

DEVELOPMENT ASSESSMENT REPORT

Assessment Officer: Alex Keller

Address / Property Lot 810 DP 752038, No.74 Willandra Road,
Narraweena

Description: Construction of a boarding house

Development Application No: DA2018/1692

Application Lodged: 15/10/2018

Plans Reference: DA001 to DA401 dated 3/9/2018 drawn by *Vigor Master Pty Ltd*

Amended Plans: Amended plans, dated 12/3/2019 drawn by *Vigor Master Pty Ltd*
Amended Bushfire Report dated 15/3/2019 by *Travers Bushfire & Ecology*

Applicant: Vigor Master Pty Ltd - contact Ivy Wang

Owner: Yi Ling Jin

Locality: B2 Oxford Falls Valley

Category: Category 2 – Warringah Local Environmental Plan (WLEP) 2000

Variations to Controls (Cl.20/Cl.18(3)): Yes – Building Height and Housing density (concurrence of *Department of Planning* (DoP) required)

Referred to DDP: NO

Referred to NBLPP: YES – 11 submissions, CIV \$1.97 million

Land and Environment Court Action: None pending.

SUMMARY

Submissions: 11 submissions of objection

Submission Issues: Incompatibility with SEPP Affordable Rental Housing, incompatibility with the Desired Future Character (DFC), flora and fauna impact, water quality impacts, visual impact, housing density, bushfire.

Assessment Issues: Submission issues, DFC Category 2, height, RFB, housing density, General Principles of WLEP 2000, Judgement of *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66*

Recommendation: Refusal

Attachments: A4 Notification Plans

EXECUTIVE SUMMARY

The subject application seeks consent for a boarding house containing 29 bedrooms (including a manager's room), basement car parking and ancillary site works. The proposal is referred to the Northern Beaches Local Planning Panel, as the application has received 11 objections and the proposal exceeds the housing density control by more than 10%.

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 critical to the proposal is the relationship of Category 2 Housing in applying the housing density control and the 'existing holding' provisions under the Desired Future Character (DFC). In this case the proposal is a 'new generation' style boarding house, but includes a shared kitchen / dining area and common room. Each bedroom is capable of being a self-contained domicile as considered in *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66*.

Additionally, the proposal is inconsistent with other key elements of the DFC Statement, including visual impact, landscaping, preservation of bushland and impacts on waterways within the Narrabeen Lagoon catchment. The proposal is also considered to be inconsistent with the General Principles of Development Control with regard to building bulk, site facilities, bushland protection, pollution control, water quality impacts, sediment control, landscaping and characteristics of 'low intensity low impact' use. Additionally, Council's Natural Environment and Climate Change (NECC) Unit do not support the proposal due to impacts on biodiversity, water quality and bushland pursuant to Warringah LEP 2000.

Council requires the concurrence of the Department of Planning for the variation to the housing density. However, under the circumstances of the proposal the variation required is not recommended for support. Accordingly the proposal is recommended for refusal.

SITE DESCRIPTION

The subject site is identified as Lot 810 in DP 752038 and is addressed as No.74 Willandra Road, Narrabeena. The property is a trapezoidal shaped Lot having a splayed frontage to Willandra Road. The site has a total site area of 28,373 square metres (sqm). The site is located on the western side of Willandra Road, between Alkira Circuit and Little Willandra Road.

The site has the following boundary dimensions:

<u>Direction</u>	<u>Boundary</u>	<u>Length</u>
• North	Side	287.99 metres (m)
• East	Front	184.25m
• South	Side	181.98m
• West	Rear	120.7m

The property is a sloping allotment having a varying fall from the south western corner to the north eastern corner (frontage). Stormwater from the property is capable of being drained to a natural gully to the north or a small table drain which traverses the frontage of the site. The existing state of the land is predominantly natural bushland but has been

partially cleared for the construction of an approved dwelling house. Access is gained from Willandra Road.

The subject property is not heritage listed but may contain potential aboriginal relics or threatened species within the undisturbed bushland areas.

Land uses surrounding the subject site comprise of:

- Bushland, which adjoins the northern, western and southern boundaries.
- A Rural Fire Service building which adjoins the south eastern corner.
- A retirement village which is located opposite the subject site on the eastern side of Willandra Road, and
- Residential land (Narraweena suburb) supporting typically one and two storey detached style dwelling houses located to the east of Willandra Road.

LOCALITY PLAN (not to scale)

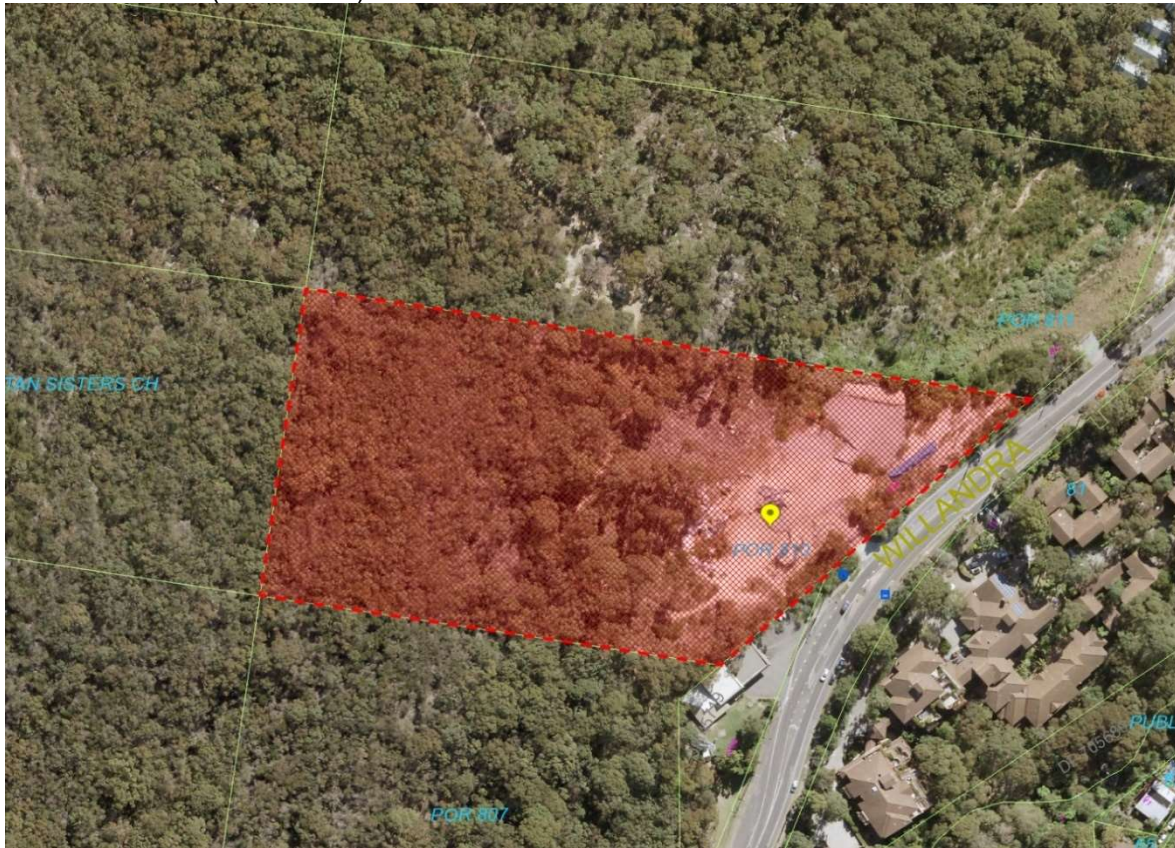


Figure 1: Site Map

RELEVANT BACKGROUND:

DA2013/0525 Development Application for the construction of a two storey dwelling house was approved by Council on 29 August 2013.

The site is currently vacant but was partly cleared and excavated for commencement works under consent No.DA2013/0525 (Refer to CC2013/0516).

DA2013/1203 Development Application for the construction of a two storey boarding house (containing 16 lodger rooms + Manager's room) was approved by way of a deferred commencement by Council on 4 July 2014. Of relevance to this approval is that it retained the building footprint, size and appearance of the dwelling house previously approved under DA2013/0525.

DA2013/1203 is now operative following a modification of consent under MOD2016/0264. No construction certificate (CC) has been issued yet.

DA2014/1164 Development Application for the construction of a two storey boarding house (containing 39 accommodation rooms) was refused by Council on 13 May 2015. In summary, the reasons for refusal included:

- Inconsistency with the DFC including housing density, visual landscape setting, low intensity low impact character, bushland protection and water quality protection.
- Inconsistency with the General Principles of Development Control including landscape open space, flora protection, building bulk, erosion control, traffic and parking, private open space and pollution control.
- Inconsistency with the objectives of the EP& A Act 1979, including the public interest.

Request for Withdrawal of DA

Concerns with the DA were raised with the applicant during discussions about the DA design and referral responses. The applicant declined to withdraw the DA and submitted amended plans without notice on 23/3/2019. This assessment has considered the amended plans and all documents received. Re-notification of the amended plans is not required or warranted pursuant to Councils notification policy.

PROPOSED DEVELOPMENT

The proposed development seeks construction of a new two storey boarding house.

Specifically the proposal will contain the following:

- Twenty-nine (29) boarding rooms, comprising 28 x lodger rooms and one (1) boarding room set-up for a live-in manager, that includes office space and a terrace;
- Fifteen (15) parking spaces (including 1 disabled persons car space) and new driveway formation;
- Six (6) motorbike spaces and six (6) bicycle spaces;
- External garbage bin holding room and truck loading bay;
- Connection to (existing) private sewer line mains;
- Landscaping, ancillary site works, including bushland clearing for bushfire safety; and
- Footpath connection along Willandra Road.

The interior floor plan is configured to include:

- **Basement Floor RL 56.00** – Basement carpark for fifteen (15) cars, six (6) motorbikes and six (6) bicycles, storage, lift and stair access.
- **Ground Floor RL 58.9** - Eleven (11) lodger bedrooms* plus one (1) manager's* bedroom (all bedrooms have an ensuite and doorway to external areas), shared lounge room, shared kitchen / dining area, terrace area, laundry, storage, lift, stairs, front entry.
- **First Floor RL61.9** – Seventeen (17) lodger bedrooms* (all bedrooms have an ensuite), shared lounge, lift, stairs.
- The height of the building is 8.9m above natural ground level.
- Note: The statement of environmental effects states that the boarding rooms will have their own kitchenette facilities. Bench space is shown on the plans, but not detailed as being fitted with a sink or stove top.

*It is not apparent that all rooms will have bench space for cooking facilities, however most boarding rooms show that such space is available to be retrofitted or accommodated.

AMENDMENTS TO THE SUBJECT APPLICATION

Amendments were made to the application on 13 March 2019 to change the roof shape and revise the submitted bushfire report.

The amended plans represent a reduced impact and did not require a further notification and advertising.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2000. (EPA Regulations)
- c) State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)
- d) Warringah Local Environment Plan 2000 (WLEP 2000)
- e) Warringah Development Control Plan 2011 (Notification only)
- f) Warringah Section 94A Development Contributions Plan (S94A Plan)
- g) State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH)

*Note: SEPP ARH does not strictly apply by virtue of LEP 2000 not having an "equivalent zone" as detailed within the SEPP.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment (EPA) Regulation 2000, Warringah Local Environment Plan (LEP) 2000 and Warringah Development Control Plan (DCP). As a result, the application was notified to thirty (36) adjoining properties and owner / occupiers for a period of a minimum 21 calendar days commencing on 31/10/2018 and being finalised on 24/11/2018. "Friends of Narrabeen" community group were also notified by letter. A notification sign was erected on the site for the notification period.

