



Statement of Environmental Effects in relation to

Proposed Retirement Village 26, 48 and 56 Manor Road, Harrington

Prepared for Bayline Developments

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Project: 16229

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1. Introduction

1.1 Overview of Proposal

The proposed development involves the construction of a retirement village which will provide supported living primarily to seniors, as well as to people with a disability. The proposed development comprises 'serviced self-care housing' under the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The proposal provides 293 dwellings along with community/recreation facilities and support services/facilities.

1.2 Scope of Report

This report has been prepared to accompany the development application and provides information as required by Schedule 1 of the *Environmental Planning and Assessment Regulation 2000*. The report addresses matters that are required to be considered by the consent authority under the provisions of Section 79C of the *Environmental Planning and Assessment Act 1979*.

The Statement of Environmental Effects provides:

- A description of the site.
- A description of the proposed development.
- A review of the statutory and non-statutory planning instruments applying to the land.
- A review of the environmental impacts of the proposed development through the use of available site information and specialist reports.
- A discussion of the suitability of the site for the development.
- A discussion of how the proposal relates to the public interest.

1.3 Supporting Documentation

This Statement of Environmental Effects is supported by several specialist investigations and assessments. Copies of these documents have been submitted with the development application. The following list of documents has been submitted in support of the development application:

- Architectural Plans and Details (communal facilities) – EJE Architects
- Dwelling Plans - Bayline
- Landscape Plans– Terras Landscape Architects
- Stormwater Plans and Stormwater/Servicing Report – Tattersall Lander
- Flooding Assessment – BMT WBM
- Bushfire Assessment – Australian Bushfire Assessment Consultants
- Traffic Assessment Report – Barry Bradley and Associates
- Social Impact Assessment – RPS Australia (East)

1.4 Site History

The subject land is zoned R5 Large Lot Residential with a small area of E2 – Environmental Conservation land in the south east corner, under the provisions of *Greater Taree Local Environmental Plan 2010*. Since the land was rezoned in 2010, the three (3) large parcels that extended from Manor Road to the Manning River frontage were subdivided to excise three (3) smaller lots containing existing dwellings, leaving three (3) large residue parcels which are the site of the proposed retirement village.

The land is also subject to a consent for a rural residential subdivision which would create 47 lots ranging between approximately 4,000m² and 4,500m².

A Site Compatibility Certificate for the proposed retirement village was issued by the NSW Department of Planning and Environment on 4 April 2018 for a *retirement village comprising 293 serviced self-care dwellings, associated recreation facilities, ancillary commercial uses and community title subdivision*.

1.5 Pre Lodgement Discussions

The proponent has consulted with MidCoast Council staff in relation to the concept in several meetings, including a meeting with the Development Assessment Panel on 30 May 2017. In these meetings the following matters were discussed:

- General indications of support for the concept, recognising the demand in the area.
- Council supported the concept for community title subdivision of the village, but was concerned about potential conflict with minimum lot sizes within the LEP.
- It was noted that an 8.5 metre height of building control affects the land if apartments are to be considered.
- Noted that the land is mapped as Class 3 Acid Sulfate Soils.
- Need for development to transition from residential to rural.
- Need to retain trees along the Manor Road frontage. Proposed 10 metre buffer was noted as beneficial.
- Access to Harrington Road is a concern and a single access road connection to Manor Road is encouraged.
- The land is subject to flooding and Council encourages the whole site to be filled to the 1% AEP (2100) flood level of 3.05 metres. This will require a maximum 800mm fill at the lowest point and impacts to surrounding flood behaviour will need to be examined.
- Waste Management will need to be discussed and determined.

- Land is mapped as Bushfire Prone land and will require an integrated approval.

Following receipt of the Site Compatibility Certificate, further discussions were held with Council officers in regard to the following matters:

- The provision of a public road to connect with the three (3) lots along the river front can be considered in the proposal.
- Stormwater management for the site will need to provide for no net increase in pollutants.
- Consideration of the new Biodiversity Conservation Act would be necessary.

With regard to these matters, the following is noted in regard to the application submitted:

- A legal opinion in relation to community title subdivision of the retirement village was provided to Council and with the application for the Site Compatibility Certificate. The Site Compatibility Certificate specifically references community title subdivision as proposed.
- The proposal does not include apartments and the proposed retirement village dwellings are less than 8.5 metres in height.
- Previous geotechnical investigations over the land identified that Potential Acid Sulfate Soils do exist over the site at depths of greater than 1 metre below the surface. Whilst there would be some disturbance of soils below this depth for services (sewer, etc.), there would be minimal disturbance for buildings, etc., on high level footings. An Acid Sulfate Soils Management Plan would need to be developed for the site, and a liming rate of 2.5-20kg of lime per tonne of soil has been identified.
- The proposal includes a 5 metre landscape buffer between development and the Harrington Waters Estate. To the west, the area is comprised primarily of open space areas used for recreation, with some buildings. The resulting development form is similar in scale and structure to a rural residential outcome.
- A wide buffer has been proposed along the frontage to Harrington/Manor Roads; however the majority of the trees in this corridor cannot be retained due to the requirements to construct Manor Road and requirements for stormwater quality structures.
- The proposal includes filling to provide flood free areas for dwellings and the impacts of filling on flood behaviour have been examined by WBM.
- Waste Management Strategies will be developed for lodgement with the development application.

- A Bushfire Assessment has been prepared for the site by Australian Bushfire Assessment Consultants showing the proposal's compliance with *Planning for Bush Fire Protection 2006*.
- The proposal includes a public road access along the western end of the site, connecting with the three (3) lots fronting the Manning River.
- Stormwater Management for the site has been devised which provides for the required treatment of stormwater flows.
- A Biodiversity Assessment report is being prepared for the site, complying with the requirements of the *Biodiversity Conservation Act 2016*.

2. Site and Surrounding Locality

2.1 Site Details

The following data is provided in relation to the site:

Title Description	Lot 2 DP 1219123 Lot 4 DP 1219124 Lot 6 DP 1217806
Property Address	26 Manor Road, Harrington 48 Manor Road Harrington 56 Manor Road Harrington
Site Area	22.7 hectares
Zoning – Greater Taree LEP 2010	R5 – Large Lot Residential E2 – Environmental Conservation

The subject site is located at the western edge of the Harrington township. The area in its regional context is shown in Figure 1 below.

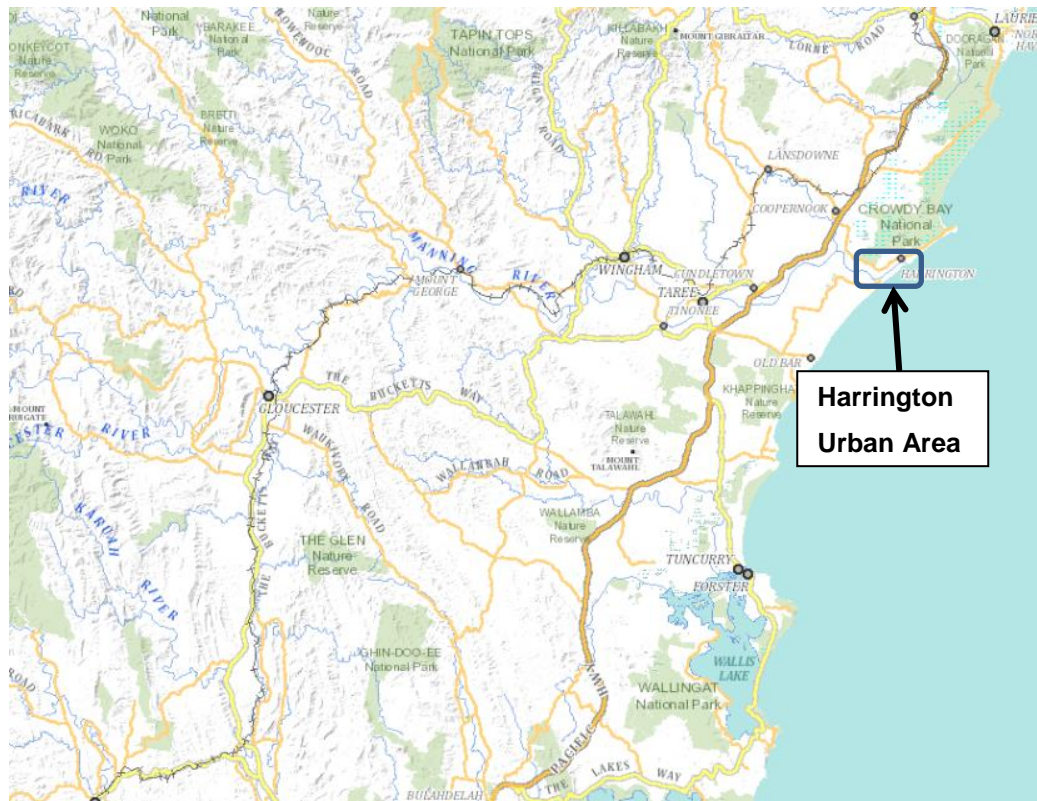


Figure 1 – Location of site in regional context [Source: Source: LPMA SIX Viewer]

The site is located on the southern side of Manor Road at the intersection with Harrington Road. The site is located adjoining the existing residential zoned area of the Harrington Waters Estate. The site and surrounding area is depicted in Figures 2 and 3 below.

