

JOINT REGIONAL PLANNING PANEL
Hunter and Central Coast

Panel Reference	2016HCC055
DA Number	DA/1443/2016
Local Government Area	Lake Macquarie
Proposed Development	Seniors Housing
Street Address	14 Halyard Way, Belmont
Applicant/Owner:	Bob Lander - Tattersall Lander Pty Limited / W H Hudson Developments Pty Limited
Number of Submissions	Twenty four (24) – representing over forty (40) local residents
Recommendation	Refusal
Regional Development Criteria	Private Infrastructure and Community Facility that has a capital investment value of more than \$20 million.
List of all relevant s79C(1)(a) matters	Lake Macquarie Local Environmental Plan 2014 Lake Macquarie Development Control Plan 2014
List all documents submitted with this report	Attachment 1 – Proposed Reasons for Refusal Attachment 2 – Plans of Development Attachment 3 – Clause 4.6 Variation – Height of Buildings Attachment 4 – Letter from Crown Lands Attachment 5 – Comments from Council’s Development Planner Flora & Fauna Attachment 6 – LMCC Request for Additional Information 16 November 2016 Attachment 7 – Plans of possible Amended Scheme
Report by	Andrew Leese, Senior Development Planner, Lake Macquarie City Council

Executive Summary

Date Lodged: 8 September 2016
(Additional information request sent 16 November 2016)

Submission Period: 19 September 2016 to 10 October 2016 *

* It is noted that a Species Impact Statement (SIS) was required to be submitted with the application. It was not. The lodgement of a SIS would have resulted the development being Advertised Development under the *EP& A Act 1979*.

Zoning: E2 Environmental Conservation
E4 Environmental Living

Approval Bodies: Mine Subsidence Board
NSW Rural Fire Service
NSW Office of Water*
Office of Environment and Heritage *

* The applicant has not identified the DA as being Integrated Development with these Authorities.

Referral Agencies: Hunter Water Corporation
Ausgrid
Transgrid
RMS
NSW Police
Crown Lands

CIV: \$27,500,000

Précis

The site is located at the northern end of Belmont, abutting the suburb of Valentine on the eastern side of Lake Macquarie. To the north and east of the subject site is mostly vegetated land, with various environmental zones. Directly to the west is land owned by LMCC which has a RE1 Public Recreation zoning. To the south is low density residential development, in a estate that was established in the 1990s.

The site is an irregular shape and has an area of over 300,000m²/30 hectares.

It is also noted that part of the required APZ is located on the neighbouring north eastern property (of which consent has been granted), there are a number of power lines and associated easements that dissect the site. A Council drainage easement and a Crown road, that provides access to the residential property at 71 Croudace Bay Road, Valentine also run through the area to be developed.



Figure 1 – Site Plan

The site is generally timbered, with some cleared areas. There are also areas of dumped refuse/waste given its proximity to residential areas and the past use of the western neighbour as a Council waste management facility (tip).

Belmont Public Hospital is less than 1km to the south of the site and retail areas of Valentine and the larger centre of Belmont are both approximately 1.5km to the north and south respectively.



Figure 2 - Ariel Photo of locality

The development is not permissible under the sites zoning (or under *State Environmental Planning Policy Housing for Seniors and People with Disabilities - SEPP HSPD*) and is only permissible by virtue of clause 7.12 of the LMLEP 2014. The clause reads as follows:

7.12 Development for the purpose of seniors housing

- (1) The objective of this clause is to maintain for a certain period the opportunity for development for the purpose of seniors housing in certain locations.
- (2) Despite any other provision of this Plan, development consent may be granted to the following development:
 - (a) a hostel (within the meaning of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*),
 - (b) a residential care facility,
 - (c) serviced self-care housing (within the meaning of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*) if the consent authority is satisfied that the housing will be provided:
 - (i) for people with a disability, or
 - (ii) in association with a residential care facility, or
 - (iii) as a retirement village (within the meaning of the *Retirement Villages Act 1999*).
- (3) Development consent must not be granted under subclause (2) unless the consent authority is satisfied that:
 - (a) the land is eligible land, and
 - (b) the land is of a sufficient size to accommodate at least 70 dwellings, and
 - (c) the land has frontage to a sealed public road that provides access to nearby urban areas, and

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

(4) This clause ceases to apply 2 years after the commencement of this Plan.

(5) This clause extends to a development application made but not finally determined before this clause ceases to apply.

(6) In this clause, *eligible land*, means land on which development referred to in subclause (2) was permissible immediately before this Plan commenced.

This clause and compliance/non-compliance with its provisions will be discussed below under LEP considerations.

PROJECT DESCRIPTION

Tattersall Lander Pty Limited lodged the application. At this time the proposed operator is not public knowledge. The development has a capital investment value of over \$27,000,000.



Figure 3 – Development Footprint – site + APZs

The application seeks approval for the following:

- Clear the development area and excavation works;
- Construction of 118 units, generally in blocks of 4, in a two storey arrangement making use of the topography/cut and fill;

- Construction of a community hall, required roads/paths/landscaping and drainage;
- Parking for twenty (20) visitor's cars; and
- Associated APZs which extend up to 100 metres around the development.

It is also the applicant's intention to stage the development. Five (5) stages are proposed as follows:

Stage 1 – community building/chapel and 24 units

Stage 2 – 22 units

Stage 3 - 24 units

Stage 4 – 24 units

Stage 5 – 24 units

The proposed development is located in the south-western part of the site, with all vehicular access from Halyard Way, with an additional emergency exit/entry directly to Croudace Bay Road (State Route B89).

The 118 units are to be built in twenty nine (29) buildings with four (4) units and one (1) building with two (2) units. The development will have an internal road network with the perimeter road forming part of the APZ.

No detailed plans of the community hall were lodged, so no details can be provided of its facilities.

THE ASSESSMENT

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

SECTION 79C: POTENTIAL MATTERS FOR CONSIDERATION

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

State Environmental Planning Policy (Infrastructure) 2007

The development is also on land that is considered to satisfy *clause 101 – development with frontage to classified road* of the Policy. Whilst the development is orientated to a local road, it is considered that the Land the development is located on, fronts a classified road. In this regard, the matters for consideration at clause 101(1) & (2) have been taken into consideration. In this regard, Council is satisfied that the proposal does not conflict with these clauses of the Policy.

The application was also considered with regard to *clause 102 – impact of road noise or vibration on non-road development*. Under this clause, the proposal is not considered to conflict with the guideline “*Development Near Rail Corridors and Busy Roads –Interim Guideline*” published by the Department of Planning 2008.

Under clause 104, the scale of proposal does not trigger Traffic Generating Development as defined at Schedule 3 of the Policy.

The proposal is deemed consistent with the Policy.

State Environmental Planning Policy No. 55 – Remediation of Land

This SEPP aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

The subject site is identified as being adjacent to a disused Council tip. As such Council sought at pre-DA meetings that contamination on the site should be investigated. No contamination report was lodged. The applicant has indicated in their SEE that “Further geotechnical reports shall address this issue and this is specifically stated in the attached geotechnical report.”

The Report on Geotechnical Investigation prepared by Cardno lodged with the application makes no notations on contamination, except identifying the presence of uncontrolled fill and dumped household and building waste – usual triggers of a contamination assessment. A contamination assessment was sought in the additional information request dated 16 November 2016.

State Environmental Planning Policy No. 71 – Coastal Protection

The site is not located within the Coastal zone.

State Environmental Planning Policy (Building Sustainability Index –Basix) 2004

The development application is not supported by any Basix Certification.

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

While this SEPP is not an applicable EPI to the development, LMCC has been consistent in using this SEPP’s controls as a guideline for the acceptability of senior’s developments where they are permissible under a Council EPI, as Council does not have specific DCP controls for Seniors Living. The applicant was made

aware of this at the several pre DA meetings held, but provided no comparison of the development with the relevant SEPP clauses (Clause 26 – Location and Access of Facilities, Clause 33-39 Design Principles, Controls in Clauses 40 and 50 and building standards contained in *Schedule 3 - Standards concerning accessibility and useability for hostels and self-contained dwellings*).

Generally a comparison with the SEPP provisions is undertaken and would be provided as an attachment to this report. As these matters have not been addressed this comparison was not undertaken by Council staff. The grounds for refusing this application are so numerous that planning staff have not assessed the application against applicable parts of the SEPP.

Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)

Clause 2.2 Zoning of land to which Plan applies

The subject site is zoned E2 Environmental Conservation and E4 Environmental Living. Surrounding lands are zoned:

- R2 Low Density Residential;
- RE1 Public Recreation; and
- E3 Environmental Management.

No portion of the site has been identified for acquisition by Council. (It is noted though that in the recent past there was a road reservation through the southern part of the lot which has since been removed.)