An advertising notice for the proposal was made in the *Manly Daily* newspaper on the 3/11/2018.

The site was advertised / notified as integrated development pursuant to Section 91A of the *Environmental Planning and Assessment Act 1979*.

A total of eleven (11) submissions were received in response to the application. All submissions have been read and considered. Submissions were received from the following:

Submission	Address
Friends of Narrabeen Lagoon	PO Box 845 Narrabeen
Rachel Clark	80 Elanora Road Elanora Heights
C Harris	Lot 2671 Morgan Road Belrose
A Sharp	77 Brighton Street Curl Curl
Ms Gopala Maurer (NBSCG*)	18 Gladys Avenue Frenchs Forest (for Northern Beaches Strategic Community Group)
Resident	Bellevue Street Fairlight
David Simpson	22 Penrith Avenue Wheeler Heights
Mr Peter Wheen	6 Sunlea Place Allambie Heights
Jodie Lee Gale	10 Lae Place Allambie Heights
Dr Devasha Gwenfrewi Scott	30 Ramsay Street Collaroy
J Harris	313 Weemala Road Duffy Forest

Collectively, the following issues were raised in the submissions and in summary each has been addressed below:

- Issue :** *The boarding house is inconsistent with the housing density control of WLEP 2000 and exceeds the housing density*

Comment:

The proposal exceeds the housing density control by more than 10% and this issue has been addressed in detail under the heading “Clause 20 – Housing Density” within this report including issues relating to housing and land use categories. Since the proposal breaches the housing density by more than 10% Council cannot grant consent without the concurrence of the NSW Director of Planning.

The non-compliance with the housing density is not supported in this instance. This issue has determining weight and is recommended as a reason for refusal.

- Issue:** *The boarding house is incompatible with State Environmental Planning Policy (Affordable Rental Housing) 2009.”*

Comment:

The application is lodged under LEP 2000 which is the applicable Environmental Planning Instrument (EPI) in this locality (B2 Oxford Falls Valley). The following issues have been raised in relation to *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH).

Department of Planning’s ‘Supporting new generation boarding houses’ Fact Sheet dated May 2011 states boarding houses are only permitted in equivalent zones to R1 General Residential, R2 Medium Density Residential, R3 High Density Residential, B1 Neighbourhood Centre, B2 Local Centre and B4 Mixed Use. Current zoning, B2 Oxford Falls Valley Locality (non-urban/rural) is not an equivalent zone.

The “Revised Standards for Boarding Houses” state that Boarding Houses need to be compatible with the design character of the area in which they are located. The application has not been lodged pursuant to SEPP ARH. Since there is no equivalent zone, the SEPP is not applicable. Instead the design character is addressed under the relevant WLEP 2000 General Principles and DFC as detailed within this report. Additionally, the proposal is “Category 2” development is required to demonstrate “consistency” with the provisions of the WLEP 2000 General Principles and DFC for B2 Oxford Falls Valley.

In summary the SEPP ARH is not applicable to the land and therefore the SEPP does not have determining weight.

- 3. Issue:** *The boarding house has inadequate communal facilities to cater for 29 accommodation rooms (including the manager) with a potential occupancy of 58 persons.*

Comment:

The communal facility of only one ground floor kitchen area would create difficulty for all lodgers in the boarding house living environment with the daily use of one area at meal times for such a high occupancy. This situation would therefore create pressure for persons to seek alternative arrangements such as the use of plug in appliances in private rooms or request later fit-out for private kitchenette style facilities.

Therefore, the boarding house is of an inadequate design in terms of site facilities to adequately cater for necessities of communal kitchen / dining areas within the building. No details have been provided that would prevent plumbing or power connections being installed in the bench top areas of each of the lodger rooms making them capable of being used as separate domiciles.

The proposal has not adequately addressed this issue and warrants refusal of the application.

- 4. Issue:** *The boarding house is not ‘low intensity low impact’ and the density of occupation is an accumulation of ‘dwellings’ within one building*

Comment:

Following the decision of Preston J under *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66* it is established that non-traditional boarding houses (termed “new generation” style) will trigger elements under WLEP 2000 with respect to the housing density controls due to modern design inclusions for self-contained style rooms. The detailed configuration of the boarding rooms does not negate the DFC test of low intensity / low impact and if all rooms are occupied the proposal would conceivably accommodate at least 29 persons, or up to 58 persons (given each bedroom contains a double bed). This density of occupation is very high given the DFC emphasis on limitations for housing. The substantial variation is required is addressed in further detail under the DFC discussion within this report, and is also subject to the concurrence of the NSW Department of Planning.

In summary, the variation is not justified as the proposal is inconsistent with the DFC and it is not supported that the concurrence of the Department of Planning be sought under the circumstances. The high intensity use and impacts of the proposal will detract from maintaining the integrity of the ‘existing holding’ provisions under the Warringah LEP 2000

and the rural character of the B2 Oxford Falls Valley Locality. Without the concurrence of the Department of Planning the proposal cannot be approved.

- 5. Issue:** *The proposal is an overdevelopment of the site for “micro-apartments” which should not be permitted in rural areas under the SEPP (Affordable Rental Housing) 2009, and there should be a moratorium on boarding house development.*

Comment:

The proposal is made under WLEP 2000, since the SEPP ARH is not applicable to the B2 Oxford Falls Valley Locality.

There is no moratorium on boarding house development in the rural land areas of WLEP 2000 and the implementation of a moratorium is not appropriate to target a specific development application.

In summary, this issue has been addressed in detail within this report under the heading ‘SEPP (ARH) 2009’.

- 6. Issue:** *The proposal will trigger further environmental impacts on the site due to associated works for the sewer line connection and will encourage urbanisation of the rural fringe.*

Comment:

The sewer line connection has been approved under a separate application and is subject to *Sydney Water* requirements. Connection to the sewer will abate the need for on-site effluent disposal and reduce the risk of water pollution from any reliance on an aerated waste water treatment system (AWTS).

The site is within an area that permits the use of the land for various development (“Category 2” and “Category 3”), subject to approval. Therefore, the potential for future urbanisation of the site is restricted by the applicable planning instrument.

This issue has been considered and does not warrant refusal of the application.

- 7. Issue:** *The proposal will adversely impact on flora and fauna of the site including threatened species habitat by land clearing.*

Comment:

Some bushland clearing has already been carried out following the approval of the construction of a dwelling house on the land (including the subsequent DA to superimpose a boarding house within the approved dwelling footprint). While the site has been partly cleared due to previous development approvals the proposed new boarding house brings a higher intensity and potential increased impacts on surrounding flora and fauna habitat, including riparian land. Council’s Natural Environment & Climate Change Unit (NEU) is not satisfied with the expected environmental impacts or management provided whereby the higher intensity of use will require additional clearing for bushfire protection.

Details are provided under the NEU referral comments. Therefore, this issue warrants refusal of the application.

- 8. Issue:** *The proposal will require additional bushland APZ clearing for bushfire protection and therefore increase create erosion and sediment problems.*

Comment:

The proposal has been submitted with a Flora and Fauna Assessment (Ref. 186573, dated 25/9/2018), a Waterways Impact Statement (dated 22/3/2017) and Bushfire Protection Assessment (Ref. A17048B, dated 11/9/2017). The application has been assessed by Council's NEU (Biodiversity) Section with respect to potential environmental impacts on bushland, biodiversity, water quality and sediment controls.

Council's NEU does not support approval of the boarding house and has raised objection with respect to APZ clearing, water quality risks, ecological impacts and erosion risks, as detailed in the referral response within this report.

Therefore, this matter warrants refusal of the application.

- 9. Issue:** *"The site will cause pollution of stormwater and affect water quality of the Narrabeen Lagoon catchment which will impact on Garigal Landcare work within the lower catchment area".*

Comment:

The site drains into Wheeler Creek and eventually the Narrabeen Lagoon. Areas of the catchment in the vicinity of the site are of a "Category A", high conservation significance. This issue is addressed in detail under the referral response by Council's NEU (Biodiversity) within this report.

It is considered that the high intensity of the use will exacerbate adverse impacts on the natural environment and therefore this matter warrants refusal of the application.

- 10. Issue:** *"The proposal is incompatible with the potential draft future zone inclusion for WLEP 2011".*

Comment: The inclusion of the "Deferred matter" lands to within a future zone and Warringah LEP 2011 as a draft has not been confirmed. No draft LEP has been gazetted and therefore no weight can be given to the possible future zone. The proposal must be considered under the LEP 2000 – B2 Oxford Falls Valley Locality DFC statement and built form controls.

It is considered that this issue is not a matter for refusal as the future zone is unconfirmed for exhibition at this stage.

- 11. Issue:** *"The boarding house does not protect the desired future character of the locality to restrict development as the proposal is an even larger reiteration of previous a previous development approval on the site".*

Comment:

This issue has been addressed under the heading 'Desired Future Character' assessment made within this report. In summary the concentrated intensity of use and associated impacts of scale, visual impact, building bulk, water quality, landscape clearing and inconsistencies against the General Principles of WLEP 2000 demonstrate the proposal is not compatible with the DFC statement.

This issue warrants refusal of the application.

MEDIATION

No requests for mediation were received.

LAND AND ENVIRONMENT COURT ACTION

There is no current Land and Environment Court action relating to the subject application.

REFERRALS

External Referrals	Referral Response / Comments
NSW Rural Fire Service <i>(NSW RFS)</i>	<p>The site is identified as bushfire prone land. In accordance with Section 100B of the <i>Rural Fires Act, 1979</i> the application was referred to the NSW Rural Fire Service (NSW RFS).</p> <p>In their response on 3 May 2019, the NSW RFS issued their Bushfire Safety Authority and General Terms of Approval which are to be included in any consent should the application be worthy of approval.</p>
Ausgrid	<p>The application was referred to Ausgrid service provider under clause 45(2) of <i>State Environmental Planning Policy (Infrastructure) 2007</i>. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no special service provider conditions are recommended.</p>

Water NSW	In accordance with Section 91A of the <i>Environmental Planning and Assessment Act 1979</i> the proposal was referred to Water NSW for General Terms of Approval (GTA) under Section 92 of the <i>Water Management Act 2000</i> . Water NSW provided GTA's on 18 January 2019 in relation to potential ground water impact relating to proposed excavation works.
Aboriginal Heritage Office	The site is identified as being in close proximity to, or having high potential for, aboriginal heritage relics on the land, and was therefore referred to the <i>Aboriginal Heritage Office</i> (AHO) supporting Northern Beaches Council. The AHO has provided a referral response on the 6/11/2018. The AHO raise no objection to approval subject to <i>"any areas of in situ rock outcrops that are more than 1m high x 2m across be inspected by a qualified AHO professional prior to excavation works"</i> .
NSW Department of Planning	Council cannot approve applications under Warringah LEP 2000 that seek a variation of greater than 10% to the housing density controls without the concurrence of the <i>NSW Department of Planning</i> . Detailed comments regarding concurrence requirements are provided later in this report under the heading "Other Matters for Consideration".
Internal Referrals	Referral Response / Comments
Strategic and Place Planning (Urban Design)	<p><i>"The proposal in its current form cannot be supported for the following reasons:"</i></p> <p>WLEP 2000 CI 66 Building bulk</p> <p><u><i>Referral Response Comments:</i></u></p> <p><i>"The area is characterised by low density residential detached dwellings. The bulk and scale of the proposed development with its flat large continuous wall planes of the elevation treatment could be further articulated and improved upon in the detailed resolution of architectural design. There is little detail in the articulation of the elevations and the building represents a mediocre outcome in terms of enhanced improvement to the character of the detached residential area."</i></p> <p>Schedule 8 Site analysis</p> <p><u><i>Referral Response Comments:</i></u></p> <p>Site and Context: <i>"The extent of contextual analysis provided populates one A3 page (see Drawing DA002 Site Analysis). Several items in the Site Analysis checklist are relevant for discussion with the proposed design.</i></p> <p><i>The building is 'in the round' and in the front central aspect of the site frontage to the south east. The drawings currently demonstrate no contextual relationship to the greater landscape context of the building at a fine grain level.</i></p> <p><i>The objective of any site analysis is to inform the development and design of the building in sympathy with the context resulting in a development that optimises the site constraints and provides for optimum user/occupant amenity.</i></p> <p><i>It is clear in the proposed development, and in consideration of the number of occupants that will be residing in the building, that the barest minimum of basic design principles that address visual and acoustic</i></p>



amenity, solar access, cross ventilation and circulation, including for DDA, site or contextual relationship have been addressed.

