

**SYDNEY NORTH PLANNING PANEL  
COUNCIL ASSESSMENT REPORT**

<b>Panel Reference</b>	2017SNH038
<b>DA Number</b>	DA2017/0294
<b>LGA</b>	Northern Beaches Council
<b>Proposed Development</b>	Demolition works and construction of a Seniors Housing Development
<b>Street Address</b>	Lot B2 DP 358165, 53 Little Willandra Road, Oxford Falls
<b>Applicant/Owner</b>	Brewster Murray Pty Ltd (Applicant) Ching Li (Owner)
<b>Date of DA lodgement</b>	4 April 2017
<b>Number of Submissions</b>	9 Submissions
<b>Recommendation</b>	REFUSAL
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	Development with a Capital Investment Value (CIV) of more than \$20 million
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Environmental Planning and Assessment Regulation 2000</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy – Infrastructure 2007</li> <li>• State Environmental Planning Policy – Housing for Seniors or People with a Disability) 2004</li> <li>• Warringah Local Environmental Plan 2000</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment 1: Pre-Lodgement Meeting Notes</li> </ul>
<b>Report by</b>	David Kerr - General Manager Planning, Place & Community
<b>Report date</b>	9 October 2017

**Summary of s79C matters**

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

**Legislative clauses requiring consent authority satisfaction**

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

**Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **No**

**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?  
*Note: in order to reduce delays in determinations, the Panel prefers that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any* **No Concurrence from NSW**

## **Executive Summary**

### **Purpose**

The application is referred to the Sydney North Planning Panel (SNPP) for determination pursuant to Schedule 4A of the Environmental Planning and Assessment Act 1979 as the development has a Capital Investment Value (CIV) in excess of \$20 million (\$21,444,000 declared).

### **The Proposal**

The application seeks consent for the redevelopment of the site known as 53 Little Willandra Road, Oxford Falls for the purposes of a Seniors Housing Development.

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. In this regard, the DA is not made pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

### **The Site**

The site known as 53 Little Willandra Road, Oxford Fall, is located on the western side of Little Willandra Road, and is a large L-shaped site with a total area of 3.30 ha.

The eastern portion of the site is currently occupied by a two storey dwelling house with the remaining site area being remnant bushland. There is a creek line (known as Wheeler Creek) which cuts the site from south-west to north-east, essentially dividing the site into three parts.

### **Summary of the Key issues**

An assessment of the proposal against the relevant planning controls has found the following fundamental issues with regards to this application:

- The built form and character sought by the proposal exceeds that envisaged for the site, particularly having regard to the environmentally sensitive nature of the site.
- The proposed development has not responded to the desirable elements which are identified under the Desired Future Character Statement (DFC) for the B2 locality under the provision of WLEP 2000, in that the proposed development has been found to result in an unacceptable environmental impact.
- The natural landscape of the site is distinctive with significant environmental features including rock outcrops, remnant bushland and natural drainage features (being Wheeler Creek) which are not retained or complemented by the development. The proposed building footprint, level of excavation and clearing of vegetation for the provision of the Asset Protection Zones (APZ) required for bushfire protection all detract from the natural features of the site.

## Conclusion

Having regard to the DFC Statement requirements embodied in the WLEP 2000 for the locality and considering the site's environmentally sensitive nature, the proposal is not considered to be an appropriate or suitable outcome. The character test applicable under the WLEP 2000 encourages a form of development which is to be compatible and consistent with the predominant built form surrounding the site.

The site is significantly constrained in terms of the location of the creek which runs through the central portion of the site, which poses significant challenges to creating a form of development which positively responds to the context of the site and locality, as well as protecting and enhancing the landscape features of the site. In this regard, it is considered that the size, scale and extent of the development are excessive and should be significantly reduced to avoid any form of development to the west beyond the creek line.

In addition, the built form should also be broken down more substantially to provide buildings which contextually fit within the established character of the locality to ensure they comprise “*detached*” building forms and an overall character that can be defined as “*low impact and low intensity*” development.

Accordingly, the assessment concludes that the proposal cannot be supported in its current form and therefore the application is recommended for refusal.

## ASSESSMENT REPORT AND RECOMMENDATION

Application Number:	DA2017/0294
Assessment Officer:	Lashta Haidari – Principal Planner
Land to be developed (Address):	Lot B2 DP 358165, 53 Little Willandra Road, Oxford Falls
Proposed Development:	Demolition works and construction of a Seniors Housing Development
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:	Ching Li
Applicant:	Brewster Murray Pty Ltd
Application lodged:	4 April 2017
Application Type:	Integrated
State Reporting Category:	Seniors Housing
Notified:	28 April 2017 – 31 May 2017
Advertised:	29 April 2017
Submissions:	9 Submissions

Recommendation:	Refusal
Estimated Cost of Works:	\$ 21,444,000

## **ASSESSMENT INTRODUCTION**

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

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

## **STATUTORY CONTROLS**

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

## **NON-STATUTORY CONTROLS**

- Warringah Development Control Plan No. 1.

## **SITE DESCRIPTION**

The site is legally described as Lot B2 in DP 358165 and known as 53 Little Willandra Road, Oxford Falls. The site is located on the western side of Little Willandra Road and is a large, L-shaped site with a northern boundary of 316.6m, western boundary of 124.8m, a street frontage to Little Willandra Road of 54.8m and a total surveyed area of 3.30ha (33,000m<sup>2</sup>).

The location of the site is shown in Figure 1 below.



**Figure 1: Aerial Image (the subject site is outlined in blue).**

The site levels vary across the site with the low point being the centre of the site at RL 15. The site also slopes from the western boundary to the central low point. The western portion of the site features rocky outcrops and dense tree cover and is the highest point of the site at RL 60.

The eastern portion of the site is currently occupied by a two storey dwelling house, with the remaining site being bushland. There is a creek line which cuts the site from south-west to north-east essentially dividing the site into three parts as shown in Figure 2 below:



**Figure 2: Image showing the creek (in pink) running through the central portion of the site. Source: Northern Beaches Council Natural Drainage (Waterways) Buffer Map.**

Adjoining the site on the northern side is Willandra Bungalows' Retirement Village, which contains 28 single storey detached buildings on a 4.45ha site. To the east of the site



(opposite Little Willandra Rd) are residential dwellings within the R2- Low Density Residential zone.

The southern and western boundary of the site adjoins lots that are similar in size and configuration, being residential development and natural bushland.

## **SITE HISTORY**

### **Pre-lodgement Meeting**

PLM2016/0006

A pre-lodgement meeting was held with the applicant on 25 February 2016 to discuss a proposal for redevelopment of the site.

In summary, the main issues identified were environmental issues, built form, consistency with the DFC statement for the B2 locality.

A copy of the notes are attached to this report (refer to Attachment 1).

### **DEVELOPMENT APPLICATION HISTORY**

The application was lodged with Council on 4 April 2017. An assessment of the proposal found the following key issues:

- The NSW Rural Fire Service has not granted an approval that is required in order for the development to be lawfully carried out;
- Inconsistency with the Desired Future Character (DFC) statement of the B2 Oxford Falls Valley locality under WLEP 2000;
- Inconsistency with the General Principles of Development Control of the WLEP 2000, particularly in relation to the environmental impact; and
- Insufficient information to satisfactorily assess the application and address the concerns in relation to the environmental impacts of the development.

Based on these fundamental deficiencies and concerns, an opportunity was presented to the applicant by letter dated 16 August 2017 to withdraw the application. The applicant was advised that failure to withdraw the application would result in Council determining the application based upon the information provided at lodgement.

The applicant advised Council via a telephone discussion on 1 September 2017 that the application would not be withdrawn and requested that it proceed to the SNPP for determination.

