

**4.1 Port 1110, 742038 Oxford Falls Road Frenchs Forest –
Alterations and additions to the existing Tennis Academy
and short term accommodation and use of premises as a
restaurant and function centre**

REV 2014/0001

Purpose

To gain Council determination of an application referred from the Manager Development Assessment and the Warringah Development Assessment Panel.

Summary

The above Development Application was detailed in the report of the Manager Development Assessments and was referred to the Warringah Development Assessment Panel (WDRP) Meeting on 26 March 2014 as the proposal is a Category 3 development in the B2 Oxford Falls Valley Locality and is required to be the subject of an independent public hearing pursuant to Clause 15 of WLEP 2000. The WDRP Minutes and the report of the Manager Development Assessments to WDRP Meeting are attached as Attachment's 'A' and 'B' respectively.

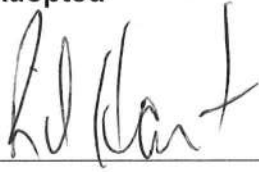
The Panel did not concur with the staff recommendation for refusal and have recommended approval subject to conditions. Council has obtained legal advice in regards to the issue of Integrated Development under Section 91 of the EPA Act, 1979 and supports the recommendation for approval subject to conditions as recommended by the Warringah Development Review Panel.

The application is recommended for approval based on the legal advice obtained by Council and that the applicant must obtain a Bushfire Safety Authority from the RFS under the Environmental Planning and Assessment Act 1979 (EPA) Section 91.

RECOMMENDATION OF DEPUTY GENERAL MANGER ENVIRONMENT

- A. That the applicant be advised that a Bushfire Safety Authority from the Rural Fire Service of NSW which must be obtained prior to the issue of a Construction Certificate in accordance with Section 91 of the Environmental Planning and Assessment Act 1979.
 - B. That the Section 82A Review REV2014/0001 of the Determination of Development Application No. DA2013/0733 for land at Port 1110 752038 Oxford Falls Road French Forest to be approved subject to the conditions No.1-55 in the recommendation in Attachment 'A' to this report.
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Adopted



Rik Hart
General Manager

9 April 2014

Date

WARRINGAH DEVELOPMENT REVIEW PANEL MEETING

4.1	Port 1110, 742038 Oxford Falls Road Frenchs Forest – Alterations and additions to the existing Tennis Academy and short term accommodation and use of premises as a restaurant and function centre
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Panel Member

Kevin Hoffman, Chair

Patrick O’Carrigan, Urban Design Expert

Lloyd Graham, Community Representative

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PROCEEDINGS IN BRIEF

The Panel inspected the site at Oxford Falls Road in regards to the alterations and additions to the existing tennis academy and short term accommodation and use of the premises as a restaurant and function centre.

The Panel heard from one objector to the proposal and one person in support. On behalf of the applicant the Panel heard from the owner of the development and a consultant to the owners.

During the Panel meeting it was indicated to the Panel that the applicant would accept a limitation to the number of patrons in the restaurant at any time for either restaurant purposes or for a function that being no more than 88 persons. The original application was for 150 persons which had been reduced following expert acoustic evidence in regard to potential noise impacts on neighbours to 120 persons. However the current undertaking by the owner to limit the number of persons to a much lesser number and to include provisions that if the public address system is to be used it would be inside only with the doors to the restaurant closed and if there was a band it too would be inside the building with the doors closed. Further that although the exterior court yard could be used during most hours all guests would be taken inside the building at 10.00pm and the restaurant closed by Midnight. It was also put to the Panel that because the owners live on site and also the motel guest bedrooms are directly above the existing restaurant that if there were motel guests not involved in either the restaurant or a function they would object to any continued noise levels that might disturb sleep.

On the basis of the applicant accepting conditions as outlined above the existing parking of the facility would be adequate and no changes would be necessary in that regard.

Attachment A

The objector gave the Panel a statement to the effect that in the previous 10 years, noise had been a disturbance but it was at a time when there was no limitation on the number of people who could be on the premises at any one time. Conditions to limit numbers would be included in any consent that might be issued in this case. It was also said to the Panel that since 2012 there had been no functions in the premises and therefore they were concerned the acoustic report would not be accurate and they were concerned that any future owners' of the property might not adhere to the conditions proposed by the applicant.

The Panel considered these matters and in regard to concerns about any conditions that might be imposed on a consent may not be complied with it would be a matter for by-laws enforcement by the Council. The conditions would apply equally to this owner and any subsequent owner.

The Panel considered the reports on the agenda and concluded that the proposed additional uses of the site are compatible with the Oxford Falls Desired Future Character.

Another matter that came to the Panel's attention was the legal advices, one from the applicant's lawyer and one verbally from Council's legal section which were opposing in their opinions. The applicant's solicitor in summary said that the test of section 100B(1)(b) of the Rural Fires Act 1997 could not apply to this proposal as it was excluded by the provisions of section 100B(5)(a) of the same clause. Whilst there is a minor new building proposed on the site and removal of a container as part of the proposal the Panel considered that they were so minor in nature it could not involve the application of section 100B(1). Also the conditions now accepted by the applicant would mean that the existing carpark would remain unchanged and it was always the case that the main buildings to be used for restaurant and function purposes only involved minor changes to the building, either internal or external. Therefore the Panel has formed the opinion that as a question of fact the application could not be classified as Integrated Development under the Environmental Planning and Assessment Act 1979 (EPA) Section 91 and accepted the applicant's legal advice in connection with the Rural Fires Act 1997 provision for development of land for special fire protection purposes. In that definition under section d it refers to a hotel / motel or other tourist accommodation. That aspect of the development is not to change in anyway and is protected under its existing consent by S109B of the EPA. The Panel is of the opinion that section 100B(1) cannot apply.

Therefore the Panel recommends to the General Manager of Warringah Council that the development be approved subject to appropriate conditions.

The Panel voted on the recommendation and it was unanimous.

Voting 3/0

RECOMMENDATION OF THE WARRINGAH DEVELOPMENT REVIEW PANEL

That the Section 82A Review REV2014/0001 of the Determination of Development Application No. DA2013/0733 for land at Port 1110 752038 Oxford Falls Road French Forest be approved subject to the conditions below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) **Approved Plans**

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
KC1 (Site Analysis Plan)	10 May 2013	K R Collins
OXF-01 Rev 4 (Floor Plan)	17 June 2013	Dentoom Drafting
OXF-02 Rev 4 (Site Plan, Elevations and Section)	17 June 2013	Dentoom Drafting
KC2B (Site Plan and Landscape Open Space)	17 May 2013	K R Collins
KC10 and KC11 (Signage Plans)	7 June 2013	Unknown

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BCA Report	26 June 2013	R.J. Killorn - Building Code of Australia Consultants
Acoustic Report	31 December 2013	The Acoustic Group

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

c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- (d) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

Attachment A

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

3. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

Attachment A

- (e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) Smoke alarms are to be installed throughout all new and existing portions of any Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.warringah.nsw.gov.au

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

4. Temporary Approval of Storage Containers

Development consent is granted for the permanent retention of one storage container only. The retention of the second storage container is granted consent for a period of two years from the date of this consent, after which time it is to be removed from the site and the area landscaped.

Reason: To minimise the visual impact of the development. (DACPLBOC2)

FEES / CHARGES / CONTRIBUTIONS

5. Bonds (Demolition)

(a) Security Bond

A bond of \$500 and an inspection fee in accordance with Councils Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection)

All bonds and fees shall be deposited with Council prior to demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to demolition.

Reason: To ensure adequate protection of Councils infrastructure. (DACPLZPC1)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. Waste Storage

An appropriate area shall be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by the premises in a manner that prevents pollution.

Any waste storage are to be located wholly within the approved building footprint under the consent. Details demonstrating compliance with the Waste provisions of Council's Development Control Plan are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of any construction certificate.

Reason: To prevent pollution and keep premises in a healthy condition.
(DACHPCPCC2)

7. Trees and / or Landscaping

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) Existing trees which must be retained

All trees not listed as exempt or noxious in Warringah

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

8. Stormwater Management

Stormwater shall be disposed of in accordance with Council's "Stormwater Drainage: From Low Level Properties Policy PDS-POL 136". The stormwater management system is to ensure that there is no increase in stormwater pollutant loads arising from the approved development.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development, ensuring that the proposed works do not negatively impact upon the existing natural watercourse present on the subject site in accordance with the requirements of the Warringah Local Environment Plan 2000 and the Warringah Creek Management Study 2004 (DACNEC17)

9. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:-

- (a) Site Boundaries and contours;
- (b) Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- (c) Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- (d) Existing and proposed drainage patterns with stormwater discharge points
- (e) Locations and methods of all erosion and sediment controls;
- (f) North point and scale.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To mitigate environmental impact resulting from site disturbance (DACNEC22)

10. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (i) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New building work**
- (j) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**
- (k) AS 4674 Design, construction and fit out of food premises
- (l) AS1668 The use of mechanical ventilation

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission

website http://www.humanrights.gov.au/disability_rights/buildings/good.htm

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)

11. External Colours and Materials

The external finish of the proposed shed and storage containers shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development. (DACPLC03)

12. On Site Sewage Management System for Effluent Disposal

If the site is not connected to the Sydney Water sewage system, the applicant must submit a Wastewater Management Report prepared by a qualified consultant and obtain an 'Approval to Install and Operate an On Site Sewage Management System', prior to the release of the Construction Certificate.

Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993. (DACPLCPCC1)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety. (DACENE09)

15. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be

Attachment A

done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLA03)

16. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Warringah Council Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACPLE02)

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

17. Fire Safety Upgrade

The fire upgrading measures and works to upgrade the building as detailed and recommended in the Fire Safety and Building Code of Australia Audit Report prepared by 'Building Code of Australia Consultants', dated 26 June 2013 and referenced 1737.1 bt-rem are to be implemented.

Attachment A

Details demonstrating adequate implementation of the specified measures is to be submitted to the Principal Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety. (DACBCF01)

18. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

19. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)

20. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACPLF07)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

21. Allocation of Spaces

55 car parking spaces shall be provided, made accessible and maintained at all times. The spaces shall be allocated as follows:

Car-parking provided shall be used solely in conjunction with the uses contained within the development.