And whilst there may not be any breaches of numerical controls, the proposed design is rudimentary in its planning and architectural response to the context.”

RECOMMENDATIONS

“The following recommendations are provided to encourage the applicant to revisit the design to address basic design improvements to the development.

Site Planning and Building Typology

The applicant is encouraged to explore with a bit more rigour building typologies that address a greater level of amenity for occupants. The courtyard typology building would lend itself to the optimisation of the topography and northern aspect of the great landscape of the site.

Alternatively, a pavilion style development of modules interconnected with pathways and landscape planting that provides a cluster approach, would sit more contextually with the site and gentle topography of the land.

Planning of the internal areas of the proposed design provides a long shotgun type corridor that goes from the front entrance directly to the rear of the building with no articulation in the corridor.

The width of the corridor is also questionable in terms of DDA, such that the width should accommodate two wheelchairs passing in the corridor. The applicant is advised to consult the Australian Standard suite of documents AS1428.1-2009 to ensure adequate circulation and amenity is provided for people with disabilities.

The general design of the corridor should be widened and articulated to provide relief to the unarticulated length.

Building Bulk

Exploration of the abovementioned typologies with provide a much more sympathetic response to the landscape across the site with open space courtyards between blocks to provide improved open space, amenity and privacy.

Alternatively addressing the roof form and building bulk by breaking the form into two buildings could also be explored to assist to achieve some of the amenity issues with the current design. And provide an integrated approach to the site and greater landscape.

Roof Form

The proposed design’s roof form is a tiled hip roof [amended]. Opportunities to address solar gain with the addition of a full length skylight along the length of the building or alternatively raising the roof and providing highlight clerestory windows with operable louvres would provide for passive ventilation and stack effect to assist with the current cross ventilation issues.

Additionally this option would allow for light and solar gain to the central corridor. With this option the central corridor could be widened and opened up to provide a void to the lower level with the circulation stairs



	<p>through and around this providing access to the apartments. This would also provide for a great internal planting zone.</p> <p>Solar and Cross Ventilation Amenity <i>The current design is a double loaded corridor with rooms either side replicated at the upper level. It is an efficient, economic and austere design that shows no acknowledgement of design that is fit for purpose or responds to the specific site and context.</i></p> <p><i>The amenity and condition of these spaces will provide no comfort or cool in the summer months. With each room to be air conditioned the unsightly application of 28 external condenser units to the building will have additional visual built form impacts.</i></p> <p>Visual Privacy and Amenity <i>Whilst the planning is efficient and will represent significant cost savings in its rudimentary design the basic amenity of individual privacy from the rooms could be addressed by offsetting the door on opposite sides of the corridor so occupants don't open the door directly into the line of sight of the open door on the opposite side of the corridor. Doors should be offset to provide some privacy and amenity for the residents.</i></p> <p>Site Context <i>The site context places the property in a more exposed and prominent visual catchment of the neighbourhood and thus requires a response that is of design merit, contemporary, of its place and time and represents quality urban design. The current design fails to achieve this and as such is unsupportable.</i></p> <p>Solar Energy <i>Opportunities for Solar Energy are encouraged with the proposed development.</i></p> <p><i>The proposed design fails to achieve the basic design principles for sustainability, amenity and design excellence and as such cannot be supported."</i></p> <p><u>Planning Officer Comment</u> The reasons for refusal detailed within the Urban Design Referral assessment are concurred with and included within the recommendation of this report pursuant to LEP 2000 and the relevant General Principles and Desired Future Character.</p>
Natural Environment Unit – Bushland and Biodiversity	<p><i>"The Development Application DA2018/1692 - Construction of a Boarding House - Lot 810 Willandra Road, Narraweena is not supported for the following reasons.</i></p> <p>• Unnecessary Impact on Native Vegetation <i>"There is an unnecessary impact on canopy trees, native vegetation, fauna habitat and the previously identified Biodiversity Conservation Area from the proposed development including the Bushfire Asset Protection Zone (APZ) indicated on the plans. Modifying the design to re-orientate the building 90 degrees and re-locating the building to the south-west will significantly reduce this impact on native vegetation. There is scope for a similar development footprint to be identified on site that will not require clearing additional native vegetation beyond that consented to previously."</i></p>

• **Insufficient setbacks from Bushfire Hazard**

"The NSW RFS have requested additional information regarding the potential radiant heat exposure on the northern elevation based upon the Court imposed re-vegetation requirement of the adjoining site to the north, Lot 811 DP752038, No.76 Willandra Road Narraweena. Modifying the design to re-orientate the building and re-positioning the location to the south-west to occur entirely within the previously approved cleared land will increase the separation distance from the re-vegetation area on Lot 811."

• **Potential trigger of the Biodiversity Offset Scheme under the NSW Biodiversity Conservation Act 2016**

"The Flora & Fauna Assessment Report (Envirotech 25/09/18) has not supplied evidence relating to the triggers for the Biodiversity Offsets Scheme Threshold with respect to the development application submitted. While the impacts to native vegetation do not occur on an area identified on the Biodiversity Values map, the Biodiversity Conservation Regulation 2017 sets out the area threshold level for when the Biodiversity Offsets Scheme will be triggered. For the subject site, the area clearing threshold trigger of ≥ 0.5 hectare applies. If clearing and other impacts exceeds this area trigger, the Biodiversity Offset Scheme applies to the proposed development, including biodiversity impacts prescribed by clause 6.1 of the BC Regulation 2017.

The area of impact to native vegetation needs to be calculated in relation to the whole development. This includes buildings, landscaping, access roads, bushfire asset protection zones, fencing and any associated infrastructure such as sewer, stormwater and footpath construction.

Section 60B of the Local Land Services Act 2013 provides the definition of native vegetation which means any trees, understorey, groundcover or wetland plants native to New South Wales (established in New South Wales before European settlement). The Plans indicate an enlarged APZ that will have a direct impact to native vegetation on the site. In addition, there are currently areas of native vegetation within the previously cleared areas, including the Biodiversity Conservation Area, that need to be included within any area threshold calculation.

The APZ Plan provided in Appendix 1 of the Envirotech report, prepared by Vigor Master Pty Ltd (Drawing No. DA007 dated 03/09/2018), is incorrect. The Plan incorrectly shows the extent of native vegetation on the site, and this implies that the full range of direct and indirect impacts have not been assessed by Envirotech.

The site supports high quality fauna habitat suitable to a range of threatened flora and fauna species, and the potential impact of the development has not been adequately addressed. Previous surveys and assessments should be reviewed to inform the current study, and assessments of significance conducted for a full range of threatened species that may occupy the site and that may be potentially impacted.

In general, the Report does not address the new legislation with respect to the purpose of the Act, the assessment pathway and processes, is not specific to the application submitted, does not consider the full range of impacts to native vegetation, threatened species and their habitats, and as stated above conclude whether or not the application triggers the Biodiversity Offsets Scheme.

	<p><i>A proponent needs to supply evidence relating to the triggers for the Biodiversity Offsets Scheme Threshold and the test of significance when submitting their application to the consent authority."</i></p> <p>Warringah LEP 2000</p> <p><i>"The Statement of Environmental Effects states that the proposed development is consistent with the Desired Future Character of the B2 Locality as it seeks to retain and protect the site's existing remnant vegetation. It states that:-</i></p> <ul style="list-style-type: none"> <i>• "The proposal seeks to retain and enhance a dense vegetative buffer adjacent to the frontage of the site.</i> <i>• The proposal will be located in a previously cleared area of the site and seeks to retain and protect the remnant vegetation of the site.</i> <i>• The proposal will be sited to enhance the existing vegetation buffer to the frontage of the site, therefore the boarding house will be well screened from the street, given the 20 metre front building setback proposed."</i> <p><i>The SEE also states that the proposed development does not require any tree removal beyond that which has been previously undertaken on the site. These statements are not correct, and the full range of impacts to the natural environment have not been addressed, as the building will not be located in an area that will minimise disturbance of vegetation and landforms. The environmental mitigation measures, including the proposed Landscape Plan, do not meet the desired future character of enhance the natural landscape.</i></p> <p><i>The application has been assessed against the following controls within the LEP."</i></p> <p>• Clause 56 – Retaining distinctive environmental features on sites</p> <p><i>"The SEE incorrectly states that the proposed boarding house is located in the similar position as the previously approved dwelling house and boarding house that does not result in any direct or unreasonable impact to the existing environmental features. This statement is incorrect, and the design is not sympathetic to distinctive environmental features such as native bushland, rock outcrops and water courses on site and on adjoining land as:-</i></p> <ul style="list-style-type: none"> <i>• Location of dwelling footprint requires additional native vegetation, including trees, to be removed for bush fire Asset Protection Zone (APZ). Moving the dwelling to the north-east to already cleared land will reduce impacts of APZ.</i> <i>• Regrowth of native vegetation is occurring on-site that is located within the building footprint and APZ. Although this area was within the previously approved footprint, the new application will require clearing of native vegetation.</i> <i>• No protection measures have been proposed for trees outside the Biodiversity Conservation areas. Trees along Willandra Road require planned protection to be implemented, and a detailed Landscape Plan provided.</i> <i>• The proposal impacts the area previously identified as Biodiversity Conservation.</i> <p>• Clause 58 - Protection of existing flora</p> <p><i>As outlined above, the development has not been sited and designed to</i></p>
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	<p><i>minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native groundcover species. The development must be designed and sited to avoid any additional environmental impacts and is therefore not supported.</i></p> <p><i>In summary, while the application submitted is not supported for the above reasons by incorporation the design changes proposed. Combined with an increase in the environmental protection and mitigation measures, impacts to the natural environment can potentially be reduced to acceptable levels."</i></p> <p><u>Planning Officer Comment:</u> The reasons for refusal detailed within the NEU (Biodiversity) assessment are concurred with and included within the recommendation of this report pursuant to LEP 2000 and the relevant General Principles and Desired Future Character.</p>
Natural Environment Unit - Coast and Catchments	<p><i>"The proposed development is supported without condition and has been assessed to comply with SEPP Coastal Management. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore."</i></p>
Natural Environment Unit - Stormwater and Floodplain Engineering (Flood risk)	<p><i>The proposed DA is outside the 1% AEP extent and as such meets the flood requirements of the LEP and DCP.</i></p>