### **PROPOSED DEVELOPMENT**

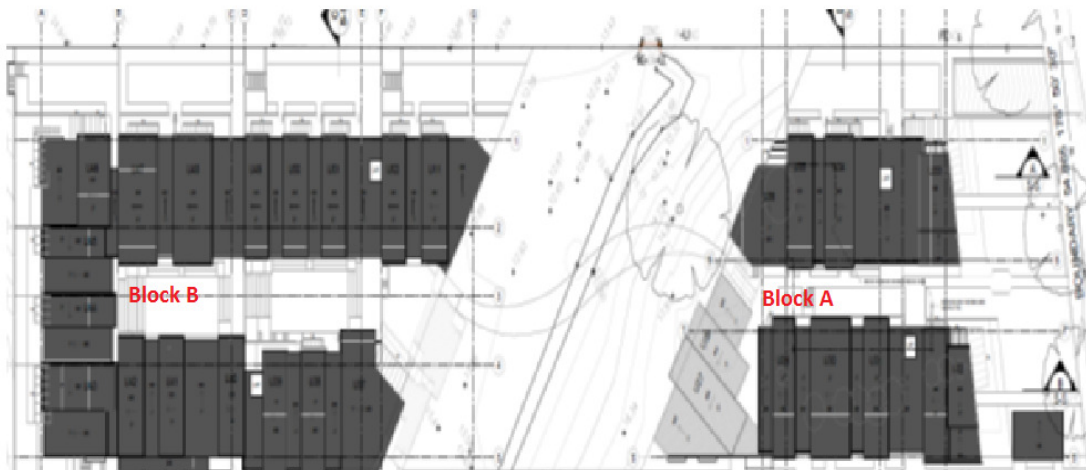
The application is made under the relevant provisions of the Warringah Local Environmental Plan 2000 and not State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The application seeks consent to develop the land known as 53 Little Willandra Road, Oxford Falls for the purposes of a Seniors Housing Development.

In detail, the application seeks consent for the following:

- The demolition of all existing structures on the site;
- Site preparation works, bulk earthworks and tree removal;
- The construction of two buildings (known as Block A containing 21 units and Block B containing 31 units) total of 52 residential units over two levels, to be used for housing for older people. The proposed Block A and B are separated by the creek line.
- Basement car parking for 63 vehicles;
- The provision of utilities and services; and
- Site landscaping and bushfire hazard management works.

Figure 3 below is provided to assist in the identification of the proposed buildings within the site.



**Figure 3:** Building Identification Plan. *Source:* Adapted by the author from Plan No. DA07, dated 27 March 2017 as prepared by Brewster Murray.



**Figure 4:** Photomontage of the development, as viewed from Little Willandra Road. *Source:* Adapted by the author from Plan No. DA01 dated 29 March 2017 and prepared by Brewster Murray.

## AMENDMENTS TO THE SUBJECT APPLICATION

There were no amendments to the subject application as lodged.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

Section 79C 'Matters for Consideration'	Comments
<b>Section 79C (1) (a)(i) – Provisions of any environmental planning instrument</b>	See discussion on “State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004”, “State Environmental Planning Policy No. 55 – Remediation of Land”, “State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004”, “State Environmental Planning Policy (Infrastructure) 2007” and “Warringah Local Environmental Plan 2000” in this report.
<b>Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument</b>	No Draft Environmental Planning instruments apply to the proposed development.
<b>Section 79C (1) (a)(iii) – Provisions of any development control plan</b>	The application was notified in accordance with Warringah Development Control Plan.
<b>Section 79C (1) (a)(iiia) - Provisions of any Planning Agreement or Draft Planning Agreement</b>	None Applicable.
<b>Section 79C (1) (a)(iv) - Provisions of the regulations</b>	Clause 98 of the Environmental Planning and Assessment Regulation 2000 states that a prescribed condition of consent is that the work is to be undertaken in accordance with the Building Code of Australia (BCA). If the application is approved a condition of consent could be included in the recommendation to ensure that the proposal complies with the BCA.
<b>Section 79C (1) (b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</b>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control table in this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable.</p> <p>(ii) The development will provide housing designed specifically for seniors or people with a disability and therefore the development ensures that the housing stock caters for a broad cross section of the community. The proposed development will not therefore have a detrimental social impact on the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p>
<b>Section 79C (1) (c) – The suitability of the site for the development</b>	The applicant has not adequately demonstrated that the site is suitable for the proposed development as there is insufficient information submitted for Council to properly assess the impact of the development on the locality, on the site, and on Narrabeen Lagoon catchment. The



Section 79C 'Matters for Consideration'	Comments
	<p>application has also been found to be inconsistent with provisions of SEPP (HSPD) and the DFC and general principles of development control as contained in WLEP 2000.</p> <p>Further, the site is not suitable for this form of development given that, the NSW RFS has not issued Bush Fire Safety Authority as required for 'Special Fire Protection Purpose' development, and given the historic and cultural significance of the area and lack of information provided to determine its impacts and mitigation measures.</p>
	<p>In regards to public submissions please refer to the discussion on "Notification &amp; Submissions Received" within this report. In summary, the public submissions received raise a number of issues which warrant the refusal of the application.</p>
<b>Section 79C (1) (e) – The public interest</b>	<p>The provision of housing for seniors or people with a disability is generally in the broader public interest.</p> <p>The development is not however in the narrower sectionalised public interest as the development has been found to be inconsistent with the provisions of SEPP (HSPD) 2004.</p> <p>There is also inadequate information submitted with the application for Council to properly assess the environmental impacts of the proposed development on native bushland and the cumulative impact of the development on the Wheeler Creek and the catchment of Narrabeen Lagoon.</p>

## PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan No. 1. The application was notified to 107 adjoining land owners and occupiers for a minimum period of 30 calendar days commencing on 29 April 2017 and being finalised on 31 May 2017. The application was also advertised in the Manly Daily on 29 April 2017 and a notice was placed upon the site.

As a result of the public exhibition process, 9 submissions were received. The matters raised within the submissions are addressed as follows:

### 1. Traffic

A number of submissions raised concerns that the additional traffic generated by the development will add to the traffic congestion in the street and jeopardise the safety of local residents.

#### Comment:

Council's Traffic Engineer has reviewed the proposed development and advised that the development will generate a very low volume of traffic which would have a minimal impact

on the road network. Based on the advice of Council's Traffic Engineer this issue does not warrant the refusal of the application.

## **2. The development is inconsistent with the semi-rural character of the locality**

Concern is raised that the development is inconsistent with the semi-rural character of the locality.

### Comment:

This issue is discussed at length in the relevant section of this report and forms a reason for the refusal of the Development Application.

In summary, it has been found that the development is inconsistent with the DFC of the locality as defined under *Warringah Local Environmental Plan 2000* for the B2 Oxford Falls locality.

## **3. Bushfire impact**

Concern is raised that the location of this type of development within an area which is bushfire prone is dangerous due to the limited mobility of residents. In addition concerns have also been raised that the Asset Protection Zones (APZ) required for the development will impact on the environmental qualities of the site and the creek.

### Comment:

The site is identified as bushfire prone land. The development is accompanied by a Bushfire Protection Assessment report dated 2 March 2017 prepared by Ecological. In the report, recommendations are provided to ensure the safety of the residents of the facility in accordance with the provisions of 'Planning for Bush Fire Protection 2006' as published by the NSW Rural Fire Service (NSWRFS).

However, as detailed later in this report (refer to the referral response from the NSWRFS under the 'Referrals' section in this report), in order to satisfy the requirements of 'Planning for Bush Fire Protection 2006' and to obtain a Bushfire Safety Authority, the NSWRFS has requested additional information to properly assess the application in relation to the Inner Protection Area (IPA) of the development and details on the effective slope of the site to confirm that the development is suitable on this site.

In this regard, the NSWRFS has not issued a Bushfire Safety Authority for the development.

Accordingly, this matter forms a reason for refusal.

## **4. Impact on natural bushland and Environment/Wildlife**

Concerns have been raised that the development, including the required APZ will result in the removal significant bushland from the site and impact on threatened species that are identified within the site.

### Comment:

The application was referred to the Biodiversity Section of Council's Natural Environment Unit, who has identified a number of key environmental issues with the proposal. Of those

issues, a fundamental concern relates to the clearing of land for the purposes of bushfire APZ and the potential impact this may have upon threatened species, native vegetation and the performance of the waterway in terms of possible increased water flows into the creek.

