

## DEVELOPMENT ASSESSMENT REPORT

<b>Assessment Officer:</b>	Alex Keller
<b>Address / Property Description:</b>	Lot 806 DP 752038, No.8 Lady Penrhyn Drive, Beacon Hill Construction of 10 independent living units as housing for 'older people or people with a disability', including ancillary site works
<b>Development Application No:</b>	DA2021/0545
<b>Application Lodged:</b>	2/7/2021
<b>Plans Reference:</b>	Dwg 001 to P06 dated 25/3/2021 and 18/8/2021, drawn by <i>Vigor Master Pty Ltd</i>
<b>Amended Plans:</b>	Yes (dated 18/8/2021)
<b>Applicant:</b>	Vigor Master Pty Ltd – c/o Ivy Wang
<b>Owner:</b>	8 Beacon Hill Investment Pty Ltd

<b>Locality:</b>	B2 Oxford Falls Valley
<b>Category:</b>	Category 2 – Warringah Local Environmental Plan (WLEP) 2000
<b>Variations to Controls (Cl.20/Cl.18(3)):</b>	No
<b>Referred to DDP:</b>	No
<b>Referred to NBLPP:</b>	Yes
<b>Land and Environment Court Action:</b>	No

### SUMMARY

<b>Submissions:</b>	Yes (23)
<b>Submission Issues:</b>	Overdevelopment, Desired Future Character, notification, land owner site management, Locality Statement, Built form controls, privacy, streetscape impact, traffic, construction impact, General Principles of WLEP 2000
<b>Assessment Issues:</b>	NSW LEC Court approved development, Desired Future Character, Built form controls, privacy, streetscape impact, traffic, construction impact, design amenity, accessibility, General Principles of WLEP 2000
<b>Recommendation:</b>	Refusal
<b>Attachments:</b>	Design & Sustainability Advisory Panel Minutes

## EXECUTIVE SUMMARY

The subject development application is referred to the NBLPP for determination as more than 10 submissions of objection have been received and the proposal is a class 2 residential flat building. The proposal involves the construction of a new part 2 storey building containing 10 independent living units (ILU's) for the purposes of *housing for older people or people with a disability* as a "Category 2" development within the B2 Oxford Falls Locality. The proposal includes basement carparking and ancillary site work.

The proposal will formally re-route the driveway access approved by the NSW LEC under DA2009/0800. Under the original NSW LEC approved development of the site, 32 ILU's within 8 buildings, and a community centre building was granted consent with an overall masterplan layout for the site. The number of ILU's on the site was recently increased to 34 by way of a modification to the development consent. Development work approved under DA2009/0800 is not yet completed, however most of the existing ILU's on site are already occupied.

The principal concerns with the current development proposal for the building containing 10 additional ILU's relate to changes required to the approved 'master plan' scheme for the driveway access (existing unauthorised works), loss of landscaping between buildings, increased intensity of residential use, inconsistency with the Desired Future Character, amenity impacts on the existing ILU residents and insufficient information provided to address engineering requirements.

The scheme is not supported as it has not satisfactorily responded to considerations under the Warringah LEP 2000, including concerns raised by Council's Design and Sustainability Advisory Panel.

## SITE DESCRIPTION

The site has a total site area of 2.6 hectares being an irregular triangular shape, having a dual frontage to Willandra Road and Lady Penrhyn Drive. The principal access is from Lady Penrhyn Drive with a second entry / exit point also off Willandra Road.

The site has the following maximum dimensions:

<u>Direction</u>	<u>Length / Depth</u>
East – West	282 metres (m)
North – South	153 metres

The site contains an existing dwelling house situated at the north-west corner of the site addressed to Lady Penrhyn Drive. There are eight (8) other existing detached buildings for the purposes of housing for older people or people with a disability. These buildings are identified as "A2", "B1", "B2", "C1", "C2", "C3", "C4", and a private community centre. The majority of residential units are occupied.

An internal road access and stormwater detention system has been constructed and is operational. The construction of a ninth building identified as "A1", similar to the other residential buildings, is also approved for the site but building "A1" is yet to be completed. The north eastern area of the site has been landscaped with paths, lawn and garden areas.

Part of the internal road system is incomplete and an alternative direct entry / exit point constructed from Lady Penrhyn Drive.

To the north the site adjoins vacant dense bushland and therefore the subject site is subject to bushfire hazard.

Extensive tree removal, excavation works and reshaping of the land has occurred for the retirement complex. No heritage items are identified on the site.

Land uses surrounding the subject site comprise of:

- Bushland, adjacent the site's northern, eastern and southern boundaries;
- Urban low density development (detached housing) to the west of the site;
- "Willandra Village" retirement complex, is located to the 130m north east of the site along Willandra Road (within Narraweena suburb); and
- Residential land (Narraweena suburb) supporting typically one and two storey detached style dwelling houses located to the east of Willandra Road within the Warringah LEP 2011 urban area.

#### LOCALITY PLAN (not to scale)



**Figure 1: Site Map**

## RELEVANT BACKGROUND:

**Development Application No.DA2009/0800** - Council refused consent for “housing for older people or people with disabilities” comprised of 32 Units clustered as 4 Units per detached residential building, common amenities building, car parking, driveway access, landscaping and conservation works, bushfire hazard management, a 2 Torrens title subdivision and strata subdivision of the residential units.

Following Appeal proceedings No.10974 of 2009 in the NSW Land and Environment Court (LEC) in *Lipman Properties Pty Ltd v Warringah Council [2010]* the NSW LEC issued development consent on 30/12/2010. The appeal decision also included consent details for **DA2009/1221** for the construction of pedestrian paths, ramps, service line works, and civil works in Lady Penrhyn Drive, Willandra Road and McIntosh Road associated with DA2009/0800.

**Modifications of Consent** - DA2009/0800 has been subject to various modifications of consent involving changes to the lot boundary, roadworks, selected building elements, building alignment, landscaping, enlargement of the community amenities building and stormwater drainage. The modifications include: MOD2016/0334 (no plan changes), MOD2017/0080 (LEC amended plan set – Court approval), MOD2018/0086 (refused), MOD2018/0087 (amended plans of community centre), MOD2018/0212 (amended subdivision plan) and MOD2018/0551 (amended subdivision plan).

The external appearance of the building was changed by construction certificate materials used and modification MOD2017/0080

During site works the access road off Lady Penrhyn Drive has been re-routed from the original “S” shaped entry to a direct / straight entry way as an ‘interim’.

**Development Application No.DA2019/0447** was refused consent by Council on 10 June 2020. An Appeal by the Applicant was dismissed (refusal of consent) by the NSW Land and Environment Court in the Judgment for Proceeding No.2019/239478.

**Modification Application No.MOD2021/0451** was approved by Council on 31/8/2021 to make administrative changes to selected conditions, including deletion of a redundant access handle, intended for a sewer line, on the approved Torrens title subdivision plan. This application modified development consent No.DA2009/0800.

**Modification Application No.MOD2021/0172** was approved by Council on 24/6/2021 to modify development consent No.DA2009/0800 with regard to the design of building “A1” to contain ten (10) independent living units. Therefore, the total number of aged care ILU’s for the site was increased from 32 to 34.

## PROPOSED DEVELOPMENT

The application seeks development consent to construct a building containing ten (10) independent living units, for “*housing for older people or people with a disability*” (‘aged care’). The building is configured with two ‘modules’ connected by a central access area and single basement carpark. The subject development application relies on the existing site infrastructure of DA2009/0800 and therefore also amends the road layout and increases the overall number of ILU’s on the site to 42.



Details of the development work proposed for the new building “D” is as follows:

- **Basement Carpark** (RL97.12) - parking for 12 cars, lift, stair access, bin storage and domestic storage; (ceiling level 99.72 EGL100)
- **Ground Floor** (RL99.92) - lift and stair access, 1 x 1 bedroom and 4 x 2 bedroom ILU's with bathroom, kitchen / living area, study room, storage.
- **First Floor** (RL103.70) - lift and stair access, 1 x 1 bedroom and 4 x 2 bedroom ILU's with bathroom, kitchen / living area, study room, storage..
- **Upper Roof level** (RL106.72 ridge);
- Landscaping and stormwater works to integrate / connect with the existing services;
- Driveway connection, ancillary site works, including retaining walls and earthworks; and
- Strata Title of the units by separate private certification.

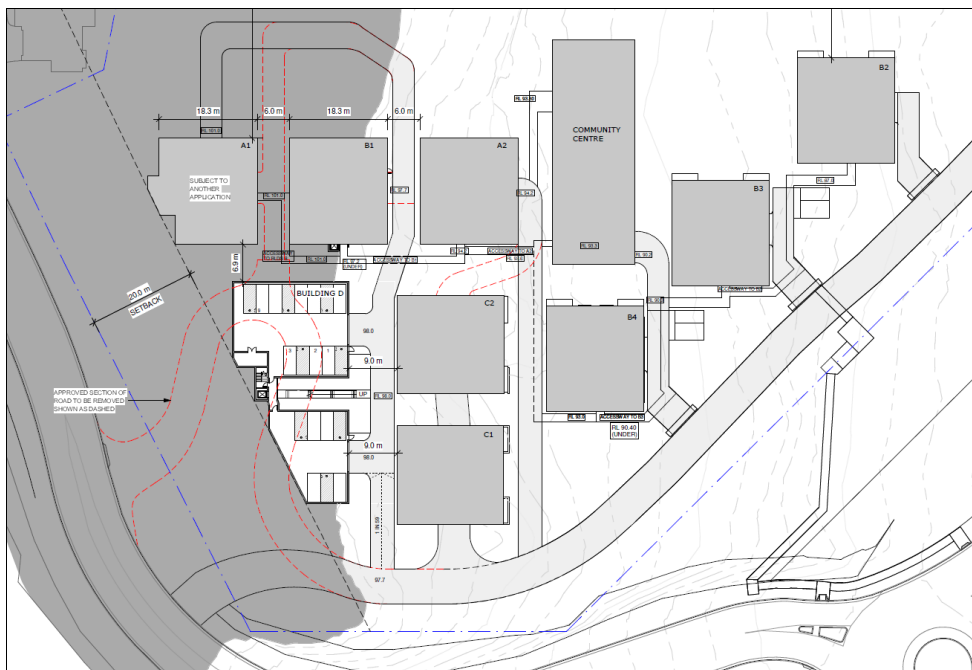


Image 2: Position of building “D” proposed positioned in the location of the approved “S” shaped driveway. Note that the existing driveways either side of “C1” and C2” (middle centre buildings) have been constructed differently to DA2009/0800 (as modified) without lawful consent. (see image 3 below)

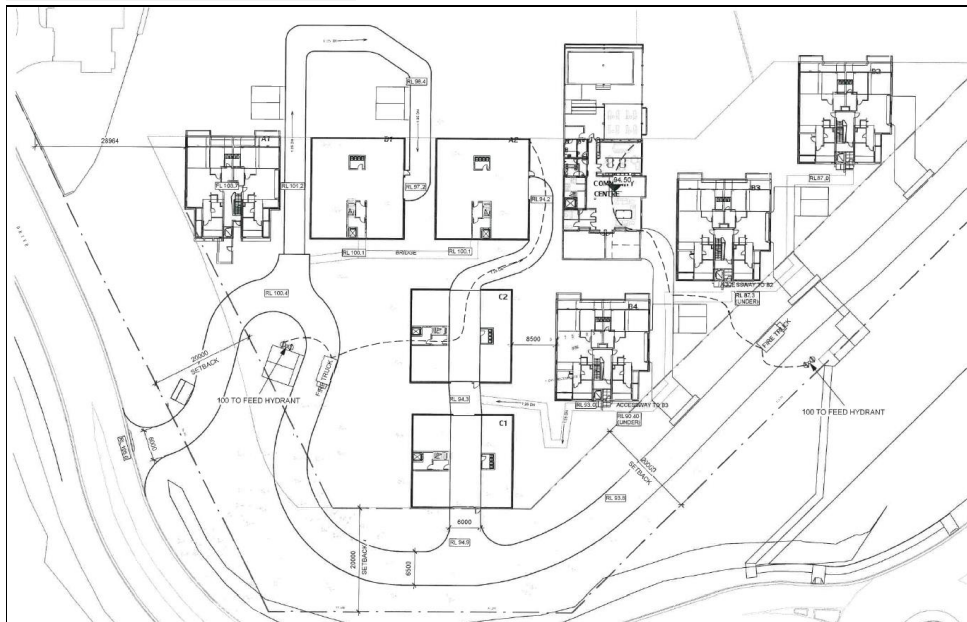


Image 3: The approved road layout as per CC2018/1419

## AMENDMENTS TO THE SUBJECT APPLICATION

Amendments to the plans were made in response to the DSAP's review of the plans. This includes resolving matters relating to privacy, access, solar access, building separation and SEPP 65 to clarify that the SEPP and *Apartment Design Guide* is not triggered.

