

JRPP No.	2010HCC018
DA No.	DA/886/2010
Proposed Development	Retirement Village
Address	Lot 11 & 12 DP 830292, 40 - 48 Burton Road, Mt Hutton
Applicant	Ken Delforce
Owner	Ken Delforce and Helen Simpson
Lodged	3 June 2010
Value	\$11.5 million
Approval Body	Mine Subsidence Board NSW Office of Water Rural Fire Service
Consent Authority	Joint Regional Planning Panel
Referral Agencies	Energy Australia and NSW Police
Exhibition	9 June to 25 June 2010 23 September 2010 to 8 October 2010 5 January 2011 to 20 January 2011
Submissions	12 (1 petition) – objection 24 (4 petitions) - support
Report By	Michelle Bisson (Lake Macquarie City Council)

Assessment and Report and Recommendation

Precise

The development proposal is for the construction of a Retirement Village comprising of fifty one (51), single storey, self contained, one and two bedroom dwellings, a community centre, maintenance shed, and associated roadworks, revegetation, and landscaping. The development is proposed to be undertaken in five (5) stages.

The development is over two parcels of land, with a total area of 49,595m², which presently accommodates a single dwelling house on each parcel. The dwellings are to be demolished and the lots amalgamated. The proposed development has a gross floor area (GFA) of approximately 5,854m² and the total landscaped area is 71% of the amalgamated site.

The development is Integrated Development in relation to the Rural Fires Act, Water Management Act and the Mine Subsidence Compensation Act.

The land is zoned 1(2) Rural (Living) Zone. The development is permissible on the site pursuant to Clause 41 – 'Development for the purpose of Retirement Villages' of the Lake Macquarie Local Environmental Plan 2004 (LMLEP2004).

Clause 41 provides the opportunity for the development of retirement village style accommodation for aged persons in appropriate locations where the land satisfies specific criteria.

NOTIFICATION PLAN



Figure 1 – Proposed Retirement Village Site Plan

Location

The site is located in an existing rural/urban setting in close proximity to public transport and to Warners Bay and Mount Hutton commercial districts (refer Figure 2 below).

The site is located on a relatively flat piece of land and has an area of 49,595m² (4.95 hectares). There are watercourses crossing the development site to the rear and centre. Upstream of this site is a very large catchment area.

Much of the property has been cleared and currently consists of landscaped gardens, grassland with scattered trees and creek-line vegetation. Existing trees and vegetation are predominantly located within the front and rear portions of the site.

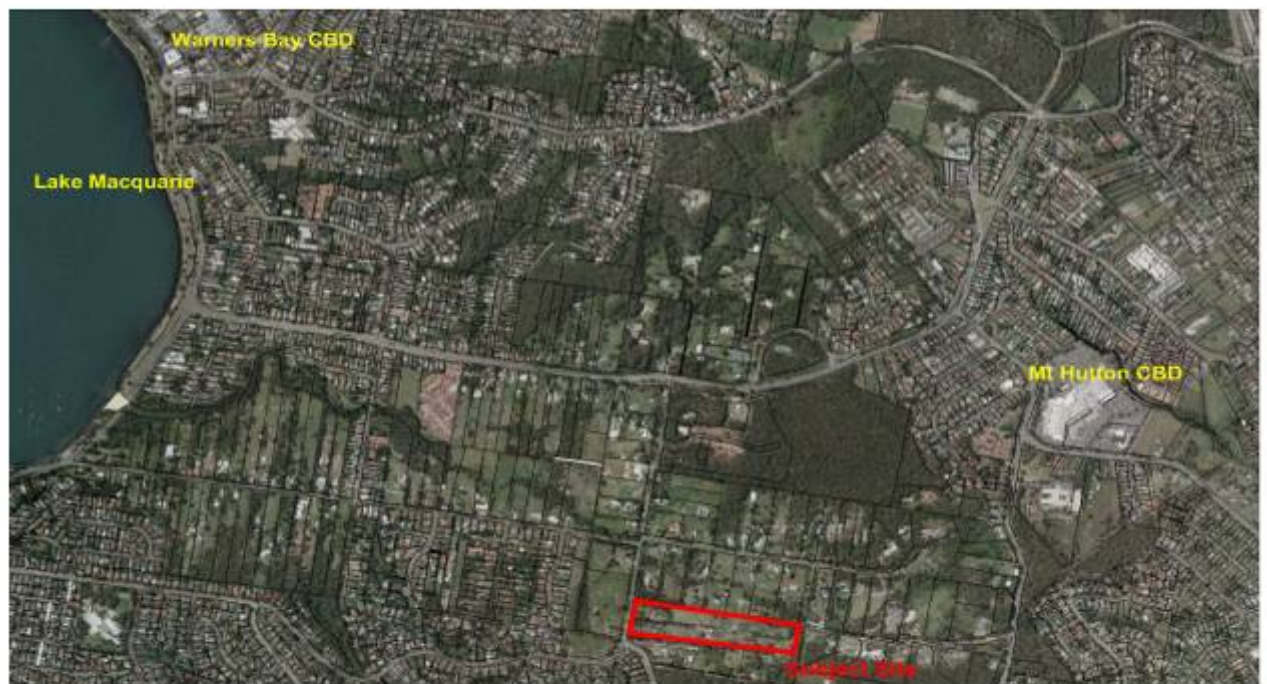


Figure 2 – Locality

Surrounding development

The properties to the north and east predominantly promote rural style living with large dwellings on large lots with an average lot size of 12,500m².

The properties to the south are principally low density residential, however the adjoining site to the south comprises of a restaurant and eco-tourist style accommodation.

The property directly across the road to the west (57 Burton Road) is currently rural style living however, the owner has recently discussed with Council the potential development opportunities of the land as a retirement village. (refer Figure 3 below) In addition, the owner sort a site compatibility certificate from DoP who advised '*it was determined that a Site Compatibility Certificate is not required, and cannot be legally issued, in light of Clause 41(5) of Lake Macquarie LEP 2004 ('Development for the Purpose of Retirement Villages'), which makes a retirement village permissible with consent. As non compliance with the criteria set out in Clause 41(5) does not prohibit the development, a Development Application may be lodged with Council without such a certificate.*

Property directly across from subject site



Figure 3 – Site Aerial Photograph and Surrounding Land

Council's Integrated Planning Department have identified that the pocket of 1(2) Rural (Living) Zone land (refer Figure 4 below) requires a major strategic investigation and they expect to undertake a review of the broader land use patterns of this 1(2) Rural (Living) zoned area in the next 1-2 years.

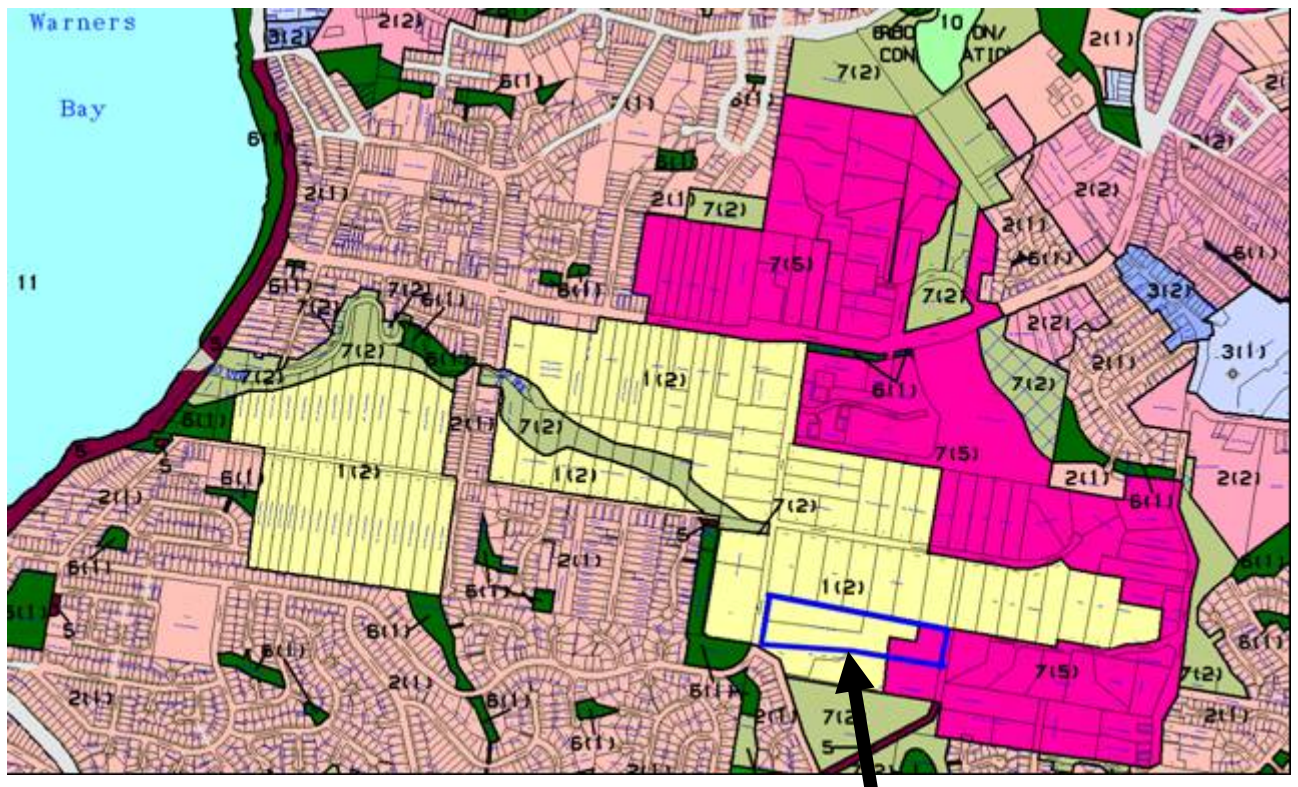


Figure 4 – Land Zonings (LMLEP2004)

Subject Land

The Assessment

This report provides an assessment of the justification presented in the application against all relevant State and Local planning legislation and policy.