Accordingly, this matter forms a reason for refusal.

## **5. Impact on watercourse and Narrabeen Lagoon**

Concerns have been raised in relation to the impact of the development on the Wheeler Creek, including the impact of construction activities.

### Comment:

This is addressed in detail in the referral Section of this report, specifically by Council's Natural Environment Section (Riparian Lands/Creek). In summary, the application is not supported in terms of its impact on the creek, based on the information submitted with the application and deficiencies in that information.

Accordingly, this matter forms a reason for refusal.

## **6. Flooding**

Concerns have been raised that the proposal will risk downstream properties through flooding.

### Comment:

Council's Flood Engineer has reviewed the proposal with regards to its flood impacts and has raised no objection to the development, subject to conditions to further reduce flood impacts. The concern raised in this regard, does not warrant refusal of the application.

## **EXTERNAL REFERRALS**

<b>External Referral Body</b>	<b>Comments Received</b>
NSW Rural Fire Service (NSWRFS)	<p>The application was referred to the NSWRFS as Integrated Development on 19 April 2017.</p> <p>Section 100B of the <i>Rural Fires Act 1997</i> enables the Commissioner of the NSWRFS to issue a Bush Fire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that Act identifies Seniors Housing (within the meaning of the <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i>) as such development.</p> <p>In their response on 19 May 2017, the NSWRFS advised that they are not position to properly assess the application and requires the following to be provided for further assessment:</p> <ol style="list-style-type: none"><li>1. <i>Confirmation that the ongoing management of the Landscaped Riparian Zone, Zone 4, as per the Vegetation Management Plan contained within the Biodiversity Management Plan prepared by Eco Logical, dated 2 March 2017, ref.15SUT-2149, will satisfy the requirements for an inner protection area and will be a non bush fire hazard.</i></li><li>2. <i>A re-assessment of the effective slope on the western elevation of Block B, and the corresponding asset protection</i></li></ol>

	<p>zone to achieve a radiant heat level not exceeding 10kW/sqm at the building façade.</p> <p><i>The effective slope is the slope of the ground under the hazard (vegetation) and in this instance should be assessed over a distance of 100m.</i></p> <ol style="list-style-type: none"> <li><i>3. A re-assessment of the effective slope within the riparian corridor on the south west elevation of Block B, and the corresponding asset protection zone to achieve a radiant heat level not exceeding 10kW/sqm at the building façade.</i></li> <li><i>4. The effective slope should be determined over the length of the corridor.</i></li> <li><i>5. Additional advice and detail explaining how the development and proposed single internal access road, 200 metres long, satisfies the performance criteria for an Internal Road as set out in Section 4.2.7 of 'Planning for Bush Fire Protection 2006'.</i></li> <li><i>6. Details of the fire trail proposed at the western end of the development connecting to the adjoining retirement village on the northern boundary.</i></li> </ol> <p>The application does not provide sufficient information to enable NSWRFs to properly assess the application and so this is included as a reason for refusal.</p>
Department of Primary Industries/Water (DPI)	<p>The application was referred to DPI as Integrated Development under Section 91A (2) of the EP &amp; A 1979. The DPI provided comments on 8 June 2017, along with their General Terms of Approval, which are to be included as conditions, should the application approved.</p>
NSW Aboriginal Heritage Office	<p>The application was referred to the NSW Aboriginal Heritage Office on 19 April 2017 pursuant to the provisions of Clause 80 of the WLEP 2000 as the site may contain or may be within the vicinity of an Aboriginal place or place of Aboriginal cultural significance.</p> <p>The NSW Aboriginal Heritage Office advises that:</p> <p><i>"An inspection of the property by Kelleher Nightingale Consulting (LITTLE WILLANDRA ROAD, OXFORD FALLS Aboriginal Heritage Due Diligence Assessment, Nov 2016) did not identify any Aboriginal heritage issues in the proposed development area. However, two rock overhangs were identified in the western part of the property. The AHO does not consider there is sufficient information presented in the archaeological report to demonstrate that these overhangs have no Aboriginal heritage potential. Without such additional information, the AHO would recommend that the overhangs be mapped on survey plans and the any consent approval highlight that they are not to be impacted. Provided that these overhangs are not impacted then the Aboriginal Heritage Office would not foresee any further Aboriginal heritage issues on the proposal".</i></p> <p>The application does not provide sufficient information to enable the Aboriginal Heritage office to properly assess the application and so this is included as a reason for refusal.</p>
Ausgrid	<p>The application was referred to Ausgrid on 19 April 2017 for comment.</p>

	To date, no response has been received and it is assumed that Ausgrid do not raise any objection nor impose any conditions.
Roads & Maritime Services (RMS)	The application was referred to RMS on 19 April 2017, for comment.  In their response on 23 May 2017, the RMS raised no objections to the proposed development.

## INTERNAL REFERRALS

Internal Referral Body	Comments Received
Building Assessment - Fire and Disability upgrades	No objections subject to conditions.
Development Engineers	<p>Council's Development Engineers have reviewed the proposal and advice the proposal cannot be supported due to the following reasons.</p> <p><u>Onsite Stormwater Detention System (OSD)</u></p> <ol style="list-style-type: none"> <li>1. <i>In order for Council to adequately check the design of the OSD system, when the DRAINS program is used, the input data and summary information including a copy of the model on computer disc must be provided. The total storage volume of the OSD system appears to be lower than expected.</i></li> <li>2. <i>At least two (2) complete sections through the detention tank/basin units showing all dimensions must be shown on the plan. This is to include all finished surface levels in relation to adjoining properties, proposed and existing buildings, wall details, and the proposed batter treatment at the top end of the basin/tank units, how they matches into the existing ground levels, etc.</i></li> </ol>
Environmental Investigations (Contaminated Lands)	No objection, subject to conditions
Landscape Officer	<p>Council's Landscape Officer has reviewed the proposal and advised that the proposal cannot be supported due to the following reasons.</p> <p><b>1. Extent of Excavation Proposed</b></p> <p><i>The drawings provided indicate that a significant amount of excavation is required to undertake the proposed works. The Southern Elevation drawing indicates 9.83 metre cut behind the dwellings and a 9 metre cut to achieve basement levels. The Western Elevation indicates 11.83 metre cut behind the dwellings, indicated as a sheer wall extending 6.13 metres above the ceiling height of the dwellings.</i></p> <p><i>The sections provided also confirm the extent of cut proposed. Section D-D indicates that the access road on the southern boundary of the site requires cut of 4.75 metres at this point.</i></p>



	<p><i>The cut required for the driveway turnaround at the rear of the site is indicated to be 12.6 metres adjacent to Unit 16.</i></p> <p><i>The stormwater plans, 3D Height Plane drawings and Shadow Diagrams all indicate extensive cut in the south western corner of the site around the turning areas.</i></p> <p><i>The extent of excavation appears at odds with the assessment in the SEE against the Desired Future Character Statement - B2 Locality which states in response to 'low intensity, low impact uses: 'The buildings have been sited to step down and conform to the natural topography of the site as much as possible'.</i></p> <p><b>2. Tree and Vegetation Removal</b></p> <p><i>The Arborist Report provided indicates 180 trees to be removed to accommodate the proposed works. Of these, 92 are indicated to be of 'High Retention Value'. The report defines 'High Retention Value' trees as:</i></p> <p><b>5.2 Retention value</b></p> <p><i>The retention value of a tree or group of trees is determined using a combination of environmental, cultural, physical and social values.</i></p> <p><i>High - These trees are considered important for retention and should be retained and protected. Design modification or re-location of building/s should be considered to accommodate the setbacks as prescribed by the Australian Standard AS4970 Protection of trees on development sites. Tree sensitive construction measures must be implemented if works are to proceed within the Tree Protection Zone.</i></p> <p><i>These trees are only those within the development footprint.</i></p> <p><i>It is noted that the Bushfire Report and Biodiversity Management Plan indicate additional areas to the west and south of the footprint within the site are to be managed as Asset Protection Zone - Inner Protection Area. Inner Protection Areas requirements restrict the percentage of tree and shrub/understory cover within the area:</i></p> <p><i>Planning for Bushfire Protection 2006 Appendix 2 - Determining Asset Protection Zones An IPA should provide a tree canopy cover of less than 15% and should be located greater than 2 metres from any part of the roofline of a</i></p>
--	---

