

JOINT REGIONAL PLANNING PANEL Hunter and Central Coast Region

JRPP No	2011HCC034
DA Number	8/2011/415/1
Local Government Area	Cessnock Local Government Area
Proposed Development	<p>Demolition of existing structures and construction of a seniors housing development comprising 183 single-storey independent living units, 20 assisted living serviced apartments, an aged care facility incorporating 40 rooms, communal facilities, dwelling to be utilised as a manager's residence, and associated earthworks, landscaping, roads and drainage infrastructure pursuant to State Environmental Planning Policy (Housing For Seniors or People with a Disability) 2004, to be constructed over nineteen (19) stages</p> <p><i>Note: The application is defined as Integrated Development (Section 100B Rural Fires Act 1997)</i></p>
Street Address	<p>Lot 1 DP 549647 - 28 Marrowbone Road, Pokolbin</p> <p>Lot 15 DP 1031577 - 69 Oakey Creek Road, Pokolbin</p> <p>Lot 19 DP 251809 - Oakey Creek Road, Pokolbin</p>
Applicant/Owner	Signature Gardens Retirement Resorts Pty Ltd c/- Insite Planning Services Pty. Ltd.
Number of Submissions	104 submissions (103 in objection, 1 in support), received during two (2) exhibition periods
Recommendation	Approval with conditions
Report by	<p>Janine McCarthy, Development Services Manager</p> <p>Richard Forbes – Team Leader, Development Services</p>

1.0 REASON FOR REFERRAL TO THE JRPP

Pursuant to the requirements of the State Environmental Planning Policy (State and Regional Development) 2011, this application is referred to the Joint Regional Planning Panel for determination as the application is defined as 'General Development' with a capital investment value exceeding \$20,000,000.

The application submitted to Council indicates a value of \$44,500,000.

2.0 EXECUTIVE SUMMARY

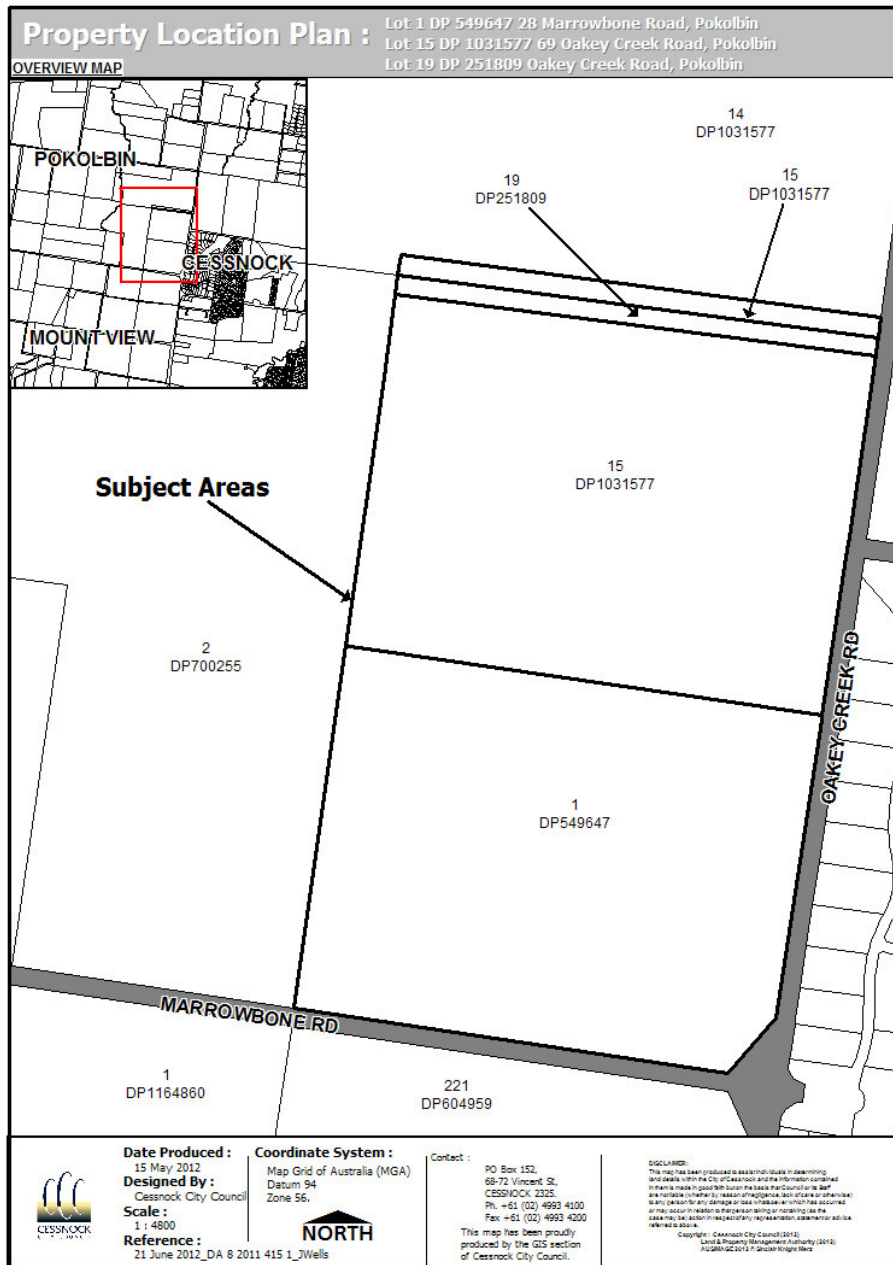
Council is in receipt of a development application proposing demolition of existing structures and construction of a seniors housing development comprising 183 single-storey independent living units, 20 assisted living serviced apartments, an aged care facility incorporating 40 rooms, communal facilities, dwelling to be utilised as a manager's residence, and associated earthworks, landscaping, roads and drainage infrastructure. pursuant to State Environmental Planning Policy (Housing For Seniors or People with a Disability) 2004, to be constructed over nineteen (19) stages, at Lot 1 DP 549647 - 28 Marrowbone Road, Lot 15 DP 1031577 - 69 Oakey Creek Road and Lot 19 DP 251809 - Oakey Creek Road, Pokolbin.

The Development Application has been assessed against the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulations 2000, relevant Environmental Planning Instruments and Council policies. The outcome of this assessment is detailed further in this report.

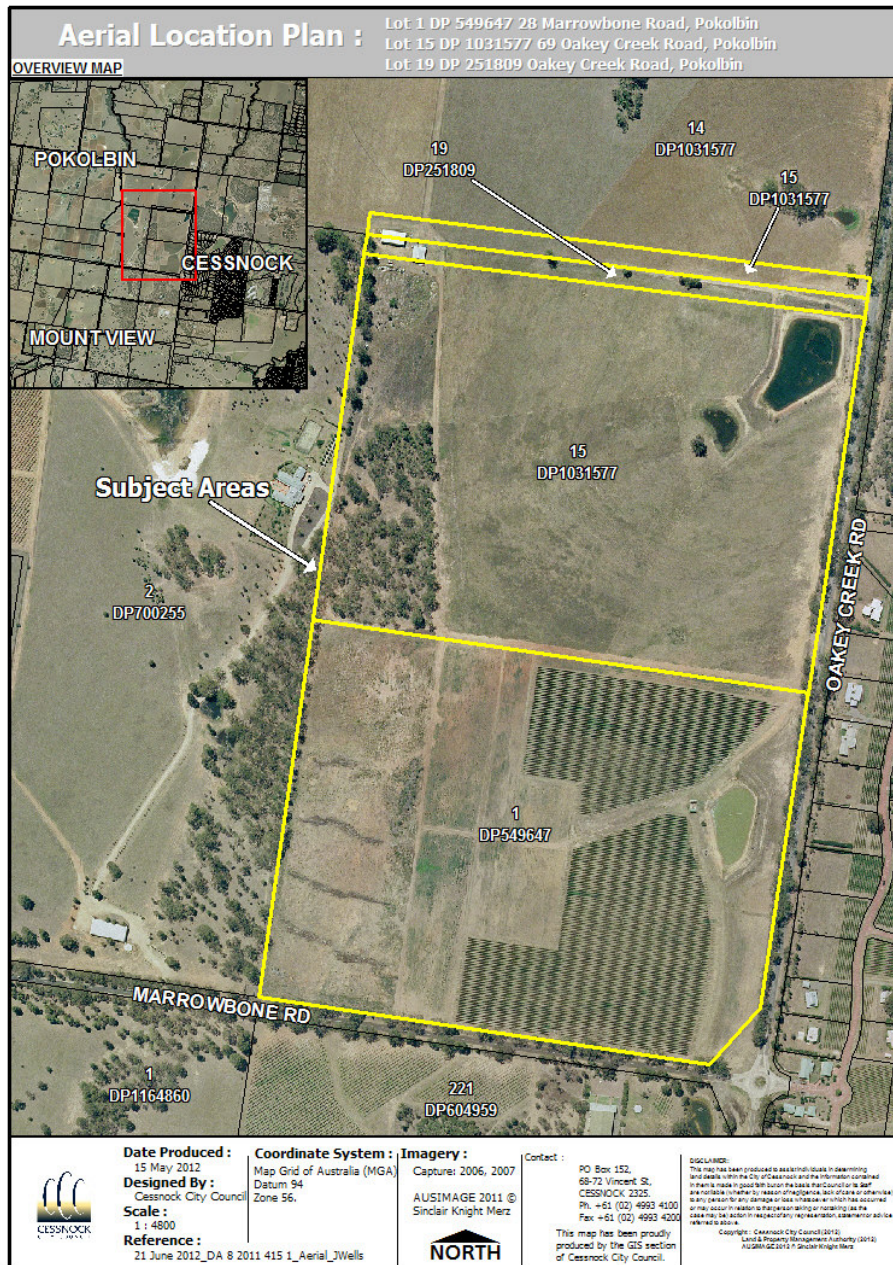
The Development Application was publicly exhibited on two (2) separate occasions in accordance with Cessnock Development Control Plan 2010 (CDCP 2010), and 104 submissions were received in total, 103 of which objected to the proposal. The issues and concerns raised in the submissions are addressed in this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is an appropriate development of the subject site which will result in the provision of important services within the Cessnock local government area. It is considered that the proposal is worthy of support and therefore, it is recommended that the Development Application be approved subject to conditions contained in Attachment C.

3.0 LOCATION MAP



4.0 AERIAL



5.0 SITE DESCRIPTION AND LOCALITY

The subject site is commonly known as Lot 1 DP 549647 - 28 Marrowbone Road, Lot 15 DP 1031577 - 69 Oakey Creek Road and Lot 19 DP 251809 - Oakey Creek Road, Pokolbin.

The site area is as follows:

Lot 1 DP 549647 28 Marrowbone Road:	21.1ha
Lot 15 DP 1031577 69 Oakey Creek Road:	22.1ha
Lot 19 DP 251809 Oakey Creek Road:	1.1ha

Total site area: 44.3ha

The land is located at the corner of Oakey Creek Road and Marrowbone Road. The frontage to Oakey Creek Road is approximately 760 metres and 480 metres to Marrowbone Road.

The site is predominantly cleared of trees and mid storey vegetation with the exception of a pocket (of approximately 2 ha in size) of remnant Lower Hunter Spotted Gum Ironbark Forest, which is recognised as an Endangered Ecological Community (EEC) under the *Threatened Species Conservation Act 1995*. It is proposed that this remnant EEC be retained. The majority of the remaining site is grassland.

Some of the land in the south-eastern corner of the site is under viticultural production.

The site has a gentle to moderate slope, falling from a ridgeline towards the western boundary to Oakey Creek Road, generally towards the east of the site. Three dams are located at the site, all in proximity to Oakey Creek Road. Two of the dams are situated in the north-eastern corner of the site, and the other is centrally located along the eastern boundary of Lot 1.

The site has been previously used for wine grape production, though it is currently limited in extent as described above. Other improvements on the site include an old shed and a functional machinery shed. Water tanks and pumping equipment are installed near the dams.

Figures 1, 2 and 3 (below), depict the existing site.



Figure 1: Photograph of subject site, as viewed from Marrowbone Road, looking east towards intersection of Marrowbone and Oakey Creek Road.



Figure 2: Photograph of subject site, as viewed from Marrowbone Road, looking north towards vegetation identified as an Endangered Ecological Community (EEC)



Figure 3: Photograph of subject site, as viewed from Oakey Creek Road, looking south-west, over existing vineyards

6.0 DETAILS OF THE PROPOSED DEVELOPMENT

The application seeks consent for construction of a seniors housing development, to be developed over nineteen (19) stages.

The main components of the proposed works are outlined below:

Demolition of existing structures

- One (1) existing shed in the north-western corner of the site will be demolished, and the remaining shed will be retained for the storage of grounds maintenance vehicles and equipment.