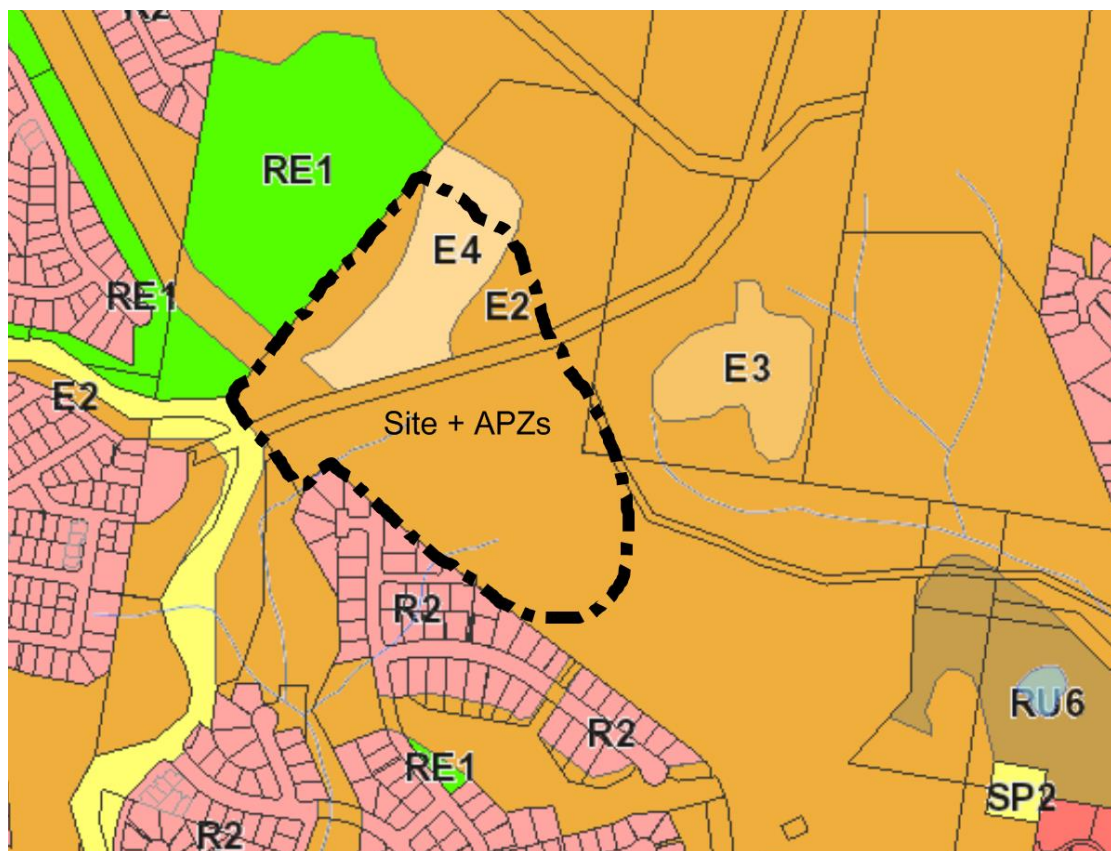


Figure 4 - Extract from Lake Macquarie Local Environmental Plan 2014 Zoning Map

Clause 2.3 Zone objectives and Land Use Table

As noted above, permissibility is conferred under clause 7.12 of the LMLEP 2014, which is discussed below. Notwithstanding this, the proposal has been considered with regard to the relevant objectives of the E2 Environmental Conservation and E4 Environmental Management Zones:

Zone E2 Environmental Conservation Zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.

Planning Comment: The proposal fails to satisfy this objective given the adverse impact on the high ecological values of the site and surround area.

- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

Planning Comment: The proposal fails to satisfy this objective as the proposal will damage and or destroy areas of high ecological value.

- To conserve, enhance and manage corridors to facilitate species movement, dispersal and interchange of genetic material.

Planning Comment: The proposal fails to satisfy this objective as the proposal will have an adverse impact on the local ecological corridor thus reducing species movement, dispersal and interchange of genetic material.

- To encourage activities that meet conservation objectives.

Planning Comment: The proposal fails to satisfy this objective as the proposal fails to protect and conserve land zoned E2 Environmental Conservation with high ecological value and important connectivity contribution. These values include the important link the site acts as between Green Point and other large areas of native vegetation/bush north of the site that extend north to Warners Bay and connect to areas that extend to the coast between Redhead and Dudley.

- To enhance and manage areas affected by coastal processes.

Planning Comment: The site is not affected by coastal processes, accordingly this objective is not applicable to this development.

Zone E4 Environmental Living Zone

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

Planning Comment: The proposal fails to satisfy this objective as the proposal will have a high impact on the ecological value of the site.

- To ensure that residential development does not have an adverse effect on those values.

Planning Comment: The proposal fails to satisfy this objective as the development will have a high impact on the ecological value of the site.

- To protect, enhance and manage corridors to facilitate species movement, dispersal and interchange of genetic material.

Planning Comment: The proposal fails to satisfy this objective as the proposal will have a high impact on the ecological value of the site, in particular an adverse impact on the critical ecological corridor that runs through the site.

- To encourage rehabilitation and conservation of environmentally important land.

Planning Comment: The proposal fails to satisfy this objective as the proposal will fail to rehabilitate and conserve land zoned E4 Environmental Conservation with high ecological value and important connectivity contribution.

Clause 2.4 – 4.2B

Not applicable.

Clause 4.3 Building heights

The maximum height prescribed for the subject site by the height of buildings map is 5.5m.

The building will exceed 5.5 metres in height from existing ground levels.

The development seeks consent for the erection of buildings with a maximum height of 8m (as identified in lodged plans) above existing ground level. In this regard, the consent authority must take into consideration whether the height is appropriate for the locality and to ensure that the building height encourages high quality urban form. In this regard an objection under Clause 4.6 is submitted for consideration.

Clause 4.4 – 4.5

Not Applicable

Clause 4.6 Exceptions to development standards

The development proposes a maximum building height which exceeds the 5.5m maximum building height identified by height of buildings map. A written submission under clause 4.6 has been considered below. A full copy can be found at Attachment 3.

1) *The objectives of this clause are as follows:*

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Applicant's Comment:

... The reason for this request is that the topography of the site is such that in reality, the efficient use of this site requires two storey building and it is specifically noted that two storey building are not unusual throughout Belmont and the LMCC LGA overall.

The clause 4.3 Height of Building is not excluded from this clause and it is considered that the proposal in its current form will provide much needed

seniors housing in this location and will be complimentary to the existing nearby residential developments. Relaxing the height clause shall allow for a better outcome of this development and the community as a whole. The building height clause (4.3) is both unnecessary and unreasonable and the relaxation of this clause will not give rise to any matters of state or regional significance.

Planning Comment: The proposal is for a new seniors living development. The proposed development will exceed the maximum building height prescribed by Clause 4.3 Height of Buildings by 3.5m or 45% having an overall building height of 8m. The building height is measured from existing ground level to the top of the proposed roofs. A 45% variation is a significant percentage variation.

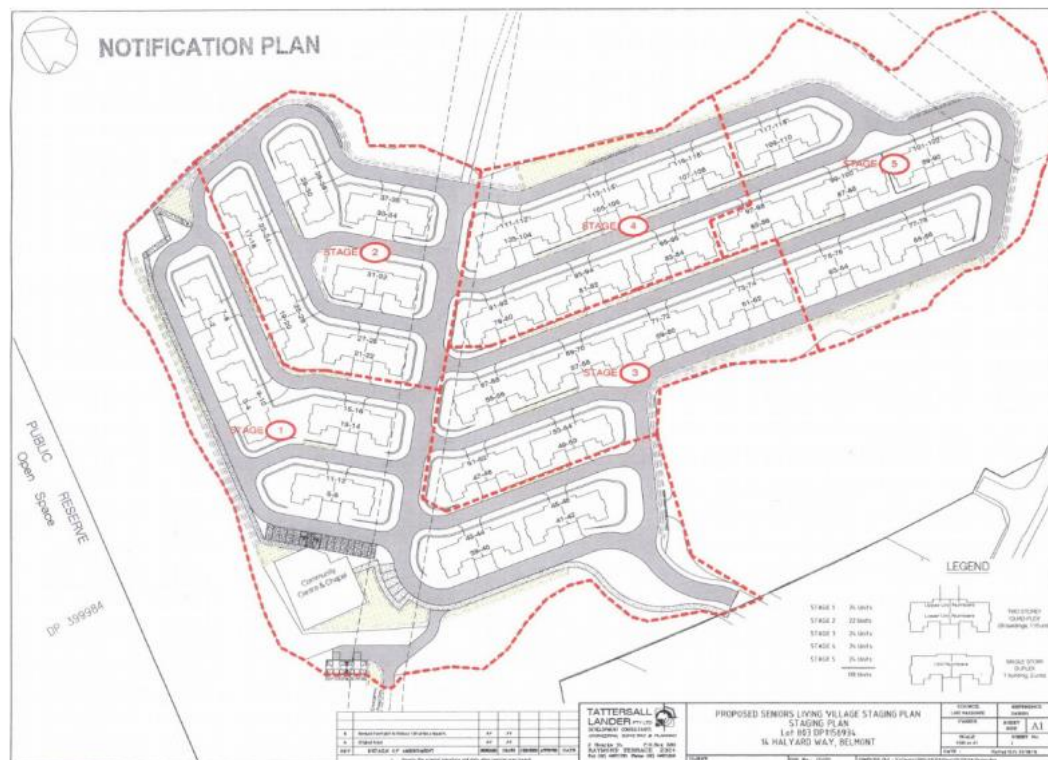


Figure 5 – Dwelling Layout

- 2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Planning Comment: Clause 4.3 Height of Buildings is not expressly excluded.

- 3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

- b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Planning Comment: No environmental planning grounds have been presented by the applicant to justify contravening the development standard.



Figure 6 – Elevations / Cross Section of standard proposed building.

- 4) Development consent must not be granted for development that contravenes a development standard unless:
- a) the consent authority is satisfied that:
 - i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - b) the concurrence of the Secretary has been obtained.

Comment: The applicant has lodged a written request requesting a variation of the height (as required in sub-clause (3)). Council has delegation for variation of height of buildings (PS 08-003).

The proposal is, however, inconsistent with the objectives of the zone and the objectives of the height control, which are:

- (a) to ensure the height of buildings are appropriate for their location,
- (b) to permit building heights that encourage high quality urban form.

On this basis the application fails the provisions of clause 4.6 and a variation to the height control can not presently be supported.

Clause 5.1 – 5.8

Not Applicable

Clause 5.9 Preservation of Trees or vegetation

Refer to comment provided within Lake Macquarie Development Control Plan 2014 Consideration.

Clause 5.9AA Trees or vegetation not prescribed by development control plan

Not Applicable

Clause 5.10 Heritage conservation

There are no identified heritage items or locations associated with the subject site. The site is not identified as containing a sensitive Aboriginal Landscape. Further consideration of this matter is provided in Section 2.15 Aboriginal Heritage of the Lake Macquarie Development Control Plan (LM DCP) 2014. There are no items of European or Natural heritage identified pursuant to Schedule 5 Environmental heritage.

Clauses 5.11 – 6.5

Not applicable.

Clause 7.1 Acid sulfate soils

The development site has not been identified as being within the Acid Sulphate Soils zone.

Clause 7.2 Earthworks

Earthworks are required to provide suitable building platforms for the proposed development.

Earthworks proposed as part of the development would not adversely affect adjoining properties amenity subject to compliance with Council's standard conditions on vibrations and a suitably prepared construction traffic management plan (CMP).

