



DEVELOPMENT ASSESSMENT REPORT

Assessment Officer:	Alex Keller
Address / Property	Lot 806 DP 752038, No.8 Lady Penrhyn Drive, Beacon Hill
Description:	Construction of housing for older people or people with disabilities comprising 14 Units
Development Application No:	DA2019/0447
Application Lodged:	3/5/2019
Plans Reference:	A001 to S401 dated 9/4/2019 drawn by <i>Vigor Master Pty Ltd</i>
Amended Plans:	No
Applicant:	Vigor Master Pty Ltd – c/o Ivy Wang
Owner:	8 Beacon Hill Investment Pty Ltd
Locality:	B2 Oxford Falls Valley
Category:	Category 2 – Warringah Local Environmental Plan (WLEP) 2000
Variations to Controls (Cl.20/Cl.18(3)):	Yes – Front building setback
Referred to DDP:	No
Referred to NBLPP:	No
Land and Environment Court Action:	Yes - Deemed Refusal - Appeal No.2019/0239478
SUMMARY	
Submissions:	1 submission of objection
Submission Issues:	Intensity of use, visual impact, landscape setbacks, sloping land, excavation and erosion, inconsistency with DFC and General principles of development control.
Assessment Issues:	Submission issues, Inconsistency with DFC, setbacks, streetscape impact, low intensity low impact, General Principles of WLEP 2000
Recommendation:	Refusal
Attachments:	A4 Notification Plans

SITE DESCRIPTION

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

The site has the following maximum dimensions:

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

The site contains an existing dwelling house situated at the north-west corner of the site addressed to Lady Penrhyn Drive. There are eight (8) other existing detached buildings for the purposes of housing for older people or people with a disability. These buildings are identified as “A2”, “B1”, “B2”, “C1”, “C2”, “C3”, “C4”, and a private community centre. An internal road access and stormwater detention system has been completed.

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

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

Land uses surrounding the subject site comprise of:

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

LOCALITY PLAN (not to scale)



Figure 1: Site Map

RELEVANT BACKGROUND:

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

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

Modifications of Consent - DA2009/0800 has been subject to various modifications of consent involving changes to the lot boundary, roadworks, selected building elements, building alignment, landscaping, enlargement of the community amenities building and stormwater drainage. The modifications include: MOD2016/0334, MOD2017/0080, MOD2018/0086, MOD2018/0087, MOD2018/0212 and MOD2018/0551.

PROPOSED DEVELOPMENT

The application seeks development consent for the construction of fourteen (14) independent living units, in a single building designed as “*housing for older people or people with a disability*” (‘aged care’) at No.8 Lady Penrhyn Drive, Beacon Hill.

Specifically, the application proposes to replace a previously approved four (4) unit building, identified as building “A1” on the site, with a larger fourteen (14) unit building.

As stated previously, Consent No. DA2009/0800 (“the development consent”) approved 32 aged persons units comprised 8 x 4 unit detached residential buildings (“A1”, “A2”, “B1”, “B2”, “C1”, “C2”, “C3”, “C4”), a community amenities building, internal road access and ancillary site works.

All buildings with the exception of “A1” have been constructed.

Details of the development work proposed as follows:

- Basement Carpark (RL101.00) - parking for 14 cars, lift, stair access, bin storage and domestic storage;
- Lower Ground Floor (RL104.05) - lift and stair access, 4 x 2 bedroom aged persons units for independent living with balcony / courtyard, lift and stair access;
- Ground Floor (RL106.7) - lift and stair access, 4 x 2 bedroom aged persons units for independent living with a balcony;
- First Floor (RL109.5) - lift and stair access, 4 x 2 bedroom aged persons units for independent living with a balcony/courtyard. (Unit 10 includes study),
- Second Floor (RL112.3) - lift and stair access, 2 x 2 bedroom aged persons units for independent living with balcony;
- Upper Floor (RL115.1) - stair access to/from Unit 14, bedroom, study, bathroom and balcony;
- Upper Roof level (RL117.89);
- Landscaping and stormwater works to integrate with the existing site;
- Driveway connection and ancillary site works, including 4 external car spaces and driveway connections adjacent Building “B1”; and
- Strata Title subdivision of the units.

AMENDMENTS TO THE SUBJECT APPLICATION

Nil

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2000. (EPA Regulations)
- c) State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)
- d) Warringah Local Environmental Plan 2000 (WLEP 2000)

- e) Community Participation Plan (Notification previously under Warringah DCP)
- f) Warringah Section 94A Development Contributions Plan (S94A Plan)

*Note: SEPP Senior Living does not apply by virtue of LEP 2000 not having an “equivalent zone” as detailed within the SEPP.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment (EPA) Regulation 2000, Warringah Local Environment Plan (LEP) 2000 and Council’s notification procedures. As a result, the application was notified to 116 adjoining properties and owner / occupiers from 28/5/2019 to 1/6/2019. The “Friends of Narrabeen” community group were also notified by letter. A notification sign was erected on the site for the notification period and an advertising notice made in the *Manly Daily* newspaper.

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

A total of one (1) submission was received in response to the application. All submissions have been read and considered. Submissions were received from the following:

Submission	Address
Friends of Narrabeen Lagoon	PO Box 845 Narrabeen

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

1. **Issue:** *The increase of 10 units will increase the intensity of development on the site.*

Comment:

The proposal is part of a larger existing development for aged care on site, designed for independent living, and the number of these dwellings on site will increase from 32 to 42, being a change of 24% in terms of the intensity of use. This results in a substantially larger built form in terms of the visible building mass and scale when viewed in the context of the site as a whole and as a separate detached building.

In summary, this issue is discussed in detail under the heading General Principles of Development Control and DFC. In summary, the proposal is not supported due to the non-compliant elements and inconsistencies with the WLEP 2000.

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

2. **Issue:** *The proposal will adversely impact the streetscape of the site due to the reduced setback from 20m to 10m from Lady Penrhyn Drive*

Comment:

The building setback for Lady Penrhyn Drive is required to be 20 metres (m) as this required for ‘all roads’ under the Desired Future Character (DFC). The proposed building has a strong relationship to Lady Penrhyn drive whereby it has direct pedestrian lines and

convenient vehicle access to this road.

The frontage to Willandra Road has been significantly compromised by the existing internal driveway access that extends along this frontage. While there is a narrow area of vegetation along the road verge of Willandra Road, this is public land and it is not relevant to include as landscaped area or landscape buffer within the site.

The additional encroachment now proposed to Lady Penrhyn Drive is symptomatic of an overdevelopment of the site and resulting a compounded overall lack of landscape buffer for the front building setback. The objective of the front building setback is: *“to be densely landscaped using locally occurring species of canopy trees and shrubs and be free of any structures, carparking or site facilities other than driveways, letterboxes and fences.”* The proposal is inconsistent with this objective of the WLEP 2000 controls.

In addition to this, the NSW Rural Fire Service have advised that the building surrounds (including the 10m setback to Lady Penrhyn Drive) is to be managed as part of the inner protection area (IPA), and landscaping is to comply with landscape restrictions under *Planning for Bushfire Protection 2006*. This very narrow setback prevents any substantive screen planting near the building and leaves the building visually exposed to Lady Penrhyn Drive and also prevents any substantive tree planting as a backdrop for the site when viewed from Willandra Road or Macintosh Road.