Reason: To ensure that adequate parking facilities to service the development are provided on site. (DACPLG01)

22. Hours of Operation

The hours of operation are to be restricted to the following:

Restaurant/function centre (identified as 'restaurant and functions' on the approved plans): 7am to 12midnight, Tuesday to Sunday. (Closed Mondays while Monday Night Tennis Competition is running)

The outdoor terrace accessed from the eastern side of the restaurant/function centre must not operate between the hours of 10pm and 7am, Monday to Sunday. At 10pm, the outdoor terrace is to be cleared of patrons, and all external doors and windows in the restaurant and function centre are to be closed.

Restaurant, shop and reception (located in the western section of the main building): 7am to 10.30pm, Monday to Sunday.

Motel Reception and breakfast room: 7am to 10.30pm, Monday to Sunday.

Tennis Courts: 7.30am to 10pm, Tuesday to Sunday, and 7.30am to 10.30pm Monday

Pool and Barbecue Area: 7.30am to 9pm, Monday to Sunday

Upon expiration of the permitted hours, all service shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)

23. Hours of Illumination

Illumination of signage at the subject premises shall cease between the hours of 12.00 midnight and 6.00 am daily.

Signs must not flash, move or be constructed of neon materials.

Reason: To ensure residential premises are not affected by inappropriate or excessive illumination. (DACPLG11)

24. Signs/Goods in the Public Way

No signs or goods are to be placed on the footway or roadway adjacent to the property.

Reason: To ensure pedestrian safety and to protect the streetscape. (DACPLG15)

25. Maximum Occupancy

The 'restaurant/function centre' is limited to a maximum of 88 patrons at any one time.

Reason: To manage traffic and parking impacts, and noise impacts, and to ensure a "low intensity and low impact" development. (DACPLGOG1)

26. Noise Measuring

Subsequent to receipt of an Occupation Certificate, an appropriate acoustic consultant must be engaged four times within 24 months, at intervals of between 5-7 months apart and provide Council with the report to verify that compliance is achieved with the report given by The Acoustic Group 43.5097.R2:ZSC, 31st December 2013 and in accordance with the Environment Protection Authority's Industrial Noise Policy.

Reason: To ensure the use of the premises does not interfere with the acoustic amenity of the residents within the immediate locality. (DACHPGOG1)

27. Noise Generation

All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) at any time above the background noise level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.

Reason: To ensure the use of the premises does not interfere with the acoustic amenity of the residents within the immediate locality. (DACHPGOG2)

28. Noise Impact on Surrounding Area

The use of the premises shall not cause a sound level in excess of 5dB(A) at any time above the background noise levels at any point along the site boundaries when measured in accordance with the Environmental Protection Authority's Industrial Noise Policy.

Reason: To ensure compliance with acceptable levels of noise established under best practice guidelines. (DACHPGOG2)

29. Patron Behaviour

The proprietors of the premises shall take all steps necessary to ensure that no noise nuisance occurs from persons using the outdoor terrace.

Reason: To ensure patrons do not interfere with the acoustic amenity of residents in the immediate locality. (DACHPGOG2)

30. Acoustic Recommendations

The recommendations in the Acoustic Report prepared by *The Acoustic Group* dated 31 December 2013 are to be implemented at all times.

Noise cut-out units are to be installed and maintained on the eastern doors to the function room in accordance with the recommendations in the report.

Reason: To ensure acoustic disturbances are kept to a reasonable level. (DACHPGOG2)

31. Plan of Management

The *Management Plan for "The Falls" Restaurant and Function Area open to the general public*, dated 5/1/14 is to be implemented at all times for the life of the development.

Noise cut-out units are to be installed on the eastern doors of the Function Room to the outdoor terrace area (as recommended by *The Acoustic Group Report* dated 31 December 2013), instead of only relying on handheld noise measuring devices.

Reason: To ensure the function centre is run in a manner that does not cause unreasonable disturbance in the area. (DACHPGOG2)

WARRINGAH DEVELOPMENT REVIEW PANEL ASSESSMENT REPORT

Assessment Officer:	David Auster
Address / Property Description:	Lot 1110 DP 752038 Port 1110 752038 Oxford Falls Road FRENCHS FOREST NSW 2086
Proposed:	Section 82A Review of Determination of DA2013/0733 for Alterations and Additions to the Existing Tennis Academy and Short Term Accommodation and Use of the Premises as a Restaurant and Function Centre
Review Application No:	REV2014/0001
Application Lodged:	06/01/2014
Plans Reference:	Overflow Car Parking Plan (Plan: KC16) dated 11/12/13 Site Analysis Plan (Plan: KC1) dated 10/5/2013 Floor Plans (OXF-01 Rev 4) dated 17/6/2013 Site Plan, Elevations and Section (OXF-02 Rev 4) dated 17/6/2013, Site Plan and Landscape Open Space (Plan: kc2B) dated 17/5/2013, Signage Plans (KC10 and KC11) dated 7/6/2013
Amended Plans:	N/A
Applicant:	Colco Consulting Pty Ltd
Owner:	K R Collins, G D Collins, M Kuriyama
Locality:	B2 Oxford Falls Valley
Category:	Category 3 (Restaurant, Recreation Facility and Short Term Accommodation)
Variations to Controls (Cl.20/Cl.18(3)):	Front setback, side setback
Referred to ADP:	No
Referred to WDRP:	Yes – Review of a determination made by WDAP
Land and Environment Court Action:	No

SUMMARY

Submissions:	7 total - 1 objection, 6 in support
Submission Issues:	Noise
Assessment Issues:	Noise, Desired Future Character, Front setback, Side setback, Section 82A - Integrated development
Recommendation:	Refusal

LOCALITY PLAN (not to scale)



Subject Site: Lot 1110 DP 752038
1110 Oxford Falls Road, Frenchs Forest

Public Exhibition: The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan (adopted 13 December 2005). As a result, the application was notified to 9 adjoining land owners and occupiers for a period of 26 calendar days commencing on 24 January 2014 and being finalised on 18 February 2014.

Furthermore, the application has been advertised within the Manly Daily on 25 January 2014 and a notice was placed upon the site.



SITE DESCRIPTION

The site consists of one allotment which is located on the western side of Oxford Falls Road (between Wearden Road and Barnes Road) and known as Lot 1110 Oxford Falls Road, Frenchs Forest.

The lot is irregular in shape and has a frontage of 121.9m to Oxford Falls Road and side boundary lengths of 180.9m (north) and 248.65m (south). The site has a total area of 2.175ha.

The site operates as a tennis academy and short term accommodation and is occupied by twelve (12) tennis courts, various sheds and pergolas, two shipping containers used for storage, a swimming pool and a part one – part two storey building which comprises the following:

Ground Floor

- Tennis and motel reception area
- Lounge
- Gymnasium
- Lecture Room
- Ancillary rooms such as kitchens, staff room and toilet facilities

First Floor

- Twelve (12) motel units (eastern wing)
- Three bedroom dwelling house (western wing)

The site also contains an open car parking area which can accommodate fifty-five (55) vehicles.

A valley is formed through the centre of the site by a creek which traverses the property from north to south. The site falls approximately 8m from the street to the creek bank and then rises approximately 7m from the creek bank to the rear boundary.

Surrounding development consists of single residential dwellings to north, south and west. Opposite the site on the eastern side of Oxford Falls Road is the vacant, heavily vegetated Crown land.

SITE HISTORY

Development Consent

Consent No.84/351 was granted on the 9 August 1984 for *the erection of two stages of sports complex comprising twelve (12) tennis courts and erection of a part single storey/part two storey building containing six (6) racquet ball courts and associated facilities*. This consent was subsequently modified on the 26 June 1985, 9 October 1985 and 12 September 1986.

Consent No. 91/131 (DA1993/43) was granted on the 7 April 1993 for 'an accommodation block in association with the existing tennis complex'.



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DA2013/0733 was recommended for approval by Council staff, and considered by WDAP on 2 October 2013. The application was refused for the following reasons:

1. *Pursuant to Section 79C(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Desired Future Character of the B2 Oxford Falls Valley locality under the Warringah Local Environmental Plan 2000. In this regard, the proposal has not demonstrated that it is a low intensity, low impact use.*
2. *Pursuant to Section 79C(b) of the Environmental Planning and Assessment Act 1979, the proposed development will have an adverse impact on the amenity of the adjoining dwelling. In this regard an acoustic report addressing the intensity and design of the function centre and how such impacts will be managed and mitigated, has not been provided.*
3. *Pursuant to Section 79C(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.*

PROPOSED DEVELOPMENT

Development consent was originally sought for the following works:

- Alterations to the existing motel building on the site comprising the replacement of a ground floor window in the northern elevation with doors to create a new entrance into the building.
- Change of use of existing ground floor rooms in the main building as follows:
 - Conversion of the existing lounge to a restaurant catering for a maximum of 20 customers. This restaurant is proposed to operate 7 days a week between 7am and 10.30pm.
 - Conversion of the previously approved gymnasium to a reception area for the motel and a breakfast room.
 - Conversion of the approved lecture room to a restaurant and function area with capacity for 150 customers. This area also makes use of the outdoor terrace adjoining the building to the east. The restaurant and function centre is proposed to operate 7 days a week between 7am and 12midnight.
- Construction of a storage shed ancillary to the recreation facility use which is to be located adjacent to the north eastern edge of the tennis courts.
- Extension of the hours of operation of the tennis courts from the approved 7.30am to 10.00pm, to 7.30am to 10.30pm.



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- Retention of the two existing storage containers, one permanently and the other for a temporary period of two years.
- The installation of two business identification signs to be located on either side of the entrance driveway behind the existing brick wall. The signs are proposed to be 800mm high by 2.4m with a maximum height above ground level of 1.8m. The signs are proposed to be externally up lit by lights located behind the existing front wall.