The amended plans dated 18/8/2021 drawn by the applicant show a revised entry area, additional details of view lines, solar access and context of the ILU's with adjacent buildings. Additional information also included a detailed site analysis statement, formal response to DSAP and amended Design Verification Statement by a registered Architect.

## 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) State Environmental Planning Policy BASIX
- e) Warringah Local Environment Plan 2000 (WLEP 2000)
- f) Community Participation Plan
- g) Warringah Section 94A Development Contributions Plan (S94A Plan)

\*Note: SEPP Senior Living does not 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 Council's *Community Participation Plan*. As a result, the application was notified to adjoining properties from 14/7/2021 to 28/7/2021. The "Friends of Narrabeen" community group were also notified by letter. A notification sign was erected on front the site for the notification period and an advertising notice made in the *Manly Daily* newspaper.

The site was advertised / notified as integrated development pursuant to Section 100B of the *Environmental Planning and Assessment Act 1979* (for Bushfire safety).

Twenty three (23) submissions of objection were received. The majority of submission have been made by the internal residents living within the development site. The site is under single ownership of the DA applicant and therefore Council does not have access to NSW Land Title Office records for the current lease / unit occupancies, since the Strata Title of the existing development complex has not yet been registered. Notwithstanding this all submissions received have been equally accepted and considered by Council with formal acknowledgment letters provided by Council.

Matters raised with regard to the public interest for the assessment of the proposal considered in context of the detailed assessment under WLEP 2000 and the development application.

The amended plans and supplementary information provided related to matters relate to routine assessment matters whereby Council may seek additional information or clarification to assist with the assessment. The changes are of a routine nature and do not warrant re-notification pursuant to the *Community Participation Plan*.

### Submissions Received

A total of twenty three (23) submission were received in response to the application. All submissions have been read and considered. Submissions were received from the following:

Name:	Address:
Mr Gaven Milnes	1/8 Lady Penrhyn Drive BEACON HILL NSW 2100
Mr David Ferguson	11 A Lady Penrhyn Drive BEACON HILL NSW 2100
Mr John Myers Mrs Barbara Myers	12 Gardere Avenue CURL CURL NSW 2096
Dr Geoffrey Martin Mrs Christiane Martin	12 Valley View Road FRENCHS FOREST NSW 2086
Mrs Louise Wilson	22 / 84 Dee Why Parade DEE WHY NSW 2099
Elizabeth Dewhurst	26/8 Lady Penrhyn Drive BEACON HILL NSW 2100
Stephen Perry	27 The Greenway DUFFYS FOREST NSW 2084
Robert Yates	29 Derna Crescent ALLAMBIE HEIGHTS NSW 2100
David Vawser	3 / 8 Lady Penrhyn Drive BEACON HILL NSW 2100
Mr Peter Beattie	3 Tisane Avenue FRENCHS FOREST NSW 2086
Mr John Elliot Mrs Janet Elliott	34 McKillop Road BEACON HILL NSW 2100
Mr Rodney Hooper Pamela Hooper	34 Toronto Avenue CROMER NSW 2099
Mr Steven Wannell Ms Hazel Wannell	38 Wallumatta Road NEWPORT NSW 2106

Name:	Address:
Mr John Chubb Mrs Jill Chubb	46 Rednal Street MONA VALE NSW 2103
Ms Anne O'Connell Mr Peter Fishburn	53 Castle Circuit SEAFORTH NSW 2092
Mr Leonard Sutton Mrs Pamela Sutton	62 Arnhem Road ALLAMBIE HEIGHTS NSW 2100
Ann Sharp	77 Brighton Street CURL CURL NSW 2096
Mrs Rhonda Virgona Mr Sam Virgona	9 Iluka Road PALM BEACH NSW 2108
Barry Smith	Address Unknown
Finn Thorvaldson	Address Unknown
Robert Bayless	Address Unknown
Dr Cornelia Harris	Lot 2671 Morgan Road BELROSE NSW 2085
Friends Of Narrabeen Lagoon Catchment	PO Box 845 NARRABEEN NSW 2101

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

1. Sales 'agreements'
2. Property maintenance
3. Parking and traffic
4. Water flow and drainage
5. Privacy and overlooking
6. Construction impacts
7. Community centre use
8. Lifestyle health and amenity
9. Access
10. Overshadowing
11. Inadequate landscaping
12. Notification
13. Desired Future Character
14. Site analysis
15. Site coverage and bulk
16. Bushfire safety
17. Density of buildings
18. Wildlife habitat
19. DSAP review

1. **Issue:** *Concern that residents were led to believe during the ILU's lease purchase process that the overall development limit on the site was only for the 8 ILU buildings and community centre and there would be no additional buildings where building "D" is now proposed.*

Comment:



This is a civil matter between the land owner / management company and resident occupiers and not relevant to the assessment of the current DA as it relates to property / unit sales processes and whether purchasers were or were not appropriately informed by real estate / purchase information or contracts.

This issue is considered not relevant to the application assessment as is it relates to private arrangements / civil matters.

- 2. Issue:** *Concern that current occupants are not satisfied the maintenance, building defects and inadequate completion of landscaping within the subject site.*

Comment:

This is a civil matter between the land owner / management company and resident occupiers and not relevant to the assessment of the DA as it relates to property management. The works associated with DA2009/0800 are incomplete and no final occupation certificate is therefore available to demonstrate satisfactory completion of all works.

This issue is not considered relevant to the assessment of the current DA as it relates to existing property maintenance and ongoing site works under separately approved works and workmanship.

- 3. Issue:** *Concern regarding the adequacy of carparking for residents and visitors as well as traffic safety and access during construction, including emergency access.*

Comment:

The proposed building “D” has a compliant number of resident and visitor parking spaces. The total road network within the site is incomplete and parts of the existing road network have been constructed without development consent. Council’s Traffic Engineer have assessed the road widths, carparking and access for the proposed building. Conditions may be applied to address construction traffic, compliance with *Australian Standards*, loading and related issues. See assessment details under the heading “Internal Referrals” within this report and “Clause 71” and “Clause 72” under the heading Warringah LEP 2000 within this report.

This issue is addressed by Council’s Traffic Engineering referral response and does not warrant refusal of the application.

(Note: See separate discussion within this report regarding unauthorised road works being relied on to facilitate the current proposal vehicle access to building “D” and other parts of the site)

- 4. Issue:** *Concern regarding waterflow runoff and drainage.*

Comment:

This matter has been assessed by Council’s Development Engineer regarding stormwater capacity and Water Management Team (for Water Sensitive Urban Design) within Council. See details under the heading “Internal referrals” within this report and Clause 60, Clause 76, Clause 78 under the heading Warringah LEP 2000 within this report. Areas of the site have been illegally paved for unapproved roadworks and other unauthorised site works that disrupt the integrity of the parent engineering works / plans approved with DA2009/0800.

In summary, insufficient information has not been provided by the applicant to satisfy this assessment issue.

- 5. Issue:** *Concern that the construction of building “D” will have an adverse impact on privacy and increase overlooking toward the existing adjacent ILU’s adjacent the proposal.*

Comment:

This issue has been considered in detail by DSAP and within the assessment report pursuant to “Clause 65” of the WLEP 2000. The applicant has provided a detailed response with diagrams to represent the privacy and overlooking impacts and consideration of building separation, balcony screens and offset positions between adjacent buildings.

In summary, privacy impacts and overlooking are considered to be acceptable for internal rooms and for balcony spaces, being outdoors and within the context of the pattern of development across the complex a balcony to balcony separation of 9m is consistent with single site ‘retirement village’ style of development in Warringah. Additional privacy analysis from the applicant is also provided in the Design Verification Statement submitted.

While the construction of building “D” would replace an area of the site that is currently landscaped the privacy impact on outdoor space is consistent with the spatial separation approved by the NSW LEC with DA2009/0800, and the applicant has amended the plans to limit overlooking as far as practicable.

Therefore, this issue has been addressed and does not warrant refusal of the application.

- 6. Issue:** *Concern that the proposal for building “D” will create construction impacts on traffic, emergency access, parking, noise, dust and general amenity. Concern that this is compounded by building “A1” not yet having been constructed either.*

Comment:

Standard conditions of consent are able to be applied to address this issue in relation to construction hours and noise to manage expected activity as a consequence of the site works and building processes associated with the development. Security fencing during construction will maintain safety and the building design considered to be acceptable design for “*Crime prevention through environmental design guidelines*”. Additional conditions may be applied to ensure the preparation and implementation of a *Construction Traffic Management Plan*, compliance with the *Protection of the Environment Operations Act*, site management requirements and defined work / delivery hours for the duration of the works as well as any Emergency services access considerations.

In summary, this issue is discussed in within the Traffic Engineering Referral comments provided as well as “Clause 42”, “Clause 72” and “Clause 50” of the “WLEP 2000” under the relevant heading within this report.

Therefore, this issue has been addressed and does not warrant refusal of the application.

- 7. Issue:** *Concern that the proposed increase in ILU’s and occupancy will impact other residents ability to use the community centre facilities within the retirement village complex.*

Comment:

Under a previous modification of consent to DA2009/0800 the community centre was substantially enlarged and is capable of serving the day to day needs of residents with the site. The facility is for the private use of residents within the site and access to and from the building is administered within the management arrangements for the site. No information is available as to whether physical access to the on-site community centre should be altered to assist accessibility and convenience of the existing residents.

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

**8. Issue:** *Concern that the additional development on site for building “D” impacts the lifestyle health and amenity of existing residents.*

Comment:

This issue relates to lifestyle of occupants, personal health and amenity they are currently accustomed to, living within the existing complex. The construction of building “D” would create a short term disruption during works and also permanent change to the visual outlook from some ILU’s and increase the residential housing density on the subject land. “Lifestyle” and personal health issues are not matters that can be feasibly assessed in terms of the applicable planning controls. General amenity issues of privacy, safety, solar access, traffic, parking, landscaping, noise and the like are considered under the relevant heading of the “General Principles” pursuant to WLEP 2000 within this report.

This issue is considered and does not warrant refusal of the application, where sufficient information has been provided by the applicant to address that issue.

**9. Issue:** *Concern that access to the existing ILU’s in the vicinity of building “D” will be obstructed during works and in the longer term create parking and traffic safety issues as well as potential difficulty for ambulance and fire appliances.*

Comment:

Access for vehicles is required to comply with Australian Standards and *Planning for Bushfire Protection* within the site. The proposed building and internal pathway connections area also required to comply with AS1428 for disabled person access. Detailed consideration has been provided by the NSW RFS referral response, Council’s Traffic Engineer and Access Report (prepared by PSE Consulting). This issue is able to be addressed by conditions.

Therefore, this issue has been addressed and does not warrant refusal of the application

**10. Issue:** *Concern that the proposed building will create overshadowing to adjacent ILU’s.*

Comment:

This issue is discussed in detail under heading for “Clause 62” and “Clause 64” pursuant Warringah LEP 2000 within this report, including solar access considerations made by DSAP referral. In summary, the proposal has not provided sufficient information to accurately delineate the solar access to proposed private open space requirements of building “D” and the impact on the existing ILU buildings of “C1” and “C2”. In particular this applies to ground lower floor level ILU’s and identifying hourly change in direct sunlight on 21 June.

Insufficient information has been provided to address this issue and therefore warrants refusal of the application.

- 11. Issue:** *Concern that the proposal will result in inadequate landscape space between the ILU's and that there is incomplete landscaping works on the site that will be further delayed from completion in accordance with the original site 'master plan' scheme.*

Comment:

The proposal complies with the net landscaping area component of 30% required for the subject land as per the applicable Built Form Controls.

Substantial inconsistencies with the NSW LEC approved landscape master plan for the site and what has currently been undertaken as landscape works exist. A landscape plan has been provided to address landscaping works surrounding the proposed building "D". See detailed comments provided by Council's Landscape assessment under the heading "Internal Referrals" and "Clause 63" of the WLEP 2000 within this report. This issue is also discussed in detail under the heading 'Desired Future Character' and within the DSAP comments provided. Site works and landscaping are currently incomplete on the site due to the situation whereby building "A1" and associated road works that are yet to be constructed.

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

- 12. Issue:** *Concern that existing occupants with the subject site and a notification sign was not erected.*

Comment:

Exhibition was undertaken in compliance with Council's *Community Participation Plan* and using official NSW Land Titles Office records which Council relies on for letter notifications. As the site is not yet Strata subdivided the subject site remains under the single land ownership of the development company with its business address for correspondence. The applicant provided a photo taken on 13 July 2021 demonstrating that the sign was properly secured to the front fence of the property along Lady Penrhyn Drive. The development application was also notified in the local newspaper of the *Manly Daily*.