Section 79C: Potential Matters for Consideration

79C(1)(a)(i) the provisions of any Environment Planning Instrument (EPI)

State Environmental Planning Policy (SEPP) (Building Sustainability Index: BASIX) 2004

The application has been supported by a BASIX certificate for the development. If the application were to be approved, an appropriate condition of consent would be applicable to ensure the development complies with the BASIX certificate.

State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability) 2004

Not applicable – The development application has been lodged against Clause 41 of the LM LEP 2004, hence the SEPP (Housing for Seniors or People with a Disability) 2004 does not apply.

The development however, has been assessed against the provisions/standards of the SEPP (Housing for Seniors or People with a Disability) 2004 as a design and assessment tool due to the absence of specific merit controls applying to Clause 41.

Provisions considered under SEPP (Housing for Seniors or People with a Disability) 2004

Chapter 1 – Preliminary

Clause 4 – Land to which Policy applies

This Policy applies to land within New South Wales that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if:

- (a) development for the purpose of any of the following is permitted on the land:*
 - (i) dwelling-houses,*
 - (ii) residential flat buildings,*
 - (iii) hospitals,*
 - (iv) development of a kind identified in respect of land zoned as special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries, or*
- (b) the land is being used for the purposes of an existing registered club.*

The subject site is land that adjoins land zoned primarily for urban purposes. It is zoned principally for rural uses and dwelling houses are permissible on the land with the consent of Council.

Chapter 2 – Key Concepts

Clause 10 – Seniors Housing

*In this Policy, **seniors housing** is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability consisting of:*

- (a) a residential care facility, or*
 - (b) a hostel, or*
 - (c) a group of self-contained dwellings, or*
 - (d) a combination of these,*
- but does not include a hospital.*

The development is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability consisting of....(c) a group of self-contained dwellings.

If the application were to be approved, an appropriate condition of consent in this regard would be applicable restricting the use of the premises for seniors or people with a disability.

Clause 11 – Residential Care Facilities

Not applicable

Clause 12 – Hostels

Not applicable

Clause 13 - Self-Contained Dwellings

(1) General term: “self-contained dwelling”

*In this Policy, a **self-contained dwelling** is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are*

included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.

(2) Example: “in-fill self-care housing”

*In this Policy, **in-fill self-care housing** is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care.*

(3) Example: “serviced self-care housing”

*In this Policy, **serviced self-care housing** is seniors housing that consists of self-contained dwellings where the following services are available on the site: meals, cleaning services, personal care, nursing care.*

The development meets the definition of ‘General term - self-contained dwelling’.

Chapter 3 – Development for Seniors Housing

Part 1 General

Clause 15 – What Chapter Does

This Chapter allows the following development despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy:

- (a) development on land zoned primarily for urban purposes for the purpose of any form of seniors housing, and*
- (b) development on land that adjoins land zoned primarily for urban purposes for the purpose of any form of seniors housing consisting of a hostel, a residential care facility or serviced self-care housing.*

The proposed development is on land that adjoins land zoned primarily for urban purposes however, the development does not consist of a hostel, a residential care facility or serviced self-care housing. The development is considered to meet the definition of self-contained dwellings therefore, the development does not meet clause 15 as described.

Clause 16 – Development Consent Required

Development allowed by this Chapter may be carried out only with the consent of the relevant consent authority unless another environmental planning instrument allows that development without consent.

As a result of non-compliance with clause 15, this Chapter does not allow the proposed development under this Policy however; another environmental planning instrument allows the development with consent.

The development application has been lodged against Clause 41 of the LM LEP 2004, hence the SEPP (Housing for Seniors or People with a Disability) 2004 does not apply.

Clause 17 – Development on Land Adjoining Land Zoned Primarily for Urban Purposes

A consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land that adjoins land zoned primarily for urban purposes unless the proposed development is for the purpose of any of the following:

- (a) a hostel,*
- (b) a residential care facility,*

(c) serviced self-care housing.

The SEPP requires development on land adjoining land zoned primarily for urban purposes being limited to either a hostel, serviced self-care housing or a residential care facility. As outlined, the development is contrary to this clause however is permitted on the basis of Clause 41 of the LM LEP 2004.

Clause 18 – Restrictions on Occupation of Seniors Housing

Development allowed by this Chapter may be carried out for the accommodation of the following only:

- (a) seniors or people who have a disability,*
- (b) people who live within the same household with seniors or people who have a disability,*
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

A condition to be applied, if development consent is granted, restricting those who may occupy the development to:

- Seniors or people who have a disability
- People who live within the same household with seniors or people who have a disability.
- Staff employed to assist in the administration of and provision of services to housing provided under this Policy.

Part 1A – Site Compatibility Certificates

Clause 24 – Site Compatibility Certificates Required

This clause applies to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing (other than dual occupancy) if:

- (a) the development is proposed to be carried out on any of the following land to which this Policy applies:*
 - (i) land that adjoins land zoned primarily for urban purposes,*
 - (ii) land that is within a zone that is identified as “special uses” under another environmental planning instrument (other than land on which development for the purposes of hospitals is permitted),*
 - (iii) land that is used for the purposes of an existing registered club, or*
- (b) the development application involves buildings having a floor space ratio that would require the consent authority to grant consent under clause 45.*

This clause does not apply to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing if the proposed development is permissible with consent on the land concerned under the zoning of another environmental planning instrument.

The development is permitted on the basis of Clause 41 of the LM LEP 2004 and as such a site compatibility certificate is not required.

Part 2 – Site Related Requirements

Clause 26 – Location and Access to Facilities

- (1) *A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:*
- (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
 - b) community services and recreation facilities, and*
 - (c) the practice of a general medical practitioner.*
- (2) *Access complies with this clause if:*
- (a) not applicable*
 - (b) not applicable*
 - (c) in the case of a proposed development on land in a local government area that is not within the Sydney Statistical Division—there is a transport service available to the residents who will occupy the proposed development:*
 - (i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*
 - (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and*
 - (iii) that is available both to and from the proposed development during daylight hours at least once each day from Monday to Friday (both days inclusive),*
and the gradient along the pathway from the site to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) complies with subclause (3).
- (3) *For the purposes of subclause (2) (b) and (c), the overall average gradient along a pathway from the site of the proposed development to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) is to be no more than 1:14, although the following gradients along the pathway are also acceptable:*
- (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*
 - (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,*
 - (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time.*

An assessment of the development determined satisfactory compliance with the requirements of Clause 26.

Clause 27 – Bush Fire Prone Land

*A consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land identified on a bush fire prone land map certified under section 146 of the Act as “Bush fire prone land—vegetation category 1”, “Bush fire prone land—vegetation category 2” or “Bush fire prone land—vegetation buffer” unless the consent authority is satisfied that the development complies with the requirements of the document titled *Planning for Bush Fire Protection*, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2006T.*

The development application has been assessed by the NSW RFS as an IDA in relation to Section 100B of the Rural Fires Act, 1997. The NSW Rural Fire Service granted its general terms of approval.

Clause 28 – Water and Sewer

A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.

The development application and associated plans are endorsed by the Hunter Water Corporation with regard to extending water and sewer reticulation to serve the development.

If the application were to be approved, an appropriate condition of consent would be applicable to ensure compliance in this regard is achieved with the development.

Clause 29 – Consent Authority to consider certain Site Compatibility Criteria for Development Applications to which Clause 24 does not apply.

This clause applies to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing (other than dual occupancy) to which clause 24 does not apply.

A consent authority, in determining a development application to which this clause applies, must take into consideration the criteria referred to in clause 25 (5) (b) (i), (iii) and (v).

Clause 25 - Application for site compatibility certificate

(5)(b) is of the opinion that the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:

(i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,

(iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,

(v) without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,

An assessment determined satisfactory compliance with the requirements of Clause 29 and is evidenced throughout this report.

Part 3 - Design Requirements

Clause 30 – Site Analysis

A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause.

Site analysis information was submitted and deemed adequate for assessment purposes.

Clause 31 – Design of In-fill Self-Care Housing

Not applicable

Clause 32 – Design of Residential Development

A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2.

Division 2 – Design Principles

Clause 33 – Neighbourhood Amenity and Streetscape

The proposed development should:

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and*

The development as proposed seeks to achieve a transition between the proposal and the surrounding rural/urban development and landscape.

- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and*

The site is not listed as a heritage item and is not located within a Heritage Conservation Area.