The current Section 82A review application involves substantially the same proposal with the following minor changes:

- Submission of an acoustic report prepared by *The Acoustic Group* dated 31 December 2013 to address the reason for refusal in relation to noise issues,
- Construction of an overflow parking area has been proposed to the east of the existing parking area,
- Amendment to the hours of the use of the tennis courts from 10pm until 10.30pm on Monday nights only,
- Reduction in the proposed number of patrons of the function centre to 120 people with up to 150 people three times per calendar year,
- A Plan of Management has been submitted
- Amendment to the function centre hours to be from 11am to 12am, with outdoor terrace not to operate between 10pm and 7am.
- Amendment to the restaurant operating hours such that it is closed on Monday evenings whilst Monday night tennis competition is running.

It is noted that the use of the property as a restaurant and function centre, and the placement of the shipping containers on the site have been the subject of extensive compliance action for alleged unauthorised use and works. The original development application, and current S82A application have been submitted to address the alleged non-compliances.

STATUTORY CONTROLS

Environmental Planning and Assessment Act 1979;
Environmental Planning and Assessment Regulation 2000;
State Environmental Planning Policy No. 55 – Remediation of Land;
SEPP No. 64 – Advertising and Signage;
State Environmental Planning Policy (Infrastructure) 2007; and
Warringah Local Environment Plan 2000



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PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan (adopted 13 December 2005). As a result, the application was notified to 9 adjoining land owners and occupiers for a period of 26 calendar days commencing on 24 January 2014 and being finalised on 18 February 2014. Furthermore, the application has been advertised within the Manly Daily on 25 January 2014 and a notice was placed upon the site.

As a result of the public exhibition process submissions have been received from:

Name	Address
H.C. Chambers - Objection	1109 Oxford Falls Road, Frenchs Forest
K. Munda – Support	250 Allambie Road, Allambie Heights
N. White – Support	11 Waterside Grove, Warriewood
R. Hastings – Support	38 Cormack Road, Beacon Hill
J. Sutton – Support	17 Panorama Crescent, Frenchs Forest
B. Giltinan – Support	12 Burrawal Place, Cromer
S. Heins – Support	No address provided

The matters raised within the submissions are addressed hereunder:

Noise

The adjoining neighbour to the north has objected based on the noise impacts of the use of the property for functions. The objection raises the same issue as against the original development application.

Comment:

This issue is discussed in detail under Clause 43 *Noise* of the General Principles of the Warringah Development Control Plan in this report. In summary the proposal is not considered to result in an unreasonable level of noise impacts, subject to conditions of consent to control noise, and to limit the number of patrons permitted to use the function centre.

MEDIATION

Has mediation been requested by the objectors?	No
Has the applicant agreed to mediation?	N/A
Has mediation been conducted?	No

LAND AND ENVIRONMENT COURT ACTION

No Land and Environment Court action is pending on this application.

REFERRALS

External Referrals

Ausgrid

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Aboriginal Heritage Office

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, although some landscape features were considered to have potential.

Given the above, the AHO considers that there are no Aboriginal heritage issues for the proposed development.

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. The AHO does not recommend monitoring of earthworks at this location.

Internal Referrals

Building Assessment – Fire and Disability Upgrades

No additional conditions need to be added to the application as the application has not changed from previous assessment. Building Surveyor had previously considered fire safety report with the application.

Development Engineers

Development Engineer raises no objection to the review of DA2013/0733 subject to the previously recommended engineering conditions (dated 29/7/2013).

Environmental Health and Protection

No objections subject to conditions.

Landscape Officer

No objections in general terms to the proposed overflow carparking. If screen planting is required in the area between the overflow carpark and the boundary, the following condition could be included.

Required Planting

- i) Screen planting is to be provided in the area between the overflow carpark and the eastern boundary along the length of the overflow carpark.
- ii) The selected planting is to comprise native species capable of attaining a minimum height of 2 metres at maturity.
- iii) Plants are to be planted at minimum 2 metre centres and be of a minimum pot size of 25 litres at planting.
- iv) The garden bed is to be prepared with a suitable soil mix, mulched and planted as per the above conditions.

Reason: Local amenity

Natural Environment Unit (Drainage Assets)

Please see the Development Engineering comments for any relevant stormwater drainage asset comments and conditions.

Nature Environment Unit (Biodiversity)

No objections and no conditions recommended.

Traffic Engineer*Proposed number of parking spaces*

The concern raised in the previous traffic engineer referral response is that there would be an overflow of parking if other uses coincide with the maximum occupancy of the function centre.

In accordance with Warringah DCP, the parking rate for restaurants is 1 parking space / 3 seats, therefore the provision of 50 parking spaces is required for the restaurant accommodating 150 people. Also, the parking rate for the Tennis courts is 3 parking spaces for each tennis court. As there are 12 tennis courts, the parking requirement for 12 tennis courts is 36 parking spaces.

There are 55 existing off-street parking spaces at this location, also, the applicant has proposed an overflow car parking area consisting of 16 parking spaces. Therefore, in total there is a shortage of 15 parking spaces.

However, the parking survey provided by the applicant shows that the existing parking is operating satisfactorily during peak hours. Also, it should be considered that simultaneous use of all uses within the centre with their full capacity would not occur regularly.

Therefore, the proposed number of parking spaces is acceptable, and there is no objections with the proposed number of parking spaces .

Car park design

The car park design needs to be in compliance with Australian Standards AS2890.2 and AS2890.6, and the required pavement markings to be marked on the sealed / concrete surface.

Planners Comment: The above assessment has failed to take into account parking for the motel section of the development, which would require a minimum of 12 spaces. The S82A application has also stated that it seeks approval for 120 guests with up to three functions in any calendar year up to 150 guests.

If the development is assessed including the motel and allowing for only 120 guests to the function centre the parking requirement is 88 car spaces. As discussed in this report, the proposed overflow parking area is not recommended for approval, and as such the existing 55 car spaces is deficient and does not provide adequate car parking as required by the LEP 2000.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

Section 82A Matters For Consideration

In accordance with Section 82A of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. As discussed in the 'Other Matters' section of this report the development is considered to be Integrated Development under Section 100B of the Rural Fires Act 1997. As such, the proposal cannot be granted consent under Section 82A of the EP&A Act, and refusal is recommended on this basis.

In accordance with Section 82A of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 2 October 2013. The review was lodged on 6 January 2014 and is to be considered by the WDRP on 26 March 2014, which is within 6 months of the date of determination.

Section 82A(4)(c) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the S82 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 82A (4) (c) of the Act



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The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on "Draft Environmental Planning Instruments" in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been address via a condition of consent. Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter has been addressed via a condition of consent. Clause 93 of the EPA Regulation 2000 requires the consent authority to consider the fire safety upgrade of development. This matter has been addressed via a condition of consent.
Section 79C (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. In summary, the proposal will not have unreasonable environmental impacts, subject to conditions of consent regarding noise control, and limiting patron numbers as discussed in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development, subject to conditions discussed in this report to limit the number of patrons to a level the existing car park can cater for.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	The noise issues have been addressed in the acoustic report and are satisfactory. However the failure to provide adequate parking is not in the public interest. Conditions of consent limiting the number of patrons would be needed to ensure the proposal is in the public interest.

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

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 used as a tennis academy and short term accommodation for a significant period of time with no prior land uses other than for residential purposes. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the proposed land use.

SEPP No. 64 – Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.



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In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The site is located within the B2 Oxford Falls Valley Locality. Although the locality envisages development for low density residential purposes, there are established uses in the area which are of a commercial nature and subsequently require signage. The proposed signage is minimalist in its design and of a size and scale commensurate with the buildings on the site. Visibility of the proposed signage from the public domain will be limited due to the vegetation surrounding the site and the colours proposed to be used are complementary to the natural environment. In this regard, the signage is compatible with the existing and future character of the locality.	Yes
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	There is no consistent theme for signage in the locality. However, as mentioned above, the proposed signage is considered compatible with the existing and future character of the area.	Yes
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The site is located opposite heavily vegetated crown land and residential properties. However, due to the size, height and location of the proposed signage, it is not considered to detract from natural conservation areas or adjoining residential development.	Yes
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signs have a maximum height of 1.8m and will be located behind a low height wall at the front of the property. Views and vistas will not be obscured or compromised as a result of the proposed signs.	Yes
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signs will not result in any changes to the skyline or quality of vistas	Yes
Does the proposal respect the viewing rights of other advertisers?	The proposed signs do not obstruct viewing rights of other current or future advertisers in the vicinity of the site.	Yes
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale, proportion and form of the proposed signs are appropriate given the scale of the development and the use proposed.	Yes
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signs provide business identification for the Falls Retreat which occupies the site. The signs provide an appropriate level of visual interest and will not appear visually dominant.	Yes
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signs are complementary to the design of the existing development and character of the area and do not result in any 'visual clutter'.	Yes

Matters for Consideration	Comment	Complies
Does the proposal screen unsightliness?	The proposed signs will not protrude above the existing buildings or tree canopies in the area.	Yes
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signs will not protrude above the existing buildings or tree canopies in the area.	Yes
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The scale of the proposed signs is considered to be commensurate with the size of the site and the development, building and structures on the property.	Yes
Does the proposal respect important features of the site or building, or both?	The proposed signage is respectful of the existing and proposed built form.	Yes
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signs are of a standard form. The design is considered satisfactory for the intended identification purposes.	Yes
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The freestanding signage is to be located behind the existing low height concrete wall which forms an entry feature to the site. The signage will satisfactorily integrate with the existing wall structure.	Yes
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The proposed signs will be externally up lit by lights located behind the existing front wall. The level of illumination is considered to be passive and non-intrusive such that it would not have any adverse glare impact upon pedestrians or vehicles nor would it detract from the amenity of any residence within the development or in close proximity to the site. Given the above considerations, the illumination would not be required to be subject to a curfew.	Yes
Can the intensity of the illumination be adjusted, if necessary?		Yes
Is the illumination subject to a curfew?		Yes
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	Due to the size and angle of the proposed signage, location of the site and the surrounding vegetation, the proposed signage would not reduce the safety of any public road, pedestrians or cyclists.	Yes
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage would not obscure sightlines from public areas and therefore would not reduce the safety of pedestrians.	Yes

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provision of the SEPP and its underlying objectives.



State Environmental Planning Policy - BASIX

A BASIX certificate is not required to be submitted with the subject application.

State Environmental Planning Policy - Infrastructure

Ausgrid

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.