	<p><i>dwelling. Garden beds of flammable shrubs are not to be located under trees and should be no closer than 10 metres from an exposed window or door. Trees should have lower limbs removed up to a height of 2 metres above the ground.</i></p> <p><i>Standards for Asset Protection Zones</i></p> <p><b>3. Removal or Pruning of Trees, Shrubs and Understorey</b></p> <p><i>The control of existing vegetation involves both selective fuel reduction (removal, thinning and pruning) and the retention of vegetation.</i></p> <p><i>Prune or remove trees so that you do not have a continuous tree canopy leading from the hazard to the asset. Separate tree crowns by two to five metres. A canopy should not overhang within two to five metres of a dwelling.</i></p> <p><i>Native trees and shrubs should be retained as clumps or islands and should maintain a covering of no more than 20% of the area.</i></p> <p><i>It is clear that numerous additional trees and other vegetation will be required to be cleared to comply with the bushfire requirements, though the actual number is not quantified in the documentation reviewed.</i></p> <p><i>The overall impact on the landscape within the site is therefore considered to be considerably affected by the proposal. An assessment of the areas affected by the development footprint and Inner Protection Zone as indicated on the Landscaped Open Space plan indicates that 23000m<sup>2</sup> of the 33000m<sup>2</sup> site will be significantly altered by the proposal, equivalent to 70% of the site.</i></p> <p><b>4. Plan Species List</b></p> <p><i>The Landscape plan indicates use of species unsuitable for use adjacent to bushland and watercourses due to propensity for spreading or poor structure:</i></p> <p><i>Erithrina x sikesii (Coral Tree) (species suitable for removal without consent WLEP2011)</i>  <i>Raphiolepis indica (Indian Hawthorn) (Noxious weeds list)</i>  <i>Agapanthus africanus (Agapanthus) (listed by Sydney Weeds Committee)</i>  <i>Lantana camara (Lantana) (Noxious weeds list)</i>  <i>Cortaderia selloana (Pampas Grass) (Noxious weeds list)</i>  <i>Senna occidentalis (Senna) (Invasive/poisonous weed in northern Australia)</i></p> <p><i>The access road along the southern boundary provides little to no setback to the adjoining</i></p>
--	---

	<p><i>property at No. 55-57 Willandra Road providing poor integration to adjoining properties, significantly reducing amenity.</i></p> <p><i>Based on the above, it is considered that the proposed works in relation to landscape issues are not in accordance the following controls under WLEP2000:</i></p> <p><i>Appendix B Narrabeen Lagoon Catchment Locality Statements LOCALITY B2 OXFORD FALLS VALLEY DESIRED FUTURE CHARACTER 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.</i></p> <p><i>The natural landscape including landforms and vegetation will be protected and, where possible, enhanced.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>Part 4 General principles of development control:</i></p> <p><i>58: Protection of existing flora</i>  <i>57: Development on sloping land</i>  <i>56: Retaining unique environmental features on sites</i>  <i>63: Landscaped open space</i></p> <p><i>Consequently the proposal is not supported in relation to Landscape issues.</i></p>
Natural Environment (Biodiversity)	<p>Council's Natural Environment (Biodiversity) Section does not support the proposal due to the following:</p> <ul style="list-style-type: none"> <li><i>The proposed development (and required APZ's) would result in direct (construction footprint, APZ, vehicle access) and indirect (e.g. erosion and sedimentation, weed invasion, light spillage and noise) impacts to environmental features of the site including a substantial area of remnant native vegetation and significant trees.</i></li> <li><i>Such impacts are considered to be inconsistent with Clauses 56 and 58 of Warringah Local Environment Plan, 2000</i></li> <li><i>The proposed development (and required</i></li> </ul>

	<p><i>APZ's) would also result in direct and indirect impacts to known threatened species habitat</i></p> <p><i>The Flora and Fauna Assessment notes observation of a likely or potential Powerful Owl Nest tree which is proposed to be removed. Evidence of Powerful Owls using the subject property has been observed by both Council and the applicant's ecologists. Visitation of the identified nest tree hollow by Cockatoos does not preclude its use as a Powerful Owl nest tree.</i></p> <p><i>The Landscape Plan submitted with the proposal nominates the planting of weeds such as Pampas Grass (and other weed species) which is inconsistent with the NSW Biosecurity Act 2015 and biodiversity management plan submitted with the proposal.</i></p> <p><i>It is noted that the NSW Rural Fire Services (RFS) have requested clarification and require additional information in relation to bushfire protection measures. Any further amendments to the proposal such as increases in clearing for Asset Protection Zones would trigger further assessment of biodiversity matters by both the applicant and Council.</i></p>
Natural Environment (Flood)	<p>The development is in accordance with WLEP 2000 and Floor levels are above the PMF.</p> <p>There is no flood related objection to the development.</p>
Natural Environment (Riparian Lands/Creeks)	<p>Council's Natural Environment ((Riparian Lands/Creeks) Section is unable to support the proposal based on the following:</p> <p><i>There is uncertainty as to the adequacy of the Asset Protection Zone and its relationship to the riparian zone and Red-crowned toadlet habitat as per the Rural Fire Service referral response which states:</i></p> <p>"Confirmation that the ongoing management of the Landscaped Riparian Zone, Zone 4, as per the Vegetation Management Plan contained within the Biodiversity Management Plan prepared by Eco Logical, dated 2 March 2017, ref.15SUT-2149, will satisfy the requirements for an inner protection area and will be a non bush fire hazard"</p> <p><i>The proposed development is not in accordance with the Desired Future Character under the WLEP2000: 'Development in locality will not create siltation or pollution of Narrabeen Lagoon and its catchment'. The Waterways Impact Statement mentions that the banks of the creek are unstable and eroding, however there is no mention of bank stabilisation techniques.</i></p>

	<p><i>The proposed development is not in line with Council's Protection of Waterways and Riparian Lands Policy. The Policy has several principles that apply, including:</i></p> <ul style="list-style-type: none"> <li><i>• causing no net loss to biodiversity;</i></li> <li><i>• supporting natural flow regimes;</i></li> <li><i>• minimising bank erosion and promoting naturalistic bank protection works when stabilisation is necessary (i.e. soft engineering outcomes);</i></li> <li><i>• preventing alteration of watercourses (includes piping, channelling, relocation or removal);</i></li> <li><i>• improving plant communities through natural area restoration;</i></li> <li><i>• maintaining natural floodplains where appropriate.</i></li> </ul> <p><i>The Waterways Impact Statement (WIS) submitted as part of the development proposal makes numerous mentions of the banks of the creek line being unstable, however doesn't propose to address this erosion as part of the development. In particular, the WIS does not detail creek bank stabilisation measures in proximity to the proposed bridge pylons which will be situated within the riparian zone and likely to increase erosion in the future without adequate treatment.</i></p> <p><i>Council's Policy also states 'Bushfire asset protection zones shall be maintained outside of riparian land'. The APZ is to be managed as inner protection zone and is located in core riparian zone. Managing this area as an IPZ has the potential to decrease ground coverage by fine material and small trees which could be providing bank stability and reducing speed at which overland flows are delivered to the creek.</i></p> <p><i>There are a number of aspects of the development that are not discussed as part of the Waterways Impact Statement but should be included in order to ensure that a complete assessment of the potential impacts is carried out. The Stormwater Management Plan indicates that there will be three stormwater discharge points into the creek line; however there is no assessment of the impact of these outlets on water quality, or bed and bank stability in the WIS. The Stormwater report also mentions the use of a temporary culvert in the creek with a steel plate over the top in order to facilitate construction of the units, but again, the impact of this structure on the form and function of the creek has not been included in the WIS.</i></p>
Urban Designer	<p>Council's Senior Urban Designer is unable to support the proposal based on the following:</p>