The developed nature of the surrounding areas and the rural activity that has occurred on site over a long period of time, namely the keeping of horses and associated activities, reduces the likelihood of there being material of archaeological significance on site. These activities have resulted in the site being significantly disturbed and altered from its likely original condition. Therefore, the site is considered to have limited historical, social, or cultural significance for Aboriginal groups.

If the application were to be approved, an appropriate condition of consent would be applicable that would ensure appropriate protective measures are implemented should any historical relics be unexpectedly discovered.

- (c) maintain reasonable neighbourhood amenity and appropriate residential character by:*
 - (i) providing building setbacks to reduce bulk and overshadowing, and*
 - (ii) using building form and siting that relates to the site's land form, and*
 - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and*
 - (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*

The development is considered in context with development in the locality. Proposed building setbacks, embellished with landscaping will adequately reduce the building mass, bulk and scale including offsite impacts of overshadowing. The building siting will relate to the site's land form and building heights are compatible in scale to surrounding development.

- (d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and*

The front building line of the development is similar to surrounding development.

- (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and*

Proposed planting is consistent with surrounding vegetation.

- (f) retain, wherever reasonable, major existing trees, and*

Existing trees wherever possible are being maintained.

(g) be designed so that no building is constructed in a riparian zone.

The riparian zone to the rear of the site will be protected and no dwellings will be constructed within the zone.

Clause 34 – Visual & Acoustic Privacy

The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents.

The development proposes single storey dwellings and therefore the proposed dwellings have no privacy impacts.

The dwellings of the surrounding properties have generous setbacks to their boundaries. The rural properties to the north generally have their dwellings towards the top third of their property ranging from 40m to 120m setback from their rear boundary. The development itself is setback 15 metres from the northern boundary. The development proposes fencing and landscaping along the boundaries.

In general, the proposed development will have some visual and acoustic impacts on surrounding development though not considered inappropriate from a residential development perspective.

Clause 35 – Solar Access & Design for Climate

The proposed development should:

- (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and*
- (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.*

The development has no impact in this regard to the living areas and private open space of neighbouring development.

A BASIX certificate has been issued for the proposed development.

Clause 36 – Stormwater

The proposed development should:

- (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and*
- (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.*

Please refer to Principle Development Engineer's comment under Sections 2.5.3 & 2.5.4 of DCP1 under 79(1)(a)(iii)..

Clause 37 – Crime Prevention

The proposed development should provide personal property security for residents and visitors and encourage crime prevention

Please refer to comment under Section 2.7.9 of DCP1 under 79(1)(a)(iii)..

Clause 38 – Accessibility

The proposed development should:

- (a) *have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and*
- (b) *provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.*

The development proposes a private bus to operate solely for the residents for planned outings. This requirement satisfies the accessibility requirements of the SEPP. If the application were to be approved, an appropriate condition of consent in this regard would be applicable.

A public bus operates along Burton Road in the morning and afternoon. Pedestrian access for collection via Burton Road will be facilitated by a requirement to construct a concrete footpath for the entire frontage of the development from the bus stop to the Glad Gunson Drive intersection, providing a kerb access ramp at this intersection.

Bus stops fronting and opposite the site will be required to be upgraded to conform with Disability Discrimination Act requirements.

The access to and around the development is satisfactory.

Generally, the services/facilities provided on-site are adequate, attractive and safe as determined by the Disability Access Audit, Social Impact Statement and Landscape Architect comments.

Clause 39 – Waste Management

The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.

The development proposes waste and re-cycling facilities for each dwelling and the Community Centre. A central garbage collection point is provided within the development site.

Part 4 - Development Standards to be Complied With

Division 1 – General

Clause 40 – Development Standards – Minimum Sizes and Building Heights

- (1) *A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.*
- (2) The site has an area of 4.95 hectares, thus exceeding the 1000m² minimum required.
- (3) The site has a frontage of approximately 120m, thus exceeding the 20m minimum width.
- (4) Height in zones where residential flat buildings are not permitted:
 - (a) The height of buildings is not to exceed 8 metres (measured from ceiling of top most floor to ground level). The proposed maximum height is 5.33m and therefore, the development complies.
 - (b) A building that is adjacent to a boundary must not be more than 2 storeys in height. All dwellings and the community centre are all one storey in height and therefore, the development complies.
 - (c) A building located in the rear 25% area of the site must not exceed 1 storey in height. No buildings are proposed within the rear 25% of the site and therefore, the development complies.

Division 2 – Residential Care Facilities – Standards Concerning Access & Useability

Not applicable

Division 3 - Self Contained Dwellings - Standards Concerning Access & Useability

Clause 41 – Standards for self-contained dwellings

A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of a hostel or self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.

The proposed development complies with the standards specified in Schedule 3 of this Policy.

Schedule 3 Standards Concerning Accessibility and Useability for Hostels and Self-Contained Dwellings

Part 1 - Standards applying to hostels and self-contained dwellings

- (1) *The standards set out in this Part apply to any seniors housing that consists of hostels or self-contained dwellings.*

Consideration of the standards applicable to self-contained dwellings would result in the imposition of conditions to respond to the following in the event of approval being granted.

- (2) The site has a gradient of 10% or less and therefore 100% of the units and common areas can achieve wheel chair access. The development shall comply with the continuous path to an adjoining public road, internal road, or driveway.
- (3) The application outlines that the pathway lighting requirements are achieved with the development.
- (4) The application outlines that the letter box requirements are achieved with the development.
- (5) All car parking spaces comply with the requirements for parking for persons with a disability set out in AS 2890 and 5% of the total number of car parking spaces are designed to enable the width of the spaces to be increased to 3.8 metres.
Garages are capable of providing power operated roller doors.
- (6) The application outlines that the accessible entry requirements are achieved with the development.
- (7) The application outlines that the general interior requirements are achieved with the development.
- (8) The application outlines that the bedroom requirements are achieved with the development.
- (9) The application outlines that the bathroom requirements are achieved with the development.
- (10) The application outlines that the toilet requirements are achieved with the development.
- (11) The application outlines that the surface finish requirements are achieved with the development.
- (12) The application outlines that the door hardware requirements are achieved with the development.
- (13) The application outlines that the ancillary item (switches and powerpoints) requirements are achieved with the development.

Part 2 - Additional Standards for self-contained dwellings

- (14) *The standards set out in this Part apply in addition to the standards set out in Part 1 to any seniors housing consisting of self-contained dwellings.*
- (15) The application outlines that the living and dining room requirements are achieved with the development.
- (16) The application outlines that the kitchen requirements are achieved with the development.
- (17) Not applicable (multi-storey building).
- (18) Not applicable (multi-storey building).
- (19) The application outlines that the laundry requirements are achieved with the development. ,
- (20) The application outlines that the storage requirements are achieved with the development.
- (21) The application outlines that the waste storage requirements are achieved with the development.

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

Clause 42 & 43 – Serviced Self-care housing and Transport services

Not applicable

Clause 44 – Availability of facilities and services

A consent authority must be satisfied that any facility or service provided as a part of a proposed development to be carried out on land that adjoins land zoned primarily for urban purposes will be available to residents when the housing is ready for occupation. In the case of a staged development, the facilities or services may be provided proportionately according to the number of residents in each stage.

The facilities and services provided as part of the proposed development (community centre, men's shed, BBQ area, caravan storage recreation areas, etc) will be available to residents when the housing is ready for occupation appropriately proportioned according to the number of residents in each stage.

Stage 1 will consist of sewer, power and water connection for the site, construction of units 1 to 14, a temporary community centre and landscaping and recreation areas along the north and eastern boundaries.

Stage 2 will commence within 3 months of completion of stage 1 and will consist of construction of units 15 to 19 and associated infrastructure and landscaping.

Stage 3 will commence within 3 months of completion of stage 2 and will consist of construction of units 20 to 27 and associated infrastructure and landscaping and the permanent Community Centre.

Stage 4 will commence within 3 months of completion of stage 3 and will consist of construction of units 28 to 30 and 37 to 41, and associated infrastructure and landscaping and the men's shed and maintenance shed.

Stage 5 will commence within 3 months of completion of stage 4 and will consist of construction of units 31 to 36 and 42 to 51 and associated infrastructure and landscaping.

If the application were to be approved, a condition of consent would be applicable to ensure compliance in this regard is achieved.

Part 6 – Development for Vertical Villages

Clause 45 – Vertical Villages

Not applicable

Part 7 - Development Standards that cannot be used as Grounds to Refuse Consent

Division 1 - General

Clause 46 Inter-Relationship of Part with Design Principles in Part 3

(1) Nothing in this Part permits the granting of consent to a development application made pursuant to this Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Note. *It is considered possible to achieve good design and achieve density ratios set out in Division 2. Good design is critical to meriting these density ratios.*

(2) For the avoidance of doubt, nothing in this Part limits the matters to which the Director-General may have regard in refusing to issue a site compatibility certificate.

The proposed development is considered to meet the principles set out in Division 2 of Part 3, as previously responded to in this report.

Clause 47 - Part does not apply to certain Development Applications relating to Heritage Affected Land

Not applicable

Division 2 Residential Care Facilities

Clause 48 - Standards that cannot be used to Refuse Development Consent for Residential Care Facilities

Not applicable

Division 3 – Hostels

Clause 49 - Standards that cannot be used to Refuse Development Consent for Hostels

Not applicable

Division 4 – Self Contained Dwellings

Clause 50 –Standards that cannot be used to Refuse Development Consent for Self-Contained Dwellings

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds.