Construction of 183 Independent Living Units (ILU's)

- All independent living units are single-storey;
- The units are a mix of 2 bedroom, and 2 bedroom + study;
- All units incorporate on-site car parking in the form of a garage;
- All units are provided with an area of private open space;
- The units are a mix of detached and attached (duplex) style.

Construction of 20 assisted living serviced apartments

- The serviced apartment component is single-storey;
- Each apartment has a living room, bedroom, ensuite and private balcony;
- The serviced apartment complex incorporates a communal lounge;
- The serviced apartment complex shares a dining room with the aged-care facility.

Construction of an aged-care facility incorporating 40 rooms

- The aged-care facility is single-storey;
- Each room has an ensuite;
- The aged-care facility incorporates recreation/lounge areas;
- The aged-care facility includes two (2) nurse's stations;
- The aged-care facility shares a dining room with the serviced apartment complex.

Construction of communal facilities

- Community facilities include a central facilities building, pool, tennis court, bocce, bowls, croquet and putting greens;
- The central facilities building includes lounge areas, activity areas, a dining hall, a kitchen, offices, a shop/café, meeting rooms, a billiards room, a theatre, a gym, a hair salon, toilets and outdoor terraces/courtyards.

Construction of a dwelling to be utilised as a manager's residence

- The dwelling to be utilised as a manager's residence incorporates a double garage, 4 bedrooms, a study, a cellar, a home cinema, living/dining rooms, kitchen, associated storage areas, and outdoor terraces/alfresco areas;
- The site will also incorporate a pool and gym/cabana.

Associated earthworks, landscaping, roads and drainage infrastructure

- Connection of the development to Hunter Water reticulated sewer;
- Establishment of a 2m high, 25m wide landscape mound along the southern boundary of the site, setback approx. 50m from the Marrowbone Road frontage;
- Retention of approx. 2ha of Lower Hunter Spotted Gum Ironbark Forest;
- Provision of visitor parking throughout the site for use by staff, visitors and emergency vehicles.
- Associated earthworks, landscaping, roads and drainage infrastructure.

Staging of development

Proposed development is to be constructed over nineteen (19) stages, as follows:

- Stage 1 – clearing of site, establishment of site perimeter buffer, construction of a dwelling to be utilised as a manager's residence and construction of vehicular access onto Oakey Creek Road;
- Stage 2 – Construction of 19 ILU's, 1 of which is to be used as a temporary central facilities area, pool and cabana, vehicular access onto Marrowbone Road, bulk earthworks, and associated drainage and roads;
- Stages 3 and 4 – Construction of 13 ILU's, establishment of bocce green, bulk earthworks, and associated drainage and roads;

- Stage 5 – Construction of 14 ILU's, establishment of bowls green, construction of central facilities building, bulk earthworks, and associated drainage and roads for Stages 5 – 7;
- Stages 6 and 7 – Construction of 12 ILU's, tennis court, cabana and roads;
- Stages 8 and 9 – Construction of 23 ILU's, roads and drainage;
- Stages 10 and 11 – Construction of 20 ILU's, bulk earthworks, and associated drainage and roads for Stages 12 - 14;
- Stages 12 and 13 – Construction of 28 ILU's, caravan parking area, and associated drainage and roads;
- Stages 14 and 15 – Construction of 28 ILU's, and associated drainage and roads;
- Stages 16 and 17 – Construction of 26 ILU's, and associated drainage and roads;
- Stage 18 – Construction of 20 assisted living serviced apartments, and associated buildings;
- Stage 19 – Construction of aged-care facility incorporating 40 rooms and associated buildings.



Figure 4: Site plan of proposed development, at the completion of Stage 19 (provided by the applicant)

7.0 BACKGROUND

7.1 Applications seeking a Site Compatibility Certificate

On 2 October, 2009, the Department of Planning and Infrastructure (known at the time as Department of Planning), received an application for a Site Compatibility Certificate under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP).

At that time, the proposed development comprised 303 retirement dwellings, a 40 apartment youth care facility, 80 aged care apartments, 60 serviced apartments, a community centre and recreational facilities, and associated infrastructure and amenities

The Department sought the views of Council in a letter dated 6 October, 2009, and Council responded to the Department on 28 October, 2009, with its views on the proposal pursuant to Clause 25(5)(b) of the Seniors SEPP. At that time, Council's concerns centred on the following:

- Proximity to viticultural activities and the potential for land use conflict with those activities;
- Proposed development densities inconsistent with those proposed for the Vineyards District;
- Potential impact on an endangered ecological community (Lower Hunter Spotted Gum Ironbark Forest);
- Potential safety issues for residents, as the site was identified as bushfire prone;
- The availability of reticulated water and sewer to service the land;
- Increase in vehicular traffic and the capacity of the existing road network to accommodate the development; and
- Lack of proximity to retail, community, medical and transport services.

This application for a Site Compatibility Certificate was refused by the Director-General on 28 May 2010. The Director-General determined that the application was of unacceptable bulk and scale for the locality and also raised such issues as the lack of a reticulated sewer system, distance from services and the inappropriateness of development within the 1(v) zone for this purpose.

On 22 October, 2010, the Department of Planning received a second application for a Site Compatibility Certificate under the Seniors SEPP at the same location, but with a reduction in development density and analysis of distances to urban services.

At this time, the proposed development comprised 201 retirement dwellings, a 40 apartment youth care facility, 80 aged care apartments, 20 serviced apartments, a community centre and recreational facilities and associated infrastructure and amenities.

The Department sought the views of the Council in a letter to Council dated 25 October 2010, and Council responded to the Department on 19 November, 2010, with its views on the proposal pursuant to Clause 25(5)(b) of the Seniors SEPP. At that time, Council's concerns centred on the following:

- Proximity to viticultural activities and the potential for land use conflict with those activities;

- Proposed development densities inconsistent with those proposed for the Vineyards District;
- Impact on tourist development;
- Non-compliance with the objectives of the Vineyards District;
- Incompatibility with the objectives of RU4 (Small Holdings zone) under Draft Cessnock LEP 2011;
- Potential impact on an endangered ecological community (Lower Hunter Spotted Gum Ironbark Forest);
- Potential safety issues for residents, as the site was identified as bushfire prone;
- The availability of reticulated water and sewer to service the land;
- Increase in vehicular traffic and the capacity of the existing road network to accommodate the development;
- Lack of proximity to retail, community, medical and transport services;
- The site is extremely visually sensitive and is a gateway location to the Vineyards District, and the proposal would be out of character with the area.

Council concluded its response to the Department on this matter, in summary, by way of the following *'Council does not support the proposed aged and disabled persons development as it is considered that the proposal does not comply with the objectives of the zone of both the current and Draft LEP, is an overdevelopment of the site, out of character with the zone, has a major impact on a gateway site to the Vineyards District and Cessnock'*.

It is noted that the Director-General issued a Site Compatibility Certificate on 10 January 2011, on the following basis:

- the site of the proposed development is suitable for more intensive development; and
- the development proposed is compatible with the surrounding environment, having had regard to the criteria specified in Clause 25(5)(b).

Following the issuing of the Site Compatibility Certificate, it was revealed that the subject site references were, in part, incorrect. Therefore, at time of writing the report, an amendment to the Site Compatibility Certificate dated 10 January 2011, had been referred to the Director-General for endorsement. Clause 24(2) of the Seniors SEPP specifies that the consent authority must not consent to the development application, unless a current Site Compatibility Certificate has been issued. Provided the amendment to the Certificate is issued prior to the application being determined, Clause 24(2) of the Seniors SEPP will be satisfied, and it will be open to the JRPP to determine the application.

A copy of the Site Compatibility Certificate, dated 10 January 2011, is contained in Attachment A.

7.2 Lodgement of Development Application with Cessnock City Council

The subject development application was lodged on 11 July 2011, and initially comprised 201 retirement dwellings, a 40 apartment youth care facility, 80 aged care apartments, 20 serviced apartments, a community centre and recreational facilities, and associated infrastructure and amenities.

Following consideration of the application by the community and various statutory agencies during the course of public exhibition, and comments provided by the Hunter and Central Coast Joint Regional Planning (JRPP) when briefed by Council on 3 November 2011, the proponent amended the development application, by virtue of the following:

- A reduction in the number of independent living units from 201 to 183;

- A reduction in the size of the aged care facility from a 80 room facility to a 40 room facility;
- The incorporation of a manager's residence in the north-western corner of Lot 15;
- Provision of a staging plan detailing the proposed construction phasing;
- Inclusion of a landscape mound to minimise visual and noise impacts;
- Provision of increased setbacks;
- Connection of the development to Hunter Water reticulated sewer infrastructure; and
- Removal of one (1) point of access to Marrowbone Road, thereby resulting in the proposed development only having one (1) vehicular crossing/driveway onto Marrowbone Road.

A number of additional documents/plans were also been provided to Council in support of the application, including:

- An Environmental Report (prepared by 'AECOM') addressing the noise, air quality and spray drift impacts from adjoining viticultural operations on the proposed development site;
- Amended plans emanating from the recommendations of the AECOM Report, including plans showing the proposed staging of the development;
- A Preliminary Sewer Servicing Strategy (prepared by 'Martens and Associates'), addressing the connection of the site to the Hunter Water reticulated sewer service;
- An updated landscape plan;
- An updated Viticultural Assessment Report; and
- An updated Plan of Management for the proposed development.

8.0 ASSESSMENT

8.1 Section 5A of the Environmental Planning and Assessment Act 1979

Section 5A of the Environmental Planning and Assessment Act, requires Council to take into account the potential impacts of the development on any critical habitat, endangered ecological community or threatened species and their habitat.

The Development Application was accompanied by an Ecological Assessment which assessed the likely impacts of the proposed development on flora and fauna, and a Bushfire Threat Assessment Report which assessed the risk of bushfire on the proposed development.

8.1.1 Flora

It is considered that the Ecological Assessment is generally adequate in the level of survey conducted and the assessment of direct impacts upon flora, in particular, the Endangered Ecological Community (EEC), Lower Hunter Spotted Gum Ironbark Forest.

Notwithstanding the above, it is considered that the Ecological Assessment is not adequate in terms of consideration given to the indirect impacts associated with construction and maintenance of the required Asset Protection Zone (APZ), and construction of the tennis court, dam and road on the EEC. The Assessment states that a 40m buffer will be established around the EEC, along with vegetated wildlife corridors, in order to minimise any impact on the EEC, however, it is noted that the 40m buffer is in fact the required APZ. The construction of the dam and road within the 40m buffer/APZ is likely to have indirect short-

term impacts on the EEC by increasing the likelihood of exotic plants invading the native vegetation through soil disturbance on the edge of the EEC.

Further to the above, the construction and maintenance of the buffer/APZ will have long-term indirect impacts on the EEC through continued disturbance from mowing/slashing. Accidental mowing of the edge of the EEC and the spread of weed seed from mowers that have not been cleared of exotic seed prior to being used in the APZ, will increase the likelihood of weeds being continually introduced and spread on the edge of the EEC.

To address the above concerns, it is recommended that a condition be imposed on the determination notice requiring establishment of an additional 10m buffer, between the EEC and the APZ. This condition is to be imposed as a Deferred Commencement condition, to ensure the provision of amended plans that reflect the required changes. The 10m buffer should be planted with local native species (including trees, shrubs and ground-layer species), and any exotic species should be removed on a regular basis by qualified bush regenerators. It is considered that the additional 10m buffer can be contained within the site, without resulting in substantial amendments to the plans, or resultant substantial impacts.

In consideration of the above, and in the event the application is approved, it is recommended that the following conditions be imposed on the determination notice:

- *Deferred Commencement condition - A 10m buffer is to be established between the EEC and the APZ, and the buffer is to be planted with local native species (including trees, shrubs and ground-layer species). Amended plans (site, landscape and drainage), shall be submitted reflecting the changes.*
- *All recommendations contained in the Ecological Assessment prepared by Peak Land Management, dated July 2011, shall be complied with.*
- *Ongoing monitoring of the Endangered Ecological Community (EEC), shall occur through a Vegetation Management Plan, which is to include ongoing bush regeneration by qualified bush regenerators.*
- *Staff should be educated as to the importance of the EEC.*
- *The impact of the APZ should be mitigated through the removal of exotic species from the edges of the fire trail and from within the 10m bushland buffer on a regular basis by qualified bush regenerators.*
- *The area of Lower Hunter Spotted Gum Ironbark Forest on the site is to be placed into a Conservation Agreement in perpetuity under Section 69 of the National Parks and Wildlife Act 1974 to ensure its maintenance and protection.*
- *The 'suggested plant palette' provided in the Landscape Architecture Report should use native species of local provenance of Lower Hunter Spotted Gum – Ironbark Forest, rather than nursery developed varieties.*

8.1.2 Fauna

It is considered that the Ecological Assessment was considered inadequate in the level of survey conducted for fauna. Although the size of the EEC on the site is relatively small (approx. 2ha), it is connected to other larger patches of vegetation and is part of a section that is approx. 40ha. Even though this and the connected vegetation appears to be thinned and is likely to be disturbed, it would still provide habitat for some types of fauna, therefore, a

more detailed fauna survey should have been conducted. Specifically, the fauna survey should have surveyed for bats, owls (foraging habitat), and other bird species, and the survey should have taken place following dusk.