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

- 3. Issue:** *The major cut and fill earthworks for the building footprint on a steeply sloping site will change the existing landform.*

Comment:

The earthworks required for the building include excavation of up to 10m and across a building footprint of 815 square metres (sqm), plus external driveway areas and retaining walls.

The existing landform where the building is to be located has been extensively modified by earthmoving, clearing and ancillary works associated with DA2009/0800. Clause 57 of the WLEP 2000 requires that: *“On sloping land, the height and bulk of development, particularly on the downhill side, is to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope”*.

The deep excavation work within the front setback area is inconsistent with Clause 57. The proposed development is also considered to be inconsistent with the Front Building Setback control and DFC that similarly discourages such landform changes by development work.

Therefore, this matter warrants refusal of the application.

- 4. Issue:** *“The earthworks will risk further siltation of the creek adjoining the northern boundary”*.

Comment:

The site has an approved stormwater system and drainage network to manage runoff and

stormwater detention. Erosion and sediment control devices will be required to ensure soil material is contained and minimises risks to South Creek and Narrabeen Lagoon.

It is considered that this issue can be addressed by conditions and during construction work. However the information provided is vague and minimal for such a steep site and such a large amount of associated earthworks to ensure adequate erosion protection is installed and works do not adversely affect the performance the existing stormwater management system.

Due to inadequate details this issues warrants refusal of the application.

- 5. Issue:** *“The proposed development is not consistent with the desired future character of the locality or General Principles of Development Control for WLEP 2000”.*

Comment:

This issue has been addressed under the heading ‘Desired Future Character’ assessment in terms of the particular concerns relevant to the proposed development. In summary, the concentrated intensity of use and cumulative associated impacts of a massed building form, visual impact, building bulk, narrow landscaped setback, significant excavation and non-compliances with numerical controls demonstrate the proposal is not consistent with the WLEP 2000.

This issue warrants refusal of the application.

MEDIATION

No requests for mediation were received.

NSW LAND AND ENVIRONMENT COURT ACTION

The proposal is currently subject to Appeal No. 2019/0239478 against a “deemed refusal” of the development application. A “Section 34” conciliation conference was held on the 18 March 2020. The (confidential) discussions did not result in a resolution and therefore the matter may, at the directions of the NSW LEC, proceed to a full Hearing within a timeframe set by the Court.

REFERRALS

External Referrals	Referral Response / Comments
NSW Rural Fire Service <i>(NSW RFS)</i>	The site is identified as bushfire prone land. In accordance with Section 100B of the <i>Rural Fires Act, 1979</i> the application was referred to the NSW Rural Fire Service (NSW RFS). In their response on 28 June 2019, the NSW RFS issued their Bushfire Safety Authority and General Terms of Approval which are to be included with conditions should the application be determined for approval.
Ausgrid	The application was referred to Ausgrid service provider under clause 45(2) of <i>State Environmental Planning Policy (Infrastructure) 2007</i>. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no special service provider conditions are recommended. Due to existing buildings on site the property already has electrical mains service connections.
Aboriginal Heritage Office	The development proposal was referred to the <i>Aboriginal Heritage Office</i> (AHO) supporting Northern Beaches Council. The location where the new building is to be constructed has been extensively modified by earthworks and landfill. The following AHO comments were provided: <i>"No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i> <i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted."</i> <u>Planning Comment:</u> AHO requirements are able to be addressed by conditions.

Internal Referrals	Referral Response / Comments
Strategic and Place Planning (Urban Design)	The following urban design comments were provided: <i>“1. The proposal encroaches into the 20m front boundary setback. The previous Development Application (DA2009/0800) approval has adopted the 20m front setback to Lady Penrhyn Drive which should be applied consistently to the current proposal. Lady Penrhyn Drive should not be considered a secondary road and therefore the proposed 10 m setback does not apply.</i> <i>2. The scale and design of building is not consistent with the Warringah Local Environmental Plan 2000 – Desired Future Character of the locality: ... ‘Future development will be limited to new detached style housing conforming with the housing density’ ... ‘low intensity, low impact uses’... ‘The natural landscape including landform 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’...</i> <i>The proposal will be prominently visible from Lady Penrhyn Drive with the reduced vegetated buffer of 20m wide reduced to 10m. The proposal sits over a steep sloping section of the site which involves major cut and fill (2 storey high) of the existing landform and vegetation.</i> <i>3. The proposal does not follow the extent of the Asset Protection Zone proposed in the previous Development Application.”</i> <u>Planning Officer Comment</u> The reasons for refusal detailed within the Urban Design Referral assessment are concurred with and included within the recommendation of this report, pursuant to LEP 2000 and the relevant General Principles and Desired Future Character.
Natural Environment & Climate Change – Riparian	Council's Riparian team raise no objection to the proposed development subject to conditions.
Natural Environment & Climate Change - Biodiversity	Council's Bushland and Biodiversity team raise no objection to the development proposal.
Natural Environment & Climate Change - Water Management	<i>The proposal has failed to demonstrate compliance with the water quality requirements of Council's Water Management Policy. The applicant is to advised submit a WSUD Strategy in accordance with Council's WSUD & MUSIC Modelling Guidelines available from the link below. MUSIC Model files must be submitted to the Council for review.</i> <u>Planning Comment:</u> The comments detailed within the Water Management comments and assessment are concurred with and are included as reasons for refusal within the recommendation of this report due to the water quality impacts carried in runoff water, including potential erosion and sediment pollutants. Further details are also provided under the heading ‘Clause 78 Erosion & Sediment Controls within this report.

Landscape Officer	The following Landscape Officer assessment comments were provided: <i>The proposal is not supported with regard to landscape issues. The works include reduction of the setback to Lady Penrhyn Drive from 20m to 10m. The 20m buffer is considered important in terms of providing a development that is sited within a natural landscape, stepping lightly down the site and integrated in to the landforms.</i> <i>The new building is significantly larger and higher than the building A1 currently approved in this location.</i> <i>The proposal to provide a larger building reduces that landscape setting and increases the visual impacts of the development. The increase of 10 units to the development increases this intensity of use and impacts on the character of the area in excess of that which has been approved previously.</i> <i>In consideration of WLEP 2000 Schedule 16 Cl.21 - Neighbourhood Amenity and Streetscape, Cl. 56 Retaining Unique Environmental Features of the Site, Cl 58 Protection of Existing Flora, Cl 66 Building Bulk and the Desired Future Character of Locality B2, the proposal is not supported.</i> <i>It is also noted that the site currently contains structures that do not appear to be authorised under the current consent and that landscaping has been undertaken contrary to the approved landscape plans for the site. Referral to Council's Compliance section for investigation may be required.</i> <u>Planning Comment:</u> The reasons for refusal detailed within the Landscape referral comments and assessment are concurred with and warrant refusal of the application. (Clause 56 and Clause 58 are not included as reasons for refusal as most flora and rock formations have been damaged or removed by works associated with DA2009/0800) Further details are also provided under the heading clause 63 Landscaped Open Space within this report.
Development Engineering	Development Engineering raise no objections with respect to the proposal with respect to stormwater drainage. <u>Planning Comment:</u> Development Engineering requirements including works within the public road reserve are able to be addressed by conditions.
Traffic Engineer	The following Traffic Engineering assessment comments were provided: <u>Traffic</u> <i>The anticipated traffic generated from the site, in accordance with RMS Guidelines, is some 6 vehicles. However, acknowledging that senior living generally does not coincide with commuter peaks, the impact is deemed negligible on the local traffic network.</i> <u>Parking</u>