Notwithstanding, the application was forwarded to Ausgrid for comment. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended. In this regard, the subject application is considered to satisfy the provisions of Clause 45 of SEPP Infrastructure.

Regional Environment Plans (REPs)

There are no Regional Environmental Plans relevant to this property.

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character (DFC)

The subject site is located in the B2 Oxford Falls Valley Locality under Warringah Local Environmental Plan 2000.

The Desired Future Character Statement for this locality is as follows:

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

Future development will be limited to new detached style housing conforming to 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.

Tennis Academy and Motel

The existing use of the site as a tennis academy and motel are defined as a "recreation facility" and "short-term accommodation" respectively under the WLEP 2000 dictionary.

A "recreation facility" is defined as follows:

"a building or place used for indoor or outdoor sporting activities, recreation or leisure activities, whether or not operated for the purpose of gain, but does not include a building or place elsewhere defined in this Dictionary."

"Short-term accommodation" is defined as follows:

"means the use of land for the temporary accommodation of the travelling public and includes a serviced apartment, a motel, a holiday flat and a backpackers hostel, but does not include a dwelling or a hotel."

A "recreation facility" and "short-term accommodation" are both identified as Category 3 development in this locality.

The works related to the tennis academy are limited to the retention of the two storage containers and construction of a storage shed, a total increase of 50.28sqm of floor space. Given the tennis academy occupies over 8300sqm of the site, the additional floor space represents an expansion of less than 1%. The only works proposed to the motel component of the development are a reconfiguration of the breakfast room and reception areas, and the installation of a new entrance door. No expansion in floor space is proposed. In this regard, the works are considered minor in nature and would not, to any significant extent, change the scale, size or intensity of these land uses.

Accordingly, in accordance with Clause 16 of WLEP 2000, these works may be granted consent as an expansion of the existing Category Three use and consistency with the DFC is not required. Consequently, no further assessment of these uses is provided.

Restaurant and Function Centre

The proposed additional use as a restaurant and function centre is defined as a "restaurant" under the WLEP 2000 dictionary.

A "restaurant" is defined as follows:

"means a building or place, the principal purpose of which is the provision of food to paying customers for consumption on the premises."

A "restaurant" is identified as Category 3 development in this locality.

Clause 12(3)(a) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality's DFC statement.

Accordingly, an assessment of consistency of the proposed development against the locality's DFC is provided hereunder:

Requirement: *"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."*

Comment: The existing character of the Oxford Falls Valley is predominantly low density residential with commercial uses interspersed. There is a high ratio of landscaped open space and vegetated areas compared to built form. The development will generally maintain the existing character of the locality.

The works proposed under this application are limited to the construction of a 3m high storage shed and the retention of two storage containers with a height of 2.4m, internal works to the main building and installation of a new entrance door on the southern elevation. The proposed works will not disrupt the skyline.

The main element of the proposal is to change the use of part of the existing building on site to operate as a restaurant and function centre. As such the following assessment is provided in relation to the "low impact" and "low intensity" requirement.

An objective interpretation of what constitutes low intensity, low impact uses was used in the Land and Environment Court judgement *Vigor Master Pty Ltd v Warringah Shire Council* [2008] NSWLEC 1128. The interpretation within the judgement is provided as follows:

"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."

AND

***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."*

Intensity Assessment

If intensity is best measured by the activities associated with a development, then the key measure for the proposal is the number of traffic movements generated by the operation of the premises as a restaurant and function centre in combination with the existing motel and tennis academy.

A Traffic and Parking Impact Assessment, prepared by Ray Dowsett Traffic and Transport Planning Pty Ltd, dated 30 May 2013, was submitted with the original application. The report undertook surveys of traffic movements during two weekend functions, one of which also included concurrent use of the tennis courts and occupation of the motel. The report found that a maximum of 51 vehicle trips occurred as a result of the functions which were considered to have a minimal impact on the surrounding road network. Council's Traffic Engineer reviewed the submitted report and concurred with the findings. Accordingly, the proposed use of the premises for a restaurant and function centre was considered low intensity.

No updated traffic report has been provided with the S82A application, however a further 16 car spaces have been proposed as part of a new overflow parking area. As discussed in this report, the proposed overflow parking area does not comply with the front setback control and is not considered acceptable. If approval is granted to the application a condition would be recommended deleting the proposed over flow parking area from the plans. The earlier traffic report and Council assessment therefore remains unchanged, and the development is considered to remain low intensity.

Impact Assessment

The primary impacts of the proposed use as a restaurant and function centre are related to noise, traffic and parking. An assessment of each of these impacts is provided below.

(a) Noise: The application proposes to operate the primary restaurant and function centre between 8am and 12midnight, seven days a week. The primary restaurant/function centre space in the south eastern corner of the building also has access to an outdoor terrace that adjoins the eastern elevation of the building. The smaller restaurant in the south-western corner of the building and the adjacent shop and reception area are proposed to operate between the hours of 7am and 10.30pm, seven days a week. Further, the hours of operation of the tennis courts are also proposed to be extended from a closing time of 10pm to 10.30pm on Monday nights.

An Acoustic Compliance Report was provided with the S82A application prepared by The Acoustic Group and dated 31 December 2013. It is noted that the acoustic report surveyed a function which was using only the indoor function room, and not the outdoor eastern terrace area. Further, the car park was only approximately 60% full on this occasion indicating that the function was not a large gathering. Approximately 60% capacity of the car park is equal to 33 cars. Given that the parking requirements are 1 space for every 3 seats, it is assumed the function accommodated approximately 99 people.



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As discussed under clause 43 Noise in this report, the measurements recorded in the acoustic report indicate that for a function of this size, the noise impacts as measured from two locations along the northern boundary were not unreasonable.

The acoustic report provides recommended conditions for maintaining a low level of noise including ceasing use of the outdoor terrace area at 10pm, and automatic noise cut-out systems being installed on the doors to the eastern terrace. Council's Environmental Health and Protection Officer has also provided the following conditions of consent should the application be approved to ensure noise is kept to an acceptable level:

Noise Measuring

Subsequent to receipt of an Occupation Certificate, an appropriate acoustic consultant must be engaged four times within 24 months at intervals of between 5-7 months apart and provide Council with the report to verify that compliance is achieved with the report given by The Acoustic Group 43.5097.R2:ZSC, 31st December 2013 and in accordance with the Environment Protection Authority's Industrial Noise Policy.

Reason: To ensure the use of the premises does not interfere with the acoustic amenity of the residents within the immediate locality. (DACHPGOG1)

Noise Generation

All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) at any time above the background noise level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.

Reason: To ensure the use of the premises does not interfere with the acoustic amenity of the residents within the immediate locality. (DACHPGOG2)

Noise Impact on Surrounding Area

The use of the premises shall not cause a sound level in excess of 5dB(A) at any time above the background noise levels at any point along the site boundaries when measured in accordance with the Environmental Protection Authority's Industrial Noise Policy.

Reason: To ensure compliance with acceptable levels of noise established under best practice guidelines. (DACHPGOG2)

Patron Behaviour

The proprietors of the premises shall take all steps necessary to ensure that no noise nuisance occurs from persons using the outdoor terrace.

Reason: To ensure patrons do not interfere with the acoustic amenity of residents in the immediate locality. (DACHPGOG2)

As the restaurants and function centre are located on the southern side of the building, the northern section of the building will provide a physical buffer between the uses and the nearest adjoining residential neighbour therefore minimising noise transfer.

Therefore, subject to the conditions recommended in the acoustic report and by Council's Environmental Health Officer, on balance, the noise impacts of the proposed development would be categorised as low.

(b) Traffic: As mentioned above, a Traffic and Parking Impact Assessment was submitted with the original application which, following surveys of vehicle movements, found that a maximum of 51 vehicle trips occurred when functions were carried out at the property. Both the report and Council's Traffic Engineer consider that the number of vehicle trips would have a minimal impact on the surrounding road network.

(c) Parking: The previous assessment of parking was as follows:

Parking is discussed in detail later in this report. In summary, the existing uses in combination with the proposed restaurant and function centre generate a parking requirement of 98 spaces under WLEP 2000. Only 55 spaces are provided on site.

The applicant has submitted a Traffic and Parking Impact Assessment which included parking surveys of the site when the property was in use for functions. At the peak of operations during the survey, the function centre accommodated 88 people, the motel was at an occupancy of 75% and the tennis courts were also in use. The survey found that at this time, 58 vehicles were parked on site, 3 of which were parked on grass areas within the site boundary. Approval is sought for the restaurants and function centre to accommodate a total of 150 people, however the submitted report has not considered or provided any estimates of the parking demand for that level of patronage either on independent of the other uses or in conjunction with the motel and tennis academy when also operating at their peak occupancy.

It has been suggested that a condition be imposed to restrict the various uses on site from operating concurrently therefore reducing the parking demand and also that consideration be given to limiting the number of attendees to the function centre.

Restricting each of the individual uses from operating concurrently on the site is not considered a reasonable condition as it would severely compromise the operations and functionality of the business and also be difficult to enforce from Council's perspective.

Consequently, in the absence of any information from the applicant to demonstrate sufficient on site carparking for 150 patrons in the restaurant/function centre a condition is recommended limiting the occupancy of the restaurant and function centre to 88 people. Subject to this condition, the parking impact of the development is considered to be low.

On balance, subject to conditions of consent relating to the hours of operation and maximum patron numbers, the development is considered to be a low intensity, low impact use that would maintain the existing character of the locality.

The S82A application has provided for an overflow parking area, but has not provided any updated traffic report. However, the overflow parking area is not considered to be appropriate given it is within the front setback area, and is not recommended for approval.

Consequently, the assessment of the intensity and impact of the development has not changed. The S82A application has not demonstrated that the proposal to accommodate up to 120 people will remain 'low intensity and low impact' as required. If the application is to be approved, a condition would be recommended limiting the number of patrons of the restaurant and function centre to 88 people.

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

Comment: The proposed works with the potential to impact the natural landscape are limited to the construction of the storage shed, signage and overflow parking area. The storage containers also subject of this application are already located on site. The proposed storage shed is to be located in an area that has been previously cleared and grassed; therefore it will not result in any interruption of the existing landform or destruction of important vegetation. There is sufficient area at the front of the site to allow for the siting of the proposed signage without requiring the removal of any trees. The retention of trees will be reinforced by a condition of consent.