- (a) All proposed buildings are 8 metres or less in height.*
- (b) The density and scale of the buildings when expressed as a floor space ratio is less than 0.5:1. The site has an area of 49,595m² and the proposed development will have a gross floor area of approximately 5854m² or FSR of 0.12:1.*
- (c) A minimum of 30% of the site is to be landscaped, which equates to 14,878m². The applicant claims an unbuilt area of 71% or 35,212m² will be provided with the development.*

- (d) A minimum of 15% of the site (being not built on, paved or sealed) is to be a deep soil zone (DSZ) having minimum dimensions of 3 metres. Two thirds of the DSZ is to be preferably located at the rear, and 10% of the total site area to be a single block of DSZ located at the rear. All landscaped areas will be deep soil zones and therefore compliance in this regard is achieved.
- (e) 70% of the dwelling are to receive a minimum of 3 hours direct sunlight between 9am and 3pm to the living rooms and private open spaces. All the proposed dwellings will achieve adequate solar access to living and open space areas.
- (f) Private Open Space for in-fill self-care housing – not applicable.
- (g) Parking complies, please refer to comment under Section 2.6.6 of DCP1 under 79(1)(a)(iii).

Chapter 4 - Miscellaneous

Not applicable

The proposed development is considered to meet all design requirements under the SEPP (Housing for Seniors or People with a Disability) 2004.

Lake Macquarie Local Environmental Plan 2004 (LMLEP2004)

Clause 15 General Controls for Land within Zones

The LMLEP2004 does not separately define a Retirement Village or similar however the development has been lodged pursuant to Clause 41 – ‘Development for the purposes of Retirement Villages’ and is permissible with consent.

Clause 16 Development Consent – matters for consideration

(a) Lifestyle 2020 Vision, Values and Aims

In considering this application the consent authority must have regard to the following vision, values and aims of the Lifestyle 2020 Strategy as expressed in Part 2 of the LMLEP2004 as follows:

Vision

The vision for land to which this strategy is:

- *a place where the environment is protected and enhanced.*
- *a place where the scenic, ecological, recreational and commercial values and opportunities of the Lake and coastline are promoted and protected.*
- *a place with a prosperous economy and a supportive attitude to balanced economic growth, managed in a way to enhance quality of life and satisfy the employment and environmental aims of the community.*
- *a place that recognises encourages and develops its diverse cultural life and talents and protects and promotes its heritage.*
- *a place that encourages community spirit, promotes a fulfilling lifestyle, enhances health and social well being, encourages lifestyle choices and has opportunities to encourage participation in sport and recreation.*
- *a place that promotes equal access to all services and facilities and enables all citizens to contribute to an participate in the City’s economic and social development.*

Values

The 4 core values of the strategy are sustainability, equity, efficiency and liveability.

Aims

The aims of the strategy are to:

- (a) provide the community with realistic expectations about the future development patterns for land in Lake Macquarie City, while retaining flexibility for land use decision making in the longer term, and*
- (b) reinforce and strengthen centres so that a wide range of commercial and community services may be provided in a timely and accessible manner, and*
- (c) provide local employment opportunities for residents and promote economic development consistent with the City's natural, locational and community resources, and*
- (d) guide the development of urban communities that are compact, distinct and diverse and include a range of housing types and activities, and*
- (e) achieve a strong sense of positive community identity, through the development of local communities that are safe and liveable and offer a diversity of uses, economic opportunities and ready access to services, and*
- (f) develop an attractive urban setting for the City which reflects its physical and natural environment, and visual character, and*
- (g) manage the City's natural environment so that its ecological functions and biological diversity are conserved and enhanced, and contribute to the City's overall well being, and*
- (h) manage the City's heritage and economic resources in a way that protects the value of these resources and enhances the City's character, and*
- (i) integrate land use with the efficient provision of public and private movement systems.*

The proposal has addressed and satisfied the vision, values and aims of the Strategy in this development through the provision of aged housing with appropriate services, access and facilities in proximity to public transport and urban core services and by minimising adverse impacts on the existing and adjacent environment.

The 2020 Strategy provides the following description at clause 6.3.3 of the Green System map, for Semi – Rural Open Landscapes and Agricultural Landscapes:

The land exhibits values that are characteristic of rural, semi rural and open landscapes. They are often used for agricultural activities or dispersed residential settlement and are generally located on the western side of the City....Pockets of these lands are located on Cherry Road at Warners Bay, among other areas.

The value of these areas lie in their reflection of the past land uses of Lake Macquarie. They add to the scenic amenity of the City through their picturesque qualities and provide opportunities for economic development through agriculture, intensive agriculture and tourism.

Land in this category are intended to be retained to provide for rural related activities, provide pleasant vistas along the Movement System and form the open landscape character for the City.

This locality currently is zoned and characterised by rural/residential landuses established within a predominantly rural landscape, dispersed with residential settlements.

The proposal provides for a housing type, which exists in the broader locality, but not within the immediate environment of the subject land. The proposal is characterised by generous building setbacks, which would enable a considerable landscape buffer to the surrounding properties, which would greatly minimise the visual presence of the development to the surrounding rural setting, especially to the north. As a result, the development, whilst

residential in nature and visible from public places including Casson Avenue and Burton Road, along with surrounding properties, will not adversely detract from the visual setting nor unreasonable affect the amenity of surrounding landowners. The locality would retain its character as a pleasant locality characterised by low scale buildings in an open and treed landscape.

Whilst the site lies within the 'Semi – Rural Open Landscape and Agricultural Landscape' area identified in the 2020 Strategy, the site is on the fringe of the semi rural zone and as such the proposal will provide a compatible relationship to the nearby properties.

(b) Objectives of Zone

Council sought legal advice to confirm the development was required to consider the objectives of the zone. Council's legal advice advised as follows:

Clause 41 does not include any provision that specifically overrides or excludes any other provision of the LMLEP 2004.....

Clause 16 of the LMLEP 2004 provides as follows:

Consent must not be granted for development unless the consent authority:

- (a) has had regard to the vision, values and aims of the Lifestyle 2020 Strategy expressed in Part 2, and*
- (b) is satisfied that such of the development is as proposed to be carried out within a zone is consistent with the relevant objectives for the zone, as set out in the Table to clause 15.*

The relevant underlying object of the EP&A Act 1979 is to promote the orderly and economic use and development of land. I am of the opinion that this object can only be met where the LMLEP 2004 is interpreted in such a manner that cl.41 does not override or exclude the application of cl.16.

However, having said that, the objectives of the relevant zone must be read and applied within the context of development permissible by reason of cl.41. Such an approach is reflected in the inclusion of the word "relevant" in cl.16(b).

As a result, the development has been considered against the objectives of the zone.

The land is zoned predominantly 1(2) Rural (Living) with a section to the rear of the site zoned 7(5) Environmental (Living) (see Figure 4 above). The objectives of the zones are to:

1(2) Rural (Living) Zone

- (a) provide for the enjoyment of a rural lifestyle and the operation of small-scale rural and tourism activities, and*

Comment: The proposal comprises a retirement village within a rural/urban setting. The development would provide residents the opportunity to enjoy elements of a rural lifestyle particularly with the vistas afforded external to the site. The dwellings would be sited in an extensive landscaped setting with generous passive recreation areas to be retained and/or provided. The landscape area will result in 71% of the site being set aside to support its visual integration into the existing landscape.

The development will not provide small-scale rural or tourism activity however; this objective is being achieved elsewhere in the locality.

- (b) provide for a range of compatible land uses that maintain the rural environment, and*

Comment: The proposal is considered compatible with the immediate rural environment. An internal 15 metre vegetated buffer has been incorporated that significantly responds to the integration of the proposal with adjoining development. Large

and medium screening shrubs with upper canopy trees will soften views from adjoining and nearby residences.

- (c) *ensure development is carried out in a manner that improves the quality of the environment, and is within the servicing capacity of the area, and*

Comment: The development proposes extensive vegetated buffers to the north and a 120 metre ecological corridor along the eastern boundary that represents both a retention of the existing ecological attributes of the site and a further embellishment of the landscape that in many respects will afford a higher landscape setting than currently exists and moreover support the environment for the movement of fauna.

The development provides a water management plan including improved stormwater management, improved water quality, reduced off site stormwater impacts and improved flood mitigation for the catchment.

The site is centrally located to Charlestown, Mount Hutton and Warners Bay CBD's. These areas include all relevant infrastructure and associated services and therefore the site is well located to take advantage of reasonably easy access to these centres.

- (d) *retain and enhance the rural character of land, and*

Comment: Surrounding development is a mixture of rural/residential and tourism with a predominance of large lifestyle rural/residential lots. The character of the land itself is semi-rural.

The site layout has sought to respect the opportunities and desire to maintain the rural character. Whilst this is a difficult challenge when integrating a more dense urban housing form, the proposal will provide generous landscaped setbacks and corridors for the maintenance of views, which are integral to the likely success of the development's integration with the existing character. The development form is predominantly of a design that helps ensure it will not dominate the landscape but rather merge sympathetically to the setting. The use of suitable materials and colours will further ensure compatibility with development in the immediate locality and afield.