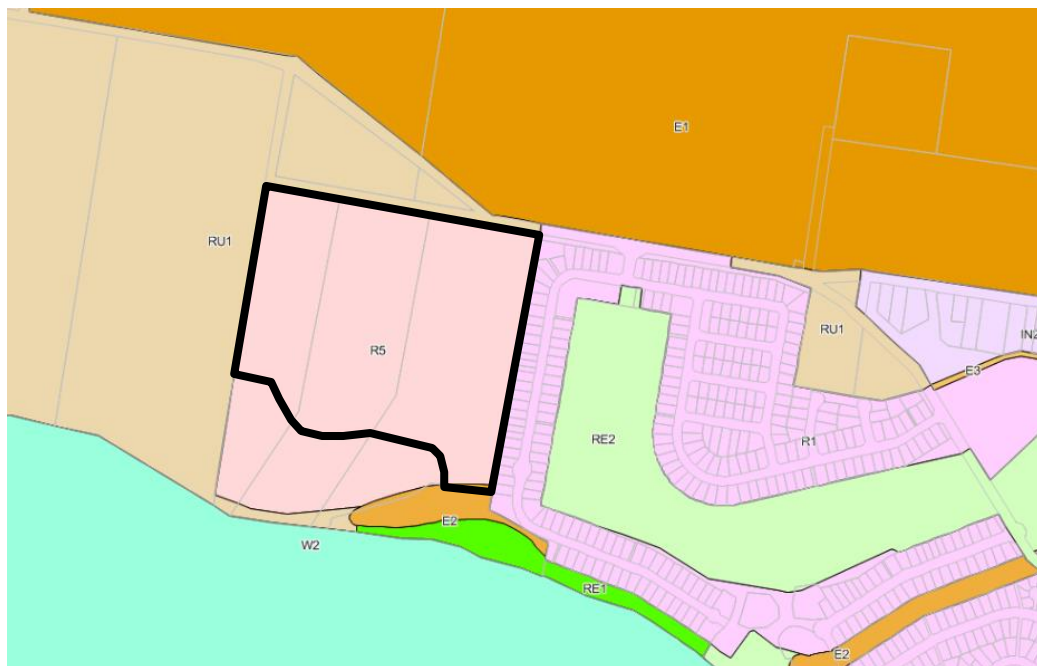


Figure 2 - Site Locality Plan (Zoning) [Source: www.legislation.nsw.gov.au]

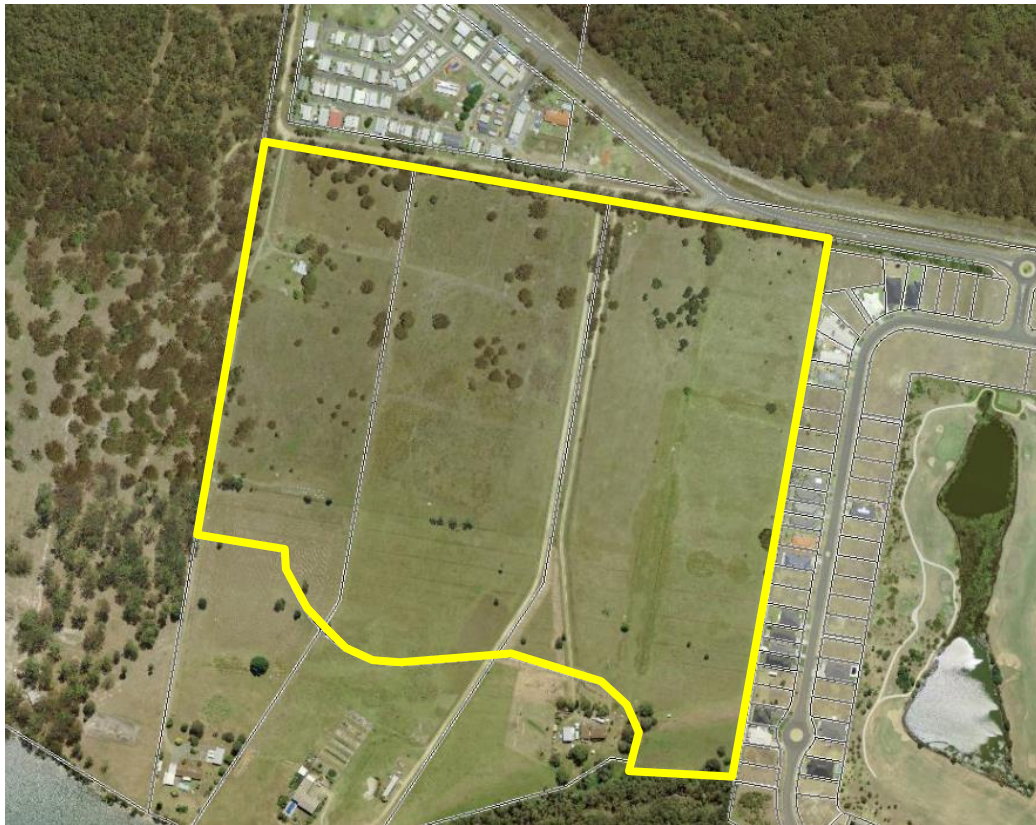


Figure 3 - Site Locality Plan (Satellite)

[Source: LPMA SIX Viewer]

The following photographs show the current condition of the land.



View over site from Manor Road



View over site from Harrington Waters Estate

2.2 General Description

The subject site is comprised of three (3) large allotments which are all vacant, and which were created when the dwelling houses were excised from the parent lot to create the three (3) lots to the south fronting the Manning River.

The site is located on the southern side of Manor Road and Harrington Road. The site has a frontage of approximately 395 metres to Manor Road and a frontage of approximately 115 metres to Harrington Road.

2.3 Site Context and Surrounding Area

The site is located at the western edge of the Harrington urban area and adjoins residential development, rural residential development and rural land.

2.3.1 Land to the North

Land to the north on the opposite side of Manor Road is improved for tourist and residential uses with a caravan park that provides 108 total sites, comprised of 63 long term sites for permanent residence and 45 short term and camp sites for tourist uses.

The land on the opposite side of Harrington Road is contained within Crowdy Bay National Park; however there is a corridor of approximately 30 metres along the Harrington Road frontage which is maintained for services in that area (electricity, water and sewer).



Manor Road frontage to site



Harrington Leisure Village (from Harrington Road)

[Source: Google Maps]



View along Harrington Road frontage to site

[Source: Google Maps]

2.3.2 Land to the West

Land directly west of the site is comprised of a large allotment of rural land zoned RU2 and appears to be used for low intensity agricultural uses.

2.3.3 Land to the South

Land to the south is comprised of three (3) rural residential lots that were excised from the subject land.

2.3.4 Land to the East

Land to the east is comprised of urban residential development within the Harrington Waters Estate. The land is filled and there is a narrow drainage corridor between the lots created and the subject land. The residential lots are generally being improved with low scale low density residential development.



Typical Harrington Waters urban development



View from site to residential development in Harrington Waters

2.4 Soils

Previous geotechnical assessment of the land has found that the soils over the site comprise a predominantly sandy alluvial profile with some firm to stiff clays in the upper 2 to 3 metres of the soil profile.

Groundwater depths over the site vary between 1.5 metres and 2 metres below the existing surface.

The site is mapped as class 3 on the Acid Sulfate Soils planning maps. Previous geotechnical assessment of the land indicated that there were potential Acid Sulfate Soils present on the site at depths more than 1 metre below the existing surface.

2.5 Topography

The topography of the land is generally described as flat. The levels over the land vary from approximately 2.3 – 2.7m AHD. There are no watercourses or other significant topographic features within the site.

2.6 Site Drainage

Overland drainage of the site is to the south toward the Manning River and the current drainage generally occurs as sheet flow across the site and adjoining land to the river.

2.7 Ecological Values

Vegetation cover on the land has been modified as a result of past agricultural activities and rural residential occupation of the land. The vegetation over the site is dominated pasture areas that have been managed for low intensity grazing purposes.

An ecological assessment of the land was carried out in 2014 by Darkheart Eco-Consultancy examining the subdivision approved over the land. This assessment identified two (2) vegetation communities over the subject land as follows:

- Pastoral Woodland – Comprising few remnant trees amongst improved pasture dominated by exotic pasture species and weeds.
- Roadside Dry Sclerophyll Forest – Comprised of a narrow band of remnant eucalypt trees along the Manor Road frontage of the site.

The previous ecological assessment for the land recognised that the development areas were *low value vegetation with generally low habitat values*.

2.8 Existing Development

The subject lots are currently vacant and only contain a rural shed and other rural infrastructure (roads, fences, etc.).

2.9 Traffic and Access

2.9.1 Site Access

Access to the site is available from frontages to Manor Road and Harrington Road. Each lot has an existing gravel access driveway connecting with the Manor Road frontage of the site.