<p>Natural Environment Unit - Water Management</p>	<p><i>"The proposed development is recommended for refusal on the basis that development application has not addressed the Stormwater Quality requirements of Council's Water Management Policy.</i></p> <p><i>The applicant is advised to provide the following documentation:</i></p> <p><i>Water Sensitive Urban Design (WSUD) Strategy</i> <i>A WSUD Strategy must be prepared in accordance with Council's WSUD Technical Guidelines (attached) to demonstrate compliance with Council's Water Management Policy.</i></p> <p><i>The Strategy shall contain the following information:</i></p> <ul style="list-style-type: none"> <i>Proposed development – Describe the proposed development at the site, including site boundaries, proposed land uses.</i> <i>Catchment analysis plan – clearly showing the surface type (roof, road, landscape, forest etc.) and the total areas. This must be consistent with the land use nodes within the MUSIC Model.</i> <i>Water conservation – Demonstrate how the potable water conservation targets in section 7.1 of the Water Management Policy. For residential developments this maybe in the form of a BASIX Certificate. Rainwater reuse should be incorporated into the development which will also have a positive impact on water quality and reduce off site discharge.</i> <i>Stormwater quality – Demonstrate how the General Stormwater Quality Requirements in Table 4, 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. Council's preference is for the use of natural systems (raingardens, bioretention etc.) as they promote infiltration, provide amenity and environmental services rather than proprietary devices.</i> <i>MUSIC model - prepared in accordance with Council's WSUD Technical Guidelines unless alternative modelling parameters are justified on the basis of local studies. Details of the modelling of those elements, parameters and assumptions used. All MUSIC data files must be provided to Council.</i> <i>Integration with the urban design – Identify how the treatment measures will integrate with the development layout and the surrounding area such as the use of bioretention within the carpark areas etc."</i> <p><u>Planning Officer Comment:</u> The comments detailed within the Water Management comments and assessment are concurred with and are included as reasons for refusal within the recommendation of this report. Further details are also provided under the heading Clause 76 Management of stormwater within this report.</p>
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Landscape Officer	<p><i>Concern is raised with regard to impacts on the landscape of the proposed works.</i></p> <p><i>The location and design of the building requires additional excavation and impact in to the bushland areas of the north western side of the site</i></p> <p><i>Excavation and incursion into the land is required for building footprint, retaining walls, outdoor common area and rainwater tank.</i></p> <p><i>It is recommended that the building be redesigned to avoid further impacts on the natural features of the site and that works be restricted to those areas already disturbed.</i></p> <p><i>Landscape Plans are to be prepared by a suitable qualified landscape designer or landscape architect and provide for reinstatement of the bushland character of the locality with the use of local native species only.</i></p> <p><i>At this stage, the proposal is not supported with regard to landscape issues."</i></p> <p><u>Planning Officer Comment:</u> The reasons for refusal detailed within the Landscape referral comments and assessment are concurred with and included within the recommendation of this report.</p> <p>Further details are also provided under the heading clause 63 Landscaped Open Space within this report.</p>
Development Engineering	<p><i>"No objection to approval, subject to conditions as recommended."</i></p> <p><u>Planning Officer Comment:</u> Conditions of consent may be applied to address engineering issues.</p>
Traffic Engineer	<p><i>"Due to the narrow width of the road way along the frontage of the site, it is envisaged that there will not be suitable clearance for vehicles to pass a waste vehicle whilst servicing the site. With the number of bins to be serviced, this will relate to wait times that may lead to critical queuing along this section of road. The applicant should demonstrate how safe servicing of the site will occur without impacting on road users. The following should be considered:</i></p> <ul style="list-style-type: none"> <i>o A waste vehicle should not service the site from a bus zone.</i> <i>o A minimum clear width of 3m around the waste vehicle is required to allow vehicles to pass.</i> <i>o A vehicle must not cross a double centre line when passing the service vehicle.</i> <p><i>Based on the lack of information relating to servicing of the site, Council's Traffic Team cannot support the application in its current form."</i></p> <p><u>Planning Assessment Comment</u> The applicant submitted amended the plans on 25/3/2019 to address traffic issues by relocating the bin room and providing a truck servicing bay within the front setback, which would require trucks to enter the site and turnaround to leave. The location of the bin room has not been designed to minimise impacts on the streetscape and is therefore included as a reason for refusal.</p>

Waste Officer	No comments and no objection to approval has been raised. Conditions are required to address bin service and waste minimisation. <u>Planning Officer Comments:</u> In terms of the site layout and streetscape impact the bin room is a substantial structure in the front setback area with minimal landscape screening. This issue is further addressed under the DFC considered within this report.
Building Assessment – Fire and Disability	<i>Building Assessments raise no objections subject to conditions to ensure compliance with the Building Code of Australia.</i>
Environmental Health (Contaminated Lands)	<i>Contamination is not likely with the exception of asbestos fragments from fill and the site is not designated as contaminated. No objection to approval subject to conditions.</i>
Environmental Health (Industrial)	<i>“No objection to approval subject to conditions.”</i>
Environmental Health (Unsewered Lands)	<i>“This site is unsewered. The applicant “intends” to get approval from Sydney Water to be able to connect. This is absolutely critical as on site disposal of waste water appears to be unlikely. The application could be refused/deferred commencement until this is achieved or conditioned to allow matters to be resolved”</i> <u>Planning Officer Comment:</u> The site has already been approved for connection to a sewer main by Sydney Water and works are in progress in accordance with Sydney Water case number 168552, dated 10 July 2018, including plans 168552WW, stamped by MGP and dated 11/7/2018. Details of the contract to undertake works in accordance with Sydney Water requirements and specifications.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “SEPP 55”, “SEPP ARH” and “Warringah LEP 2000” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	No Draft Environmental Planning Instruments apply.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 (1.7 notification) applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the <i>Building Code of Australia</i> . This matter has been address via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the “General Principles of

Section 4.15 'Matters for Consideration'	Comments
the natural and built environment and social and economic impacts in the locality	<p>Development Control” in this report. The environmental concerns associated proposal relating to DFC, density, building bulk, wastewater, flora and fauna and streetscape are unsatisfactory for the B2 Oxford Falls Valley Locality, and warrants refusal of the proposal.</p> <p>(ii) While the development will contribute to the available stock of affordable rental housing in the locality the development does not ensure a satisfactory living environment for the demographic of the community that it is intended to cater to. In terms of the provision of housing, the proposed development will therefore contribute to a detrimental social impact on the locality and occupants.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The site has physical constraints which create difficulties for ground & surface water, fire protection, minimising impacts on flora and fauna, and addressing the DFC due to the proposal being of an unsuitable scale and intensity of development on site.</p> <p>The building, as configured, also cannot meet the housing density for the locality making the proposal unsuitable. In addition, the site is part of an “existing parcel” and which has implications for future development given that DA2013/0525 has taken up the shared dwelling entitlement of the ‘existing parcel’. This applies to all “housing” on the site with the exception of “Senior’s housing”.</p>
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regulations	<p>The public submissions received in response to the proposed development are addressed under ‘Notification & Submissions Received’ within this report.</p>
Section 4.15 (1) (e) – the public interest	<p>For the reasons stated in this report, it is apparent that the proposal is not in the public interest due the likely impacts on the B2 Oxford Fall Locality.</p> <p>The proposal does not satisfy the DFC including the requirement for “low intensity low impact” development and is not supported for concurrence for variation to the housing density. It is considered that approval of the proposal will create an unfavourable housing density precedent of regional significance to the Northern Beaches within the “deferred lands” area.</p> <p>Accordingly, the assessment has found that the proposal is not justified for approval in the public interest.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No 55 – Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been vacant land for a significant period of time with no substantial prior development having been undertaken. In this regard, it is considered that the site poses no risk of contamination, subject to the recommendations detailed within the Stage 1 Environmental Site Assessment (Ref.EBG-02323.Stage 1.ESA) dated 13 September 2013, prepared by *EBG Environmental Geoscience*.

No further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use with no unresolvable contamination issues. Therefore, suitable conditions may be included subject to any recommendation for approval. It is noted the report was prepared for a boarding house use previously made by the applicant for land. The report does not rely on a specific building position but assesses the state of the land as a whole residential use.

The recommendations within the report remain appropriate and the application has been considered by Council's Environmental Health section.

State Environmental Planning Policy - BASIX

As the proposed development is classified as a "Class 3 Building" in accordance with the Building Code of Australia (BCA), an "alternative assessment" applies for large boarding houses of more than 12 persons or larger than 300sqm. The proposed form of development is also subject to the energy efficiency related provisions contained within Section J - Energy Efficiency of Volume One of the BCA. Conditions requiring compliance with the BCA to address sustainable energy use (as per the BCA report, prepared by "*Thermal Performance*" dated 12.10.2018), may be included subject to any recommendation for approval.

State Environmental Planning Policy - Infrastructure

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

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

The proposal is not within or immediately adjacent to any of the above electricity infrastructure and does not include a proposal for a swimming pool; as such the development application is not required to be referred to the electricity supply authority. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

The application was referred to *Ausgrid* who did not raise any objection or provide conditions to the proposal.

Clause 101 of *SEPP Infrastructure* requires the Consent Authority to consider any development application for development with frontage to a classified road. Willandra Road is not listed as a classified road for the purposes of the SEPP.

SEPP (Affordable Rental Housing) 2009

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	Inconsistent The site is located within the (rural) B2 Oxford Falls Valley Locality of Warringah LEP 2000 and as such, is not located within an 'equivalent zone' to those listed.

The proposal is not permissible under SEPP (ARH), since it does not fall into an “*equivalent zone*”. Therefore the proposal has been lodged under WLEP 2000 under which a boarding house is permissible as a Category 2 land use.

Local Environment Plans (LEPs)

Warringah Local Environmental Plan 2011 (WLEP 2011)

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

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

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

Warringah Local Environment Plan 2000 (WLEP 2000)

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

The DFC statement for the B2 locality states:



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

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

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

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

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

Definition and Category of Development

Boarding house development is identified as a Category 2 use in this locality as it is a form of housing development which is not prohibited or listed in Category 1 or 3. In addition to being a form of housing, a “boarding house” is also a specifically described use under the WLEP 2000 - *Dictionary*.

A boarding house falls under the collective category of “housing” being a type of development for permanent residential accommodation. This is different to “other uses” that include tourist accommodation such as backpacker lodges, B&B or motel rooms.

A boarding house fits within the collective land use category of “housing” of which **housing** means development involving the creation of one or more dwellings whether or not used as a group home.

The category of “Other buildings, places or land uses” is for development other than “housing” that is not prohibited or Category 3. Since a boarding house is a form of housing development it is appropriate to be subject to the housing density controls.

A boarding house does not escape the housing density controls since the WLEP 2000 makes it clear that, by similarity a “group home” (which is also separately defined and is so configured with bedrooms and shared spaces in a building), is distinguished as “a dwelling”. Likewise a boarding house contains spaces that make it a building that has “*a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.*”

Therefore, a boarding house will by default contain a dwelling or many dwellings (conventionally being attached) and any or a number of rooms that will also be “**capable of being occupied or used as a separate domicile**”. This is particularly the case if the boarding rooms have their own external access to enter / leave the property and lodger rooms have bathrooms and bench space for cooking appliances / food preparation.

The legal context of “dwellings” within boarding houses was considered by Preston J under *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66* – see paragraphs 62-27 of Preston J decision, dated 2 May 2018. In this instance, and following this recent legal judgement, it is not appropriate for the application to disregard the housing density control as a use that is not housing and at least one or more than one dwellings.

