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. Therefore, comprehensive conditions of consent will be required to be imposed for Construction Management Plan to be submitted, should this application be approved. Issues to be addressed include stormwater and wastewater disposal, waste management, air quality, noise management and truck movement, frequency and parking. Subject to addressing the imposed conditions, the application is considered capable of satisfying the provisions of this General Principle.	Yes (Subject to conditions)
Clause 43 Noise	Yes	The nature of the proposed use is unlikely to generate significant noise emissions associated with the occupation of the development.	Yes
Clause 44 Pollutants	Yes	The proposed use increases the population density of the site and introduces a medical feature (nursing). 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. 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	Yes (Subject to conditions)

Control	Required	Proposed	Compliance
		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 upon the environment.	
Clause 47 Flood Affected Land	No	No further assessment required.	Not Applicable
Clause 48 Potentially Contaminated Land	Yes	This issue has been addressed under SEPP 55 of this report. In summary, the site is suitable for the proposed development.	Yes
Clause 49 Remediation of Contaminated Land	No	No further assessment required.	Not Applicable
Clause 49a Acid Sulphate Soils	No	No further assessment required.	Not Applicable
Clause 50 Safety & Security	Yes	The development consists of a managed Residential Care Facility and does not require a formal assessment under the provisions of Crime Prevention Through Environmental Design. 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.	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	With exception to the road reserves which abut the site, the site is a privately owned property which is surrounded by private properties (except for Barnes Road road reserve to the south). A notable exception is the proximity of the Garigal National Park which is located approximately 1.2km to the north. Notwithstanding, the site is characterised by extensive landscaping which, according to the Flora and Fauna Assessment dated September 2014 as prepared by Travers Bushfire and Ecology, includes up to 728 trees of which a significant number are located within the Barnes Road reserve. Of those trees, the Flora and Fauna Assessment indicate that 16 trees will be required to be removed (of which 11 are located within the road reserve). This is not considered to be excessive such that it would disrupt the visual transition between	Yes

Control	Required	Proposed	Compliance
		open space and buildings. Accordingly, the proposal satisfies the requirement of this control.	
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	The development proposes excavation works up to about 6m below the existing ground level, as indicated by the Geotechnical Report, dated 5 August 2016, as prepared by Geo-Enviro Consultancy Pty Ltd. The Geotechnical Report submitted does not provide sufficient details which would ascertain the presence of rock outcrops on the site. Furthermore, it is noted that report is based on the previous plans, and the report recommends that additional investigation are required to be carried out to further assess the sub surface conditions to confirm the recommendations of this report. Accordingly, there are insufficient details submitted with the application to determined compliance with the requirement of this clause.	No Insufficient information provided
Clause 57 Development on Sloping Land	Yes	Clause 57 requires that the geotechnical stability of sloping land to support development is to be demonstrated. The site generally slopes downwards from the south-western corner to the north-eastern corner by 27m over a distance of 280m. This represents a slope of 9.6% which is considered to be gradual. The Geotechnical report submitted with the application, as prepared by GeoEnviro Consultancy, states that additional investigation is required and as indicated under Clause 56, it is noted that the report is based on different plans, however it provides sufficient information to satisfy the requirement of this clause.	Yes
Clause 58 Protection of Existing Flora	Yes	The application, which includes a 'Flora and Fauna Assessment' dated September 2014 as prepared by Travers Bushfire & Ecology, was referred to Council's Biodiversity Section of the Natural Environment Unit who did not raise any objection to the	No

Control	Required	Proposed	Compliance
		proposal. This assessment is based on the fact the previous approval on this site. However, as noted previously this application should be assessed on its individual merit. As indicated under the DFC section of this report, the application is not supported in relation to the environmental issues due to the significant modification and removal of vegetation from the site to accommodate the proposed development. This issue has been included as reason for refusal.	
Clause 59 Koala Habitat Protection	Yes	The site has a total area of 33,710m² 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. 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. 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.	Yes
Clause 60 & Watercourses Aquatic Habitats	Yes	The application was referred to the Riparian Section of Council's Natural Environment Unit who advises (see 'Internal Referrals' in this report) that no objection is raised to the development. This was based upon the fact that the development has not been designed to maintain and enhance natural watercourses and aquatic habitat.	Yes

