

# Referral Response

## IP – Strategic Planning



**Application Number:** DA/886/2010

**Date:** 15/07/2010

**Location:** LOT 11 DP 830292, LOT 12 DP 830292 40 BURTON ROAD, MOUNT HUTTON NSW 2290, 48 BURTON ROAD, MOUNT HUTTON NSW 2290

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I refer to the subject application and advise the following:

### **Proposal**

The proposal is for the construction of a Retirement Village comprising of seventy six (76), single story self contained one and two bedroom dwellings; a community centre , maintenance shed, and associated roadworks, revegetation and landscaping. It is proposed to stage the development. The application has been lodged pursuant to Clause 41 of LMLEP 2004.

### **Zoning:**

The proposal is located within Zone 1(2) Rural (Living) Zone.

The objectives of this zone are to:

- (a) provide for the enjoyment of a rural lifestyle and the operation of small-scale rural and tourism activities, and
- (b) provide for a range of compatible land uses that maintain the rural environment, and
- (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
- (d) retain and enhance the rural character of land, and
- (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
- (f) avoid land use conflict by restricting or prohibiting development that has the potential to negatively affect the sustainability of existing agriculture, and
- (g) provide for sustainable water cycle management.

### **Planning Comment:**

The zone objectives contemplate uses, which are rural in nature and small in scale. The area is seen as having tourism potential and other land uses, which are compatible with a rural lifestyle, all within the servicing capacity of the area. Although the zone allows for a variety of other uses to be permissible with consent, the intent of the zone is clearly for

small hobby farm and rural activities such as a retail plant nursery; grazing for cattle and horses; horticulture including fruit, vegetable, and flower crop production etc.

Clearly, the zone objectives play a significant role in the determination of issues and values, which must be considered before relevant uses are contemplated for approval.

### **Lifestyle 2020 Strategy**

The 2020 Strategy (the strategic document that the LMLEP is based on), provides the following description at clause 6.3.3 of the Green System Map, for Semi – Rural Open Landscapes and Agricultural Landscapes:

*The lands exhibit 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.*

### **Planning Comment**

The proposal for a Retirement Village is completely incompatible with the zone objectives, which has its genesis from Council's Lifestyle 2020 Strategy as discussed above. The area is clearly contemplated for rural type activities of a small scale within rural open landscapes, dispersed with residential settlements maintaining scenic amenity and vistas of the city and its character.

### **Lodgement**

The application was lodged pursuant to Clause 41 of LMLEP 2004, which states:

*(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).*

*(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).*

*(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.*

*(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.*

*(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*

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

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

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

It is noted that the applicant has provided a legal opinion that suggests that the provisions of clause 41 overrides the objectives of the zone. Although this clause exists in the LEP, it was imposed by the Department of Planning at the eleventh hour prior to gazettal of the LEP 2004. It is not a clause that is supported by Council and is omitted from the draft 2011 LEP as the SEPP (Housing for Seniors or People with a Disability) 2004 is seen as being sufficient for the purposes of providing accommodation for this type of development.

With respect to Clause 41, the following is relevant:

Part 4 Special provisions applying to all land

Clause 16 Development consent - matters for consideration

*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 as is 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.*

## **Planning Comment**

Integrated Planning is of the view that the zone objectives are not superseded by Clause 41. The clause merely allows the consideration of a Retirement Village within the context of the LEP as a whole. The Lifestyle 2020 Strategy, which underpins the LEP, clearly shows that the area in question has special qualities and needs to be taken into consideration via the objectives of the zone.

## **Strategic planning considerations**

A planning proposal to rezone 1(2) Rural (Living) zoned land to Zone 2(1) Residential Zone was recently submitted to Council's Rezoning Assessment and Prioritisation Panel (RAP) for consideration. The proposal was considered by RAP 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.

An extract of the minutes provides the following:

*The Panel resolved that a major strategic investigation of the 1(2) Rural (Living) zoned land in this locality needs to be undertaken before the subject proposal is considered further. The Panel was of the view that the further reduction of rural residential land in this locality should not 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. The land currently supports a strong visual buffer between the residential development and rural lifestyle lots and its loss without appropriate rationale is seen as premature.*

*Council expects to undertake a review of the broader land use patterns of the 1(2) Rural (Living) zoned land in the next 12 or so months. The outcome of the investigation will determine how council proceeds in relation to your site.*

The above planning proposal has relevance to the current development application due to its proximity to the current proposal, , and that it was the proponent's intent to submit a development application for a Seniors Living type of development, if the planning proposal for a rezoning was not acceptable to council.

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. Development of the proposal would also prejudice future potential land uses of the area, which may be identified in Council's review of land use patterns in the 1(2) Rural (Living) Zone. Prior to any urban intensification in the area, a thorough assessment is needed to identify and substantiate future uses. Undertaking intensive development prior to such an assessment is likely to result in development that is inappropriately located and designed, and prejudice future potential land uses. Integrated Planning has placed the revision of the 1(2) Rural (Living) Zone of Council's Lifestyle 2020 Strategy for the Mount Hutton area in its Forward Works Register as being of a high priority. It is anticipated that work will commence in the near future.

On the basis of the above analysis, Integrated Planning believes that the proposal is, inconsistent with the zone objectives, inappropriate in terms of scale and intensity, and a premature development in the context of the 1(2) Rural (Living) Zone.

#### **LMLEP 2010**

Under the provisions of the new LEP (currently awaiting s.65 certificate for exhibition), clause 41 will be superseded by reliance on SEPP (Housing for Seniors or People with a Disability) 2004 as council believes this is a more rigorous process of evaluation given the SEPP provides criteria for consideration above and beyond that which is provided under t Clause 41 of LMLEP 2004. The proposed zone for the new LEP will be converted to that of Zone RU4 Rural Small Holdings, which will maintain the integrity of the current zoning 1(2) Rural (Living) Zone in LEP 2004.

Attachment 1 (TRIM No.D01836399) to this response provides the relevant components of the analysis required to progress any future changes to the existing Lifestyle 2020 Strategy. This would be required to contemplate a change in zoning to enable consideration of more intensive use of land, as proposed in the development application for a Retirement Village, or Seniors Living type of application.

Should you require any information please contact me on extension (insert ext 509)

**Gabriele Calcagno**

**Integrated Planning**