However, the extent of fill/excavation which includes areas with 3-4.5m of fill and 6-7 metres of excavation greatly exceeds Council's desired 1m maximum cut or fill outside building footprints and 3-4m within building footprints. Council's ecologist have also expressed concerned with the extent of cut and fill on surrounding flora and fauna (root impacts) and impact on nearby water catchments. Further detailed consideration of these matters is provided throughout the report.

Clause 7.3 Flood Planning

The subject site is not identified as containing any land that is located below the flood planning level as identified in the flood planning maps.

Clauses 7.4 – 7.11

Not applicable.

Clause 7.12 Development for the purpose of seniors housing

The clause reads as follows:

7.12 Development for the purpose of seniors housing

- (1) The objective of this clause is to maintain for a certain period the opportunity for development for the purpose of seniors housing in certain locations.
- (2) Despite any other provision of this Plan, development consent may be granted to the following development:
 - (a) a hostel (within the meaning of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*),
 - (b) a residential care facility,
 - (c) serviced self-care housing (within the meaning of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*) if the consent authority is satisfied that the housing will be provided:
 - (i) for people with a disability, or
 - (ii) in association with a residential care facility, or
 - (iii) as a retirement village (within the meaning of the *Retirement Villages Act 1999*).
- (3) Development consent must not be granted under subclause (2) unless the consent authority is satisfied that:
 - (a) the land is eligible land, and
 - (b) the land is of a sufficient size to accommodate at least 70 dwellings, and
 - (c) the land has frontage to a sealed public road that provides access to nearby urban areas, and
 - (d) at least 70% of the proposed development site comprises land with a slope of less than a 20% grade.

Planning Comment:

In relation to sub-clause (3):

- (a) Eligible land: Can not be classified as this as will be detailed below.
 - (b) 70 dwellings: The site can accommodate more than 70 dwellings.
 - (c) Frontage to sealed public road and access to nearby urban area: The site has a frontage to sealed public road and access to a nearby urban area.
 - (d) 70% of the site has land with a slope of less than 20% grade: Council has calculated the area of land with a slope of less than 20% grade at 64% . The applicant has provided revised figures that calculate that area with less than 20% grade as being 70.03%. Based on Council's calculation the area to be developed, (which includes the APZs, but does not include the entire lot), the proposal does not satisfy this condition and therefore can not be permitted. (It is noted that small modification of the proposal could result in a satisfactory slope calculation.)
- (4) This clause ceases to apply 2 years after the commencement of this Plan.
 - (5) This clause extends to a development application made but not finally determined before this clause ceases to apply.

Planning Comment:

This application was lodged on 8 September 2016. The Plan commenced on 10 October 2014 and thus this clause 'ceased to apply' on 10 October 2016. The DA was lodged within the period the clause applied, thus satisfying sub-clause 4 and 5.

- (6) In this clause, *eligible land*, means land on which development referred to in subclause (2) was permissible immediately before this Plan commenced.

Planning Comment:

To be *eligible land* the site must satisfy the provisions of Clause 41 of LMLEP 2004, which would have made the development permissible prior to the commencement of the 2014 Plan. This clause reads:

41 Development for the purpose of retirement villages

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

- (2) This clause applies to:

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

- (3) In this clause:

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

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

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

- (a) the land on which the development will be carried out is of sufficient size to accommodate a minimum 70 unit retirement village development, and
- (b) the land has frontage to a formed public road servicing nearby urban areas, and
- (c) the development is able to be serviced with reticulated water, sewerage and electricity, and
- (d) at least 70% of the proposed development area comprises land with a slope of less than 20% grade.

Given Council has calculated the area with a slope of less than 20% at 64% of the site, (below the required 70%), at sub-clause 41(5)(d) it is considered that the land can not be defined as 'eligible land'.



Figure 7 - Topography of the area (2m contours)

Clauses 7.13 – 7.20

Not applicable.

Clause 7.21 Essential services

The site has available to it the required infrastructure necessary to support the development.

The application was referred to Ausgrid and Transgrid for comment under clause 45(2) of SEPP Infrastructure 2004. They did not provide comment.

Hunter Water Corporation has not responded to Council's correspondence of 15 February 2017.

Clause 7.22 – 7.23

Not applicable.

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

There are no draft instruments which affect the development proposal.

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

Lake Macquarie Development Control Plan 2014

Part 1 Introduction Section 1.15 – Notification Requirements

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

Mine Subsidence Board;
NSW Rural Fire Service (RFS);
Hunter Water Corporation;
Roads and Maritime Services (RMS);
Crowns Land (NSW Department of Industry – Lands)
Ausgrid, and
Transgrid

The NSW Office of Environment and Heritage and NSW Office of Water were not notified as the applicant did not identify them as being Integrated bodies and or provide the relevant information that these State bodies would require to make an assessment of the application

The Mine Subsidence Board General Terms of Approval were received on 21 November 2016.

The NSW Rural Fire Service provided comments on 4 February 2017 after the provision of additional information. Due to the recommendation for refusal the conditions proposed by the RFS have not been put to the applicant for confirmation that the proposal can comply with these conditions.

Transgrad and Ausgrid have not provided comments.

Crowns Lands have responded and a copy of their response can be found at attachment 4. The conclusion of their letter reads:

Given the lack of information in the applicant's environmental assessment on access and road management issues and until such time as documented support is provided on road close or road transfer to Council, the Department objects to the applicant's use of the Crown Road

RMS provided comment on 2/2 2017. Their response was as follows:

Roads and Maritime has reviewed the documentation including the Traffic & Parking Impact Assessment by McLaren Traffic Engineering dated September 2016 and notes that traffic analysis has only been undertaken for the intersection of Spinnaker Ridge Way / Gibb Street which form part of the local road network.

Roads and Maritime requires that the traffic assessment include the analysis of the intersection of Spinnaker Ridge Way / Croudace Bay Road to determine the impact of the development on the classified state road network. The analysis shall include:

- *Current traffic counts for relevant intersections for proposed traffic accessing the site.*

- *Traffic analysis of any major / relevant intersections, using SIDRA or similar traffic model, including:*
 - *Current traffic counts and 10 year traffic growth projections, allowing a 2% background growth on the classified road network*
 - *With and without development scenarios considered*
 - *95th percentile back of queue lengths*
 - *Delays and level of service on all legs for the relevant intersections*
 - *Use of SIDRA or similar traffic model*
 - *Electronic input/output data files for RMS review*
- *The anticipated additional vehicular traffic likely to be generated as a result of the subject proposal.*
- *The distribution on the road network of the trips generated by the proposed development, including the number of right in / right out movements to and from the site. It is requested that the predicted traffic flows are shown diagrammatically to a level of detail sufficient for easy interpretation.*

Furthermore, Roads and Maritime requests clarification on the status of the existing 'fire trail' access from Croudace Bay Road which is proposed to be used as an 'emergency bush fire' access. Can Council please advise if the fire trail is Crown Land, if it provides access to any properties and how the development will restrict use to this emergency access.

Council has not responded to the RMS letter to date, but in Council's additional information request additional assessment on the traffic impacts to the intersection of Spinnaker Ridge Way and Croudace Bay Road were requested.

Notification of plans occurred in accordance with the Lake Macquarie Development Control Plan 2014 – Part 1 Section 1.15 Notification which required notification for a minimum 14 day period.

Twenty-four submissions were received. All submissions object to or raised concerns with the proposal. The objections are addressed within section 79C(1)(d) of this report.

Part 7 Development in Environmental Protection Zones – Section 2 Context & Setting

2.1 Site Analysis

The development is required to consider the relevant constraints of the site within the plans and supporting documentation. Council's Landscape Architect has noted that the:

The landscape site analysis is labelled 'draft' and appears incomplete with regard environmental constraints of slope, zoning overlays and identification of prevailing characteristics of the site.

With regard to the significant constraints that exist on this site, the recommendations of the Flora Report to establish high impact development

on the already disturbed adjoining land to the north west is worthy of further consideration. Further analysis is required to support this recommendation.

2.2 Scenic Values

The application has been assessed by Council's Landscape Architect, who made the following comments:

The submitted Visual Impact Analysis (VIA) is labelled 'draft for review'. The visual impact overview appears indeterminate in its findings.
Recommendation: establish status of this draft document with the applicant.

Comments have been sought from the applicant, but are yet to be received.

2.3 Geotechnical

The development is located within a T1 (the highest grade) and T3 geotech areas. A geotechnical report is required for these zones. Council's Subdivision Engineer made the following comments:

The site has been identified as being within a (T1 and T3) zone on Council's Geotechnical Maps.

A geotechnical report by Cardno has been provided but it only covers site classification and highlights some uncontrolled filling.

A slope stability assessment from a practicing Geotechnical Consulting Engineer shall be submitted to support the application for development.

The presence of uncontrolled fill and dumped household and building waste would usually trigger a contamination assessment. This should be discussed with WER.

Further information has been requested. No information has been received.