Control	Required	Proposed	Compliance
Clause 61 Views	Yes	The proposed development has been assessed in relation to view loss impacts in relation to view principles outlined within the Land and Environment Court Case <i>Tenacity Consulting Pty Ltd Vs. Warringah Council</i> [2004] NSWLEC 140. It is considered that due to the topography of the land and the fact that the buildings within the proposed development are well below the 8.5m height limit, that there will be no unreasonable view loss. Accordingly, the proposed development will allow for the reasonable sharing of views consistent with the requirements of this Clause.	Yes
Clause 62 Access to sunlight	Yes	The shadow diagrams submitted with the application indicates that the proposed development will achieve compliance with the requirement of this Clause.	Yes
Clause 63 Landscaped Open Space	Yes	The development includes 70% of landscaped open space (this is located within the property boundary and does not include the road reserve). This provision will enable the establishment of appropriate plantings to maintain and enhance the streetscape and the desired future character of the locality, which is of a scale and density commensurate with the building height, bulk and scale, will accommodate appropriate outdoor recreational needs and suit the anticipated requirements of occupants of the Facility.	Yes
Clause 63A Rear Building Setback	Yes	The proposed development is found to be consistent with the requirement of this Clause.	Yes
Clause 64 Private open space	No	No further assessment required.	Not Applicable
Clause 65 Privacy	Yes	The development is located a sufficient distance from other residential properties such that it will not result in any unreasonable direct overlooking into habitable rooms and principal private open spaces. No additional architectural privacy treatments are considered to be required.	Yes
Clause 66 Building bulk	Yes	Clause 66 requires buildings to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land. The proposed development complies with the building height and floor space ratio	No

Control	Required	Proposed	Compliance
		controls which apply to development for seniors or people with a disability. The varied front setbacks and roof form assists in reducing the visual bulk of the development by breaking up the massing of the development as viewed from Barnes Road and other distant areas. However, as stated in the previous section of this report and included in Council's Urban Designers comments, the development is not consistent with structures on adjoining and nearby land and therefore, it is considered that that the proposed development does not meet all of the requirements of this clause. This issue has been included as a reason for refusal.	
Clause 67 Roofs	Yes	The proposed roof form is considered to be satisfactory and is integral to the style of the buildings.	Yes
Clause 68 of Conservation Energy and Water	Yes	The development complies with the Building Height Built Form Control as required under Clause 29 of the WLEP 2000. This enables reasonable and compliant solar access to neighbouring sites. Additionally, the development includes bio retention basins (rain gardens) which are designed to treat stormwater runoff from landscaped areas. This clause does not include any reference to the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. Therefore, the provisions of the SEPP are not considered here. The proposed development is found to be consistent with the requirement of this Clause.	Yes
Clause 69 Accessibility – Public and Semi-Public Buildings	Yes	The DA includes an Accessibility Report, dated 2 March 2017, as prepared by Accessibility Solutions (NSW) Pty Ltd which concludes that the development satisfies the accessibility provisions of the Building Codes of Australia and the DDA Premises Standards for a Residential Care Facility. The Report includes recommendations which are to be imposed as conditions of consent should this application be approved.	Yes (subject to condition)

Control	Required	Proposed	Compliance
Clause 70 Site Facilities	Yes	The development provides for all required site facilities which may be situated such that they are convenient to the needs of users and have minimal visual impact from public places. 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.	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 western side boundary and along the eastern edge of the internal driveway.	Yes
Clause 72 Traffic Access & Safety	Yes	The site is accessed via a variable width driveway (between 4.0m and 5.5m in width) which connects via a single crossover to the sealed section of Barnes Road at the south-western edge of the site. The width of the driveway provides sufficient sightlines along the roadway to ensure safety.	Yes (Subject to condition)
Clause 73 On-site Loading and Unloading	Yes	The DA involves a semi-commercial use which will require facilities for the loading and unloading of delivery vehicles. The plans indicate two turning areas, one located immediately to the south of the development and the other one in the north western portion of the site. These areas will enable delivery access into the Facility. The turning area will enable vehicles to leave the property in forward direction.	Yes
Clause 74 Provision of Car Parking	Yes	The development includes a provision for the on-site parking of 33 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 site is accessed via a variable width driveway (Between 4.0m and 5.5m in width) which connects via a single crossover to the sealed section of Barnes Road at the south-western edge of the site. The width of the driveway provides sufficient sightlines along the roadway to ensure safety. The application has attracted a significant number of objections which raise concern regarding traffic safety on the local road network. Council's Traffic Engineer has reviewed the application and raises no	Yes