Regardless of the notification limitations all submissions to Council have been considered and acknowledged in writing. Adequate time was permitted for any person to make a written submission, including after the notification period ended.

This issue has been addressed and does not warrant refusal or re-notification of the application.

- 13. Issue:** *"Concern that the proposed development is not consistent with the desired future character of the locality or General Principles of Development Control for WLEP 2000" and the increase of 10 units does not retain the existing low intensity low impact development threshold on the site approved by the NSW LEC.*

Comment:

The proposal in part seeks to change the approved intensity the development density from 34 ILU's to 44 ILU's. This results in a concentration of built form in terms of the visible

building mass and scale, tightly spaced, with roads in between the buildings. The buildings and concrete road sections between detracts from the DFC by the intensified development pattern.

This issue has been addressed under the heading 'Desired Future Character' assessment in terms of the particular concerns relevant to the proposed development. In summary, the concentrated intensity of use and cumulative associated impacts of a massed building form, intensity and impact demonstrate the proposal is not consistent with the WLEP 2000.

This issue warrants refusal of the application.

- 14. Issue:** *Concern that a site analysis should be done and this would preclude the site from further development.*

Comment:

The applicant has provided a site analysis that is sufficiently detailed to address the relevant parts of *Schedule 8 – Site analysis* pursuant to WLEP. A site analysis should influence the design response of a development however it is not intended to prevent prohibit development.

Therefore, this has been addressed and does not warrant refusal of the application.

- 15. Issue:** *“Concern that the site coverage and bulk of the building is detracts from the approved development complex and surrounding amenity”.*

Comment:

This issue is addressed in context with the assessment discussions provided under the heading “Desired Future Character” within this report. In summary the development proposal concentrates and intensifies the use of the site by a significant increase in built form. While the building intends to present as 2 modules it is in effect 1 building with at 40m long western wall and building footprint that is substantially larger than the other ILU buildings already on the site.

Therefore, this has been addressed and does not warrant refusal of the application.

- 16. Issue:** *Concern that the site is affected by bushfire hazard and the proposal compromises fire safety requirements for the NSW RFS.*

Comment:

The NSW Rural Fire Service have advised that the building surrounds (including the setback to Lady Penrhyn Drive) is to be managed as part of the inner protection area (IPA), and landscaping is to comply with landscape restrictions under *Planning for Bushfire Protection 2006*. The NSW RFS requirements include evacuation and fire-fighting access requirements as detailed in the referral response provided.

This issue has determining weight and warrants refusal of the application.

- 17. Issue:** *Concern that the change in density of buildings is not consistent with the approved pattern of development on the site and detracts from landscape residential amenity.*



Comment:

This issue is considered in context with the DFC locality statement under the heading “WLEP 2000” within this report. The concrete driveway areas constructed between the existing buildings and proposed building “D” prevent any large canopy trees and dense plantings to enhance the residential amenity within the development complex. The constructed driveways beside buildings “C1” and “C2” were not approved with DA2009/0800 and therefore unauthorised works. The proposal therefore depends on illegal site works to facilitate the development application in access to building “D”. This is not acceptable as it requires the use a development application to provide tacit approval for unlawful site works.

This issue has determining weight and warrants refusal of the application.

- 18. Issue:** *Concern that proposal reduces landscape space that is potential habitat for native wildlife from impact of clearing and the approved landscape scheme.*

Comment:

The application has been provided with a detailed landscape plan that includes a mix of native trees and other plant species to provide potential habitat for wildlife which includes a 20m wide front boundary setback on the western side of building “D” proposed. The existing broader landscaping ‘master plan’ works for DA2009/0800 are incomplete due to unfinished buildings and road works with that development consent. Retaining landscape open space contributes to the desired future character of the B2 Oxford Falls Locality and in particular the integration of new development into the bushland characterisation. This development removes crucial elements of revegetation of the site which was required to establish the consistency of the development with the DFC in order to gain consent. This is addressed under the WLEP 2000 later in the report under heading “Desired Future Character”. The landscape spacing between buildings is also important for internal site amenity and providing habitat for native wildlife, just as does the landscape distribution and quality along the setback zones assists to achieve wildlife corridors toward the boundary with adjacent properties. This proposal removes the possibility of vegetation to the west of buildings “C1 and c2 that afforded a wide buffer around the “S” shaped driveway. The proposal therefore does not contribute positively towards this goal of the wide landscape buffer being retained as a backdrop to the developed core area of the site.

This issue has been addressed under DFC and “Clause 58” within this report and in summary is a reason for refusal of the application.

- 19. Issue:** *Concern that the proposal was not supported by the Design and Sustainability Review Panel (DSAP) and therefore is inappropriate for further development on the site.*

Comment:

The applicant has provided a detailed response and amendments to the plans in order to address the critical design review by DSAP. In summary, this issue is addressed under the heading “Internal Referrals – Design and Sustainability Review Panel” including any matters that not been satisfactorily resolved.

This issue has been considered and any matters that have not been resolved are identified as reasons for refusal.

## NSW LAND AND ENVIRONMENT COURT ACTION

Nil

## REFERRALS

EXTERNAL REFERRALS	Referral Response / Comments
<b>NSW Rural Fire Service</b>  <i>(NSW RFS)</i>	<p><b>Supported with conditions</b></p> <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 dated 26/8/2021, the NSW RFS issued <i>their Bushfire Safety Authority and General Terms of Approval</i> which are to be included with conditions should the development application be determined for approval.</p>
<b>Ausgrid</b>	<p><b>Supported with conditions</b></p> <p>The application was referred to Ausgrid service provider under clause 45(2) of <i>State Environmental Planning Policy (Infrastructure) 2007</i>.</p> <p><i>Ausgrid</i> did not raise any objection and referral advice is provided as per the Ausgrid response on 20/7/2021 are to be included with conditions should the development application be determined for approval.</p> <p>Due to existing buildings on site the property already has electrical mains service connections.</p>
<b>Aboriginal Heritage Office</b>	<p><b>Supported with conditions</b></p> <p>There are known Aboriginal sites in the area although no sites are recorded in the current lot.</p> <p>One area of potential was identified on of the property, a sandstone overhang. Provided that this area is not impacted then the Aboriginal Heritage Office would not foresee any further Aboriginal heritage issues on the proposal. If the area would be impacted, then the Aboriginal Heritage Office would recommend further investigation ('due diligence' under the <i>National Parks and Wildlife Act 1974</i>) by a qualified Aboriginal heritage professional prior to any development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