However, the overflow parking area, while shown on the proposed plan as remaining grassed, is to be a formalised parking area. Council's Traffic Engineers have recommended conditions of consent which would require the parking area to be paved, in accordance with the Australian Standard. The proposal would therefore result in a significant reduction in landscaping in the front setback area. If the application was to be approved, a condition would be recommended deleting the over flow parking area.

The other new works are of minimal bulk and scale and will successfully integrate with the existing landscape. Conditions can be imposed to ensure colours and materials are complementary to the character of the area to minimise the visual impact of the development.

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

Comment: The site does not adjoin either Forest Way or Wakehurst Parkway. Further, no fencing is proposed as part of the application. However, as mentioned above the proposed overflow parking area is in the front setback area and would result in a significant reduction in landscaping in the front setback were it to be approved.

Although the storage containers subject of the proposal are located in the front setback, the existing landscaping along the street frontage may be maintained by deletion of the overflow parking area, and will ensure the containers remain screened from view. Accordingly, the proposal is considered to satisfy the underlying intent of the DFC, subject to a condition deleting the overflow parking area.

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

Comment: Councils Natural Environment Unit has raised no objection to the proposal and accordingly the development will not create siltation or pollution of Narrabeen Lagoon and its catchment.

Given the above assessment, the proposed development on traffic and parking grounds is not considered to be consistent the Desired Future Character statement of the B2 Oxford Falls Valley locality. However, conditions of consent to control noise, delete the proposed overflow parking area, and limit the number of patrons using the restaurant and function centre could ensure consistency with the DFC statement should the application be considered worthy of approval.

Built Form Controls (Development Standards)

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

Control	Requirement	Provided	Compliant
Housing Density	1 dwelling/20ha of site area	N/A	N/A
Building Height (Overall)	8.5m	Storage container: 2.4m Storage Shed: 3m Signage: 1.8m	Yes Yes Yes
Building height (Natural ground to topmost ceiling)	7.2m	Storage container: 2.4m Storage Shed: 2.7m	Yes Yes
Front Building Setback	20m	Storage container: 12m Works within the existing building: 37m Storage shed: 113m Signage: 1m Overflow parking area: 1m	No Yes Yes No No
Rear Building Setback	10m	Storage container: 216m Storage shed: 90m Works within the existing building: 159m	Yes Yes Yes
Side Building Setback	North: 10m South: 10m	North: 33m to new works South: 0.6m to storage containers Approx. 6m to signage	Yes No
Landscaped Open Space	30% (6525m ²)	47% (10275 m ²)	Yes



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The proposed development is considered to fail to satisfy the Locality's Front Building Setback and Side Building Setback Built Form Controls, accordingly, further assessment is provided against the provisions of Clause 20(1) hereunder.

Clause 20(1) stipulates:

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

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

(i) General Principles of Development Control

Subject to conditions of consent as discussed in this report, the proposal can be made generally consistent with the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on "General Principles of Development Control" in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

Subject to conditions of consent as discussed in this report, the proposal can be made consistent with the Locality's Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on "Desired Future Character" in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under 'State Environmental Planning Policies'). Accordingly the proposal to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Description of variations sought and reasons provided:

Notwithstanding, in order to fully consider the application the following provides an assessment of the non-compliance with the Front and Side Setback Built Form Controls.

In assessing these elements of the proposal, it is necessary to consider the merit considerations of the controls as detailed below:

Front Building Setback

The proposed signage is setback only 1m from the street frontage. The storage container which is proposed for retention is setback 12m from the street frontage. These elements were assessed as acceptable as part of the original application and have not been altered by the S82A application. They are considered to achieve the objectives of the control set out below. The overflow parking area is a new element and is proposed 1m from the front boundary. This element is assessed below.

Required: 20m

Proposed: The overflow parking area is proposed 1m from the front boundary.

Response:

In assessing this non-compliant element of the proposal, it is necessary to consider the merit considerations of the Front Building Setback Built Form Control. Accordingly, consistency with the merit considerations are addressed below:

- **Create a sense of openness**

Comment: The proposed parking area is uncovered and at the existing ground level. Given it is uncovered, it is not considered to significantly impact on the sense of openness.

- **Provide opportunities for landscaping.**

Comment: The proposed parking area is shown on the plans as remaining grassed. However, if approved it will be a formalised parking area and as such will be required to be paved in accordance with the Australian Standard. It would therefore result in a significant reduction in landscaping in the front setback area, and the proposal is not therefore considered to achieve this objective.

- **Minimise the impact of development on the streetscape.**

Comment: As discussed above the proposal would result in a significant amount of the existing landscaped front setback area being replaced by paving. It would not have a minimal impact on the streetscape, and is not considered to achieve this objective.

- **Maintain the visual continuity and pattern of buildings, front gardens and landscape elements.**

Comment: The proposal will result in a significant portion of the existing landscaped front setback area being paved for an overflow parking area. Development in the area, whilst not always compliant with the required 20m front setback, generally maintains a significant landscaped area in the front setback area. The proposal for a parking area would be required to be paved, and a 30m long by 11.2m wide paved parking area 1m from the front boundary would not maintain the existing pattern of development and landscape elements. The proposal is not considered to achieve this objective.

The proposal is therefore considered to be inconsistent with a number of objectives and in this regard should the application be approved, a condition would be recommended to delete the overflow parking area from the plans.

Side Building Setback Built Form Control

As above the storage containers and signage are within the side setback and were previously assessed as being acceptable with regard to the objectives of the control. Given that these elements have not been altered the assessment has not changed. The proposed overflow parking includes four car spaces within the side setback area and these are assessed below.

Required: 10m

Proposed: The plan provided is not to scale, however the parking spaces appear to be well within the required 10m setback.

Response:

In assessing this non-compliant element of the proposal, it is necessary to consider the merit considerations of the Side Building Setback Built Form Control. Accordingly, consistency with the merit considerations are addressed below:

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

Comment: The proposed parking spaces are uncovered and will not visually dominate the area. They have no height and bulk.

- ***Ensure that development responds to site topography.***

Comment: The proposed car spaces are at ground level, and sufficiently respond to the topography.

- ***Provide separation between buildings***

Comment: Directly adjoining the site to the south is a residential dwelling with a tennis court, swimming pool and stables. The adjoining site is heavily vegetated for a distance of 70m measured from the street frontage; therefore there are no buildings within close proximity to the non-compliant works. The storage containers, which are the closest element to the shared side boundary, are setback over 180m from the nearest building on the adjoining property. The proposed car spaces are to the north of the storage containers. Adequate separation is therefore preserved between buildings.

- ***Provide opportunities for landscaping.***

Comment: The proposed car spaces within the side setback area are proposed to remain grassed. However as discussed above they will be required to be paved in accordance with the Australian Standard should they be approved. They will therefore

reduce the landscaping in both the front and side setback area, and are not considered to achieve this objective.

- **Create a sense of openness**

Comment: The proposed parking spaces are uncovered and will have no significant impact on the sense of openness in the area.

As detailed above the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1) subject to conditions of consent.

However, the proposed overflow parking is not considered to be consistent with the underlying objectives of the Side Building Setback and the Front Setback Built Form Controls. It is for these reasons that the variation to the Side Building Setback and Front Setback Controls (Development Standards) pursuant to Clause 20(1) are not supported.

General Principles of Development Control

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

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	The proposed physical works on site are minor in terms of bulk and scale and would not result in any unreasonable glare or reflection on adjoining properties. A condition will be imposed to ensure that colours and materials are not light in colour. The proposed signage is to be artificially illuminated by up lighting located behind the existing front wall. Subject to conditions requiring that the lighting is to comply with the relevant Australian Standards, it is considered that the development would not unreasonably diminish the amenity of the locality.	Yes, subject to condition
CL39 Local retail centres	No	No further assessment required.	N/A
CL40 Housing for Older People and People with Disabilities	No	No further assessment required.	N/A
CL41 Brothels	No	No further assessment required.	N/A
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. Conditions of consent will be imposed that adequately address the construction requirements associated with the building works proposed on the site.	Yes, subject to condition



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General Principles	Applies	Comments	Complies
CL43 Noise	Yes	Clause 43 of WLEP 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>". Concerns have been raised by the adjoining neighbours to the north of the site that the noise associated with the use of the development as a restaurant and function centre would have a detrimental impact on their amenity. The application proposes to operate the primary restaurant and function centre between 8am and 12midnight, seven days a week. The primary restaurant/function centre space in the south eastern corner of the building also has access to an outdoor terrace that adjoins the eastern elevation of the building and is used by patrons during functions. The smaller restaurant in the south-western corner of the building and the adjacent shop and reception area are proposed to operate between the hours of 7am and 10.30pm, seven days a week. The hours of operation of the tennis courts are also proposed to be extended from a closing time of 10pm to 10.30pm on Monday nights only. The original assessment of the application found the noise impact to be acceptable, subject to conditions of consent limiting the restaurant/function centre to a maximum of 88 guests, and requiring use of the eastern terrace area to cease use at 8pm. However, after considering the application the WDAP did not consider that the noise impacts could be sufficiently judged without an acoustic assessment. An acoustic report has therefore been provided with the current S82A application. The report notes that during the survey of the site during a function in the function room: <i>"Music could be detected adjacent to the entrance to the function room and generated minor increases above the background level.</i> <i>Attendance towards the northern boundary adjacent to the courtyard (location 2) found music to be audible and generated minor increases above the background level.</i> <i>At the eastern end of the function room (location 1) an average maximum level of 90 dB(A) was obtained from the DJ sound system.</i> <i>A test at the northern boundary adjacent the courtyard (location 2) was carried out with the eastern glass</i>	Yes, subject to condition