To address the above concern, it is recommended that a condition be imposed on the determination notice requiring that a specific type of fencing be erected along the western boundary, where the EEC is located. This will allow the movement of fauna between the 2ha section of EEC on the subject site, and the other larger areas of vegetation on adjoining sites.

In consideration of the above, and in the event the application is approved, it is recommended that the following condition be imposed on the determination notice:

- *Fencing along the western boundary of the site (where it adjoins the identified EEC), shall be constructed in accordance with the Landscape Architecture Report prepared by Terras Landscape Architects, dated June 2011, Job number 8241.5, Revision B.*

8.1.3 Conclusion

Given the final findings of the Ecological Assessment and the level of assessment undertaken by Council's Ecologist – Development Assessment, it is considered that the potential impact of the proposed development on the EEC has been taken into account and is considered satisfactory, subject to the inclusion of conditions on the notice of determination relating to the mitigation measures outlined above.

8.2 Environmental Planning and Assessment Act 1979 – Section 79(C)(1)

In determining a Development Application, the consent authority is to take into consideration the following matters as are of relevance in the assessment of the Development Application on the subject property:

(a)(i) The Provisions of any Environmental Planning Instrument

The Environmental Planning Instruments that relate to the proposed development are:

1. State Environmental Planning Policy (Infrastructure) 2007
2. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
3. State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
4. State Environmental Planning Policy No. 55 – Remediation of Land
5. State Environmental Planning Policy (State and Regional Development) 2011
6. Cessnock Local Environmental Plan 1989
7. Cessnock Local Environmental Plan 2011

An assessment of the proposed development under the relevant Environmental Planning Instruments is provided below:

1. State Environmental Planning Policy (Infrastructure) 2007

Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 requires that the development application be referred to the Roads and Maritime Services (RMS) for comment, as it proposes the provision of 200 or more motor vehicles in association with the seniors living development, as specified within Schedule 3 of the SEPP.

Clause 104 also requires Council to take into consideration any submission made by the RMS, the accessibility of the site concerned, and any potential traffic safety, road congestion or parking implications of the development.

The application was referred to the RMS, and due to the size of the proposal, the Hunter Regional Development Committee (HRDC) provided comment. An assessment of the traffic impacts of the proposed development is provided later in this section of the report.

The requirements of Clause 104 of the SEPP have been satisfied.

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

The Development Application was accompanied by a BASIX Certificate in accordance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, however, it is noted that the Certificate reflects the initial proposal, rather than the amended plans that reduce the number of ILU's proposed.

In consideration of the above, and in the event the application is approved, conditions are to be imposed on the notice of determination requiring the submission of an amended BASIX Certificate that reflects the approved plans, and for the commitments noted in the BASIX Certificate to be incorporated into the development.

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

The SEPP (Housing for Seniors or People with a Disability) 2004 ('Seniors SEPP'), applies to the proposed development. The aims of the SEPP are primarily to increase the supply and diversity of housing for seniors of people with a disability, and to ensure that such development is of a high quality design.

In accordance with the SEPP, the consent authority must be satisfied that the proposed development is consistent with the required considerations. A detailed assessment of the proposed development has been carried out in relation to the Policy, and is outlined below:

Clause/Standard	Requirement	Proposed	Complies
2/Aims of the policy	<ul style="list-style-type: none"> • Increase the supply/diversity of residences • Make efficient use of existing infrastructure and services • Be of good design 	The application proposes different types of housing, thereby increasing choice, it is proposed to connect the development to Hunter Water's reticulated sewer service, and the design is considered high quality.	Yes
10/Seniors housing	Seniors housing consists of: <ul style="list-style-type: none"> • A residential care facility • A hostel • A group of self contained dwellings • A combination of these 	Application proposes the following components: <ul style="list-style-type: none"> • Residential care facility • Hostel • Self contained dwellings 	Yes
16/Development consent required	Development may only be carried out with the consent	Development consent sought.	Yes

Clause/Standard	Requirement	Proposed	Complies
	of the relevant consent authority.		
17/Development on land adjoining land zoned primarily for urban purposes	<p>(1) A consent authority must not consent to an 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 any of the following:</p> <ul style="list-style-type: none"> • A hostel • A residential care facility • Serviced self-care housing <p>(2) A consent authority must not consent to an application made pursuant to this Chapter to carry out development for the purposes of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that the housing will be provided for people with a disability, or in combination with a residential care facility, or as a retirement village.</p>	Proposal complies, as the site adjoins urban zoned land (opposite Oakey Creed Road). Serviced self-care housing and residential care are provided. Housing will be provided for seniors.	Yes
18/Restrictions on occupation of seniors housing	In the event approval is granted, the consent authority must impose a condition to the effect that only the kinds of people referred to in Subclause (1) may occupy the accommodation, and a restriction must be registered against the title of the property.	Such conditions have been imposed on the draft determination notice.	Yes
24/Site Compatibility Certificates	The Director-General must have issued a site compatibility certificate as the development is proposed to be carried out on land that adjoins land zoned primarily for urban purposes.	Site Compatibility Certificate issued by the Director-General, refer to Attachment A.	Yes
26/Location and	Consent cannot be granted	A shuttle bus is to be provided	Yes

Clause/Standard	Requirement	Proposed	Complies
access to facilities	unless residents will have compliant access to shops, bank service providers, other retail and commercial services, community services and recreational facilities, and the practice of a general medical practitioner.	at the completion of Stage 2 (first stage that incorporates a residential component), and the bus will pick up residents from their front door or a designated communal location, and transport them to the required service. All access paths within the development comply with the SEPP requirements.	
27/Bush fire prone land	Consent cannot be granted unless the proposed development complies with the requirements of <i>Planning for Bush Fire Protection' 2006</i> .	Bushfire Assessment submitted and referred to the NSW RFS for concurrence, as the proposal is defined as Integrated Development. NSW RFS have issued concurrence.	Yes
28/Water and sewer	Consent cannot be granted unless appropriate arrangements made for water and sewer services (connection to a reticulated water system and adequate facilities for the removal or disposal of sewage).	Water is available, and development to be connected to Hunter Water's reticulated sewer service.	Yes
30/Site analysis	Consent cannot be granted unless site analysis has been prepared and considered.	Provided	Yes
32/Design of residential development	Consent cannot be granted unless the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 (Clauses 33 – 39).	Addressed below.	Yes
33–39/Design principles	Residential development to address neighbourhood amenity and streetscape, visual and acoustic privacy, solar access and design for climate, stormwater, crime prevention, accessibility and waste management	It is considered that the development addresses these design principles. Conditions have been imposed on the draft determination notice requiring the development to comply with all of the detailed construction standards for self-contained dwellings, hostels and residential care facilities, as set out in the SEPP, with regard to detailed design considerations, including access, common area, security, letterboxes, private car accommodation,	Yes

Clause/Standard	Requirement	Proposed	Complies
		accessible entries, width of internal corridors, size of bedrooms, facilities in bathrooms, living and kitchen facilities, and laundry and garbage facilities.	
40/Development standards	Consent cannot be granted unless the proposed development complies with: <ul style="list-style-type: none"> • Site size – 1000m² • Site frontage – 20m • Height – 8m or less, a building adjacent to the boundary must be no more than 2 storeys in height, and a building located in the rear 25% of the site must not exceed 1 storey in height. 	The application provides: <ul style="list-style-type: none"> • Site size – approx. 44.3ha • Site frontage – 480m to Marrowbone Road and 760m to Oakey Creek Road • Height – no building exceeds 8m in height, all buildings are single-storey 	Yes
41/Standards for hostels and self-contained dwellings	Consent cannot be granted unless the hostel or self-contained dwelling complies with the standards specified in Schedule 3.	Proposal complies with the requirements of Schedule 3. Advisory condition has been included on the draft determination notice to ensure compliance with Schedule 3.	Yes
42–44/Development on land adjoining land zoned primarily for urban purposes	Consent cannot be granted unless residents will have reasonable access to home delivered meals, personal care and home nursing, assistance with housework, and transport to local centres. These facilities and services must 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 to the number of residents in each stage.	Facilities and services to be provided. Such facilities and services to be provided on-site at the completion of Stage 2 (first stage that incorporates a residential component). Conditions have been imposed on the draft determination notice reflecting the above.	Yes
48/Standards that cannot be used to refuse development consent for residential care facilities	A consent authority must not refuse an application on any of the following grounds: <ul style="list-style-type: none"> • Building height – if all proposed buildings are 8m or less in height • Density and scale – if the floor space ratio is 	The plans submitted with the application show that the proposal complies with these requirements, with the exception of parking, which is discussed in Section 8.0 of the report.	Partly

Clause/Standard	Requirement	Proposed	Complies
	1:1 or less <ul style="list-style-type: none"> Landscaped area – if a minimum of 25m² of landscaped area per residential care facility bed is provided Parking for residents and visitors – if at least 1 space for each 10 beds in the residential care facility, 1 space for each 2 persons employed and on duty at any one time, and 1 space suitable for an ambulance, is provided. 		
49/Standards that cannot be used to refuse development consent for hostels	A consent authority must not refuse an application on any of the following grounds: <ul style="list-style-type: none"> Building height – if all proposed buildings are 8m or less in height Density and scale – if the floor space ratio is 1:1 or less Landscaped area – if a minimum of 25m² of landscaped area per hostel bed is provided Parking – if at least 1 space for each 5 dwellings in the hostel, 1 space for each 2 persons employed and on duty at any one time, and 1 space suitable for an ambulance, is provided. 	The plans submitted with the application show that the proposal complies with these requirements, with the exception of parking, which is discussed in Section 8.0 of the report.	Partly
50/Standards that cannot be used to refuse development consent for self-contained dwellings	A consent authority must not refuse an application on any of the following grounds: <ul style="list-style-type: none"> Building height – if all proposed buildings are 8m or less in height Density and scale – if the floor space ratio is 0.5:1 or less Landscaped area – if a minimum of 30% of the area of the site is to be landscaped 	The plans submitted with the application show that the proposal complies with these requirements, with the exception of parking, which is discussed in Section 8.0 of the report.	Partly

Clause/Standard	Requirement	Proposed	Complies
	<ul style="list-style-type: none"> • Deep soil zones – if that part of the site that is not built on, paved or otherwise sealed has soil with a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site, minimum dimension of 3m • Solar access – living rooms and private open spaces for a minimum of 70% of dwellings receive a minimum of 3 hours direct sunlight between 9am and 3pm • Private open space – 15m² of private open space per dwelling, not less than 3m wide and 3m long, and accessible from a living area • Parking – if at least 0.5 spaces for each bedroom 		

4. State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7(1) of SEPP No. 55 – Remediation of Land, requires that consent not be granted until Council has considered whether the land is contaminated. If the land is contaminated, the Council needs to be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

In this instance, the subject site is generally vacant and in its natural state, with the exception of some established vineyards, and a small area of vegetation (approx. 2ha).

The applicant submitted a Preliminary Environmental Site Assessment (PESA) in support of the application. The PESA assessed the land to determine any contamination, and also assessed the suitability of the site to be used for the purpose proposed.

The PESA concludes as follows:

‘Based on observations compiled during the site walkover and the site history assessment, four (4) Areas of Environmental Concern (AEC) were identified within the investigation area. Soil sampling and lab analysis was undertaken to address the AEC and Chemicals of

Concern (COC) associated with them. Finding indicated that chemical levels are below the investigation criteria outlined in Section 5.5.

The site is generally considered suitable for the proposed use. Some minor remediation around the Above-Ground Storage Tanks (AST) may be required, should further investigations identify hydrocarbon impacts’.

In consideration of the above, it is considered that the site is suitable for its proposed use. In the event the application is approved, a condition of consent will be imposed on the determination notice requiring compliance with the PESA submitted in conjunction with the application.

5. State Environmental Planning Policy (State and Regional Development) 2011

Pursuant to the requirements of the State Environmental Planning Policy (State and Regional Development) 2011, the development application is required to be referred to the Joint Regional Planning Panel for determination as the application is defined as ‘General Development’ with a capital investment value exceeding \$20,000,000.

The application submitted to Council indicates a value of \$44,500,000.