Consideration of the development against the Desired Future Character (DFC) statement

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

- ***The present character of 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.”

Comment:

While the western half of the land is mostly undisturbed bushland, a lot of land near Willandra Road has been cleared of vegetation for site works, associated with the construction certificate for DA2013/0525 being consent for an approved detached dwelling house. Therefore, the circumstance of change to use the site for housing has commenced.

However, while a variation to the housing density for DA2013/0525 was granted on 13/8/2013 the proposal for a boarding house increases the intensity of the land use by a much higher occupancy due to the capability and configuration of boarding house accommodation. Circumstances of change to intensify the use of the site were progressed by DA2013/1203 for a 17 bedroom boarding house that utilised a similar footprint and external building appearance as the approved house for DA2013/0525.

The differences between DA2013/0525 (house) and DA2013/1203 (boarding house) required minimal change to accommodate the boarding house; by utilising the established building footprint, physical appearance, Asset Protection Zone, driveway area. This ensured the dominant impacts remained consistent. The Director of the *NSW Department of Planning* considered the circumstances of the variation to the housing density and granted concurrence to permit the approval of the 17 bedroom boarding house.

The current proposal is of a substantially higher intensity (70.5% increase in accommodation rooms) and thereby increases the development impacts on the surrounding environment. The boarding house covers a much larger building footprint of 700 sqm (plus terraces/courtyards) with minimal articulation for walls and roofing and is setback to the minimum frontage for Willandra Road. The two storey scale, single mass of the building does not demonstrate “*detached style*” required for housing.

The close proximity to the road is inconsistent with the General Principle applying to the Locality that “*buildings are to have a visual bulk and an architectural scale consistent with*

structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise.”

In summary, increased impacts include bushfire clearing, environmental site management, water runoff, building bulk, streetscape impacts and landscape appearance for the rural Locality.

The proposal will vary the housing density standard by more than 10% and such variation requires the written concurrence of the Director of the *NSW Department of Planning* before consent may be granted.

As the proposed development is not a conventional single detached dwelling house, the development is required to conform as a “low intensity, low impact” use as described in the Land and Environment judgement “*Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128*”. The following definition was provided in the judgement:

- **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.*

Low Intensity assessment

Occupation Intensity: The proposed boarding house, as submitted, does not identify the resident occupancy for up to 29 individual rooms, and only specifies rooms not be “*occupied by more than 2 people at a time*”. This creates ambiguity of the intensity of occupancy range between 29 to a potential 58 persons.

The building form is substantially higher in intensity of use to the consent issued for a (previous) dwelling house DA2013/0525 and the smaller scale boarding house (DA2013/1203) approved for the site. A plan of management (PoM) is provided to address administrative matters, facilities, parking, maintenance, waste, safety, health, security, complaints and review of the PoM.

Traffic Intensity: The Applicant has provided a Traffic and Parking Assessment Report prepared by *Varga Traffic Planning*, dated 8/10/2018 which provides a land use comparison with a ‘motel’ for traffic generation. Council previously supported a smaller boarding house on the site based on a lower expected traffic intensity potential vehicle trips per hour (6.4) during commuter peak periods. By comparison a single dwelling produces 0.85 vehicle peak commuter trips per hour, or 9 daily vehicle trips (based on the RMS Traffic Guide).

The increase in traffic movements now proposed is 11.2 vehicle trips per hour during the commuter period. While this may not adversely impact traffic along Willandra Road or the local road network performance it results in an increased intensity of use by 4.8 vehicle trips per hour. It is noted there is an operating boarding house at Bundaleer Avenue Belrose

(WLEP 2000) that has not been used to provide a more appropriate comparison of traffic generation, rather than a motel.

In summary, it is not concurred that the use satisfies the test of low intensity (as opposed to “impact”) for traffic as the boarding house will generate more traffic than the existing development within the site and an appropriate comparison of a like-for-like land use has not been made.

Density: In terms of density, the requirement for the B2 Oxford Falls Valley Locality is 1 dwelling per 20 hectares (ha). The site has a total area of 2.92 ha (Lot 810 only). The proposed development is not a conventional dwelling, and is of substantial proportions for housing uses in the rural Locality. The visible aspects such as the window fenestration, wall mass, large roofscape, large bin room, car access and entry areas, and the like, reveal the high intensity of occupation. The physical size of the building itself is not considered consistent with the density control. The concentrated occupancy of the boarding house is essentially a new building form that is of high intensity and inconsistent with maintaining the lower intensity and lower impact uses previously approved for the site. The site is subject to existing holding provision intended to protect the DFC density controls.

Accordingly, the proposal fails to satisfy ‘low intensity’ use and consistency test for Category 2 development against the DFC.

Low Impact assessment

The relevant potential impacts of the proposed development are addressed as follows:

Built Form Impact: The physical impacts of the building form on the natural landscape is substantially larger than the boarding house footprint approved under DA2013/1203. The likely external impacts are therefore more intense due to a greater occupancy which increases vegetation clearing, excavation, traffic frequency, noise, garbage management and other ancillary aspects of the land use.

Overall, the development will present as a single building entity (35m x 20m). The development falls under the group / collective land use of “Housing” category under LEP 2000 which captures a number of separately defined styles of housing. The proposal is therefore a generic alternative housing style within an ‘existing holding’. Therefore, in considering the built form impact the proposal cannot be established as being only “*one dwelling*” by reference to the DFC since the building does not resemble a conventional dwelling house for the rural landscape. The building clearly surpasses the threshold for any building form that is commensurate with visual appearance of a dwelling house. Internally the proposal has potential to be 29 self-contained rooms with each boarding room capable of fit-out for kitchenette facilities.

As the site is currently vacant, the proposed development will create a substantial visual impact due to the two storey scale and singular mass of the building with minimal landscape screening proposed due to the APZ requirements. The proposal is not of a detached style representative of a single rural dwelling scale (as was approved under DA2013/1203). The bin holding structure is an 8.5m long building across the site frontage, creating a high visual impact to the roadside which is unscreened due to a vehicle bay in front of the bin room. This is inconsistent with the DFC to *minimise impacts* on the rural landscape of the Oxford Falls Valley Locality.

Noise Impact: The boarding house will operate seven (7) days a week, and balconies and a boarding house operational Plan of Management (PoM) includes restrictions relating to visitor hours and the use of external private open space. An Environmental Noise Assessment prepared by *PKA Acoustic Consulting* dated 5/4/2017 was submitted with the Development Application. The report concludes that the proposed development can meet the noise criterion for residential development as per section 6 and section 7 of the report.

Traffic Impact: The submitted Traffic and Parking Impact Assessment prepared by *Varga Traffic Planning Pty Ltd* dated 8.10.2018 states that the anticipated traffic movements for the development would not adversely impact on the performance of the surrounding road network. The assessment concludes that car parking for 15 cars is satisfactory and the increase traffic generation will be statistically low, as concurred by Council's traffic Engineer.

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

Comment:

It is noted that the majority of existing native vegetation toward the rear of the site is to be retained as part of the proposed development. However, on the lower slopes and land in proximity to Willandra Road tree clearing is required to meet bushfire protection which exposes the building to full view from the public domain. The site is not visible from Narrabeen Lagoon or 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.***

Comment:

Vegetation and Landform: As mentioned above, the proposal seeks any further vegetation removal to that already approved on site. The Asset Protection Zone (APZ) must be expanded for bushfire protection purposes approved by the NSW Rural Fire Service. The site will retain vegetation located in the western half of the site, but further clearing is required of the lower slope west of the building. The density of new landscape planting on the site is not consistent with the desired landscape character of the area to protect, enhance and minimise disturbance of vegetation. As a Category 2 development the proposal has not demonstrated consistency with the DFC or general principles.

The site provides core habitat for many native species of fauna, including threatened fauna and in its natural condition supports a dense and diverse habitat. This includes a ground layer of vegetation that comprises shrubs, trees and other understorey vegetation. In summary, apart from the disturbed (cleared) areas, vegetation communities on the site comprises *Sandstone Heath*, *Bloodwood Scribbly Gum Woodland*, *Coastal Upland Swamp (Sydney Basin)*, with *Peppermint Angophora Forest* adjacent.

The subject site was included in the Warringah Biodiversity Conservation Study (September 2011) and assigns the following Conservation Values to the area in which the site is located:

- Conservation Significance – Creek: Category A (Wheeler Creek Catchment).
- Conservation Significance – Connectivity: Regional Core
- Conservation Significance - Rating: Very High

The boarding house and APZ would be located in regional core habitat within the Wheeler Creek Catchment and the previous protections ensured under DA2013/1203 for a small scale boarding house on the site have been foregone. The up-scaled proposal for a 29 room boarding house will broaden impacts on the remnant habitat depleting edge buffers to core bushland. A biodiversity management plan are considered necessary to restrict future clearing and prevent fragmentation of the 'existing holding'. However, the proposal has not addressed this issue and some irregularities in clearing have already occurred on site. The proposed development will require further tree removal beyond that which has been previously approved and increase potential risk / impacts on local water quality, which is contrary to the DFC.

Rural Amenities: The proposed development results in a significant increase in intensity of use relating to impacts of higher occupancy activity and intrusion of a substantial and large single massed building form for the rural landscape. The site is in a fringe location but the urban zone adjacent is not part of the Locality Statement (or LEP 2000). Therefore, the influence of development opposite the site is not considered to carry determinative weight such that the proposed higher occupancy building is consistent with the low intensity / low impact emphasis of the DFC in maintaining the rural character of the Oxford Falls Valley Locality.

Visual Materials: The proposed boarding house presents as a large two storey building of a bulk and scale similar as a single mass 35m x 20m. The chosen colours and materials are shown on the elevation plans as referenced on plan DA401 – Schedule of external materials.

- ***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.***

The site does not front Forest Way or Wakehurst Parkway, therefore specific issues relating to these road corridors as Main Roads (MR) do not apply the site.

The proposed landscaping along the site frontage includes a row of trees/ shrubs to benefit the local streetscape. However, RFS Referral Response and Bushfire Report contradict the landscape plan in so far as fire protection would allow no tree planting along the frontage of the building being "*IPA to the property boundary*". It should be noted that the frontage also contains power lines close to the boundary and it is undesirable to have planting near power lines on fire prone land. Therefore, due to the size, scale and intensity of the proposal and wide APZ buffers needed the proposal cannot achieve the landscaping proposed. This creates a high visual impact of the proposal on 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.***

Comment:

The site is already subject to erosion control issues and the proposal will risk further erosion and sedimentation impacts on waterways and riparian land, including drainage to Narrabeen Lagoon.