	14 car spaces are proposed in accordance with the SEPP. This is deemed compliant. <u>Accessibility</u> The applicant must ensure that the footpaths, kerb and gutter along the frontage of the site, and connections to local public transport services are upgraded in accordance with the SEPP and Council standards. The current plan does not provide sufficient detail, however the information can be conditioned. <u>Planning Comment</u> SEPP Seniors Living applies to the site. Traffic engineering issues are able to be addressed by conditions.
Waste Officer	The following Waste Officer assessment comments were provided: <i>This proposal is for additions to an existing retirement village that does not use Council waste collection services.</i> <i>The owner has engaged the services of a private waste collection contractor. It is noted that a suitable waste bin storage room has been provided in the proposal.</i> <u>Planning Comment:</u> Waste services requirements are able to be addressed by conditions.
Building Assessment – Fire and Disability	The following Building Assessment comments were provided: <i>The proposed development involves the construction of an enlarged seniors living building over the footprint of a previously approved building footprint to provide an additional 10 independent senior living units. As the works are all new, compliance with the National Construction Code can be achieved.</i> <i>No objections, no special conditions (standard conditions applicable).</i> <u>Planning Comment:</u> Building Assessment requirements are able to be addressed by conditions.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "SEPP 55" "Sepp BASIX" and "Warringah LEP 2000" and SEPP (Housing for Seniors or People with a Disability) 2004
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	No Draft Environmental Planning Instruments apply.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Nil
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the <i>Building Code of Australia</i>. This matter has been address via a condition of consent. Councils Community Participation plan for the notification of development applications applies.
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 “General Principles of Development Control” in this report. The environmental concerns associated proposal relating to DFC, visual amenity, building bulk, landscaping building setbacks and streetscape impacts are unsatisfactory for the B2 Oxford Falls Valley Locality, and warrants refusal of the proposal. (ii) While the development will contribute to the available stock of housing for aged persons in the locality the development does not create a built form that is consistent with the local planning controls, including 'low intensity low impact' use. (iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site has physical constraints which create difficulties for landscaping to meet the DFC, due to the proposal being of an unsuitable scale and intensity of development on site. This includes special provisions for bushfire safety that came into effect in 2006, well after WLEP 2000 was gazetted.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regulations	The public submissions received in response to the proposed development are addressed under 'Notification & Submissions Received' within this report.
Section 4.15 (1) (e) – the public interest	For the reasons stated in this report, it is apparent that the proposal is not in the public interest due the likely impacts on the B2 Oxford Falls Valley Locality. The proposal does not satisfy the DFC including the requirement for “low intensity low impact” development and is inconsistent with the WLEP objectives for front building setback, building bulk, development on sloping land and wall height. Accordingly, the assessment has found that the proposal is not justified for approval in the public interest.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No.55 – Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been vacant bushland for a significant period of time with and only a dwelling house no substantial other prior development having been undertaken.

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

State Environmental Planning Policy – BASIX (2004)

The development application was submitted with a BASIX Certificate No.1011163M dated 23 April 2019 to address the requirements of this SEPP.

The performance rating scores for water (45), thermal comfort (Pass) and energy (39) comply with the target scores required under the SEPP.

State Environmental Planning Policy – Infrastructure (2007)

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

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

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

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

Clause 101 of *SEPP Infrastructure* requires the Consent Authority to consider any

development application for development with frontage to a classified road. Lady Penrhyn Drive is not listed as a classified road for the purposes of the SEPP.

State Environmental Planning Policy- Design Quality of Residential Apartment Development

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

- (a) the development consists of any of the following:*
 - (i) the erection of a new building,*
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
 - (iii) the conversion of an existing building, and*
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
- (c) the building concerned contains at least 4 or more dwellings.*

The proposed building comprises 14 attached dwellings and is 3 storeys as it transitions up the slope of the site.

The applicant has not provided any design analysis details required pursuant to SEPP 65 and therefore insufficient information is available to enable a full and proper assessment by Council. In addition to this, the location of a residential flat building within the B2 Oxford Falls Locality is not appropriate for reasons provided in the DFC analysis provided within this report.

In summary, Development for the purposes of flat buildings is not considered to be consistent with the B2 Oxford Falls Valley locality, or the semi-rural setting, regardless of the density relaxation permitted for 'aged care' housing. This is warranted as a reason for refusal of the development application.

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

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

Part 1 General

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

Part 1A Site Compatibility Certificates

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

Part 2 Site-related requirements

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

Part 3 Design Requirements

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

Part 4 Development Standards to be complied with

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

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

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

Part 6 Development for vertical villages

Not applicable

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

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

Local Environment Plans (LEPs)

Warringah Local Environmental Plan 2011 (WLEP 2011)

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

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

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

Warringah Local Environment Plan 2000 (WLEP 2000)

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

The DFC statement for the B2 locality states:

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

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

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

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

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

Definition and Category of Development

The proposed development is defined as:

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

“Housing for older people or people with disabilities” is identified as a specific Category 2 use and is permissible within the B2 Locality only on land described in paragraph “C” of the Housing density control. Paragraph C states that:

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

Consideration of the development against the Desired Future Character

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

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

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

Comment:

The new building covers a much larger building footprint than the approved "A1" building. This includes encroachment into the front setback, minimal articulation for walls and a single massed appearance when viewed from the periphery of the site or nearby vantage points. The multi-storey scale, single massed building form does not demonstrate "*detached style*" prescribed in the DFC and makes the building appear as a residential flat building rather than detached style housing. Development for the purposes of flat buildings is not considered to be consistent with low intensity development for the rural locality regardless of the density relaxation permitted for 'aged care' housing.

The DFC requires that all "future development be limited to detached style housing" and that the housing density standards are required to be conformed to. Aged care development is specifically granted a discretion against the housing density standard for the purpose of being limited to land adjoining the urban localities. However, the DFC still requires aged care development to be "detached style" and be of "low intensity, low impact" use. The subject building is neither detached style due to its singular massed form. It is also not representative of 'low intensity, low impact' by virtue of inconsistencies in conforming with the Built Form Controls and General Principles of Development, that are called for in 'Category 2' uses.

The size and scale of the building, now having 14 Units joined in a single deeply excavated building, compared to the other existing 4 Unit detached buildings on the site is unrepresentative of low intensity, low impact development and the General Principle applying to the Locality. In particular, the LEP requires that buildings "*are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise.*" For the B2 Oxford Falls Valley Locality, the locality statement does not provide "otherwise".

This type of development clustered into a massed large single building of 14 attached dwellings, which is also located substantially within the Front Building setback, is not regarded as being representative of 'low intensity, low impact'.

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

- ***Intensity*** - is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore "*low intensity*" would constitute a development which has a low level of activities associated with it.
- ***Impact*** - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore '*low impact*' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality.