- (e) *allow for the appropriate development of land presently within this zone so as to limit the need to rezone any more land to this zone, and*

Comment: The development is not permissible within the zone and the development will remove the rural land from production.

- (f) *avoid land use conflict by restricting or prohibiting development that has the potential to negatively affect the sustainability of existing agriculture, and*

Comment: The land is not considered high agricultural land and overall level of production is low in this locality. The area is predominately rural residential of large dwellings on large lots which support small hobby type activities, including the keeping of horses. The inclusion of an internal 15 metre vegetated buffer on the northern boundary provides appropriate means of minimising land use conflict at this interface because this is where the majority rural/residential activities prevail. However it is not as imperative to the south (an internal 5 metre vegetated buffer) as the development adjoins a small eco tourism development at its southern interface.

- (g) *provide for sustainable water cycle management.*

Comment: The development supports sustainable water cycle management as determined in the assessment report.

7(5) Environmental (Living) Zone

The part of the site that is zoned 7(5) Environmental (Living) is the rear section of the site, and this area is proposed to be predominantly open landscape.

- (a) *provide land with ecological, geological, scientific, scenic and biodiversity values that may accommodate minimal impact, low density residential and agricultural development, and*

Comment: This section of the site consists of a Riparian Zone and Asset Protection Zone. No dwellings, only minor construction (men's shed, caravan storage area, BBQ shelter) is proposed within this area and as such the retention of the majority of trees is possible. Weed removal and supplementary tree and understorey plantings shall rehabilitate the creekline to achieve a function Riparian Zone. A Property Vegetation Plan (PVP) for any rehabilitation of this area is to be developed in consultation with Council, the Hunter & Central Rivers Catchment Management Authority (CMA) and the Office of Water.

- (b) *manage development to minimise adverse impacts on those values, such as by encouraging appropriate use of disturbed land, and*

Comment: The development proposes minimal construction within this section of the site. The vegetation within this area will be significantly embellished to reinforce its ecological values to ensure it maintains the values of sustaining ecological biodiversity for both flora and fauna habitats.

- (c) *protect, enhance and manage corridors to facilitate species movement, dispersal and interchange of genetic material, and*

Comment: Native vegetation occurs predominantly within this area of the site. Councils Native Vegetation and Corridor Maps have identified this area as playing an important role in the movement of flora and fauna. Protection and enhancement of this area will ensure species movement, dispersal and interchange of genetic material will not be impacted upon in this area by the development.

- (d) *encourage rehabilitation and conservation of environmentally important land, and*

Comment: This area of the site will be rehabilitated, protected and conserved as part of this proposal, accepting there is to be minimal development in this area, and the development proposed will be adequately managed by the VMP to be developed.

- (e) *provide for sustainable water cycle management.*

Comment: The development supports sustainable water cycle management as determined in the assessment report.

In consideration of the proposal in relation to the zone objectives, advice was sought from Council's Integrated Planning Department who provided advice (see attached as Appendix B and C).

In summary:

Integrated Planning do not support the proposal and consider it to be incompatible with the zone objectives and Lifestyle 2020 Strategy. The area is currently zoned for rural/residential type activities of a small scale with rural open landscapes, dispersed with residential settlements maintaining scenic amenity and vistas of the city and its character. The intent of the zone is clearly for small hobby farm and rural activities and the zone objectives play a significant role in the determination of issues and values.

A planning proposal to rezone 1(2) Rural (Living) zoned land (opposite the subject site) to Zone 2(1) Residential Zone was recently submitted to Council's Rezoning Assessment and Prioritisation panel (RAP) for consideration. The proposal was considered as not having merit until a full strategic overview was undertaken of all 1(2) Rural Living land in the vicinity, as it was deemed as being inconsistent with Lifestyle 2020 Strategy. No further reduction of rural residential land in this locality should take place without the support of a broader land use investigation that identifies the need/desire to reduce the amount of 1(2) land in Mount Hutton and the surrounding area. Council expects to undertake a review of the broader land use patterns of the 1(2) Rural (Living) zoned land in the next 1-2 years.

Integrated planning consider an approval of this type of development would be prejudicial to an orderly planning outcome, would set a precedence for similar development, and provide for an intensification of a rural area without appropriate infrastructure such as footpaths for the elderly being in place.

After having regard to Integrated Planning comments, I have formed the opinion on the basis of my determinations made in this report that the application is worthy of support.

The proposed is considered not antipathetic to the zone objectives, particularly because it is in a location where there is rural/residential existing in the immediate locality and therefore this development will sit comfortably in this context. Whilst the strategic desire is to have a broader investigation of the land capabilities existing in the 1(2) zone, this investigation is not imminent and therefore should not prevent the subject development from proceeding.

Clause 17 - Provision of essential infrastructure

The site is capable of being fully serviced with essential infrastructure.

Please refer to comment under Section 2.5.1 of DCP 1 under 79(1)(a)(iii).

Clause 18 - 23

Not applicable.

Clause 24 Subdivision

The development site is over two parcels of land known as Lot 11 and 12, DP830292. The sites are proposed to be consolidated as part of this proposal.

Please refer to comment under Section 3.2 of DCP 1 under 79(1)(a)(iii).

Clause 25 Demolition

The site presently accommodates two dwelling houses and associated outbuildings, which are proposed to be demolished as part of this proposal. Demolition of these existing buildings and associated structures are enabled by this Clause and will be considered as part of this application.

Clause 26 – 28

Not applicable

Clause 29 Building heights

The proposed dwellings/units have a maximum height of 5.33 metres and therefore, do not exceed 8 metres in height. The proposed building heights are considered acceptable

Clause 30 Control of pollution

The proposed Retirement Village, and the nature of its use/operation, will not give rise to excessive noise or air pollution. If the application were to be approved, an appropriate condition of consent in relation to the control of pollution would be applicable.

Clause 31 Erosion and sediment control

A soil and water management plan was submitted with the application.

Please refer to comment under Section 2.1.11 of DCP 1 under 79(1)(a)(iii).

Clause 32 Flood prone land

The land is not zoned flood prone, however some localised flooding would occur in significant rain events.

There are watercourses crossing the development site and upstream is a large catchment area. A flood management plan was submitted with the application and has been determined as adequate to manage stormwater in rain events.

Please refer to comment under Section 2.1.7 of DCP 1 under 79(1)(a)(iii).

Clause 33 Bush fire considerations

The land is zoned bush fire prone.

Please refer to comment under Section 2.1.5 of DCP 1 under 79(1)(a)(iii).

Clause 34 Trees and native vegetation

Trees and native vegetation are to be removed as part of the project.

Refer to comment under Section 2.1 of DCP 1 under 79(1)(a)(iii).

Clauses 35 - 37

Not applicable.

Clause 38 Advertising Structures and Signs

Along either side of the entry, it is proposed to construct identification signage wall. This will be integrated into the landscaping of the site

Refer to comment under Section 2.7.7 of DCP 1 under 79(1)(a)(iii).

Clauses 39 - 40

Not applicable.

Clauses 41 Development for the purpose of Retirement Villages

The development has been lodged against Clause 41 of the LM LEP 2004. This clause reads as follows:

- (1) This clause aims to maintain the opportunity for the development of retirement village style accommodation for aged persons in appropriate locations where the land satisfies the criteria specified in subclause (5).

Comment: The description of the development is 'Retirement Village'.

- (2) This clause applies to:

- (a) land within Zone 2 (1), and
- (b) land that is not within Zone 2 (1), 7 (1), 7 (4), 8 or 9, but part or all of which immediately adjoins, or is within 400 metres of, land within Zone 2 (1).

Comment: The development site is within 400 metres of land zoned 2(1) Residential under the LM LEP 2004.

- (3) In this clause:

retirement village means a complex containing residential premises that are predominantly or exclusively occupied, or intended to be predominantly or exclusively occupied, by persons aged 55 years or older, which provides access to meals, cleaning, emergency assistance, and a transport service for residents.

Comment: The development application has been lodged as a 'Retirement Village'. The SoEE details that the proposal fits within the definition of Retirement Village under Clause 41(3) of the LM LEP 2004. A condition of consent will apply restricting use of the premises to persons predominantly aged 55 years or older.

- (4) Nothing in this plan prevents a person, with development consent, from carrying out development on any land to which this clause applies for the purpose of a retirement village.

Comment: Legal advice from the City Solicitor identified that consideration of the zone objectives is applicable and not overridden by Clause 41.

- (5) Despite subclause (4), consent may be granted to development for the purpose of a retirement village only if the consent authority is satisfied that:

- (a) the land on which the development will be carried out is of sufficient size to accommodate a minimum 70 unit retirement village development, and

Comment: The development proposal consists of 51 units. The development originally proposed 76 units. 70 units can be provided on the land however, the applicant has designed the development to more sympathetically integrate the proposal with the existing landscape/character and has therefore proposed a reduction in dwellings that would otherwise be possible on the site.

- (b) the land has frontage to a formed public road servicing nearby urban areas, and

Comment: The development fronts Burton Road, a formed and sealed public road servicing residential zoned land to the south and rural zoned land to the north.

- (c) the development is able to be serviced with reticulated water, sewerage and electricity, and

Comment: The development is able to be serviced by reticulated water, sewerage and electricity, as evidenced by correspondence by HWC and Energy Australia. If the application were to be approved, an appropriate condition of consent in relation to supply of reticulated water, sewerage and electricity would be applicable.