2.9.2 Public Road Frontage

Manor Road is a minor gravel road providing access to the three (3) properties, as well as to the caravan park on the opposite side of the road. The roadway is a narrow gravel road with a 3-4 metre wide pavement and informal table drains along each side.

2.9.3 Public Transport

The subject site is located approximately 1.3km from the Harrington Shopping Centre and approximately 3.5km from the shops located in High Street, Harrington. The site is connected to these areas by public roads, with Harrington Road being the main access into Harrington.

The subject site is located approximately 200 metres (via public roadways) south of the existing bus stop located in Harrington Road. This bus stop is serviced by Route 320 operating between Taree and Harrington which runs in each direction three (3) times a day Monday - Friday.

The proponent has been in contact with the bus company who has agreed that the bus could run through the village, and the proposed layout will facilitate a bus route via the main circuit road through the retirement village.

In addition, the village will provide a mini-bus service connecting with Harrington and Taree, as well as on occasions for special trips and functions organised for the residents.

2.10 Hazards

2.10.1 Flooding

The land is identified as within the flood planning area under *Greater Taree Local Environmental Plan 2010*. The Manning was subject to a recent flood study undertaken by BMT-WBM for MidCoast Council, known as the *Review and Update Manning River Flood Study*. The Flood Impact Assessment for the proposal was also prepared by BMT-WBM. The Flood Assessment has identified the following flood levels for the land:

- 1% AEP event (1:100 ARI) – 2.6m AHD
- 0.5% AEP event (1:200 ARI) – 2.6m AHD
- 0.2% AEP event (1:500 ARI) – 3.0m AHD
- 1% AEP event (1:100 ARI) 2100 climate change allowance – 3.1m AHD

The peak velocities across the subject land in flood events are low and are typically less than 0.2 metres per second.

2.10.2 Bushfire

The subject site is identified as bushfire prone land on the mapping held by MidCoast Council. An extract of the mapping is provided below. As can be seen, the bushfire prone areas mapped are limited to buffer areas to Category 1 vegetation along the western and northern boundaries of the site, and in the south eastern corner of the site.



Figure 4 – Bushfire Prone Lands Map of site

[Source: MCC Exponare]

2.11 Heritage

2.11.1 European Heritage

There are no items of European heritage listed as being present on the land and the site is not located in a heritage conservation area. There are no items identified on adjoining lands.

2.11.2 Aboriginal Heritage

A Search of the Aboriginal Heritage Information Management System (AHIMS) database has been undertaken and did not reveal any Aboriginal Sites or Places on or near the subject site. The subject land has been disturbed through past activities and would be 'disturbed land' under the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*.

3. The Proposed Development

3.1 Development Overview

The proposed development involves a new Retirement Village development on the subject land.

The proposed Retirement Village provides 293 dwellings comprised of a variety of single storey detached villas. The seniors housing is for 'serviced self-care housing' and will provide extensive recreation and support services including:

- Management services for the coordination of services to the residents.
- A Care Manager (registered Nurse) responsible for the coordination and provision of care to residents.
- Onsite manager for 24 hour support and response to emergency calls and alarms, including resident distress alarms within each dwelling.
- Home delivered meals provided through the on-site kitchen or outside contractors at the choice of the resident.
- Personal hygiene management and personal care.
- Assistance with housework.
- Maintenance of yards and gardens.
- Doctors and other health specialists consulting room.
- Ancillary commercial use to serve residents.
- Lifestyle and wellness activity programs and facilities.
- Dining area.
- Barbecue facilities.
- Storage facilities.
- Caravan parking.
- Temporary Accommodation.

The proposal will also involve subdivision of the lots under a community title scheme which will create separate titles for the dwellings which will be managed under the *Retirement Villages Act 1999*.

3.2 Development Statistics

The proposed development provides 293 dwellings for aged and disabled occupancy within a retirement village made up of a variety of dwelling types. The different dwelling types meet different needs and provide a range of housing options as well as providing for different levels of affordability.

Community title subdivision of the retirement village is proposed to provide individual titles for residents. Lot sizes within the subdivision shall vary between approximately 352m² and 584m² and will include a community lot containing the roads, parking, recreation areas, etc.

The following statistics are relevant for the proposed retirement village:

Relevant Statistic	Proposal
Site Area	Approximately 22.7 hectares
FSR entire development	0.24:1
FSR sites	Max 0.39:1
Landscape Area	45%
Deep Soil Areas	45%
Ceiling heights above existing ground	Villas – 2.4 - 2.7m Village Centre Buildings - 4.5m Accommodation Building – 5.8m Clubhouse – Building 4.5m

3.3 Subdivision

The proposed development provides for community title subdivision of the land to create individual dwelling allotments for the individual seniors housing dwellings. The provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* allow subdivision of land to facilitate seniors housing.

The proposed subdivision would create individual allotments for seniors housing which will be developed with a seniors dwelling meeting the provisions of Schedule 3 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

3.4 Proposed Villa Accommodation

The proposal includes some flexibility for an incoming owner to choose a dwelling design which can be adapted to individual needs. The application includes multiple dwelling designs which are suited to the different sites. Each dwelling includes:

- 2 bedrooms
- Ensuite/bathroom
- Kitchen
- Living Area
- Laundry
- Double Garage

The dwelling styles present flexible options for residents to have additional facilities depending on need and budget, and there is flexibility in the design to provide:

- 3rd bedroom
- Boat/Caravan Parking area
- Additional Parking space
- Integral shed/locker/store
- Theatre room
- Additional living space
- Private Pool or Spa

Each dwelling has been designed to maximise northern aspect to living areas and can be adapted for other lot orientations where necessary. The outdoor areas of each dwelling include an alfresco/patio area, drying area, as well as large garden space well in excess of the minimum standards specified by the SEPP.

3.5 Recreation/Community Facilities

The village provides a wide range of recreational opportunities for the residents, including:

- Tennis Courts
- Bowling Greens
- Men's Shed
- Sports Club House
- Main Recreation Centre including:
 - Foyer/reception
 - Large commercial and catering kitchen
 - Formal Bar area
 - Large indoor and outdoor seating/dining area
 - Games Room
 - Multipurpose Room
 - Gymnasium
 - Indoor swimming pool
 - Sauna
 - Theatre/Cinema
 - Associated amenities.
- Extensive parkland network
- Barbecue shelters and other embellishment of parklands
- Pedestrian/Cycleway connections

3.6 Ancillary Commercial Facilities

Given the size of the village, it has been proposed to provide some small scale commercial uses for the retirement village to serve the residents. The plan includes six (6) small tenancies which will provide small scale retail and service facilities for the day-to-day needs of the residents. Such facilities may include:

- Village Management office
- Medical Consulting rooms
- Dispensary/Pharmacy
- Personal care services (hairstylist, beautician, etc.)
- Small neighbourhood shop selling daily needs (bread, milk, newspaper)
- Specialist elderly retail (mobility equipment, etc.)
- Café/coffee shop

The facilities will operate on hours suitable to serve the residents but would generally be limited to between hours of 7am and 6pm.

3.7 Manager's Residence and Temporary Accommodation

A small two storey building containing a manager's residence and 14 suites has been proposed as part of the centrally located facilities to support the proposed retirement village use.

The suites will be occupied by persons attending the site for the following reasons:

- Visiting health professionals or similar using the consulting room.
- Staff or contractors providing services to the village and requiring on-site accommodation.
- Members of the resident's household/family attending events for that family member (birthday, anniversary, etc.) where the group is too large to be accommodated in the owner's dwelling.

3.8 Building Design and Aesthetics

The proposed villa designs provide for contemporary design and materials utilising a combination of face brickwork, rendered finishes, lightweight feature panels and coloured sheet metal roofing. The designs allow for altered roof forms including hipped roofs, gables and skillions. The variation allows future owners to develop an individual style for their personal dwelling which is complementary and acts to avoid repetitive streetscapes of the same dwelling.

The communal buildings have a common design theme to create a sense of place and character for the estate. The developer owns the Harrington Marina

which is a central facility within the Harrington Waters Estate, and the building design incorporates key elements of this building form including the pitched roof and central steeples. The building designs work on this sense of place to link with existing development in the area.

3.9 Caravan/Boat Parking

Whilst residents can choose to have a caravan/boat parking space incorporated into their development, a communal boat/caravan parking area is provided for residents which can be used to store their caravans/boats when not being used.

3.10 Landscape and Open Space

The treatment of the open space areas within the development are detailed in the Landscape Design Report submitted with the development application.

The site planning incorporates a network of open space through the site creating small clusters of dwellings separated by landscape areas and tree lined streets.

The network of open space creates:

- A formal entrance square and feature.
- A large village green near the central shops and recreation facility.
- Green space around the recreation facilities along the western boundary of the site.
- Pocket parks around the site providing passive and active recreation space.
- Large open area around the southern pond.

The area in the front setback is to be improved with planting of native canopy trees and shrubs to provide a treed area which will maintain a green leafy setback that complements the Manor Road frontage.