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General Principles	Applies	Comments	Complies
		doors open to reveal an average maximum of 63 dB(A). <i>Attendance to a position towards the northern boundary adjacent to the swimming pool (location 3) found no music from the function room could be detected with the eastern doors open or closed."</i> Location 2 in the Acoustic assessment gives an impression of the possible impacts upon the Office/games room building of the northern neighbour, which is closest to the subject site. Location 3 was located further to the west and gives an impression of possible noise impacts on the main dwelling, including primary living areas and bedrooms of the northern neighbour. However, it should be noted that the acoustic report surveyed a function which was using only the indoor function room, and not the outdoor eastern terrace area. Further, the car park was only approximately 60% full on this occasion indicating that the function was not a large gathering. The report gives the following recommendations for noise mitigation: • <i>All entertainment provided in the function centre shall be contained wholly within the envelope of the building,</i> • <i>The level of music generated inside the premises for functions after 8pm when measured inside the north eastern glass door that (leading to the courtyard) shall not exceed a level of 90 dB(A) when measured as an average maximum level in accordance with the OLGR requirements,</i> • <i>The level of music generated inside the premises for functions between 10am and 8pm when measured inside the north eastern glass door that (leading to the courtyard) shall not exceed a level of 98 dB(A) when measured as an average maximum level in accordance with the OLGR requirements,</i> • <i>To maintain the required internal noise limit necessitates either the use of the handheld meter with monitoring conducted by the management when entertainment is provided, or alternatively use of a noise cut-out unit that monitors the internal noise level at that position and disconnects power to the amplification equipment when the level is exceeded</i> • <i>The cut-out unit shall have reed switches installed on all eastern doors to the function room so that if any door is open the internal noise cut-out level is to be reduced to 75 dB(A) and the nominated monitoring point,</i>	



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General Principles	Applies	Comments	Complies
		The internal noise level nominated for acoustic compliance purposes can permit the use of live entertainment in the form of a pianist or guitarists, small ensembles etc., but does not permit the use of a live rock band. The applicant has stated in the Plan of Management provided with the application that a hand-held measuring device will be used. However this is not considered to be a reliable method for ensuring noise is kept to a minimum level, particularly for a large function where staff may well be very busy, and unable to constantly monitor noise. A condition of consent is therefore recommended requiring automatic noise cut-out units as suggested by the acoustic report. Given that the survey was undertaken for a small function, judged by the 60% usage of the car park, it is considered that the previous recommendation of a maximum of 88 guests should stand. It has not been demonstrated that a reasonable level of noise intrusion will be maintained for a large function of 120 people as requested by the application. Given these considerations, and subject to conditions as discussed above, it is considered that the noise impact of the function room will remain at reasonable levels and may be considered as 'low intensity and low impact' as required by the Desired Future Character (DFC) statement.	
CL44 Pollutants	No	No further assessment required.	N/A
CL45 Hazardous Uses	No	No further assessment required.	N/A
CL46 Radiation Emission Levels	No	No further assessment required.	N/A
CL47 Flood Affected Land	No	No further assessment required.	N/A
CL48 Potentially Contaminated Land	Yes	This issue has been addressed under SEPP 55 of this report. In summary, the site is suitable for the proposed development.	Yes
CL49 Remediation of Contaminated Land	No	No further assessment required.	N/A
CL49a Acid Sulfate Soils	No	No further assessment required.	N/A
CL50 Safety & Security	Yes	The proposal maintains an acceptable level of safety and security through the site design and layout. - The existing building will be generally unchanged maintaining passive surveillance. - The existing car park area is extensively lit.	Yes



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General Principles	Applies	Comments	Complies
		The entrance to the building is clearly defined and is also orientated towards Oxford Falls Road. Given the above, this proposal is satisfactory in terms of safety and security.	
CL51 Front Fences and Walls	No	No new fences or walls are proposed as part of this application.	N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	Yes	The site opposite across Oxford Falls Road is a heavily vegetated parcel of Crown land. The proposal will not create any significant impact on this land as the frontage of the development to Oxford Falls Road is generally unchanged. The installation of signage and retention of storage containers within the front setback area will not result in any significant loss of vegetation therefore an appropriate visual transition is maintained.	Yes
CL53 Signs	Yes	The proposed signage is not altered under the S82A application, and remains acceptable. The application proposes to install two freestanding business identification signs on either side of the driveway entrance. The signs are proposed to have a maximum height of 1.8m and width of 2.4m. The maximum area of each sign is 1.92m. The signage is proposed to be illuminated by external lighting which will be located behind the existing front walls. The signage would not result in visual clutter, obscure sightlines or diminish the amenity of the locality. The proposed signage is consistent with Clause 53.	Yes
CL54 Provision and Location of Utility Services	Yes	Existing services are available to the site. According to Council's records, the subject site is not connected to the Sydney Water Sewage system. Accordingly, a condition will be imposed requiring the applicant to provide a wastewater report and obtain an approval to install and operate a wastewater management system prior to the issue of the Construction Certificate to demonstrate that the onsite system is of sufficient size to manage the intensification of the use.	Yes, subject to conditions.
CL55 Site Consolidation in 'Medium Density Areas'	No	No further assessment required.	N/A
CL56 Retaining Unique Environmental Features on Site	Yes	The proposed development will not affect any unique environmental features on the property.	Yes
CL57 Development on Sloping Land	Yes	The proposal does not involve any change to the building bulk and no excavation is proposed. The proposal is consistent with these provisions.	Yes



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General Principles	Applies	Comments	Complies
CL58 Protection of Existing Flora	Yes	No tree removal is proposed to facilitate the development. The provision of overflow car parking area in the S82A application will require the pruning of the lower branches of one tree in the front setback. However as discussed in this report the overflow parking area is not recommended for approval.	Yes
CL59 Koala Habitat Protection	Yes	Councils Natural Environment Unit has raised no objections to the proposal therefore consistency with these provisions is demonstrated.	Yes
CL60 Watercourses & Aquatic Habitats	Yes	Councils Natural Environment Unit has raised no objections to the proposal therefore consistency with these provisions is demonstrated.	Yes
CL61 Views	Yes	Clause 61 stipulates 'Development is to allow for the reasonable sharing of views'. The new structures on site will have a maximum height of 2.4m and due to the topography of the land they would not result in any significant loss of views.	Yes
CL62 Access to sunlight	Yes	The proposed development will not result in any overshadowing of adjoining properties.	Yes
CL63 Landscaped Open Space	Yes	The application does not propose to remove any significant vegetation from the site and over 47% of the site is maintained as landscaped open space providing opportunities for the planting of indigenous shrubs and trees. The proposed overflow parking area is shown to remain grassed on the plans, however, as discussed in this report, it would be a formalised parking area and would be required to be paved in accordance with the Australian Standard. The plan showing this overflow parking area is not to scale, however it is estimated that the overflow parking area, if approved, would add somewhere in the region of 400sqm of hard surface area in the front setback. As discussed in this report, the overflow parking area is recommended for deletion should the proposal be approved, and in this regard the landscaped open space will not be altered. Subject to this condition, the development is consistent with Clause 63 of WLEP 2000.	Yes
CL63A Rear Building Setback	Yes	No changes are proposed to the existing rear building setback.	Yes
CL64 Private open space	Yes	No changes are proposed to the existing provision of private open space to the single dwelling located in the main building.	Yes
CL65 Privacy	Yes	Due to the separation between buildings and private open space, the proposed development would not result in any unreasonable impacts on privacy enjoyed by adjoining properties.	Yes



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General Principles	Applies	Comments	Complies
CL66 Building bulk	Yes	Clause 66 of WLEP 2000 provides <i>"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"</i>. The S82A application has not altered the proposed built form, other than to propose a grassed overflow parking area. The proposal is considered to satisfy the provisions of the General Principle for the following reasons: • The proposed works are minor and of minimal building bulk. • The proposed works are single storey structures that will not exceed the building height control and will maintain consistency with surrounding development. • The proposed building works are generally screened from the streetscape by existing landscaping and structures on the site. • The proposed signage uses recessive colours and materials that are complementary to the character and appearance of the area. • One of the two storage containers is temporary only and is to be removed after two years, reducing the bulk of development within the front setback.	Yes
CL67 Roofs	Yes	The roof design of the proposed single storey shed is consistent with other structures existing on the property.	Yes
CL68 Conservation of Energy and Water	Yes	The proposed development will maintain sufficient natural ventilation and solar access to the restaurant areas. Additionally, no trees are proposed to be removed from the site ensuring areas for shade and relief from the sun are maintained around the tennis court area.	Yes
CL69 Accessibility – Public and Semi-Public Buildings	Yes	The S82A application continues to rely on the Building Code of Australia report, prepared by Building Code of Australia Consultants, dated 26 June 2013 submitted with the development application. The report has found that the restaurant and function areas subject of this application can be made accessible for people with disabilities. Conditions are recommended requiring compliance with the submitted report, the Building Code of Australia and relevant Australian Standards.	Yes
CL70 Site facilities	Yes	A waste storage area is located on site within the existing car park area and waste is collected weekly by a commercial waste contractor.	Yes
CL71 Parking facilities (visual impact)	Yes	The S82A application has proposed an overflow parking area in the front setback area between the front boundary and the existing car park.	Yes, subject to condition



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General Principles	Applies	Comments	Complies
		The control makes the following requirements: • <i>garage doors and carports are to be integrated into the house design where topography and other constraints of the site allow, and</i> • <i>laneways are to be used to provide rear access to carparking areas where possible, and</i> • <i>car parking is to be provided underground or in semi basements for apartment buildings and other large developments, and</i> • <i>parking is to be located so that views of the street from front windows are not obscured.</i> The proposed overflow parking is to remain grassed, and does not specifically contradict any of the above points. However, it is non-compliant with the front setback control which specifically prohibits parking in the front setback, while requiring dense landscaping. The provision of a formalised parking area, even were it to remain grassed is not considered to meet the intent of clause 71, and the overflow car park is recommended for deletion. Further, the formalisation of this area for parking will require the parking area to be paved. Subject to this condition the existing car park will remain unchanged and in accordance with the control.	
CL72 Traffic access & safety	Yes	Vehicle access into the site is existing and unchanged. According to the submitted Traffic and Parking Impact Assessment, the proposed use of the site as a restaurant and function centre in combination with the existing uses on the property, will generate peak flows of approximately 51 vehicle trips which would have a minimal impact on the surrounding road network. Council's Traffic Engineer concurs with the findings and is satisfied that the additional trips would not compromise traffic safety. The S82A application has proposed to increase the number of parking spaces on site, although no updated traffic report has been provided. However as discussed in this report the overflow parking is recommended for deletion should the proposal be approved, and in this regard the previous assessment remains unchanged.	Yes
CL73 On-site Loading and Unloading	Yes	No changes are proposed to the existing arrangements for loading and unloading of vehicles. Access to and from the site is available in a forward direction.	Yes
CL74 Provision of Carparking	Yes	An assessment of car parking under Schedule 17 of WLEP 2000 is provided later in this report. The combination of uses as a recreation facility, motel, restaurant and function centre generates an overall requirement of 88 parking spaces, taking into account the number of patrons of the function centre being	Yes – subject to conditions of consent