<p><b>Strategic and Place Planning (Urban Design)</b></p> <p><b>Design and Sustainability Review Panel</b></p>	<p><b>GENERAL</b></p> <p><b><u>1. Strategic context, urban context: surrounding area character</u></b></p> <p>“The proposal is for ten (10) additional independent living units (ILU) within an existing development complex for ‘older people or people with disabilities’, currently approved as a development for 34 units, a community centre and ancillary site works.</p> <p>The proposal is in the ‘deferred area’ of the Warringah LEP 2000 and in the B2 Oxford Falls Valley Locality.</p> <p>The Panel notes that housing for older people or people with disabilities (‘aged / disabled persons’) is permitted adjacent to “urban land” that borders the B2 Oxford Falls Valley Locality.</p> <p>The Panel’s principal charter is related to the design quality of development, not its permissibility.</p> <p>The design quality is related to its relationship to neighbours (in this case primarily the existing dwellings on the site), relationship to them and any adverse impacts, relationship to the public domain, and where the desired future character of the area has been articulated, how the design responds to, and fits with the desired future character, and the internal and external amenity of the design for occupants and visitors.</p> <p>The Panel has been briefed by council officers about the context and the history of the development.</p> <p>Although it has not been possible to visit the site, due to COVID restrictions, the architectural drawings, Google street-view, and most importantly the images of the existing development that are part of the landscape set of drawings has provided a good understanding of the existing development and site conditions, despite there being no supporting site analysis being provided.</p> <p>For future reference the applicant should note that the Panel considers a thorough site analysis to be an <i>essential part of any design presentation and DA documentation</i>.</p> <p>A thorough site analysis is required by cl 22 WLEP 2000: <i>‘Consent must not be granted for any development, except complying development, involving the erection of, or additions to, a building, or the subdivision of land unless the consent authority has considered a site analysis’.</i></p> <p>Appendix 1) of the <i>Apartment Design Guide</i> provides a good indication of what is required in a site analysis and the Panel expects the analysis to clearly demonstrate how the design has taken into account the constraints and opportunities of the site, not simply describe climatic and topographic conditions etc.</p> <p>This is also specifically required by the WLEP2000:</p> <p><i>‘A site analysis should be accompanied by a written statement explaining how the design of the proposed development responds to the site analysis, and the relevant general principles of development control in Part 4 and the Locality Statement.’</i></p>
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	<p>This is a very significant omission in the documentation provided to the Panel.</p> <p>Additionally, there is no clarity on the successive changes that have been made since the original approval, and exactly what building (siting and forms) and landscaping is currently approved. Noting that the site works are yet to be completed. This lack of clarity makes any assessment extremely difficult / impossible.</p> <p><b><u>2. Desired future character</u></b></p> <p>The 'deferred lands' has a 'bushland character'. The desired future character is worth reiterating in full: The WLEP 2000 requires that Council be satisfied that the development is consistent with the desired future character (DFC) prior to granting consent. Of relevance to the building design, the DFC for the locality requires:</p> <p><i>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.</i></p> <p>It is not clear to the Panel how the existing development is consistent with this desired 'future character' which does not resemble 'detached style housing' in any respect. There are many examples of single storey ILUs around Sydney, the existing development more closely resembles 'residential flat buildings'</p> <p><i>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.</i></p> <p>N/A</p> <p><i>The natural landscape including landforms and vegetation will be protected and, where possible, enhanced.</i></p> <p>It is not clear to the Panel how the proposed development achieves this based on the cumulative impacts from the existing development and how this responds to the original development passing this test.</p> <p><i>Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.</i></p> <p>It appears that the entire site within the mandatory setbacks has been erased. The proposal continues this erasure, removes all existing vegetation, and provides a very low proportion of deep soil. Additionally, the introduced landscaping does not seem to have any relationship to the existing or originally approved conditions.</p>
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	<p><i>Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.</i></p> <p>Council has provided the Panel with the material palette of the original approved DA. This does not appear to have been adhered to, and the justification for these changes that have significantly reduced the quality of the design, has not been provided.</p> <p><i>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.</i></p> <p>N/A</p> <p><i>Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.</i></p> <p>N/A</p> <p><b>Recommendation:</b></p> <p>It has not been demonstrated to the Panel how, in the context of the Desired Future Character, the proposed works which further erode the landscape setting, rather than enhance it, from the original application.</p> <p><b><u>3. Scale, built form and articulation</u></b></p> <p>The scale is not consistent with the desired future character specifically 'detached housing' that is almost without exception in Sydney a maximum of 2 storeys – the proposal has a 3 storey form and presentation to the majority of the access ways and approaches.</p> <p>The built form has been determined entirely by conforming with the absolute minimum setbacks required.</p> <p><b>Recommendation:</b></p> <p>The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.</p> <p><b><u>4. Landscape</u></b></p> <p>Buildings are proposed to be built right up against and cut back to align with the setback, and opens onto landscaping that includes unspecified evergreen trees, which are not part of the desired future character. This results in poor design outcomes and indicates over development.</p> <p>Site calculations for landscape seem to rely on the setbacks. However, these are not usable spaces for residents as they are inaccessible and are to be designed as screening. While providing outlook, this is not able to utilise the required landscape to its full positive effect.</p> <p><b>Recommendation:</b></p> <p>The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.</p> <p><b><u>5. Access</u></b></p> <p>Accessibility around the site is not provided except via contorted routes along linear concrete driveways and through other buildings. The only</p>
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	<p>lobby accessibility is either via stairs or through car parks. This is not acceptable.</p> <p>Comfortable, accessible, and pleasant pedestrian access for the new residents to the community centre and wider landscaping is required.</p> <p>The applicant suggested in the presentation that the driveways would be 'convivial meeting places for residents to interact' or words to that effect. This is not evident in the existing development where the 'shared' ways provide very little amenity, are designed solely for the movement of vehicles, do not include well designed landscaping, and are very unlikely to ever be used as gathering or meeting spaces.</p> <p>The proposal removes the approved curved driveway and an extension of the northern driveway into the basement carparking of Block A1. This curved driveway would retain the more direct access to the basement parking for Block A1, and could remove the need for the northern driveway which will further decimate the existing landscaping and natural rocks features of the site and cause unnecessary and negative impacts on the apartments of blocks A1 and B1 which look out to the north.</p> <p><b>Recommendation:</b></p> <p>The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.</p> <p><b><u>6. Amenity</u></b></p> <p>The amenity of the proposed dwellings is poor. They have with pitiable outlook, orientation, and little solar access for a number of the dwellings. The larger sections of the balconies are off the bedrooms rather than the living rooms. In addition, they reduce the amenity and outlook of existing dwellings on the site.</p> <p>Driveways are immediately adjacent to bedrooms with little opportunity for screening</p> <p>The built form that has been determined entirely by conforming with the absolute minimum setbacks required, means the lower level units have very little outlook, or look directly at other buildings or onto unshaded drive ways. The upper level units' views to the east will be dominated by the roofs of the units below.</p> <p><b>Recommendation:</b></p> <p>The panel does not make any recommendations because suggestions for improvements would infer that the proposal could be supported; it cannot.</p> <p><b><u>7. Façade treatment / Aesthetics</u></b></p> <p>Refer to previous comments. The panel notes that the materials, composition, cladding, roof forms and external shading devices in the original DA attempted and were reasonably successful in responding to the bushland setting and achieving the 'desired future character'. The current built form and proposal has none of these qualities or characteristics.</p>
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	<p><b>Recommendation:</b></p> <p>The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.</p> <p><b><u>8. Sustainability</u></b></p> <p>No sustainability measures in excess of minimum compliance have been included. Any additional apartments would require reasonable passive design initiatives (such as north facing living rooms) and sustainability initiatives (such as total electrification of the apartment and rooftop PV panels for onsite renewable energy production).</p> <p><b>Recommendation:</b></p> <p>The panel does not make any recommendations because suggestions for improvements would infer that that the proposal could be supported; it cannot.</p> <p><b>PANEL CONCLUSION</b></p> <p>The existing buildings bear little resemblance to the original approved DA and shown on drawings dated 19-06-2009 provided to the Panel for reference.</p> <p>It is not clear to the panel how the original DA met or was consistent with the 'desired future character' of the area.</p> <p>The Panel notes that the existing development is significantly different to that originally approved in terms of quality of materials, architectural detailing, environmental controls and built form that were more sympathetic to the bushland setting. The proposal intends to extend the unsympathetic forms and materials.</p> <p><b>The Panel cannot see any benefit or justification for any additional development on the site beyond what has already been approved, which has already been increased since the initial approval.</b></p> <p><b>The Panel does not support the proposal for any additional development on the site, and would be very unlikely to given its lack of design quality, its inability to demonstrate qualities consistent with the "desired future character" of the area, and the impact it would have on the existing residential accommodation."</b></p> <p><u>Response to DSAP Referral</u></p> <p>The applicant has provided amended plans and detailed information in response to the above DSAP comments:</p> <p><i>"Following the meeting with Council's Design and Sustainability Advisory Panel and in response to the comments and recommendations provided by the Panel, the proposed architectural design has been revised. Below is a summary of the Panel's comments and the changes have been made in response to each comment.</i></p> <p><b>1. A thorough site analysis is required under clause 22 of Warringah LEP 2000. It should be accompanied by a written statement.</b></p>
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	<p><u>Applicant Response:</u> <i>An additional Site Analysis Statement is prepared to provide all information required by clause 22 and schedule 8 of WLEP2000 and appendix 1 of ADG.</i></p> <p><u>Planning Assessment comment:</u> A site analysis has been provided to satisfy the requirements of the Warringah LEP 2000. Therefore this issue has been satisfactorily addressed by the applicant.</p> <p><b>2. Desired Future Character needs to be considered and complied with.</b></p> <p><u>Applicant Response:</u> <i>A detailed assessment against the desired future character requirements is contained in the Statement of Environmental Effects prepared by PPD Planning Consultants. The new amendments made to the building design also address the concerns about the compliance of desired future character.</i></p> <p><u>Planning Assessment comment:</u> The proposal would be required to be substantially amended and downsized to address the DSAP comments. The information provided by the applicant does not satisfy this issue by DSAP.</p> <p><b>3. Scale, built form and articular need to be consistent with the desired future character specially 'detached housing'</b></p> <p><u>Applicant Response:</u> <i>Building D is redesigned by dropping approximately 800mm to all levels. It is now a two-storey building under the definition of SEPP 65 that complied with the desired future character particularly conforming with the detached styled housing requirement.</i></p> <p><u>Planning Assessment comment:</u> The proposal would be required to be substantially amended and downsized to address the DSAP comments regarding scale, built form and articulation. The building design remains substantially the same and while SEPP 65 and the ADG do not apply the revisions made to the plans do not satisfy this issue by DSAP.</p> <p><b>4. Concerns about landscape design and calculations.</b></p> <p><u>Applicant Response:</u> <i>As illustrated on page 4/4 of the Landscape Plan, dense landscape plantings are installed to maintain leafy setting of the site. The proposed additional landscaped area will enhance the current situation and could be also considered as an improvement comparing to the lengthy curved road as currently approved.</i></p> <p><i>The landscaped area available to the residents of building D is not limited to the adjacent areas around building D but the entire village including the large landscaped open space at the northeast part of the village.</i></p> <p><u>Planning Assessment comment:</u></p>
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	<p>Landscaping design has been addressed by Council's Landscape assessment officer with details provided under the heading "Internal Referrals" within this report. While the proposal complies with the numerical built form controls the loss of landscaping that reduces the landscape setting and DFC has not been addressed to maintain the appearance of "low intensity / low impact development and a bushland character within the central area of the site.</p> <p><b>5. Accessible pathway connecting the new building D to the community centre is required.</b></p> <p><u>Applicant Response:</u>  <i>The main entrance of building D is redesigned to include an accessible pathway with direct entrance to the centre lobby on basement level and another direct entrance with stairs to the ground floor. The accessible pathway connecting building D to the community centre is also shown on the plans. 10km/h shared zone signage will be installed for the section of the internal road that shared by pedestrians and vehicles.</i></p> <p><u>Planning Assessment comment:</u>  This issue relies on the unauthorised driveway construction being approved as part of the development application. The development application cannot approve unlawfully constructed works as part of the proposal. Therefore this issue is not satisfactory for approval.</p> <p><b>6. Concerns about internal amenity, outlook and solar access.</b></p> <p><u>Applicant Response:</u>  <i>Additional drawings P04 to P06 are prepared to illustrate the design of sill height, window location and screening device. Considerations have been given to avoid any unreasonable overlooking issue.</i></p> <p><i>Additional drawings P01 to P03 are prepared to demonstrate the calculation and compliance against ADG requirements on natural ventilation and solar access.</i></p> <p><u>Planning Assessment comment:</u>  Additional detailed sections and diagrams have been provided by the applicant to satisfy the information requirements of this issue. Refer to details under "Clause 64" within this report.</p> <p><b>7: The new building needs to have similar façade treatment as in the original DA approval.</b></p> <p><u>Applicant Response:</u>  <i>Building D is designed to have similar façade treatment as in the original DA approval. The proposed external finishes, materials and colours are the same with the original DA approval.</i></p> <p><u>Planning Assessment comment:</u>  This issue is superseded by subsequent modification of consent that changed the colour palette for the buildings and the majority of the development complex. Therefore this issued does not warrant refusal of the application as muted tones of mid-green and earthy colours are used.</p>
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	<p><b>8: Sustainability measures need to be provided.</b></p> <p><u>Applicant Response:</u>  <i>No gas heater or cooking appliance is proposed. The new building D will be the same with the existing buildings by using ducted aircon system and electric cooktop. All existing buildings have solar panel installed on the roof. Solar panels will be installed to new building D as well.</i></p> <p><u>Planning Assessment comments:</u>  This issue has been addressed by the information provided by the applicant for the development application. BASIX and NatHERS compliance have been demonstrated as being satisfactory. This issue is suitable to be addressed by conditions.</p> <p><b>Summary of Planning Assessment comment:</b>  The applicant has provided amended plans and additional information where appropriate which generally address DSAP comments. These matters are further addressed under the relevant heading sections of the "Warringah LEP 2000" within this report.</p>
<b>Landscape Officer</b>	<p><b>Supported with conditions.</b></p> <p>The proposal seeks consent for construction of an additional seniors living building accommodating ten (10) independent living units with associated basement car park and landscaping.</p> <p>Council's Landscape Referral section has assessed the application against WLEP2000, B2 Oxford Falls Valley Locality.</p> <p>The proposal has been presented following discussions during LEC proceedings relating to DA2019/0447, which was refused by the Court. The landscape plans provided with the application are considered acceptable with regard to the relevant planning controls and previous discussions.</p> <p>No objections are raised to approval with regard to landscape issues subject to conditions.</p> <p><u>Planning Assessment comments:</u>  Landscape conditions recommended are concurred with.</p>
<b>Natural Environment &amp; Climate Change - Biodiversity</b>	<p><b>Supported conditions.</b></p> <p>The application seeks approval for the construction of a new building in the existing retirement village, including new soft landscaping. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <ul style="list-style-type: none"> <li>• Biodiversity Conservation Act 2016 (BC Act)</li> <li>• Warringah Local Environmental Plan 2000</li> <li>• B2 Oxford Falls Valley Locality</li> </ul>



	<p>The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values.</p> <p>NEU-Biodiversity have no objections to the proposed landscaping (Paul Scrivener Landscape 2021). Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p> <p><u>Planning Assessment comments:</u> Biodiversity conditions recommended are concurred with.</p>
<b>Natural Environment &amp; Climate Change - Water Management</b>	<p><b>Not supported - Insufficient information</b></p> <p>The proposal seeks consent for construction of an additional seniors living building accommodating ten (10) independent living units with associated basement car park and landscaping.</p> <p>The supplied documentation is insufficient to demonstrate compliance with the water quality requirements of Council's Water Management Policy.</p> <p>The applicant is to submit a WSUD Strategy in accordance with Council's WSUD &amp; MUSIC Modelling Guidelines available from the link below.</p> <p>The site updated MUSIC Model files <u>must</u> be submitted to the Council for review.</p> <p><u>Planning Assessment comments:</u> Water management information is required to be submitted at DA lodgement. This issue cannot be conditioned and therefore warrants refusal due to insufficient information.</p>
<b>Development Engineering</b>	<p><b>Not supported – Insufficient information</b></p> <p>A review of the submitted drainage report and plans indicates that there is insufficient information to assess the application to ensure the design complies with Council's Water Management Policy. The proposal relies on connection of stormwater from the new buildings and road system into the existing drainage system on the site. No calculations or drainage model has been provided with the submission to determine if the system will meet the requirements of the policy.</p> <p>The catchment plan submitted does not include all the impervious areas for the site and a summary table detailing the area bypassing the OSD tank etc. to assess if the existing system will function as designed. It is considered further details of the existing system including the as constructed OSD tank, pipe system and impervious areas must be provided with the application.</p> <p>The proposal relocates the originally approved driveway crossing on Lady Penrhyn Drive to the current as constructed location. This issue has not been addressed by Council's Traffic Engineer. It is</p>

	<p>considered that the current line marking will need to be adjusted adjacent to the crossing to permit vehicles to turn safely into the site. This issue is to be addressed by Council's Traffic Engineers.</p> <p>Development Engineers cannot support the application due to insufficient information.</p> <p><u>Planning Assessment comments:</u> Stormwater runoff and OSD information is required to be submitted at DA lodgement. This issue cannot be conditioned and therefore warrants refusal due to insufficient information. Traffic engineering issues are addressed by the Traffic Engineering referral response.</p>
<b>Waste Officer</b>	<p><b>Supported with conditions.</b></p> <p><b>Waste Management Assessment</b> Acceptable - subject to conditions. Bin room of acceptable size located in underground carpark.</p> <p>Note: Council does not provide waste collection services to this retirement village.</p> <p><u>Planning Assessment comments:</u> Waste management conditions recommended are concurred with.</p>
<b>Building Assessment – Fire and Disability</b>	<p><b>Supported with conditions.</b></p> <p>As the works are all new, compliance with the National Construction Code can be achieved. There are no objections or special conditions (standard conditions applicable).</p> <p><u>Planning Assessment comments:</u> Building assessment conditions recommended are concurred with.</p>
<b>Traffic Engineer</b>	<p><b>Supported with conditions</b></p> <p><b>Proposal description:</b> Expansion of an existing seniors living.</p> <p>The proposal is for the construction of a new building on the south-western portion of the site, to be known as building "D", comprising a total of 10 Independent Living Units (ILUs) including eight x 2-bedroom+study apartments and two x 1-bedroom+study apartments with an associated basement car park. Off-street parking for building "D" for a total of 12 cars will be provided.</p> <p>Vehicular access to the parking area is provided via an internal driveway and service road that currently services the site and provides direct access to Lady Penrhyn Drive and Willandra Road. Development Approval has previously been obtained under DA2009/0800 for the construction of a seniors living development on the site, comprising a total of 32 ILUs across 8 seniors living buildings,</p>