6. Cessnock Local Environmental Plan 1989

Cessnock Local Environmental Plan 1989 (CLEP 1989), was in force at the time of lodgement of the application. Clause 1.8A of CLEP 1989 is a Savings Provision that prescribes that the application must be determined as if Cessnock LEP 2011 had not commenced. The original development application was lodged on 11 July, 2011, and therefore the application has been considered under CLEP 1989, with consideration given to Cessnock LEP 2011 in accordance with the adopted Savings Provision.

An assessment of the proposal against the provisions of CLEP 1989, is provided below:

6.1 Land use permissibility

The subject site is zoned 1(v) Rural (Vineyards) under CLEP 1989, and the zoning is depicted in the below Figure (Figure 5). The proposed development is prohibited in this zone.

Notwithstanding the above, the provisions of the Site Compatibility Certificate permit the proposed development pursuant to SEPP (Housing for Seniors of People with a Disability) 2004.

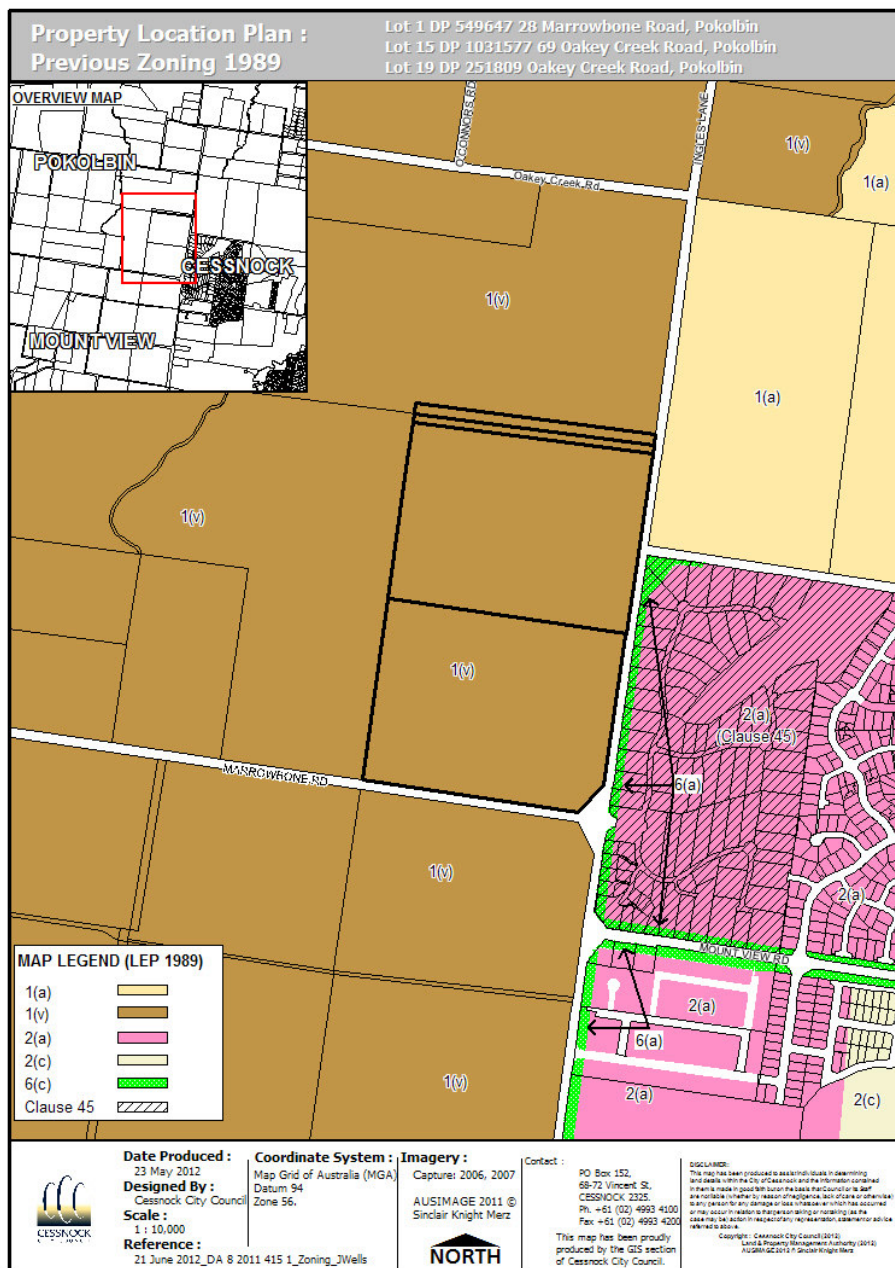


Figure 5: Zoning – CLEP 1989

6.2 Objectives

The objectives of the 1(v) Rural (Vineyards), and a response in relation to the objectives, are as follows:

- *to maintain prime viticultural land and enhance the economic and ecological sustainability of the Vineyards District*

A Viticultural Soils Analysis was prepared by Stephen Gell of Allynbrook Pty. Ltd. (February, 2012), and submitted in conjunction with the Development Application. The report concludes that the site 'does not contain prime viticultural soils and confirms the NSW Department of Agriculture Assessment from 1993 which classified the site as unsuitable for viticultural production' (established through field survey and laboratory analysis).

Whilst it is acknowledged that the site is located within the Vineyards District, it has been confirmed that the soils are not classified as 'prime', and therefore, it would be reasonable to expect that the site could be used for a purpose other than viticulture.

It is considered that the proposed development is not contrary to this zone objective.

- *to encourage appropriate tourist development consistent with the rural and viticultural character of the Vineyards District*

The proposed development is not a form of tourist development, however, it is not contrary to this zone objective as it would not discourage other sites within the vicinity from being used for tourist related purposes.

- *to minimise conflict between viticultural and non-viticultural land uses by ensuring sympathetic location and design of those uses*

This objective is relevant, as the site is located adjacent to both non-viticultural land uses (opposite 'Kelman Estate'), and existing viticultural land uses ('Saddler's Creek' and 'Kelman').

The proposed design of the development has sought to minimise land use conflict with surrounding viticultural land uses, through the incorporation of a landscape buffer, the retention of significant vegetation on the site (approx. 2ha), generous setbacks, a reduction in the development density, and connection of the development to Hunter Water's reticulated sewer service. It is considered that these measures will address land use conflict between the proposed development and existing uses in the locality.

- *to enable continued rural use of land which is complementary to the viticultural character of land within this zone*

The proposed development does not comprise a rural use of land, however, it is not contrary to this zone objective as it would not discourage the continued rural use of land within the vicinity.

- *to protect the water quality of receiving streams and to reduce land degradation*

Plans were submitted in conjunction with the application outlining the acceptable disposal of stormwater from the site, thereby ensuring the protection of the water quality of receiving streams and negation of land degradation.

- *to actively promote the need to conserve and enhance the biodiversity of the Vineyards District*

The application proposes the retention of a significant area of vegetation (approx. 2ha) in the north-western part of the site. In addition, detailed landscape plans have been submitted in conjunction with the application, and it is therefore considered that the proposal conserves and enhances biodiversity.

Further comments in relation to the ecological issues associated with the proposal are discussed in Section 8.1 of this report.

- *to conserve the aboriginal archaeology and European heritage of the Vineyards District*

An Aboriginal Heritage Assessment was submitted in conjunction with the application, and the report states as follows:

'..... an experienced sites officer from Mindaribba Local Aboriginal Land Council accompanied this archaeologist on a visual inspection of the site on 15/4/11.

It was readily observed that the landscape had been extremely modified through past agricultural practices and the finding of any above surface artefacts extremely remote, if not impossible.

It was not possible due to the poor visibility to completely rule out the chance of artefacts existing on site. This archaeologist has found artefacts in vineyards amongst the vines after the access tracks had been ploughed.

It was concluded that a further inspection would be warranted after approval of the development when the vines had been removed and the pasture slashed. This way all opportunity would be given to determine the existence of artefacts.

It must be stressed however that it is the opinion of both the archaeologist and the Aboriginal sites officer, that the observation of any artefact is extremely unlikely'.

In consideration of the above, it is noted that there are no known items of Aboriginal Archaeology or European heritage on the site. Notwithstanding, a condition will be imposed on the draft determination notice, as part of Stage 1, as follows:

As a matter of due diligence to ensure no 'unknown' artefacts are harmed, appropriately qualified representatives must be engaged to undertake a further field assessment once the vines have been removed and the pasture slashed'.

Further comments from the NSW Office of Environment and Heritage, are outlined in Section 10.1 of this report.

6.3 Relevant Clauses

The Development Application was assessed against the following relevant clauses of CLEP 1989:

- Clause 32: Land subject to bushfire hazards

Clause 32 requires Council to assess bushfire impacts, prior to granting consent to any development on land which is the subject of bushfire hazards. The site is identified as being bushfire prone, and in this regard, was referred to the NSW RFS for concurrence. The NSW RFS have issued their concurrence to the proposal, thereby satisfying the requirements of Clause 32.

7. Cessnock Local Environmental Plan 2011

Cessnock Local Environmental Plan 2011 (CLEP 2011), was made on 23 December 2011 and came into force at that time.

Clause 1.8A of CLEP 2011 states as follows:

'if a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced'.

In consideration of Clause 1.8A, whilst CLEP 2011 is the relevant Environmental Planning Instrument in force at the time of determining this application, the effect of the savings provision (Clause 1.8A), is to treat CLEP 2011 as a Draft Environmental Planning Instrument, and give consideration and weighting to it accordingly.

In consideration of the above, the following assessment is provided against the provisions of CLEP 2011:

7.1 *Land use permissibility*

The subject site is zoned RU4 Primary Production Small Lots under the provisions of CLEP 2011, and the zoning is depicted in the below Figure (Figure 6). The proposed development is prohibited in this zone.

Notwithstanding the above, the provisions of the Site Compatibility Certificate permit the proposed development pursuant to SEPP (Housing for Seniors of People with a Disability) 2004.

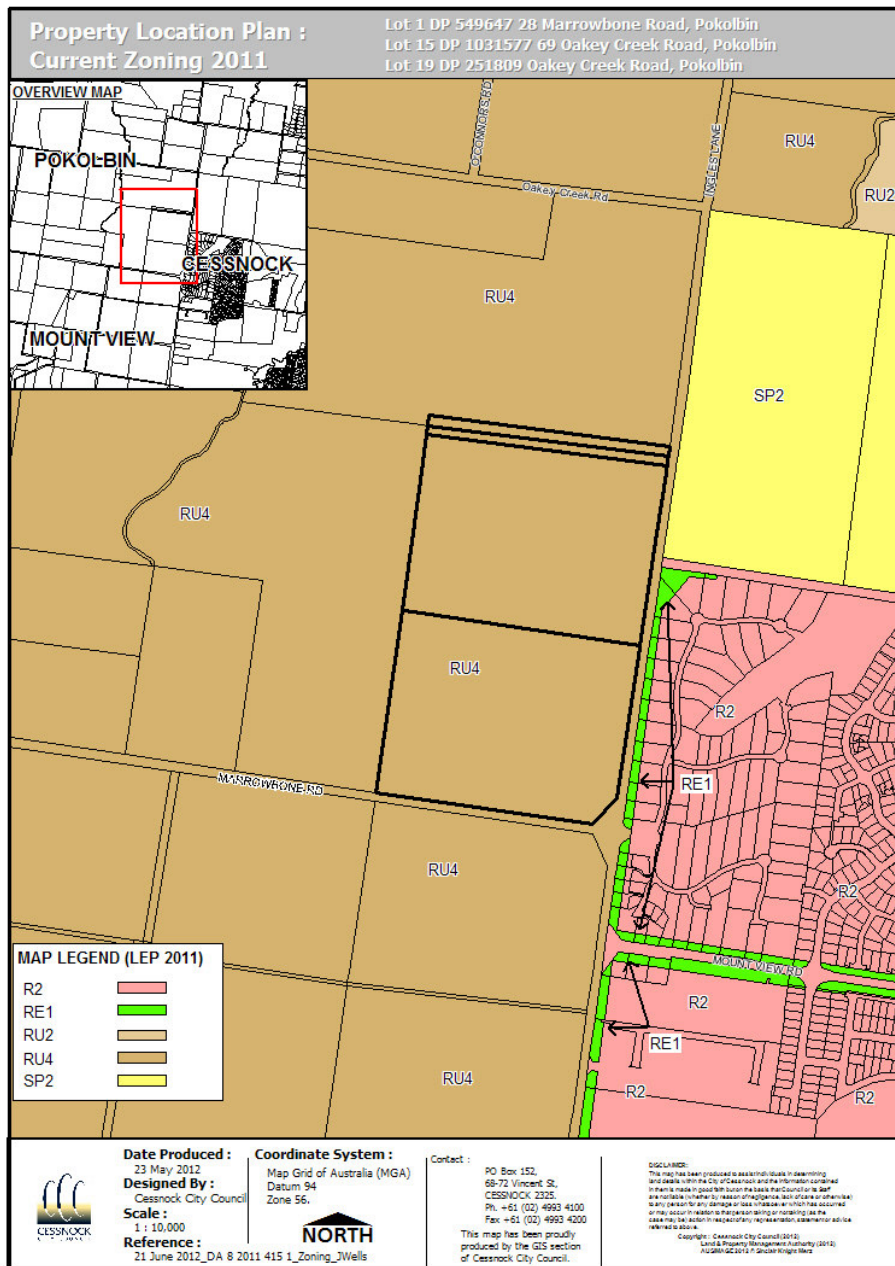


Figure 6: Zoning – CLEP 2011

7.2 Objectives

The objectives of the RU4 Primary Production Small Lots zone, and a response in relation to the objectives, are as follows:

- *To enable sustainable primary industry and other compatible land uses.*

Whilst the proposal is not a type of sustainable primary industry, it will not compromise sustainable primary industry within the locality. Furthermore, it is considered that the proposed development is not incompatible with other existing uses within the area.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Whilst not a primary industry, the proposed development will generate employment opportunities within the local government area.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

It is considered that the proposed development has been designed to be sympathetic with the surrounding land uses, through the use of a substantial landscape buffer, generous setbacks, retention of significant vegetation, and a reduction in the dwelling density on the site.