- (d) at least 70% of the proposed development area comprises land with a slope of less than 20% grade.

Comment: The site generally is relatively flat. The width varies from 97m (rear) to 120m (frontage), a depth of 475m, with a maximum rise/fall of 9m (south-east corner to north-west corner) over a distance of 475m.

This equates to a distance of 52.7m for every 1m of rise/fall (less than 2%).

Not applicable.

Clauses 47 Assessment of Heritage Significance

The development site contains no heritage items.

Clauses 48 - 51

Not applicable.

Clauses 52 Development in vicinity of a Heritage Item

The development site is not within the vicinity of any identified heritage items.

Clauses 53 - 62

Not applicable.

79C(1)(a)(ii) the provisions of any draft EPI

There are no draft Environmental Planning Instruments applicable to the site or the development.

79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)

Development Control Plan No. 1 – Principles of Development

Section 1.8 – Development Notification Requirements

As required by the EPA Regulation 2000, relevant government departments were notified, being:

Department of Environment, Climate Change and Water;

Energy Australia;

Mine Subsidence Board;

NSW Police; and

NSW Rural Fire Service

The Department of Environment, Climate Change and Water (NSW Office of Water) General Terms of Approval were received on 1 November 2010.

Energy Australia advised it has no objections on 5 August 2010.

The Mine Subsidence Board General Terms of Approval were received on 30 September 2010.

The NSW Police advised it has no objections on 21 August 2010.

The NSW Rural Fire Service General Terms of Approval were received on 14 July 2010.

Adjoining and adjacent neighbours were notified of the proposal. A total of 36 submissions were received, 12 objecting (incl 1 petition) and 24 in support (incl 4 petitions) of the proposal. The objections are addressed within section 79C(1)(d) of this report.

Section 2.1 – Environmental Responsibility and Land Capability

2.1.1 – Ecological Values and 2.1.2 – Ecological Corridors

Council's Flora and Fauna Development Planner has reviewed the application, including engineering plans, landscape plans and environmental impact assessment, and advises as follows:

Vegetation present on the subject site includes large areas of paddocks with remnant and planted trees scattered throughout the site. Three vegetation communities were identified: being landscaped gardens, grassland with scattered trees and creekline vegetation. Native vegetation occurs predominantly within the eastern portion of the site and is comprised of disturbed Coastal Sheltered Apple – Peppermint Forest. This vegetation has been identified by Council's Native Vegetation and Corridor Maps as playing an important role in the movement of flora and fauna. No threatened species or EECs were detected on site.

The application proposes to remove approximately 0.26 ha of disturbed Coastal Sheltered Apple – Peppermint Forest and several other trees scattered throughout the subject property. To ameliorate this impact the application proposes to rehabilitate the rear portion of the property, which would include a rehabilitation buffer of 20 metres either side of the creekline. A vegetation management plan for the rehabilitation area is to be developed in consultation with Council, the Hunter & Central Rivers Catchment Management Authority (CMA) and the Office of Water. Accordingly, a condition of any consent should require evidence from the CMA that a Property Vegetation Plan (PVP) is granted and an approval under the Native Vegetation Act has been issued.

An Assessment of Significance (7-part test) has been undertaken in accordance with Section 5(A) of the Environmental Planning and Assessment Act 1979. It was concluded that there would be no significant impact on any threatened species or endangered ecological community as a result of the proposed development and support in this regard is given.

If the application were to be approved, appropriate conditions of consent would be applicable to ensure satisfactory flora and fauna outcomes are achieved with the development.

2.1.3 Scenic Values

The site is located within a rural residential setting, surrounded by vegetated hillsides. Higher density residential development is located to the south however, the immediate vicinity has a rural landscape character. The area is not classified as a visually significant natural landscape within the LMCC Scenic Guidelines – Appendix 3: Significant Features, Viewpoints and Ridgelines Maps.

The proposed dwellings will be of quality built form, which will contribute favourably to the context of the area. The dwellings and community centre shall be single storey and are of a suitable scale. The character of the development represents a good urban design consisting of appropriate site planning, articulated building forms and roof treatments and generous complementary landscaping to ensure its compatibility and appropriate relationship to the surrounding residential development.

Visual access to the site is exposed to motorists travelling along Burton Road however, existing and proposed vegetation along the western boundary will provide adequate screening so this exposure is not unreasonable intensified. The proposed development will be set back approximately 27-38m from Burton Road with a significant landscape buffer to the Burton road interface to help integrate the proposal with the existing rural character.

The eastern area of the site consists of a Riparian Zone and Asset Protection Zone (APZ) (90 metres). As no dwellings are proposed within this area, the retention of the majority of trees is possible, which will assist in reducing the impact of the development. Weed removal and supplementary tree and understorey plantings are proposed which shall rehabilitate this area further.

A 6 metre wide drainage swale and landscape buffer will be provided along the southern boundary, which will assist in reducing the impact of the development.

Rural type style fencing will be predominantly provided along the boundaries of the site, with a section on the southern boundary that will provide 1800mm high hardwood fencing for privacy. Internal fencing will be dark grey in colour and at 1500mm high to minimise the visual presence.

Six different colour and finishes pallets have been submitted with the application. These options allow for a significant colour and finish variation throughout the project, which will improve the visual interpretation of the project by applying individual unit treatments whilst integrating groups of buildings.

The development will be suitably screened to the surrounding area. The impact of the development will be mitigated by the design, colour and materials proposed for the dwellings and the significant landscape buffers along the boundaries of the site.

Overall, the proposal is considered sympathetic to the landscape appreciation of Mount Hutton. The proposal will establish a stronger urban line to the north, but because these sites have adequate area/depth they should be able to maintain a satisfactory level of amenity inclusive of any rural/residential lifestyle activities currently enjoyed.



Figure 5 – Landscape Masterplan

2.1.4 Tree Preservation and Management

A review of the application, including the Flora and Fauna Report, Tree Removal Plan, Visual Impact Statement and Landscaping documentation by Council's Development Planner – Flora & Fauna Officer and Council's Tree Preservation Officer, determined that the development was considered satisfactory, provided conditions of consent are imposed to ensure adequate measures are implemented for tree preservation and management.

Refer to the above comments under Section 2.1.1, 2.1.2 and 2.1.3 of DCP 1 under 79(1)(a)(iii).

2.1.5 Bushfire Risk

The application was referred to the NSW Rural Fire Service, as the development is integrated development in relation to Section 100B of the Rural Fires Act 1997. The NSW Rural Fire Service has issued its General Terms of Approval.

2.1.6 Water Bodies, Waterways and Wetlands

The proposed development is located within the vicinity of South Creek, and contains a tributary, which is a natural watercourse. The proposed development proposes to discharge to Burton Road and a watercourse. The revised stormwater management strategy satisfactorily addresses water quality discharge from the site.

2.1.7 Flood Management

There are two watercourses crossing the development site to the rear and centre. A very large catchment area feeds into the rear watercourse with a smaller catchment feeding the centre more minor watercourse. Both watercourses convey large flows during significant rainfall events.

The potential hazard to future residents, by flooding, has been considered. Councils consideration of this issue has been guided by the Floodplain Development Manual (2005). Appendix L of the Manual outlines a range of factors that need to be considered in assessing the hazard. Some of the factors to be considered are the Effective Warning Time, the Rate of Rise of Floodwaters, the Depth, the Duration of Flooding, Evacuation Needs & Problems & Flood Access.

The position of the development within the upper parts of the catchment and the steepness of the catchment will mean that residents will be afforded little warning of rising flood waters. (Note that the flood waters will only impact for a short time). Given the potential low mobility of some residents, it would be expected that evacuation would be an unlikely first response to flooding. The immediately surrounding road system would be flooded to some degree as well. As such the most likely and practical response to flooding would be for residents to stay in their dwellings.

The Northrop Engineers flood study submitted with the application indicates that all floor levels proposed appear to be set at 500mm clear of the 100 year flood and majority are at, or above, the PMF (probable maximum flood) level. Some of the proposed units however, are proposed to be below the PMF level. For the reasons above, the PMF has been chosen as the most relevant flood level and all the floor levels should be expected to meet the PMF level. It is likely that the proposed floor levels of Units 10, 11, 13, 14 & 46 - 50 will be required to be lifted to meet the PMF level (by a maximum of 400mm). The final levels of all the units will be dependent on the final civil design for the road and drainage. Please note that in the 100 year design storm the flood flows are generally contained within the watercourses and drainage system of the development and do not directly impact the proposed dwellings.

The development will also require a "Flooding Response Strategy" that is communicated to all residents. The Strategy would be required to outline the required actions of residents and staff/caretaker during flooding.

If the application were to be approved, appropriate conditions of consent in this regard would be applicable.

2.1.9 Sloping Land and Soils

The site is not identified as being within a geotechnical zone on Council's Geotechnical Maps, as such further geotechnical investigation is not required. The development does not propose any significant cut or fill to accommodate the development.

2.1.10 Acid Sulfate Soils

The development will not impact on the water table and therefore has no implications with regard to Acid Sulfate Soils.

2.1.11 Erosion Prevention and Sediment Control

The soil and water management plan lodged with the application has been assessed by Council's Erosion and Sediment Control Officer, who advises that the plan is sufficient for the scope of works.