	<p>with the inclusion of a central community centre for residents. This development is complete</p> <p>Warringah LEP 2000 applies to the subject site.</p> <p>Under the WLEP, the development cannot be refused on the grounds of parking supply if it provides at least 0.5 car spaces for each bedroom in a development for Housing for older people or people with a disability. Similarly, if the development comprises 8 or more dwellings and provides visitor parking it can also not be refused.</p> <p>The plans prepared by VIGOR MASTER Pty Ltd dated 25.03.2021 have been reviewed by Traffic team.</p> <p><b>Parking Requirement and Design</b></p> <ul style="list-style-type: none"> <li>Onsite parking is provided in the basement for a total of twelve (12) cars which exceeds the WLEP 2000 off-street minimum parking requirements by 3 spaces however, no designated visitor parking spaces are proposed. For residential unit development 1 visitor space for every 5 units would normally be required and for a 10 unit development is therefore considered appropriate that no less than 2 of the car parking spaces be designated for visitor parking. This can be conditioned.</li> <li>The design of the internal car park is in accordance with the Australian Standard <i>AS2890.6:2009 Parking Facilities-Off Street Parking for People with Disability</i> Section 2.2 Parking space-dimensions Point 1 Angle parking spaces.</li> <li>Although parking space and carpark dimensions are compliant with Australian Standard requirements no swept path analysis has been provided in the traffic report. It is suggested that this be undertaken for B99 cars accessing both basement carparks on building "D" North and South to demonstrate that forwards entry and exit is possible from all spaces to the internal roads.</li> <li>A circulation roadway width of approximately 4.5m has been noted on the plans however it is noted that the roadway as constructed is approx. 5.8m to 5.9m in width. As the roadway is more than 30m long in order to access building "D" and is also used to access building B1 and potentially building A1 (if approved) it must provide passing opportunities for two way traffic and a width of at least 5.5m would be required. This would ensure compliance with <i>AS2890.1:2004 Off Street Car Parking</i> Section 3.2.2. The circulation roadway width should be confirmed on amended plans.</li> <li>There is no information provided on servicing, loading and unloading area/delivery area and emergency vehicle spots on the site plans. An onsite facility for the loading and unloading of service, delivery and emergency vehicles are to be screened from public view and designed so that vehicles may enter and leave in a forward direction.</li> </ul>
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	<p><b>Traffic Impact</b></p> <ul style="list-style-type: none"> <li>The proposal will generate minimal traffic (4 vehicle trips per hour) during the weekday peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance.</li> </ul> <p><b>Conclusion</b></p> <p>The traffic team has no objection to the proposal in principal, and it can be supported subject to the following conditions:</p> <ul style="list-style-type: none"> <li>visitor parking spaces be labelled on the car park layouts.</li> <li>swept path analysis be undertaken for B99 Cars accessing both basement carparks on building "D" North and South from/to the internal roads.</li> <li>some information about loading/unloading area, delivery area and emergency vehicle spots be provided on the plans.</li> </ul> <p><u>Planning Assessment comments</u></p> <p>Traffic engineering have provide detailed conditions to address the above traffic assessment. These matters are achievable since the site is also required to maintain access for Fire Fighting Appliance vehicles and the existing infrastructure / driveway space is available.</p>
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## 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 BASIX" and "Warringah LEP 2000", "SEPP 65" and SEPP (Housing for Seniors or People with a Disability) 2004
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	<p>Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land).</p> <p>Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential (aged care) purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.</p>
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Nil
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed

Section 4.15 'Matters for Consideration'	Comments
	<p>conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. The proposal has been submitted with a design review by a qualified architect. (See details under the heading SEPP 65)</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Following the completion of the notification period some minor additional information was sought in relation to considerations regarding urban design, solar access, privacy, access, setback / height compliance, and amenity considerations. The information is of a routine nature for assessment consideration and does not substantially change any elements of the design plans or environmental impacts. Re-notification of the plans is therefore not required by the <i>Community Participation Plan</i>.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is able to be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter is able to be addressed via a condition of consent as applicable,</p>



Section 4.15 'Matters for Consideration'	Comments
	<p>specifically to internal fit-out requirements for this type of housing</p> <p>.</p>
<p><b>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</b></p>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the “General Principles of Development Control” in this report. The development assessment addresses the proposal relating to DFC and General Principles of Development; including visual amenity, building bulk, landscaping building setbacks and streetscape impacts for the B2 Oxford Falls Valley Locality for Warringah LEP 2000.</p> <p>(ii) The development will contribute to the available stock of housing for aged or disabled persons in the locality the development. WLEP 2000 permits the use of the land to be used for the social support in the available supply of housing for Warringah and the wider area.</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. The proposal seeks to increase the economic supply of housing for aged or disabled persons.</p>
<p><b>Section 4.15 (1) (c) – the suitability of the site for the development</b></p>	<p>The site has physical constraints which are influenced by existing buildings, appropriate setbacks to meet the DFC, accessibility and bushfire management. In this regard the proposal seeks to utilise the area was to be taken up by the “S” shaped driveway. The building footprint is in a similar position of the site that was subject to extensive site works and there are no trees in the area to be disturbed. The proposal seeks to maintain the existing approved use of the land for housing for aged and disabled persons.</p> <p>The site includes special provisions for bushfire safety that came into effect with the Rural Fires Act 1997 and the particular requirements / allowances given to “<i>housing for older people or people with a disability</i>” on the urban to rural interface. The NSW RFS provided a referral response pursuant to Section 100B, dated 16/8/2021.</p>

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
<b>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regulations</b>	See detailed consideration of submissions within this report under the heading “submissions”.
<b>Section 4.15 (1) (e) – the public interest</b>	<p>The public interest is considered in the context of the proposal, submission issues raise and the provisions applying to the B2 Oxford Falls Valley Locality for Category 2 development.</p> <p>The assessment has found that the proposal is not justified for approval in the public interest for reasons listed in the recommendation of this report.</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 bushland for a significant period of time with and only a dwelling house no substantial other prior development having been undertaken.

The requirements of SEPP 55 were addressed for the aged care development on the site with development application DA2009/0800. During site preparation and construction works for DA2009/0800 the land was cleared, developed and is now occupied for residential purposes. No site contamination issues have been notified to Council (such as buried waste or the like). The site is not adjacent a potentially contaminating use (e.g. service station) that might lead to future contamination risks and the area of the building footprint contains soil disturbed during site works.

#### **State Environmental Planning Policy – BASIX (2004)**

The development application was submitted with a BASIX Certificate No.1195179M dated 16 April 2021 to address the requirements of this SEPP.

The performance rating scores for water (42), thermal comfort (Pass) and energy (45) comply with the target scores required under the SEPP.

#### **State Environmental Planning Policy – Infrastructure (2007)**

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 to modify the existing facility swimming pool.

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 and referral advice is provided as per the Ausgrid response on 20/7/2021.

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

Any requirements of Sydney Water for water and sewer connections are administered by separate processes directly through Sydney Water (Section 73 Certificates where applicable).

### **State Environmental Planning Policy- Design Quality of Residential Apartment Development**

This Policy applies to the State for development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (a) the development consists of any of the following:*
  - (i) the erection of a new building,*
  - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
  - (iii) the conversion of an existing building, and*
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
- (c) the building concerned contains at least 4 or more dwellings.*
  - i. The development comprises 10 attached dwellings and is technically 2 storeys being partly excavated into the slope of the site with the basement less than 1.2m above existing ground level. Ground level is taken as the existing ground (survey) level, since earthworks visible on site have occurred by artificial modifications of the landform as being 'temporary' with a lot of surrounding civil works still being incomplete or changed during the construction phases of DA2009/0800).*
  - ii. At per the survey plan dated 2/6/2021 drawn by Survcorp, the existing ground level along the eastern side of the basement wall is RL99.74 to RL99.13 along the front of*

the basement (41m length) of building “D”. The finished level for the basement ceiling is RL99.72

- iii. Alternatively the original site survey plan dated 16/3/2009 drawn by Craig & Rhodes Surveyors, the natural ground line (as per original survey) is RL99.5 to RL100.0 along the front of the basement (41m length) of building “D”.
- iv. The building does not trigger (b) to qualify as a 3 storey residential flat building under the SEPP.
- v. While the proposal is “housing” in the form of a residential flat building within the B2 Oxford Falls Locality the configuration of the building for aged or disabled persons is permitted on the site (as Category 2 land use) and meets the requirements of *Clause 40 Housing for older people or people with disabilities* (including Schedule 16)
- vi. Development for the purposes of flat buildings (pursuant to SEPP 65) is not considered to be consistent with the B2 Oxford Falls Valley locality, or the semi-rural setting, regardless of the density relaxation permitted for ‘aged care’ housing.

### **State Environmental Planning Policy - Housing for Seniors or People with a Disability (2009)**

Sections of the SEPP do not apply where that part of the SEPP is preceded by the words “a development application made pursuant to this Chapter” (See *Mete v Warringah Council* [2004] NSW LEC 273)

#### **Part 1 General**

The development proposal is consistent with the applicable clauses under this Part.

#### **Part 1A Site Compatibility Certificates**

Not required for the proposal as it replaces an existing approved building for the same purpose.

#### **Part 2 Site-related requirements**

The proposal is required to demonstrate consistency with the applicable clauses under this Part where there is no provision in the WLEP 2000 for that site related requirement.

#### **Part 3 Design Requirements**

Applied under WLEP 2000 (see *Mete v Warringah*)

#### **Part 4 Development Standards to be complied with**

Applied under WLEP 2000 (see *Mete v Warringah*)

#### **Part 5 Development on land adjoining land zoned primarily for urban purposes**

Applied under WLEP 2000 (see *Mete v Warringah*)

#### **Part 6 Development for vertical villages**

Not applicable

#### **Part 7 Development standards that cannot be used as grounds to refuse consent**

Applied under WLEP 2000 (see *Mete v Warringah*)

## **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 nominated the land in the Oxford Falls Valley and Belrose North localities as a "deferred matter" 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 Desired Future Character (DFC) statement for the B2 Oxford Falls Valley locality states:

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

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

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

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

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

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

The proposal seeks consent for "Housing for older people or people with disabilities". The land use is identified as a specific Category 2 use and is permissible within the B2 Locality only on land described in paragraph "C" of the Housing density control. Paragraph C states

that:

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

The LEP provide an explanatory note on “categories” of development which reads:

*“To assist with understanding: Category One development is development that is generally consistent with the desired future character of the locality, Category Two development is development that may be consistent with the desired future character of the locality, and Category Three development is development that is generally inconsistent with the desired future character of the locality.”*

### **Consideration of the development against the Desired Future Character**

Before granting consent to the proposal, Clause 12(3)(b) of WLEP 2000 requires that the consent authority must consider the DFC described in the locality statement. As the proposal is a ‘Category 2’ use it must maintain consistency with the Desired Future Character (DFC) Statement and General Principles of development control. As such, the following provides consideration of the development when tested 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:**

The new building covers a larger building footprint than the other existing ILU buildings but is similar in appearance in terms of external materials, parking location, height, roof form and window and balcony style. Development for the purposes of large, multi-storey residential flat buildings is not considered to be consistent with *low intensity* development for the non-urban locality, regardless of the density relaxation permitted for ‘aged care’ housing. In this regard SEPP 65 is intended to deal with apartment style development normally seen in medium density zones, and not a rural fringe / semi-bushland setting. Maintaining a two storey detached style in small modules that are “consistent with structures on adjoining or nearby land” has not been adequately demonstrated. In this case the building is some 40m x 20m in its footprint that is substantially larger than any adjacent or nearby buildings.

The DFC requires that all “future development be limited to detached style housing” and that the housing density standards are required to be conformed too. The built form controls permit that *“on land that adjoins a locality primarily used for urban purposes and on which a dwelling house is permissible, where there is no maximum housing density if the development is for the purpose of “housing for older people or people with a disability”*. As such the proposed use is specifically granted discretion against the housing density standard. However, the DFC still requires aged care development to be “detached style” and be of “low intensity, low impact” use.



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 proposal may be assumed to have an occupancy of 2 persons per unit, being up to 20 persons for the building as a maximum. Intensity considerations must also extend to the whole of the site also, as the development controls apply in context of the whole of the site. Therefore, the proposed building should not just be considered in isolation as a ‘stand-alone’ building. The DFC is seeking to create a detached and dispersed development pattern, with development dispersed within a semi-rural / bushland setting. Development application No.DA2009/0800, originally sought the limitation of 32 Units (likely 64 persons) in small detached ‘pavilions’ or small ‘modules’ dispersed on the site, with landscaping dispersed between the building and wide setback zones to the north and west, in order to characterise a bushland setting. This was depicted within DA2009/0800 as a form of ‘master plan’ for the site. A number of modifications have occurred to the original master plan concept and most other principal buildings have been completed, including the ‘community building’. The addition of building “D” creates a highly concentrated development pattern that is intensive in terms of its urbanised character, loss of landscaping between buildings for road works and completely ‘building out’ most buildings on 2 or 3 sides for many of the ILU modules and all 4 sides to building “C2”.