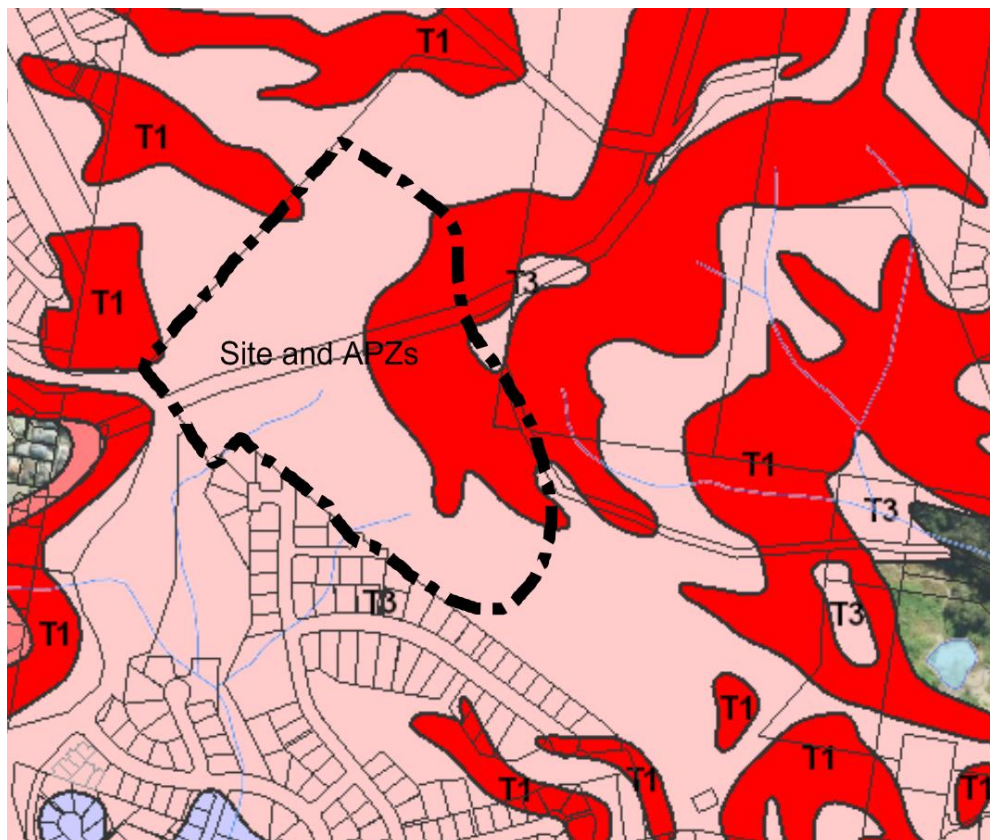


Figure 8 - Geotechnical zoning

2.4 Mine Subsidence

Mine Subsidence Board provided General Terms of Approval (GTAs) on 21 November 2016. These GTAs would be included on any consent.

2.5 Contaminated Land

The subject site has not historically been used by any use. Council requested a contamination report due to the site being adjacent a decommissioned Council tip, the identified dumping of building waste and household rubbish on the site. The geotech report suggested uncontrolled fill was located on the site. No specific contamination report was supplied and this was requested in Council's additional information request of 16 November 2016. An extension was granted till 30 March 2017. No additional information had been received at this time.

2.6 Acid Sulfate Soils

Addressed under Clause 7.1 of the LM LEP 2014.

2.7 Stormwater Management

Council's Development Engineer has noted that a suitable Stormwater Management Plan by Tattersall Lander incorporating detention, water harvesting, water quality facilities and site discharge index requirements in accordance with the Lake Macquarie DCP 2014 has been provided. The plan is considered adequate for DA purposes.

The engineer also notes however that the stormwater plan and the landscaping plan should be consistent. Currently the landscaping plan includes street trees within the biofilters.

2.8 Catchment Flood Management

N/A

2.9 Lake Flooding & Tidal Inundation

Not Applicable

2.10 Natural Water System

Council's Mapping/GIS system identifies natural watercourses (identified with a blue line) within the site and development area. While it is acknowledged that there are no running water courses on the site, these identified water courses feed into the local natural water system and are required to be considered. As given works are within 40 metres a referral to the NSW Office of Water is required under the *Water Management Act 2000*.

In relation to Natural Water Systems, Council's Subdivision Engineer has made the following comments:

- The site proposes works within a watercourse (indicated as a blue line on the GIS). As such the application should be referred to the Office of Water to seek conditions for a Controlled Activity Approval.
- The stormwater management plan prepared by Tattersall Lander has incorporated controls which should limit significant adverse effects on the downstream receiving waters.
- Council's Sustainability Dept may have comments in regard to riparian corridors.

In turn, Council's Ecosystems Project Officer - Sustainability has made the following comments:

The application has been assessed for compliance with LMCC LEP (2014); Section 2.10 Natural Water Systems of LMCC DCP Part 7: Development in Environmental Protection Zones; and Council's Protection of Watercourses and Drainage Policy in relation to potential impacts of the development on natural water systems

The proposed development is for a retirement village with 118 units. The proposal also includes a community hall, roads and drainage, and all associated infrastructure.

The site contains two natural watercourses that flow in a south-westerly direction in the southern portion of the site. Both of these watercourses are classified as a first order watercourse under the Strahler System of ordering watercourses. In accordance with DCP 1 Part 7 Development in Environmental Protection Zones Section 2.10, a 10 metre vegetated riparian zone (both sides of the watercourse) should be protected from development.

The Site Cut-Fill Plan prepared by Tattersall Lander Pty Ltd (July 2016) shows extensive cut and fill (between 4.5 metres of fill and up to 7 metres of cut) with both watercourses filled in and developed over. Although the Stormwater Plan identifies water quality and flow control structures are to be installed, it is unclear if these structures will be adequate to protect ecosystems downstream.

Both Council's Protection of Watercourses and Drainage Policy and objectives contained within Section 2.10 Natural Water Systems of LMCC's DCP, state that natural watercourses and their associated riparian vegetation should be left in as undisturbed state as possible, without redirection, reshaping, or modification.

The subject site is zoned E2 (Environmental Conservation) and E4 (Environmental Living) under the Lake Macquarie Local Environment Plan 2014.

Objectives of the E2 zone are:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To conserve, enhance and manage corridors to facilitate species movement, dispersal and interchange of genetic material*

Objectives of the E4 zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect, enhance and manage corridors to facilitate species movement, dispersal and interchange of genetic material.*
- *To encourage rehabilitation and conservation of environmentally important land.*

The application does not meet the objectives of these zones. Natural watercourses and their associated riparian vegetation are considered to have high ecological values. The filling of the two watercourses and removal of their riparian vegetation will have an adverse effect on the immediate and downstream ecological values.

The nominated Asset Protection Zone (APZ) for the development site would result in a significant amount of native vegetation clearing, as it extends for 100 m to the north, 55 m to the northwest, >140 m to the south southwest and west, and 100 m to the east. One of the two natural watercourses that are located on the site is within the APZ. Control 7 in Section 2.10 of Council's DCP recommends that APZ must not be located within the Vegetated Riparian Zone.

The application does not comply with the objectives of Section 2.10 of Council's DCP Part 7, the E2 Environmental Protection and E4 Environmental Living Zone objectives or Council's Protection of Watercourses and Drainage Policy.

It is recommended that this proposed development be refused.

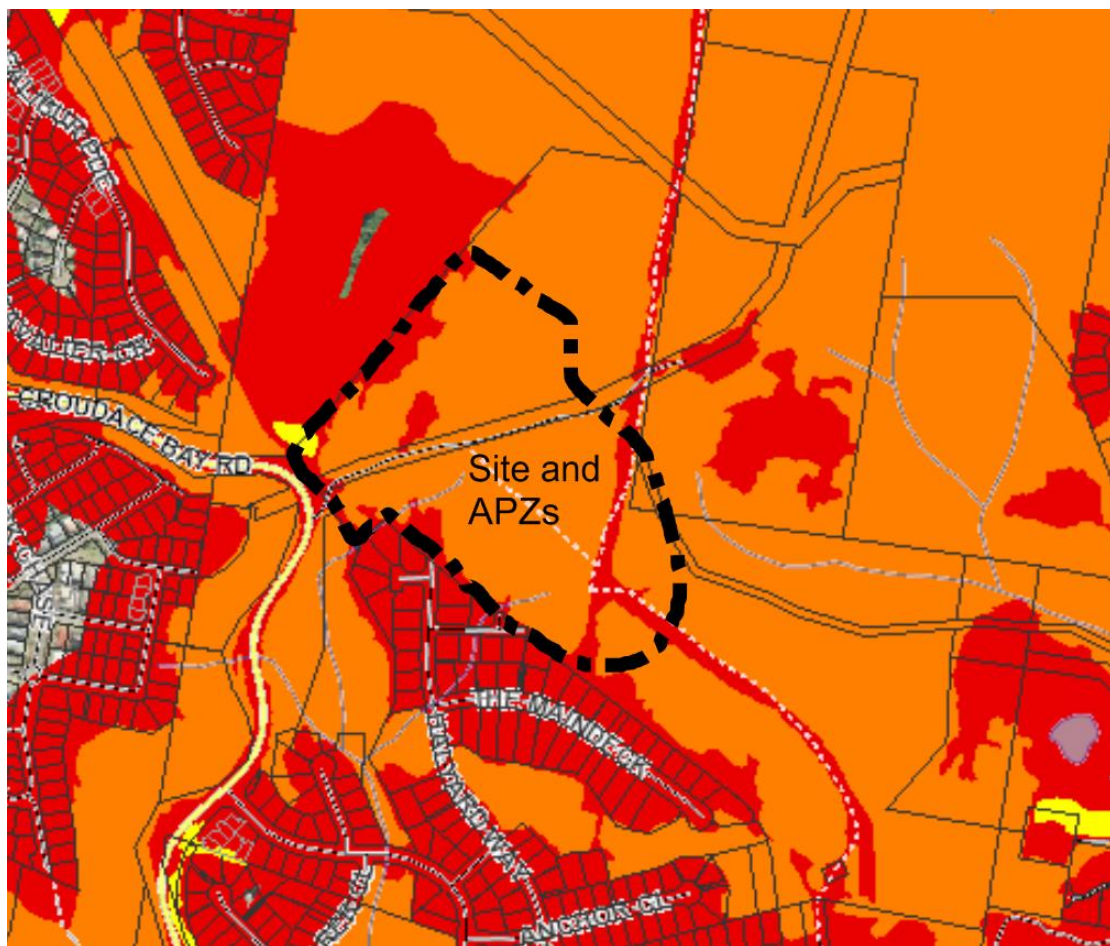


Figure 9 - Bushfire risk – red/ buffer zone and orange bushfire prone.

2.11 - Bushfire

The application has been considered by the NSW Rural Fire Service as Integrated Development under section 91 of the Act. General Terms of Approval provided by NSW RFS would be included as conditions of any consent.

2.12 Flora & Fauna

The application has been assessed by Council's ecological experts. Council's Development Planner Flora & Fauna comments can be found in full at Attachment 5. Their concluding paragraphs are:

Recommendation

The application does not meet the site E2 Environmental Protection and E4 Environmental Living zone objectives or Part 7 of Council's DCP and cannot be supported from a flora and fauna perspective. The site contains high value ecological habitat including threatened flora and fauna, hollow-bearing trees and a mapped corridor and crossing point which provides a key strategic habitat linkage for threatened species including the squirrel glider and powerful owl that are protected by the *Threatened Species Conservation Act*, *Environmental Protection and Assessment Act* and Council's Local Environmental Plan.