Control	Required	Proposed	Compliance
		objection to the proposed development on traffic grounds.	
Clause 76 of Management Stormwater	Yes	Council's Development Engineer has reviewed the proposal and raised no objection to the proposed development subject to conditions of consent. Should the application be approved, the conditions as recommended by Council's Development Engineers can be included in the consent.	Yes (subject to conditions)
Clause 78 Erosion & Sedimentation	Yes	Appropriate conditions associated with management of erosion and sedimentation can be included on the consent should this Development Application be approved.	Yes (Subject to Condition)
Clause 79 Heritage Control	Yes	The application was referred to the NSW Aboriginal Heritage Office pursuant to the provisions of Clause 80 of the Warringah Local Environment Plan 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 Office advises that: <i>"No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i>	Not Applicable
Clause 80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	See comments provided under Clause 79 above.	Yes
Clause 82 Development in the Vicinity of Heritage Items	No	No further assessment required.	Not Applicable
Clause 83 Development of Known or Potential Archaeological Sites	No	No further assessment required.	Not Applicable

Other relevant WLEP 2000 Clauses

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

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

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

SCHEDULES

Schedule 5 - State Policies

In accordance with Clause 12(1) (b) of *WLEP 2000*, before granting consent for development, the consent authority must be satisfied that the development is consistent with any relevant SEPP described in Schedule 5. Schedule 5 outlines the *SEPP (HSPD) 2004*. The proposal has been assessed in detail against the provisions of *SEPP (HSPD) 2004* elsewhere in this report. The proposal has not been found to be consistent with *SEPP (HSPD) 2004* and therefore the application has been recommended for refusal.

Schedule 8 - Site analysis

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

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

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

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

Control	Required	Proposed	Complies
1. Identification	If more than one street, street signage incorporating house numbers at each intersection.	The 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	The development includes open carpark areas to accommodate -	Yes

Control	Required	Proposed	Complies
	garages are to have an internal clearance of 2.5m and must have a power operated roller door.	-- spaces. The designs of the car park areas facilitate ease of manoeuvring through a wide access aisle.	
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 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.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
9. Kitchen	A kitchen in a self-contained dwelling must have a width of at least 2.7m and a clear space between benches of at least 1450mm, and additional requirements as specified in the schedule.	The development does not include self-contained dwellings.	Not Applicable
10. Main bedroom	The main bedroom must have an area sufficient to accommodate a wardrobe and a queen size bed and a minimum of 1200mm clear space at the foot of the bed, etc.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
11. Bathroom	A bathroom must have an area in compliance with AS 1428 and a slip resistant floor surface and a shower complying with requirements of the schedule.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
12. Toilet	A dwelling must have a toilet that is a visitable toilet within the meaning of Clause 1.4.12 of AS 4299,	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)

Control	Required	Proposed	Complies
	with a slip resistant floor surface, and additional requirements as per the schedule.		
13. Access to kitchen, main bedroom, bathroom & toilet	Kitchen, main bedroom, bathroom and toilet must be located on the ground floor, etc.	Compliance with this standard will be incorporated as a condition of consent.	Yes (Subject to condition)
14. Laundry	A self-contained dwelling must have a laundry that has provision for the installation of an automatic washing machine, etc.	The development does not include self-contained dwellings.	Not Applicable
15. Storage	Dwelling must have a linen cupboard that is at least 600mm wide and has adjustable shelving.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
16. Doors	Door hardware provided as the means for opening doors must be able to be operated with one hand and located between 900mm and 1100mm above floor level.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
17. Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	To be required as a condition of consent should this application be approved.	Yes (Subject to condition)
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	The proposed development is found to be satisfactory with respect to the impact of the development on items of heritage significance.	Yes

Control	Required	Proposed	Complies
	environmental plan.		
	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 Desired Future Character 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 character by considering, where buildings are located on the boundary, the impact of the boundary walls on neighbor's.	The proposed development has been designed to minimise any visual amenity impact of the development on the adjoining proposed development.	Yes
	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 provides a satisfactory front setback as required by the control and that is consistent with the adjoining properties.	Yes
	g. Embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	The proposal is found to be satisfactory in relation to the proposed planting.	Yes

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 \$27,492,888		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$261,182
Section 94A Planning and Administration	0.05%	\$13,746
Total	1%	\$274,929

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

OTHER MATTERS

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

The DA is accompanied by Flora and Fauna Assessment as prepared by Travers Bushfire and Assessment.

