

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0409
Responsible Officer::	Lashta Haidari
Land to be developed (Address):	Lot 1113 DP 752038, 1113 / 752038 Oxford Falls Road, Frenchs Forest
Proposed Development:	Demolition works and construction of a seniors housing development comprising serviced self-care units with associated basement carparking, internal roads and site landscaping
Locality :	B2 Oxford Falls Valley under WLEP 2000
Category:	Category 2 – Housing for older people or people with disability
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	Yes
Owner:	Anita Spaliviero
Applicant:	Dukor 24 Pty Limited
Application lodged:	18 April 2019
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Seniors Housing
Notified:	11 May 2019 – 10 June 2019
Advertised:	11 May 2019
Submissions:	43 Submissions
Recommendation:	Refusal
Estimated Cost of Works:	\$ 22,870,089.00

Executive Summary

This Report involves the detailed assessment of a Development Application for the construction of a seniors housing development comprising 41 serviced self-care dwellings.

The application is made pursuant to Warringah Local Environmental Plan 2000 and is within the “*Deferred Lands*” under Warringah Local Environmental Plan 2011.

The site is the subject of a prior approval for a 72 bed Residential Care Facility (RCF) under DA2017/0206. The DA was initially refused by the Sydney North Planning Panel but subsequently approved by the Land and Environmental Court.

The current proposal has a design and configuration that is consistent with the footprints of the approved RFC, which are a series of pavilions or modules stepping down the sloping site. The current proposal seeks to diminish that outcome with the introduction of new

structures in the intervening spaces of some of the buildings. That change in outcomes and associated impacts is not supported.

The seniors housing provisions within WLEP 2000 are contained in Clause 29, Clause 40 and Schedule 16. In particular, the accessibility requirements under Clause 40 are of specific note in that the proposed development is required to provide “adequate access” for residents to off-site services and facilities and that access is adequate only if the facilities or services are located within 400m or a bus stop is situated within 400m of the site.

The subject site is situated 450 to 550 metres from the nearest bus stops, which does not comply with Clause 40. Furthermore, the means of pedestrian access to those bus stops is problematic, in that there are presently no footpaths in the connecting streets and the application does not include the construction of a suitable footpath.

Importantly, the approved RCF development was provided with only a “*private*” transport service on the basis that the residents of such a facility would not need to have a high level of access to nearby shops and facilities due to their physical condition and hence lack of independence. This was considered reasonable in the particular circumstances of a RCF.

The private mini-bus service will only provide a partial solution to the issue of adequate accessibility for future occupants of the current proposal. As the application has not demonstrated that the requirements of Clause 40 have been satisfied, the application is recommended for refusal for reasons of inadequate access and the unsuitability of the site for a self-care model of seniors housing.

The application is also deficient with respect to the other requirements of Clause 40, including the access of support services such as meals, personal care and home nursing and assistance with housework.

The public notification of the application resulted in 43 submissions and a number of issues are concurred with and included in the reasons for refusal.

A number of interdepartmental referral issues relating to the environmental impacts of the development on the site (trees, rock outcrops, extent of excavation and biodiversity), remain unresolved and also form reasons for refusal of the application. The application is Integrated Development and the RFS have provided their approval.

Accordingly, it is recommended that the Northern Beaches Local Planning Panel, as the determining authority, refuse the application for the reasons detailed within the “Recommendation” section of this report.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the EP&A Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;

- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority officers on the proposal.

SITE DESCRIPTION

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

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



Figure 1 – Subject Site

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

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

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

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

RELEVANT BACKGROUND

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

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

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

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

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

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

Development Application No. 2004/1402

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

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

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

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

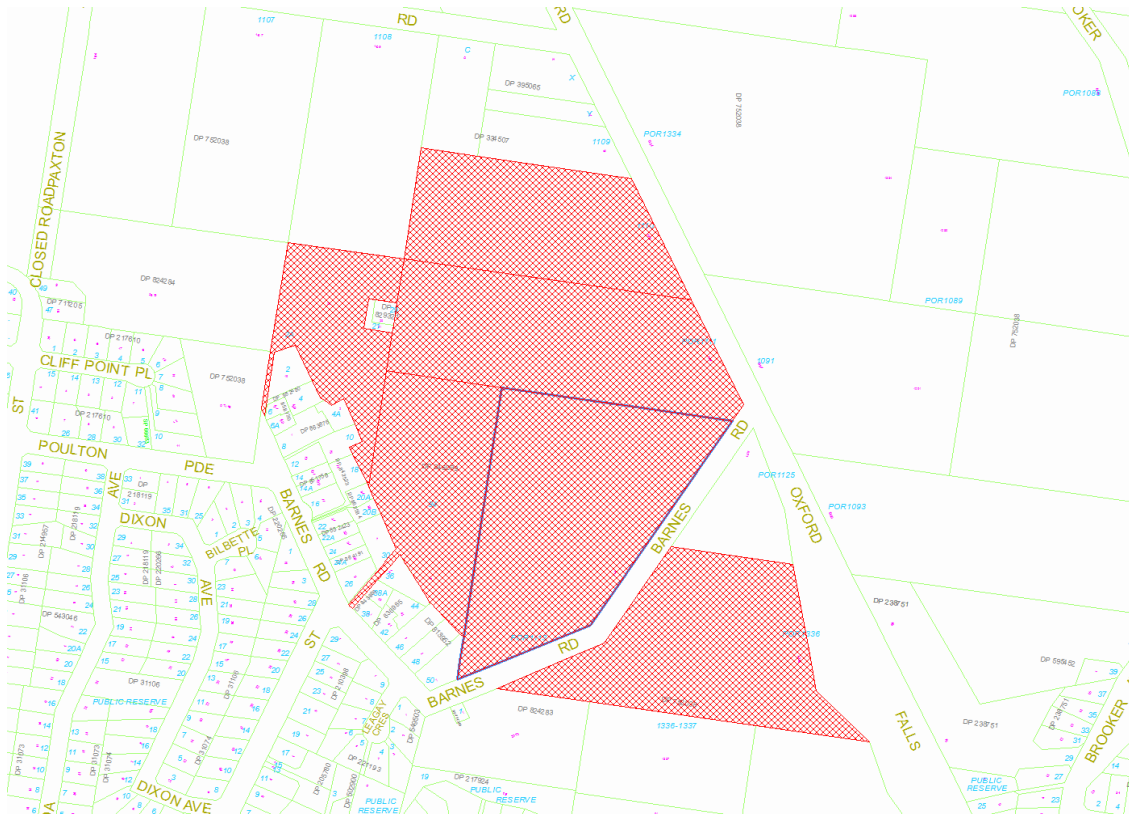


Figure 2 - Land included in DA2004/0585, DA2004/1402 and the Part 3A Application for a Seniors Living Resort and Associated Services and Facilities (Sid Londish Site). The site of the current application is outlined in purple.

The following Development Applications directly relate to the subject site:

Development Application No. DA2013/0575

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

The application sought consent for alterations and additions to a dwelling-house and a change of use to a Residential Care Facility (RCF) for **10 beds** and construction of an extension to a road, internal access road, carpark and recreation facilities.