Conclusion on the DFC

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

Built Form Controls for Locality B2 Oxford Falls Valley

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

Built Form Control	Required	Proposed Development	Compliance
Housing Density	<p>1 dwelling per 20ha</p> <p>dwelling means a room or a suite of rooms occupied or used or so constructed or adapted as to be <u>capable</u> of being occupied or used as a separate domicile.</p> <p>housing means <u>development</u> involving the creation of one or more dwellings whether or not used as a group home.</p>	<p>2.837 Hectares – Lot 810</p> <p>NOTE: The “existing holding” is one parcel that includes Lot 807 & Lot 810 with a collective area of 5.45 hectares. The holding became a split ownership after 2012.</p> <p>The proposal is for boarding house is capable of higher occupancy than a normal dwelling. There is one dwelling entitlement within the existing holding of Lot 807 and Lot 810. The site will have competing development approvals between DA2013/0525 and this proposal. The previous approval for a boarding house on the site has not been issued a construction certificate yet.</p> <p>The Locality Statement states, <i>“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>As such the assessment of the proposal against “low impact, low intensity” is considered the pertinent test and is addressed previously in this report.</p>	<p>No* – subject to concurrence of DoP.</p> <p>For 29 self-contained boarding rooms (capable of being used as a “dwelling” in the form of a habitable “domicile”).</p> <p>1 dwelling per 1,879 sqm (0.187ha) across the whole of the “existing holding”.</p> <p>Variation is 28 fold (or 96.5% change) on the existing holding entitlement of 1 dwelling**.</p>
Building Height (NGL to Ridge RL66.59)	8.5m	8.9m	No*
	7.2m	7.2m	Yes
Front Building Setback	20m	Willandra Road 7.8m to bin storage	Yes

Built Form Control	Required	Proposed Development	Compliance
		20.0m to building and basement carpark	
Rear Building Setback	10m	172.6m	Yes
Side Setback	10m	37.2m (north) 45.4m (south)	Yes Yes
Landscape Open Space	30% of site to be landscaped (0.85 Ha)	98% (27,847 sqm) Note: The above calculation includes all landscaped areas of the site including the APZ.	Yes

******The proposal substantially exceeds the threshold previously accepted for the site and the increased density of use is affirmed by the recent legal context of what constitutes a “dwelling” within boarding houses as considered by Preston J under *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66*

*Refer to “Clause 20” assessment details below.

The proposed development fails to satisfy the Locality’s Building Height, and Housing Density Control Built Form Controls. Accordingly, further assessment is considered against the applicability of Clause 20(1).

Clause 20(1) stipulates:

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

Housing Density Variation (CI 20)

The proposal seeks a variation of 1 dwelling per 1,879 sqm for the existing holding (being a variation of 28 fold change, or 96.5% decrease variance to the holding). (Note 1:20ha comparison is not used as the holding has an entitlement on the original holding, as mapped with the gazettal of WLEP 2000.) In determining whether the proposal qualifies for variation under Clause 20(1) consideration is made in the following three step assessment:

(i) General Principles of Development Control

The proposal has been considered for variation under clause 20 and fails to be consistent with the General Principles of development control as detailed in the following section headings of this report.

In summary, variation to the housing density for such a large scale development is not supported against the general Principles and the desired future character. See the discussion on “General Principles of Development Control” in this report for a detailed

assessment of consistency for issue relating to the protection of water quality, traffic, site facilities, landscaping, minimising bushland clearing, sedimentation and conservation of flora and fauna habitat within the site.

Therefore, the proposal fails to qualify to be supportable for a variation to the development standards, under the provisions of Clause 20(1).

(ii) Desired Future Character of the Locality

In determining whether the proposal qualifies for consideration under Clause 20(1) in terms of the DFC consideration is made as follows:

Consideration of the DFC for the development is addressed in this report. However, in summary the DFC is dictated in part by the housing density standard that is also subject to restrictions for 'existing holdings'. Therefore, this issue must be addressed as follows:

In the *Locality B2 Oxford Falls Valley* the minimum area per dwelling required by the housing density standard is deemed to be the minimum allotment size for allotments created by subdivision – subject to "existing holding" provisions of land, which is adjacent or adjoining lots held in the same ownership on 8 March 1974 and having a combined area of not less than 2 hectares.

Since the holding is more than 2 hectares and the proposal is not for a "single dwelling", or "aged care" the density provision applies the purpose of housing (in this instance a boarding house) across the whole of the holding.

The proposal is subject to satisfying the DFC and, in particular, the test of "low intensity" and "low impact" for development. Part of this test also includes consideration of the key themes of the DFC for location, detached style of building appearance, bushland protection, water quality and streetscape.

In this case, the variation to the housing density of '1 dwelling per 20 hectares' is not supported due to inconsistency with the DFC and general principles. Consent to vary the housing density by more than 10% cannot be granted without the concurrence of the Director of the NSW Department of Planning. As discussed previously in this report the use of the site for a boarding house is a much higher intensity of occupation than for a single dwelling. In this case the subject proposal will result in a substantial housing density variation including a development bearing no physical resemblance to a single dwelling house. For housing purposes the proposal is contradictory to the DFT and "low intensity low impact" requirements for Category 2 development.

In conclusion the proposal fails to qualify for a variation to the development standards, under the provisions of Clause 20(1). (See discussion on "Desired Future Character" in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

Application of any State environmental planning policies have been addressed previously within this report, including the relevance of SEPP ARH.

Conclusion on Cl 20 Housing Density Variation

The development is not considered to be consistent with the general principles and key elements of the desired future character, including test of 'low intensity low impact'. Therefore, the proposal fails to qualify for variation under Clause 20 for the housing density proposed. In this respect, the variation to the Building Height built form control is not supported.

Building Height Variation (CI 20)

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

The proposed boarding house has a roof height of 8.9m which equates to a variation of 5.8%. In determining whether the proposal qualifies for variation under Clause 20(1) consideration is made in the following three step assessment:

(i) General Principles of Development Control

The building height of the proposal and relevant objectives has been considered for variation under clause 20 and fails to be consistent with the General Principles of development control as detailed below.

Merit consideration of non-compliance

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

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

The non-compliance with the building height is a minor variation of 0.4m at the apex the skillion roof shape. While this is a minor section of the roof form large floor plate of the building and spans required to cover the upper storey results in visually dominant building bulk that has no sympathy or relationship to the bulk of surrounding residential development. In this regard the proposal does not demonstrate reduced scale of 'detached style' envisaged by the DFC and does not satisfy this objective.

- *Preserve the amenity of the surrounding land.*

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

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

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

The building footprint area has a minor slope and the proposal includes a basement carpark. The principal building area has been disturbed by surface excavation and therefore the natural topography of the land is already modified. In this regard, despite the scale of the proposal, it is considered that the development responds to the topography and therefore satisfies this objective

(ii) **Desired Future Character of the Locality**

Establishing consistency with the DFC is a requirement for Category 2 uses that is a higher test than for a Category 1 use. The building height proposed is considered against consistency with the DFC. The proposal fails to qualify for a variation under Clause 20(1) due to an inadequate design response to achieve key elements of the DFC. This includes requirements for “detached style”, ensuring a landscape setting to screen the building appearance from the street and being development that represents a low intensity low impact use.

A comprehensive consideration of the DFC is made previously in this report under the heading Warringah LEP 2000.

(iii) **Relevant State Environmental Planning Policies**

Application of any State environmental planning policies have been addressed previously within this report, including the relevance of SEPP ARH.

Conclusion on Cl 20 Building Height Variation

The development is not consistent with the objectives underlying the Building Height built form control to ensure building do not become visually dominant by using a design response that is of a detached style, breaks up the built form, wall mass and roof height (including span) and is sympathetic to the bushland rural setting. Therefore, the proposal fails to qualify for variation under Clause 20 to building height as proposed. In this respect, the variation to the Building Height built form control is not supported.

WLEP 2000 General Principles of Development Control

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

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	<p>This General Principle seeks to ensure that development does not result in excessive glare and solar reflections.</p> <p>Conditions of consent will ensure that the roof finish be within the medium to dark colour range to blend with the bushland setting for the roof.</p>	Yes (subject to conditions)

General Principles	Applies	Comments	Complies
		Accordingly, the proposal is considered to satisfy this General Principle.	
CL42 Construction Sites	Yes	<p>The site provides adequate area for the handling and storage of building materials, and will not unreasonably impact on the amenity of the locality subject to construction management.</p> <p>The proposal however does not include suitably comprehensive and robust erosion control measures for the construction phase. Therefore, the proposal places water quality of the Narrabeen Lagoon catchment at risk and aquatic habitat of Wheeler Creek. This is inconsistent with the requirements for Category 2 development and warrants refusal of the application.</p>	No (Reason for refusal)
CL43 Noise	Yes	<p>Clause 43 of LEP 2000 provides “<i>Development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants</i>”.</p> <p>While it is anticipated that there will be some degree of increased noise generated from the proposed boarding house, the level of noise must be appropriately managed to ensure that there is no unreasonable impacts on the amenity of nearby dwellings. The closest dwelling is 60m east, within a retirement village.</p> <p>A noise assessment Acoustic report (dated 5 April 2017) prepared by <i>PKA Acoustic Consulting</i> has been submitted with the application and addresses noise from plant equipment and potential resident noise.</p> <p>The Applicant has submitted a boarding house operational Plan of Management (PoM) which includes guidelines and 'house rules' to be applied in order to manage and mitigate noise from the site, including amplified music, social gatherings and the like. The PoM is necessary to ensure acoustic impacts from the density of occupation are suitably minimised to protect the amenity of the surrounding residences and neighbourhood by imposing restrictions on the use of indoor and outdoor communal areas if required.</p> <p>Additionally, a standard condition of consent will require that all air conditioners and plant equipment result in noise emissions no more</p>	Yes (subject to conditions)

General Principles	Applies	Comments	Complies
		<p>than 5db(A) above ambient background level when measured from a property boundary.</p> <p>For the reasons listed above the proposal is considered to satisfy the requirements of Clause 43, subject to conditions adhering to the PoM and standard conditions for noise emissions.</p>	
CL44 Pollutants	Yes	<p>The proposal is located within the headwater catchment to Wheeler Creek and South Creek and will be connected to a new sewer line (currently under construction) to Sydney Water sewer mains in Willandra Road north of the site. A waterways impact statement (dated 22/3/2017) by <i>Woodlots and Wetlands Pty Ltd</i> has been provided to address riparian impacts but is not supported by Council's NEU – Biodiversity section due to potential biodiversity impacts.</p> <p>Therefore, the proposal is unsatisfactory against the requirements of this clause.</p>	<p>No</p> <p>(Reason for refusal)</p>
CL45 Hazardous Uses	No	No comment	N/A
CL46 Radiation Emission Levels	No	No comment	N/A
CL47 Flood Affected Land	No	No comment	N/A
CL48 Potentially Contaminated Land	Yes	<p>The area of the site which the development is proposed has historically been vacant. A statement prepared by <i>EBG Environmental Geoscience</i> (dated September 2013) has been provided detailing that the site is suitable for the proposed land use and that no further investigation is required.</p> <p>Conditions are recommended to address the site management issues raised in the applicant's environmental assessment report.</p>	<p>Yes</p> <p>(subject to conditions)</p>
CL49 Remediation of Contaminated Land	No	No comment	N/A
CL49a Acid Sulfate Soils	No	No comment	N/A
CL50 Safety & Security	Yes	<p>The proposal maintains an acceptable level of safety and security through the site design and layout and a Boarding House PoM.</p> <p>Assessment of the proposal with regard to clause</p>	<p>Yes</p> <p>(subject to condition)</p>