The Assessment notes that the site (which, for the purposes of the Assessment includes the road reserve) includes the following:

- *“Four (4) threatened fauna species, Powerful Owl, Grey-headed Flying-fox, Glossy Black-Cockatoo and Eastern Bent wing-bat were recorded within, or in close proximity to, the study area;*
- *No threatened flora species were recorded within the study area;*
- *No EECs were recorded within, or in close proximity to, the study area; and*
- *No endangered populations are likely to utilise the study area”.*

The Assessment concludes that the *“development is unlikely to result in a significant impact on any threatened species, populations or EECs or their habitats and that no further assessment is required under the Environmental Planning & Assessment Act, 1979, the Environmental Protection and Biodiversity Conservation Act, 1999 or the Fisheries Management Act, 1994”*

The Assessment recommends that a *“Vegetation Management Plan be prepared to identify the ongoing management of habitat resources, weeds, future landscaping and site works to retain mature trees and habitat movement corridors”*. This recommendation is to be included as a condition should this application be approved.

CONCLUSION

This report provides a comprehensive assessment of the DA for the redevelopment of the site for the purposes of a 72 bed residential care facility at Lot 1113/752038 Oxford Falls Road, French Forest.

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 and the history and background of the previous applications and approvals reviewed.

The proposed land use is permissible with consent pursuant to the provisions of WLEP 2000 and the proposed development has been assessed in accordance with the prevailing planning controls applying to the site. According to the applicant, the proposed scheme has been developed around the fact that the JRPP/SNPP has found the site to be suitable and appropriate for a Residential Care Facility, having granted approval for a 45 bed Residential Care Facility on this site and that this new development scheme is simply an expansion to that approval.

However, this report assesses the new application on its individual merits and, whilst recognising that the previous approval has been granted and cannot be ignored, the current proposal is independent of that approval and is a significantly different concept in terms of the size, scale and the intensity of the development and its associated impacts.

Importantly, Council has consistently raised concerns in relation to the suitability and appropriateness of the site for this type of development given its isolation from essential services. The distance of the subject site from the essential services and inadequacies highlighted with regard to the proposed privately operated shuttle bus will exacerbate the sense of isolation from the range of services likely to be required by an aging population and the residents of the development.

In addition to the above, 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 Warringah Local Environment Plan 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 public exhibition of the DA resulted in a significant negative response from the community, which included a total of 47 individual submissions plus two (2) petitions, all of which raised concerns with the proposed development. The concerns were primarily on the basis of environmental impact, bushfire impact, traffic and parking impacts of the proposed development, the inconsistency of the design with the desired future character statement and the inappropriate design of the development for seniors or people with a disability. The issues raised in the submissions have been addressed in the "Public Notification" section of this report.

Finally, the proposed development is also found to be inconsistent with the aims of *SEPP (HSPD) 200*. 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 consent authority, refuse this application for the reasons detailed within the "Recommendation" section of this report.

The conclusions and recommendation contained in this report are consistent with Council's previously adopted position that (outlined in the Assessment Report of DA2014/1062) the proposal is contrary to the aims of the WLEP 2000, the aims of the SEPP (HSPD) and the relevant planning controls which seek to ensure such developments are appropriately

designed and sited to meet the needs of the future residents and preserve the character of the area.

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 DA2017/0206 for demolition works and construction of a residential care facility with associated car parking, internal roads and landscaping on land at Por 1113/752038, Oxford Falls Road FRENCHS FOREST subject to the reasons outlined as follows:

1. Pursuant to Section 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) (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.
3. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000* (as amended), the development is inconsistent with the following General Principles of Development Control as follows:
 - a) Clause 58 Protection of Existing Flora
 - b) Clause 66 Building Bulk
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 not consistent with Schedule 5 - State Policies.
5. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act, 1979*, the subject site is considered to be unsuitable for the proposed development.
6. Pursuant to Section 79C (1) (e) of the *Environmental Planning and Assessment Act, 1979*, the public interest, as expressed in the submissions received during the public exhibition of the Development Application, will not be served by the proposed development.