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

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

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

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

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

Development Application No. DA2014/1062

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

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

The application was referred to the former *Joint Regional Planning Panel* (JRPP) on 12 August 2015 with a recommendation for refusal for the following reasons:

1. *Pursuant to Section 91A(4) of the Environmental Planning and Assessment Act, 1979, the NSW Rural Fire Service has refused to provide General Terms of Approval.*
2. *Pursuant to Section 79C (1) (a) (i) of the Environmental Planning and Assessment Act, 1979 and Clause 2(1) (c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, the proposed development is not consistent with the aims of the policy.*
3. *Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(3) (b) of Warringah Local Environment Plan 2000 (as amended), the proposed development is inconsistent with the Desired Future Character statement for the B2 Oxford Falls Valley Locality.*
4. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1)(a) of Warringah Local Environment Plan 2000 (as amended), the development is inconsistent with the following General Principles of Development Control as follows:*
 - a) *Clause 56 Retaining Unique Environmental Features,*
 - b) *Clause 57 Development on sloping Land,*
 - c) *Clause 58 Protection of Existing Flora,*
 - d) *Clause 60 Watercourses & Aquatic Habitats,*
 - e) *Clause 66 Building Bulk.*
5. *Insufficient information has been submitted to demonstrate compliance with the following provisions of Warringah Local Environmental Plan 2000:*
 - a) *Clause 40 Housing for Older People and People with Disabilities (support services),*
 - b) *Clause 57 Development on Sloping Land,*
 - c) *Clause 43 Noise,*
 - d) *Clause 68 Conservation of Energy and Water,*
 - e) *Clause 77 Landfill.*
6. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the proposed development is not consistent with following Schedules:*
 - a) *Schedule 5 - State Policies,*
 - b) *Schedule 16 - Principles and Standards for Housing for Older People or People with Disabilities (Clause 21 - Neighbourhood Amenity and Streetscape).*

7. *Pursuant to Section 79C (1) (c) of the Environmental Planning and Assessment Act, 1979, the subject site is considered to be unsuitable for the proposed development.*
8. *Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979, the development is not in the public interest.*

The JRPP approved the application on 12 August 2015 and provided the following reasons for its decision:

Reasons for the panel decision:

The majority of the Panel considered the recommendation of the assessment report to refuse the application; however it did not accept the recommendation for the following reasons:

The first reason for refusal, the lack of General Terms of Agreement from the Rural Fire Service, no longer exists, as the Service has provided GTAs on 12 August 2015.

Apart from the above reason, the principal reason for refusal in the assessment report is that the proposal is inconsistent with the Desired Future Character of the area. The majority of the Panel believes, however, that the proposal, especially the component to preserve the northern part of the site in an undeveloped condition, to regenerate bushland on it and provide a 30m wide biodiversity corridor, is consistent with the Desired Future Character as expressed in the LEP. The majority of the Panel notes that a residential care facility is a permissible use in the zone, that such a facility cannot reasonably be expected to take the form of rural-residential development, that the proposed buildings are nestled into the slope of the site and that the FSR of the proposal is around 0.2:1. The majority also considers that concentrating the buildings on the southern part of the site and regenerating the vegetation on the rest is a better solution environmentally and visually than dispersing them over the site in an attempt to imitate the form of rural-residential development.

As regards the concerns expressed in the assessment report about the lack of information in relation to environmental impact, the majority of the Panel considers that the proposal to regenerate bushland and provide a biodiversity corridor on the site is a net environmental benefit.

The Panel has carefully considered the views of objectors, whose concerns, additional to those mentioned in the assessment report, related to the impact on threatened fauna species (Eastern Pygmy Possum and Powerful Owl) and inadequate parking. The Majority is persuaded that the proposal will not impact adversely on these species. It notes that the parking provided complies with the council's controls.

Development Application No. DA2016/0897

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

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

The applicant subsequently withdrew the application on 23 December 2016, following advice from Council that the proposal could not be supported on the basis of inconsistency with the Desired Future Character Statement and Building Bulk.

Development Application No. DA2017/0206

This Development Application was lodged with Council in March 2017.

The application sought consent to demolish the existing dwelling-house and construct a new **71 bed** residential care facility, thus increasing the intensity of the development from 45 beds to 71 beds.

The DA was recommended for refusal by staff and refused by Sydney North Planning Panel for the following reasons:

Reasons for Refusal:

That the Sydney North Planning Panel, as the consent authority, pursuant to Clause 80(1) (a) of the EP&A Act 1979 (as amended), REFUSE Development Consent to Development Application No DA2017/0206 for demolition works and construction of a residential care facility with associated car parking, internal roads and landscaping on land at Por 1113/752038, Oxford Falls Road FRENCHS FOREST subject to the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979* and Clause 2(1)(c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is not considered to be consistent with the Aims of the policy.
2. Pursuant to Section 79C (1) (a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(3) (b) of *Warringah Local Environment Plan 2000* (as amended), the proposed development is inconsistent with the Desired Future Character statement for the B2 Oxford Falls Valley Locality.
3. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000* (as amended), the development is inconsistent with the following General Principles of Development Control as follows:
 - a) Clause 58 Protection of Existing Flora
 - b) Clause 66 Building Bulk
4. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that the proposed development is not consistent with Schedule 5 - State Policies.
5. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act, 1979*, the subject site is considered to be unsuitable for the proposed development.
6. Pursuant to Section 79C (1) (e) of the *Environmental Planning and Assessment Act, 1979*, the public interest, as expressed in the submissions received during the public exhibition of the Development Application, will not be served by the proposed development.

The DA was the subject of a Class 1 Appeal and was subsequently approved by the Land and Environment Court (LEC) in July 2017.

Pre-Lodgement Meeting

A pre-lodgement meeting was held with Council on 30 November 2018 in relation to the current serviced self-care proposal. The critical planning advice provided to the Applicant was in relation to Clause 40 and the adequacy of the future resident's access to services and facilities. The following commentary was made in the Notes:

The main planning issue relates to the increased intensity of the development and the fact that the site is not located within 400 metres of essential facilities and services and is substantially further than 400 metres from a public transport service (bus).

...it is a practical reality that the future residents of a serviced self-care housing development on the subject site will have a significantly higher need to access the local and nearby shops and facilities and for that access to be provided for pedestrians than is the case with a RCF. The access should not be solely provided for in the form

of private motor vehicles and the community bus. To rely upon motorised transport only would be “sub-optimal” for older persons and cause social and amenity impacts.

Compliance with the requirements of Clause 40 of the WLEP 2000 to existing public transport services is not achievable. The proposal is considered unsuitable for the subject site in this regard.

In this regard, given the sites relative isolation from transport and other services and non-compliance with Clause 40 is considered to be problematic.

DEVELOPMENT APPLICATION HISTORY

On 18 April 2019, the current DA2019/0409 was lodged with Council.

On 2 May 2019, the Applicant filed a Class 1 application with the Land and Environment Court against the deemed refusal of the DA.

The hearing date is set down for 3 October 2019.

PROPOSED DEVELOPMENT

The proposal seeks consent for demolition works and construction of a Seniors Housing Development, comprising the following:

- Site clearance and removal of trees and demolition of the site's existing dwelling
- Excavation for 95 basement car parking spaces, a gym, pool and ancillary recreational facilities
- The construction of 41 serviced Independent Living Units (ILU's)
- Landscaping works
- Riparian rehabilitation works
- Construction of internal roads
- Use of Barnes Road as an Asset Protection Zone (APZ)
- Site improvement, civil works, staff facilities and sediment collection

The proposed scheme has been developed around the previously approved 71 bed RCF. The applicant has indicated that the key alterations to the approved development can be summarised as follows:

- The proposal involves serviced independent living units (ILUs) as opposed to the previously approved residential care facility. Forty-one (41) ILUs are proposed as opposed to the 71 bed Residential Aged Care Facility (RACF)
- Increase in car parking provision from 36 to 95 parking spaces and providing basement car parking

- Decrease in building footprint for individual units and associated Gross Floor Area (GFA), with a previous GFA of 7,238m², decreasing to a GFA of 6,446.7m²
- Provision of facilities including a gym, pool and physio room
- Conversion of the central connecting corridor into an open breezeway

Figure 3 below shows the comparison of the building footprints.

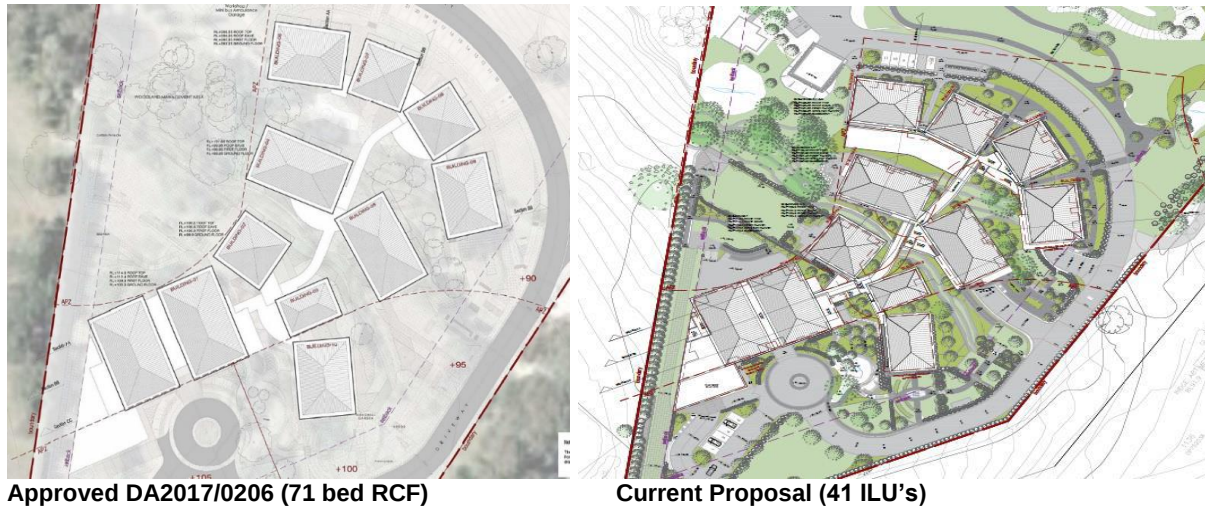


Figure 3 – Comparison of Building Footprints (Source: SEE prepared by City Plan Services)