The proposal includes a 5 metre wide landscape buffer between the site and the existing dwellings in Harrington Waters Estate to create a green leafy screen.

Planting is also proposed along the roadways within the development and includes trees within the setbacks to buildings, as well as planting of trees along the development setback areas to create an avenue of larger trees along the roadway. This will create a green leafy treatment to the southern edge of the development.

3.11 Management Services

The village provides onsite management to support the aged housing and the following management services are provided at the site which will be available to the residents of the new dwellings:

- Onsite management to provide distribution of mail, arrangement of outside support services as required and daily administration for the village.
- Onsite caretaker to provide services out of hours as necessary, such as response to resident distress alarms and supervision of the village.
- Maintenance staff to provide maintenance of buildings, infrastructure, gardens and facilities, including maintenance of residents' yards and gardens.
- Organised activities and trips for residents to encourage active lifestyles and build community cohesion within the village.

In addition, the new residents will have access to the existing clubhouse and recreation facilities that are provided for the village.

3.12 On-site Support Services

The retirement village provides substantial on-site support services which go beyond the minimum requirements of the Seniors SEPP. Residents in the village are provided with necessary support to 'age in place' and live with dignity and respect.

Residents have a high level of access to retail, commercial, recreation and health facilities available in the local area, by both public transport services available at the site frontage as well as private access arrangements provided by the village.

The support services provided within the village include:

- Management services for the coordination of services to the residents.
- A Care Manager (registered Nurse) responsible for the coordination and provision of care to residents.
- Onsite manager for 24 hour support and response to emergency calls and alarms, including resident distress alarms within each dwelling.
- Home delivered meals provided through the on-site café/commercial kitchen or outside contractors at the choice of the resident.
- Nursing services provided by staff.
- Personal Hygiene Management and personal care.
- Assistance with housework.
- Maintenance of yards and gardens.
- Hairdresser and beauty salon.

- Doctors and other health specialist consulting room.
- Lifestyle and wellness activity programs and facilities.

These services are provided from the retail spaces provided around the village green, as well as from the large community building also located at the village green.

In the initial stage of the development, a temporary transportable building will be used to house an office, kitchen and consulting rooms, etc., so that these services are available when the first resident moves in. When the retail spaces are constructed in Stage 2, the services and facilities will be provided from these spaces and the transportable building will be removed from the site.

3.13 Traffic and Access

Parking for the villas is provided by double garages for each dwelling. Visitor parking is also available throughout, including parking at the main club house and other facilities throughout the village.

The road system is a grid pattern providing for high accessibility throughout the village and will provide a shared access which will be suitable for mobility scooters, etc., as well as pedestrians and cyclists.

The site will be connected to Manor Road via two (2) new intersections located approximately 200 metres apart and connecting a loop road along the western edge of the property with central connection through the centre of the proposed retirement village back to Manor Road. No access is proposed to Harrington Road.

The proposal will also provide for the construction of Manor Road to an appropriate standard. The road will be constructed from the constructed section at the intersection with Harrington Road to the new public road access at the western end of the site. The traffic impact assessment has examined the traffic generation of the proposal and the existing traffic conditions in the area and has found that the existing BAR intersection will be suitable for the traffic generated from the proposal.

The proposal includes connection via a proposed public road to the three (3) rural residential properties immediately south of the site, consistent with the rights of access for those properties and allowing for access and servicing for development of those lots. The proposed public road is developed as a construction access during construction stages and then completed and dedicated as a public road prior to occupation of the final stage of development.

The current rights of access through the site for the three properties to the south require access to be maintained to those properties. Currently this is via 3 individual driveways and in the future will be via the new public road. During development of the site access will be maintained for these properties either via temporary connecting road, or over the internal roads developed as part of the village.

3.14 Bushfire Mitigation Measures

The land is partly identified as bushfire prone land. The proposal has been located and designed to meet the requirements of *Planning for Bush Fire Protection 2006*. An assessment of the proposal against this Guideline has been submitted with the development application.

The proposal provides necessary Asset Protection Zones (APZ) between the development and bushfire prone vegetation to the west and south. The APZ area is provided over existing cleared land. Provision of the APZ in this area does not require the removal of any existing native vegetation and only requires ongoing management of the area in the same manner as currently occurs.

Access through the site is provided via a grid road with two (2) public road connections, which provides suitable access for fire-fighting purposes throughout the site.

Water supply through the site will include hydrants which will be available for fire-fighting purposes.

3.15 Flooding Controls

The impacts of flooding to the site have been examined by BMT WBM Pty Ltd. The flooding of the site has been modelled and the site will be filled, with minimum flood levels observed as follows:

- Current 1% AEP Flood Level – 2.6m AHD
- 1% AEP Flood Level (2100) – 3.1m AHD

The building areas will be filled to a level above 3.1m AHD so as to be above the 1% AEP (including 2100 climate change allowance) flood planning level. Floor levels will be provided with a 500mm free board above the design flood level, consistent with Council's DCP.

The effects of this proposed filling have been examined by BMT WBM in the *Flood Impact Assessment*. The Assessment has concluded that:

The impacts of the proposed development were presented in terms of relative change from the existing peak flood level, as presented in Figure 4-2 and Figure 4-3 and summarised in Table 4-1. The impacts are relatively minor, given that they are limited to flood event magnitudes above the 0.5% AEP, are less than 100 mm and are relatively localised in extent.

The assessment shows that minor flood level increases will occur over large rural properties, other than the impact to Lot 1 DP 34304 which currently contains a caravan park. The impacts to the park are considered to be minor given that the impacts are only experienced in rare events under the 2100 climate change allowance event, and the park will undergo significant change in that time which would include requirements for floor levels to be 500mm above the design flood applicable at the time, and well above any minor increase in level that would occur as a result of this proposal.

3.16 Stormwater Management

Stormwater Management for the site has been undertaken by Tattersall Lander who have prepared a stormwater management strategy for the site which includes modelling for stormwater quality, flows and local flooding. The strategy includes provision for conveyance of stormwater through the site in accordance with engineering standards. The proposal also provides for treatment of stormwater quality and includes:

- Collection of roof water in tanks to meet BASIX requirements.
- Collection of tank overflows via inter-allotment drainage.
- Treatment of stormwater from roads and tank overflows in bioretention basins throughout the site.
- Collection of water from the Manor Road to constructed wetlands to treat the water from catchments outside the site.
- Conveyance of stormwater to two large detention basins to control flows from the site.

3.17 Development Staging

It is proposed to stage the development, and it has been proposed that the proposal will be carried out in eleven (11) stages as follows:

Stage	Description
1	29 Seniors dwellings/lots, including central access road and associated drainage and transportable building providing services and support facilities.

Stage	Description
2	26 Seniors dwellings/lots, including access road and associated drainage and retail premises to provide services and support facilities, Managers Residence/Accommodation and village green area.
3	22 Seniors dwellings/lots, including access road and associated drainage.
4	21 Seniors dwellings/lots, including central access road and associated drainage. Includes Tennis Courts, Sports Club House (Relocated Stage 1 services building) and Main Recreation Centre.
5	22 Seniors dwellings/lots, including access road and associated drainage and Bowling Green, Men's Shed and Maintenance Shed.
6	22 Seniors dwellings/lots, including access road and associated drainage and caravan/boat parking area.
7	40 Seniors dwellings/lots, including access road and associated drainage.
8	22 Seniors dwellings/lots, including access road and associated drainage.
9	20 Seniors dwellings/lots, including access road and associated drainage.
10	45 Seniors dwellings/lots, including access road and associated drainage.
11	24 Seniors dwellings/lots, including access road and associated drainage.

The staging of construction has also been considered and is detailed in the construction staging plans. The staging provides for the creation of construction access primarily using the new public road, with the road to be constructed to its final form and finish and dedicated to Council prior to the occupation final stage of development.

4. Planning Controls and Legislation

4.1 Environmental Planning and Assessment Act 1979

4.1.1 Integrated Development

Section 91 of the Act identifies development which is 'integrated development', being development which requires development consent and another type of

approval specified in the Clause. In relation to the proposal, it has been lodged as integrated development with the following approvals also required:

- Bushfire Safety Authority to use land for a 'special fire protection purpose' – approval is required from the NSW Rural Fire Service under the provisions of Section 100B of the *Rural Fires Act 1997*.

4.2 State Environmental Planning Policy 44 – Koala Habitat Protection

The subject land has an area in excess of 1 hectare and the provisions of *State Environmental Planning Policy Number 44 – Koala Habitat Protection* (SEPP 44) apply. Previous investigations of the land found that the vegetation on site does not comprise potential koala habitat.

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

The proposed development is lodged under the provisions of State Environmental Planning Policy (Housing for Seniors or Persons with a Disability) 2004 (SEPP Seniors). This policy was made to increase the supply of Seniors Housing within the state and allows the setting aside of local policy to allow seniors housing where it meets certain standards and requirements. The need for seniors housing in the MidCoast Council local government area is evident given the population in the area is generally ageing and the area is a popular retirement area for seniors.