General Principles	Applies	Comments	Complies
		<p>50 is provided as follows:</p> <ul style="list-style-type: none"> The proposed building will have open surroundings for the building and is visible towards Willandra Road to maintain passive surveillance Entrance to the building is clearly accessible from the driveway and parking is contained with a basement area <p>Subject to compliance with this requirement the proposal is satisfactory in terms of safety and security.</p>	
CL51 Front Fences and Walls	Yes	The proposal includes no references fencing details. Accordingly, a condition of consent may be recommended detailing the fencing to be of a rural style wooden post and wire or post and rail only, to suit the bushland setting. Any fence netting should have minimum height of 1.5m and maximum aperture of 100mm x 250mm, to enable the easier movement of wildlife away from Willandra Road toward the bushland habitat areas within the site.	Yes (subject to condition)
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	No comment – Site does not have a common boundary with a Council Park or Reserve.	N/A
CL53 Signs	Yes	No advertising signs are proposed as accommodation is made by appointment. Conditions may be included to ensure signs are not erected without consent as applicable to the recommendation. (The existing “Marsden” sign erected has been identified for compliance action as appropriate.)	Yes (subject to condition)
CL54 Provision and Location of Utility Services	Yes	<p>The site has access to electrical and water services with connections to be managed by the relevant service provider.</p> <p>A Section 73 Certificate from <i>Sydney Water</i> is required, as applicable since the proposal is in a rural area and not a dwelling house and is not made pursuant to SEPP ARH.</p> <p>The site proposed to be connected to <i>Sydney Water</i> sewer line as per a sewer extension approval 168552WW from Sydney Water dated .10 July 2018</p>	Yes (subject to condition)
CL55 Site Consolidation in	No	No comment	N/A

General Principles	Applies	Comments	Complies
'Medium Density Areas'			
CL56 Retaining Unique Environmental Features on Site	Yes	<p>This General Principle seeks to ensure that development is responsive to the existing environmental features on the site and on adjoining land.</p> <p>The subject site contains extensive natural bushland, exposed rock outcrops scattered over the site and pockets of 'hanging swamp' as well as riparian land for the upper catchment of Wheeler Creek.</p> <p>The proposed boarding house is located in the approximate position as the previously approved dwelling house (as per DA2013/0525) and a smaller scale boarding house (as per DA2013/1203).</p> <p>The position does not result in any direct or unreasonable impact to natural rock outcrops. Tree clearing issues required for bushfire protection under <i>Planning for Bushfire Protection</i> to pursuant to the <i>Environmental Planning and Assessment Act 1979</i>. Much of these areas have already been cleared as part of works undertaken following the approval of DA2013/0525 (dwelling house).</p> <p>Accordingly, the proposal satisfies this General Principle.</p>	Yes (subject to condition)
CL57 Development on Sloping Land	Yes	<p>This General Principle seeks to reduce the impact of development on sloping land by minimising the visual impact of development and the extent of excavation by requiring development to step down the site.</p> <p>The subject has a variable falls from south-west to north-east by approximately 4m to 6m within the broad area proposed for the building footprint and APZ. The western areas of the site have a more significant slope rising a further 28m. These areas are not proposed to be altered by the development.</p> <p>The site is not identified on the Landslip Hazard Map. Accordingly, the proposal is considered acceptable in terms of this General Principle.</p>	Yes
CL58 Protection of Existing Flora	Yes	<p>This general principle requires that development be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation and on remnant native ground cover species.</p>	No (Reason for refusal)

General Principles	Applies	Comments	Complies
		<p>The proposal requires additional land clearing and surpasses the threshold permitted under DA2013/0525 and DA2013/1203 on the site. The larger scale and intensity of use will enlarge the impact area of the clearing works. Therefore, the proposal is not consistent with the objectives of this clause minimise impacts on remnant flora by way of containing the scale of the building form to site the established disturbed area.</p> <p>Therefore, the proposal is unsatisfactory against the requirements of this clause.</p>	
CL59 Koala Habitat Protection	Yes	The proposal has been reviewed by Council's Natural Environment Unit, Biodiversity who have indicated that as the site may be potential Koala habitat but unlikely to contain any Koala population. Accordingly, the proposal is acceptable in terms of this General Principle.	Yes
CL60 Watercourses & Aquatic Habitats	Yes	<p>The proposal has been reviewed by Council's NEU (Biodiversity) and do not support the proposed development impacts. No conditions of approval are recommended due to the potential adverse effect on local watercourses including Narrabeen Lagoon.</p> <p>Council's NEU (Riparian) have recommended refusal given the associated concerns with flora and fauna impacts, sediment water runoff and inconsistency with the DFC this general principle is not satisfied.</p>	<p>No</p> <p>(Reason for refusal)</p>
CL61 Views	No	The are no coastal or district views across the site likely to be impacted by the proposed development	N/A
CL62 Access to sunlight	Yes	<p>This General Principle seeks to ensure that development does not unreasonably reduce sunlight to surrounding properties.</p> <p>The proposed boarding house retains a reasonable and equitable level of sunlight to both the subject site and the adjoining properties with no less than 2 hours of sunlight between 9am and 3pm on 21st June.</p> <p>There is sufficient separation between the proposed building and surrounding development to prevent overshadowing. Therefore, there will be no adverse impact to the existing solar access of from the boarding house with respect to any nearby housing.</p> <p>Accordingly, the proposal satisfies this General</p>	Yes

General Principles	Applies	Comments	Complies
		Principle.	
CL63 Landscaped Open Space	Yes	<p>This General Principle seeks to ensure that development provides landscaped open space that contributes to the amenity of the area. The majority of the site will be retained as dense natural bushland but the proposal will create further APZ incursions into the remnant bushland areas which should be avoided.</p> <p>Given the high occupancy, the provision of landscaped open space does not allow for the accommodation of appropriate outdoor recreational needs of the occupants and service functions, including the provision for clothes drying and landscape screening. Further details are provided under the Referral Response by Council's Landscape Officer.</p> <p>Therefore, the proposal is unsatisfactory against the requirements of this clause.</p>	No (Reason for refusal)
CL63A Rear Building Setback	Yes	Natural bushland areas at the rear setback between 20m-100m along the rear boundary within the site will remain unchanged and protected by a Bushland Management Plan.	Yes (subject to condition)
CL64 Private open space	Yes	<p>This General Principle seeks to ensure that housing is provided with an area of private open space that can be used as an extension of the living area for dining or the outdoor enjoyment of occupants. While the proposed boarding house is not a dwelling, the intent of this control is considered relevant, and the site has sufficient land area to accommodate private open space for occupants in the areas around the communal building, and extending from the communal dining area.</p> <p>Therefore, the proposal is unsatisfactory against the requirements of this clause due to inadequate detail.</p>	Yes (subject to condition)
CL65 Privacy	Yes	<p>The closest dwelling to the subject site is to the east, "Willandra retirement village" on the opposite side of Willandra Road.</p> <p>The proposal shows that at least 8 boarding rooms have their own external access allowing separate / alternative access, being more akin to being attached domiciles.</p> <p>Adequate separation distance is available to the closest neighbours to ensure privacy to adjacent residents.</p>	Yes (subject to condition)

General Principles	Applies	Comments	Complies
		Accordingly, the proposal satisfies this General Principle.	
CL66 Building bulk	Yes	<p>The size and appearance of the proposed development is substantially larger than the boarding house approved under DA2013/1203 and has minimal building articulation / modulation to break up the wall planes and overall mass. By visual comparison the proposed building will be substantially larger than the adjacent RFS centre and the semi-detached villa units opposite, along the frontage of Willandra Retirement Village.</p> <p>Therefore, the building bulk and scale is out of context to satisfying Category 2 development and being consistent with the DFC.</p>	<p>No</p> <p>(Reason for refusal)</p>
CL67 Roofs	Yes	<p>This General Principle seeks to ensure that development provides a roof form that complements the local skyline and integrates with the built form of the development.</p> <p>The proposed roof form comprises skillion style. Thus the roof span is expansive by comparison to a single detached family dwelling. The roof expanse is approximately double that of nearby buildings; such as the RFS centre and clustered villas within Willandra Retirement Village therefore having a greater visual impact.</p> <p>Having regard to the DFC, and envisaged future development to maintain '<i>low intensity and low impact</i>' characteristics, the proposal is not consistent with the rural character of development in the B2 Oxford Falls Valley Locality.</p> <p>Therefore, the proposal is unsatisfactory against the requirements of this clause.</p>	<p>No</p> <p>(Reason for refusal)</p>
CL68 Conservation of Energy and Water	Yes	<p>As the proposed development is classified as a Class 3 Building in accordance with the Building Code of Australia (BCA), SEPP BASIX does not apply due to recent changes to Basix for large boarding houses.</p> <p>The proposed form of development is instead affected by the energy efficiency related provisions contained within Section J - Energy Efficiency of Volume One of the BCA. Conditions requiring compliance with the BCA are contained within the recommended conditions.</p>	<p>Yes</p> <p>(subject to condition)</p>
CL69 Accessibility – Public and Semi-Public Buildings	Yes	<p>The building is not a public building however accessibility is required to be maintained to satisfy a Class 1b building, including compliance with current standards under AS1428 and satisfy</p>	<p>Yes</p> <p>(subject to condition)</p>

General Principles	Applies	Comments	Complies
		<p>the <i>Disability Discrimination Act 1992</i>.</p> <p>Subject to conditions the proposal is able to meet these requirements.</p>	
CL70 Site facilities	Yes	<p>The proposal currently includes a bin storage room located on the eastern boundary adjoining Willandra Road. This structure should be setback 6.5m from the boundary with screen planting provided within the setback to provide adequate screening. In addition, large volumes of domestic garbage will be generated by the collective garbage and from 29 rooms and a communal kitchen.</p> <p>The common kitchens shows only four x 4 burner stove tops, two double sinks with two dishwashers and four fridge freezer units to properly cater for communal activity and servicing requirements. The common kitchen areas are inadequate and warrant refusal of the proposal.</p> <p>The does not indicate the adequacy of laundry washing / dryers and clothes line to service 29 rooms. A boarding house development of the potential occupancy proposed should have adequate laundry facilities provided, plus generous outdoor drying facilities.</p> <p>The site facilities proposed are inadequate to satisfy this general principle and warrant refusal of the application.</p>	<p>No</p> <p>(Reason for refusal)</p>
CL71 Parking facilities (visual impact)	Yes	<p>This General Principle seeks to ensure that parking facilities are sited and designed so as not to dominate the street frontage.</p> <p>The proposed parking facilities are provided as garage under the boarding house.</p> <p>The garage entry is located side-on to Willandra road and therefore does not create an unreasonable visual impact.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	<p>Yes</p> <p>(subject to condition)</p>
CL72 Traffic, access & safety	Yes	<p>This General Principle seeks to ensure that vehicle movements to and from a development do not interfere with the flow of traffic or compromise pedestrian safety.</p> <p>The proposed parking facilities provide direct access to Willandra Road via the proposed vehicle driveway and will comply with Australian</p>	<p>No</p> <p>(Reason for refusal)</p>

General Principles	Applies	Comments	Complies
		<p>Standard 2890.1.</p> <p>Councils' Development Engineers raised no objections to the proposed works, subject to conditions. The conditions of consent will ensure the works comply with Councils technical specifications for driveways and vehicle crossings.</p> <p>Having regard to traffic volume, the proposal must be deemed to meet the DFC as a Category 2 development. In this case a higher threshold for traffic volumes of 0.4 movements for the likely potential occupancy is warranted due to the location that has limited public transport and not conveniently close to other retail services. This results in a peak traffic movement of 23 vehicles.</p> <p>Based on the considerations made by Hussey C in "<i>Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128</i>" the proposal is therefore above the peak traffic generation that found to be unacceptable for <i>low intensity low impact</i> development as related in assessment against consistency with the DFC.</p> <p>Therefore, the proposal is unsatisfactory against the requirements of this clause.</p>	
CL73 On-site Loading and Unloading	Yes	<p>Due to the position of the parking area and main entrance to the building with the vehicle approach to the basement. The loading bay proposed for the bin room is in an unsuitable location which prevents a landscape screening to address the DFC.</p> <p>Further, the site provides adequate space to enable vehicles to enter and leave in a forward direction consistent with the requirements of this general principle.</p>	No (Reason for refusal)
CL74 Provision of Carparking	Yes	<p>Schedule 17 does not provide a parking rate specifically for boarding house uses. The applicant has submitted a <i>Traffic and Parking Assessment</i> prepared by "Varga Traffic Planning Pty Ltd" dated 8/10/2018 which applies the minimum requirements of SEPP ARH as a guide providing fifteen (15) car spaces, six (6) motorcycle and six (6) bicycle spaces. The <i>Traffic and Parking Assessment</i> prepared by "Varga Traffic Planning Pty Ltd", estimates up to 11.2 vehicle movements per hour in peak periods.</p> <p>While LEP 2000 does not provide a specific</p>	No (Reason for refusal)