	<ol style="list-style-type: none"> <li>1. The main concern is with the scale and design of buildings being not consistent with the Desired Future Character Statement (DFC) in the LEP 2000. To assist in achieving consistency with the DFC, adequate articulation and greater 'gaps' should be imposed within parts of the building to improve built form of being "new <u>detached style</u> housing'. The proposal could be broken up into building blocks similar in size to the adjacent residential 'Willandra bungalows' to the north of the site to be more contextually fitting.</li> <li>2. The proposed excavation on the south-western edge of the built form is greater than 11 metres at the deepest end. This is not consistent with the requirement of the DFC: '... 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'.</li> </ol>
Traffic Engineer	<p>Council's Traffic Engineer is unable to support the proposal based on the following:</p> <p><i>This development application is for a seniors' living residential development including 52 units and provision of 63 off-street parking spaces.</i></p> <p><i>The submitted plans show the presence of two driveways in place of one driveway compared to the plans submitted during the pre-lodgement stage. There does not appear to be any justification on why a secondary driveway was created. For this development a second driveway is not supported.</i></p> <p><i>The truck bay within the frontage of the site should be signposted to allow passenger pickup and drop off, whilst allowing bin collection by the service contractor.</i></p> <p><i>The proposed internal path and bridge leading to Block B is required to have a traffic calming devices at frequent intervals to maintain acceptable vehicle speeds and safety. Parking restriction signs are also required along both sides to prevent unwanted parking by visitors and/or residents.</i></p> <p><i>All parking spaces marked as disabled parking within the basement 2 and basement 3 carparks does not meet AS2890.6:2009 in terms of bay dimension and shared areas. If these spaces are allocated to a specific unit then the disabled markings should not be necessary.</i></p>

	<i>Parking provisions for this development is 63 spaces which exceed the amount required under Council's DCP requirements. The traffic generation is expected to be 21 vehicles during the peak hour, and this level is to the surrounding road network is not considered significant</i>
Waste Officer	No objection, subject to conditions
Water Management	<p>Council's Water Management Section is unable to support the proposal based on the following:</p> <p><i>The Stormwater Management Plan prepared by Richmond Ross refers to the General Stormwater Quality Requirements as provided in Table 4 of the Water Management Policy. However, as the existing site possesses less than 10% impervious area and is within a Group A Catchment, the Stormwater Quality Objectives in Table 3 apply.</i></p> <p><i>As such, the Stormwater Management Plan does not comply with the requirements of the Water Management Policy.</i></p> <p><i>In order to demonstrate compliance with this Policy, the applicant is required to provide an updated Water Management Plan which demonstrates how the Stormwater Quality Objectives in Table 3, Section 8.1 of the Water Management Policy will be met, including the location, size and configuration of stormwater treatment measures proposed for the development. The development must be re-modelled to demonstrate a neutral or beneficial effect over the existing scenario. Two models are required to be submitted – the existing site; and the proposed development with treatment. The MUSIC data files must be provided to Council.</i></p>

## **ENVIRONMENTAL PLANNING INSTRUMENTS**

All, Environmental Planning Instruments (SEPPs, REPs and 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 Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

A further consideration is required for the following State Policies:

## **SEPP No. 55 – Remediation of Land**

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

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

Council 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.

## **SEPP (Building Sustainability Index: BASIX) 2004**

The development is classified under the Environmental Planning and Assessment Regulation, 2000 as BASIX affected development.

BASIX Certificates has been submitted for the proposed development. The BASIX Certificate confirms that the proposed development meets the NSW government's requirements for sustainability. The development meets the water and energy performance targets and achieves a pass for thermal comfort

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

The subject application has been lodged under the WLEP 2000 and not the SEPP.

As the SEPP applies within the State of NSW, it is relevant to the assessment of this application. However, any clauses in the SEPP which are prefaced for their operation with the words "*development application made pursuant to this chapter*" would not be relevant to the application as per the NSW Land and Environment Court decision of Talbot J in *Mete v Warringah Council* [2004] NSWLEC 273.

In accordance with Section 79C of the Environmental Planning and Assessment Act, the assessment of this application takes into consideration the relevant heads of consideration of the SEPP as per the above noted Land and Environment Court decision as follows:

### **Chapter 1 – Preliminary**

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

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

The above Aims are considered as follows:

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

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

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

In terms of making efficient use of infrastructure, the development is serviced by normal power and sewerage systems and can be managed by the relevant providers (i.e. telecommunications, water, electricity etc.).

If the application was recommended for approval, conditions would be included which will require approval by Sydney Water for access to Sydney Water's sewerage infrastructure prior to the issuing of a Construction Certificate.

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

**(c) Be of good design**

When considering the development against the aim of achieving good design, the development must be considered in context with the other provisions of the WLEP 2000. In this regard, the proposed development seeks to construct the buildings in a series of rows into two buildings (either side of the creek). The development has not been designed in order for buildings and works to be integrated into the site to minimise disturbance of vegetation and landforms.

In addition to the above, the development is not considered to be located and designed in a manner particularly suited to the environmentally sensitive nature of the site.

For the above reasons, the proposed development has been found to be inconsistent with aims of the SEPP and this issue has been included as a reason for refusal.

**Chapter 2 – Key concepts**

The proposed development is consistent with the key concepts contained within the SEPP.

The proposed development comprises the redevelopment of the site to accommodate 52 self-contained dwellings which is defined as:

*“A dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis”.*

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

**Chapter 3 – Development for seniors housing**

Chapter 3 of the SEPP contains a number of development standards that are applicable only to development applications made pursuant to the SEPP. However, as the development application was made pursuant to WLEP 2000, the specific provisions prefaced for their operation with the words “made pursuant to this chapter” of Chapter 3 do not apply.

Accordingly, the provisions outlined under Chapter 3 of the SEPP are not applicable to the assessment of this application.

#### **Chapter 4 – Miscellaneous**

The proposed development is consistent with the provisions contained in Chapter 4. The site is not located on environmentally sensitive land (as defined by Schedule 1 of the SEPP), is not affected by amendments to other SEPPs, and the special provisions do not apply to this land.

Accordingly, no further assessment of the application is required under Chapter 4 of the SEPP.

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

The application was referred to Ausgrid on 19 April 2017 for comment.

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

##### Roads and Maritime Service (RMS)

With regards to requirements of Clause 104(2) (b) and Schedule 3 of the SEPP, the development does not have a capacity for 200 or more motor vehicles.

Therefore, the SEPP does not apply in this respect, however the application was referred to RMS, who has raised no objection to the proposed development.

#### **Regional Environment Plans (REPs)**

There are no Regional Environmental Plans applicable to this development.

#### **Local Environment Plans (LEPs)**

##### **Warringah Local Environmental Plan 2011 (WLEP 2011)**

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

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



## **Warringah Local Environment Plan 2000 (WLEP 2000)**

### **Desired Future Character Statement**

The subject site is located in the B2 Oxford Falls Valley locality under Warringah Local Environmental Plan 2000.

The Desired Future Character statement for the locality states:

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

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

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

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

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

### **Definition and Category of Development**

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

*"residential accommodation which is or is intended to be used permanently as housing for the accommodation of older people or people with disabilities, whether or not it is also used to accommodate people who live with older people or people with disabilities, or staff who are employed to assist in the administration of and provision of services to such housing. Housing for older people or people with disabilities may consist of a residential care facility, a hostel or a grouping of 2 or more self-contained dwellings, or a combination of these, but does not include a hospital or a group home".*

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

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

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

***Future development will be limited to new detached style housing conforming to the housing density standards set out below and low intensity, low impact uses.***

#### Detached Style Housing

The DFC requires that new housing within this locality is to be limited to new detached style housing conforming to housing density *and low intensity, low impact uses*. 'Detached style housing' is not defined in the dictionary of WLEP 2000.

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

In a broader context, the present character of the B2 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 adjoins to the north the Willandra Bungalows 'Retirement Village' to the north which consists of single storey detached style building forms. The site is also situated opposite an R2 – Low Density Zone, which is characterised by detached style housing in landscape setting.

