

## RESIDENTIAL DEVELOPMENT – 4.55(1A) APPLICATION ASSESSMENT REPORT

<b>Modification Application Number:</b>	Mod2018/0212
<b>Development Application Number:</b>	DA2009/0800
<b>Planner:</b>	Nick England
<b>Property Address:</b>	Lot 806 DP 752038 , 8 Lady Penrhyn Drive BEACON HILL,
<b>Proposal Description:</b>	Modification of Development Consent DA2009/0800 granted for the construction of 32 units for older people or people with a disability and Torrens title subdivision
<b>Recommendation:</b>	<b>APPROVED</b>
<b>Clause 20 Variation:</b>	Yes (Housing Density)
<b>Proposal in Detail:</b>	<p>The proposed modification involves a re-adjustment to the existing boundaries of the approved Torrens title subdivision. The approved 2 lot subdivision was as follows:</p> <ul style="list-style-type: none"> <li>Lot 1, 2.425 hectares (the seniors living development); and</li> <li>Lot 2, 2,064m<sup>2</sup> (the existing house).</li> </ul> <p>The proposed modification involves the revised sizes:</p> <ul style="list-style-type: none"> <li>Lot 1, 2.4 hectares; and</li> <li>Lot 2, 2,301m<sup>2</sup>.</li> </ul> <p>The revised secheme will increase the size of the existing house allotment by approximately 237m. This will occur by extending a 1m wide access handle for services on Lot 2 down towards Willandra Road, taken from the approved Lot 1.</p>
<b>Relevant History and Background:</b>	<p>The application for the Torren title subdivision and seniors living development was approved in the NSW Land and Environment Court on 13 March 2011. This application has been modified three (3) times since this approval, however none of these modifications have related to the approved Torrens title subdivision. The approved lots have yet to be created and the land is still currently one allotment.</p>

### Plans Reference

Drawing Number	Title	Revision	Dated	Drawn By
Sheet 1 of 1	Plan of Subdivision of Por 806 in Crown Plan 1208.2030	-	18 December 2017	Simon Pak Yan Ho



Report Section	Applicable – Yes or No
Section 1 – Code Assessment	Yes
Section 2 – Issues Assessment	Yes
Section 3 – Site Inspection	Yes

Notification Required:	Yes	14 days
Submissions Received:	Yes	Number of Submissions: 1
Cost of Works:	N/A	
Section 94A Applicable:	N/A	TOTAL: N/A

Section 96(1A) EPA ACT 1979	
Section 96(1A) (a) – Is the Modification to consent of Minimal Environmental impact?	Yes
Section 96(1A) (b) – Would the consent as proposed to be modified be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was previously modified?	Yes
Section 96(1A) (c) & (d) – Has the application been on Public Exhibition? Have you considered any submissions?	Yes Yes
Section 96 (3) – Have you considered such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application	Yes

## SECTION 1 – CODE ASSESSMENT REPORT

### ENVIRONMENTAL PLANNING INSTRUMENTS

#### Warringah Local Environmental Plan 2000

**Locality:** B2 Oxford Falls Valley

**Development Definition:** Housing

**Category of Development:** Category 2

#### Desired Future Character Statement:

*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.*

**Is the development consistent with the Locality's Desired Future Character Statement?** Yes

## **Category 2 Assessment against the Desired Future Character Statement**

**Requirement:** *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.*

**Comment:** The proposed boundary adjustment will not result in any new allotments, only result in a minor change in the areas of the two approved Torrens title allotments. In this regard the approved low intensity, low impact use will remain the same and this requirement is achieved.

**Requirement:** *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:** The proposed boundary allotment will result in no physical works and hence this requirement is not applicable under the circumstances.

**Requirement:** *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.*

**Comment:** The proposed boundary allotment will result in no physical works and hence this requirement is not applicable under the circumstances.

**Requirement:** *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:** No physical works are proposed and hence this requirement is not applicable to the proposed modification.

## **BUILT FORM CONTROLS**

The relevant Built Form Control for the proposed subdivision is Housing Density, which states:

*The maximum housing density is 1 dwelling per 20 ha of site area, except:*

*(a) where this standard would prevent the erection of one dwelling on an existing parcel of land, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 ha, and*

*(b) on Portions 199, 200, 985, 986, 1001, 1002, 1003, 1004, 1011, 1012, 1018 and 1019 Parish of Manly Cove and Lot 33 DP 870625 Pinduro Place, Cromer, where one dwelling may be erected provided the land exceeds 4,000m<sup>2</sup> in area and was lawfully created prior to 13 August 1982, or was otherwise lawfully created, and*

*(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.