Low Intensity assessment

Occupation Intensity: The proposal may be assumed to have an occupancy of 2 persons per Unit, being 28 persons for the building. However, since each Unit multiple bedrooms the total occupancy could easily accommodate 44 persons. Intensity considerations must also extend to the whole of the site also, as the development controls apply in context of the whole of the site. Therefore, the proposed building should not only be considered in isolation as a 'stand-alone' building. The DFC is seeking to create a detached and dispersed development pattern, with development dispersed within the rural setting. Rather than a massed urban form that simply replicates a defacto urban zone. The proposal offends the balance of merit applied under DA2009/0800, whereby the limitation of 32 Units in small detached pavilions or small modules dispersed on the site, and well inside the setback zones within a bushland setting, was depicted within that development application.

The building form is substantially higher in its design intensity of use and does not demonstrate a design approach that is consistent with 'low intensity' envisaged by the DFC.

Traffic Intensity: The Applicant has provided a Traffic and Parking Assessment Report prepared by *Varga Traffic Planning*, dated 15/4/2019 which provides a land use comparison base on an increase of 10 independent living units (ILU) including traffic, access and parking.

In summary, the proposal raises the threshold of traffic intensity generated by the existing development on the site. Traffic to and from the building is intensified by the additional 10 dwellings, or 150% uplift change, compared to the approved A1 building. This equates to 31% intensification for the site as whole (not including visitors). It is therefore, not concurred that either represents a "low intensity" change, when the DFC is explicitly seeking to limit development in the definitions provided above.

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

The WLEP allows aged care on the subject site to avoid the strict numerical density control, but retains the limitations of the DFC that seek "low intensity/low impact". It also retains reliance on the Built Form Controls and the General Principles to manage density, limit "new development" and demonstrate consistency with the DFC. The proposal exhibits elements that draw attention to building being high density. This includes encroachment into the front setback, wall height, building height, massed attached building form and the like, reveal the high intensity of building occupation. The physical size of the building itself is inconsistent with built form outcomes expected by the DFC for "detached style" and minimal setback encroachments. The concentrated occupancy the massed new building form is of high intensity and inconsistent with maintaining the 'low intensity' (and hence lower impact) previously considered suitable for the site.

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

Low Impact assessment

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

Built Form Impact: The physical impacts of the building form on the natural landscape is substantially larger than the footprint of building “A1” (4 Units) approved under DA2009/0800. The likely external impacts are greater due to the increased building mass, height, width and scale. The building now impacts the front building setback area by taking up landscape space, increasing visual impacts, increasing the area of excavation, creating a higher traffic generation and other ancillary aspects.

The proposed building clearly surpasses the established threshold and pattern of existing 4 unit x part 2 storey aged care buildings dispersed throughout southern half of the property. A visual association with the existing original house on the property, in a higher location to the proposed development, is not considered to be an appropriate interpretation of the DFC to justify the new larger building and variation to the front setback. This existing dwelling house predates LEP 2000 and is unrepresentative of the DFC controls.

The proposed development will create a substantial visual impact due to the three storey scale and singular mass of the building with minimal landscape screening proposed due to the APZ requirements. The proposal is not of a detached style that would disperse and break up built form in favour of a lower visual impact on the landscape. From the east, south and north the building rises up over 6 levels across a 34m distance, with the building being as deeply excavated below ground as it is high above ground.

Setback elements on the site have already been compromised for significant sections of the frontages by way of the driveway located within 3.0m of the majority of the south-eastern boundary. The proposal now seeks to encroach development into the 20m setback to Lady Penrhyn Drive. This is inconsistent with the DFC to *minimise impacts* on the rural landscape of the Oxford Falls Valley Locality. While the DFC covers the expansive area of Oxford Falls Valley Locality, the DFC applies to each property within it and specifically, the particulars of all new development to maintain a “low impact”.

Noise Impact: The proposed land use does not require a noise assessment, however civil works are likely to create a high noise impact to adjoining residences including those aged care dwellings already occupied within the site. In this regard, civil works for excavation and construction should be confined to standard hours to allow some respite for adjacent residential uses. Internal building plant, such as air conditioners, lift motors, garage door mechanisms and the like are subject to noise impact regulations and conditions as detailed within this report under *General Principle 43 Noise*.

Traffic Impact: The submitted Traffic and Parking Impact Assessment prepared by *Varga Traffic Planning Pty Ltd* dated 15.4.2019 states that the anticipated traffic movements for the development would not adversely impact on the performance of the surrounding road network. The assessment concludes that car parking for 14 resident car spaces in the basement is satisfactory and the increase traffic generation will be accommodated by the internal driveway arrangements. The parking provision and traffic access arrangements proposed are concurred by Council’s Traffic Engineer. The traffic report shows the vehicle entry has been simplified, with the existing constructed entry area retained and only some minor adjustment for a ‘left-in left-out’ driveway crossover at Lady Penrhyn Drive.

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

Comment:

The DFC seeks to exclude development from ridgetops as these higher areas are much more visibly exposed in the rural landscape. Buildings and associated development like tree clearing has a more pronounced visual impact than on lower slopes and open valleys of the Oxford Falls area. The subject building is not on a ridgetop, however it is situated high on the site, and is exposed to view lines in the vicinity of McIntosh Road that have an outlook toward the rural landscape. The reduced setback of the building therefore diminishes the landscape backdrop and increases the visibility and exposure of the development so it merges with adjacent buildings rather than protecting and enhancing the landscape setting. The site is not visible from Narrabeen Lagoon or Wakehurst Parkway.

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

Comment:

Vegetation and Landform: As mentioned above, the proposal seeks to further excavate into the sloping landform of the site, including the setback to Lady Penrhyn Drive. The Asset Protection Zone (APZ) for bushfire protection purposes also limits vegetation planting and therefore compromises the ability to “protect” and where possible, enhance the natural landscape. For this reason the landscape buffer to the road should be retained at 20m or more to maximise the limited opportunities for non-interlocking trees within the APZ. The density of new landscape planting on the site is not consistent with the desired landscape character of the area to protect, enhance and minimise disturbance of vegetation. As a Category 2 development, the proposal has not demonstrated consistency with the DFC or related General Principles of development control.

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

Visual Materials: The proposed aged care building presents as a large part 3 storey building, of a bulk and scale presenting as a single mass 35m x 25m (and from RL101.25 to RL115.10). The chosen colours and materials are shown on the elevation plans as referenced on plan S401 – Schedule of external materials.

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

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

The proposed landscaping along the site frontage includes a row of trees/ shrubs to benefit the local streetscape. However, RFS Referral Response and Bushfire Report contradict the landscape plan in so far as fire protection would severely limit tree planting along the frontage of the building, being an Inner Protection Area (IPA). Therefore, due to the size, scale and intensity of the proposal and wide IPA buffers needed, the proposal cannot properly achieve the landscaping proposed to effectively screen the building. This creates a much higher visual impact of the proposal on the surrounding landscape.

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

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

Comment:

The site has erosion control devices and drainage infrastructure constructed as part of DA2009/0800. Subject to effective erosion control during construction, the risk of further erosion and sedimentation impacts on waterways and riparian land should be 'low', including water quality impacts on Narrabeen Lagoon. The proposal has not been submitted with a detailed erosion control plan appropriate to the steepness of the site, bulk excavation and extent of other civil works required, including driveway construction (see 'Clause 42 Construction Sites' within this report).

Conclusion on the DFC

Based upon the above considerations, the development, as a "Category 2" use, is considered to be inconsistent with the DFC statement for the B2 Oxford Falls Valley locality. Overall the proposal does not demonstrate characteristics of "low intensity low impact" or other desired WLEP outcomes when tested against the DFC statement.