#### ***Traffic Intensity:***

The proposal raises the threshold of traffic intensity generated by the existing development on the site. Traffic to and from the building is intensified by the additional 10 dwellings, or 29% dwelling uplift / numerical change to the site as whole (not including visitors). It is therefore, a significant change to the existing “low intensity” approved by the NSW LEC with DA2009/0800 and not substantially the same as the approved 34 dwellings (as modified).

#### ***Density:***

In terms of density, the requirement for the B2 Oxford Falls Valley Locality is 1 dwelling per 20 hectares (ha) and the subject property already contained a dwelling house within Lot 806 DP 752038. The existing dwelling house was excised as part of DA2009/0800 by two lot subdivision.

The WLEP allows housing for aged care on the subject site to avoid the strict numerical density control, but retains the limitations of the DFC that seek “low intensity/low impact”. The proposed building “D” does not encroach into the front setback. The wall height, building height, and building separation is similar to adjacent residential buildings (as they currently appear on site). The physical size of the building itself however is not consistent with built form outcomes expected with the approved master plan of DA2009/0800. While the proposal has 2 ‘modules’ the overall outer footprint span is 41.5m x 22m.

The scale and shape of the new building “D” form creates a substantial density impact on the site and intensification from the approved development under DA2009/0800.

Accordingly, the proposed DA does not maintain ‘low intensity’ use and consistency test required 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 within the area to be used for road works associated with DA2009/0800. The proposed building “D” is to be substantially embedded into the hillside and the likely external impacts affect the pattern of development for the existing buildings due to the similar spatial separation, style of building, and completely building out the south-western area of the site. Building C2 is proposed to be completely surrounded by buildings and other closer modules to building “D” bordered on 3 sides in terms of built form surroundings with roads in-between.

While the DFC covers the expansive area of Oxford Falls Valley Locality, the DFC applies to each property within it and specifically, the particulars of all new development to maintain a “low impact”. The increased concentration creates an adverse built form impact on surrounding ILU’s that are loose a wide landscaped open outlook.

#### ***Noise Impact:***

The proposal does not require a noise assessment, and existing conditions address civil works for excavation and construction hours. Internal building plant, such as air conditioners, lift motors, garage door mechanisms and the like are subject to NSW noise impact regulations and addressed within this report under *General Principle 43 Noise*.

#### ***Traffic Impact:***

The proposal is not considered to adversely impact on the performance of the surrounding road network. The assessment concludes that car parking for 10 resident car spaces plus visitor spaces in the basement and will be accommodated by the internal driveway arrangements (shown on the *Basement Plan* Dwg 101 dated 18/8/2021). The parking provision and traffic access arrangements proposed are concurred by Council’s Traffic Engineer, subject to conditions.

The submitted plans show the vehicle entry to the building depends on the existing unauthorised driveway along the western side of building “C1”. This driveway was built without consent and is unlawful. Therefore, planning assessment cannot support the DA as

it depends on illegal development work that occurred with DA2009/0800 to enable traffic / access to now further intensify the land use for new housing.

- ***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:

The DFC seeks to exclude development from ridgetops as these higher areas are much more visibly exposed in the broader bushland setting and landscape surrounding of the Locality. Buildings and associated development like tree clearing maintain consistency with the building set low against the backdrop with Lady Penrhyn Drive. The visual impact when viewed from surrounding urban land and near the site (such as Macintosh Road, Willandra Road, Cousins Road and Cormack Road) is ameliorated by 20 landscape buffer whereby the “S” shaped driveway is to be replaced with landscape area. 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:***

The Asset Protection Zone (APZ) for bushfire protection purposes limits vegetation planting and therefore compromises the ability to “protect” and where possible, ‘enhance’ the natural landscape. The landscape buffer to the road at retained at 20m for the building walls to allow opportunities for non-interlocking trees within the APZ. The density of landscape planting on the site required to address desired landscape character as per the approved landscape plans (despite some visible changes having occurred with the completion of the existing buildings previously).

In LEC Judgement of 2009/10973, when discussion regarding the DFC in paragraphs 96-97 the applicant argues that the removal of 147 trees would be replaced by 100 new trees propagated from soil removed from the site and that this revegetation of the site would result in a “negligible impact” upon the bushland appearance of the site from surrounding properties and therefore have negligible impact upon the bushland character of the B2 Locality.

In Paragraph 98 of Judgement of 2009/1093 the Commissioner is persuaded by the applicant’s evidence. Below is the landscaped plan approved by the LEC which involves new tree plantings (dark green) to restore the bushland character of the site as well as the many trees (light green) purported to be retained in situ to maintain the DFC. Although the driveway winds through the area where the proposed building is to be located, there is significant number of trees proposed to be planted. The construction of a building in the proposed location destroys the original intent of the court consent and substance of the applicant’s argument of retaining a bushland character by now with further in-fill development by exploiting areas revegetated around the existing development.





The current development, although not complete, does not achieve the original intent of the Court Consent in being consistent with the DFC, nor does the proposal contribute to this outcome required in the DFC to maintain the existing character, nor enhance or protect the natural landscape (landforms and vegetation)



**Amenity:** The DFC prescribes an overall density of “1 dwelling per 20 hectares”, whilst age care development is permissible, if adjoining land for urban purposes, this density control defines the expected character and intensity of development within the B2 locality. The

resultant amenity should therefore demonstrate a response to the distribution of the development across the site in balance with compliance to the built form controls.

The proposed development results in an increase of 10 ILU's (by 29.4%) to the intensity of use relating to impacts of higher occupancy by the total number of aged care ILU dwellings on site. The site is in a fringe location to the urban zone however the Locality Statement (or LEP 2000) still requires the bushland landscape of the DFC to be given appropriate weight. The visual influence of development adjacent the site (west and east) is not considered to carry determinative weight. However, the proposal intensifies the development pattern of the site within the core areas, (i.e. not encroaching the front or side boundary setback areas). The transition to the bushland amenity is retained on the northern interface where the site adjoins bushland.

**Visual Materials:** The proposed aged care building presents as a part 2 / part 3 storey building when finished but is 2 storeys above existing and natural ground level. The bulk and scale is split into two modules of 21.7m x 18m and 15m x 17.3m. The chosen colours and materials are to match the existing buildings on site.

- ***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.

Rural Fire Service requirements affect the landscape plan in so far as fire protection will partly limit tree planting along the frontages of the building, including areas of the Inner Protection Area (IPA). Therefore, the proposal maintains 20 setback for landscaping to assist in screening the building and reducing the visual impact of the proposal on the surrounding landscape.

Boundary fencing for the majority of the western frontage along Lady Penrhyn Drives has already been constructed. No change to boundary fencing style is proposed as part of this development application.

- ***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 has permanent erosion control devices and drainage infrastructure constructed as part of DA2009/0800. Subject to effective erosion control during construction, the risk of further erosion and sedimentation impacts on waterways and riparian land should be 'low', including water quality impacts on Narrabeen Lagoon. The subject DA has been provided with an erosion control plan for the site works.

**Conclusion on the DFC**

Based upon the above considerations, the development, as a “Category 2” use, is considered to be inconsistent with the DFC statement for the B2 Oxford Falls Valley locality. Overall the proposal detracts from the characteristic of “low intensity low impact” including inconsistency with the development ‘master plan’ as originally approved for the site.

Clause 12 of the WLEP 2000 requires that before consent is granted the consent authority must be satisfied that the development is consistent with the DFC. This is a pre-condition to ensure that future development complies with Part 2 and 3 of the WLEP and the applicable development standards set out in the applicable Locality Statement. Further to this, before granting consent any Category 2 development must be consistent with the DFC. In this case the proposal is not satisfactory.

### **Built Form Controls for Locality B2 Oxford Falls Valley**

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

<b>Built Form Control</b>	<b>Required</b>	<b>Proposed Development</b>	<b>Compliance</b>
Housing Density	1 dwelling per 20ha	“Housing for aged persons or persons with a disability”.  (WLEP 2000 Exception to Housing density restriction for land adjacent urban land)	Yes
Building Height	8.5m	7.1m Measured from Natural Ground Level	Yes Refer to “WLEP Clause 29”.
	7.2m	6.8m	Yes
Front Building Setback	20m (All roads)	Lady Penrhyn Drive 20m to building façade	Yes
		20.0m to basement carpark and upper wall plane	Yes
		Other frontage setbacks – 62.5m due east, 23.5m due south.	Yes
		(Existing buildings B2, B3, B4 & C1: 20m to Willandra Road reserve)	N/A
Rear Building Setback	10m	N/A	N/A
Side Setback	10m	86.5m (north boundary)	Yes
Landscape Open Space	30% of site to be landscaped	70%(18,443sqm)  Note: The above calculation includes all landscaped areas of the site including the APZ.	Yes



**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.”*

The proposal does not make any variations to LEP permitted setbacks, height, wall height or landscaping pursuant to the built form controls of the Locality Statement.

**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:

**Clause 29 On what grounds can applications for housing for older people or people with disabilities not be refused?**

Clause 29 Requirement	Applies	Requirement Details and Comments	Complies
<b>Building Height</b>	Yes	<b>8 metres</b> or less in height when measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point	Yes
<b>Density and Scale</b>	Yes	<b>0.75:1</b> or less, for hostels and residential care facilities located <b>within 400 metres</b> walking distance of a public transport node (being a public transport facility such as a railway station, bus stop, or ferry / wharf that is serviced on a frequent and regular basis in daylight hours.	Yes  (Pathway link approved with DA2009/1221
<b>Landscape Area</b>	Yes	a minimum of <b>35sqm of landscaped area per dwelling</b>	Yes
<b>Parking</b>	Yes	in the case of dwellings, at least <b>0.5 car space for each bedroom</b>	Yes
<b>Visitor Parking</b>	Yes	For less than 8 dwellings, (and not on a clearway) no visitor parking is required.  <u>Comment:</u> The proposed development has more than 8 dwellings and is therefore required to provide at least 1 visitor space.	Yes  Communal visitor site parking available and 2 spaces in basement

Clause 29 Requirement	Applies	Requirement Details and Comments	Complies
<b>Landscaped Areas</b>	Yes	Soil of a sufficient <b>depth to support the growth of trees</b> and shrubs on an area (preferably located at the rear of the site) of <b>not less than the width of the site multiplied by 15% of the length</b> of the site.  <u>Comment:</u> Planting of canopy trees is subject to NSW RFS requirements that permits limited tree distribution within the APZ.	Yes  Landscape surroundings for building as per landscape plan drawn by 'Paul Scrivener' dated 27/4/2021
<b>Private Open Space for Infill Housing</b>	Yes	(ii) Any dwelling that is located partly or wholly at ground floor of a multi-storey building must have <b>15 sqm</b> of private open space with dimensions of at least <b>3 m wide and 3 m long</b> . The open space must be accessible <b>from a ground floor living area</b> .  (iii) Any other dwelling must have a balcony not less than <b>6 sqm</b> and <b>no less than 1.8 m</b> . The balcony must be accessible from a living area.	<b>No</b> Units 1 to 4 are at ground level but use balconies instead of 15sqm of private open space.  First floor balconies comply

The proposal achieves numerical compliance with Clause 29. Further development assessment is required pursuant to Schedule 16 as specified to aged care development under WLEP 2000. See "Schedule 16" assessment within this report.