4.3.1 Preliminary (Chapter 1 – Part 1 - SEPP Seniors)

Clause 4 of SEPP Seniors identifies the land on which the SEPP applies. The clause provides that the provisions of the SEPP apply to land that is zoned urban or adjoins land zoned urban and on which dwellings, houses, residential flat buildings, hospitals, or special uses are permissible. The subject site adjoins an urban zone and dwelling houses are permissible on the land. As such, the SEPP applies to the land.

4.3.2 Key Concepts (Chapter 1 – Part 2)

The proposed development provides *serviced self-care housing*, as defined in clause 13 of the SEPP as follows:

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

The proposal provides self-contained housing in a new retirement village that will provide services to the residents on-site, including the specified services.

4.3.3 General Requirements (Chapter 3 - Part 1)

Clause 17 of the SEPP provides that certain forms of seniors housing is permissible on land that adjoins land zoned primarily for urban purposes, including serviced self-care housing that is managed as a retirement village. The subject land adjoins residential zoned land in Harrington Waters. The proposed development proposes serviced self-care housing and is to be managed under the provisions of the *Retirement Villages Act 1999*. The proposed development is therefore permissible on the land under the provisions of the SEPP.

Clause 18 of the SEPP provides that accommodation within the development may only be occupied by persons over 55 years of age or persons with a disability, and persons in the same household (including carers), as well as persons employed to provide management and services to residents. The dwellings will only provide accommodation for people over the age of 55 years and those with a disability (or members of their household). With regard to the other accommodation, the following is noted:

- The manager's residence is provided for the on-site manager/caretaker who is on site to provide services to residents.
- The temporary accommodation (built with the manager's residence) will provide accommodation for visiting professionals and staff providing services to residents. These persons are employed to provide services to the residents.
- The temporary accommodation will also provide accommodation for relatives and friends attending special events for residents who cannot otherwise be accommodated in the dwelling. These people are considered to be members of a resident's household who cannot otherwise be accommodated in the dwelling.

Clause 21 of the SEPP allows subdivision of land to facilitate seniors housing. In this regard, the clause provides:

Land on which development has been carried out under this Chapter may be subdivided with the consent of the consent authority.

Legal advice has been obtained in regard to subdivision of the land, including subdivision using the provisions of clause 21 of the SEPP. A copy of this legal advice has been provided in Appendix C. Essentially, the provisions of clause

21 would allow the subdivision of land under the SEPP to create lots less than the 4,000m² minimum area under the LEP. Whilst the lots will be created as separate titles, they will be encompassed under the community management statement and managed as a retirement village in accordance with the *Retirement Villages Act 1999*.

4.3.4 Site Compatibility Certificate (Chapter 3 – Part 1A)

Clause 24 of the SEPP provides that seniors development requires a Site Compatibility Certificate from the Director General in certain circumstances, including where it is on land which adjoins an urban zone. A Site Compatibility Certificate has been issued for the land and a copy of the certificate is provided in Appendix B.

4.3.5 Site Related Requirements (Chapter 3 – Part 2)

Clause 26 of the SEPP provides that development may only be approved under the SEPP if it is within 400 metres of certain services as listed in the SEPP, or is within 400 metres of a transport service which will provide transport to a point within 400 metres of the listed services.

The required services are:

- (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
- (b) community services and recreation facilities, and*
- (c) the practice of a general medical practitioner.*

All the above services are available in Harrington, with higher order services available in Taree.

The retirement village is directly adjoining a bus route and 200 metres from an existing bus stop which provides a public transport service from the site to the facilities in various locations. In addition, the developer is creating a bus route through the village and is in discussions with the local bus company to have a route through the village. The village will also provide buses that can meet these times as well as providing transport for trips to recreational and entertainment activities. All the necessary services listed in Clause 26 are available by public and private transport.

The subject land is identified as bushfire prone land and the provisions of Clause 27 apply. The Clause provides that the consent authority must be satisfied that the development complies with *Planning for Bush Fire Protection 2006* and must consider the views of the NSW Rural Fire Service. A bushfire

assessment has been submitted with the application, addressing compliance with *Planning for Bush Fire Protection 2006*.

Clause 28 of the SEPP provides that development must be connected to a reticulated water supply and have suitable methods for the disposal of sewage. The retirement village will be connected to MidCoast Water Services' reticulated water and sewerage system.

4.3.6 Site Analysis (Clause 30)

A site analysis has been prepared by EJE for the site which deals with the matters provided in clause 30 of the SEPP. The following discussion expands on relevant points.

Site dimensions

The seniors living site has an area of 22.77 hectares with large dimensions enabling effective development of seniors housing on the land.

Topography

The site is considered relatively level with only very slight grades generally in the order of 1° or less with the land generally sloping down to the south.

Services

The proposed development will be connected to reticulated water and sewer. The site will also be connected to mains electricity supply and telecommunications services.

Existing vegetation

The vegetation on the land is highly disturbed from previous activities on the land. The proposal results in the removal of isolated trees over the site as well as the trees along Manor Road to provide for new road construction and stormwater quality treatment.

Micro climates

The subject site has a north south orientation and the street grid layout provides streets running east west, allowing the maximum number of lots to have a front or rear northern orientation. Lots along the eastern boundary are oriented east west, however. House options for these areas include aspects to ensure orientation for northern sun.

Location of buildings, etc

The site analysis plan shows the existing features of the land.

Views to and from the site

The site is located in a low area and there are limited views to and from the site. The site is not highly prominent and views into the site are generally limited to properties which immediately adjoin the site. There are few opportunities for views or vistas to be obtained from the site.

Overshadowing by neighbouring structures

Adjoining structures are located away from the boundaries and do not overshadow the site.

Neighbouring buildings

The location, etc., of neighbouring buildings is detailed on the site analysis plan. The only close structures are located along the eastern boundary of the site and are limited to low scale residential structures fronting Pretoria Parade in the Harrington Waters Estate.

Privacy

There are no neighbouring buildings which impact on the privacy of the site. Likewise there are no areas of private open space or living areas, etc., in adjoining dwellings in close proximity to the site boundaries which would be overlooked from within the site.

Difference in levels with adjoining sites

There is a change in site levels between the site and adjoining lands to the east, where the land has been filled. Similar filling of the site will result in similar levels between the sites.

Views and solar access of adjoining properties

Adjoining lands do not enjoy significant views or vistas across the area proposed for the new accommodation.

Built form and character of surrounding locality

The character of the surrounding area has been previously described in detail. The land to the east and north is comprised of primarily residential development, with land to the west comprised of rural land and land to the south comprised of large lot rural residential development.

Direction and distance to local facilities

In this regard, the development is located 1.3kms from Harrington Shopping Centre and approximately 3kms from Harrington Main Street.

Public open space

There is a public reserve adjoining to the south eastern corner of the site which connects with foreshore open space and footpath along the river front connecting with Harrington and riverfront parklands.

Adjoining bushland or environmentally sensitive land

As discussed, the site does not contain significant native vegetation and is comprised of disturbed land from previous use. There are areas of EEC located south east of the site in the public reserve.

Sources of nuisance

There are no sources of nuisance such as major roads, rail corridors or airport flight paths located within the surrounds of the site.

Adjoining land uses and activities

As discussed, adjoining land uses vary from residential development to rural residential development.

4.3.7 Design Principles (Chapter 3 – Part 3 – Division 2)

Clauses 33-39 provide a number of design principles and the development must have adequate regard to these principles. The design principles provided are:

Neighbourhood Amenity and Streetscape

The SEPP provides that development should:

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

This Clause requires recognition of the desirable elements of the location's current and developing character. The design then needs to respond to those elements.

In relation to the location's character, the area is an urban fringe area which is changing in development structure and form. The development to the north and east is comprised of more intense urban forms, while the land to the west and south is comprised of less dense forms of rural residential development. Elements of the character which are relevant are:

- Dwellings in the area are predominantly single storey (although some two storey dwellings are located in the areas adjoining the site in Harrington Waters).
- Setbacks along Harrington Road are generally comprised of a 10 metre fenced and screened setback. The caravan park to the north has setback of structures in the order of 3 metres.

- Manor Road is not formally constructed but setbacks of structures along the northern frontage (within the caravan park) are in the order of 3 metres to 5 metres while some structures have almost no setback.

The proposal has recognised this character and has incorporated the following features to integrate with the surrounding character:

- The development provides single storey development.
- A large setback to Harrington Road and Manor Road has been provided.
- A 5 metre setback for lots has been retained along the eastern boundary which will be planted to provide a visual separation. Dwellings on these lots will also be setback a further 3-4 metres.

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

The area does not contain any heritage items or conservation areas.

(c) maintain reasonable neighbourhood amenity and appropriate residential character by:

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

The proposal maintains reasonable neighbourhood amenity and residential character as:

- i. Building setbacks are provided which do not result in overshadowing, reduce bulk and which allow effective landscaping.
- ii. The site is relatively flat and landform is not a key design consideration for building form.
- iii. The building height throughout the development is single storey which is compatible in scale with adjacent development.

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

The front building setback of 10 metres is consistent with existing building setbacks in Harrington Road.