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See the discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None Applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah DCP as it relates to the notification is applicable to this application.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None Applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	The <i>EPA Regulations 2000</i> requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be addressed via a condition of consent should this application be approved. Clause 92 of the <i>EPA Regulations 2000</i> requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be addressed via a condition of consent should this application be approved. Clause 50(1A) of the <i>EPA Regulations 2000</i> requires the submission of a Design Verification Statement from the designer at lodgement of the development application.

Section 4.15 'Matters for Consideration'	Comments
	The proposed development is a two-storey development, therefore SEPP 65 is not applicable to the proposed development and therefore a Design Verification Statement is not required for the proposed development.
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	i. The environmental impacts of the proposed development on the natural and built environment are addressed under the <i>Warringah LEP 2000</i> section of this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable. ii. The development will provide seniors housing in the locality, therefore the development ensures that the housing stock caters for a broad cross section of the community. In terms of the provision of housing, the proposed development will not have a detrimental social impact on the locality. iii. The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed land uses.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not considered suitable for the development given its location within an area, which renders the development inconsistent with the applicable planning controls as they apply in relation to access to services and facilities. In this regard, the site is not suitable for the proposed development, given the excessive distance to the closest public transport services and the lack of pedestrian connectivity (no existing or proposed footpaths) to those transport services.
Section 4.15 (1) (d) – any submissions made in accordance with the <i>EPA Act</i> or <i>EPA Regs</i>	The 43 public submissions received in response to the proposed development are addressed under 'Notification & Submissions Received' within this report. Several issues were raised which warrant the refusal of the application.
Section 4.15 (1) (e) – the public interest	The public interest has been considered as part of the application process. Overall, the public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed. The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable in terms of its impact on the natural environment. On this basis, the proposal is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights do not apply to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The DA was publically exhibited in accordance with the EP&A Act, *Environmental Planning and Assessment Regulation 2000* and Warringah Development Control Plan. The development application was notified from 11 May 2019 to 10 June 2019. Additionally, the application was advertised in the Manly Daily on 11 May 2019 and a notice was placed on the site

As a result of the public exhibition process, Council is in receipt of 43 submissions, each raising objections to the proposed development.

Name:	Address:
Mr Samuel Philip Croll	10 Karabah Place, French Forest
Mr John William O'Sullivan	27 Bluegum Crescent, French Forest
Ms Deborah Anne Hicks	24 Bimbadeen Crescent, French Forest
Mr Geoffrey John Davidson	20 A Barnes Road, French Forest
Mr Stephen Peter Johnco	26 Barnes Road, French Forest
Joseph James Earl	87 Wearden Road, French Forest
Mr John Randall Dillon	PO Box 7010, Warringal Mall 2100
Mr Shawn Christian Richardson	16 Myra Street, French Forest
Mrs Carolyn Lynda Richardson	16 Myra Street, French Forest
Mr David Allan Tuckwell	Po Box 4006 MILPERRA NSW 1891
Mr Timothy John Fergusson	16 Dixon Avenue, French Forest
Withheld	-
Withheld	-
Mr Alistair Bell	3 Winslea Avenue, French Forest
Mr Christopher Miles Low	7 Myra Street, French Forest
Ms Alice Chuang	128 Frenchs Forest Road West, French Forest
Terry Robert Vibert and Mrs Corinne Julie Vibert	44 Barnes Road, French Forest
Mr Geoffrey Lionel Broadbent	56 Iris Street, French Forest
Mr Christopher John Tanner	9 Karabah Place, French Forest
Mr Richard Cover	50 Barnes Road, French Forest
Phillip John Patrick Condon	29 Myra Street, French Forest
Mr Philip Martin	5 Karabah Place, French Forest
Mrs Kathryn Elizabeth Condon	29 Myra Street, French Forest
Mr Simon John Waight	38 Barnes Road, French Forest
Mr Maxwell Jackson	16 Karabah Place, French Forest
Alan Hornbuckle	25 Myra Street, French Forest
Ms Patricia Nettleton	5 Myra Street, French Forest
Mr Desmond John Griffin	4 Winslea Avenue, French Forest
Bruce Harvey Cohn	8 Myra Street, French Forest
Mr Andrew Phillip Nicholls	12 Barnes Road, French Forest
Christine Elizabeth Milne	21 Dixon Avenue, French Forest
Mr Phillip Vivian Strugnell Mrs Kay Strugnell	4 Myra Street, French Forest
Craig Root	-
Mrs Jeanette Elizabeth Root	38 A Barnes Road, French Forest
Mrs Ellen Mary Jackett	17 Myra Street, French Forest
Mr Mark Antico and Mrs Leanne Michelle Keys	12 Dixon Avenue, French Forest
Ann Elizabeth Sharp	77 Brighton Street, Curl Curl
Mr Gregory Mark Sainty	27 Myra Street, French Forest
Ms Megan Andrea Laurence	1 Leagay Crescent, French Forest
Mr Wen Er Zhou	16 Barnes Road, French Forest
Duffys Forest Residents Association	PO Box 567, Terrey Hills
Conny Harris	-
Mr Ian Coulter McKenzie	8 Barnes Road, French Forest
Ashley Robert King	81/77 Riley Street, Darlinghurst

Assessment of Residents Issues

The relevant matters raised within the submissions have been considered and are addressed as follows:

1. Increased Traffic and Street Parking

Concerns have been raised that the proposal will create unreasonable traffic impacts on surrounding roads and the neighbouring area, through congestion, prevalence of traffic hazards and noise pollution. Additionally, the received submissions have expressed concerns relating to street parking as a result of the additional traffic.

Comment: This issue is addressed under the referral section of this report (refer to Council's Traffic Engineers comments). In summary, there is insufficient information submitted within the applicant's Traffic Report to accurately determine the traffic impact of the development on the local road network.

This issue constitutes a reason for the refusal of the application.

2. Out of Character with the Locality

Concern has been raised that the proposal does not comply with the Oxford Falls Valley Locality statement, as the proposed development is not in keeping with the local area and will destroy a unique enclave and community on the Northern Beaches. Particularly a number of submission have listed the development as a high-density development within a semi-rural area.

Comment: This issue has been discussed at length throughout this report and forms a reason for the refusal of the DA. In summary, it has been found that the development is inconsistent with the DFC statement for the B2 – Oxford Falls Locality.

3. Impact on native wildlife and vegetation

Concerns have been raised that the proposed development will result in adverse impacts on the natural environment. Specific issues that were identified within the submissions include the destruction of native vegetation and habitat for wildlife and pollution caused by the proposed stormwater system, garden fertilisers and cleaning chemicals.

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

Comment: This issue as it relates to environmental impacts are addressed in the relevant referral comments by Council's Landscape Officer and Natural Environment (Biodiversity). In summary, the impact on the natural environment is found to be unsatisfactory and is included as a reason for refusal.

In relation to the Planning Assessment Commission (PAC) report, the subject site is not part of PAC study area and there are no statutory requirements for Council to refuse the application on the outcome of the PAC report.

4. Inadequate Access to Public Transport

A number of submissions have listed the sites exclusivity as an issue, in relation to access to public transport.

Concerns have also been raised within the submissions that the local area lacks public infrastructure like pathways and it is believed that the development is unable to provide safe access for its residents to nearby facilities and services.