### **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
<b>CL38 Glare &amp; reflections</b>	Yes	This General Principle seeks to ensure that development does not result in excessive glare and solar reflections.  The roof finish will be within the medium green colour range ('colorbond') to blend with the bushland setting for the roof and external colours similar to the existing adjacent ILU buildings.	Yes

General Principles	Applies	Comments	Complies
		Accordingly, the development proposed is considered to satisfy this General Principle.	
<b>CL42 Construction Sites</b>	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. It is recommended that a detailed construction management plan (CMP) be prepared prior to works commencing to co-ordinate internal traffic, dust and construction related matters during site works.</p> <p>Accordingly, the development proposed is considered to satisfy this General Principle.</p>	Yes (subject to condition)
<b>CL43 Noise</b>	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>There will be construction noise generated from the site works during the construction phase and this is able to be addressed by conditions for standard industry hours and a construction management plan. The level of noise is appropriately managed by conditions to ensure that there is no unreasonable impacts on the amenity of nearby dwellings (within the site and fronting Lady Penrhyn Drive).</p> <p>Standard requirements already apply for installed equipment (lift plant / A/C units and the like. The position of the building on the site is adequately separated from neighbouring properties in Lady Penrhyn Drive to buffer noise the building services.</p> <p>For the reasons listed above the proposal is considered to satisfy the requirements of Clause 43.</p>	Yes
<b>CL44 Pollutants</b>	Yes	The proposal is located within the headwater catchment to South Creek and will be connected to a new sewer line to the Sydney Water sewer mains link in Willandra Road north east of the site.	Yes

General Principles	Applies	Comments	Complies
		Therefore, the development proposed is satisfactory against the requirements of this clause to manage domestic sewerage disposal.	
<b>CL45 Hazardous Uses</b>	No	No comment	N/A
<b>CL46 Radiation Emission Levels</b>	No	No comment	N/A
<b>CL47 Flood Affected Land</b>	No	No comment	N/A
<b>CL48 Potentially Contaminated Land</b>	Yes	<p>The site of the proposed building was previously undeveloped bushland which has now been significantly modified by civil earthworks and landscaping associated with DA2009/0800.</p> <p>No contamination has been identified on the site and this clause was addressed prior to development of the existing aged care building's being approved on the subject property. See assessment details provided under the heading 'SEPP 55'</p>	Yes
<b>CL49 Remediation of Contaminated Land</b>	No	No comment	N/A
<b>CL49a Acid Sulfate Soils</b>	No	No comment	N/A
<b>CL50 Safety &amp; Security</b>	Yes	<p>The proposal maintains an acceptable level of safety and security through the site design and layout.</p> <p>Assessment of the proposal with regard to clause 50 is provided as follows:</p> <ul style="list-style-type: none"> <li>The proposed building will have open surroundings for the building and partly visible towards Lady Penrhyn Drive to maintain passive surveillance within the site, due to the proximity of existing aged care buildings within the same property.</li> <li>Entrance to the building is clearly accessible from the driveway and parking is contained with a basement area</li> </ul> <p>Accordingly, the development proposed is considered to satisfy this General Principle.</p>	Yes

General Principles	Applies	Comments	Complies
<b>CL51 Front Fences and Walls</b>	Yes	<p>The site already has a brick and batten fence constructed along the frontage of Lady Penrhyn Drive between the entry and the north western corner of the site constructed in association with existing building work on the site.</p> <p>No change is proposed to the fencing.</p>	Yes
<b>CL52 Development Near Parks, Bushland Reserves &amp; other public Open Spaces</b>	No	No comment – Site does not have a common boundary with a Council Park or Reserve.	N/A
<b>CL53 Signs</b>	Yes	No advertising signs are proposed.	Yes
<b>CL54 Provision and Location of Utility Services</b>	Yes	<p>The site has access to electrical and water services with connections to be managed by the relevant service provider.</p> <p><i>Sydney Water</i> connection is administered separately by Sydney Water for water and sewer. Service connection is available to the site due to the existing aged care development on the property.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	Yes
<b>CL55 Site Consolidation in 'Medium Density Areas'</b>	No	No comment. Not within a medium density locality.	N/A
<b>CL56 Retaining Unique Environmental Features on Site</b>	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 has been extensively modified such that there are no significant rock outcrops or trees in the location of the proposed building footprint.</p> <p>Insufficient information has been provided to address the site works that have covered backfilled the edge of the rock cliff features in the western half of the site and how they may be restored / reinstated. The evidence to the Court in paragraph 90 of the</p>	No Insufficient information

General Principles	Applies	Comments	Complies
		<p>judgement proceedings under 2009/10974 portrayed that <i>“the majority of prominent outcrops are retained and the site will remain characterised by these...”</i></p> <p>The proposal however seeks to increase the fringe ‘urbanisation’ of the site following extensive unauthorised civil earthworks that has back filled or covered the main rock outcrops / escarpment feature. The subject proposal alters the internal road network access and insufficient information is provided to address the requirements of this clause and maintain the integrity of natural features of the site.</p> <p>Accordingly, the proposal is not considered to satisfy this General Principle.</p>	
<b>CL57 Development on Sloping Land</b>	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 site has a variable (and artificially modified) fall from west to east approximately 3m within the building footprint. The eastern wall base is positioned between RL99.74 to RL99.13.</p> <p>The site is not identified on the Landslip Hazard Map. Accordingly, the proposal is considered to satisfy this General Principle.</p>	Yes
<b>CL58 Protection of Existing Flora</b>	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. The development proposal work will not require the removal of any trees as the land has already been extensively cleared for civil works associated with DA2009/0800. The landscape plan provides for a mix of trees, shrub and native plant that are endemic to the area as well as other suitable plants. However the proposed building will remove the capacity to re-vegetate parts of the site due to the additional restrictions of bushfire protection</p>	No Insufficient information



General Principles	Applies	Comments	Complies
		<p>In this regard insufficient information has been provided to demonstrate that the integrity of the protection of flora has been maintained on balance with the loss of landscape area for driveway and hard surface zones. This concern is influenced the present situation that areas of hard surface driveways are not approved and would otherwise be landscaped open space intended to be retained and not used for later "infill" development.</p> <p>Accordingly, the proposal is not considered to satisfy this General Principle.</p>	
<b>CL59 Koala Habitat Protection</b>	No	Site has been developed for aged persons housing and is not identified as Koala habitat.	N/A
<b>CL60 Watercourses &amp; Aquatic Habitats</b>	Yes	<p>The site has existing drainage infrastructure and a water detention system. Runoff water is required to be directed to this system which manages all runoff from the adjacent buildings within the complex as a whole to protect the water catchment habitat quality of Narrabeen lagoon.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	Yes
<b>CL61 Views</b>	Yea	<p>There are coastal and district views across the site. The site is overlooked from other houses that are much higher in elevation above the site. This avoids any unreasonable view impact for adjacent land.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	Yes
<b>CL62 Access to sunlight</b>	Yes	<p>The proposed has insufficient details to demonstrate compliant sunlight to both adjacent dwelling and private open space within building "D" Adjacent aged care dwellings Building "B1" and "A1" will overshadow the ground floor balconies. Insufficient information is provided to clearly show no less than 2 hours of sunlight retained between 9am and 3pm on 21st June. Building C2 and C1 will also lose solar amenity in the late afternoon.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	No Insufficient information

General Principles	Applies	Comments	Complies
<b>CL63 Landscaped Open Space</b>	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 is subject to NSW RFS requirements that can override the amount of permitted tree planting on site. Therefore, the opportunities to provide effective dense landscape screening, commensurate the size and scale of the building proposed, is subject to RFS considerations.</p> <p>Further details are provided under the Referral Response by Council's Landscape Officer.</p> <p>Due to RFS requirements, the establishment of appropriate planting to maintain and enhance the streetscape and the desired future character of the locality is diminished on this site. In this regard the approved landscaping on site is critical to maintaining consistency with the Desired Future Character. The loss of any landscaped areas to additional building works beyond the original consent is in conflict with the court consent, including evidence provided by the applicant in the proceedings for 2009/10974 in consideration of WLEP 2000. Insufficient information is provided to address the objectives of this clause.</p> <p>The proposal is considered to not satisfy this General Principle.</p>	No Insufficient information
<b>CL63A Rear Building Setback</b>	N/A	Natural bushland areas adjacent the northern boundary will remain unchanged as this forms part of the 60m APZ. This is a side setback for the triangular shaped lot.	Yes
<b>CL64 Private open space</b>	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. The site has sufficient land area to accommodate private open space for occupants (ground level courtyards), however these courtyards are not provided. The ground floor balconies area overshadowed for some units.</p> <p>The site has other communal open space areas around the shared community facilities</p>	No

General Principles	Applies	Comments	Complies
		<p>available within the site for the private complex as a whole.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	
<b>CL65 Privacy</b>	Yes	<p>The closest dwelling houses that are not related to the use of the site are toward the north-west along Lady Penrhyn Drive. These dwelling houses are 60m or more from proposed building “D”.</p> <p>Building “D” is positioned so that the upper storey will overlook the adjacent buildings of C1 and C2. The horizontal separation is 6m to 9.0m This vertical separation between the buildings is assisted by offset balconies and privacy screen to restrict overlooking. The east facing balconies seek to also seek to gain morning sunlight. Visual privacy with buildings C1 and C2 is similar to the spatial separation balcony positions throughout the site. Given the visual separation between the buildings, the formal/informal outlooks it is proposed to mitigate any minor visual conflicts with screens and suitable devices. Privacy screening is provided for the balcony side edges.</p> <p>Adequate separation distance is available to the closest neighbours to ensure privacy to adjacent dwelling houses in Lady Penrhyn Drive. Balcony and terraces for the building proposed generally overlook roof areas at the upper level but face the masonry side wall for Building ‘B1’, ‘C1’ and ‘C2’ at ground level.</p> <p>Accordingly, the proposal satisfies this General Principle.</p>	Yes
<b>CL66 Building bulk</b>	Yes	<p><i>This General Principle of Development Controls seeks that:</i></p> <ul style="list-style-type: none"> <li><i>side and rear setbacks are to be progressively increased as wall height increases,</i></li> <li><i>large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief, and</i></li> </ul>	Yes

General Principles	Applies	Comments	Complies
		<ul style="list-style-type: none"> <li>• <i>appropriate landscape plantings are to be provided to reduce the visual bulk of new buildings and works.</i></li> </ul> <p>The size and appearance of the proposed development articulated into 2 modules. These modules are similar in height and bulk to the adjacent ILU buildings on the site. The western wall of building “D” is mostly below EGL and appears as single storey from the west.</p> <p>Therefore, the building bulk and scale is consistent with the character of the site having already been developed for aged care housing in the style of a retirement village complex.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle</p>	
<b>CL67 Roofs</b>	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 building is a low profile pitched roof similar to the shape and style other buildings on site. The colour is of a mid-green “colorbond”.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle</p>	Yes
<b>CL68 Conservation of Energy and Water</b>	Yes	<p>As the proposed development is classified as a Class 3 Building in accordance with the Building Code of Australia (BCA) and a design compliance certificate has been provided pursuant to SEPP BASIX.</p> <p>Conditions requiring compliance with the BCA / NCC and BASIX are contained within the recommended conditions.</p>	Yes
<b>CL69 Accessibility – Public and Semi-Public Buildings</b>	Yes	<p>The building is not a public building. Accessibility is required to be maintained to satisfy Schedule 16, including compliance with current standards under AS1428 and the <i>Disability Discrimination Act 1992</i> (DDA).</p> <p>Sufficient details have been provided to demonstrate the requirements of AS1428 and the DDA can be met in terms of footpath</p>	Yes (Subject to condition)

General Principles	Applies	Comments	Complies
		<p>links, internal lift and car parking appropriate to persons with aged or disability access limitations, subject to conditions to ensure compliance.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle</p>	
<b>CL70 Site facilities</b>	Yes	<p>The site facilities include bin storage in the basement and the site already has an operational waste handling service. Each unit has access to balcony and internal laundry for domestic clothes drying.</p> <p>The site facilities proposed are adequate to satisfy this general principle.</p>	Yes
<b>CL71 Parking facilities (visual impact)</b>	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 an excavated garage under the building with landscaping along the entry area.</p> <p>The garage entry is located facing east and does not create an unreasonable visual impact on Lady Penrhyn Drive.</p> <p>Accordingly, the proposal is considered to satisfy this General Principle.</p>	Yes
<b>CL72 Traffic, access &amp; safety</b>	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 approved internal driveway network provides direct access to Lady Penrhyn Drive and Willandra Road for construction purposes meets Australian Standard 2890.1.</p> <p>The access from Lady Penrhyn Drive will remain as constructed with some minor adjustment to layback delineation. The existing entry was constructed as a “temporary” alternative during the construction phase of the existing buildings on site. The approved entry involved a sweeping “S” shaped driveway down the steep slope below the western site boundary. The western front building setback has been</p>	Yes (Subject to condition)

General Principles	Applies	Comments	Complies
		<p>grassed and a new masonry fence erected along the frontage to Lady Penrhyn Drive. Therefore, the proposal will augment and formally replace the original driveway access design from Lady Penrhyn Drive, including the link driveway to building "A1". The "U" shaped link to building "A1" was originally a west to east (clockwise) link but is not proposed to be the reverse (anticlockwise) link for vehicles. This link extends past buildings "B1" and "A2" then around to a northern elevation of building "A1".</p> <p>A minor modification of consent to DA2009/0800 would be required in the future by the applicant to change the garage door to the northern side of "building A1" basement. Building A1 is not constructed yet, since the vehicle approach was originally from the "S" shaped main driveway.</p> <p>Council's Development Engineers raised no objections to the proposed works, subject to conditions.</p> <p>Council's Traffic Engineers raise no objection to the development with respect to traffic, access and safety.</p> <p>Considerations has been made in accordance with Hussey C in "<i>Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128</i>" for the proposal with regard to <i>low intensity low impact</i> development</p> <p>Therefore, the proposal is satisfactory against the requirements of this clause.</p>	
<b>CL73 On-site Loading and Unloading</b>	No	Not applicable	N/A
<b>CL74 Provision of Carparking</b>	Yes	The proposal is considered to comply with Clause 21, Clause 74 and Schedule 16 and Schedule 17.	Yes
<b>CL75 Design of Carparking Areas</b>	Yes	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	Yes