Built Form Controls for Locality B2 Oxford Falls Valley

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

Built Form Control	Required	Proposed Development	Compliance
Housing Density	1 dwelling per 20ha	"Housing for aged persons or persons with a disability". (WLEP 2000 Exception to Housing density restriction for land adjacent urban land)	Yes
Building Height	8.5m	9.1m (7% variation) Measured from Natural Ground Level	Refer to "WLEP Clause 29".

Built Form Control	Required	Proposed Development	Compliance
	7.2m	7.9m (9%) – variation permitted where slope is 20% or greater.	Refer to “WLEP Clause 29”.
Front Building Setback	20m (All roads)	Lady Penrhyn Drive 10m to building façade (50% variation) 10.0m to basement carpark (50% variation) Other frontage setbacks - 66m due south, 130m due east. (Existing buildings B2, B3, B4 & C1: 20m to Willandra Road reserve)	No No Yes N/A
Rear Building Setback	10m	N/A	N/A
Side Setback	10m	60m (north boundary)	Yes
Landscape Open Space	30% of site to be landscaped	71%(18,765sqm) Note: The above calculation includes all landscaped areas of the site including the APZ.	Yes

The proposed development fails to satisfy the Locality’s front building setback and wall height development standards. Accordingly, further assessment is considered pursuant to Clause 20(1).

Clause 20(1) stipulates:

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

Front Building Setback (CI 20)

The proposal seeks a variation to required 20m front building setback. The proposed setback is 10m, being a 50% variation. In determining whether the proposal qualifies for variation under Clause 20(1) consideration is made in the following three step assessment:

(i) General Principles of Development Control

In determining whether the proposal qualifies for consideration under Clause 20(1) in terms of the General Principles of Development Control, consideration is made and addressed in summary as follows:

In summary, such a significant variation to the Front Building Setback, for such a large rural fringe site is not supported against the General Principles and the DFC. See the discussion under the “General Principles of Development Control” in this report for a detailed assessment tested against the relevant controls of building bulk, excavation and landscaping. In summary, the proposal is considered to be inconsistent with the objectives to be achieved to maintain landscape setback free of structures, building bulk and development of sloping land.

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

(ii) Desired Future Character of the Locality

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

The proposal is subject to satisfying the DFC and in particular, the test of “low intensity” and “low impact” for development. Part of this test also includes consideration of the key themes of the DFC for location, detached style of building appearance, built form controls, landscape setting and streetscape.

Merit Assessment of the Built Form Control

The minimum front setback to all roads is 20 metres.

The minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs and be free of any structures, carparking or site facilities other than driveways, letterboxes and fences.

The WLEP makes it clear that the 20m setback applies to all roads. The WLEP places particular emphasis in the rural locality that the setback area must be ‘densely landscaped’ with endemic canopy trees and shrubs, and excludes the likelihood of buildings, carparking and “any structures” that would prevent this objective from being achieved. The control only allows for driveways, letterboxes and fencing. In this regard, the proposed development is contradictory to this objective with over one-third of the building inside the front setback.

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

(iii) Relevant State Environmental Planning Policies

Application of any State environmental planning policies have been addressed previously within this report.

Conclusion on Clause 20 Variation

The development is not considered to be consistent with the general principles and key elements of the DFC, including test matters relevant to 'low intensity low impact' development. Therefore, the proposal fails to qualify for variation under Clause 20 for the front building setback proposed. In this respect, the variation to the Front Building Setback built form control is not supported.

WLEP 2000 General Principles of Development Control

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

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

Clause 29 Requirement	Applies	Requirement Details and Comments	Complies
Building Height	Yes	8 metres or less in height when measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point	Yes
Density and Scale	Yes	0.75:1 or less, for hostels and residential care facilities located within 400 metres walking distance of a public transport node (being a public transport facility such as a railway station, bus stop, or ferry / wharf that is serviced on a frequent and regular basis in daylight hours.	Yes
Landscape Area	Yes	a minimum of 35sqm of landscaped area per dwelling	Yes
Parking	Yes	in the case of dwellings, at least 0.5 car space for each bedroom	Yes
Visitor Parking	Yes	For less than 8 dwellings, (and not on a clearway) no visitor parking is required. <u>Comment:</u> The proposed development has more than 8 dwellings and is therefore required to provide at least 1 visitor space.	Yes Communal visitor site parking available.
Landscaped Areas	Yes	Soil of a sufficient depth to support the growth of trees and shrubs on an area (preferably located at the rear of the site) of not less than the width of the site multiplied by 15% of the length of the site. <u>Comment:</u>	Yes

Clause 29 Requirement	Applies	Requirement Details and Comments	Complies
		Planting of canopy trees in shallow soil is not appropriate due to wind loading risks. The landscape plan has not been designed appropriate to NSW RFS requirements that permits limited tree distribution within the APZ.	
Private Open Space for Infill Housing	Yes	(i) Any dwelling that is located partly or wholly at ground floor of a multi-storey building must have 15 sqm of private open space with dimensions of at least 3 m wide and 3 m long. The opens space must be accessible from a ground floor living area. (ii) Any other dwelling must have a balcony not less than 6 sqm and no less than 1.8 m. The balcony must be accessible from a living area.	Yes

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

WLEP 2000 General Principles of Development Control

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

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	This General Principle seeks to ensure that development does not result in excessive glare and solar reflections. Conditions of consent will ensure that the roof finish be within the medium to dark colour range to blend with the bushland setting for the roof. Accordingly, the proposal is considered to satisfy this General Principle.	Yes (Subject to condition)
CL42 Construction Sites	Yes	The site provides adequate area for the handling and storage of building materials, and will not unreasonably impact on the amenity of the locality subject to construction management. The proposal however does not include suitably comprehensive and robust erosion control measures for the construction phase. Therefore, the proposal places water quality of the Narrabeen Lagoon catchment at risk and aquatic habitat of South Creek downstream of the site.	No (Reason for refusal)

General Principles	Applies	Comments	Complies
		This is inconsistent with the requirements for Category 2 development and warrants refusal of the application.	
CL43 Noise	Yes	Clause 43 of LEP 2000 provides “<i>Development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants</i>”. There will be increased noise generated from the proposed development during the construction phase and this should be limited to standard industry hours. The level of noise must be appropriately managed to ensure that there is no unreasonable impacts on the amenity of nearby dwellings (within the site and fronting Lady Penrhyn Drive). Additionally, a standard conditions of consent will require that all air conditioners and plant equipment result in noise emissions no more than 5db(A) emanating from the installed equipment for the building. For the reasons listed above the proposal is considered to satisfy the requirements of Clause 43, subject to conditions adhering to standard conditions for noise emissions.	Yes (Subject to condition)
CL44 Pollutants	Yes	The proposal is located within the headwater catchment to South Creek and will be connected to a new sewer line to Sydney Water sewer mains in Willandra Road east of the site. Therefore, the proposal is satisfactory against the requirements of this clause to manage domestic sewerage disposal.	Yes
CL45 Hazardous Uses	No	No comment	N/A
CL46 Radiation Emission Levels	No	No comment	N/A
CL47 Flood Affected Land	No	No comment	N/A
CL48 Potentially Contaminated Land	Yes	The site of the proposed building was previously undeveloped bushland which has now been significantly modified by civil earthworks and landscaping associated with DA2009/0800.	Yes