- (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and*
- (f) retain, wherever reasonable, major existing trees, and*
- (g) be designed so that no building is constructed in a riparian zone.*

The landscaping proposals for the site provide for planting around and within the site, which contributes to the visual amenity of the area.

Visual and Acoustic Privacy

The proposed development layout has had due regard for visual and acoustic privacy as follows:

- The dwellings include large open space areas which are fenced for privacy.
- Planting and treatment around the boundaries of the site provides for effective screening between the retirement village and the adjoining properties.

Solar Access and Design for Climate

The proposed development layout provides for effective solar access and performance in the following manner:

- All dwellings have a north oriented living area and private courtyard.
- All dwellings will be subject to a BASIX certificate for energy and water efficiency, as well as thermal comfort.
- The proposed development does not result in overshadowing that affects adjoining dwellings or areas of private open space.

Stormwater

The Stormwater and Flooding reports submitted with the development application detail compliance with the stormwater controls within the development. The development includes controls to ensure that impacts from additional stormwater generation are not felt off-site. The proposal provides for the capture and reuse of stormwater in accordance with BASIX requirements.

Crime Prevention

The issue of Crime Prevention through Environmental Design was examined in detail for the original retirement village application. In relation to the matters addressed under the SEPP:

- The internal layout of the dwellings provides for observation and surveillance of the entrances and access roads.
- The use of glass side panels, security grilles and peep holes will allow for the observation of entrances without having to open the front door.

Accessibility

In relation to the matters raised within the SEPP:

- The proposal includes pedestrian network links through the site and with the pedestrian facilities in the area.
- The pedestrian links provide access for pedestrians, bicycles and mobility scooters.

- The pedestrian and vehicle access through the site is safe and effective. Resident and visitor parking (stacked) is provided to each dwelling.
- Additional parking for visitors (or residents) is provided in key locations near the recreation buildings, commercial areas, etc.

Waste Management

Waste Management within the site involves waste collection service by utilising Council's kerbside collection service. The access roads allow the turning of garbage trucks involved in waste collection.

4.3.8 Development Standards (Chapter 3 – Part 4)

Clause 40 of the SEPP provides a set of development standards for development of land to which the SEPP applies. The following standards are relevant to the proposal:

- Site Size – The SEPP provides the site must have an area of at least 1,000m². The subject site has an area of approximately 22.7 hectares.
- Site Frontage – The SEPP provides the site must have a frontage of at least 20 metres. The subject site has a frontage of approximately 520 metres.

Clause 41 of the SEPP provides that self-contained dwellings must meet the standards provided in Schedule 3 of the SEPP. The proposed dwelling designs comply with these standards.

4.3.9 Development on land adjoining land zoned primarily for Urban Purposes (Chapter 3 – Part 5)

This part of the SEPP provides certain controls for development that is located on land which adjoins an urban zone (such as the proposed development).

Clause 42 of the SEPP provides that development on land adjoining an urban zone must have reasonable access to home delivered meals, personal care, home nursing and assistance with housework. These services are provided onsite by management and the residents will also have the choice to engage outside help/contractors if they wish and this can be arranged by the onsite management. The staging of the development provides for a temporary building in Stage 1 to provide these services. The creation of the commercial spaces in Stage 2 will enable these services to be provided for thereafter. The spaces will provide a management office, consulting/nurses room, personal care services (hairstylist/beautician, etc.), a café providing onsite meals and a store for cleaning/maintenance services. As the village progresses, these services will be further rationalised within the recreational centre, maintenance shed and within the additional commercial spaces.

Clause 43 of the SEPP provides that a bus capable of carrying a minimum of 10 passengers is required to be provided which will take residents to shops, medical services, etc. While the site has access to public bus services, the village will also operate buses capable of carrying approximately 15 passengers each in accordance with this requirement.

4.3.10 Development Standards that cannot be used as a grounds to refuse consent (Chapter 3 – Part 7)

Clause 50 of the SEPP provides a series of non-refusal standards for self-contained dwellings (including serviced self-care housing). The standards provide controls for certain aspects and the consent authority cannot refuse consent to a development on the basis of that aspect if the standard is not breached. It should be noted that this does not prevent the consent authority approving something that exceeds the standards.

In the relation to the proposed development, the non-refusal standards are:

- **Building Height** – If all proposed buildings are less than 8 metres in height (from ground level to uppermost ceiling). The proposed dwellings are single storey and have a ceiling height of 2.4m – 2.7 metres. The proposed Recreation Centre has a ceiling height of 4.5 metres. The manager's residence/temporary accommodation is a two storey building and the top ceiling height is 5.8 metres.
- **Density and Scale** – If the floor space ratio is less than 0.5:1. The floor space ratio of the proposed development is 0.24:1.
- **Landscaped Area** – Minimum 30% of site area. The proposal provides a landscaped area of 45% of the site area.
- **Deep Soil Zones** – Minimum 15% of the site area. The proposal provides deep soil areas of 45% of the site area.
- **Solar Access** – Minimum of 70% of living rooms and private open space areas receive three (3) hours of sunlight daily between 9am and 3pm in mid-winter. All of the proposed dwellings and lots have been formulated so that dwellings will receive direct sunlight in mid-winter exceeding the minimum requirements.
- **Parking** – Minimum of 0.5 spaces per bedroom which equates to one (1) car space for each 2 bedroom dwelling and 1.5 spaces for each 3 bedroom dwelling. Each 2 bed dwelling has a garage providing one (1) or two (2) spaces, whilst 3 bedroom dwellings have at least 2 parking spaces. In addition, the development provides large areas of visitor/other parking spaces near key activity areas with 90 additional spaces provided in these areas.

The proposed development is compliant with the provisions of the State Environmental Planning Policy.

4.4 State Environmental Planning Policy Number (Coastal Management) 2018

The SEPP became operational on 3 April 2018 and repealed SEPP 71, SEPP 14 and SEPP 26, providing a consolidated instrument for land in the coastal zone. The SEPP is supported by interactive mapping for the coastal area. The maps identify that the site is identified as:

- Proximity Area for Coastal Wetland
- Coastal Environment Area
- Coastal Use Area

Clause 11 of the SEPP applies to land in proximity to coastal wetlands or littoral rainforest. These areas are mapped and Figure 3 provides an extract of the maps related to the SEPP showing the Littoral Rainforest areas and proximity areas. As can be seen the north eastern corner of the site is located in the Proximity Area to Coastal Wetland located on the opposite side of Harrington Road within Crowdy Bay National Park.



Figure 5: Proximity Area to Coastal Wetland

[Source: NSW DoPE]

Clause 11 of the SEPP provides controls in relation to these areas as follows:

11 Development on land in proximity to coastal wetlands or littoral rainforest

(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

(2) This clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.

The subject land is separated from the coastal wetland area by the Harrington Road corridor. The proposal does not impact on any vegetation within the coastal wetland area. The drainage of the site is toward the Manning River and away from the wetland area, and the Harrington Road Corridor creates a major drainage diversion between the site and coastal wetland areas. The proposal will not impact on the integrity of the coastal wetland area or surface or groundwater flows to/from the wetland area.

Clause 13 of the SEPP applies to land in the coastal environment area and provides:

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*

- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Relative to these matters:

- The proposal is unlikely to significantly impact on ecological or hydrological values in the area.
- The proposal includes drainage controls to protect water quality.
- The proposal does not have significant adverse impacts on native vegetation, fauna or their habitats, headlands or rock platforms.
- The application submitted includes due diligence Cultural Heritage Assessment and notes that the land is disturbed from previous development.
- The proposal includes connection of sewer to the MidCoast Water reticulated system.
- Stormwater treatment for the site results in improvements to water quality.
- The proposal will not impact on the surf zone.

Clause 14 of the SEPP provides controls in relation to land in the coastal use area as follows:

14 Development on land within the coastal use area

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) Aboriginal cultural heritage, practices and places,*
 - (v) cultural and built environment heritage, and*
 - (b) is satisfied that:*
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Relative to the above, the following is noted:

- The site does not have frontage to the coastal foreshore. The proposal does not impact on public access along coastal foreshores.
- The proposal does not involve impact to views, overshadowing or wind funneling along the foreshore.
- The proposal will not impact on scenic amenity of the coast, including coastal headlands.
- The application includes due diligence Cultural Heritage Assessment.
- The proposal does not affect any heritage items or areas.

4.5 Greater Taree Local Environmental Plan 2010

The proposed development has been lodged under the provisions of the Seniors SEPP and the provisions of the SEPP override other planning instruments in the event of any inconsistency, including *Greater Taree Local Environmental Plan 2010* (LEP).

4.5.1 Development Control Table

As previously identified, the subject lands are zoned R5 – Large Lot Residential and E2 – Environmental Conservation. The seniors accommodation is located entirely within the R5 Large Lot Residential zone.

Seniors housing is not listed as a permissible use in the R5 zone; however the land use is permissible under the provisions of the SEPP. The small commercial spaces are uses that are ancillary to the seniors living use and are therefore also permissible with the primary use.