While a Species Impact Statement should have been provided with the application as per Section 78A(8)(b) of the EP&A Act and Council's guidelines for *Tetrahecta juncea*, large forest owls and the squirrel glider, it is recommended that this not be requested rather that the application be refused as even with a Species Impact Statement the application will be unable to meet the environmental zone objectives given the significance of the habitat and threatened species to be impacted

Note: Consent under the Native Vegetation Act would also be required from the Local Land Services.

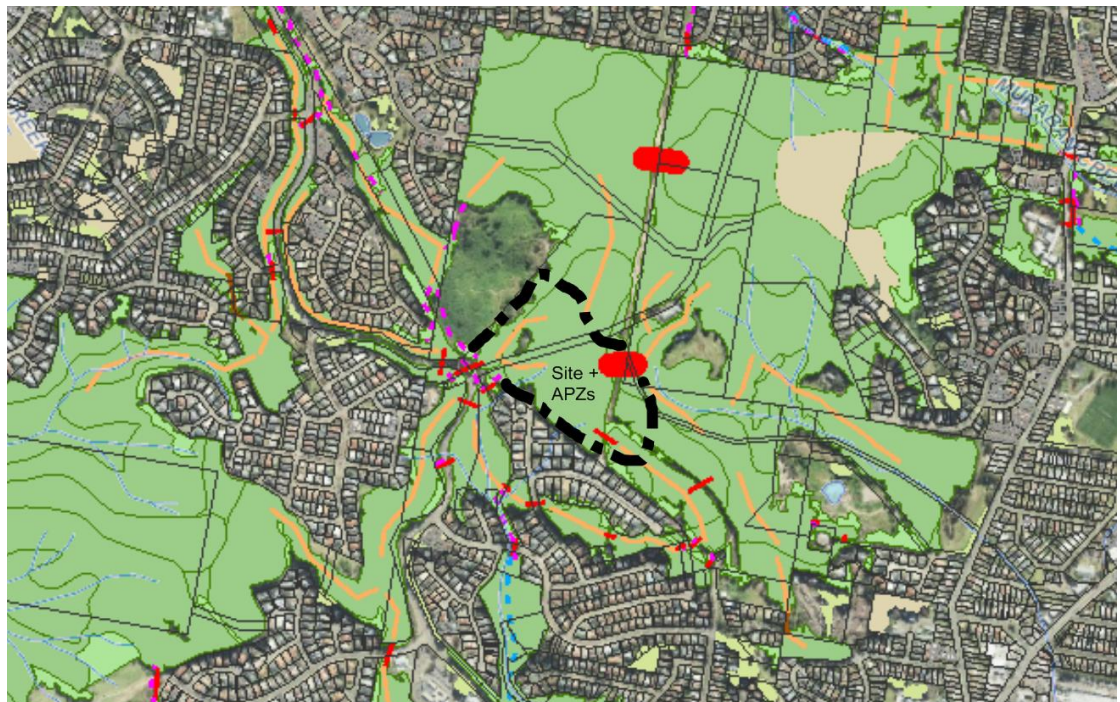


Figure 10 - Environmental overlay of locality.

(KEY: blue = riparian corridor / red = fauna crossing point / purple = rehabilitation corridor / orange = corridor less than 200m wide)

Council's Environmental Planner- Ecosystems Enhancement made these comments in relation to the DA:

The Development Assessment and Compliance Ecologist has provided detailed comments in regard to the objectives of the zone and the adequacy of the assessment. I agree and support these comments.

In a more strategic or landscape sense this development proposal will have implications far beyond the footprint that is proposed to be cleared. Impacts on a strategic native vegetation corridor has implications for the flora and fauna species that occupy a number of interconnected habitat patches in the north east of the LGA from Green Point to Hillsborough and Myall Road. Councils native vegetation and corridor maps show this network of patches and Councils Local Environmental Plan LMLEP 2014 contains Environmental Living and Conservation Zones in a spatial configuration to maintain native vegetation corridors and landscape connectivity across this area.

The proposed development reduces the current width and structural integrity of a strategic connection between Green Point and Floraville Ridge. The more disturbed this connection becomes the smaller the range of species that can navigate across it. Isolation of species to individual patches reduces the resilience of the population to events such as fire and predation as well as leading to decline in genetic diversity. The Green Point bushland patch could be effectively isolated for some species.

The long to medium term viability of Squirrel Gliders inhabiting Green Point as part of larger population of Squirrel depends on the functionality and maintenance of this connection.

The Aged Housing proposal creates long thin corridors around the western and southern side of the clearing footprint. The corridors post development would be subject to edge impacts on both sides reducing functionality and effectiveness. The western corridor is narrowed to less than 50m for more than 150m. The proposed development would result in these post development corridors not only being narrowed in width but containing steep batters and being managed as an Asset Protection Zones.

The development proposal will result in increased disturbance to existing native vegetation in one of the most critical pinch points of the existing Green Point Floraville Ridge corridor.

The proposed amount of cut and fill (between 4.5 metres of fill and up to 7 metres of cut) with the majority of the site requiring excavation or fill is of great concern as this could have indirect impacts on terrestrial and aquatic biodiversity. The level of risk of failure and the consequences associated with failure of erosion and sediment controls are significantly increased with such high levels of cut and fill. Failure to manage this adequately will result in consequences downstream.

The proposal will also result in complete modification (by filling) of the headwaters of Mill creek. Despite Water quality and flow controls impacts are likely to be experienced downstream. It is not clear whether the water quality and flow control structures will be adequate to protect the ecosystem downstream.

It should also be noted that retention of hollow bearing trees or threatened flora species and buffers, within development footprints and/or APZs has not proved successful (for other developments) in the long term. Over time, these areas are impacted from surrounding urban landuses as occupants and

managers incrementally extend gardens, extend mown areas and remove hollow bearing limbs and habitat trees that become dangerous over time.

It is recommended that this proposed development be refused.

The issues raised by these officers are significant. These officers are also of the opinion that amendments or a redesign of the proposal will still not satisfy or overcome the flora/fauna related concerns/constraints with this development.

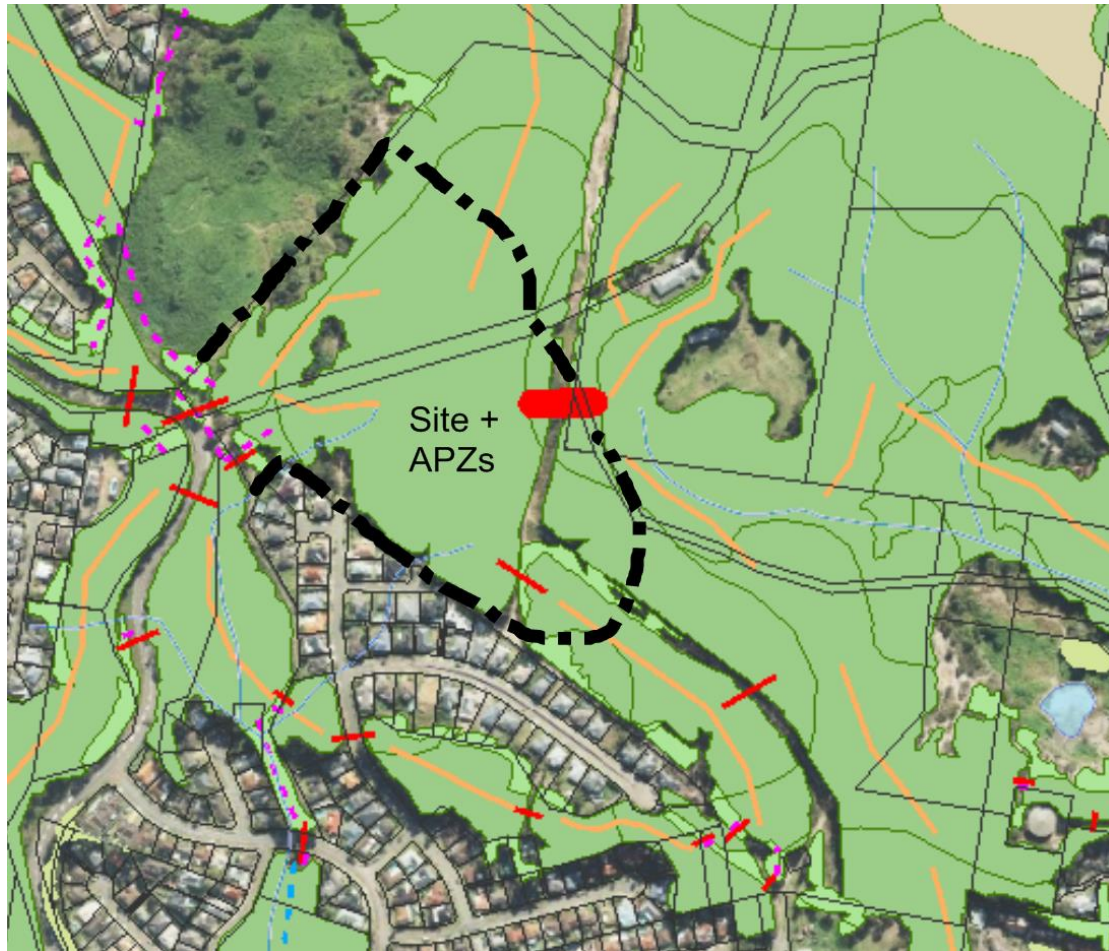


Figure 11 - Environmental overlay of site.

(KEY: blue = riparian corridor / red = fauna crossing point / purple = rehabilitation corridor / orange = corridor less than 200m wide)

2.13 Preservation of Trees & Vegetation

Council's Arborist made the following comments:

I refer to the subject application and advise that I concur with referral comments forwarded by Council's Flora and Fauna Officer.

It appears no established trees are proposed for retention within [the] footprint of [the] proposed layout.

The outstanding issue from a tree retention perspective (under current layout) is requirements for vegetation clearing and the establishment of an Asset Protection Zone (APZ) across the site.

The vast area nominated to be managed as an Asset Protection Zone (APZ) is expected to have extensive tree removal required, which needs to be

clarified with every individual tree proposed for removal (or retention) clearly identified on site plans and marked on site.