The design of the proposed development is in the form of unbroken built forms with varying heights. The proposed buildings generally appear as large continuous attached rows of building with no physical separation provided between each dwelling. The only significant amount of building separation and "detachment" is between Block A and Block B and in a (east-west) manner between the two "rows of built form" comprising the footprint of Block A and Block B.

Therefore, Council is not satisfied that the proposal is consistent with this element of the DFC which relates to detached style housing.

#### Low Intensity and Low Impact Uses

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

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

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

***"Impact: is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore 'low impact'***

*would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality.”*

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

### **Is the proposed development a “low intensity” use?**

#### **Size and Scale**

As indicated previously, the size and scale of the built form of the development is not considered to be in keeping with the size and scale of the built forms comprising of existing development in the area. The visual pattern of the development is inconsistent with the predominant character of surrounding development.

#### **Extent of the activities associated with the proposal**

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

Therefore, whilst the extent of activities associated with the development can be defined as low-intensity development, it is concluded that the proposed development does not satisfy the definition of low-intensity form of development due to the physical size and scale of the development and its associated character and visual intensity.

### **Is the proposed development a “low impact” use?**

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

- The visual impact of the built form and the amount of excavation required for the proposed development is found to be inconsistent with the dominant non-urban character of the built and natural environment of the B2 Oxford Falls Valley Locality that the site is located within;
- The proposed development will result in a significant adverse impact upon the site including the substantial modification of the its natural drainage features (the creek), vegetation and topography through the removal and modification of 36% (1.22ha) of the site area as a result of the development including the access road/driveways, footpath areas, platforms throughout the development and the provision of APZ’s;
- The proposed buildings and associated works including access roads and services have not been designed or grouped in areas that will minimise disturbance on the creek, vegetation and landforms; and
- The character and visual amenity of the built form of the development as detailed in the previous discussion, is inconsistent with the surrounding development, and is found to be inconsistent with the applicable planning controls.

The proposed development is therefore inconsistent with the DFC statement of the locality relating to the requirement for the development to be a low intensity and low impact use.

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

The proposed development does not disrupt the skyline when viewed from Narrabeen Lagoon and Wakehurst Parkway as the site cannot be seen from those vantage points.

In this regard, the proposed development is consistent with this component of the DFC.

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

A large proportion of the site which is currently occupied by native vegetation and the Wheeler Creek flows through the central portion of the site.

As noted in the Referral Section of this report, (specifically Council's Natural Environment Unit (Biodiversity and Riparian Sections) and the Landscape Officer comments), the proposed development will result in a significant impact upon the site including its natural drainage features, vegetation and topography. In this regard, it is noted that the proposal will include the removal of 0.41 ha (4, 100m<sup>2</sup> or 12% of the site) for the actual development and modification of 0.81 ha (8,100m<sup>2</sup> or 24% of the site) of natural vegetation for the purposes of APZ's.

The development also includes a significant amount of excavation (up to 12m) to undertake the proposed works.

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

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

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

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

The subject site is located in the Wheeler Creek catchment, a sub-catchment of the Narrabeen Lagoon catchment. Wheeler Creek flows through the site from south to north.

Council's Natural Environment (Riparian) Section has indicated that there is insufficient information submitted with the application for Council to properly assess the impact of the development in relation to Wheeler Creek and the catchment.

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

### **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 (Development Standards)

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

<b>Built Form Standard</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
Housing Density	WLEP 2000 states that on land that adjoins a locality primarily used for urban purposes and which a dwelling house is permissible, 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	8.5 metres (overall)	8.5 metres (overall)	Yes
Front Building Setback	20 metres	20 metres	Yes
Rear Building Setback	10 metres	120 metres	Yes
Side Boundary Setback	10 metres	10 metres to both north and south boundaries	Yes
Landscaped Open Space	30% of the site area.	25,751m <sup>2</sup> (78%) of the site is landscaped or maintained in its natural state	Yes

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

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

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

<b>Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Building Height</b>	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below.)	All of the buildings achieve compliance with the maximum of 8.0m	Yes
<b>Density and Scale</b>	Self-care - 0.5:1	0.12:1	Yes
<b>Landscaped Area</b>	35m <sup>2</sup> per dwelling for Self-Care Units	Each dwelling provides in excess of 35m <sup>2</sup> of landscape area.	Yes
<b>Parking</b>	0.5 spaces per bedroom	The proposed development provides 24 x 1 bedroom dwellings and 28x 2 bedroom dwellings. Providing a total of 80 <u>bedrooms</u> .  A total of 40 car spaces are therefore required.	Yes



Control	Required	Proposed	Compliance
		The proposed development provides 63 car spaces incorporating 52 resident spaces and 11 visitor/staff spaces.	
<b>Visitor Parking</b>	1 space per 5 units	<p>The proposed provides 52 dwellings and therefore requires a total of <u>10.4 spaces for visitors.</u></p> <p>The proposed development provides for <u>11 spaces for visitors.</u></p> <p>The proposed development is satisfactory in relation to the number visitor's spaces.</p>	Yes
<b>Landscaped Area</b>	Width x 15% of length =5,925.5m <sup>2</sup> (17%)	25,751m <sup>2</sup> (78%)	Yes
<b>Private Open Space</b>	Ground Floor (15m <sup>2</sup> ) First Floor (6m <sup>2</sup> )	All dwellings comply	Yes

### General Principles of Development Control

The following applicable General Principles of Development Control as contained in Part 4 as addressed as follows:

General Principle	Applies	Comments	Complies
<b>CI 38 Glare &amp; reflections</b>	Yes	<p>Issues of glare and reflection, including building colours and materials, internal and external lighting of the buildings and flood lighting of the site will be the subject of conditions if the application was recommended for approval requiring:</p> <ul style="list-style-type: none"> <li>• Compliance with the approved colours and materials as shown on the submitted sample board which is considered satisfactory,</li> <li>• Full details of lighting in the form of a <b>Lighting Strategy</b> which is to minimise impacts on the night times amenity adjoining residential properties</li> </ul>	<p>Yes</p> <p>Subject to condition should this application be approved</p>

### 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 LEP:

Control	Required	Proposed	Compliance
<b>Support Services</b>	<p>The site within 400m of a shopping centre or bus stop; or</p> <p>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</p>	<p>The Access report submitted with the application, prepared by Morris Goding Accessibility Consulting, dated 9 March 2017 notes that the site is located within 400m from the bus stop.</p> <p>The bus services provided from the nearest bus stops (route 153, 178, E78) provides access to and from the local facilities to and from the subject site during daylight hours at least once</p>	Yes

Control	Required	Proposed	Compliance
	Monday to Friday (inclusive)	per day from Monday to Friday.	
	Reasonable access to home delivered meals, personal care and home nursing and assistance with housework	<p>The residents of the Facility will have reasonable access to the following:</p> <ul style="list-style-type: none"> <li>• Meals which can be delivered to the site (if required);</li> <li>• Personal care and on-site nursing; and</li> <li>• Assistance with housework.</li> </ul>	Yes
Wheelchair access	<p><u>(a) Site Gradient</u></p> <p>(i) if the whole of the site has a gradient of less than 1:10, 100% of the hostel or residential care facility beds and 100% of the dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is accessible to all residents, or</p> <p>(ii) if the whole of the site does not have a gradient of less than 1:10, a percentage (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.</p>	<p>The whole of the site has a gradient of 8.5% which equates to a gradient of 1:10; therefore (i) applies.</p> <p>The development provides a continuous path of travel from 100% of the dwellings in the facility to the driveway and adjoining public road in order to assist wheelchair bound residents.</p>	Yes
	<p><u>(b) Road Access</u></p> <p>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</p>	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
	wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road		
	<u>(c) Common Areas</u> Access must be provided so that a person using a wheelchair can use common areas and common facilities associated with the development	The development includes level access paths to the nearby common areas located adjacent to the dwellings. Accessibility to these areas have been designed to satisfy AS1428.1 and AS1428.2 as well as the DDA.	Yes
	<u>(d) Adaptability</u> 10% of any hostel or residential care facility beds and 10% of any dwellings which meet the requirements of paragraph (a) must also have, or be capable of being modified so that they have, wheelchair access by a continuous path of travel (within the meaning of AS 1428) to all essential areas and facilities inside the hostel, residential care facility or dwellings, including a toilet, bathroom, bedroom and a living area.	The design of the development can accommodate 5 adaptable dwellings [i.e.: 10%] which will provide doorway entrances and circulation spaces that will comply with AS1428.1 and Table D3.1, Part D3.3 of the BCA/DDA Premises Standards.	Yes