- *To maintain prime viticultural land and enhance the economic and ecological sustainability of the vineyards district.*

As outlined previously, a Viticultural Soils Analysis was prepared by Stephen Gell of Allynbrook Pty. Ltd. (February, 2012), and submitted in conjunction with the Development Application. The report concludes that the site 'does not contain prime viticultural soils and confirms the NSW Department of Agriculture Assessment from 1993 which classified the site as unsuitable for viticultural production' (established through field survey and laboratory analysis).

Whilst it is acknowledged that the site is located within the Vineyards District, it has been confirmed that the soils are not classified as 'prime', and therefore, it would be reasonable to expect that the site could be used for a purpose other than viticulture.

The retention of significant vegetation on the site, combined with the existence of similar vegetation on adjoining sites, will result in the proposal contributing to sustainability within the locality.

- *To encourage appropriate tourist development (including tourist-related retail) that is consistent with the rural and viticultural character of the vineyards district.*

As outlined previously, the proposed development is not a form of tourist development, however, the proposal is not contrary to this zone objective as it would not discourage other sites within the vicinity from being used for tourist related purposes.

- *To enable the continued rural use of land that is complementary to the viticultural character of the land.*

As outlined previously, the proposed development does not propose the rural use of land, however, it is not contrary to this zone objective as it would not discourage the continued rural use of land within the vicinity.

7.3 Relevant Clauses

The Development Application was assessed against the following relevant clauses of CLEP 2011:

- Clause 7.2: Earthworks

Clause 7.2 requires Council to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. It also allows for earthworks to be considered as ancillary to a purpose for which development consent has been given.

In this instance, the application proposes earthworks in association with the overall development of the subject site, and can therefore be considered as ancillary. The proposed earthworks have been assessed, and it is considered that the earthworks will not have a detrimental impact on neighbouring development, or environmental functions.

(a)(ii) The Provisions of any Draft Environmental Planning Instrument (that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)).

At the time of determining this application, no Draft Environmental Planning Instruments are applicable.

(a)(iii) The Provisions of any Development Control Plan

Cessnock Development Control Plan 2010

Development Control Plan (DCP) 2006 was in force at the time of lodgement of the DA, but has now been amended by the introduction of DCP 2010 on 23 December 2011. Subsequently, the application must be assessed and determined against the provisions of DCP 2010, as it is the relevant DCP in force at the time of determination.

In consideration of the above, the following is an assessment of the proposal's compliance with the standards in Chapter E.3 of Development Control Plan 2010. Discussion of any variations of the standards is provided below:-

Clause/Standard	Required	Proposed	Complies
3.2.1/Consideration of adjoining land uses	Development to consider the existence and location of surrounding land uses, including viticultural and agricultural activities, and development to be sited in a position which will not result in the potential for land use conflict between neighbouring land uses. Note: the onus is on the encroaching development to provide the required buffer on the subject land.	Development complies with the required 100m setbacks and is in compliance with the setback and amenity requirements of the Seniors SEPP. The Seniors SEPP prevails to the extent of any inconsistencies. The Seniors SEPP in this instance supports the objectives of Council's DCP. The proposal is consistent with the	Yes

Clause/Standard	Required	Proposed	Complies
		amenity and impact on neighbouring buildings and provisions of Clause 30 of the Seniors SEPP.	
3.2.2.1/Viticultural Analysis	Development applications must be accompanied by a report from a suitably qualified professional outlining soil types and their suitability for viticultural purposes over the proposed development site. An associated assessment of the impact of the proposed development on the viticultural capability of the site is to be made.	A Viticultural Soils Analysis prepared by a suitably qualified consultant was submitted in conjunction with the application, and it is concluded that the site does not comprise prime viticultural land.	Yes
3.2.2.2/Potentially Contaminated Land	Submission of details outlining the history of land uses on the land, to initially determine if the land is likely to be contaminated. In cases where the land is likely to be contaminated, Council may require submission of a report from a suitably qualified professional clearly specifying the extent of contamination from past viticultural, agricultural or other activities, and the measures proposed to decontaminate that land.	A Preliminary Environmental Site Assessment was submitted in conjunction with the application, and such assessment considered areas of risk, specifically, existing above ground storage tanks located on the site. Remediation of the isolated areas can be satisfactorily achieved by imposition of suitable conditions of consent. The site is considered suitable for the proposed land use.	Yes
3.2.3/Building Siting and Design	To ensure that development is appropriately sited and designed having regard to the opportunities and constraints of a site and its surrounds and the special qualities of the Vineyards District.	The proposal complies with the provisions of the Seniors SEPP, which in conjunction with the boundary setbacks provided in compliance with the DCP, result in	Yes

Clause/Standard	Required	Proposed	Complies
		the appropriate location of development on the site.	
3.2.5/Front and Side Development Setbacks	Council will usually require a minimum front setback of 75 metres. Council requires a minimum side setback of 50 metres.	The plans submitted demonstrate compliance with the boundary setback requirements of the DCP.	Yes
3.2.7/Ground Spraying and Aerial Spraying Considerations	New 'public place' developments and dwelling-houses are to have a minimum separation distance of 100 metres from an existing or approved vineyard on adjoining or adjacent land.	The plans submitted demonstrate compliance with the setback requirements of the DCP.	Yes
3.2.8/Noise Generation and Odour Considerations	Applications for development with human habitation components (tourist developments, dwelling-houses and the like) located adjoining, adjacent to or within properties containing existing wineries shall be required to provide a report from a qualified acoustic consultant detailing measures proposed to satisfy Council that noise levels within the development will be adequate for the purposes of the development. Odour impacts from existing wineries should also be considered with measures taken to ameliorate such effects.	<p>The application was supported by an Acoustic Assessment which determined that noise exceedances would occur due to operations that typically occur for a few hours per fortnight between September and November, and possibly up until April. Outside of these times, it is expected that noise produced by viticultural operations will be minor.</p> <p>Assessment recommends the inclusion of noise attenuation measures to reduce noise impacts, and these will be imposed as conditions of consent on the</p>	Yes

Clause/Standard	Required	Proposed	Complies
		draft determination notice.	
3.3.3/Clearing of Vegetation And 3.3.4 Flora and Fauna Considerations	<p>Where consent is granted to remove vegetation, it will be required as part of this Chapter that equivalent amounts of vegetation be re-established within either the specified native vegetation corridors at Appendix 2 of the DCP , as relevant and as specified, or otherwise within other acceptable positions on a property as determined on merit. Wherever appropriate, consents for properties having specified locations for proposed corridors illustrated in Appendix 2 of the DCP will require the re-establishment of equivalent vegetation loss in those corridors in preference to other locations on the site. Species should be selected from those contained within Appendix 2 of the DCP.</p> <p>Council will require the preparation of a flora/fauna assessment in accordance with the requirements of current legislation. A subsequent Species Impact Statement may also be required</p>	<p>The proposal is supported by a flora and fauna assessment (Appendix 4, Insite SoEE dated July, 2011) and landscape design which addresses the requirements of Council's DCP.</p> <p>The proposal will not result in a significant impact on any Endangered Ecological Community or habitat. Conditions have been imposed to address additional planting required to comply with revegetation requirements under Council's DCP.</p>	Yes
3.3.5/Aboriginal Archaeology	Applications must include an investigation of the Aboriginal qualities of the site and the likely impact of the proposal on items of such heritage. A qualified archaeologist may be required to carry out investigations in areas of likely impact.	There are no known items of Aboriginal Archaeology or European heritage on the site, as supported by the Aboriginal Heritage Assessment submitted in	Yes

Clause/Standard	Required	Proposed	Complies
		conjunction with the application.	
3.3.7/Water Management Plan	Applications for development, including those for vineyards, shall illustrate water movement through the site, both from the view of its entry to the site (e.g. roof water collection into tanks, reticulated supply, collection in dams via overland flow, extraction from creeks, extraction from ground water supplies), uses within the site, their respective locations and the point and nature of discharge to the soil within the property (e.g. waste water disposal systems) and/or on to adjoining properties (e.g. dam overflow). This is best illustrated by way of flow diagrams and associated text. Details should include estimated quantities of water both in terms of inputs and outputs.	A suitable Water Management Strategy has been provided to Council in consideration of water management on the site. The proposal is intended to be provided with reticulated water and sewage.	Yes
3.3.8/Disposal of Waste	Details of the methods proposed to dispose of waste must be clearly outlined in applications for development.	A suitable waste strategy has been provided in compliance with the DCP and provisions of the Seniors SEPP.	Yes
3.3.8.1/Waste Water	Details of the methods proposed to dispose of waste water must be clearly outlined in applications for development	The development is to be provided with reticulated water and sewage. The availability of service has been confirmed by the Hunter Water Corporation.	Yes
3.3.9.1/Water Supply	Developments are required to comply with Hunter New England Area Health Service	The site is to be provided with a reticulated water supply.	Yes

Clause/Standard	Required	Proposed	Complies
	requirements for provision of a potable water supply.		
3.3.9.2/Electricity and Telecommunications	Developments will be required to be appropriately serviced, with details being provided from servicing authorities regarding availability.	The proponent has confirmed the availability of service by Ausgrid and Telstra.	Yes
3.3.10/Outdoor Lighting	Outdoor lighting details are to be provided with the development application.	Suitable details have been provided in compliance with the requirements of the Seniors SEPP. The requirements of Council's DCP are satisfied concurrently with the Seniors SEPP.	Yes
3.3.11/Fencing	Details of the type of fencing to be used, if any, is to be provided with applications for development. Such fencing must be in keeping with the rural and viticultural character of the Vineyards District.	Suitable details of landscaping and fencing have been provided in conjunction with the landscaping plans dated February, 2012 prepared by Terras Landscaping. The proposed Fencing complies with the requirements of Council's DCP.	Yes
3.3.12/Car Parking	<p>Car parking is to be provided consistent with Cessnock DCP 2009, Part C: General Guidelines, Chapter 1: Parking and Access.</p> <p>An assessment of the proposal based on 183 ILU's and a 40 room Aged care facility in conjunction with the ancillary uses on site will generate a demand for 323 car parking spaces</p>	<p>The development provides for 272 spaces.</p> <p>* breakdown of allocation of car parking is shown in the below table.</p>	<p>No</p> <p>* discussed below</p>

Clause 3.3.12 Car Parking

The proposal provides for 272 on site car parking spaces (HHH Architects Plan No 4066 DA – 2.04-D Feb 2012), which represents a shortfall of 51 spaces in accordance with Council's requirements. Council has determined the requirement for parking at 323 spaces in accordance with both the Seniors SEPP, and DCP requirements, as described by the attached table:

Proposed Use	SEPP and DCP rate	Per Unit/Floor space	Parking Requirement
Self Contained ILU's	0.5 spaces per bedroom	366 bedrooms	183 spaces
Aged care serviced apartments	1 space per 10 beds + 1 space per 2 employees + 1 ambulance	40units	7 spaces
Community Hall	1 space/5 seats	250 seats	50 spaces
Residential Bar/Lounge	1 space/7 sq m of Licensed floor area.	100 sq m	14 spaces
Administration	1 space/30 sq m GFA	30 sq m	1 space
Clinic facilities	1 space/25 sq m	50 sq m	2 spaces
Beauty Salon	1 space/20 sq m floor area	50 sq m	3 spaces
Bowling Green	30 spaces for the first green & 15 spaces for each additional green	1 green	30 spaces
Tennis Court	3 spaces per court. 1 space/3 employees or part.	1 Court + 1 employee	2 spaces
Swimming Pool	16 spaces per pool + 1 employee	1 pool + 1 employee	17 spaces
Putting Green	1 space per 25 sq m	50 sq m	2 spaces
Bocce/Croquet lawns	1 space per 25 sq m	50 sq m	2 spaces
Storage facility	1 space /300 sq m GFA	300 sq m	1 space
		TOTAL	323 spaces required

The proponent has argued that there will be significant cross-use between facilities whereby most residents will walk to the facilities provided. On the basis of the estimate made by the proponent, 60% of visits to ancillary facilities will occur from residents walking from their accommodation. The justification for the variation is not supported to the extent of 51 spaces on the following grounds:

- (i) The site is not centrally located and is not serviced by public transport. Visitors to the site will generate vehicle traffic in most instances in addition to the likely

service needs of the site. The car parking should therefore comply with the calculated requirements.