If the application were to be approved, an appropriate condition of consent in relation to the control of erosion and sediment would be applicable.

2.1.12 Mine Subsidence

The Mine Subsidence Board has no objection to the proposal and provided General Terms of Approval to be imposed on any development consent issued.

2.1.13 Contaminated Land

The Targeted Soil Investigation prepared by Pacific Environmental dated 19th May 2010 identified contaminated fill on site.

If the application were to be approved, appropriate conditions of consent in relation to the remediation of the contaminated land would be applicable.

2.1.14 Energy Efficiency

The application has been supported by a BASIX certificate for the development. The development meets the minimum targets for water consumption, energy consumption and thermal comfort.

2.1.15 Noise and Vibration

Council's Senior Environmental Officer has reviewed, considered and relied on the information provided in the acoustic report prepared by Spectrum Acoustics, Ref: 10582/3669 dated 9 September 2010 when assessing this development and is satisfied with the recommendations contained within the report.

The recommendations contained in this acoustic report shall be incorporated into the design and construction of the development.

If the application were to be approved, appropriate conditions of consent in relation to the control of noise and vibration would be applicable, throughout both the construction phase and the daily operations of the village.

2.1.16 Air Quality and Odour

The proposed development is not itself an offensive contributor to air quality and odour. Moreover it is not located adjacent to any land use that generates air quality concerns. Potential exists for the rural activities to the north and east to generate odours as a result of rural pursuits (domestic scale) however, the site inspection identified no intensive agricultural use (crops, market gardens, orchards, feed lots, stockyards, horse stud, etc). The internal buffer of 15 metres to the north and 120 metres to the east provides an acceptable separation.

2.1.17 Demolition and Construction Waste Management

The applicant states that a Demolition and Construction Waste Management Plan will be provided prior to construction.

A condition of consent would be applicable in relation to the control of demolition and construction waste management.

Section 2.2 – Social Impact

The proposal is a 'Category 2' development with the applicant providing a Social Impact Assessment (SIA).

The SIA identifies that there is a need for increased provision of senior living developments within the Hunter due to an increase in the Hunter's population. The amended SIA explores the full range of positive and negative social impacts of the development. The SIA outlines the positive social impacts associated with aged housing within close proximity to services, existing residents will be able to 'age in place' as well as economic benefits due to construction. The negative impacts associated with the proposal will be pressure on existing infrastructure and services, amenity impacts, the loss of lifestyle lots, and the potential land. In addition, the application identifies that rural residential land use has significant environmental, social and economic costs and is not considered to be socially or environmentally sustainable.

The site is well located for transport that can take residents to a range of health, commercial and community services in the area.

The East Lake Macquarie area has a population of 10,376 people aged 65 years and over and the North Lake Macquarie area has a population of 10,664 people aged 65 years and over (2006 Census). In this combined catchment area (North and East Lake Macquarie) there are currently only 752 independent living units spread over 15 sites. Australia is currently experiencing the biggest generational shift that has been seen for over 60 years. By 2031, the Lake Macquarie LGA, population aged >70 years is estimated to be approximately 45,000 people (double to existing), which means approximately 4,000 high care and low care beds (combined), an increase of 2,000 beds from where we are today, will be required.

As part of a Council's Seniors Housing Research Project, recent community consultations have taken place. Participants of these workshops discussed the difficulty in acquiring independent living units on the eastern side of the lake where the majority of services are located and public transport is available.

The social benefits of the proposal are considered to outweigh any negative impacts generated by the proposal particularly in terms of the maintenance of the rural lifestyle and the opportunities for small-scale rural and tourism activities. The measures identified by the proposal and within the SIA (Section 7 – Mitigation of Impacts) will help mitigate the negative social impacts.

This proposal contributes to satisfying demand for this form of housing.

If the application were to be approved, appropriate conditions of consent in this regard would be imposed.

Please refer to Crime Risk comment under Section 2.7.9 of DCP 1 under 79(1)(a)(iii).

Section 2.3 – Economic Impact

The proposal would have positive economic impacts for the City.

Section 2.4 – Heritage

This section is not applicable to this development.

Section 2.5 – Stormwater Management, Infrastructure and On-site Services

2.5.1 Essential Infrastructure

Essential infrastructure including, the supply of water, provision of energy, provision of telecommunications and the disposal and management of sewer is capable of being provided.

Sewer is not currently provided to the site and water provision to the site is required to be upgraded to service the development satisfactorily. Hunter Water has provided correspondence that details there is currently sufficient capacity within the water and sewer systems to cater for the loads to be generated by the proposed development.

If the application were to be approved, appropriate conditions of consent in relation to essential infrastructure services would be imposed.

2.5.2 On-Site Wastewater Treatment

The site currently operates an on-site wastewater treatment service. This will be disconnected and sewer is to be connected to the site to service the proposed development.

2.5.3 Stormwater Management (Drainage System Design) and 2.5.4 On-Site Stormwater Harvesting (Source Controls)

Council's Principle Subdivision Engineer advises that a suitable Stormwater Management Plan by Northrop Engineers incorporating detention, water harvesting, water quality facilities and site discharge index requirements in accordance with DCP 1 has been provided. The plan is considered adequate to demonstrate compliance with DCP 1 and is supported.

2.5.5 Operational Waste Management

The applicant states that an Operational Waste Management Plan will be provided prior to construction.

The applicant has advised waste collection for the development will be collected by a commercial waste collector from a centralised waste bin store area. The design of the bin enclosure and the internal driveway to the bin enclosure allows for commercial waste collection vehicles. Individual dwellings/units will have two half sized bins, one for general waste and the other for recyclable waste. Management of the post-development will collect these individual bins and empty them into the centralised bin for collection by the commercial contractor.

If the application were to be approved, an appropriate condition of consent in relation to the control of operational waste management would be applicable.

Section 2.6 – Transport, Parking, Access and Servicing

2.6.1 Movement System

This section is not applicable to this development.

2.6.2 Traffic Generating Development

This section is not applicable to this development.

2.6.3 Road Design

This street and surrounding public road system is considered adequate to support the development proposed. The frontage of the site has kerb and guttering along approximately 70% of the frontage. This development will be required to extend the existing kerb and guttering for the full frontage (with any necessary adjustments to drainage).

If the application were to be approved, an appropriate condition of consent in relation to providing kerb and guttering along the full frontage would be applicable.

2.6.4 Pedestrian and Cycle Paths

Pedestrian paths are proposed throughout the development, which connect to Burton Road. These paths provide a link between the individual dwellings/units and facilities/amenities provided on-site. As part of this development, a pathway is to be constructed along the frontage of the development to the Glad Gunson Drive intersection and kerb access ramp at this intersection. This equates to a distance of approximately 130 metres.

If the application were to be approved, an appropriate condition of consent in this regard would be applicable.

2.6.5 Public Transport

Bus stops exist fronting the site and opposite for bus route 310 (from Belmont Tafe to Civic Station, Newcastle). These stops are to be upgraded to conform with Disability Discrimination Act requirements as part of this development.

In addition, a private bus service for planned outings is proposed as part of the on-site services.

If the application were to be approved, appropriate conditions of consent in this regard would be imposed.

2.6.6 Vehicle Parking Provision

In accordance with the Vehicle Parking Table the development is defined as 'Housing for people aged over 55 years or people with disabilities or People with Disabilities (SEPP (Housing for Seniors or People with a Disability) 2004. Clause 50(h) of the SEPP requires:

	Rate	Required (On-Site)	Provided	Complies
Dwellings				
28 x 1 bedrooms	0.5/bedroom	14		
23 x 2 bedrooms	0.5/bedroom	23	60	Yes
Visitor				
51 x dwellings	Not required		21	Yes
TOTAL		37	81	Yes

The subject development generates 37 spaces with 81 spaces being provided. This demonstrates compliance with DCP 1.

2.6.7 Car Parking Areas and Structures

Council's Principle Subdivision Engineer advises that the internal driveway and car parking area (including turning movements) appear adequate for the development and comply with DCP requirements including AS 2890.1.

2.6.8 Vehicle Access

Council's Principle Subdivision Engineer advises that the proposed access and sight distances to the proposed development from Burton Road are satisfactory.

2.6.9 Access to Bushfire Risk Areas

Please refer to the above comments at Section 2.1.5 of DCP 1 under 79(1)(a)(iii).

2.6.10 Servicing Areas

The development will be required to facilitate delivery vehicles, removalists and waste collection vehicles. The development is to ensure sufficient turning area be provided within the site to allow all vehicles to exit in a forward direction (inclusive of parking facilities for the private mini bus, cul-de-sacs and designated areas for service/delivery vehicles).

Council's Principle Subdivision Engineer advises that the proposed development is satisfactory in this regard.

2.6.11 On-Site Bicycle Facilities

Specific on site bicycle parking facilities are not provided though can be accommodated within each dwelling/unit. Pedestrian paths are proposed throughout the development, which connect to Burton Road.