Recommendation

- Clarification is required regarding vegetation clearing/tree removal intentions in accordance with Asset Protection Zone recommendations in submitted Bushfire Threat Assessment by Tattersal Lander' (Folbigg, July 2016).

It is recommended tree removal be restricted to only what is required to achieve adequate Asset Protection Zones (APZ), in accordance with the Bushfire Report.

In accordance with *Appendix 5 of Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service document, *Standards for Asset Protection Zones*, extensive tree retention is possible and should be a primary consideration.

- Accordingly, it is appropriate that a number of trees be specifically identified for retention within the APZ, which shall be individually marked (and adequately protected during works).

Additional information has been requested of the applicant. No information has been received.

2.14 European Heritage

The subject site is not identified as containing any items or location of European heritage, pursuant to schedule 5 of the LM LEP 2014.

2.15 Aboriginal Heritage

The subject site is not identified as a sensitive Aboriginal Landscape and an AHIMS search of the site with a 200m buffer was conducted, which did not identify any recorded sites or declared places in or near the location.

2.16 Natural Heritage

The subject site is not identified as containing any items or location of Natural heritage, pursuant to schedule 5 of the LM LEP 2014.

2.17 Social Impact

Council's Coordinator - Social & Community Planning made the following comments

I refer to the subject application and advise that I have reviewed the submitted documentation, including the Social Impact Assessment (SIA). I concur with the findings of the SIA in that the proposal will adequately cater for the growing need in aged accommodation, and is located in relatively close proximity to local centres and services.

However, in order to comprehensively understand the potential impacts, further documentation is required to be submitted, prior to making an assessment. This documentation is to include detailed plans of the community centre and chapel, in order to ensure that it is suitable for the identified purposes, as well as a management plan for the facility.

Additional management details and more footpaths were also sought in the RFI of 16 November 2016.

2.18 Economic Impact

The proposal will not result in any unreasonable adverse economic impacts.

3.1 Street Setback

The development is not being constructed in a regular residential subdivision, so front setback in terms of the DCP controls are not necessarily applicable. Based on the plans lodged with the application it is not possible to accurately measure the setback of the proposed dwellings from the internal road system, but an estimate is between 3.78m and 4.5m (based on setbacks shown on the typical section plan).

3.2 Side and Rear Setback

The development is not being constructed in a regular residential subdivision so side and rear setback in terms of the DCP controls are not necessarily applicable. The units are in excess of 30 metres from the rear of properties in Halyard Way, The Hatch and Helm Place. Again, site plans do not show enough information/legibility to easily/accurately determine the setbacks between proposed buildings on the site.

3.3 Building Bulk

The DCP controls include:

1. Large areas of continuous wall planes must be avoided by varying building setbacks, and using techniques to provide visual relief.
2. Building height and scale must relate to the topography and the existing site conditions.
3. Verandas, recesses, surface treatments and variations in material selection and colour should be utilised to reduce building bulk.
4. Landscaping should be provided to reduce the visual bulk of buildings.
5. Walls in excess of 15 metres in length must be articulated, landscaped, or otherwise treated in order to provide visual relief.
6. Walls in excess of four metres high must be articulated, landscaped or otherwise treated in order to provide visual relief.

The proposed development fails control No 2. Other building bulk impacts are reduced by the setback from neighbouring developments.

3.4 Solar Access and Orientation

There are no solar access implications for neighbouring properties given the development's setbacks. However, no shadow diagrams have been provided so Council is unsure how many dwellings and their private open spaces (some cut into the site's slope with 3m retaining walls) to determine if satisfactory solar access within the proposed development has been provided. The applicable control requires at least 50% of the required area of private open space to have three hours of sunlight on 9am-3pm on June 21. (It is noted that SEPP HSPD identifies the following control as an acceptable outcome - "if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter," but again Council has not been provided with any information to make this assessment.)

3.5 Energy Efficiency and Generation

The development requires a BASIX certificate. None was supplied.

3.6 Landscape Design

Council's Landscape Architect made the following comments in relation to landscape design:

The landscape documents submitted for the proposal are labelled 'draft'. The plans are lacking in detail that enables the full assessment of the proposal. A landscape report is required to accompany the plans. No Sectional information is shown. Recommendation: establish status of this draft document with the applicant.

The extent of cut over the site to accommodate dwellings results in limited opportunities for quality site landscaping and given the extent of cut, will make re-establishment of landscape difficult in some locations. Recommendation: reconsider site planning in keeping with the aims of the DCP and objectives of the LEP.

The proposal will require the clearing and significant cut and fill to construct roadways and building platforms. There has been no attempt to conserve native vegetation or integrate with the existing landform. The works involve high impact levels of excavation and tree removal contrary to the aims of the DCP with regard the zoning, and objectives of the Local Environment Plan (LEP). Recommendation: reconsider site planning in keeping with the aims of the DCP and LEP.

The battering and extensive canopy separation clearing to accommodate fire trails and proposed Asset Protection Zone as demonstrated in the Flora Report, will result in the removal of many large established trees and native understorey. Recommendation: reconsider site planning in keeping with the aims of the DCP and objectives of the LEP.

The north facing private open space at the rear of dwellings appears adversely impacted by the extent of retaining down the south facing slope. The south facing private open space is minimal width (1.88m) and impacted by stormwater devices along internal roadway. Recommendation: reconsider site planning in keeping with the aims of the DCP and objectives of the LEP.

Stormwater devices are proposed over the entire site however there is no accompanying information on the landscape plan. Recommendation: provide consistent information.

Significant conflicts along internal roadways with underground services, retaining, drainage and bio-filters indicate no street or garden tree planting is possible to enhance residential amenity. Recommendation: reconsider site planning in keeping with the aims of the DCP and objectives of the LEP.

The communal area shown on LP08 appears undersized for the development and isolated. Recommendation: reconsider site planning and position community space centrally with useable landscape features that enhance the space.

There are no significant views associated with the subject site. There are no significant land forms, items or water views from the site. The development is not located along any ridgeline which would promote views and potential impact on existing views from the public domain or any adjoining land use, thus it is not considered that there will be any significant impact on views associated with the locality.

Details have been requested in the RFI, but no formal response has been received.

3.7 Landscape and Tree Planting in Car Parks

These can be provided by condition in any approval, if deemed necessary.

3.8 Fencing

No fencing has been shown. This could be easily conditioned in any approval, as fencing would not have a major impact on the streetscape.

3.9 Traffic and Transport

Council's Asset Management – Traffic staff have made the following comments in relation to Traffic Generating Development and Public Transport

- ❖ The analysis of the intersection of Jib Street and Spinnaker Ridge Way assumes 100% of traffic will travel towards the Pacific Highway. It is considered that not all traffic would travel in that direction. Motorists may want to travel north towards the Warners Bay area, and therefore the intersection of Croudace Bay Road and Spinner Ridge Way is also to be assessed during peak times.
- ❖ The analysis of the additional traffic on Spinnaker Ridge Way, Halyard Way and Jib Street do not take into account the potential external use of the community centre and the chapel. Additional information is requested in regards to the intended external use of these facilities.

Public Transport

The Traffic Report states that the nearest public transport is 800 metres from the site entrance. It is noted that the residential properties within the site are likely to be several hundred metres additional to this. Therefore, it is considered that access to public transport for senior living is unacceptable for this proposal. It is likely that the site should have its own bus service.

These requests have been made in the additional information request of 16 November 2016.

3.10 Design of Parking and Service Areas

Parking areas are considered acceptable.

3.11 Car Parking Rates

Council's Asset Management – Traffic staff have made the following comments in relation to Vehicle Parking Provision:

SEPP 2004 requires the following Vehicle Parking Provision for Housing for Seniors:

- ❖ 0.5 spaces per bedroom (118 x 2 bdm dwellings = 118 car spaces)
- ❖ 5 spaces plus 1 space per 40sqm for Community facility (600sqm) GFA

118 car parking spaces have been provided on site for residential parking and 20 spaces have been provided for the community centre and chapel.

A chapel is considered a Place of Public Worship, and the parking rate is based on the number of seats. Therefore, additional parking may be required. There is no internal layout and no information provided for the use of the community centre or chapel external to this development.

Additional information relating to the community centre has been requested

3.12 Non- Discriminatory Access

Council's Aging and Disability Planner made the following comments:

I note that an access audit has been provided and I support the recommendations of the report.

A draft management plan needs to be provided including details of village vehicle, any onsite services available and services available in the community.

A footpath needs to be provided across the front of the development to link to existing footpath/bus stop.

As per Council's Social Planner's comments no major objection to the proposal was raised, but management details were requested.

3.13 Safety & Security

Crime Prevention Through Environmental Design (CPTED) is based upon the principle of designing out crime by making the chances of being caught in the act of crime, outweigh the benefits of the criminal activity. Council's CPTED officer concluded their report as follows:

Conclusion and recommendations

The applicant has elected to submit a Crime Prevention through Environmental Design (CPTED) Assessment Report (Palmer Bruyn, May 2016) rather than a full Crime Risk Assessment as required by the Lake Macquarie Development Control Plan 2014; Safety and Security for Zone E2 Environmental Conservation & Zone E4 Environmental Living (Part 7 Section 3.13). As such, it remains a requirement that the applicant submit a full Crime Risk Assessment responding to the Lake Macquarie Development Control Plan 2014, demonstrating what is planned for this development to deter the occurrence of crimes that may impact on it as identified above. The Crime Risk Assessment is to be completed by a person who has undergone NSW Police - Safer by Design training and verified within the Development Application.

Council's request for further information has requested a full Crime Risk Assessment.

3.14 Cut & Fill

Council's Subdivision Engineer has made the following comments in relation to cut and fill:

Cut & Fill

- The proposed development includes significant cut and/or filling in the order of several metres.

Most of the earthworks are contained within the footprint of the development. Extensive cut batters at 2:1 grade are shown to the eastern portion of the batter. Comment should be sought from the geotechnical engineer, in conjunction with the landscape designer with regard to the ongoing stability of these batters. i.e. the ability to maintain plantings on this steep slope and the runoff over the batters from the catchment upstream.

Cuts and fills of +4m and -7m are proposed. This exceeds the DCP control for a maximum 1m cut/fill on the site, with a maximum 3-4m cut within the building footprint.