Control	Required	Proposed	Compliance
<b>CI 42 Construction Sites</b>	Yes	The potential exists for the construction of the proposed development to have an adverse impact upon the amenity of nearby residential properties in terms of traffic, noise, dust, parking, accessibility, sediment and the safety of pedestrians given the nature of the works and length of time for construction. These matters are generally covered in the <b>Construction Management Plan</b> . However, if the application is to be approved, a condition of consent should be included to require compliance with this requirement. Issues to be addressed in the Construction Management Plan include pedestrian movements and safety, stormwater and wastewater disposal, waste management, tree protection, hours of demolition and excavation, air quality, noise management, truck parking, and more specifically the impact of the development on the creek.	Yes  Subject to condition should this application be approved
<b>CI 43 Noise</b>	Yes	The nature of the proposed use is unlikely to generate significant noise emissions associated with the occupation of the development, with the exception of air conditioning systems. A suitable condition could be imposed if the application was worthy of approval in relation to A/C systems.	Yes  Subject to condition should this application be approved
<b>CI 47 Flood Affected Land</b>	Yes	Council's Flood Engineer has assessed the proposal and has raised no objection to the proposal on	Yes

Control	Required	Proposed	Compliance
		flooding grounds.	
<b>CI 48 Potentially Contaminated Land</b>	Yes	<p>Council records indicate that the subject site has been used for residential purposes for a significant period of time, with no prior conflicting land uses.</p> <p>In this regard it is considered that the site poses no risk of contamination, the land is considered to be suitable for continued residential land use and therefore, no further consideration is required in this regard.</p>	Yes
<b>CI 50 Safety &amp; Security</b>	Yes	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
<b>CI 52 Development Near Parks, Bushland Reserves &amp; other public Open Spaces</b>	Yes	The proposal will provide adequate separation of the site from the surrounding public open space. The proposal is therefore considered to satisfy the requirements of Clause 52.	Yes
<b>CI 54 Provision and Location of Utility Services</b>	Yes	Appropriate conditions may be imposed, should this application be approved, to ensure that the development is connected to the required utilities.	<p>Yes</p> <p>Subject to condition should this application be approved</p>
<b>CI 56 Retaining Unique Environmental Features on Site</b>	Yes	<p>The distinctive environmental features of the site are that the subject site is substantially undisturbed and undeveloped land containing degraded remnant bushland vegetation and the Wheeler Creek. Council's Natural Environment Unit has assessed the proposed development and has advised that the application cannot be supported for the reasons provided in the referral section of this report.</p> <p>Based on the above advice, the application is not consistent with the requirements of Clauses 56 and 58 and this issue has been included as a reason for refusal.</p>	<b>No</b>
<b>CI 57 Development on Sloping Land</b>	Yes	<p>In accordance with Clause 57, the height and bulk of the development is to be minimised on sloping land and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope.</p> <p>The excavation of the landform on this site is considered to be significant and inconsistent with the DFC statement for the B2 locality.</p> <p>For the above reason, the development is considered to be inconsistent with the requirements of Clause 57 and this issued has been included as reason for refusal.</p>	
<b>CI 58 Protection of Existing Flora</b>	Yes	Refer to assessment provided under Clause 56.	<b>No</b>
<b>CI 59 Koala Habitat Protection</b>	Yes	The site has a total area of 3.30 ha and therefore is subject to the provisions of this clause and Schedule 11 under WLEP 2000 (Schedule 11 includes a list of feed tree species). Note: as per Clause 5 of WLEP 2000, SEPP 44 does not apply due to the inclusion of Clause 59 as a General Principle of Development Control) and Schedule 11.	Yes

Control	Required	Proposed	Compliance
		<p>Clause 59 defines potential koala habitat as consisting of areas of native vegetation where the trees of the types listed in Schedule 11 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.</p> <p>The Development Application includes a Flora and Fauna Impact Assessment, which concludes that no Koala population exists on the site. This assessment is concurred with by Council's Natural Environment section.</p>	
<b>CI 60 Watercourses &amp; Aquatic Habitats</b>	Yes	<p>The application was referred to NoW for approval as Integrated Development under the provisions of Section 91 of the Environmental Planning and Assessment Act, 1979.</p> <p>In their response, NoW do not raise any objection to the proposal subject to the imposition of their General Terms of Approval (GTAs). The General Terms of Approval are to be included, in their entirety, in the Notice of Determination should this application be approved</p> <p>However, the application was also referred to the Riparian section of Council's Natural Environment section who advises (see 'Internal referrals' in this report) that the development be refused based upon the provision of insufficient information.</p>	<b>No</b>
<b>CI 61 Views</b>	Yes	<p>The proposed development has been assessed in relation to view loss impacts in relation to view principles outlined within the Land and Environment Court Case Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140.</p> <p>It is considered that due to the topography of the land and the fact that the buildings within the proposed development complies with the 8.5m height limited that will be no reasonable view loss.</p> <p>Accordingly, the proposed development will allow for the reasonable sharing of views consistent with the requirements of this Clause</p>	Yes
<b>CI 62 Access to sunlight</b>	Yes	<p>The shadow diagrams submitted with the application indicates that the proposed development will achieve compliance with the requirements of this Clause.</p>	Yes
<b>CI 63 Landscaped Open Space</b>	Yes	<p>The development includes 78% of landscaped open space (this is located within the property boundary and does not include the road reserve or adjoining allotment).</p> <p>Whilst the development complies with the numeric requirement, insufficient information has been submitted to demonstrate appropriate plantings can be provided which are commensurate with the height and scale of the development in consideration of the APZ requirements and the existing soil conditions.</p> <p>As such the development is not considered to be consistent with the requirements of Clause 63.</p>	<b>No</b>
<b>CI 63A Rear Building</b>	Yes	<p>The building is setback 120 metres from the rear boundary which complies with the required 10 metre</p>	Yes

Control	Required	Proposed	Compliance
<b>Setback</b>		setback. Adequate landscaped open space is proposed within the rear building setback to meet the objectives of the rear building setback control.	
<b>CI 64 Private open space</b>	Yes	In accordance with Clause 62 Private open space of WLEP 2000, private open space is not to be located within the street setback area unless the site is a corner allotment or the applicable Locality Statement provides otherwise. The private open space provided for each dwelling is satisfactory in addressing the requirements of this Clause.	Yes
<b>CI 65 Privacy</b>	Yes	The development is located sufficient distance from other residential properties such that it will not result in any unreasonable direct overlooking into habitable rooms and principle private open spaces. No additional architectural privacy treatments are considered to be required.	Yes
<b>CI 66 Building bulk</b>	Yes	<p>Clause 66 requires buildings to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land.</p> <p>The proposed development complies with the building height and floor space ratio controls which apply to development for seniors or people with a disability.</p> <p>However, as stated in the previous section of this report and included in Council's Urban Designers comments, the horizontal massing of the proposed development provides no physical break which results in a visually dominant building bulk that has no sympathy or complementary and compatible relationship to the adjoining development or that which is envisaged under the DFC for the B2 locality.</p> <p>This issue has been included as a reason for refusal.</p>	<b>No</b>
<b>CI 67 Roofs</b>	Yes	The development includes a varying roof design which is consistent with other traditional pitched roof forms in the area.	Yes
<b>CI 68 Conservation of Energy and Water</b>	Yes	<p>BASIX Certificates have been submitted with the application.</p> <p>The development achieves the target for water, thermal comfort and energy use. Conditions should be included in the consent if the application is approved to ensure the commitments identified on the BASIX certificate are implemented.</p>	<p>Yes</p> <p>Subject to condition should this application be approved</p>
<b>CI 69 Accessibility – Public and Semi-Public Buildings</b>	Yes	<p>The Development Application includes an Accessibility Report which concludes that the Development satisfies the accessibility provisions of the Building Codes of Australia and the DDA Premises Standards for a Senior's Housing Development.</p> <p>The report includes recommendations which are to be imposed as conditions of consent should this application be approved.</p>	<p>Yes</p> <p>Subject to condition should this application be approved</p>
<b>CI 70 Site facilities</b>	Yes	The development provides for all required site facilities which may be situated such that they are	Yes