However, consent may be granted for development that will contravene these housing density standards but, if by more than 10 per cent, only with the concurrence of the Director.

The matters which shall be taken into consideration in deciding whether concurrence should be granted are:

(a) whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the planning controls adopted by this plan.

To measure housing density:

- the site area (which does not include the area of any access corridor, whether such access corridor is to be created or is in existence at the time of application for development consent) is divided by the number of dwellings proposed on the site, including any existing dwellings which are to be retained,
- the site is the allotment which existed on the day this plan came into effect, and
- granny flats are not considered to be a dwelling and are limited to one per allotment.

In calculating housing density, the area of any access corridor (including any right-of-carriageway, access handle, accessway or other area that provides for vehicle access) is to be excluded, whether that access corridor is to be created or is in existence at the time of application for subdivision.

Both allotment s are under the 20 hectares minimum. However, exception (c) to the standard applies. A further discussion on this is provided in the Issues section of this report.

## RELEVANT SCHEDULES

Schedule	Applicable	Compliant
Schedule 7 Matters for consideration in a subdivision of land	Yes	Yes
Schedule 8 Site analysis	Yes	Yes

## OTHER RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS:

STATE ENVIRONMENTAL PLANNING POLICIES, REGIONAL ENVIRONMENTAL PLANS			
POLICY	ASSESSMENT	YES /NO /N/A	COMPLIES
SEPP – 55	Based on the previous land uses is the site likely to be contaminated?	No	Yes
	Is the site suitable for the proposed land use?	Yes	Yes
SEPP INFRASTRUCTURE	Is the proposal for a swimming pool, or Within 30m of an overhead line support structure? Within 5m of an overhead power line?	No	N/A



## EPA REGULATION CONSIDERATIONS:

Regulation Clause	Applicable	Conditioned
Clause 54 & 109 (Stop the Clock)	No	N/A
Clause 92 (Demolition of Structures)	No	N/A
Clause 92 (Government Coastal Policy)	No	N/A
Clause 93 & 94 (Fire Safety)	No	N/A
Clause 94 (Upgrade of Building for Disability Access)	No	N/A
Clause 98 (BCA)	No	N/A

## REFERRALS

Referral Body Internal	Comments	Consent Recommended
Development Engineering	No objection to the proposed modification and no additional conditions recommended.	Yes

Referral Body External	Comments	Consent Recommended
NSW Rural Fire Service	In correspondence dated 4 July 2018, the NSW Rural Fire Service has advised that they have no objection to the proposed boundary adjustment, nor any additional conditions to apply.	Yes

## APPLICABLE LEGISLATION/ EPI'S /POLICIES:

EPA Act 1979	Yes
EPA Regulations 2000	Yes
Rural Fires Act 1997	Yes
SEPP No. 55 – Remediation of Land	Yes
WLEP 2000	Yes
WDGP 2000	Yes

## Section 4.15 “Evaluation”

Section 4.15 (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 4.15 (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any	Yes



Section 4.15 “Evaluation”	
proposed environmental planning instrument	
Section 4.15 (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 4.15 (1) (a)(iia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	Yes
Section 4.15 (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	Yes
Section 4.15 (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	Yes
Section 4.15 (1) (c) – Is the site suitable for the development?	Yes
Section 4.15 (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regs?	Yes
Section 4.15 (1) (e) – Is the proposal in the public interest?	Yes

## SECTION 2 – ISSUES

### PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the EPA Regulation 2000 and the applicable Warringah Development Control Plan 2000.

As a result of the public exhibition of the application Council received one (1) submission from the following.

Name	Address
Carolyn Watson	No.6 Sirius Parade, Beacon Hill

The issues raised in this submission are summarised and addressed as follows:

**Issue:** *Construction on the site has been inconsistent with the development consents issued on the land. These matters relate to: sediment control; cut and fill; front wall; driveway; and damage to the adjoining roadway.*

**Response:** These matters do not specifically relate to the proposed modification. It would appear that this correspondence was mistakenly registered to this application as a submission. This correspondence has been referred to Council's Building Control unit for further action.

### BUILT FORM CONTROLS – WLEP 2000

WLEP 2000 specifies a “Housing Density” standard , which would apply any application for subdivision .

This control states a maximum housing density is 1 dwelling per 20 ha of site area. The proposed allotments are 2.425 hectares (the seniors living development) and 2,064m<sup>2</sup> for the dwelling allotment, which do not comply with the minimum housing standard.

However, an exception within this standard states:



*“(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.”*

In the consideration of the original application in the NSW Land & Environment Court, it was Council's contention that exception (c) did not apply to the subject land. The Court however found that exception (c) did apply to the land and the Court exercised its discretion to exercise the concurrence function to grant consent to the subdivision, notwithstanding the variation to the minimum standard.