Comment: Clause 40 of WLEP 2000 requires this type of development to be located within 400m of a shopping centre or bus stop, or be serviced by a transport service that is located not more than 400m from the site and is available both to and from the development during daylight hours at least once per day from Monday to Friday (inclusive). The SEE notes that the site is serviced by a mini-bus, which is parked on the site and is therefore, available to the residents of the facility for outings, convenience shopping needs or attendance at appointments.

Therefore, with regards to access to shops and/or medical facilities, the assessment of the application found that the provision of the mini-bus does not satisfy the access requirements of the 'Support Services' section under Clause 40 of the WLEP 2000.

This issue constitutes a reason for the refusal of the application.

5. Bushfire Risk

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

Comment: The subject site is identified as being bushfire prone land. The application was referred to the NSWRFs (see referral response in the Referrals section in this report), who have also raised no objection to the proposed development based on the bushfire impact and evacuation.

6. Non-compliance with SEPP (HSPD) 2004

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

Comment: The development is lodged under the provision of WLEP 2000 and not SEPP (HSPD) 2004 so the provision of access requirements of the SEPP is not applicable to the proposed.

The issue of accessibility is addressed under Clause 40 of WLEP 2000 and due to issues in relation to the adequacy of the access, is included as a reason for refusal.

7. Acoustic Impact

A number of submissions have raised concerns relating to the noise spill over caused from the operation of the development. Further, residents are concerned that due to the geographical characteristics of the area, sound will echo throughout the valley and unreasonably detract neighbourhood amenity.

Comment: This issue have been addressed under Clause 43 of WLEP 2000. In summary, it has been found that the development has generally satisfied the requirements to manage acoustic privacy.

Therefore, this issue should not be given determining weight.

8. The development is incrementally stepping towards an even larger proposal

Concerns have been raised that the development is stepping towards a larger proposal.

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

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

This matter does not warrant the refusal of the application.

9. Impact of Asset Protection Zones (APZ) on Native Bushland

Concerns have been raised within the received submissions that the proposed APZ will have adverse impacts on the surrounding bushland environment, as the APZ's are "*within the riparian buffer of Middle Creek and the tributary located on the adjoining property to the south*". It is therefore believed that this will create a conflict between environmental conservation and bushfire protection.

Comment: The application is dependent upon the use of the Barnes Road road reserve (public land) for the purposes of providing for APZ's. The provision of an APZ within the road reserve was endorsed as part of the previous approval for the site and Council's Asset Manager has provided suitable conditions to manage the APZ within the road reserve.

This matter does not warrant the refusal of the application.

10. Impact on Riparian Lands

Concern has been raised over the 10.0m width of the vegetation corridor placed adjacent to Middle Creek, as it is believed to be too narrow to effectively manage surrounding native vegetation.

Comment: As noted in the comments by the Riparian Section of Council's Natural Environment Unit, the application proposes works, which are located within the 40m buffer zone to a waterway. In this respect, the impact of the proposed development is found to be satisfactory as outlined in the referral section of this report.

This matter does not warrant the refusal of the application.

11. Excessive Excavation

Concerns have been raised over the excessive level of excavation required for the proposed basement carpark. The submissions raise the issue that the proposed excavation will result in the removal of natural rock outcrops and unreasonably disrupt the natural landform and hydrology of the site.

Comment: This issue is addressed in detail in this report, including within referral comments from Council's Landscape officer. In summary, the impact resulting from the proposed excavation is found to be unacceptable for the specific reasons referred to and is included as a reason for refusal of the application.

MEDIATION

Mediation was not requested.

EXTERNAL REFERRALS

External Referral Body	Recommendation/Comments
Department of Natural Resources Access Regulator	No Integrated Approval Required The application was referred to Natural Resources Access Regulator's as Integrated Development. The Department provided their comments on 4 June 2019 stating that a controlled activity approval is not required for the proposed development and no further assessment is therefore necessary.
NSW Rural Fire Services (NSW RFS)	Approval (Subject to Condition) The application was referred to the NSW RFS as Integrated Development on 6 May 2019. Section 100B of the <i>Rural Fires Act 1997</i> enables the Commissioner of the NSW RFS to issue a Bushfire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that <i>Rural Fires Act 1997</i> identifies Seniors Housing (within the meaning of the <i>SEPP (HSPD) 2004</i>) as such development. The RFS by letter dated 3 June 2019 issued their General Terms of Approval, which are to be included as conditions of consent should the application be considered worthy of approval.
Aboriginal Heritage office	Refusal (insufficient information provided) The Aboriginal Heritage Office requires a preliminary inspection ('due diligence' under the <i>National Parks and Wildlife Act 1974</i>) by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required.
Ausgrid	No response received The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007. To date, no response has been provided and it is assumed that no objection is raised concerning the proposal and hence there are no specific Ausgrid requirements to be imposed on any consent.

INTERNAL REFERRALS

Internal Referral Body	Recommendation/comments
Building Assessment - Fire and Disability upgrades	Approval (Subject to conditions) The application has been investigated with regard to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.
Environmental Health (Industrial)	Approval (Subject to conditions) No objection subject to conditions.
Waste Officer	Approval (Subject to conditions) No objection subject to conditions.
Natural Environment and Climate Change (Bushland and Biodiversity)	Refusal Council's Bushland and Biodiversity section has provided the following comments: <i>In response to the previous referral comments, the applicant provided a letter from Travers bushfire & ecology (19 July 2019) which states that the creation of the asset protection zone within the southern portion of the Barnes Road Reserve will not require the removal of native vegetation, and therefore will not trigger the NSW Biodiversity Offset Scheme (BOS). They state that only hand removal of exotic species is required in order to achieve the required asset protection standards.</i> <i>The vegetation within the road reserve area has previously been mapped by Travers as 'Canopy with managed understorey' and 'Canopy with dense weed understorey' (Bushland Regeneration and Biodiversity Management Plan Travers Bushfire & Ecology 12 April 2019). For the purposes of determining whether or not the BOS is triggered under the area clearing threshold, additional information regarding the extent of native vegetation within the road reserve would have been of assistance to support their claims. Based on a recent site visit it was confirmed that non-native plant species dominate within the road reserve area, although the claim that no native vegetation will require removal could not be verified. It is considered that while creation of the APZ would contribute to the total amount of</i>

Internal Referral Body	Recommendation/comments
	<i>native vegetation impacted by the development, the amount required to create the asset protection zone would not lead to the area threshold being exceeded.</i> <i>However, following discussions with Council traffic engineers and transport assets staff, they consider that an upgrade to the northern portion of the Barnes Road Reserve is required for the road to comply with Planning for Bush Fire Protection. The NSW RFS, in their General Terms of Approval, state that the internal road from the development is linked into the northern end of Barnes Road to form a secondary access / egress route. They do not specify any requirements for the road reserve itself, so it is up to Council to specify any requirements to satisfy Planning for Bushfire Protection. Any changes to the access from Oxford Falls road to the site should be part of the current development application. Associated with this is an increase in biodiversity impacts, with additional clearing of native vegetation associated with widening of Barnes road required.</i> <i>Based on this the biodiversity report must be updated, and a Biodiversity Development Assessment Report, in accordance with the Biodiversity Assessment Method 2016 (BAM) established under Section 6.7 of the NSW Biodiversity Conservation Act 2016 must be prepared <u>if the BOS is triggered under the area clearing threshold.</u></i>
Natural Environment and Climate Change (Riparian Lands and Creeks)	Approval (Subject to conditions) Council's Riparian section has provided the following comments: <i>This development has been assessed under:</i> • Warringah Local Environment Plan 2000 (WLEP 2000) • Warringah Development Control Plan 2000 (DCP 2000) • Protection of Waterways and Riparian Land Policy, PL 740 Waterways, Warringah Council. <i>The application proposes a 10-metre core riparian zone with a 10-metre vegetated buffer. This core riparian zone and buffer must be maintained. The development must ensure Bushfire Asset Protection Zones (APZ's) are maintained outside of riparian land in accordance with section 3.1 of the Protection of Waterways and Riparian Land Policy. The development must be sited and designed to maintain and enhance natural watercourses and aquatic habitat in accordance with section 60 of the WLEP 2000.</i> <i>The application is supported, as it complies with the above policies.</i>
Natural Environment and Climate Change (Water Management)	Approval (Subject to conditions) Council's Riparian section has provided the following comments: <i>The proposal complies with the water management requirements of Council's Water Management Policy. As such, no objection to the proposed development is raised subject to conditions as recommended.</i>
Landscape Officer	Refusal Council's Landscape Officer has provided the following comments: <i>It is noted that there is an existing approval on this site for a Residential Care Facility with a similar building footprint and layout to the current application.</i> <i>This application is for Seniors Housing development. Some amendments to the existing approval include:</i> • Additional excavation for basement parking, pool and gym • Additional driveway accesses for basement parking • Amended internal footpath access • Amended alignment of the northern section of the driveway • Increase in building footprint in the northern portion of the site. 1. <u>Tree and Landscape Impacts</u>