2.6.12 Non-Discriminatory Access and Use

A Disability Access Report was submitted with the application. A review of the report by Council's Community Planning found:

- The temporary community centre is adequate with the proposed staging and the permanent community centre to be constructed within Stage 3.
- A concrete footpath along the full frontage of the site from the bus stop to the Glad Gunson Drive intersection, providing a kerb access ramp at this intersection is required. Bus stops fronting and opposite the site will be required to be upgraded to conform with Disability Discrimination Act requirements.
- Provision of a village vehicle as outlined in documentation is required for planned outings.
- All recommendations contained within the Access Report need to be implemented and demonstrated in documentation at the construction certificate stage.

If the application were to be approved, appropriate conditions of consent in relation to non-discriminatory access and use would be applicable.

Section 2.7 – Streetscape and the Public Realm

2.7.1 Streetscape and Local Character

The amended development proposal reduced the dwelling numbers from 76 to 51. This reduction afforded the development to increase the setbacks, maximise tree retention, implement substantial additional landscaping and significantly reduce the visual impact to the street and surrounding properties. This reduction in density provides improved compatibility with the semi-rural environment.

The streetscape relies on generous landscaping to minimise the impact of the development to the rural/residential setting. Due to the location of the site being of an interface of larger allotments of rural landscape and smaller urban allotments, the increase in density has been designed to sensitively merge with the corresponding land uses. Overall, it is considered an acceptable integration of potential competing land uses.

The frontage of the development will be improved through the construction and extension of kerb & gutter and pedestrian pathway along the full frontage of the site. This will create a more defined streetscape, which reinforces the site merging with urban development to the south.

The front dwellings have stepped setbacks to reduce their visibility and provide better articulation. The single storey development will support the existing built form/context of the locality and a single access driveway with entry statement will be provided.

The internal streetscape has been embellished with landscaping and pleasant open space areas with seating to be provided for passive recreation. Furthermore, the termination points of the internal roadways have been landscaped to provide relief to these areas.

2.7.2 Landscape

The proposed landscaping is paramount to achieving an acceptable outcome. Specific protection measures for existing trees are to be in place, along with trees to be introduced to help with early establishment of vegetated areas on site. Landscaping along Burton Road street frontage, the northern boundary and the riparian and creekline regeneration zone will be required to be implemented at Stage 1 of the development, six (6) months prior to the first Occupation Certificate.

Overall, the landscape outcomes are considered to be acceptable and would achieve a category 3 design outcome.

Conditions of consent will be imposed to ensure compliance with the category 3 design report.

2.7.3 Public Open Space

The proposed development does not propose any public open spaces within the development site. Section 94 contributions will be applied to the development in accordance with Council's Section 94 contribution plan toward the provision of open space.

2.7.4 Pedestrian Networks and Places

The development proposes internal pedestrian networks and places. The proposed internal pedestrian network links all the dwellings/units with Burton Road, the open space, maintenance shed and community centre.

Landscaping of the development seeks to provide shade and bench seats for the amenity of residents throughout the site.

2.7.5 Light, Glare and Reflection

The design of the development and the proposed colours of the development indicate that reflection off the development will not cause nuisance. Colourbond 'Windspray' and 'Jasper' are the proposed roof colours, which will integrate well with the existing landscape.

If the application were to be approved, appropriate conditions of consent in relation to light, glare and reflection would be applicable.

2.7.6 Views

No significant views are enjoyed by adjoining development, except of the rural landscape that exists on the subject lot.

For comment regarding Visual Impacts, please refer to Section 2.1.3 of DCP 1 under 79(1)(a)(iii).

2.7.7 Signs

Identification signage is proposed at the entry point to the development.

If the application were to be approved, an appropriate condition of consent is recommended requiring final detail to be submitted with the construction certificate.

2.7.8 Fences

The proposed fencing for the development is as follows:

- Western Boundary New 1500mm High Timber Post & Rail fencing and Entry Signage Feature.

A review of the Crime Prevention Through Environmental Design Assessment (Section 4.19 of SEE) by NSW Police (dated 21 August 2010) identified the development as having a 'low crime risk'. The following specific design comments were raised:

- CCTV to be provided at the Community Centre.
- Appropriate lighting within the development is to be implemented to Australian and New Zealand Lighting Standards. A lighting maintenance policy is to be established for the development.
- Landscaping to be regularly maintained to ensure branches cannot act as a natural ladder to gain access.
- Clear directional signage is to be provided. Signage at entry and exit points throughout the development and signage to clearly identify visitor parking.
- A boom gate to be provided at the front of the development for security purposes. This conflicts with the Social Planner's concerns over creation of gated communities, therefore the boom gate is not supported.
- Glass within the community building to be laminated. Fire exit doors and main entry/exit doors to be fitted with single cylinder locksets to restrict unauthorised access. Windows to be key operated locksets to restrict unauthorised access.

If the application were to be approved, an appropriate condition of consent to address the above matters would be applicable.

Section 3.1 to 3.7 (inclusive)

These sections were considered not applicable to the subject development.

Part 4 – Area Plans

4.12 Mount Hutton Area Plan

Mount Hutton is a residential area, supported by a large shopping precinct with two smaller local centres and a range of additional stand alone uses, including nurseries and aged care facilities.

Residential development is predominantly low-density, although the area also offers opportunities for a variety of housing types and lifestyle choices. Maintaining and enhancing these opportunities to ensure a continued mix of housing is essential to the success of the suburb's liveability.

The intent of Council's requirements is to ensure Mount Hutton develops in an integrated manner that reflects community desires and development needs. The site is within the Casson Avenue Precinct and this area comprises a large area of bushland that forms part of the treed backdrop to the south-west of Mount Hutton. The area may be characterised as bushland and rural/residential housing.

The Casson Avenue Precinct is to provide very low density, bushland and rural residential development that respects the rural and natural amenity of the Precinct.

The proposal has respected the rural and natural amenity of the area by providing generous setbacks to the surrounding rural development. The proposed development is designed to minimise environmental impacts, and risk of hazards to people and property in the locality. Adequate infrastructure is provided for the development and accessibility within and around the site will be improved. The bushland to the east of the site is part of an important flora and fauna corridor that needs protection and rehabilitation, which is proposed as part of this development.

The proposed development will enhance and revitalise the site as a retirement village, is considered will integrate well with the existing residential development in the area, and will respond appropriately to the existing rural development in the locality.

79C(1)(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

There is no planning agreement that has been entered into under section 93F, and no draft planning agreement that a developer has offered to enter into under section 93F of the Act that relates to this development.

79C(1)(a)(iv) any matters prescribed by the regulations

The Regulation 2000 provides:

(1) *For the purposes of section 79C (1)(a)(iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:*

(a) *in the case of a development application for the carrying out of development:*

(i) *in a local government area referred to in the Table to this clause, and*

(ii) *on land to which the Government Coastal Policy applies,*

the provisions of that Policy,

(b) *in the case of a development application for the demolition of a building, the provisions of AS 2601.*

(a) The Government Coastal Policy does not apply.

(b) The development includes the demolition of two dwellings and associated outbuildings. If the application were to be approved, an appropriate condition of consent in this regard would be applicable.

79C(1)(b) the likely impacts of the development

The following matters were considered and, where applicable, have been addressed elsewhere in this report.

Context & Setting	Waste
Access, transport & traffic	Energy
Public domain	Noise & vibration
Utilities	Natural hazards
Heritage	Technological hazards
Other land resources	Safety, security & crime prevention
Water	Social impact on the locality
Soils	Economic impact on the locality
Air & microclimate	Site design & internal design
Flora & fauna	Construction

79C(1)(c) the suitability of the site for development

Does the proposal fit the locality?

The outcomes proposed will achieve a highly functional development compatible with the local residential context and land characteristics, and provides excellent living standards for future residents.

Are the site attributes conducive to development?

The site attributes are conducive to development.

79C(1)(d) any submissions made in accordance with this Act or the Regulations?

Public submissions:

The proposal was notified on three occasions with a total of 12 objection submissions (1 from multiple parties) and 24 support submissions (4 from multiple parties) received from the public.

The objection submissions vary in their objection to the proposal. Generally, inconsistent with the rural character, detrimental impact to flora and fauna, loss of visual amenity, traffic, flooding, noise, dust, and waste management are concerns raised.

Most of the support submissions do not outline specific reasons for their support. The few that have stated reasons generally outline the development will benefit the Lake Macquarie community, it is in close proximity to services, there is a need for retirement villages in Lake Macquarie, it is a good location for a retirement village and that they have a desire to take up residency when the development is constructed.

Each submission has been considered and assessed against the relevant Council's controls and it is concluded that satisfactory design outcomes have been achieved and/or conditions of consent can be imposed to provide an appropriate development that has respected the surrounding land whilst providing a land use that is permissible and highly sort after in the Lake Macquarie area.

Submissions from public authorities:

As required by the EPA Regulation 2000, relevant government departments were notified, and where necessary general terms of approval applied. There were no circumstances where objections were raised by public authorities.

79C(1)(e) the public interest

It is considered the public interest issues have been adequately considered. The proposed development is considered to be in the public interest.

Conclusion:

Based on the above assessment it is concluded that the construction and operation of a retirement village at 40-48 Burton Road, Mount Hutton will result in an acceptable development, with no unreasonable environmental impacts.

Recommendation:

It is recommended that the application be approved, subject to the conditions contained in Appendix A to this report.

Michelle Bisson
Development Planner
Lake Macquarie City Council

I have reviewed the above planning assessment report and concur with the recommendation.

John Andrews
Chief Development Planner
Lake Macquarie City Council