General Principles	Applies	Comments	Complies
		No contamination has been identified on the site and this clause was addressed prior to development of the existing aged care building's being approved on the subject property.	
CL49 Remediation of Contaminated Land	No	No comment	N/A
CL49a Acid Sulfate Soils	No	No comment	N/A
CL50 Safety & Security	Yes	The proposal maintains an acceptable level of safety and security through the site design and layout. Assessment of the proposal with regard to clause 50 is provided as follows: - The proposed building will have open surroundings for the building and partly visible towards Lady Penrhyn Drive to maintain passive surveillance within the site, due to the proximity of existing aged care buildings within the same property. - Entrance to the building is clearly accessible from the driveway and parking is contained with a basement area Subject to compliance with this requirement the proposal is satisfactory in terms of safety and security.	Yes (Subject to condition)
CL51 Front Fences and Walls	Yes	The site already has a brick and batten fence constructed along the frontage of Lady Penrhyn Drive between the entry and the north western corner of the site constructed in association with existing building work on the site. No details have been provided regarding the existing fencing approval.	Yes (Subject to condition)
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	No comment – Site does not have a common boundary with a Council Park or Reserve.	N/A
CL53 Signs	Yes	No advertising signs are proposed. (No details have been provided regarding any existing signs)	Yes



General Principles	Applies	Comments	Complies
CL54 Provision and Location of Utility Services	Yes	The site has access to electrical and water services with connections to be managed by the relevant service provider. <i>Sydney Water</i> connection is required, as applicable for the additional dwellings for water and sewer. Service connection is available to the site due to the existing aged care development on the property. Therefore the proposal is able to satisfy the requirements of this General Principle.	Yes (Subject to condition)
CL55 Site Consolidation in 'Medium Density Areas'	No	No comment. Not within a medium density locality.	N/A
CL56 Retaining Unique Environmental Features on Site	Yes	This General Principle seeks to ensure that development is responsive to the existing environmental features on the site and on adjoining land. The subject site has been extensively modified such that there are no significant rock outcrops or trees in the location of the proposed building footprint. Accordingly, the proposal satisfies this General Principle.	Yes (Subject to condition)
CL57 Development on Sloping Land	Yes	This General Principle seeks to reduce the impact of development on sloping land by minimising the visual impact of development and the extent of excavation by requiring development to step down the site. The subject has a variable falls from west to east approximately 8m (22% gradient) within the building footprint. The site is not identified on the Landslip Hazard Map. Accordingly, the proposal is considered acceptable in terms of this General Principle.	Yes
CL58 Protection of Existing Flora	Yes	This general principle requires that development be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation and on remnant native ground cover species. The development work will not require the removal of any trees as the land has already been extensively cleared for works associated with DA2009/0800.	Yes

General Principles	Applies	Comments	Complies
		Therefore, the proposal is satisfactory against the requirements of this clause.	
CL59 Koala Habitat Protection	No	Site has been developed for aged persons housing and is not identified as Koala habitat.	N/A
CL60 Watercourses & Aquatic Habitats	Yes	The site has existing drainage infrastructure and a water detention system. The proposal however has not been provided with sufficient details of erosion and sediment control, including Water Sensitive Urban Design details. In this regard the development work involves extensive civil works, bulk excavation on steep land, yet minimal details have been provided to ensure protection of the drainage system and downstream natural watercourses. (see Plan E003 – Erosion and sediment control, drawn by Vigor Master) Therefore, the proposal does not satisfy the requirements of this General Principle.	No
CL61 Views	Yea	There are coastal and district views across the site. The site is overlooked from other houses that are much higher in elevation above the site which therefore avoids any unreasonable view impact. Accordingly, the proposal satisfies this General Principle.	Yes
CL62 Access to sunlight	Yes	The proposed demonstrates compliant sunlight to both neighbouring land and the adjacent aged care dwellings (Building “B1”) within the site, with no less than 2 hours of sunlight retained between 9am and 3pm on 21st June. Building B1 will lose solar amenity in the late afternoon, to their secondary bedrooms that are located at the SW corner of that building. Accordingly, the proposal satisfies this General Principle.	Yes
CL63 Landscaped Open Space	Yes	This General Principle seeks to ensure that development provides landscaped open space that contributes to the amenity of the area. The majority of the site is subject to NSW RFS requirements that significantly reduces the amount of permitted tree planting on site. Therefore the opportunities to provide effective dense landscape screening, commensurate the	No (Reason for refusal)

General Principles	Applies	Comments	Complies
		size and scale of the building proposed, is compromised. Further details are provided under the Referral Response by Council's Landscape Officer. Therefore, the proposal is unsatisfactory against the requirements of this clause.	
CL63A Rear Building Setback	N/A	Natural bushland areas adjacent the northern boundary will remain unchanged as this forms part of the 60m APZ.	Yes
CL64 Private open space	Yes	This General Principle seeks to ensure that housing is provided with an area of private open space that can be used as an extension of the living area for dining or the outdoor enjoyment of occupants. While the proposed is not a dwelling, the intent of this control is considered relevant, and the site has sufficient land area to accommodate private open space for occupants in the areas around the communal building, and extending from the communal dining area. Therefore, the proposal is unsatisfactory against the requirements of this clause due to inadequate detail.	Yes (Subject to condition)
CL65 Privacy	Yes	The closest dwelling not related to the use of the site are opposite the land in Lady Penrhyn Drive. Adequate separation distance is available to the closest neighbours to ensure privacy to adjacent residents. Balcony and terraces for the building proposed generally overlook roof areas or face south or north Accordingly, the proposal satisfies this General Principle.	Yes (Subject to condition)
CL66 Building bulk	Yes	<i>This General Principle of Development Controls seeks that:</i> <i>• side and rear setbacks are to be progressively increased as wall height increases,</i> <i>• large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief, and</i> <i>• appropriate landscape plantings are to be provided to reduce the visual bulk of new buildings and works.</i>	No (Reason for refusal)

General Principles	Applies	Comments	Complies
		The size and appearance of the proposed development is substantially larger than any of the residential buildings approved under DA2009/0800. Additionally the proposed development has minimal building articulation / modulation to break up the wall planes and overall mass that extends across six levels. Therefore, the building bulk and scale is out of context with the existing adjacent buildings on site and does not satisfy the objectives of this General Principle. The development therefore fails the test of consistency also required for Category 2 development in terms of the DFC as discussed previously within this assessment.	
CL67 Roofs	Yes	This General Principle seeks to ensure that development provides a roof form that complements the local skyline and integrates with the built form of the development. Having regard to the DFC, and envisaged future development to maintain '<i>low intensity and low impact</i>' characteristics, the proposal is not consistent with the rural character of development in the B2 Oxford Falls Valley Locality. The roof is expansive, spreading up the hill and extending into the front setback area to Lady Penrhyn Drive. This is considered to be inconsistent with the requirements of this clause. Therefore, the proposal is unsatisfactory against the requirements of this clause.	No (Reason for refusal)
CL68 Conservation of Energy and Water	Yes	As the proposed development is classified as a Class 3 Building in accordance with the Building Code of Australia (BCA) and a design compliance certificate has been provided pursuant to SEPP BASIX. Conditions requiring compliance with the BCA and BASIX are contained within the recommended conditions.	Yes (Subject to condition)
CL69 Accessibility – Public and Semi-Public Buildings	Yes	The building is not a public building. Accessibility is required to be maintained to satisfy Schedule 16, including compliance with current standards under AS1428 and the <i>Disability Discrimination Act 1992 (DDA)</i>.	No (Reason for refusal)