This level of cut/fill is excessive considering the zoning and proposed use. The applicant has been requested to reconsider the extent of cut/fill proposed.

4.1 Demolition & Construction Waste Management

A suitable demolition and construction plan would be sought if the application was supported.

4.2 Waste Management

Council's Waste Operations Manager and Governance Audit and Waste have both noted that, "As the site waste minimisation and management plan is incomplete, I am unable to fully assess the application."

Further information has been sought from the applicant. No information has been received to date.

4.3 On-Site Sewerage Management

Not Applicable

4.4 Liquid Trade Waste & Chemical Storage

Not Applicable

4.5 Erosion & Sediment Control

There was no Erosion and Sediment Control Plan submitted with the Application. One was submitted post lodgement to which Council's Erosion and Sediment Control officer has sought additional information.

4.6 Air Quality

The development will not adversely affect air quality.

4.7 Noise & Vibration

No Acoustic Assessment (requested are pre-DA meetings) was submitted. As such, no assessment could be carried out in relation to this consideration.

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

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

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

The Regulation 2000 provides:

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

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

- (i) *in a local government area referred to in the Table to this clause, and*
- (ii) *on land to which the Government Coastal Policy applies, the provisions of that Policy,*

Planning Comment: The Government Coastal Policy does not apply to the subject site.

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

Planning Comment: The development does not include demolition.

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

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

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

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

Does the proposal fit the locality?

Seniors Housing is compatible with low density residential neighbours. However, the proposal will have adverse impacts on the critical flora / fauna values of the site and critical details, such as contamination, extent of cut and fill, solar access and traffic impacts have not been resolved.

The outcomes proposed will not achieve a highly functional development compatible with the surrounding activities.

Are the site attributes conducive to development?

The site attributes are not conducive to development of this nature.

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

Public submissions:

Twenty-four submissions were received in response to notification. It has been previously noted that the lodgement of a Species Impact Statement would have required the proposal to be notified as Advertised Development. The main matters raised in the submissions are summarised below.

Lack of Community Consultation by the applicant

Planning Comment:

There is presently no legal requirement for an applicant to consult with neighbours prior to lodging a DA with a Council. Once this application was lodged with Council it was notified to over seventy (70) surrounding properties, with extensions granted to several requests for a period that extended Council's standard 14 day notification period.

It has been noted in the assessment report above that if a SIS had been lodged as required or the proposal was identified by the applicant as Integrated Development under the *Water Management Act 2000*, the proposal would have been identified as Advertised Development, which would have seen a minimum 30 day notification period, as well as site notices and notification in a local paper, (generally Saturday's issue of the Newcastle Herald.)

Neighbours were told there were to be only 50 dwellings - not 118

Planning Comment:

Discussions/rumours regarding development prior to lodgement are not relevant to the proposal being formally considered by Council/JRPP.

Impact on Natural Water Courses

Planning Comment:

Comments from Council's Ecosystems Project Officer - Ecosystems Enhancement have been noted above. The applicant has indicated they are seeking correspondence from NSW Office of Water that the proposal is not Integrated development and does not require GTAs to be issued by that office. This clarification should have been resolved prior to the lodgement of the application.

Lack of Parking

Planning Comment:

Council's Assets –Traffic staff have considered the proposal and concluded that the proposal complies with the parking requirements set out in SEPP HSPD, which Council uses a guideline as to acceptable Seniors Housing development.

Decreased Safety with increased traffic

Planning Comment:

Council's Assets –Traffic staff have considered the proposal and concluded that additional information is required to conclude that there are no adverse impacts on the local community in terms of traffic impacts and reduce safety to pedestrians etc in the locality.

Proposal should provide vehicular access off Croudace Bay Road (including a letter supporting the proposal on this basis)

Planning Comment:

Croudace Bay Road is a State managed road. Access off this road would require the approval of the RMS. It is understood that the applicant did not seek this, with an emergency exit and entry to be retained at the existing location of the access (Crown reserve/road) to the residential dwelling located at 71 Croudace Bay Road, Valentine, who under this proposal will access their property via the proposed Halyard Way entry point.

Matters relating the Crown Road have not been clarified by the applicant.

Poor water pressure in the area

Planning Comment:

Hunter Water have not 'stamped' the plans which indicates they have not considered the proposal.

An issue such as poor water pressure could be addressed with a new pumping stations. If the proposal was approved, the applicant would be required to gain approval from Hunter Water in relation to connecting to the areas water and sewer system. At that time Hunter Water would address any service issues in the locality.

Hunter Water has made no response to Council's referral.

Acoustic concerns – waste processing

Planning Comment:

No acoustic report was lodged with the application. Any noise impacts from waste processing would equally affect future residents of the proposal, and as such could be addressed through acoustic controls and restrictions on hours of operation.

Social impacts – lack of community infrastructure

Planning Comment:

While the site may seem isolated, such developments are often found on the edge/periphery of urban areas. There are however issues with the distance and slope to public transport – a control from SEPP HSPD. Council's Community/Social Planner found the social impacts of the site acceptable, but has sought additional management information.

Flora and Fauna impacts (TJ/native animals/corridor 10m instead of 20m buffer)

Planning Comment:

Council's Flora and Fauna Officer and Environmental Planner - Ecosystems Enhancement have both raised significant concerns with the proposal in this area, which is reflected in comments above and the recommendation for refusal.

Zoning objectives

Planning Comment:

It has been noted above that the use is not permissible in the zones that affect the site, nor permissible after 10 October 2016. It is considered that the proposal fails to satisfy a number of zone objectives, leading to the proposal failing to be supported by Council's planning officer and a number of Council referral officers.

Lack of details in plans/documentation - including community centre/chapel

Planning Comment:

The plans are poorly prepared and presented. There are also no floor plans of the community centre chapel, leading to questions regarding its potential use. Additional plans were requested as part of the Council's additional information request of 16 November 2016.

Poor Design – carbon copies/reduction in tree canopy/height variations/slope/APZ included in site area

Planning Comment:

While the development does present as a 'cookie cutter' style development, many similar developments, in particular Senior's housing developments could be characterised this way. The use of materials and landscaping can reduce the visual impact of such a development. However, the use of a 'cookie-cutter' design on such a constrained site, (not level - such as developments along Burton Road, Mt Hutton considered by the JRPP). Significantly more attention should have been directed to the design, use of materials and landscaping. Overall the design and site planning response is significantly flawed.

No public transport – difficult to cross Croudace Bay Road

Planning Comment:

It is noted that bus stops (measured from google earth) to west of the site are over 400m from the Croudace Bay Road emergency exit, while the bus stops at the intersection with Spinnaker Ridge Way are just within 400m from the emergency exit. There is a 12m (approx. drop/rise) and no pedestrian paths to either of these bus stops.

APZ not able to be maintained – lack of APZ details

Planning Comment:

The location of areas of endangered flora within the identified APZs has raised concerns regarding how the APZ's will be retained, whether too poorly, or over enthusiastically, where trees and areas of endangered species may be removed or damaged with little consideration of their importance.

Extent of cut and fill

Planning Comment:

The proposal cut and fill – max fill and max cut exceed Council's preferred maximum of 1 metre outside the footprint of the building. While variations can be considered, variations of this size in an Environmental zone are considered excessive.

General non-compliance with controls

Planning Comment:

It has been noted in the assessment report above that the proposal fails a number of DCP controls eg cut and fill/solar access/building bulk and or has not provided sufficient information for a particular matter to be adequately assessed, eg crime prevention/contamination.

Increased crime in the area

Planning Comment:

The use and residents are unlikely to increase crime in the locality, but they could themselves be the targets, as they are more susceptible targets of criminals.

No crime risk assessment lodged

Planning Comment:

A full crime risk assessment was requested for a development of this size, a full accredited report was not submitted. Comments from Council's Crime Prevention Officer have been noted above and more information has been requested in the Council's RFI.

Restrictive covenants on other local sites (no felines)

Planning Comment:

Any approval would seek to impose the same restrictive covenants imposed on surrounding residential developments, such as the prohibition of residents having pet cats, in an effort to protect native wildlife.

Site/locality too steep for seniors

Planning Comment:

Council has noted above that the site does not satisfy the slope requirements of the enabling clause. (A small modification to the site/design could rectify this). Council's Aged and Disability officer has not raised issues with the completed site in terms of its grade, though access to public transport is limited.

Waste Management unsatisfactory

Planning Comment:

Further details on how waste will be managed were sought from the applicant in the additional information request of 16 November 2016. These issues can generally be considered and appropriately conditioned.

Vibrations during construction

Planning Comment:

Any approval would require the lodgement of a Construction Management Plan. Council also has a standard condition in relation to the acceptable level of vibration that can be generated during construction works.

Construction traffic

Planning Comment:

Any approval would require the lodgement of a Construction Management Plan. This would identify traffic routes to be used, hours of work and expected traffic volumes.

Dust management during construction

Planning Comment:

Any approval would require the lodgement of a Construction Management Plan. Council also has a standard condition in relation to the dust during construction works.

Place of public worship prohibited

Planning Comment:

Places of Public Worship - identified with the proposed chapel - are not permitted in the zone. However, as the community facility/chapel would be considered a secondary/ancillary use to the Seniors Housing it can be considered and would generally be supported, as it would provide residents with a community hub. Any approval of the development would restrict to use of the building to resident events only i.e. it could not be rented/leased out to or used by an unrelated church/community group for services or events.

Drop in property values

Planning Comment:

Property values are not a planning consideration under the *EP&A Act, 1979*.

Stormwater concerns

Planning Comment:

Council's Development Engineer has raised no major issues with the stormwater impacts.

As with residential neighbours, Council owns the property to the west. The Council's Department in charge of this site has noted in their referral comments that:

The stormwater management plan indicates a receiving node at the end of the development which will be the finish point of the stormwater drainage on site. There is a possibility that storm water leaving this site will flow onto council land at 56C Spinnaker Ridge Way Belmont which Community Planning do not support.

The applicant has been requested to confirm this is the case.

No erosion and sediment controls

Planning Comment:

Erosion and Sediment control plans were lodged 20 October 2016 (one month after the DA was lodged). Council's Erosion and Sediment Control officer has commented on that the plans and sought modifications to the plans and additional notations.