The court judgement in relation to these matters (NSWLEC 1310 dated 30 December 2010) are contained in paragraphs 107-110, which is provided below:

107 That the proposed development includes a proposal for torrens title subdivision and housing for older people. As such, the Council contends the proposal does not fall within the exceptions set out in paragraph C of the Housing Density Standard.

108 I accept the submission on behalf of the applicant that the word ‘only’ has been inserted into the contention and I am satisfied the proposed development is for the purpose of housing for older people and people with a disability and therefore falls under the Housing Density exception in subcl C. I accept the evidence of Mr Cady that the locality statement provides a generic 20 ha lot size density standard subject to the specific exceptions which includes “C” housing for older people and people with a disability. I also accept that the subject site adjoins a ‘locality’ primarily used for urban purposes on which a dwelling house is permissible and as such no maximum housing density is required for the purpose of housing for older people. Where such developments comply with the minimum standards set out in cl 29. This includes a floor space ratio of 0.5:1 whereas the proposed development is 0.23:1 and height restrictions that are also complied with.

109 I am satisfied that while the development application includes a proposal to subdivide the land into 2 Torrens title lots that the development is for the purpose of providing housing for older people. The subdivision is to allow the existing dwelling house to remain on the site and the RFS has deemed the existing dwelling inappropriate for use for housing for older people due to its proximity to the northern boundary. However, they raised no issue to the existing continued use of the building as a dwelling.

110 It was submitted on behalf of the respondent that the development contravenes the housing density standard by more than 10% and the Director-General has not given concurrence. However, it was also submitted that the Court has the power under s39(6) of the *Land and Environment Court Act 1979* and I exercise this function in allowing the variation.

Further concurrence for the subject modification is not considered necessary as the :

- No additional allotments are proposed and hence the approved Housing Density will remain the same;
- average variation for each allotment as a percentage (94%) is unchanged; and
- modification is in effect a minor boundary adjustment and not a subdivision.





Under the circumstances, the concurrence already granted by the Court remains in effect and applies to the proposed modification.

## **NON-COMPLIANCE:**

### **Clause 20(1) stipulates:**

*“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”*

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

### **General Principles of Development Control**

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

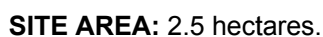
### **Desired Future Character of the Locality**

The proposal is consistent with the Locality’s Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

### **Relevant State Environmental Planning Policies**

The proposal has been assessed as being consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’). Accordingly the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1). As detailed above, the proposed development satisfies the requirements to qualify for consideration under Clause 20(1). It is for this reason that the variation to the Housing Density Built Form control, pursuant to Clause 20(1), is supported.





**Detail existing onsite structures:**

Dwelling house and seniors living development currently under construction.

### Site Features:

Vegetation; rock outcrops.

Bushfire Prone?	Yes
Flood Prone?	No
Affected by Acid Sulphate Soils	No
Located within 40m of any natural watercourse?	Yes
Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW Coastal Policy?	No
Located within 100m of the mean high watermark?	No



#### Site constraints and other considerations

Located within an area identified as a Wave Impact Zone?	No
Any items of heritage significance located upon it?	No
Located within the vicinity of any items of heritage significance?	No
Located within an area identified as potential land slip?	No
Is the development Integrated?	Yes
Does the development require concurrence?	No
Is the site owned or is the DA made by the "Crown"?	No
Have you reviewed the DP and s88B instrument?	Yes
Does the proposal impact upon any easements / Rights of Way?	No

#### SITE INSPECTION / DESKTOP ASSESSMENT UNDERTAKEN BY:

Does the site inspection confirm the assessment undertaken against the relevant EPI's

Yes

Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?

No

Are there any existing unauthorised works on site?

No

If YES has the application been referred to compliance section for comments?

N/A

Signed

Date: 18 September 2018

Nick England, Planner

#### SECTION 4 – APPLICATION DETERMINATION

##### Conclusion:

The proposal has been assessed against the relevant matters for consideration under Section 79C and 96(1A) of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

#### RECOMMENDATION - APPROVAL

That Council as the consent authority:



**APPROVE THE MODIFICATION OF THE DEVELOPMENT CONSENT** subject to:

The following amended conditions detailed within the associated notice of determination; and

**A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Subdivision Plan - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Sheet 1 of 1	18 December 2017	Simon Pak Yan Ho

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

"I am aware of Council's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest"

Signed

Date: 18 September 2018

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**Nick England, Planner**

The application is determined under the delegated authority of:

Signed

Date: 20 September 2018

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**Steven Findlay, Development Assessment Manager**