- (ii) The proposal offers a range of commercial services which are not nominated as exclusive to residents and which will generate commercial traffic. With a site population of approximately 400 residents, it is likely that commercial facilities such as the beautician and hairdresser, will need to be open to the wider market attracting vehicles from outside of the facility. The commercial facilities should therefore provide compliant car parking facilities.
- (iii) The overall provision of car parking does not include adequate consideration for traffic generated by the servicing needs of the residents and the maintenance of site facilities and extensive landscaping. There is therefore a need for service staff and maintenance parking throughout the facility in addition to on-street parking to accommodate visitors and service vehicles.

A variation of 51 spaces is not supported solely on the basis that residents will likely walk to the site facilities. As outlined, the site has extensive service oriented facilities and landscaping in addition to the residential components on the site, which in combination with physical isolation from public transport and convenient pedestrian access, requires compliance with the minimum calculated parking provisions.

A condition of development consent has been imposed on the draft determination notice requiring the provision of car parking in accordance with the minimum calculated parking requirement (323 spaces). It is considered that the additional parking can be contained within the site, without resulting in substantial amendments to the plans, or resultant substantial impacts.

(a)(iia) The Provision of any Planning Agreement that has been entered into under Section 94F, or any draft Planning Agreement that a developer has offered to enter into under Section 93F

No such agreement has been proposed as part of this application.

(a)(iv) The Regulations

The Regulations require the consent authority to consider the provisions of the Building Code of Australia (BCA). The proposal has demonstrated compliance with the BCA and is satisfactory in this regard.

(b) The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality

(i) Natural and Built Environment

The proposed development has been assessed, and it is considered that the application will not have a significant impact on both the natural and built environments. Specifically, the following issues have been addressed:

- **Noise Impacts**

The applicant submitted a Noise Impact Assessment in conjunction with the application, which assessed the impact of noise from surrounding existing land uses on the proposed development.

The subject site is surrounded by vineyards to the east, west and south, with vineyards also to the north separated by grazing land. 'Saddlers Creek' and 'Kelman's Estate' are immediately adjacent to the site. Several other vineyards were also considered as part of the acoustic assessment, however, some of these are not located immediately adjacent to the site.

The acoustic assessment states as follows:

'The existing noise environment is characterised by typical rural noise sources, including plant associated with farming, for example, tractors. The acoustic assessment notes that ambient noise was typical for a rural/farming area. General noise produced by wind and distant traffic from Cessnock was punctuated by occasional closer traffic noise and plant associated with farming/viticulture. It is critical to note that the noise sources considered as part of this assessment are already existing in the area.'

The relevant legislative framework for addressing noise is contained within the Protection of the Environment Operations Act 1997 and the Industrial Noise Policy (INP).

Noise monitoring and logging was undertaken on a number of occasions, and it is noted that monitoring was not able to be consistently achieved due to persistent rain over the monitoring peak period which resulted in the majority of harvesting operations being halted. Furthermore, rain noise made establishing background noise levels difficult, so monitoring results from the period were not included in the report. It is also noted that spraying operations were not taking place during the monitoring period.

The acoustic assessment concludes as follows:

'The noise impact at representative worst affected noise sensitive receivers has been predicted. Exceedances of the Intrusiveness Criteria of up to 23 dB(A) during the day and evening have been predicted. The maximum predicted exceedance at night is 19dB(A). It is critical to note that these exceedances are due to operations which typically occur for a few hours per fortnight between September and November, with the possibility of some spraying until April. Outside of these times noise produced from viticultural operations and expected to be minor.'

Furthermore, the noise sources considered are currently operational all across Hunter Valley and the predicted noise impact at the proposed development is considered to be typical of any residences situated close by to operational vineyards.

These results are considered to represent the worst possible case and do not take into account attenuation provided by mitigation.

It should be noted that the exceedances are predicted at the worst affected façade of the closest noise sensitive receivers. The receivers themselves would act as noise barrier resulting in a reduction of noise impact as you move further into the development'.

The acoustic assessment also provides recommendations for noise attenuation measures, including provision of a noise mound along the southern boundary of the site, provision of air conditioning in all residences to allow windows and doors to be closed if required, implementation of a management plan that will include resident education in relation to noise, and relocation of windows in the units along the southern boundary in order to minimise noise impacts.

It is considered that, subject to inclusion of the recommended noise mitigation measures outlined in the acoustic assessment, the proposed development will provide an acceptable environment for future residents. Any exceedances will be temporary, and the impact of such exceedances will be reduced through implementation of the noise mitigation measures. In the event the application is approved, conditions have been imposed on the draft determination notice requiring compliance with the recommendations of the acoustic assessment.

- **Traffic Impacts**

The applicant submitted a Traffic Impact Assessment in conjunction with the application, which assessed the likely traffic impacts of the proposal on the adjacent road network due to additional traffic and parking demand generated by the development.

The report concludes as follows:

‘This report has determined therefore that the proposed development can be supported from a traffic perspective as it will not have an adverse impact on the local road network and complies with all Council, RTA and Austroads Guidelines in regard to traffic impacts’.

Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 requires that the development application be referred to the Roads and Maritime Services (RMS) for comment, as it proposes the provision of 200 or more motor vehicles in association with the seniors living development, as specified within Schedule 3 of the SEPP.

Clause 104 requires Council to refer the application to the RMS for comment, and before determining the application, to take into consideration any submission that the RMS makes, the accessibility of the site concerned, and any potential traffic safety, road congestion or parking implications of the development.

Council’s Consultant Engineer, the RMS and the Hunter Regional Development Committee (HRDC), all provided comment on the proposal. The HRDC did not object to the proposal, subject to conditions being imposed on the notice of determination.

The RMS have noted that Marrowbone and Oakey Creek Roads are both local roads, and therefore, traffic related issues are required to be addressed by Council, taking into consideration the comments provided by the HRDC. Whilst no objection was raised to the proposal by the RMS and the HRDC, the following issues are noted and addressed:

Provision of on-site car parking

As noted in Section 8.0 of the report, the plans submitted in conjunction with the application show the provision of 272 on-site car parking spaces. This does not comply with the requirements of the Seniors SEPP or Cessnock DCP 2010. It is considered that, due to the lack of public transport in the area, compliant on-site car parking should comply with the relevant planning controls. In this regard, a condition of development consent has been imposed on the draft determination notice requiring the provision of car parking in accordance with the minimum calculated parking requirement (323 spaces). It is considered that the additional parking can be contained within the site, without resulting in substantial amendments to the plans, or resultant substantial impacts.

Provision of intersections

The HRDC did not support the initial application lodged with Council, as it proposed the construction of two (2) intersections on Marrowbone Road. The proposal has since been

modified and the current plans show the provision of one (1) intersection on Marrowbone Road, thereby satisfying the HRDC's concerns. It is further noted that the HRDC recommended that the intersection should be designed as a roundabout, and such roundabout would be desirably located opposite the access to the winery on the southern side of the site.

As outlined previously, the HRDC provide comments for Council's consideration, however, these comments are advisory only. In this instance, it is considered that the proposed intersection location is satisfactory.

It is noted that, at this stage, the HRDC do not support a reduction of the speed limits on both Oakey Creek Road and Marrowbone Roads from 80kmh to 60kmh. However, the applicant is required to lodge a separate application with the RMS for consideration following determination of the application, to reduce the speed limit. In the event such reduction is not support, the roundabouts on both Oakey Creek Road and Marrowbone Roads would need to be constructed to a standard capable of coping with traffic in an 80kmh speed environment. This may require some additional road works and widening, however, a condition has been imposed on the draft determination notice stipulating that any additional road widening be contained within the development site if it cannot be contained wholly within the existing road reserve.

No concerns were raised by the HRDC in relation to traffic generation or the road network's ability to cope with the increase in traffic. In it considered that the increased traffic generation on Mount View Road, Oakey Creek Road and Marrowbone Road will not cause the local road network to reach its capacity threshold.

In consideration of the above, the proposal is considered satisfactory in terms of traffic impacts.

- **Visual Impacts**

The applicant submitted a Visual Impacts Assessment in conjunction with the application, which assessed the potential visual and related amenity impacts of the proposed development.

The author of the Visual Impacts Assessment also provided advice to the developer, prior to development of the proposal, in order to advise on visual opportunities and constraints to inform the layout of the proposed development for the subject site.

The visual impact assessment methodology used by the author is aimed at addressing the two issues relating to impact assessment under the Environmental Planning and Assessment Act 1979, i.e., what is the nature and extent of the activity that causes visual effects on the environment and what is the importance of those effects.

The report concludes as follows:

'On the basis of the detailed assessment presented above, it is concluded that there are no unacceptable visual, streetscape or related amenity effects of the proposed development.'

'The proposed development is consistent with the character of the immediate and wider visual context of the site and is assessed to be consistent with the provisions of SEPP (HSPD) on the factors of compatibility with the site, streetscape, surrounding built and natural character, surrounding developments, built forms, scale, visual and related amenity'.

Following submission of the application, the applicant prepared photomontages showing the proposed development from three (3) locations close to the site. As part of this process, the author of the Visual Impacts Assessment assisted with the preparation of the photomontages.

Figure 7 (below) provides the photomontages submitted.



Figure 7: Photomontages of proposed development

In a statement submitted in conjunction with the photomontages, the author of the Visual Impact Assessment states as follows:

'My assessment provided with the DA predicted that there would be low overall visibility of the development from external viewing places such as those for which montages have been prepared.

The 3-D computer model of the buildings exists in the photomontages. However, it is behind the screening vegetation and as a result there is little if any of it to see. Because of the gentle topography of the site and the low viewing angles from the boundaries, a significant screen of vegetation will mask the development even at an early stage of maturity, as I predicted in my assessment report.

On the basis of both the report and the photomontages submitted in support of the application, it is considered that the proposal will not substantially change the visual character of the area, as the proposed development is single-storey in nature, provides for generous setbacks from all boundaries, and will be significantly screened from the surrounding locality.

- **Odour and Spray Drift**

The applicant submitted an Air Quality Assessment in conjunction with the application, which assessed the impact of odour and spray drift from surrounding existing land uses on the proposed development.

Odour

In order to assess odour impacts, an inspection of the surrounding activities in the near vicinity of the site was undertaken on 30 November 2011. A total of five (5) properties were assessed, including Kelman Estate vineyard, Saddlers Creek Vineyard, Ryans House vineyard, Iron Gate vineyard and Savannah Estate/Peterson's processing site.

The report concludes as follows:

'No large scale odour sources were identified as part of the inspections and all small sources identified were observed to have no observable odour emanating from them on the day of the inspection.'

Although there are metrological conditions that may exacerbate odour impacts should odorous emissions occur, the lack of any significant odour source suggests that adverse impacts are not likely to occur.

The potential impact associated with odour is considered to be insignificant'.

In consideration of the above, the proposal is considered satisfactory in terms of odour and associated impacts.

Spray Drift

Spray drift impacts were assessed in terms of the work practices occurring (based on observations and discussions) on the vineyards surrounding the development site. Furthermore, relevant literature was reviewed which highlighted a number of generalized buffer distances specifically prepared for the Pokolbin area, for example, Cessnock DCP 2010, and other areas throughout Australia.

The report concludes as follows:

'The potential for adverse impact associated with spray drift has been assessed based on advised vineyard operations. Assessment of potential impact was carried out following a literature review and consideration of information in the Cessnock Council DCP. All required setbacks in the DCP can be met with the addition of a 30m thick vegetative barrier along the southern boundary of the site.'

Assuming the vegetative barrier is appropriately designed and constructed, the impact associated with spray drift is considered insignificant.

In consideration of the above, the proposal is considered satisfactory in terms of spray drift impact. The required vegetated barrier referred to in the Air Quality Assessment has been

provided and is shown on the plans submitted to Council. The landscape species nominated for the landscaped mounds will include a range of endemic shrubs and trees which, when combined with the mound itself, are likely to reach a height of at least 12 – 17 metres.