Native Vegetation Act approval also required

Planning Comment:

This has been noted by Council's Development Planner – Flora and Fauna.

Species Impact Statement (SIS) should have been provided

Planning Comment:

This is noted and discussed in the assessment report.

Visual / scenic impact

Planning Comment:

Council's Landscape Architect who makes comments on urban design and visual impact has requested additional information to help in the determination of the visual impact. The setback from surrounding residential uses and retention of trees within the APZ would reduce the visual impact as perceived from surrounding sites.

Loss of privacy

Planning Comment:

The design and setback of the dwellings would not lead to an adverse loss of visual privacy to neighbouring residents. Internal privacy was not considered due to the poor quality of the plans.

Dumped rubbish/asbestos on site

Planning Comment:

A contamination report had been requested so that this issue could be addressed appropriately.

Control sale to seniors only

Planning Comment:

Any approval would require a S.88B instrument to be applied to the land that would restrict the purchase or occupation of the units to those permitted under the provisions of SEPP HSPD.

MSB and sink holes in the area

Planning Comment:

The application was referred to the Mine Subsidence Board (aka NSW Subsidence Advisory) who have issued GTAs in November 2016. (Their GTAs included the requirement for a comprehensive site assessment and the grouting of any mine works discovered.)

Each submission has been considered and assessed against the relevant Council controls and it is concluded that design outcomes are not satisfactory and conditions of consent can not be imposed to provide an appropriate outcome that respects the subject and surrounding area, without significant additional information.

While the use is in high public demand in the Lake Macquarie area, the ecological impacts are adverse and effectively outweigh the benefit of seniors housing.

Submissions from public authorities:

Submissions were received from NSW Rural Fire Service and Mine Subsidence Board as integrated referral submissions, details of which are provided below.

Department of Industry – Land the NSW RMS have also commented on the application, details of these submissions have been discussed above in this report.

No other submissions from public authorities were received.

79C(1)(e) the public interest

It is considered the public interest issues have not been adequately considered by the application. While providing for a service and housing type in great demand, the proposed development is not considered to be in the greater public interest due to its adverse impacts on the natural environment.

INTEGRATED DEVELOPMENT

The application is integrated development in accordance with clause 91 of the Act, for the purpose of:

- section 100B of the Rural Fires Act 1997;

- section 15 of the Mine Subsidence Compensation Act 1961, and

The general terms of approval could be included in the proposed conditions of any consent granted for the development. Integrated referrals under the *Water Management Act 2000* and the Office of Environment and Heritage for a SIS under the *Threatened Species Conservation Act 1995* were not undertaken.

Rural Fires Act 1997

NSW Rural Fire Service provided their General Terms of Approval dated 4 February 2017;

Mine Subsidence Compensation Act 1961

The Mine Subsidence Board provided their General Terms of Approval dated 21 November 2016.

CONCLUSION

Based on the above assessment it is concluded that the proposed development is unjustified on the subject site.

The applicant has approached Council with an amended scheme, which makes substantial changes to the original proposal. It has reduced cut and fill, greater corridor retention and a modified unit design. Due to time constraints the amended design has not been considered, particularly as Council staff held extensive discussions over a period of 3-4 years confirming the Council staff expectations for development at the site.

In other circumstances Council may have sought to have the applicant withdrawn the application and prepare a more considered proposal for lodgement. However, given the application is only permissible by virtue of a local planning provision that has now lapsed if the application was withdrawn (or refused as recommended) no future DA for this use would be permissible at this site.

This report has been prepared prior to the lodgement of all the additional information requested and with no analysis of the preliminary revised scheme for the following reasons:

- The two schemes are at the level where the revised scheme is too dissimilar to that lodged;
- The applicant has met with Council on several occasions since 2012, (four years prior to lodgement), but still failed to lodge an application with information requested by Council and required under the *EP & A Act, 1979*;
- Council needs to ensure the seriousness of DAs being lodged and is mindful of the costs to staff time (and fees paid) in undertaking revised assessments; and
- Significant concerns from Council officers that the ecological constraints warrant a SIS and detailed constraints analysis prior to any design response being contemplated.

No additional plans or information have been lodged in line with the procedure for amending a development per Clause 55 of the *Environmental Planning and Assessment Regulations 2000*.

There are a number of public submissions in response to the proposal, of which detailed consideration has determined that the scheme or resolution via appropriate conditions to ameliorate any unreasonable impact to residents and the environment is not possible.

While such a facility would provide significant benefit to the over 55 years population of Lake Macquarie, refusal of the development, is considered to be in the public interest and satisfy the objectives of the Act.

RECOMMENDATION

It is recommended that the application be refused for the reasons contained in Appendix A to this report.

ENDORSEMENT

The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application has no pecuniary interest to disclose in respect of the application.

The staff responsible authorised to assess and review the application have no pecuniary interest to disclose in respect of the application. The report is enclosed and the recommendation therein adopted.

Andrew Leese
Senior Development Planner
Lake Macquarie City Council

I have reviewed this report and concur with the recommendation.

John Andrews
Chief Development Planner
Development Assessment and Compliance

Attachment 1 – Proposed Reasons for Refusal

Attachment 2 – Plans of Development

Attachment 3 – Clause 4.6 Variation – Height of Buildings

Attachment 4 – Letter from Crown Lands

Attachment 5 – Comments from Council’s Development Planner Flora & Fauna

Attachment 6 – LMCC Request for Additional Information 16 November 2016

Attachment 7 – Plans of possible Amended Scheme

Attachment 1

Reasons for Refusal

1. The development application does not comply with *State Environmental Planning Policy No.55 – Remediation of Land*. The application is not supported by an adequate assessment of the likely contamination of the land and the likely cumulative impacts of the proposed development. The application is not supported by a report carried out in accordance with the Contaminated Land Planning Guidelines (79C(1)(a)(i)).
2. The development application does not comply with *State Environmental Planning Policy (Building Sustainability Index –Basix) 2004*. The development application is not supported by any Basix Certification. The application is not supported by adequate information to allow a proper assessment of the proposed development (s79C(1)(a)(i)).
3. The development application does not satisfy Section 5A of the *EP& A Act 1979*, due to the significant impacts on threatened species and endangered populations and in particular sub-section (d) where the proposal is likely to fragment or isolate areas of habitat and impacts on the long term survival of the species, population and ecological community in the locality.
4. The development has not provided a Species Impact Statement required under Section 78A(8)(b) of the *EP&A Act 1979* and Council's guidelines for *Tetrahteca juncea*, large forest owls and the squirrel glider.
5. The development application is inconsistent with the aims of *Lake Macquarie Local Environmental Plan 2014*, in particular (2)(e) *to apply the principles of ecologically sustainable development*. (79C(1)(a)(i)).
6. The development application is inconsistent with the E2 Environmental Conservation and E4 Environmental Management zone objectives of *Lake Macquarie Local Environmental Plan 2014*, in particular *To conserve, enhance and manage corridors to facilitate species movement, dispersal and interchange of genetic material and To protect, enhance and manage corridors to facilitate species movement, dispersal and interchange of genetic material*. (79C(1)(a)(i)).
7. The development application does not comply with Clause 7.12 of *Lake Macquarie Local Environmental Plan 2014*. The proposed development fails to comply with subclause (3)(a) *the land is eligible land*. The area of land calculated as having a slope of less than 20% is 64% and as this was the case prior to this Plan commenced it is not eligible land as this slope requirement was a requirement under the previous plan (79C(1)(a)(i)).
8. The development application does not comply with Clause 7.12 of *Lake Macquarie Local Environmental Plan 2014*. The proposed development fails to comply with subclause (3)(d) *at least 70% of the proposed development site comprises land with a slope of less than a 20% grade*. The area of land calculated as having a slope of less than 20% is 64%. (79C(1)(a)(i)).
9. The development application is inconsistent with clauses 4.3 Height of Buildings and the clause 4.6 Exceptions to development standards of *Lake Macquarie Local Environmental Plan 2014*. The application fails to provide sufficient evidence to support a clause 4.6 exception to the 5.5m height standard. (79C(1)(a)(i)).

10. The proposed development is inconsistent with the intent of *Lake Macquarie Development Control Plan No.1 – Principles of Development*. The application is not supported by adequate information to allow a proper assessment of the likely environmental impacts of the proposed development. The application has failed to adequately meet sections 3.4 Solar Access and Orientation, 3.5 Energy Efficiency and Generation, 3.13 Safety and Security, 3.14 Cut and Fill 4.6 Erosion and Sediment Control and 4.7 Noise and Vibration. (s79C(1)(A)(iii)).

11. The development application is not supported by adequate information to allow a proper assessment of the likely environmental impacts of the proposed development. The proposed development is considered likely to adversely impact the biophysical environment of the locality and the amenity of adjoining residents. The application is not supported by adequate information detailing (79C(1)(b)):

- a. Inadequate plans and draft documentation;
- b. Acoustic Impacts;
- c. Land Contamination impacts;
- d. Operational Site Management;
- e. Stormwater Plans;
- f. Slope Stability;
- g. Traffic;
- h. Waste Management;
- i. Crime Prevention (CPTED);
- j. Landscape and Visual impacts, and
- k. Erosion and Sedimentation impacts.

12. The development application has not demonstrated that the site is suitable for the proposed development. The application is not supported by adequate information to allow a proper assessment of the proposed development. The proposed development is considered likely to adversely impact the biophysical environment of the locality and the amenity of adjoining residents. The application is not supported by adequate analysis and reporting in the following areas (79C(1)(c)):

- a. Inadequate plans and draft documentation;
- b. Acoustic Impacts;
- c. Land Contamination impacts;
- d. Operational Site Management;
- e. Stormwater Plans;
- f. Slope Stability;
- g. Traffic;
- h. Waste Management;
- i. Crime Prevention (CPTED);
- j. Landscape and Visual impacts, and
- k. Erosion and Sedimentation impacts.

13. Approval of the development application is not considered to be in the public interest.

The development application is not supported by adequate information to allow a proper assessment of the proposed development. The proposed development is considered likely to adversely impact the biophysical

environment of the locality and the amenity of adjoining residents. The application fails to demonstrate that environmental harm is not likely to occur.

The proposed development is not considered to comply with the objectives of the *Environmental Planning and Assessment Act 1979*. (s79C(1)(e))