General Principles	Applies	Comments	Complies
		Sufficient details have not been provided to demonstrate the requirements of AS1428 and the DDA can be met in terms of footpath links appropriate to persons with aged or disability access limitations. (Note: Inadequate details are provided regarding the completion of footpath links to McIntosh Road bus stop, to service the development).	
CL70 Site facilities	Yes	The proposal currently includes a bin storage The site facilities proposed are adequate to satisfy this general principle, subject to conditions.	Yes
CL71 Parking facilities (visual impact)	Yes	This General Principle seeks to ensure that parking facilities are sited and designed so as not to dominate the street frontage. The proposed parking facilities are provided as and excavated garage under the building. The garage entry is located facing internally therefore does not create an unreasonable visual impact on Lady Penrhyn Drive. Accordingly, the proposal is considered to satisfy this General Principle.	Yes
CL72 Traffic, access & safety	Yes	This General Principle seeks to ensure that vehicle movements to and from a development do not interfere with the flow of traffic or compromise pedestrian safety. The proposed parking facilities provide direct access to Lady Penrhyn Drive and Willandra Road via the internal vehicle driveway and will comply with Australian Standard 2890.1. Councils' Development Engineers raised no objections to the proposed works, subject to conditions. The conditions of consent will ensure the works comply with Councils design requirements for footpath safety. Sufficient details have not been provided by the applicant for the changes required to the driveway entry to Lady Penrhyn Drive for safety, as indicated on the DA plans. Based on the considerations made by Hussey C in " <i>Vigor Master Pty Ltd v Warringah Shire Council</i> [2008] NSWLEC 1128" the proposal is therefore above the peak traffic generation that	No (Reason for refusal)

General Principles	Applies	Comments	Complies
		is found to be unacceptable for <i>low intensity low impact</i> development as related in this assessment against consistency with the DFC. Therefore, the proposal is unsatisfactory against the requirements of this clause.	
CL73 On-site Loading and Unloading	No	Not applicable	N/A
CL74 Provision of Carparking	Yes	Schedule 17 does not provide a parking rate specifically for uses. The applicant has submitted a <i>Traffic and Parking Assessment</i> prepared by The proposal is considered to comply with Clause 21, Clause 74 and Schedule 16 and Schedule 17.	Yes
CL75 Design of Carparking Areas	Yes	This General Principal seeks to ensure that carparking is designed to minimise visual impact and provide a safe and efficient environment for both vehicles and pedestrians. Car parking, motorcycle spaces, and the disabled person's parking space are within the basement structure. Willandra Road is capable of accommodating traffic from the proposal and the driveway access is satisfactory subject to compliance with AS2890.1 Council's Traffic Engineer has reviewed the proposed parking and traffic conditions on the site and raised no objections to the design safety of the parking area. Accordingly, subject to conditions the proposal satisfies this General Principle.	Yes (Subject to condition)
CL76 Management of Stormwater	Yes	This General Principal seeks to ensure that adequate provision is made for the management of stormwater volume The application has been assessed by Council's Development Engineers and all stormwater will be connected to the existing on-site detention system and drainage network within the site. (Refer to Development Engineering referral response comments within this report) Accordingly, the proposal satisfies this General Principle.	Yes (Subject to condition)

General Principles	Applies	Comments	Complies
CL77 Landfill	Yes	Landfill, if necessary, will utilise existing material on site sourced from excavation for building footprint, driveway and ancillary works. No new fill material is proposed to be brought from outside the site. Accordingly, the proposal satisfies this General Principle.	Yes (Subject to condition)
CL78 Erosion & Sedimentation	Yes	Appropriate management of erosion and sedimentation works on the site have not been provided that are satisfactory for the scale of civil works required considering the steep slope and potential impact on drainage infrastructure within the site Therefore the proposal does not satisfy the requirements of this General Principle of Development Control.	No (Reason for refusal)
CL79 Heritage Control	No	No comment	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	This clause is addressed in the Aboriginal Heritage Office (AHO) advice that should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW <i>Office of Environment and Heritage</i> (OEH) and the <i>Metropolitan Local Aboriginal Land Council</i> be contacted. Accordingly, subject to conditions the proposal satisfies this General Principle.	Yes (Subject to condition)
CL81 Notice to Heritage Council	No	No comment	N/A
CL82 Development in the Vicinity of Heritage Items	No	The proposal is not within close proximity to any local heritage items identified in the Warringah LEP 2000 or Warringah LEP 2011 (applies to adjacent land).	Yes
CL83 Development of Known or Potential Archaeological Sites	Yes	The AHO have advised that the development work is located within an area that is already substantially disturbed by previous clearing and earthworks. No objection to approval of the proposal subject to requirements of the AHO as detailed in the referral response.	Yes (Subject to condition)

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

SCHEDULES

Schedule 8 - Site analysis

The Site Analysis plan has been provided pursuant to the minimum requirements of Schedule 8.

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

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

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
Main bedroom	Yes	Bedroom must comply with parts (a) to (e) including bedside circulation space power outlets and lighting.	Yes (Subject to condition)
Bathroom	Yes	Bathroom must comply with parts (a) to (h). Including compliance with AS1428, AS3740 and AS4299.	Yes (Subject to condition)
Toilet	Yes	Complies with clause 1.4.12 of AS 4299, and AS1428 including wall clearance and can accommodate a grab rail in compliance with Figure 4.5 of AS 4299 and AS 1428	Yes (Subject to condition)
Access to kitchen, main bedroom, Bathroom and toilet	Yes	The kitchen, main bedroom, bathroom and toilet must be located on the ground floor or if not on ground floor the living space is accessible to the same floor, or a stair climber provided for a wheelchair.	Yes (Subject to condition)
Laundry	Yes	Must have provision for an automatic washing machine, clothes dryer with access space of 1300mm clearance, thermostatic mixing valves, slip resistant floor and accessible path of travel to any clothesline provided.	Yes (subject to conditions)
Storage	Yes	Must be provided with a linen cupboard 600mm wide with adjustable shelving.	Yes (Subject to condition)
Doors	Yes	Door handles able to be operated with one hand and located between 900mm and 1,100 mm above floor level.	Yes (Subject to condition)
Surface finishes	Yes	External paved areas must have slip-resistant surfaces.	Yes (Subject to condition)
Ancillary items	Yes	Switches must be located between 900mm and 1,100mm above floor level. General purpose outlets must be located at least 600mm above floor level.	Yes (Subject to condition)
Garbage	Yes	Outside garbage storage area must be provided in an accessible location.	Yes (Subject to condition)
Applications by certain housing providers	No	Not applicable to this application.	N/A
Neighbourhood amenity and streetscape	Yes	(a) <i>contribute to an attractive residential environment with clear character and identity, and</i> The building design is inconsistent with this requirement and detracts from the character of the approved use of the site.	No (Reason for refusal – Parts ‘a’, ‘c’, ‘d’, ‘e’, and ‘g’)