Control	Required	Proposed	Compliance
		<p>convenient to the needs of users and have minimal visual impact from public places.</p> <p>Council's Waste Officer has reviewed the proposal and has raised no objection in relation waste facilities for the development, subject to conditions.</p>	Subject to condition should this application be approved
<b>CI 71 Parking facilities (visual impact)</b>	Yes	The parking facilities (located within the basement levels) are sited and designed to not dominate the street frontage or other public spaces and is satisfactory in addressing the General Principle.	Yes
<b>CI 72 Traffic access &amp; safety</b>	Yes	<p>The site is accessed via a two separate driveways which connects via two crossovers to Little Willandra Road. The width of the driveways provides sufficient sightlines along the roadway to ensure safety.</p> <p>However, Council's Traffic Engineer has reviewed the application and notes that the provisions of two driveways to the site is not supported and there is no justification provided by the applicant to indicate why two driveways are required for this development.</p> <p>Accordingly, this issue has been included as reason for refusal.</p>	<b>No</b>
<b>CI 73 On-site Loading and Unloading</b>	Yes	All loading and unloading will occur within the boundaries of the subject site and is therefore considered to be satisfactory in relation to this Clause.	Yes
<b>CI 74 Provision of Car parking</b>	Yes	The car parking requirements for this development are imposed under Clause 29 of WLEP 2000. The car parking provision complies with Schedule 17 of WLEP 2000, which adopts the requirements of Clause 29(d).	Yes
<b>CI 75 Design of Car parking Areas</b>	Yes	<p>The car parking area is accommodated within basement levels which are incorporated into the design of the development. Access/egress is provided to the variable width driveways.</p> <p>The design of the car park and driveway will enable safe and convenient pedestrian and traffic movement and will enable vehicles to enter and leave the site in a forward direction.</p>	Yes
<b>CI 76 Management of Stormwater</b>	Yes	Council's Development Engineer has reviewed the proposal and raised a number of issues regarding the stormwater drainage design which has been addressed in the referral section of this report. As inadequate stormwater details have been submitted, compliance with the requirements of Clause 76 Management of stormwater has not been achieved. These issues have been included as reasons for refusal.	<b>No</b>
<b>CI 78 Erosion &amp; Sedimentation</b>	Yes	Should this application be approved, appropriate conditions associated with management of erosion and sedimentation are to be included in any consent.	<p>Yes</p> <p>Subject to condition should this application be approved</p>
<b>CI 80 Notice to Metropolitan</b>	Yes	The application was referred to the NSW Aboriginal Heritage Office on 19 April 2017 pursuant to the provisions of Clause 80 of the Warringah Local	<b>No</b>

Control	Required	Proposed	Compliance
<b>Aboriginal Land Council and the National Parks and Wildlife Service</b>		<p>Environment Plan 2000 as the site may contain or may be within the vicinity of an Aboriginal place or place of Aboriginal cultural significance.</p> <p>The NSW Aboriginal Heritage Office advises that: The application does not provide sufficient information to enable the Aboriginal Heritage office to appropriately assess the application and this is included as a reason for refusal.</p>	

## 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 Desired Future Character 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.

Adequate site analysis documentation has been submitted with this application that 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

Schedule 16 prescribes various standards concerning accessibility and useability having regard to relevant Australian Standards specifically designed for housing for seniors and people with disability. The applicant has submitted a report prepared by an accredited access consultant verifying that the proposal will comply with the relevant standards. These standards may be reinforced via suitable conditions of consent, if the application was worthy of approval.



Notwithstanding the above, and as detailed throughout this report the proposed development does not comply with Clause 21 of Schedule 16, as the design of the development does not maintain an appropriate residential character that is consistent with the adjoining and surrounding properties. Accordingly, the inconsistency of the development with Clause 21 of Schedule 16 has been issued as reason for refusal.

### **Schedule 17 – Car parking Provision**

The provision of car parking is addressed under Clause 29 of the WLEP 2000. Schedule 17 reiterates the requirements of Clause 29 for a seniors housing development.

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 2006**

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

The following monetary contributions are applicable:

<b>Warringah Section 94A Development Contributions Plan</b>		
Contribution based on total development cost of \$ 21,444,147.00		
<b>Contribution - all parts Warringah</b>	<b>Levy Rate</b>	<b>Contribution Payable</b>
Total S94A Levy	0.95%	\$ 203,719.40
S94A Planning and Administration	0.05%	\$ 10,722.07
<b>Total</b>	<b>1.0%</b>	<b>\$ 214,441.47</b>

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

### **CONCLUSION**

The proposal has been considered against the relevant matters for consideration under Section 79C of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, the Statement of Environmental Effects and all other documentation supporting the application, internal and external referral responses and public submissions.

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

The application was referred to internal departments and external authorities. In the responses, the NSW Rural Fire Service has declined to issue their General Terms of Approval due insufficient information to properly assess the application and determine its suitability, thereby prohibiting the consent authority from issuing consent under the provisions of Section 91A of the *Environmental Planning and Assessment Act 1979*.

Council's Natural Environment Section, Urban Designer, Development Engineer and Landscape Officer each raised fundamental concerns in relation to the character, design and

external appearance of the development, and its associated environmental impacts. Council's Traffic Engineer identified that two driveways from Little Willandra Road cannot be supported.

The assessment has found that the proposed development is inconsistent with the Desired Future Character statement of the B2 Oxford Falls Valley Locality and pursuant to Clause 12 (3) of the WLEP 2000, cannot be consented to.

Additionally, the assessment of the proposal against the provisions of *Warringah Local Environmental Plan 2000* found that the proposal is not consistent with Clauses 56, 57, 58, 60, 63, 66, 72, 76, and 80 under the General Principles of Development Control.

The application was publicly exhibited in accordance with Warringah Development Control No. 1 Plan and a total of 9 submissions were received, all which objected to the proposal. The issues and concerns raised in the submissions are addressed in this report and generally concurred with and warrant the refusal of the application.

As a direct result of the application and the consideration of the matters detailed within this report, it is recommended that the SNPP, as the consent authority, refuse this application for the reasons detailed within the "Recommendation" section of this report.

## **RECOMMENDATION - REFUSAL**

That the SNPP, as the consent authority, pursuant to Clause 80(1) (a) of the EP&A Act 1979 (as amended), refuse Development Consent to Development Application No. DA2017/0294 for the Construction of a Seniors Housing with associated car parking and landscaping and demolition works at Lot B2 DP 358165, 53 Little Willandra Road, Oxford Falls subject to the reasons outlined as follows:

1. Pursuant to Section 91 of the *Environmental Planning and Assessment Act, 1979*, the NSW Rural Fire Service has not granted its General Terms of Approval that are required in order for the development application to be consented to.
2. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979* and Clause 2(1)(c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is not considered to be of good design.
3. 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
4. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000* (as amended), the development is inconsistent with the following General Principles of Development Control as follows:
  - Clause 56 Retaining Unique Environmental Features
  - Clause 57 Development on sloping Land
  - Clause 58 Protection of Existing Flora
  - Clause 60 Watercourses & Aquatic Habitats
  - Clause 63 Landscaped open space
  - Clause 66 Building Bulk

- Clause 72 Traffic access & safety
  - Clause 76 Management of Stormwater
  - Clause 80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service
5. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that the proposed development is not consistent with Schedule 5 - State Policies and Clause 21 of Schedule 16.
  6. 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.
  7. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979* the proposed development is not considered to be in the public interest as the development results in adverse impacts on the built and natural environment.