General Principles	Applies	Comments	Complies
		<p>parking rate for boarding house developments it is a recommendation of this report that the higher parking provision provided for under SEPP ARH of 0.5 spaces per room be applied in this instance due to the location of the site not being close to any local shops and having a large site area enabling off-street parking to be provided easily. SEPP ARH provides this parking rate at a higher ratio of 0.4 for developments that are in less accessible locations.</p> <p>The proposal does not allocate any parking for visitors on site and the WLEP 2000 requires 1 space per unit for 'apartment style housing'. Similarly a Motel also requires 1 space per unit plus employee parking. The parking analysis for the site is not considered to be adequate to address this clause in accordance with Clause 74 and Schedule 17.</p>	
CL75 Design of Carparking Areas	Yes	<p>This General Principal seeks to ensure that carparking is designed to minimise visual impact and provide a safe and efficient environment for both vehicles and pedestrians. Car parking, motorcycle spaces, and the disabled person's parking space are within the basement structure. Willandra Road is capable of accommodating traffic from the proposal and the driveway access is satisfactory subject to compliance with AS2890.1</p> <p>Council's Traffic Engineer has reviewed the proposed parking and traffic conditions on the site and raised no objections to the design safety of the parking area.</p> <p>Accordingly, subject to conditions the proposal satisfies this General Principle.</p>	Yes (subject to condition)
CL76 Management of Stormwater	Yes	<p>This General Principal seeks to ensure that adequate provision is made for the management of stormwater.</p> <p>The application has been assessed by Council's Development Engineers and their recommendations incorporated in the consent conditions. (See further discussion under Referrals in this report.)</p> <p>Accordingly, the proposal satisfies this General Principle.</p>	Yes (subject to condition)
CL77 Landfill	Yes	<p>Landfill, if necessary, will utilise existing material on site sourced from excavation for building footprint, driveway and ancillary works. No new fill material is proposed to be brought from</p>	Yes (subject to condition)

General Principles	Applies	Comments	Complies
		outside the site. Accordingly, the proposal satisfies this General Principle.	
CL78 Erosion & Sedimentation	Yes	Appropriate management of erosion and sedimentation works on the site have not been provided to the satisfaction of Council's NEU. Detailed assessment is provided in the NEU referral response. Disturbance of the site will not minimise potential sediment impacts on Wheeler Creek and the Narrabeen Lagoon. In this regard, the <i>Waterways impact statement</i> prepared by "Woodlots and Wetland Pty Ltd" dated 22.3.2017 is not supported. Accordingly, the proposal is considered to satisfy this General Principle.	No (Reason for refusal)
CL79 Heritage Control	No	No comment	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	This clause is addressed in the Aboriginal Heritage Office (AHO) advice that should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW <i>Office of Environment and Heritage</i> (OEH) and the <i>Metropolitan Local Aboriginal Land Council</i> be contacted. Accordingly, subject to conditions the proposal satisfies this General Principle.	Yes (subject to condition)
CL81 Notice to Heritage Council	No	No comment	N/A
CL82 Development in the Vicinity of Heritage Items	No	The proposal is not within close proximity to any local heritage items identified in the Warringah LEP 2000 or Warringah LEP 2011 (applies to adjacent land).	Yes
CL83 Development of Known or Potential Archaeological Sites	Yes	The AHO have advised that for development on this site "in so far as areas of <i>in situ</i> sandstone outcrop are proposed for impact (such as overhangs over 1m in height or platforms over 2m square), the <i>Aboriginal Heritage Office</i> (AHO) recommend a preliminary inspection by a qualified Aboriginal heritage professional". There are no rock overhangs within 20m of proposed building footprint however other undeveloped parts of the property contain exposed <i>in situ</i> sandstone. No objection to approval of the proposal subject to requirement of the AHO as detailed in the referral response.	Yes (subject to condition)

General Principles	Applies	Comments	Complies
		Accordingly, subject to conditions the proposal satisfies this General Principle.	

SCHEDULES

Schedule 8 - Site analysis

The Site Analysis plan submitted for the development is unsatisfactory to address the requirements of Schedule 8.

Schedule 17 - Carparking Provision

See assessment under Clause 74 of the General Principles of this report which demonstrates the proposal's ability to satisfy the requirements of this Schedule. At full capacity the proposal could accommodate 58 adults but it is reasonable to assume a "normality" of 50% of lodger rooms having 2 persons, given the high demand for affordable rental housing in proximity to urban land and commercial centres of Dee Why and Brookvale. The submitted plans do not identify any allocated visitor spaces to the building, which would be warranted given the high intensity use.

Given the location of this development a comparable study with another operating boarding house of similar size in a rural locality (such as Lot 2506 Linden Avenue Belrose) would be appropriate. Reason being the site is a more car dependant area (as per Locality C8 Belrose North), being well away from local shops only serviced by one form of public transport. It is highly likely that this development will generate a higher demand for parking than is provided as a comparison to a "motel".

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$19,700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,970,000.

OTHER MATTERS FOR CONSIDERATION

Department of Planning Concurrence

The proposal requires concurrence from the Director of the *NSW Department of Planning* (the DoP) for variation to housing density under WLEP 2000.

In particular if the land is less than 20 hectares and more than 2 hectares "*Consent may be granted for development that will contravene these housing density standards but, if by more than 10 per cent, only with the concurrence of the Director.*"

The proposal achieves a density of 1 dwelling per 2.67 hectares for the Lot (but 1 dwelling per 5.45 hectares of the 'existing holding') and thus varies the housing density standard by more than 10% (96.5% or 28 fold) the variation is unsupportable for the holding.

Council must not grant consent to the application unless the NSW Director of Planning has provided concurrence. Concurrence has not been sought, as the application for refusal.

CONCLUSION

This report provides a comprehensive assessment of the DA for the redevelopment of the site for the purposes of a 29 room boarding house on the site known as No.74 Willandra Road, Narrabeena

Permissibility of boarding houses under WLEP 2000, as a Category 2 development, facilitates the provision of low-cost, flexible rental accommodation to a range of tenants, and is subject to consistency with the DFC Statement, Built Form Controls and General Principles. Boarding House development, as affordable housing is consistent with the State Government objective for new generation boarding houses in the metropolitan areas of Sydney.

The site already has approval for a small scale low intensity low impact boarding house that was based on a previously approved built form for a dwelling house in the same location. On that precedent of minimal physical changes to the approved dwelling house, it was considered a satisfactory development in the Locality to provide an alternative form of affordable housing to meet the housing needs of the local demographic. The additional impacts and up-scaling with the current proposal use exceeds the threshold for *low intensity low impact* development as envisaged by the DFC as demonstrated in “*Vigour Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128*”. Previous interpretations of “housing” vs “dwellings” vs “boarding house” have been clarified by Preston J in *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66*.

The B2 Oxford Falls Valley Locality states that, *future development will be limited to new detached style housing conforming with the housing density standard*. In this case, the proposal is of detached style housing but cannot conform to the density standard over the ‘existing holding’. In addition, the integrity of the DFC and General Principles are compromised by the high intensity use as associated impacts from such a large scale boarding house on the site despite being on the rural fringe of the Locality.

For the reasons stated in this report, it is apparent that while there is public benefit to be gained from boarding house style accommodation, it is not in the public benefit to diminish the local environmental planning instrument and rural character for poor quality outcomes that results in higher intensity and higher impact development than envisaged by the DFC. Issues raised in public objection to the proposal have been addressed and where applicable are concurred with as reasons of refusal in the public interest.

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan 2000;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the requirements of the General Principles of Warringah LEP 2000
- Inconsistent with the Desired Future Character of the Warringah LEP 2000, including requirement for 'low intensity, low impact' development
- Inconsistent with the aims of the Warringah LEP 2000
- Inconsistent with the test of 'clause 20' required for built form variations to LEP 2000
- Inconsistent with the requirements to demonstrate consistency with the DFC for 'Category 2' development of Warringah LEP 2000 – B2 Oxford Falls Valley
- Inconsistent with the objects specified in Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act 1979.

It is considered that the proposed development fails to satisfy the appropriate controls and assessments procedures have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Planning Panel, as the consent authority REFUSE Development Consent to Development Application No. DA2018/1692 for the construction of Boarding House on land at Lot 810 DP 752038 Willandra Road Narraweena, for the reasons outlined as follows:

1. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Warringah Local Environmental Plan 2000* in that the proposal exceeds the housing density controls. In particular
 - The B2 Oxford Falls Locality housing density controls are significantly exceeded.
 - The proposal includes multiple dwellings as established under *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66*
 - Concurrence of the *NSW Director of Planning* is required and has not been made for a variation to the housing density of more than 10%.
 - The proposal fails to qualify for a variation to the housing density and building height controls pursuant to the requirements of 'Clause 20' of the *Warringah Local Environmental Plan 2000*.
2. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the

provisions of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the Desired Future Character (DFC) Statement of the B2 Oxford Falls Valley Locality. In particular, the proposal does not satisfy DFC requirements for a “Category 2” development to conform to:

- *Low intensity and low impact uses;*
- *Satisfying the housing density standards;*
- *Detached style appearance for housing types;*
- *Enhancing the natural landscape;*
- *Minimising disturbance of vegetation;*
- *Ensuring buildings blend with the natural landscape; and*
- *Ensuring ecological values of natural watercourses.*

3. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the ‘General Principles of Development Control’. In particular the proposal does not satisfy the requirements of:

- *Clause 44 Pollutants*
- *Clause 58 Protection of existing flora;*
- *Clause 60 Watercourses and aquatic habitat;*
- *Clause 63 Landscaped open space;*
- *Clause 64 Private open space;*
- *Clause 66 Building bulk;*
- *Clause 70 Site facilities;*
- *Clause 73 On-site loading and unloading;*
- *Clause 74 Provision of carparking;*
- *Clause 78 Erosion and sedimentation;*
- *Schedule 5 – Bushland in urban areas;*
- *Schedule 8 – Site analysis; and*

4. Pursuant to Section 4.15 (1) (b) and (c) of the *Environmental Planning and Assessment Act 1979* the proposed development is unsuitable for the site. In particular the proposal exceeds the threshold considerations for ‘low intensity low impact’ development as established within *Vigour Master Pty v Warringah Shire Council [2003] NSWLEC 1128*.
5. Pursuant to Section 4.15 (1) (e) of the *Environmental Planning and Assessment Act 1979* the proposed development is not in the public interest. In particular the proposal does not meet the provisions of the relevant local



environmental planning instrument for the creation of a better environment and maintaining the desired character of the rural locality.

6. Pursuant to the *Environmental Planning and Assessment Act 1979* the proposal is inconsistent with *Clause 1.3 Objects*, for the provision of affordable housing in a manner that is consistent with the applicable local planning controls to promote a better environment.