General Principles	Applies	Comments	Complies
		<p>Road is capable of accommodating traffic from the site as a whole.</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>	
<b>CL76 Management of Stormwater</b>	Yes	<p>This General Principal seeks to ensure that adequate provision is made for the management of stormwater volume</p> <p>The application has been assessed by Council's Development Engineers and all stormwater will be connected to the existing on-site detention system and drainage network within the site. Insufficient details are provided to address the additional runoff design details, including Water Sensitive Urban Design</p> <p>The new driveway links constructed plus the new building add 825sqm of hard surface to the site when offset with the sections of driveway that are now shown to be replaced with landscaping (see site plan and landscape plans).</p> <p>Accordingly, the proposal satisfies this General Principle.</p>	No Insufficient information
<b>CL77 Landfill</b>	Yes	<p>Landfill, if necessary, will utilise existing material on site sourced from excavation for building footprint, driveway and ancillary works.</p> <p>No new fill material is proposed to be brought from outside the site.</p> <p>Accordingly, the proposal satisfies this General Principle.</p>	Yes
<b>CL78 Erosion &amp; Sedimentation</b>	Yes	<p>Appropriate management of erosion and sedimentation works on the site have not been provided that are satisfactory for the scale of civil works required considering the steep slope and potential impact on drainage infrastructure within the site</p>	Yes

General Principles	Applies	Comments	Complies
		Accordingly, the proposal satisfies this General Principle.	
<b>CL79 Heritage Control</b>	No	No comment	N/A
<b>CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service</b>	Yes	No aboriginal relics have been identified on the site, however conditions are suitable to address the appropriate action should any potential relics be uncovered  Accordingly, the proposal satisfies this General Principle.	Yes
<b>CL81 Notice to Heritage Council</b>	No	No comment	N/A
<b>CL82 Development in the Vicinity of Heritage Items</b>	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
<b>CL83 Development of Known or Potential Archaeological Sites</b>	Yes	The work is located within an area that is already substantially disturbed by previous clearing and earthworks.  There are no known aboriginal sites recorded on the subject land.	Yes

## SCHEDULES

### Schedule 8 - Site analysis

The Site Analysis dated 1/10/2021 has been provided pursuant to meeting the minimum requirements of Schedule 8.

### Schedule 16 - Principles and Standards for housing for older people or people with disabilities

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
<b>Identification</b>	Yes	House numbering to be provided.	Yes  (Suitable to be addressed by condition)

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
<b>Security</b>	Yes	Pathway lighting, height and LUX.	Yes  (Suitable to be addressed by condition)
<b>Letterboxes in multi-dwelling developments</b>	Yes	Lockable, central location and situated in hardstand accessible location.	Yes  (Suitable to be addressed by condition)
<b>Private car accommodation</b>	Yes	Each car parking space must be not less than 6 metres 3.2m with internal clearance 2.5m  Power operated roller door.	Yes  (Suitable to be addressed by condition)
<b>Accessible entry</b>	Yes	Must not have a slope that exceeds 1:40 Must comply with clauses 4.3.1 and 4.3.2 of AS 4299.  Entry door handle and other hardware that complies with AS 1428	Yes  (Suitable to be addressed by condition)
<b>Exterior: general</b>	Yes	External doors to any one dwelling must be keyed alike.	Yes  (Suitable to be addressed by condition)
<b>Interior: general</b>	Yes	Must have a clearance of at least 820 millimetres (mm), a width of 1000 mm. Internal door approaches must be at least 1 200 mm.	Yes  (Suitable to be addressed by condition)
<b>Living room and dining room</b>	Yes	Bedroom must comply with parts (a) and (b) including circulation space AS4299, telephone connections and lighting.	Yes  (Suitable to be addressed by condition)
<b>Kitchen</b>	Yes	Kitchen must comply with parts (a) to (j) (ii), including circulation space, power outlets, bench space and cupboard design.	Yes  (Suitable to be addressed by condition)
<b>Main bedroom</b>	Yes	Bedroom must comply with parts (a) to (e) including bedside circulation space power outlets and lighting.	Yes  (Suitable to be addressed by condition)
<b>Bathroom</b>	Yes	Bathroom must comply with parts (a) to (h). Including compliance with AS1428, AS3740 and AS4299.	Yes  (Suitable to be addressed by condition)

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
<b>Toilet</b>	Yes	Complies with clause 1.4.12 of AS 4299, and AS1428 including wall clearance and can accommodate a grab rail in compliance with Figure 4.5 of AS4299 and AS1428	Yes (Suitable to be addressed by condition)
<b>Access to kitchen, main bedroom, Bathroom and toilet</b>	Yes	The kitchen, main bedroom, bathroom and toilet must be located on the ground floor or if not on ground floor the living space is accessible to the same floor, or a stair climber provided for a wheelchair.  All units have living areas on the same floor as bedrooms.	Yes
<b>Laundry</b>	Yes	Must have provision for an automatic washing machine, clothes dryer with access space of 1300mm clearance, thermostatic mixing valves, slip resistant floor and accessible path of travel to any clothesline provided.	Yes (Suitable to be addressed by condition)
<b>Storage</b>	Yes	Must be provided with a linen cupboard 600mm wide with adjustable shelving.	Yes (Suitable to be addressed by condition)
<b>Doors</b>	Yes	Door handles able to be operated with one hand and located between 900mm and 1,100 mm above floor level.	Yes (Suitable to be addressed by condition)
<b>Surface finishes</b>	Yes	External paved areas must have slip-resistant surfaces.	Yes (Suitable to be addressed by condition)
<b>Ancillary items</b>	Yes	Switches must be located between 900mm and 1,100mm above floor level. General purpose outlets must be located at least 600mm above floor level.	Yes (Suitable to be addressed by condition)
<b>Garbage</b>	Yes	Outside garbage storage area must be provided in an accessible location.  Garbage room is in basement accessible by lift and stairs and ramp to outside area.	Yes
<b>Applications by certain housing providers</b>	No	Not applicable to this application.	N/A
<b>Neighbourhood amenity and streetscape</b>	Yes	(a) <i>contribute to an attractive residential environment with clear character and identity, and</i>	Yes (Suitable to be addressed by condition)

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
		<p>The building design is consistent with this requirement and the character of the approved use of the site. The approval of DA2009/0800 relied on a clear character of small pavilions separated and spaced within the site in a bushland setting. The two modules of “building “D” have a similar mass and spatial separation to the adjacent buildings. See discussion of the desired future character and the approved built form of aged care development on the site (pursuant to WLEP2000) within this report.</p> <p>(b) <i>where possible, retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and</i></p> <p>There are no urban conservation areas or heritage items in the vicinity of the proposal.</p> <p>(c) <i>where possible, maintain reasonable neighbour amenity and appropriate residential character by providing building setbacks that progressively increase as wall heights increase to reduce bulk and overshadowing, and</i></p> <p>The building curtilage for the basement and units are outside the front 20m building setback area as required including carparking and site facilities that are integrated to the building.</p> <p>(d) <i>where possible, maintain reasonable neighbour amenity and appropriate residential character by using building form and siting that relates to the site’s land form, and</i></p> <p>The site is 2.6 hectares and sufficiently large in area and dimensions to ensure it is possible to not require buildings to be located within setback areas and ensure wide landscape buffers are maintained to the road frontages. A landscape plan has been provided to show the new landscape area that has replaced parts of the “S” shaped driveway.</p> <p>(e) <i>where possible, maintain reasonable neighbour amenity and appropriate</i></p>	

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
		<p><i>residential character by adopting building heights at the street frontage that are compatible in scale with adjacent development, and</i></p> <p>The site is within a bushland locality and therefore it is required to maintain consistency with the Oxford Falls Valley DFC. In this regard the DA cannot rely on transposing the adjacent urban character to address residential amenity, setbacks, scale and streetscape. The building presents as a low two storeys structure to the west and part 3 storeys to the east. The building form is of the same character to the rest of the existing site buildings within the development complex.</p> <p>(f) <i>where possible, maintain reasonable neighbour amenity and appropriate residential character by considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</i></p> <p>No walls are located on the boundary as this clause may consider appropriate in urban locations. Building structures on or close to the boundary in the bushland localities are not be considered to be consistent with the DFC.</p> <p>(g) <i>be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</i></p> <p>The DFC requires a 20m building setback to Lady Penrhyn Drive which currently varies from 50m ("building C2") to 20m ("building A1"). The front building setback complies with the Oxford Falls Locality building line of 20m. There are no driveway areas directly in front of the building and Lady Penrhyn Drive, as the previous "S" shaped driveway is to be replaced with landscaping.</p> <p>(h) <i>embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</i></p> <p>The proposal has a landscape plan to ensure substantial landscape planting that</p>	



Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
		is commensurate with the height and scale of the building to provide an effective screen to Lady Penrhyn Drive.	

## 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 (and any associated concerns).

## POLICY CONTROLS

### Northern Beaches 'Section 7.12' Contributions Plan 2019.

The monetary contribution is based on the development cost of \$4,932,308.00.

A monetary contribution of **\$49,323.08** is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to 'section 7.12' of the *Environmental Planning & Assessment Act 1979* and the *Northern Beaches Section 7.12 Contributions Plan 2021*.

This may be addressed by a condition of consent.

## OTHER MATTERS FOR CONSIDERATION

### Department of Planning Concurrence

The proposal does not require concurrence from the Director of the *NSW Department of Planning* for variation to housing density pursuant to WLEP 2000 for the reasons stated in "paragraph C" of the B2 Locality statement, detailed previously in this report.

## CONCLUSION

This report provides a comprehensive assessment of the proposal for ten (10) independent living units ('building "D"') to provide housing for older people and people with disabilities and particulars of the development that simultaneously augment the existing development complex approved under DA2009/0800 on the site known as No.8 Lady Penrhyn Drive, Beacon Hill.

Housing for older people or people with disabilities ('aged care') under WLEP 2000 is regarded as a "Category 2" development and facilitates the supply of purpose built housing along the fringe of the urban zones. All development however is subject to demonstrating consistency with the DFC Statement, Built Form Controls and General Principles. The proposal does not comply with Clause 12(2) whereby the proposal is not satisfactory in terms of meeting the "low intensity and low impact" development characterisation, fails to maintain the character of the locality and does not enhance the natural landscape. Additionally the proposal has insufficient information to comply with Clause 12(3) of the WLEP 2000.

The site already has approval for 34 aged / disabled persons independent living units, with ancillary structures distributed across the site in smaller detached buildings of 4 or 6 units grouped together. The proposed 10 units within building “D” are grouped into one semi-detached building module of 6 attached units and one of 4 attached units. The location of building “D” is situated on part of the site that was to be used for an “S” shaped driveway area that served as an important vegetation buffer and was to provide replacement vegetation identified in the Court Consent active on the site.

Substantial elements within the site that were approved under DA2009/0800 (as modified) have been subject to unauthorised changes. These works have been constructed to a permanent standard without approval and the subject development application relies on those works for fundamental aspects of access, drainage, landscaping and the like. Approval of the subject development application would therefore be giving tacit development approval to those unauthorised works. Critically this applies to the driveway access to the building and other ancillary works within the site that are inconsistent with the approved site plan and layout. Therefore, the proposal cannot lawfully be approved with the present state that the site is in, following major works having being completed that are erroneous or inconsistent with the NSW LEC consent for DA2009/0800.

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 considered to be inconsistent with maintaining ‘low intensity low impact’.

Public submission raised in objection to the proposal have been addressed.

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, as amended, 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:

- Insufficient in information to satisfy 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 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 appropriate controls and assessments procedures have been satisfactorily addressed to enable determination of the development application.

THAT Development Application No. DA2021/0545 for housing for older people or people with disabilities, at No.8 Lady Penrhyn Drive, Beacon Hill, be REFUSED 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 application relies on unauthorised works undertaken without consent to enable vehicle access to the proposed building. The development application cannot lawfully be approved given the dependency of access on the illegal existing driveway structures and associated site works constructed contrary to the NSW LEC approval of DA2009/0800 and associated construction certificate.
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 Clause 12 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 with:
  - i. *Low intensity and low impact characteristics;*
  - ii. *Detached style appearance for housing; and*
  - iii. *Enhancing the natural landscape;*
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 and sufficient information to comply with:
  - i. *Clause 29 (g) Private open space*
  - ii. *Clause 62 Access to sunlight*
  - iii. *Clause 56 Retaining Unique Environmental Features on Site*
  - iv. *Clause 58 Protection of Flora*
  - v. *Clause 63 Landscape open space*
  - vi. *Clause 74 Private open space; and*
  - vii. *Clause 76 Management of stormwater.*
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



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for the creation of a better environment and maintaining the Desired Future Character of the B2 Oxford Falls Valley locality.