The objectives of the R5 zone are:

Zone R5 Large Lot Residential

1 Objectives of zone

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The proposal has been lodged under the provisions of SEPP (Seniors) which provides for the setting aside of local controls for the purpose of enabling such development to occur. Whilst the proposal does not involve rural residential development, the proposal does not inhibit future urban development in the area and has access to necessary services and facilities. The site planning provides residential lots along the eastern boundary adjoining other residential development in Harrington Waters Estate. Communal and recreational facilities are located away from existing residential uses to minimise potential for conflicts with existing residential development. The proposed development maintains large setbacks from adjoining land uses and provides for visual screening, minimising potential for land use conflicts.

4.5.2 Development Standards

Clause 4.1 of the LEP provides controls in relation to minimum lot sizes for subdivision. The LEP includes maps which identify the minimum lot size controls for certain lands. In relation to the subject land, the minimum lot size control identified on the maps for this land is 4,000m². As discussed, the proposed community title subdivision is permissible under the provisions of the SEPP and is not subject to this constraint on lot size.

Clause 4.1A of the LEP provides certain controls in relation to subdivision of certain land, including land in the R5 zone where the lot size control is 4,000m². The operative provisions of the clause provide:

Development consent must not be granted to the subdivision of the following land unless the consent authority is satisfied that each lot to be created by the subdivision will be connected to a reticulated water and sewerage system

All of the proposed lots and development will be connected to MidCoast Water Services' reticulated water and sewerage system.

Clause 4.3 of the LEP provides controls in relation to heights of buildings. The LEP includes maps which identify the height of buildings controls for certain lands. In relation to the subject land, the height of building control identified on the maps for this land is 8.5 metres.

The overall heights of buildings are:

- Villas – 4.84m – 5.75m
- Main Recreation Centre – 10.41m (Ridge) – 13.21m (Steeple)
- Village Commercial Tenancies – 7.05m (ridge) – 9.77m (Steeple)
- Managers/Temp Accommodation – 7.75m (Ridge) – 10.71 (Steeple)

- Clubhouse – 8.32m (Ridge) – 10.87m (Steeple)
- Mens Shed – 5.5m

It is noted that the overall building heights of the Recreation Centre, Commercial Tenancies, Managers/Temp Accommodation and Clubhouse buildings exceed the overall height restriction under clause 4.3. It is noted, however, that the provisions of the SEPP for Seniors Housing provide a height control in the form of a non-refusal standard which overrides the provisions of the local control. The buildings all comply with this control. Whilst this is the case, the proposed building heights are considered justified anyway and this justification has been detailed in the 4.6 submission for exception to development standards below.

4.5.3 Clause 4.6 Variation of Development Standards

The height of the building is variable in different parts of the development. The following table shows the various height limits for various parts of the buildings.

Development Component	Maximum Building Height	Variance from Height limit
Recreation Centre Ridge	10.41m	+1.91 (22%)
Recreation Centre Steeple	13.21m	+4.71 (55%)
Commercial Ridge	7.05m	-1.45 (-17%)
Commercial Steeple	9.77m	+1.27 (14%)
Accommodation Ridge	7.75m	-0.75m (-9%)
Accommodation Steeple	10.71m	+2.21m (26%)
Clubhouse Ridge	8.32m	-0.18m (-2%)
Clubhouse Steeple	10.87m	+2.37m (28%)

As can be seen, for most buildings, only the central steeple is over the height limit. In relation to the main Recreation Centre, the height of the main ridge is also over the height limit due to the dimensions of the building and the roof pitch necessary for the building design and form.

As a first step in determining if the application of the standard is unreasonable or unnecessary in this case, the objectives of the development standard are determined. Clause 4.3 lists the objectives of the development standard as follows:

- (1) *The objectives of this clause are as follows:*
- (a) *to ensure that the height of a building is appropriate for the site,*
 - (b) *to ensure that the height of a building complements the streetscape or rural character of the area in which the building is constructed.*

The subject buildings are part of an overall new retirement village development over a large area. The buildings provide the recreation and activity centres of the area and have a consistent design theme to be recognisable within the village as such. The nature and use of the buildings requires higher building forms, and the higher building form within the site also highlights this function and use in the urban design of the village. The central buildings are located well away from the site boundaries and do not create any adverse impacts either within the site or to adjoining areas. Whilst the Clubhouse building is adjacent to the western boundary, it is only a marginal height different for this building and does not adjoin any residential or other sensitive areas. As such, the

building heights proposed are considered appropriate for the site given the context of the proposed development.

The proposed development only results in one and two storey commercial development on the land which is entirely appropriate for the site. The height limits are only breached by architectural roof features which create a sense of place for the village. Whilst a lower roof pitch could be utilised to obtain compliance with the height control, such a roof would not be architecturally consistent with the desired forms to provide for appropriate architectural treatment of the buildings. As such, the higher roof is essential to maintain a consistent and appropriate streetscape and character within the proposed village.

The higher buildings are generally contained to the central parts of the site with single storey dwellings at the interface with Harrington Waters Estate so that there is no abrupt change to building heights and there are no negative impacts from higher buildings abutting existing residential development.

The proposed building height does not result in any negative impacts within the site or to surrounding properties in terms of overshadowing, privacy or views.

The proposed development is consistent with the objectives of the standard, notwithstanding the non-compliance with the numeric control.

Given the above discussion, it is submitted that:

- It is unreasonable and unnecessary to maintain the maximum height standard in this case as:
 - Buildings are limited to one or two storey buildings that are appropriate for the site.
 - The variation is limited to the central parts of the building.
 - The building heights are necessary to achieve appropriate urban design outcomes for the proposed retirement village.
 - The additional height is necessary to maintain consistent roof forms and architectural features for the estate.
 - The higher buildings are distant from lower built forms in adjoining residential areas.

Through other cases, a series of reasons have been identified as to why compliance with a development standard may be considered unreasonable or unnecessary in the circumstances of a case. Preston CJ (*Wehbe v Pittwater Council*) expressed the view that there are five (5) different ways in which an objection may be well founded and that approval of the objection may be

consistent with the aims of the policy (SEPP 1 at the time). The five (5) ways expressed are:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

In this case, the built form outcomes are necessary to meet the objectives of the development standard and lowering of the roof pitch to achieve compliance would actually thwart achievement of the objective to ensure the building complements the desired character.

Given the above, strict application of the standard is considered unreasonable and unnecessary.

- The following environmental planning grounds support variation of the development standard:
 - The proposed building designs help to create a sense of place for the retirement village building on established themes in the area.
 - Lowering of roof forms would allow compliance with the numerical standard, but would ultimately be to the detriment of the urban design outcomes for the site.

Given the above, variation of the height of buildings development standard would be appropriate (if required) in accordance with Clause 4.6 of Greater Taree LEP 2010.

4.5.4 Miscellaneous Provisions

There are no miscellaneous provisions within Part 5 of the LEP that are applicable to the proposal.

4.5.5 Additional Local Provisions

Clause 7.1 of the LEP deals with Acid Sulfate Soils. The Planning Maps for the area identify the subject land as Class 3 indicating the possibility of Acid Sulfate Soils at depths of more than 1 metre below the surface level.

The proposal generally involves filling of the site and works above existing ground level and would not involve any disturbance of soils at depths of more than 1 metre below the surface level. The exceptions are the two proposed detention basins which involve excavation of soils more than 1 metre below the existing surface. These would need to be subject to an Acid Sulfate Soils Management Plan. The previous geotechnical report for the site advised management measures, and included a liming rate which could be adopted for neutralisation of the soils and reuse within the site as fill.

Clause 7.2 of the LEP deals with flood planning requirements and affects the land which is mapped as being located within a flood planning area. The provisions of the clause state:

7.2 Flood planning

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

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development compatible with the land's flood hazard, taking into account projected sea level rise,*
- (c) to avoid significant adverse impacts on flood behaviour and the environment.*

(2) This clause applies to land at or below the flood planning level.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and*
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) will not be likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

(4) A word or expression used in this clause has the same meaning as it has in the NSW Government's Floodplain Development Manual published in 2005, unless it is otherwise defined in this clause.

(5) In this clause:

flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard.

Relative to subclause (5) above, the flood planning level is 3.1m AHD (being the 100 year ARI level of 2.6m AHD plus 0.5m freeboard).

The flood issues were examined by BMT WBM in their Flood Impact Assessment submitted with the application. The assessment has found that:

- Much of the land is above the flood level but is below the flood planning level and is therefore low hazard.
- The proposal incorporates filling of the site above the flood planning level, as well as above higher flood levels modelled for climate change scenarios.
- The proposed filling has been modelled and it was determined that the proposal would result in only minor localised impacts to flood behaviour associated with event magnitudes greater than the 100 year ARI flood.

The proposed development incorporates floor levels for dwellings above the modelled flood levels and includes road levels that provide for safe evacuation in the modelled flood events.

4.6 Greater Taree DCP 2010

The proposed development has been lodged under the provisions of the Seniors SEPP and the provisions of the SEPP override other planning instruments in the event of any inconsistency.