Internal Referral Body	Recommendation/comments
	<i>The excavation for the pool and gym will require removal of several trees required to be retained under the existing consent. These trees are noted as:</i> • <i>Tree 698 Eucalyptus sieberi 12m ht.</i> • <i>Tree 418 Angophora costata 23m ht.</i> • <i>Tree 410 Eucalyptus piperita 18m ht.</i> • <i>Tree 420 Angophora costata 17m ht.</i> • <i>Tree 422 Eucalyptus piperita 22m ht.</i> • <i>Tree 688 Melaleuca styphelloides 11m ht.</i> • <i>Tree 687 Melaleuca styphelloides 11m ht.</i> <i>Additionally, the approved Landscape Plan proposed additional tree planting in the area now proposed to be occupied by the pool and gym as follows:</i> <i>3 x Eucalyptus haemastoma</i> <i>8 x Archontophoenix cunninghamiana</i> <i>8 x Elaeocarpus reticulatus</i> <i>4 x Cyathea cooperi.</i> <i>The proposed landscape plan now indicates replanting of :</i> <i>1 x Elaeocarpus reticulatus</i> <i>3 x Cyathea cooperi</i> <i>The new proposal therefore represents a net loss of 26 trees around the built form that provided important retention of existing native trees and provision of additional trees that helped to break down the bulk and scale of the buildings stepping down the site.</i> <i>Consequently, the excavation for the pool and gym as proposed is not supported.</i>
Development Engineers	Approval (Subject to conditions) No objection subject to conditions.
Traffic Engineer	Refusal Council's Traffic Engineer has provided the following comments: <i>The proposal is for demolition works and the construction of a 41 self-contained dwellings (Seniors Housing) with basement car parking, internal roads.</i> <i>As it was raised in the Pre-DA meeting, the main concern is in relation to the accessibility to /from the site and its distance from a public bus stop. The approved Residential Care Facility development was approved with only a "private transport service" (community bus) on the basis that the residents of such a facility would not need to have a high level of access to nearby shops and facilities due to their lack of independence. This was considered reasonable in the circumstances of the case and the site was considered suitable for that specific type of seniors living. This approach was consistent with the requirements of the SEPP in relation to the provision of a community bus.</i> <i>The new proposal is for self-contained Seniors Housing (over 55 living) and the future residents of a serviced self-care housing development on the subject site will have a significantly higher need to access the local shops and facilities for that access to be provided for pedestrians than is the case with a Residential Care Facility. The access shall not be solely provided for in the form of private motor vehicles and the community bus. This will also increase the private car use dependency.</i> <i>In addition, connection to the facilities such as shopping, health care and other social infrastructure is required with multiple options for residents to access these services, through private vehicle, community bus and walking to public transport, which is crucial. An accessible path of travel needs to be formalised from the development to the bus services in Iris Street. This will need to be a minimum of 1.5 metre wide concrete footpath and any other works required to provide this connection, including but not limited to pedestrian refuges, widening of the existing footpath where required, and street lighting upgrades.</i>

Internal Referral Body	Recommendation/comments
	<i>Whilst the proposed primary access is from the formed section of Barnes Road, a secondary access and egress point is required from the development to connect with Oxford Falls Road (east). This connection should be constructed in line with Planning for Bushfire Protection requirements and include a 1.5 metre wide footpath to assist residents in connecting with the wider community and local area.</i>
Urban Design	Approval Council's Urban Designer has provided the following comments: <i>There are no urban design issues identified. The amount of site excavation has been increased due to the newly added basement car parking areas but they are located under the previously approved building footprints. As a result, the proposed built forms are similar to the previously approved building forms.</i>
Strategic and Place Planning	Approval Council's Strategic and Place Planning Section has provided the following comments: <i>A portion of the subject site (approximately half of the site) lies within the 'Area of Influence' identified for the purposes of developing the Hospital Precinct Structure Plan. As such, the DA has been referred to Strategic Planning for comment in relation to future strategic planning directions for the area.</i> <i>In August 2017, Northern Beaches Council adopted the Hospital Precinct Structure Plan. Work is currently underway to develop the required amendments to Warringah LEP 2011 and Warringah DCP 2011 to carry forward Stage 1 of the Structure Plan directions. The proposed LEP and DCP amendments are scheduled for public exhibition in the second half of 2019.</i> <i>The site is not subject to any proposed changes to the current planning provisions arising from the Hospital Precinct Structure Plan; nor will the proposed development have any impact in relation to the future operation of the Structure Plan and associated amended planning controls.</i>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)

All, EPIs (State Environmental Planning Policies (SEPPs), Regional Environment Plans (REPs) and Local Environment Plans (LEPs)), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each EPIs (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the documents are not relevant or are enacting, definitions and operational provisions, which the proposal is considered acceptable against.

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

State Environmental Planning Policies (SEPPs)

Further consideration is required for the following State policies:

SEPP 55 - Remediation of Land

The SEPP establishes Statewide provisions to promote the remediation of contaminated land.

SEPP 55 states that land must not be developed, if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when

consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when land has been at risk.

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

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

SEPP (Infrastructure) 2007

Clause 45 – Ausgrid

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

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

The application was referred to Ausgrid under clause 45(2) of SEPP Infrastructure.

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

Clause 102 - Roads and Maritime Service (RMS)

The development consists of 41 residential apartments, and the site does not have an access to a classified road or a road that connects to the classified road, therefore the requirement of clause 106 is not applicable to the subject application.

SEPP (Building Sustainability Index: BASIX) 2004

The application has been accompanied by a BASIX certificate for proposed development, that lists the sustainability commitments by the applicant as to the manner in which the development will be carried out. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposed development. Nonetheless, a condition could be imposed, should the application be considered worthy of approval to ensure such commitments are fulfilled during the construction of the development and prior to occupation.

SEPP 44 – Koala Habitat Protection

The provisions of this policy apply as the site is greater than one hectare in size. The site does not represent potential or core koala habitat. Accordingly, no further consideration of the policy is required.

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

The DA is made pursuant to WLEP 2000, which permits development for the purposes of *housing for older people or people with disabilities* on land within Locality B2 Oxford Falls Valley. The DA is not made pursuant to SEPP (HSPD) 2004.

Notwithstanding, clause 12(1)(b) of WLEP 2000 states that before granting consent for development the consent authority must be satisfied that the development is consistent with any relevant State Environmental Planning Policy described in Schedule 5 (State policies). State policies pertaining to housing for older people or people with a disability are nominated in Schedule 5.

In addition to the above, the Land and Environment Court decision of Talbot J on 31 May 2004 in *Mete v Warringah Council [2004] NSWLEC 273*, states that if a DA is made pursuant to WLEP 2000, then only certain clauses of the *SEPP* are relevant to the assessment of the application. Specifically, clauses, which are prefaced with the words “development application made pursuant to this chapter”, are not relevant to the application.

Taking the approach of the Court, an assessment of the proposal has taken into consideration the relevant provisions of the *SEPP* outlined as follows:

Chapter 1 – Preliminary

Aims of the Policy:

- (1) *This Policy aims to encourage the provision of housing (including residential care facilities) that will:*
 - (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
 - (b) *make efficient use of existing infrastructure and services, and*
 - (c) *be of good design.*

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

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

When considering the development against the aim of achieving good design, the development must be considered in context with the other provisions of the SEPP. In this regard, it is acknowledged that the footprint of the proposed development is consistent with the already approved footprint under DA2017/0206 and Council's Urban Designer has raised no issues in relation to the design of the development.

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

Chapter 2 – Key concepts

The proposed development is consistent with the key concepts contained within SEPP. The proposed development comprises self-contained dwellings, which are to be occupied by seniors, people with a disability, or other persons permitted by the SEPP. Appropriate conditions can be placed on the development consent to restrict occupation of this building in accordance with the definitions outlined under the SEPP.