In order to ensure that the barrier is maintained for the life of the development, a condition of consent has been imposed on the draft determination notice.

In consideration of the above, the proposal is considered satisfactory in terms of spray drift.

(ii) Social and Economic Impacts

As demonstrated by the above assessment, the proposed development is unlikely to have a significant impact on the social and economic conditions of the locality.

The proposed development will increase the population density within the area, which in turn, will result in positive economic benefits.

The application proposes a type of development which is needed within the locality, and it is therefore considered that it will result in positive social benefits.

(c) The suitability of the site

As demonstrated by the above assessment, the site is considered to be suitable for the proposed development. Whilst it is noted that the site is located within the vineyards district and this has been raised as an area of concern in the submissions/objections received by Council, it is also noted that a Site Compatibility Certificate was issued by the Director-General, and this Certificate stipulates that the '*site is suitable for more intensive development*' and '*the development is compatible with the surrounding environment*'.

Since the issuing of the Site Compatibility Certificate, the scale and density of the proposal has been reduced. It is considered that the proposal, as amended, is suitable for the subject site and the wider locality.

(d) Any submissions made in accordance with this Act or the Regulations

The Development Application was publicly exhibited in accordance with Cessnock DCP 2010 on two (2) separate occasions, and 104 submissions were received in total, 103 of which objected to the proposal.

The following discussion addresses the issues and concerns raised in the submissions, and provides a response to those issues and concerns:

1. Concern has been raised that the site is not suitable for the form of development proposed. Specifically, the following concerns have been noted:

- (i) The proposal does not comply with Council's statutory planning controls, and is inconsistent with the zone objectives and the current Vineyard Visioning exercise**
- (ii) The proposal is incompatible with the character of the vineyards district locality**
- (iii) The proposal reduced the amount of land available for wine production**
- (iv) The proposal will separate the different regions within the vineyard district**

- (v) **The proposal will adversely impact upon tourism, upon which, the local government area relies upon**
- (vi) **Permanent residential development is contrary to the strategic direction in the vineyards district**
- (vii) **Permanent residential development is 'disguised' as a retirement, aged-care facility, for which, there is no demand**
- (viii) **Site is not conveniently located close to the central business area of Cessnock**

Comment:

- (i) The site is zoned RU4 Primary Production Small Lots under the Cessnock LEP 2011 under which the development is prohibited. The proposal relies upon the Seniors SEPP, 2004 and a Site Compatibility Certificate to establish permissibility and to provide a framework of planning controls. The proposal is consistent with the planning framework established by the Seniors SEPP and the Site Compatibility Certificate. The provisions of the Seniors SEPP prevail over any inconsistency with Council's local planning controls.

The proposal is not inconsistent with the land use objectives of the RU4 zone to the extent that it will not withdraw any significant viticultural land from production and will not give rise to adverse land use conflict with the Kelman Estate residential development to the east or Saddler's Creek winery located to the south of the site due to the low density of development, substantial setbacks from site boundaries and extensive landscaping of the development.

The Vineyards Vision consultation undertaken by Council has yet to be concluded, however, the draft form of the document gives encouragement to the development in the following regard;

"Vision 2 – Ensure expansion of existing residential estates that incorporate leisure, tourism, and residential facilities as part of lifestyle niches in keeping with the character and amenity of the vineyards district provided they are built to a high standard"

The proposal is consistent with the stated vision.

- (ii) The character of the location is not typical of the broader vineyards district since it comprises an area adjacent to land zoned for urban uses characterised by the Kelman Estate. The site is not bounded by any commercial vineyard with existing viticultural land uses in the location being limited to the Saddler's Creek winery. The predominant character of the locality is that of low intensity farmland at the rural/urban interface. The predominant character of adjoining development is established by the scale of the Kelman Estate.
- (iii) The proposal does not comprise prime viticultural land in accordance with the 1993 NSW Dept of Agriculture land use classification maps and this has been confirmed by a site specific viticultural soils analysis provided with the application. In the absence of any superior evidence to the contrary, the development will not withdraw any prime viticultural land from production.
- (iv) The separation of Mt View and Pokolbin regions within the vineyards district is not contributed to by the proposal. The site lies at the fringe of the vineyards district and does not isolate the large rural land holdings adjoining and surrounding the site. The objection is based on a perception that the

development will 'drive a wedge ' between lands lying to the east and west of the Marrowbone and Oakey Creek Road intersection. It is argued that the existing land uses on either side of the road corridor are presently undifferentiated and that the development does not intrude on any notable distinctions in the existing land uses on either side of the road corridor.

- (v) The proposal is unlikely to impact upon potential tourist related development, and the location of the site at the rural/urban fringe is not historically subject to significant demand for tourist related development. Tourist related development is not well represented in the location as evidenced by the vacant, large scale rural holdings adjoining. The significant measures proposed to isolate the development within the site ensures that any future tourist related facility in the locality is unlikely to be adversely impacted by the development with respect to noise or visual amenity issues.
- (vi) The permanent residential use of the land is enabled by the provisions of the Seniors SEPP. The SEPP does not give rise to an undesirable precedent with respect to Council's broader strategic objective of controlling the permanent occupation of rural land. The SEPP does not rezone the land, therefore the remaining planning controls such as the restriction of the subdivision of land and density of residential development remain in force.
- (vii) The proposal cannot be characterised as a 'resort' or a tourist recreation facility. The Seniors SEPP ensures that the development cannot be occupied other than by seniors or persons with a disability and enforces this requirement by way of restriction as to use of the land. Council has imposed conditions of consent in compliance with the provisions of the Seniors SEPP.
- (viii) The locality of the development is argued to be unsuitable for seniors due to its isolation from the Cessnock town centre. The proposal complies with the provisions of the Seniors SEPP and Site Compatibility Certificate which make direct reference to access to services and facilities in support of senior residents. The location of the development is not isolated from the greater urban area, is served by direct road connection to the town centre via Mount View Road, a private shuttle bus service will be available for residents, and the site lies in close proximity to significant residential populations within the Kelman Estate, the Vines Estate and Vineyard Grove Estate.

2. Concern has been raised that the proposed development will create land use conflict and result in unacceptable impacts on surrounding areas. These impacts include:

- (i) Traffic (including public transport availability)**
- (ii) Infrastructure (including services)**
- (iii) Visual and amenity**
- (iv) Noise**
- (v) Spray drift and air quality**
- (vi) Bushfire**
- (vii) Vegetation**

Comment:

- (i) The impact of the development on the nature and capacity of the local road network has been considered by the HRDC, RMS and Council, and is sufficient

to accommodate the proposed development subject to the works prescribed by conditions of consent.

The proposal was accompanied by a Traffic Impact Assessment which confirmed that the development is not a significant traffic generating development. The proposal does not give rise to traffic movement through any adjoining residential precincts other than Mount View Road which presently accommodates residential traffic from Kelman Estate, the Vines Estate, Vineyard Grove Estate and the Stonebridge Estate. The development does not make a significant contribution to this overall traffic volume.

Limited access to the site via public transport is recognised by the proponent and is addressed by provision of a private bus service. Pedestrian and cycle connection to Mount View Road is to be enhanced by the civil works conditions of consent imposed on the draft determination notice.

- (ii) The impact of the development on public roads and infrastructure are equitably addressed by conditions of consent and Section 94 developer contributions. Objection has also been raised to the likely impact of additional residents on services and facilities such as medical services. The facility provides a basic level of service to residents and includes a medical clinic, aged care and assisted living facilities which will be appropriately staffed. To this extent, the development will reduce demand for these services in the broader community.
- (iii) The visual impact and amenity issues raised primarily by residents adjoining the site have been extensively dealt with in the submissions in support of the application and as discussed in Section 8 of this report.

The development does not represent an overdevelopment of the site or achieve a density of development ordinarily permitted under the Seniors SEPP. The proponent has reduced the scale of development directly in response to issues raised by the community and isolated the visual impact of the development within the site by the provision of extensive landscaping and mounding.

- (iv) The noise concerns raised in objections have been comprehensively addressed in Section 8 of this report. The proposal is considered satisfactory in terms of noise impacts.
- (v) Concerns relating to spray drift and air quality have been comprehensively addressed in Section 8 of this report. The proposal is considered satisfactory in terms of spray drift and odour.
- (vi) The proposal represents a 'sensitive' land use under the provisions of the Rural Fires Act, 1997. The proposal has been assessed by the NSW Rural Fire Service as Integrated Development for the purposes of Section 100B of the Rural Fires Act, 1997, and a Bush Fire Safety Authority has been issued for the development. The proposal is subject to the bush fire safety measures imposed by the NSW Rural Fire Service, and there are included in the draft notice of determination.
- (vii) The impact of the development on vegetation has been assessed with due regard for the impact of the establishment of a bushfire Asset Protection Zones (APZ) identified by the Bushfire Threat Assessment Report, and protection of a 2ha area of Endangered Ecological Community (EEC), Spotted Gum and Ironbark, on the site. The proposal is considered satisfactory subject

to the retention and protection of the area of EEC and vegetation linkage enhancements imposed as conditions of consent requiring additional planting and fencing along the western boundary in accordance with the report prepared by Terras Landscape Architects ref; Plan 8241.5, Revision B. Additionally, it is proposed to require establishment of a 10m wide vegetated buffer between the bushfire APZ and the EEC. Conditions are imposed with respect to ensuring all recommendations of the Ecological Assessment prepared by Peak Land Management, July 2001 are complied with, including requiring submission of a Vegetation Management Plan for the ongoing monitoring of the retained area of EEC.

3. Concern has been raised in relation to the Site Compatibility Certificate, as follows:

- (i) The Certificate was issued in error because of the nature of the adjoining land, i.e., Kelman Estate**
- (ii) Inconsistent with the provisions of the Seniors SEPP**
- (iii) It specifies an incorrect development description**

Comment:

- (i) The Site Compatibility Certificate issued by the Director-General is in accordance with Clause 24 of the Seniors SEPP, which stipulates that such Certificate is required, as the development is proposed to be carried out on land that adjoins land zoned primarily for urban purposes. Kelman Estate is zoned R2 under Cessnock LEP 2011, and is therefore categorised as 'urban'. The Certificate has not been issued in error.
- (ii) As outlined in Section 8 of the report, the application complies with all relevant requirements of the Seniors SEPP, with the exception of car parking. The non-compliance is not supported and therefore, in the event the application is approved, a condition of consent has been imposed on the draft determination notice requiring the submission of amended plans showing a total of 323 car parking spaces being provided on the site.
- (iii) Clause 24(3) of the Seniors SEPP states as follows:

Nothing in this clause prevents a consent authority from granting consent to a development application to which this clause applies to carry out development that is on a smaller (but not larger) scale than the kind of development in respect of which a site compatibility certified was issued.

The Site Compatibility Certificate issued on 10 January 2011 relates to the initial application that was lodged with Council, i.e., 201 retirement dwellings, a 40 apartment youth care facility, 80 aged care apartments, 20 serviced apartments, a community centre and recreational facilities, and associated infrastructure and amenities.

The amendments to the application reduced the density of development, and Clause 24(3) of the Seniors SEPP therefore maintains the validity of the Certificate.

4. Concern has been raised that the proposal was not comprehensively exhibited

Comment:

The application was publicly exhibited on two (2) occasions in accordance with Cessnock DCP 2010. Specifically, the initial application was exhibited, and following receipt of the amended plans, the application was re-exhibited. As part of the exhibition process, letters were sent to interested stakeholders, a sign was placed on the site and a notice was placed in the local newspaper.

It is considered that the application has been comprehensively exhibited.

- 5. Concern has been raised that the most required component of the facility will not be built until the final stages, and the construction of the development will take too long**

Comment:

The applicant has advised that it is proposed to stage the construction of the project. It is estimated that each stage will take approximately 6 – 9 months to construct, depending on market demand. In total, it is proposed to construct 19 stages, however, some stages will be constructed concurrently. Therefore, the applicant has estimated that it will take approximately 10 years to complete the development.

It is acknowledged that the 20 assisted living serviced apartments, and aged care facility incorporating 40 rooms will be the last stages to be constructed. However, the development in its entirety is permitted by virtue of the Site Compatibility Certificate issued by the Director-General, and does not rely upon any specific part of the proposal being constructed initially.

- 6. Concern has been raised that the design of the development is inconsistent with 'country' development, and density is too high**

Comment:

As outlined in Section 8 of the report, it is considered that the proposal will not substantially change the visual character of the area, as the proposed development is single-storey in nature, provides for generous setbacks from all boundaries, and will be significantly screened from the surrounding locality, as evidenced in the photomontages submitted in support of the application.