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
		The approval of DA2009/0800 relied on a clear character of small 4 unit pavilions separated and spaced within the site in a bushland setting. The proposal selects one large massed building form that extends up the site and into the front setback area. The massed building form is out of context with the desired future character, for detached style housing, and the approved built form of aged care development on the site (pursuant to WLEP2000). The original development of the land had a clear character and identity of detached style housing modules, dispersed within a landscape setting. The proposal has an opposing form of many more units clustered into a massed building form that detracts from the desired residential environment of the rural locality. (b) <i>where possible, retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and</i> There are no urban conservation areas or heritage items in the vicinity of the proposal. (c) <i>where possible, maintain reasonable neighbour amenity and appropriate residential character by providing building setbacks that progressively increase as wall heights increase to reduce bulk and overshadowing, and</i> The building is substantially within the front 20m building setback area that is required to be "free of any structures", including carparking and site facilities. This is of an inappropriate character to Locality and existing pattern of development on the land. (d) <i>where possible, maintain reasonable neighbour amenity and appropriate residential character by using building form and siting that relates to the site's land form, and</i> The site is 2.6 hectares and sufficiently large in area and dimensions to ensure it is	



Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
		possible to not require buildings to be located within setback areas and ensure wide landscape buffers are maintained to the road frontages. (e) <i>where possible, maintain reasonable neighbour amenity and appropriate residential character by adopting building heights at the street frontage that are compatible in scale with adjacent development, and</i> The site is within a rural locality and therefore it is required to maintain consistency with the Oxford Falls Valley DFC. In this regard the DA cannot rely on transposing the adjacent urban character to address residential amenity, setbacks, scale and streetscape. The building presents as two storey to the west however due to the higher surrounding land adjacent dwelling will be able to see the full expanse of 5 levels as the building extends up from building B2 toward Lady Penrhyn Drive. The scale of the building is also visible from other vantage points in the vicinity of McIntosh Road. It is considered that the building demonstrates an inappropriate character to the rest of the site and therefore sets an undesirable precedent for the Locality. (f) <i>where possible, maintain reasonable neighbour amenity and appropriate residential character by considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</i> No walls are located on the boundary as this clause may consider appropriate in urban locations. Building structures on or close to the boundary in the rural localities will not be considered to be consistent with the DFC. (g) <i>be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</i> The DFC requires a 20m building setback to Lady Penrhyn Drive which currently varies from 50m ("C2") to 20m ("A1"). The	

Schedule 16 Requirement	Applies	Requirement Details and Comments	Complies
		existing original residence in the north-west corner of the site predates WLEP 2000 and was not approved as an aged care development. In this regard, density, setback and built form comparisons for the original dwelling house are not appropriate to relay as an overriding exception this clause. (h) <i>embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</i> The proposal is restricted from being able to restore substantial landscape planting that is commensurate with the height and scale of the building to provide an effective screen to Lady Penrhyn Drive.	

Schedule 17 - Carparking Provision

See assessment under Clause 74 of the General Principles of this report which demonstrates the proposal's ability to satisfy the requirements of this Schedule (and any associated concerns).

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$50,220 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,022,788. This matter may be addressed by a suitable condition for payment.

OTHER MATTERS FOR CONSIDERATION

Department of Planning Concurrence

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

CONCLUSION

This report provides a comprehensive assessment of the DA for the redevelopment of the site for the purposes of on the site known as No.8 Lady Penrhyn Drive, Beacon Hill.

Housing for older people or people with disabilities ('aged care') under WLEP 2000 is regarded as a Category 2 development and facilitates the provision of purpose built accommodation, subject to consistency with the DFC Statement, Built Form Controls and General Principles. The approval of development for aged care is also required to be consistent with the EP&A Act 1979.

The site already has approval for 32 aged care units, with ancillary structures distributed across the site in smaller detached buildings of 4 units grouped together. Landscaping buffers are located between buildings and around the outer areas of the site.

The B2 Oxford Falls Valley Locality states that, '*future development will be limited to new detached style housing conforming with the housing density standard*'. In this case, the proposal is not considered to be detached style housing being a single massed form of 14 units attached together. In addition, the integrity of the DFC and General Principles are compromised by the higher intensity and associated impacts from such a large scale building on the site despite being on the rural fringe of the Locality. Principal elements of the proposal that depart from the DFC, Built Form Controls and General Principles under WLEP 2000 are related to inconsistency with the front building setback, landscaped open space, sediment control, building bulk and maintaining 'low intensity low impact'.

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

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

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

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

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

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

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

RECOMMENDATION

THAT Development Application No. 2019/0447 for housing for older people or people with disabilities, at No.8 Lady Penrhyn Drive, Beacon Hill, by 'deemed refusal', under Appeal 2019/0239478, be endorsed for refusal for the reasons outlined as follows:

1. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Warringah Local Environmental Plan 2000* in that the
 - i. The proposal fails to qualify for a variation to the front building setback controls pursuant to the requirements of 'Clause 20' of the *Warringah Local Environmental Plan 2000*.
2. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the Desired Future Character (DFC) Statement of the B2 Oxford Falls Valley Locality. In particular, the proposal does not satisfy DFC requirements for a "Category 2" development to conform with:
 - i. *Low intensity and low impact characteristics;*
 - ii. *Detached style appearance for housing; and*
 - iii. *Enhancing the natural landscape;*
3. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the 'General Principles of Development Control'. In particular the proposal does not satisfy the requirements of:
 - i. *Clause 42 Construction Sites;*
 - ii. *Clause 63 Landscaped open space;*
 - iii. *Clause 64 Private open space;*
 - iv. *Clause 66 Building bulk;*
 - v. *Clause 67 Roofs;*
 - vi. *Clause 69 Accessibility;*
 - vii. *Clause 72 Traffic access and safety;*
 - viii. *Clause 78 Erosion and sedimentation;*
 - ix. *Schedule 16 – Principles and standards for housing for older people or people with disabilities: Parts (a), (c), (d), (e) and (g) for Neighbourhood amenity and streetscape*



4. Pursuant to Section 4.15 (1) (b) and (c) of the *Environmental Planning and Assessment Act 1979* the proposed development is unsuitable for the site. In particular the proposal exceeds the threshold considerations for 'low intensity low impact' development as established within *Vigour Master Pty v Warringah Shire Council [2003] NSWLEC 1128*.
5. Pursuant to Section 4.15 (1) (e) of the *Environmental Planning and Assessment Act 1979* the proposed development is not in the public interest. In particular, the proposal does not meet the provisions of the relevant local environmental planning instrument for the creation of a better environment and maintaining the Desired Future Character of the rural locality.
6. Pursuant to the *Environmental Planning and Assessment Act 1979* the proposal is inconsistent with *Clause 1.3 Objects*, for development that is consistent with the applicable development controls to promote a better environment. In particular, the proposal does not demonstrate appropriate access to public transport to meet access current requirements of Australian Standard 1428 and the *Disability Discrimination Act 1992*.
7. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Warringah Local Environmental Plan 2000* in that
 - i. The proposal appears to take the form of a 'Residential Apartment Development' which is inconsistent with the Desired Future Character; and
 - ii. Insufficient information has been provided, where applicable, to address any relevant requirements of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

Alex Keller
Principal Planner

Steve Findlay
Manager Development Assessments

Date: 10 June 2020