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

Chapter 3 – Development for seniors housing

Chapter 3 of the SEPP contains a number of development standards that are applicable only to DAs made pursuant to the SEPP. As this DA was made pursuant to WLEP 2000, the specific provisions prefaced for their operation with the words “made pursuant to this chapter” of Chapter 3 do not apply. There are no relevant provisions of Chapter 3 applicable to this DA.

Chapter 4 – Miscellaneous

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

STATE REGIONAL ENVIRONMENTAL PLANS

There are no SREPs applicable to the site.

LOCAL ENVIRONMENTAL PLANS

Warringah Local Environment Plan 2000 (WLEP 2000)

WLEP 2000 applies to the subject land and the development application is made pursuant to this instrument. Under WLEP 2000, the subject site is within the B2 Oxford Falls Valley Locality and the proposed development, being development for the purposes of housing for older people or people with disabilities, is classified as a Category 2 Development.

The DFC statement for the B2 locality states:

B2 Oxford Falls Valley Locality

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

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

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

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

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

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

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

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

(a) New detached style housing conforming with the housing density standards

In terms of the character of the area, the development is for seniors housing which is permissible use with consent on the subject site. It is of a similar scale and occupies a similar footprints and building envelopes to the approved RCF development under DA2017/0206. Therefore the proposed development is found to be consistent with this component of the DFC.

(b) Low intensity, low impact uses

The terms “low intensity” and “low impact” are not defined in WLEP 2000. However, in the matter of *Vigor Master P/L v Warringah Council [2008] NSWLEC 1128*, the Commissioner gave weight to the evidence of the Council Planner who sought to give meaning and understanding to the terms “intensity” and “impact”. In this regard, the following characterisation was given:

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

“Impact *- is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore ‘low impact’ would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality”.*

It is commonly accepted that the term ‘intensity’ in the context of development assessment relates to the general extent and degree of the activities associated with a proposal while the

term 'impact' relates to height, bulk and scale and the relationship of a proposal with its site and surroundings. To achieve consistency with the DFC statement in the B2 Locality under WLEP 2000, a development is also required to be of a low intensity and low impact.

An assessment of the intensity and impact of the proposed development is as follows:

Is the proposed development a “low intensity” use?

The activities associated with the proposed development are traffic and noise associated with the operation of the use and the activities of its occupants. The proposal is considered to satisfy the low intensity test. In particular, the Traffic and Parking Assessment undertaken in relation to this proposal confirms that the proposed development will have no unacceptable traffic implications in terms of road network capacity.

However, it is noted that the Traffic Report does not consider the additional number of daily delivery movements which will be required in the provision of specific external services to residents of the development (as required under Clause 40 of WLEP 2000).

Therefore, in the absence of that additional traffic assessment, the proposed development cannot conclusively be defined as a low intensity form of development.

Is the proposed development a “low impact” use?

The impact of the proposal in its current form is found to be unsatisfactory, as there are certain elements of the current design that are unsatisfactory as it relates to impact on natural landforms, vegetation and rock outcrops. Specifically, this relates to the excavation and tree loss for the proposed swimming pool and gym, which is situated between Building 4 and Buildings 6 and 7 and the significant amount of additional excavation for the 40 surplus car parking spaces to be provided onsite.

The surplus parking is based on what is being provided above the parking rate referred to in Clause 29 of WLEP 2000 (deemed to be the minimum parking requirement for seniors housing). In this regard, insufficient justification has been provided as why such a significant amount of additional spaces are required, which results in an additional impact on the landforms and vegetation of the site.

Therefore, the proposed development is not considered to be low impact for reasons that the excavation is not minimised.

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

The DFC indicates that there should be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The development will not disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway and is therefore consistent with this aspect of the DFC.

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

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

The proposed development will result in a significant impact upon the site including its native vegetation through the removal and or modification of greater than 0.5 ha of remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species as a result of the proposed development within site, provision of APZs within the site as well as over the adjoining public land, and emergency egress/access over the adjoining public land.

The proposal includes approximately 16,823m³ of excavation for basement car parking (which includes 40 surplus parking spaces) and storage areas as well as the provision of the gym and pool area across the upper slopes of the site resulting in permanent alteration of natural topography, removal of rock outcrops and boulders and removal of mature native trees and other vegetation.

The proposed development is therefore not consistent with the DFC statement of the locality relating to the requirement of protecting natural landscape and landform.

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

The proposal incorporates external finishes with natural textures and neutral colours to ensure the development is visually compatible with the natural landscape in which it is situated. A schedule of colours and finishes is included with the architectural plan set submitted with the application. The proposal is consistent with this component of the DFC.

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

This part of the DFC statement is not applicable as the site is not located on or near to Forest Way or Wakehurst Parkway.

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

As noted in the comments by the Riparian Section of Council's Natural Environment Unit, the application proposes works, which are located within the 40m buffer zone to a waterway. In this respect, the impact of the proposed development is found to be satisfactory. The proposal is consistent with this component of the DFC

Conclusions on consistency with the DFC Statement

Based upon the above considerations, the development is found to be inconsistent with the DFC statement for the B2 Oxford Falls Valley locality. It is found not to involve a low intensity and low impact on the site in terms of the form, scale and siting of the development, particularly in relation to the unacceptable impacts on the natural landforms and native vegetation through excessive excavation and placement of certain building elements.

Built Form Controls for Locality B2 Oxford Falls Valley

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

Built Form Standard	Required	Proposed	Compliance
Housing Density	WLEP 2000 states that on land that adjoins a locality primarily used for urban purposes and which a dwelling house is permissible, there is no maximum housing density, if the development is for the purposes of housing for older people or people with a disability and the development complies with the minimum standards set out in Clause 29.	The development being housing for older people or people with a disability is consistent with the floor space ratio provisions of Clause 29 and therefore the housing density is not applicable for this development. (refer to Clause 29 table of this report)	Not Applicable
Building Height	8.5m	The development has a maximum height of 8.5m	Yes
Front Building Setback	20.0m (Barnes Road)	20.0m	Yes
Rear Building Setback	10.0m	In excess of 10.0m	Yes
Side boundary setback	10.0m	Approximately 10.0m from the proposed building	Yes
Landscaped Open Space (LOS)	30% of the site area.	Approximately 70% of the site will remain as LOS	Yes

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

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

The following table details whether the development meets the requirements and whether it can be refused:

Development Standard	Required	Proposed	Can application be refused?
(a) Building Height (to ceiling)	8.0m	8.0m	No
(b) Density and Scale	0.5:1 or less (site area – 33,853m ²)	0.2:1 (6,446m ²)	No
(c) Landscaped Area	Min 35m ² per dwelling. Total required = 1,435m ² (based on 41 units).	Approximately 23,379m ² of Landscape area provided	No
(d) Parking	0.5 car space for each bedroom 32 x 2 bedroom = 64 bedroom 9 x 3 bedroom = 27 Total parking space required = 45.5 (46 spaces)	82 spaces	No (36 spaces surplus)
(e) Visitor Parking	1 space per 5 dwellings = 8.2 (9 spaces)	13 spaces	No (4 spaces surplus)

(f) Deep Soil Area	(a) Site width (W) = 199.9m (b) Site length (L) = 263m (when measured from western boundary) (c) W x 15% of L Total required = 7,886.1m ²	Approximately 23,379m ² of Landscape area provided	No
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General Principles of Development Control

Clause 12(1)(a) of WLEP 2000 states that prior to granting consent, Council must be satisfied that the proposal is consistent with the relevant general principles of development control contained in Part 4 of WLEP 2000.