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General Principles	Applies	Comments	Complies
		reduced to 120 as proposed by the S82A application. It is noted that the application proposes providing for up to 150 function centre patrons three times in any calendar year, which would generate the requirement for 98 spaces. There are currently 55 parking spaces available on site which caters for the existing approved tennis academy (36 parking spaces) and motel (minimum 12 parking spaces) leaving an excess of 7 parking spaces. No updated traffic report has been provided with the S82A application. The previous assessment of the original application was as follows: <i>Contrary to the parking calculation provided in the submitted Parking and Traffic Impact Assessment, under WLEP 2000 a restaurant and function centre which caters for up to 150 patrons would require the provision of 50 parking spaces. Therefore, strict compliance with the controls would require an additional 43 parking spaces to be provided on the site.</i> <i>The Parking and Traffic Impact Assessment prepared by Ray Dowsett Traffic and Transport Planning Pty Ltd, dated 30 May 2013, provides details of two parking surveys that were undertaken during functions at the site.</i> <i>The larger of the two functions catered for 88 guests and operated concurrently with the tennis courts and 75% occupancy of the motel. The parking survey found that 58 vehicles were parked on the site, 3 of which were parked informally on grass areas inside the entrance of the property. The report finds that based on the surveys undertaken, the existing 55 parking spaces on site would generally satisfy the peak parking demands of the site.</i> <i>The report does not consider the parking demand of the restaurant and function centre at peak use of 150 patrons as applied for in the Development Application, nor does it consider this number of patrons in combination with tennis academy and motel also operating at peak occupancy.</i> <i>Council's Traffic Engineer has assessed the proposal and raised no objections to the development. However, a condition is recommended requiring that the uses on the site do not operate concurrently and also that the maximum number of patrons to the function centre be limited.</i> <i>It is not considered reasonable to condition that each of the separate uses on the site must not operate</i>	

**Attachment B**

General Principles	Applies	Comments	Complies
		<i>concurrently. However, it is also not considered that there is sufficient parking on the site to cater for 150 patrons of the restaurant/function centre in combination with the motel and tennis academy uses. Although it is agreed that there would be some overlap in the uses, e.g. motel customers may also be function attendees; the application has failed to demonstrate that at its maximum capacity of 150 restaurant/function centre patrons there would be adequate on site parking.</i> <i>Although Council's Traffic Engineer has suggested overflow parking could be accommodated within the road reserve along Oxford Falls Road, this parking impact would be inconsistent with the provisions of the Desired Future Character statement for this locality which only permits non-residential uses when they are of a low impact and low intensity. Accordingly, it is recommended that a condition be imposed limiting the patronage of the restaurant/function centre to 88 seats.</i> As discussed in this report the proposed overflow parking area is not recommended for approval, as it is within the front setback area and does not comply with the front setback control. The existing parking is therefore assumed to remain unchanged, and the above assessment remains valid. The S82A application has failed to demonstrate that the proposed function centre catering for 120 guests, and up to 150 guests, remains low intensity and low impact as required by the Desired Future Character Statement. Justification of the proposal in the S82A application has relied upon Oxford Falls Peace Park, which has an official capacity of 50 guests, but caters to more than this for functions using the outdoor area (up to approximately 120-130 guests). No parking is provided for Peace Park. However this is a community facility on public land zoned RE1 Public Recreation under WLEP 2011, and there is therefore a general expectation of community use. The subject site falls under WLEP 2000 and the proposed use is a Category 3 use under in the locality. Council must therefore be satisfied that the use will remain 'low intensity and low impact' regardless of other developments in the area. This assessment finds that the development falls well short of the required number of on-site parking spaces, and the S82A application has failed to demonstrate that an increased number of guests remains low intensity, low impact. Should the application be approved a condition would be recommended limiting the restaurant/ function centre to 88 seats.	

General Principles	Applies	Comments	Complies
CL75 Design of Carparking Areas	Yes	The S82A application has proposed a new overflow parking area in the front setback area. As discussed in this report the overflow parking is within the front setback area and does not comply with the front setback control. Although the plans show the parking as to remain grassed, the formalisation of the parking area will require it to be paved in accordance with the Australian Standard. The overflow parking area is therefore recommended for deletion should the application be approved. Subject to this condition the existing parking area will remain unchanged and is satisfactory with regard to Clause 75.	Yes – subject to condition.
CL76 Management of Stormwater	Yes	Council's Development Engineer has assessed the application and raised no objections to the development on the basis of stormwater management.	Yes
CL77 Landfill	No	No further assessment required.	N/A
CL78 Erosion & Sedimentation	Yes	Conditions will be imposed to ensure appropriate erosion and sedimentation measures will be put in place prior to the commencement of works.	Yes
CL79 Heritage Control	No	No further assessment required.	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	No	No further assessment required.	N/A
CL81 Notice to Heritage Council	No	No further assessment required.	N/A
CL82 Development in the Vicinity of Heritage Items	No	No further assessment required.	N/A
CL83 Development of Known or Potential Archaeological Sites	Yes	The application was referred to the Aboriginal Heritage Office who raised no concerns. A condition is recommended stating that if any archaeological sites are uncovered during works then work is to cease and Council and the AHO to be notified.	Yes

RELEVANT SCHEDULES

Schedule 5 - State Policies

Koala Habitat Protection	Councils Natural Environment Unit has raised no objections to the proposal therefore consistency with these provisions is demonstrated.
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Schedule 8 - Site analysis

Site Analysis	The proposal includes a site analysis that satisfies the requirements of Schedule 8.
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Schedule 15 - Statement of Environmental Effects

Clause 15(1) of Warringah Local Environmental Plan 2000 requires that the consent authority must consider a Statement of Environmental Effects prepared in accordance with the criteria listed in Schedule 15. In addition, Clause 15(2) requires the consent authority to consider the findings of an independent public hearing prior to the determination of the application.

The applicant submitted a Statement of Environmental Effects (SEE) with the development application, prepared by Colco Consulting Pty Ltd, which addresses Schedule 15 of WLEP 2000. The following is provided having regard to these provisions:

Consideration	Proposed
(1) Summary of the Statement of Environmental Effects (SEE)	A summary of the environmental impacts of the development is provided in the conclusion of the submitted Statement of Environmental Effects.
(2) Consistency of the proposal with the desired future character statement and general principles of development control established by the plan.	With regard to Point 2 of Schedule 15 the applicant has provided the following: <i>"1. This issue is addressed in 7.0 Assessment Table and 8.0 Low Impact Test criteria are assessed in 8.0.</i> <i>2. The conclusion stated in 8.0 is:</i> <i>The proposal is considered to result in no noticeable change, have minimum or negligible impact on the locality and unlikely to significantly change the amenity of the locality. It will provide needed services and facilities and amenities for Warringah residents, and tourist visitors. It complies with the "Low Intensity and Low Impact Test".</i> Comment: In Section 7.2 and 9.0 of the SEE the applicant has generally demonstrated consistency with the desired future character of the locality with reference to the Category 3 classification of the proposal. In Section 7.4 of the SEE the applicant has also satisfactorily addressed the relevant general principles of development control. As demonstrated throughout this report both these aspects of the application are found to be acceptable subject to conditions of consent to limit the numbers of patrons of the function centre.
(3) Objectives of the proposed development.	With regard to Point 3 of Schedule 15 the applicant has provided the following: <i>"The objectives of the proposed development are:</i> <i>1. To clarify all uses involving the general public that may not be covered by the application of existing consents and ancillary uses as provided for under the EP&A Act in order that the facilities available for dining, functions and entertainment available to tennis players and guests and short term accommodation motel guests are also available to the general public.</i>

Consideration	Proposed
	2. To provide for storage needs of the business." Comment: A detailed site history is provided in section 1.2 of the SEE which establishes the objectives of the Development Application following compliance action by Council. In addition to the above statement provided by the applicant, the objectives of the proposed development are made clear in the documentation provided to Council.
(4) An analysis of feasible alternatives. (including (a) Consequences of not carrying out the development and (b) Justification for the development)	With regard to Point 4 of Schedule 15 the applicant has provided the following: <i>"1. We are advised that there are no alternatives available to the owners in regard to the general public access to on-site facilities as they are required to ensure the commercial, viability of the centre as tennis on its own is financially unsustainable.</i> <i>2. A possible, but impractical alternative solution to on-site storage is to take storage off-site to another location.</i> <i>3. Business use and high standard of maintenance requires extensive equipment including various ride on and hand mowers etc. Due to the potential for vandalism and theft they need to be under locked storage and on-site for convenient availability."</i> Comment: The statement above is provided in section 12.0 of the SEE and is considered sufficient to demonstrate that there are limited alternatives for a viable business in this location. It is noted however, that the SEE has failed to demonstrate that the size and intensity of the restaurant and function centre operations is justified and as discussed earlier in this report, conditions are recommended to reduce the permitted number of patrons. Even so, the information provided in the SEE is considered satisfactory to address the Clause 15(1) of WLEP 2000.
(5) Development and context analysis.	With regard to Point 5 of Schedule 15 the applicant has provided the following: <i>"1. The assessments against the various planning criteria are contained in the Tables 7.1 to 7.8 and in clauses 8.0 and 9.0.</i> <i>2. The conclusion in brief is that there are no adverse environmental impacts and that the application should be approved with normal and appropriate conditions."</i> Comment: The SEE has provided sufficient analysis of the development to demonstrate that the overall impacts of the development on the surrounding environment are minimal. The SEE fails to provide details of mitigation measures for noise impacts on adjoining properties, however an acoustic report has been submitted with the application for review to demonstrate that noise impacts are not unreasonable. The information provided in the SEE is considered satisfactory to address the Clause 15(1) of WLEP 2000.
(6) Biophysical, economic and social considerations and the principles of ecologically sustainable development.	With regard to Point 6 of Schedule 15 the applicant has provided the following: <i>"The reasons justifying this development are stated within the SEE. In summary:</i> <i>1. The proposal is permissible under the provisions of WLEP 2000 and complies with the WLEP 2000 B2 Oxford Falls Locality Desired Future Character statement; and test for Low Intensity and Low Impact.</i>