The density of the proposed development is considered acceptable for the area, and will assist in maintaining the rural character of the locality, due to generous landscaped areas, inclusion of water bodies, and substantial setbacks provided.

All proposed buildings within the development are single-storey. Whilst they have not been designed in a traditional 'country' style, they are considered to display architectural quality, and have been designed to address sustainability principles. Having due regard to the fact that the site will not be highly visible from adjoining public areas, and that the proposal is low density, the design of the development is considered acceptable.

- 7. Concern has been raised that certain residents within the locality have made significant financial and lifestyle commitments to the area on the basis of it remaining as a vineyard district, and if approved, 'Kelman Estate' will become part of Cessnock Suburbia**

Comment:

Objection has been raised to the proposal on the basis that it results in the extension of residential development onto vacant rural land which is considered a valuable part of the setting for the Kelman Estate by its residents. The proposal results in a density of 4.3 dwellings per hectare which is below the density characteristic of “suburbia” or new urban land release areas at approximately 10 dwellings per hectare. The density of development is deliberately below that permitted under the Seniors SEPP in response to the rural context of the site. The expectation that the site would remain vacant rural land in perpetuity is unrealistic. The proposal recognises the likely visual impact on the views of a proportion of residents within the Kelman Estate and substantial measures have been established to ameliorate the visual impacts as discussed in Section 8 of this report. The extensive landscaping and control over the scale and bulk of the buildings, results in a scale of development which cannot be characterised as an extension to ‘suburbia’.

8. Concern has been raised that the AECOM Report submitted with the report is inadequate

Comment:

Objection has been raised to the adequacy of the noise impact assessment provided by AECOM. The report is based upon an accepted calculation criteria and was based on survey work of vineyard activity undertaken in conjunction with a viticulture consultant (Allynbrook Viticulture consultants) to establish the range and magnitude of activities likely to impact upon the site. The report provides evidence of satisfactory examination of distance attenuation, topography, ground absorption and weather conditions. In addition, the report recognises that short term activities in a vineyard are likely to produce exceedances, and amelioration measures have been developed based on a conservative modeling of noise generated during harvesting and spraying. The noise impact of harvest and spraying remains below the 50 – 55 dB(A) noise levels prescribed by the EPA standard as likely to cause sleep disturbance.

Supplementary comment from AECOM in May 2012 in light of criticism of the report confirms that night spraying on the adjacent vineyard will not result in any predicted exceedances of the EPA sleep disturbance criteria and is therefore unlikely to result in noise complaints concerning night spraying.

It should be noted that a survey of developments in proximity to vineyards throughout the vineyards district indicates that tourist accommodation is commonly located 100 – 150 metres from a working vineyard. In such instances, a landscaped noise barrier or alterations to the design of the building to control noise intrusion are not prescribed measures required by Council’s planning controls. The noise control measures recommended by AECOM have been imposed as conditions of consent and are considered to satisfactorily address the issue.

9. Concern has been raised that the proposed development does not comply with the requirements of the Seniors SEPP in terms of design and location.

Comment:

As outlined in Section 8 of the report, the application complies with all relevant requirements of the Seniors SEPP, with the exception of car parking. The non-compliance is not supported and therefore, in the event the application is approved, a condition of consent has been imposed on the draft determination notice requiring the

submission of amended plans showing a total of 323 car parking spaces being provided on the site.

(e) The public interest

The public interest is served through the detailed assessment of this Development Application under the applicable legislations, State Environmental Planning Policies, and local planning controls. Based on Council's assessment of the application, it is considered that the proposal serves the broader public interest.

9.0 INTERNAL REFERRALS

The application was referred to the following internal departments of Council for comment:

Department	Comment/s
Community Planning Co-ordinator	<p>Concern raised, as follows:</p> <ul style="list-style-type: none"> • Most required part of development, i.e., Stages 18 and 19, will be the last component of the proposal to be constructed; • Joint dining room is not connected to the buildings it proposes to service, thereby exposing elderly residents to potential adverse weather conditions; • Affordable Housing Policy to be developed for the 183 ICU's and 20 assisted living serviced apartments. To be addressed as a condition of consent on the draft determination notice.
Consultant Development Engineer	<p>No objection to the following components of the proposal:</p> <ul style="list-style-type: none"> • on-site detention and stormwater drainage; • flooding (site is not affected by flooding) <p>Concern raised in relation to the adequacy of the traffic impact assessment, however, the NSW Roads and Maritime Services (inclusive of the Hunter Regional Development Committee), have raised no objection to the proposal, subject to conditions.</p>
Traffic Engineer	No objection to the proposal, subject to conditions.
Ecologist	Refer to comments under Section 8.1 of this report.
Environmental Health Officer	No objection to the proposal, subject to conditions.
Manager Environment and Waste	No objection to the proposal, subject to conditions relating to the provision of waste services and sustainability.
Strategic Asset Planning Manager	<ul style="list-style-type: none"> • Concur with Consultant Development Engineer's comments that the site is not affected by flooding; • Single point of vehicular access to both Marrowbone and Oakey Creek Roads is supported; • Applicant to negotiate with 'Rover Coaches' to ascertain whether bus services could be extended to service the site, or alternatively, shuttle bus service to be provided. • Conditions to be imposed, including provision of a DDA compliant bus shelter, and shared off-road facility/pathway.
Strategic Planning Manager	<p>Objection raised, as follows:</p> <ul style="list-style-type: none"> • Proposed development is inconsistent with the Cessnock City Wide Settlement Strategy, Cessnock LEP 2010, general principles established in the Lower Hunter Regional Strategy

	<p>for orderly urban development, and zone objectives and permissibility within the Vineyards District;</p> <ul style="list-style-type: none"> • Proposed development will undermine Council's planning framework and establish an undesirable precedence; • Site is not suitable due to its location, and the inadequacy of support services and facilities, and the visual and practical impacts on the wider Vineyards Districts rural character; • Most required part of development, i.e., Stages 18 and 19, will be the last component of the proposal to be constructed, and may not eventuate; • Use of the SEPP (Housing for Seniors or People with a Disability) 2004, is not appropriate in this instance, as any benefit cannot, on balance, be adequately established, and the proposal would have a disproportionate impact on Council's planning policies and instruments, which is not warranted or appropriate.
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10.0 EXTERNAL REFERRALS

10.1 External Statutory Authorities

The application was referred to the following external statutory authorities for concurrence/comment, as relevant:

Agency	Comment/s
NSW Rural Fire Service	No objection to the proposal, concurrence issued.
NSW Office of Water	No objection to the proposal, applicant not required to obtain a Controlled Activity Approval, as proposal not lodged as Nominated Integrated Development. This will be pursued separately by the applicant.
NSW Roads and Maritime Services	No objection to the proposal, subject to conditions. Also referred to the Hunter Regional Development Committee, and considered satisfactory, subject to conditions.
NSW Office of Environment and Heritage	No objection to the proposal, subject to conditions.

10.2 External Groups and Agencies

The following comments have been received from external groups and agencies, and it is noted that these agencies and groups do not have a statutory role in the assessment of the application. Notwithstanding, where appropriate, comments have been addressed throughout the report, and/or in the draft determination notice.

Agency	Comment/s
Hunter New England Health	No objection to the proposal.
Department of Ageing, Disability and Home Care	Comments sought on numerous occasions. No response received.
Hunter Water Corporation	Have advised that the site can be serviced, however, the applicant's preliminary servicing strategy was not prepared in accordance with Hunter Water's Servicing Strategy template. To be addressed as a condition of consent on the draft

	determination notice.
Ausgrid	Site can be serviced, subject to resolution of issues relating to the location of power lines. In the event the application is approved, to be addressed following the determination and prior to the issue of a Construction Certificate.
Mindaribba Local Aboriginal Land Council	Comments sought on numerous occasions. No response received.
Rover Motors	Comments sought on numerous occasions. No response received.
Hunter Valley Wine Industry Association	Object to the proposed development on the basis of increased residential development in the vineyards district and subsequent impact on existing infrastructure, and non-compliance with Council's statutory land use planning framework.

11.0 SECTION 94 CONTRIBUTIONS

The proposal will intensify the use of existing resources and add incrementally to the demand by older residents for public amenities and services. It is therefore reasonable for Council to levy contributions on housing built under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, in accommodating the increased demand for community facilities and additional demands on stormwater and traffic management infrastructure.

The Section 94 Contributions have been calculated from Council's adopted Section 94 Residential Contributions Plan. The contribution has been based on a two bedroom residential unit, and has therefore been calculated on a per Independent Living Unit (ILU) basis as follows:

Calculations	Per ILU
District Open Space	\$858.00
District Community Facilities (Halls)	\$525.00
District Community Facilities (Libraries)	\$141.00
District Community Facilities (Bushfire)	\$40.00
District Roads – Rural Areas	\$654.00
Studies (Plan Preparation)	\$49.00
Plan Administration	\$188.00
Total S.94 Contribution – Per ILU	\$2455.00

A condition of consent requiring payment of the Section 94 Contribution prior to issue of a Construction Certificate for each stage of development, has been imposed on the draft determination notice. Payment of the contributions will occur at the following stages of development of the site:

- Stage 2 – Contribution of **\$46,645** for the construction of 19 ILU's, 1 of which is to be used as a temporary central facilities area, pool and cabana, vehicular entrance, bulk earthworks, and associated drainage and roads;
- Stages 3 and 4 – Contribution of **\$31,915** for construction of 13 ILU's, establishment of bocce green, bulk earthworks, and associated drainage and roads;
- Stage 5 – Contribution of **\$34,370** for construction of 14 ILU's, establishment of bowls green, construction of central facilities building, bulk earthworks, and associated drainage and roads for Stages 5 – 7;

- Stages 6 and 7 – Contribution of **\$29,460** for the construction of 12 ILU's, tennis court, cabana and roads;
- Stages 8 and 9 – Contribution of **\$56,465** for construction of 23 ILU's, roads and drainage;
- Stages 10 and 11 – Contribution of **\$49,100** for construction of 20 ILU's, bulk earthworks, and associated drainage and roads for Stages 12 - 14;
- Stages 12 and 13 – Contribution of **\$68,740** for construction of 28 ILU's, caravan parking area, and associated drainage and roads;
- Stages 14 and 15 – Contribution of **\$68,740** for construction of 28 ILU's, and associated drainage and roads;
- Stages 16 and 17 – Contribution of **\$63,830** for construction of 26 ILU's, and associated drainage and roads.

Total Section 94 Contribution payable at the completion of Stage 17 of the development is **\$449,265**.

No contributions have been levied on Stages 18 and 19 which involve the construction of 20 assisted living serviced apartments and an aged-care facility incorporating 40 rooms and associated buildings.

12.0 CONCLUSION

The Development Application has been assessed in accordance with Section 79C(1) of the Environmental Planning and Assessment Act 1979 and all relevant instruments and policies.

With the exception of the provision of on-site car parking, the application complies with all relevant requirements of the Seniors SEPP 2004, and all other relevant planning controls. The density of the development has been reduced from the application initially submitted to Council, and the plans submitted provide for generous setbacks, a densely planted landscape buffer, retention of significant vegetation, and planting of additional landscaping within the site.

The development proposed is of a type that is required within the locality, and one which the Seniors SEPP 2004 facilitates through the ability to issue a Site Compatibility Certificate that permits the development on the subject site. Whilst acknowledging that the site is located within the vineyards district, it is also noted that the Site Compatibility Certificate issued by the Director-General stipulates that the '*site is suitable for more intensive development*' and '*the development is compatible with the surrounding environment*'.

Since the issuing of the Site Compatibility Certificate, the scale and density of the proposal has been reduced. The applicant has provided numerous reports in conjunction with the application and it is considered that these reports are comprehensive and satisfactorily address the issues in question.

In conclusion, it is considered that the application is worthy of support, and it is therefore recommended that the application be approved, subject to conditions.

13.0 RECOMMENDATION

That the Hunter and Central Coast Joint Regional Planning Panel (JRPP) approve Development Application 8/2011/415/1 proposing demolition of existing structures and construction of a seniors housing development comprising 183 single-storey independent living units, 20 assisted living serviced apartments, an aged care facility incorporating 40 rooms, communal facilities, dwelling to be utilised as a manager's residence, and associated earthworks, landscaping, roads and drainage infrastructure pursuant to State Environmental Planning Policy (Housing For Seniors or People with a Disability) 2004, to be constructed over nineteen (19) stages at Lot 1 DP 549647 - 28 Marrowbone Road, Lot 15 DP 1031577 - 69 Oakey Creek Road and Lot 19 DP 251809 - Oakey Creek Road, Pokolbin, subject to the conditions contained in Attachment C.

14.0 ATTACHMENTS

- A. Site Compatibility Certificate, dated 10 January 2011.
- B. Plans of the proposal
- C. Draft notice of determination