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

General Principle	Applies	Comments	Complies
Clause 38 Glare & Reflections	Yes	A standard condition may be included in the consent, should this application be approved, to ensure that the reflectivity index of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%. Subject to addressing the imposed conditions, the application is considered capable of satisfying the provisions of this General Principle.	Yes (subject to condition)
Clause 39 Local Retail Centres	No	The site is not located within a Local Retail Centre.	Not Applicable

Clause 40 - Housing for Older People or People with Disabilities

Comment:

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

Control	Required	Proposed	Compliance
Support Services	The site within 400m of a shopping centre or bus stop; or The development is serviced by a transport service that is located not more than 400m from the site and is available both to and from the development during daylight hours at least once per day from Monday to Friday (inclusive).	The site is not located within 400 metres of essential facilities and services and is further than 400 metres from a public transport service (bus). The proposal does not meet the specific requirements of clause 40, which should apply to the proposed development to ensure a reasonable and good level/standard of access is afforded to the future occupants of the development. Furthermore, the application is not accompanied by any justification to vary the 400m requirement and does not involve the construction of a footpath which would connect	No

Control	Required	Proposed	Compliance
		the site to the bus stops and hence provide a safe and comfortable means of walking to and from the bus stop. The reliance upon a privately operated mini-bus as part of the development, is not a suitable substitute (as the sole means of accessing local services and facilities), for not meeting the pedestrian access requirements to a public bus stop. Accordingly, the issue of non-compliance with clause 40 has been included as a reason for refusal.	
	Reasonable access to home delivered meals, personal care and home nursing and assistance with housework.	Clause 40 requires that the consent authority must not consent to development for the purpose of housing for older people or people with disabilities on land that adjoins land in a locality used primarily for urban purposes unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have reasonable access to: • home delivered meals, and • personal care and home nursing, and • assistance with housework. The applicant has not demonstrated by satisfactory written evidence that residents of the proposed development will have reasonable access to home delivered meals, personal care and home nursing, and assistance with housework, as required by clause 40 of WLEP 2000. Therefore, this issue is included as reason for refusal.	No
Wheelchair access	<u>(a) Site Gradient</u> (i) if the whole of the site has a gradient of less than 1:10, 100% of the hostel or residential care facility beds and 100% of the dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is	Internally, the development has a series of interlinking walkways and pedestrian tracks between the buildings and around the site. The access driveway to the individual residences has a separate pedestrian pathway, to provide adequate sightlines to enhance visibility for motorists and pedestrians.	Yes

Control	Required	Proposed	Compliance
	accessible to all residents, or (ii) if the whole of the site does not have a gradient of less than 1:10, a percentage (which is not less than the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and which in this subparagraph is called <i>the specified minimum percentage</i>) of any hostel or residential care facility beds and the specified minimum percentage of any dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is accessible to all residents.		
	<u>(b) Road Access</u> At least 10% of any hostel or residential care facility beds and at least 10% of any dwellings which meet the requirements of paragraph (a) must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road.	The development provides for a continuous path of travel for wheelchair bound residents of the facility to the driveway and adjoining public road.	Yes
	<u>(c) Common Areas</u> Access must be provided so that a person using a wheelchair can use common areas and common facilities associated with the development.	The Access Report notes that the development will achieve compliance with the requirement of this Clause.	Yes
	<u>(d) Adaptability</u> 10% of any hostel or residential care facility beds and 10% of any dwellings which meet the requirements of paragraph (a) must also have, or be capable of being modified so that they have, wheelchair access by a continuous path of travel (within the meaning of AS 1428) to all essential areas and facilities inside the hostel, residential care facility or dwellings, including a toilet, bathroom, bedroom and a living area.	The Access Report notes that the development will achieve compliance with the requirement of this Clause.	Yes

Control	Required	Proposed	Compliance
Clause 42 Construction Sites	Yes	The potential exists for the future demolition, excavation and construction to have an adverse impact upon surrounding locality to the west in terms of traffic, noise, dust, parking, accessibility and sediment. Therefore, comprehensive conditions of consent will be required to be imposed for Construction Management Plan to be submitted, should this application be approved. Issues to be addressed include stormwater and wastewater disposal, waste management, air quality, noise management and truck movement, frequency and parking. Subject to addressing the imposed conditions, the application is considered capable of satisfying the provisions of this General Principle.	Yes (Subject to conditions)
Clause 43 Noise	Yes	The nature of the proposed use is unlikely to generate significant noise emissions associated with the occupation of the development, with the exception of air conditioning systems. A suitable condition could be imposed if the application was worthy of approval in relation to A/C systems.	Yes (subject to conditions)
Clause 44 Pollutants	No	No further assessment required	Not Applicable
Clause 47 Flood Affected Land	No	The site is not located within, or near to, any identified flood affected land.	Not Applicable
Clause 48 Potentially Contaminated Land	Yes	Council records indicate that the subject site has been used for residential purposes for a significant period, with no prior conflicting land uses. In this regard, it is considered that the site poses no risk of contamination, the land is considered suitable for continued residential land use and therefore, no further consideration is required in this regard.	Yes
Clause 49 Remediation of Contaminated Land	No	Refer to assessment under SEPP 55 and Clause 48.	Not Applicable
Clause 49a Acid Sulphate Soils	No	The site is not located within, or near to, any land categorised as containing acid sulphate soil.	Not Applicable
Clause 50 Safety & Security	Yes	The nature of the proposed use and the design of the proposed development will provide an enhanced level of passive surveillance to the adjoining roadway.	Yes
Clause 51 Front Fences and Walls	No	The plan submitted with the application does not show any front fencing.	Not Applicable
Clause 52 Development Near Parks, Bushland Reserves & other public Open Spaces	Yes	With exception to the road reserves, which abut the site, the site is a privately owned property, which is surrounded by private properties (except for Barnes Road reserve to the south). A notable exception is the proximity of the Garigal National Park, which is located approximately 1.2km to the north.	Yes

Control	Required	Proposed	Compliance
		The proposal will provide adequate separation of the site from the surrounding public open space. The proposal is therefore considered to satisfy the requirements of Clause 52.	
Clause 53 Signs	No	No signs are proposed as part of this application.	Not Applicable
Clause 54 Provision and Location of Utility Services	Yes	Appropriate conditions may be imposed, should this application be approved, to ensure that the development is connected to required utilities.	Yes (subject to conditions)
Clause 56 Retaining Unique Environmental Features on Site	Yes	The distinctive environmental features of the site are assessed by Council's Landscape and Natural Environment sections, whom have advised that the application cannot be supported for the reasons provided in the referrals section of this report. In summary, it relates to impact on native trees and excessive excavation. Based on the above, the application is not considered to be consistent with the requirements of Clauses 56 and 58 and this issue has been included as a reason for refusal.	No
Clause 57 Development on Sloping Land	Yes	Clause 57 requires that the geotechnical stability of sloping land to support development is to be demonstrated. The site generally slopes downwards from the south-western corner to the north-eastern corner by 27m over a distance of 280m. This represents a slope of 9.6%, which is considered gradual. The proposed development has been stepped to respond to the topography of the land.	Yes
Clause 58 Protection of Existing Flora	Yes	Refer to assessment provided under Clause 56.	No
Clause 59 Koala Habitat Protection	Yes	Clause 59 defines potential Koala habitat as consisting of areas of native vegetation where the trees of the types listed in Schedule 11 constitute at least 15% of the total number of Trees in the upper or lower strata of the tree component. The assessment by Council's Natural Environment section has raised no objection in relation to Koalas on site.	Yes
Clause 60 Watercourses & Aquatic Habitats	Yes	The application was referred to the Riparian Section of Council's Natural Environment Unit who advises (see 'Internal Referrals' in this report) that no objection is raised to the development. This was based upon the fact that the development has not been designed to maintain and enhance natural watercourses and aquatic habitat.	Yes
Clause 61 Views	Yes	Due to the topography and location of the site, it is unlikely that the proposed development will affect any significant views, which will warrant the refusal of the application.	Yes