Consideration	Proposed
	2. The proposal reinforces the nature of business and community activities that have operated since the mid 1980's and mid 1990's and confirms the available of the facilities for use by the general public. 3. The extension of/confirmation of the uses provide needed recreation, meeting, functions and associated facilities to Warringah residents and visitors/tourists. 4. The uses are contained within existing buildings and facilities; and the provision of storage satisfies the need for on-site storage, safety and security. 5. The proposal is considered to result in no noticeable change, have minimum impact on the locality and unlikely to significantly change the amenity of the locality. 6. The application has been brought about by the issue of an Order by Warringah Council which questions the validity of some existing uses and conflicting legal advice obtained by the owners. 7. The agreement between Council and the owners that it is in the interests of all parties to ensure clarification of all business uses. It is on this basis that the applicant submits this development application on a "Without Prejudice" basis - in order to clarify matters of doubt and to extend the approved uses beyond what is ancillary to the existing consents; and for consent for storage needs and amend existing signage at the entrance to the property." Comment: Acceptable justification has been provided for the proposal throughout the SEE. The proposal is considered to have no adverse impacts in relation to the economic and social environment as it will ensure the existing recreation facility on site remains a viable business and will provide opportunities for employment that would be of benefit to the wider community without causing irreversible damage to the biophysical environment.
(7) Measures to mitigate any adverse effects of the development on the environment	With regard to Point 7 of Schedule 15 the applicant has provided the following: <i>"It is concluded that there are no adverse effects of the development on the environment. Such matters as potential noise arising from such uses are a matter of good management and the owners have a management plan in place."</i> Comment: The Schedule states that the SEE should include a single section that outlines measures taken to mitigate any adverse impacts of the development on the environment. The submitted SEE does not do this specifically, as it does not identify any significant impacts that may arise from the proposal. The SEE does refer to potential noise impacts, however it states that these are mitigated by good management of the property. Under the application for review an acoustic assessment and a Plan of Management have also been provided to address impacts on the surrounding area. As discussed in this report, the noise arising from the proposal is not considered unreasonable subject to conditions to mitigate the noise impact. The SEE is on balance, adequate to meet the requirements of Clause 15(1).
(8) Other approvals required	With regard to Point 8 of Schedule 15 the applicant has provided the following: <i>"There are existing consents in place for the current buildings and uses including a Liquor licence to cover up to 150 people on the licensed premises. No additional guests are proposed."</i>

Consideration	Proposed
	Legal advice obtained by the owner indicates that there are no referrals required to extend these uses to the general public for the reasons: 1. The existing buildings for the office, shop, short term accommodation, lounge; restaurant and functions are all approved and constructed by prior consents. 2. The uses are existing uses by prior consents and the application of ancillary uses as provided for under the EP&A Act and the proposal simply ensures that existing facilities are available to the general public. 3. The proposed "extension" of uses can be carried out without further approvals beyond Council's development consent. It may be also that they are already covered by the broad application of "Ancillary Uses". 4. One shipping container may require the obtaining of a Building Certificate although it's noted that it is not permanently attached to the land nor are there services connected. Further consideration is being undertaken." Comment: The SEE provides a list of further approvals that may be required. It does however fail to acknowledge that a Section 68 Activity Approval to operate an onsite wastewater management system which will be required by a condition of consent. Even so, the information provided in the SEE is considered satisfactory to address the Clause 15(1) of WLEP 2000.

It is considered that the submitted Statement of Environmental Effects prepared by Colco Consulting Pty Ltd, dated 26 June 2013 in response to the provisions of Clause 15/Schedule 15, on balance, adequately addresses the compatibility of the of the development with the Locality and the DFC.

Schedule 17 - Carparking Provision

Carparking Provision	Motel: 1 space per unit (12 units) plus 1 space per 2 employees = minimum 12 Recreation Facility (Tennis Court) : 3 spaces per court = 36 Restaurant and Function Centre (120 seats) : 1 space per 3 seats = 40 TOTAL: 88 spaces Provided: 55 spaces The development fails to provide sufficient parking to meet the requirements of WLEP 2000. A detailed assessment of this deficiency is provided under Clause 74 of the General Principles of Development Control earlier in this report.
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POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

As the estimated cost of works is less than \$100,000.00 the policy is not applicable to the assessment of this application.



OTHER MATTERS FOR CONSIDERATION

Integrated Development

The assessment of the original development application included the following recommendations:

- A. *The proposal being referred to the NSW Rural Fire Service (NSW RFS) as Integrated development,*
- B. *The application being advertised as required by Clause A.7 of the Warringah Development Control Plan as Integrated development,*
- C. *A supplementary report being referred to the General Manager at the end of the advertising period addressing any additional submissions*
- D. *The conditions be amended to incorporate any NSW RFS General Terms of Approval.*
- E. *If the applicant refuses to pay the Integrated "approval fee" or if the NSW RFS refuse to grant approval of the proposal the application be refused in accordance with Section 91A (4) of the EP&A Act 1979.*

This was considered at the WDAP meeting who provided the following response in the minutes:

The applicant brought to the meeting advice that this was not an integrated development requiring an approval from the NSW Rural Fire Service. As a result, the applicant did not agree that the application needed to be advertised as integrated development, nor would he wish to pay the fee for the integrated development to be referred to the Rural Fire Service. Accordingly, the Panel understands that if this is not sought to be an integrated development receiving RFS approval at the same time as council approval, and there is no need for the payment of the integrated development fee nor the advertising and the applicant must take his chances with the RFS after any approval this council may give. Accordingly the Panel would not impose the conditions referred to as A – E under Council's recommendation.

The Rural Fire Service did however provide an official response after the assessment report was written dated 9 September 2013, received by Council on 20 September 2013. This report stated that in the opinion of the RFS the development was integrated development:

"The understanding within the RFS which has been consistently applied is that as the proposal relates to the development of bush fire prone land for the purpose of a special fire protection purpose development, a bush fire safety authority is required under s100B of the Rural Fires Act 1997 making it integrated development under s91 of the EP&A Act.

The proposed extended restaurant area and function centre together with the new motel reception area and breakfast room will form an intricate part of the existing

special fire protection purpose development. The additional restaurant capacity and the impact of this upon other guests in the facility during the event of an emergency evacuation must be considered and addressed."

Given these comments the development is considered to constitute Integrated Development, and as such cannot be considered as a Section 82A Review Application. Also, no bushfire risk assessment has been provided by the applicants.

Accordingly, the applicants should lodge a fresh Development Application for Integrated Development and accompany that application with a Bushfire Report.

The application must therefore be refused on the basis that a S82A Review of Determination cannot be made on a development that is Integrated Development.

CONCLUSION

The proposal has been considered against the relevant matters for consideration under Section 82A and 79C of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000, Draft Warringah Local Environmental Plan 2009 and the relevant codes and policies of Council.

The development is considered by the NSW Rural Fire Service to be Integrated Development. Section 82A of the Environmental Planning and Assessment Act 1979 specifically prohibits a review of determination under this section in respect of integrated development. In this regard, the current S82A application must be refused on this basis alone.

However, there are a number of other concerns with the application relating to noise and traffic impacts, and the application has not demonstrated that the proposal will remain a 'low intensity, low impact' use as required by the Desired Future Character statement. Additionally the proposed overflow parking area is within the front setback and is not consistent with the objectives of the front setback control.

As discussed in this report these issues could be dealt with by conditions of consent deleting the proposed overflow parking, limiting the number of patrons of the restaurant/function centre and imposing strict conditions in respect of noise control. However, given the application is for integrated development and cannot be approved under Section 82A, these issues are included as reasons for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.



Attachment B

As a direct result of the application and the consideration of the matters detailed within this report it considered that Council as the consent authority refuse the application for the reasons detailed within the "Recommendation" section of this report.

RECOMMENDATION - REFUSAL

That to the Section 82A Review REV2014/0001 of the Determination of Development Application No. DA2013/0733 for land at Port 1110 752038 Oxford Falls Road FRENCHS FOREST be REFUSED for the reasons outlined below:

1. Pursuant to Section 91 of the Environmental Planning and Assessment Act 1979 the proposed development is Integrated Development, requiring a Bushfire Safety Authority from the NSW Rural Fire Service under Section 100B of the Rural Fires Act 1997, and cannot therefore be approved under Section 82A of the Environmental Planning and Assessment Act 1979.
2. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979, the proposed development is considered to be inconsistent with the provisions of Clause 12(3)(b) of Warringah Local Environment Plan 2000 (as amended), in that the proposed development is inconsistent with the Desired Future Character Statement for B2 Oxford Falls Valley locality that it is not a low intensity, low impact development.
3. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 12(2)(b) and fails Clause 20(1) of Warringah Local Environment Plan 2000 (as amended) in that a portion of the proposed development being the proposed overflow parking areas are inconsistent with the front setback and side setback development standards detailed under the applicable Built Form Controls for the B2 Oxford Falls Locality. In this regard it is considered that the failure to comply with the development standard will:
 - (a) Cause an undesirable precedent of development and;
 - (b) Significantly reduce the landscaped area in the front setback area.
4. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 12(1)(a) and Clause 18(1) of Warringah Local Environment Plan 2000 (as amended) in that portions of the proposed development are inconsistent with the General Principles outlined under Part 4 of WLEP 2000 as follows:
 - (a) Clause 43 Noise;
 - (b) CL71 Parking facilities (visual impact) ;
 - (c) CL74 Provision of Carparking; and
 - (d) CL75 Design of Carparking Areas.
5. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest in that:
 - The noise and traffic impacts of the proposed restaurant function centre will be unreasonable in the locality.