Control	Required	Proposed	Compliance
Clause 62 Access to sunlight	Yes	The shadow diagrams submitted with the application indicates that the proposed development will achieve compliance with the requirement of this Clause.	Yes
Clause 63 Landscaped Open Space	Yes	The application was referred to the Landscape Officer who advises (see 'Internal Referrals' in this report) that the application is not supported in relation to the landscape issues of the site, particularly in relation to excessive excavation and tree removals proposed for the proposed development.	No
Clause 63A Rear Building Setback	Yes	The proposed development is found to be consistent with the requirement of this Clause.	Yes
Clause 64 Private open space	No	In accordance with Clause 62 Private open space of WLEP 2000, private open space is not to be located within the street setback area unless the site is a corner allotment or the applicable Locality Statement provides otherwise. The private open space provided for each apartments is satisfactory in addressing the requirements of this Clause.	Not Applicable
Clause 65 Privacy	Yes	The development is located a sufficient distance from other residential properties such that it will not result in any unreasonable direct overlooking into habitable rooms and principal private open spaces. No additional architectural privacy treatments are considered required.	Yes
Clause 66 Building bulk	Yes	Clause 66 requires buildings to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land. The proposed development complies with the building height and floor space ratio controls which apply to development for seniors or people with a disability. Council's Urban Designer has reviewed the proposed development and has raised no objection to the design of the development in relation to building bulk.	Yes
Clause 67 Roofs	Yes	The proposed roof form is considered satisfactory and is integral to the style of the buildings.	Yes
Clause 68 Conservation of Energy and Water	Yes	BASIX Certificates have been submitted with the application. The development achieves the target for water, thermal comfort and energy use. Conditions should be included in the consent if the application is approved to ensure the commitments identified on the BASIX certificate are implemented.	Yes (subject to condition)
Clause 69 Accessibility – Public and Semi-Public Buildings	Yes	The proposed development is required to comply with all the relevant accessibility provisions of Clause 40	Not Applicable
Clause 70 Site Facilities	Yes	The development provides for all required site facilities, which may be situated such that they	Yes

Control	Required	Proposed	Compliance
		are convenient to the needs of users and have minimal visual impact from public places. The DA does not include any details with regards to waste management. However, this could be appropriately addressed through the imposition of an appropriate condition should this DA be approved.	(subject to condition)
Clause 71 Parking Facilities (visual impact)	Yes	The proposed open and basement car parking area does not dominate or detract from the streetscape given its relative concealment by the proposed landscaped works along the western side boundary and along the eastern edge of the internal driveway.	Yes
Clause 72 Traffic Access & Safety	Yes	The site is accessed via a variable width driveway (between 4.0m and 5.5m in width) which connects via a single crossover to the sealed section of Barnes Road at the south-western edge of the site. The Traffic study submitted with the application does not include any details in relation to the service deliveries that will be required as part of satisfying Clause 40 for this type of development. Therefore, the impact on traffic cannot be accurately determined based on the information submitted.	No (Insufficient Information)
Clause 73 On-site Loading and Unloading	Yes	All loading and unloading will occur within the boundaries of the subject site and therefore considered to be satisfactory in relation to this Clause.	Yes
Clause 74 Provision of Car Parking	Yes	The development includes a provision for the on-site parking which exceeds the requirements of Clause 29 under WLEP 2000.	Yes
Clause 75 Design of Car Parking Areas	Yes	The car parking layout and internal access arrangements are capable comply with the relevant design requirements in 'AS/NZS 2890.1:2004' and 'AS/NZS 2890.6:2009'.	Yes
Clause 76 Management of Stormwater	Yes	Council's Development Engineer has reviewed the proposal and raised no objection to the proposed development subject to conditions of consent. Should the application be approved, the conditions as recommended by Council's Development Engineers can be included in the consent.	Yes (subject to conditions)
Clause 78 Erosion & Sedimentation	Yes	Appropriate conditions associated with management of erosion and sedimentation can be included on the consent should this Development Application be approved.	Yes (Subject to Condition)
Clause 79 Heritage Control	No	No further assessment required.	Not Applicable
Clause 80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	The Aboriginal Heritage office has assessed the proposed development and has advised that a preliminary inspection ('due diligence' under the <i>National Parks and Wildlife Act 1974</i>) by a qualified Aboriginal heritage professional is required. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and	No (Insufficient Information)

Control	Required	Proposed	Compliance
		recommendations for any further action if required. Accordingly, there is insufficient information submitted with the application to demonstrate compliance with the requirement of this Clause.	
Clause 82 Development in the Vicinity of Heritage Items	No	No further assessment required.	Not Applicable
Clause 83 Development of Known or Potential Archaeological Sites	No	No further assessment required.	No

Other relevant WLEP 2000 Clauses

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

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

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

SCHEDULES

Schedule 5 - State Policies

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

Schedule 8 - Site analysis

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

It is considered that the submitted Site Analysis, in conjunction with the Statement of Environmental Effects adequately addresses how the development responds to its surrounds and the locality.

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

Schedule 16 prescribes various standards concerning accessibility and useability having regard to relevant Australian Standards specifically designed for housing for seniors and people with disability. The applicant has submitted a report prepared by an accredited access

consultant verifying that the proposal will comply with the relevant standards. These standards may be reinforced via suitable conditions of consent, if the application was worthy of approval.

Schedule 17 – Car parking Provision

The provision of car parking is addressed under Clause 29 of the *WLEP 2000*. The development, as proposed, complies with the car parking requirement under Clause 29 and Schedule 17 of the *WLEP 2000*, providing 40 spaces in excess of what is deemed to be the minimum requirement.

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

A monetary contribution of \$228,701 is required, if the application is approved, for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$22,870,089.

CONCLUSION

The application has been assessed in accordance with the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP (HSPD) 2004, SEPP Infrastructure, WLEP 2011 and the relevant codes and policies of Council, including the relevant provisions of the WDCP 2011.

Council has consistently raised concerns in relation to the suitability and appropriateness of the site for higher density residential development such as seniors housing, given its isolation from local services and facilities and the lack of pedestrian connectivity of the site with local public transport services.

The distance of the subject site from key services and facilities that residents will need to access on a daily basis, is highlighted by the applicants reliance upon a privately operated shuttle bus that will provide a restricted level of access and exacerbate the sense of isolation that residents will feel, especially when ageing in place and circumstances change from being more mobile to less mobile. In fact, some residents will be less mobile (do not drive) from initial occupation of the development and will need to depend on the infrequent mini-bus timetable as they will not have the choice of walking to the local bus stop via a safe and comfortable pedestrian footpath.

The assessment of this application has found that the application is not consistent with DFC statement for the B2 Oxford Falls Valley Locality and the application is deficient in addressing the environmental impacts associated within the subject site, as described in the relevant expert assessment comments.

The notification of the development resulted in 43 individual submissions, which were all in opposition to the proposal. The majority of the submissions raised concerns with regards to:

- Increased traffic congestion in the area,
- Impact on the surrounding road network, including on street parking,
- The impact on the character and amenity of the locality in general,
- Limited access for the future residents of the development;

- Environmental Impacts,
- Bushfire risk, and
- Suitability of the site for a senior's housing development.

The issues raised in the submissions are generally concurred with and justify the recommendation for refusal of the application. They are addressed in the "Public Notification Section" of this report.

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

RECOMMENDATION (REFUSAL)

That the Northern Beaches Local Planning Panel, as the consent authority, pursuant to Clause 4.16 (1) (a) of the EP&A Act 1979 (as amended), REFUSE Development Consent to Development Application No DA2019/0409 for demolition works and construction of a seniors housing development comprising 41 serviced self-care units, swimming pool and gym, with associated basement carparking, internal roads and site landscaping at Por 1113/752038, Oxford Falls Road, Frenchs Forest subject to the reasons outlined as follows:

1. The proposed development is unsatisfactory in respect to Section 4.15 of the EPA Act, as the application is found to be inconsistent with the provisions of Aims of SEPP (HSPD) 2004 in relation to the isolation of the site.
2. Pursuant to Section 4.15 (1) (a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(3) (b) of Warringah Local Environment Plan 2000 (as amended), the proposed development is inconsistent with the Desired Future Character statement for the B2 Oxford Falls Valley Locality.
3. Pursuant to Section 4.15 (1) (a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(3) (b) of Warringah Local Environment Plan 2000 (as amended), the proposed development is inconsistent with the requirement of Clause 40 for the following reasons:
 - The proposal fails to comply with the requirement of clause 40 in that site is not located within 400 metres of essential facilities and services and is substantially further than 400 metres from the public transport service (bus).
 - The site is not considered suitable for the development given its location for housing for seniors or people with a disability, given the excessive distance and steep grades to the closest public transport services.
 - Insufficient details have been provided to demonstrate that residents of the serviced self-care housing component of the proposed development will have reasonable access to home delivered meals, personal care and home nursing, and assistance with housework.
4. Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1)(a) of Warringah Local Environment Plan 2000, the development is inconsistent with the following General Principles of Development Control as follows:

- Clause 56 Retaining Unique Environmental Features
- Clause 58 Protection of Existing Flora
- Clause 72 – Traffic Access & Safety
- Clause 63 – Landscape Open Space
- Clause 80 - Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service