This DCP is comprised of Chapters dealing with specific land uses and issues, as well as area plans.

The parts of the DCP that have some relevance to this proposal are discussed below:

- Part C – Subdivision Requirements
- Part D – Environmental Requirements
- Part E – Flooding Requirements
- Part G – Car Parking Requirements
- Part H – Residential Requirements
- Part M – Site Waste Minimisation and Management

4.6.1 Part C – Subdivision Requirements

The following table deals with requirements under Part C that are relevant to the proposed community title subdivision under the SEPP.

DCP Performance Criteria	Compliance
C3.1 – Site Hazards	
Where roads and other engineering works are to be carried out, engineering plans must be lodged with the application. For detailed engineering and construction requirements for subdivision, reference should be made to Council's Auspec Development Specification. Applicants are advised to consult with Council's engineers prior to lodging an application.	The Public Road within the site has been designed to Auspec requirements and there has been consultation with Council in preparation of the plans.
Should the subdivision be likely to have an impact on any threatened species, populations or ecological communities, a Species Impact Statement will be required. A 7-part test will be required to be submitted with the subdivision application to indicate likely ecological impacts.	A Biodiversity Assessment is being prepared advising development can proceed subject to retirement of credits.
Where native vegetation is to be impacted, an ecological assessment carried out by a qualified ecologist is to be submitted with the application and the relevant approvals are to be sought.	A Biodiversity Assessment is being prepared advising development can proceed subject to retirement of credits.
Where a subdivision proposal is located on bushfire prone land, the applicant shall comply with Planning for Bush Fire Protection Guidelines produced by the NSW Rural Fire Service.	A Bushfire Assessment has been prepared by Australian Bushfire Assessment Consultants and has been submitted with the development application. The assessment details the compliance requirements with the Rural Fire Service Guidelines.
In areas subject to flooding and inundation, subdivision of land will not be permitted where any lot to be created will be fully inundated by a 1% flood and the creation of such a lot will create potential for increased intensity of development on flood prone land. In assessing whether or not land will be wholly inundated by 1% flood, Council will disregard any proposals for filling that land.	The proposal includes filling to create levels above the identified flood levels consistent with the Council's controls.
C3.2 Road design and construction	
Where subdivision involves the construction of new roads, the road network to be established shall be designed in such a manner that will enable each lot to be developed and accessed in a practical and feasible manner.	Each lot is provided with practical and feasible access from a community title road.
Unless specified elsewhere in this Part, the configuration of roads shall accord with Council's Auspec Design Specification and other approved standards referenced therein. Pavement widths, depths and similar requirements are contained in this document.	The concept road designs for the public road have been designed to meet AUSPEC requirements.

DCP Performance Criteria	Compliance
Access from individual lots to major roads should be minimised. The use of minor roads for such access is desirable wherever practicable.	Access for the lots is only provided from the community title roads and no access to Harrington Road or Manor Road is proposed.
C3.3 Filling and levelling	
1. Site works are to be planned to allow topsoil to be stripped, stockpiled and reused on the site. No soil is to be removed from the site without consent.	Site works will be planned as required, with information provided for construction of the different stages.
2. Filling and levelling shall not adversely affect adjoining land and shall be carried out to Council's satisfaction, as indicated on approved engineering plans.	Filling will not impact on adjoining lands.
3. The quality of laying and compaction of fill will be required to meet Council's engineering standards. Geotechnical certification may be required to indicate compliance with Council's engineering standards and relevant Australian Standards.	Further information on filling will be provided during construction.
4. Levels shall generally be adjusted so that lots drain to the street and/or the stormwater drainage system. Where required, a system of inter-allotment drainage shall be installed to prevent ponding of water, or intensification of runoff on to adjacent land.	All lots shall drain to the drainage system as detailed in the stormwater management plan/strategy.
5. Cutting and filling should be planned to minimise damage or disturbance to existing vegetation.	Filling is located in areas that are generally absent of significant vegetation. Construction of Manor Road will require the removal of trees along that road frontage. The removal of this vegetation is not avoidable.
6. Erosion control and sediment control principles shall be implemented in accordance with Part G of this DCP.	Erosion and Sediment Control Plans will be provided for construction of each stage.
C3.4 Services	
Reticulated water and sewerage services shall be provided to all lots within urban areas (with the exception of lots in zone R5 shown on the lot size maps as having a minimum lot size of 10,000m sq or 15,000m sq) and Industrial and Commercial areas.	All lots will be provided with reticulated water and sewer services.
Reticulated electricity supply shall be made available to all lots. Underground power shall be provided to all lots in urban, commercial and industrial areas.	Underground electricity will be supplied to all lots.
The provision of utility services should not detrimentally impact on the landscape character of an area, or detrimentally impact vegetation corridors.	Services will be provided underground within the planned service corridors and will not have a significant impact on landscape character or vegetation corridors.

DCP Performance Criteria	Compliance
C3.5 Drainage	
Drainage systems shall be designed and constructed in accordance with Council's Auspec 1 Design Specification. Natural drainage systems should be incorporated into designs where possible.	The drainage strategy has been determined to meet Council requirements. Detailed drainage designs will be provided for each of the stages to obtain a subdivision construction certificate.
Drainage from subdivision sites should be consistent in both water quality and quantity terms with the predevelopment stormwater patterns.	Each stage includes detention and water quality structures to maintain flows and water quality.
Water quality in watercourses near subdivisions is to be protected by way of appropriate structures and/or filter mechanisms.	Bio-retention raingardens and other structures are provided to protect water quality.
Consideration will be given to the likely effects of flooding in determining any application. Land will generally be required to be filled to the General Flood Planning Level. Any development shall conform to Part E of this DCP and particular flood management plans where relevant.	The flooding and stormwater assessment by BMT WBM provides assessment of the effect of the development on flooding.
C3.8 Landscaping	
4. In approving a subdivision application Council may require the lodgement of a Landscape Plan to the satisfaction of Council and the undertaking of works as documented therein. These plantings shall be continuously maintained for a minimum of twelve (12) months.	The details of landscaping the site are provided in the landscaping concepts.
C4.1 Residential subdivision	
Site frontage shall be sufficient to permit vehicular and pedestrian access to the site.	The site frontages provide for effective vehicular and pedestrian access.
Lots shall be of suitable dimension and orientation to ensure good solar access to future development. On roads running north-south, lots may need to be widened to provide for solar access and prevent overshadowing of dwellings and private open space.	The majority of lots have a north south orientation. All lots have been designed to provide suitable solar access for dwellings. Dwelling designs have been provided for the lots to enable suitable access to northern sun.
Residential development will only be considered where reticulated water and sewerage is available to the proposed subdivision.	Reticulated water and sewer is to be provided for the subdivision.

4.6.2 Part D – Environmental Requirements

Only Section D3 of this part of the DCP is relevant. Part D3 provides controls in relation to Earthworks, Erosion and Sedimentation. In relation to the relevant performance criteria for each matter, the following is noted:

Earthworks

- The estate is being constructed with due regard to the grades of the land. The flooding constraints over the land require filling to achieve appropriate levels.
- Previous Geotechnical Assessment of the site found it was suitable for development purposes.

Erosion and Sediment Controls

- Consistent with the provisions of the DCP, a Soil and Water Management Plan will be prepared for the proposed works with the suite of civil designs.
- The soil and water management plan will include erosion and sediment controls, including silt fencing, diversion drains and sediment basins as required.
- Draft erosion and sediment controls for construction have been included in the concept civil designs prepared by Tattersal Lander and submitted with the application.

4.6.3 Part E – Flooding Requirements

This part of the DCP provides detailed development controls for land that is subject to flooding. The controls are based upon different land use categories. In the case of the proposal, the development involves subdivision as well as residential land use. These controls reference different flood planning levels and the relevant flood planning levels are discussed below:

Flood Planning Level	Description	Applicable Level at site
Current 1% AEP	1% AEP flood level	2.6m AHD
FPL2	2100 1% AEP flood level	3.1m AHD
FPL3	2100 1% AEP flood level plus 0.5m freeboard	3.6m AHD

Subdivision Controls

Hydraulic Hazard Category

- *No subdivision is to occur on land wholly inundated by flooding up to FPL2 event, unless it is demonstrated that the risk of flooding can be effectively and appropriately mitigated without impacting the adjacent floodplain.*
- *Subdivision proposed in residential zones where partly inundated by flooding up to FPL2 may be considered where it can be demonstrated that all resultant lots are able to provide adequate flood free land suitable for*

future development and effluent disposal (if applicable) Mounds are not considered suitable for this type of subdivision.

Flood Effects

- *Engineer's report required to certify that the development will not increase flood effects elsewhere, having regard to:*
 - *Loss of flood storage.*
 - *Changes in flood levels, flows and velocities caused by alterations to the flood conveyance.*
 - *The cumulative impact of multiple potential developments in the floodplain.*

The proposal provides for filling of the land to create ground levels generally above FPL2, although some roads are lower than FPL2. The report by WBM BMT examines the effect of the proposal on flood behaviour and notes that the proposal would result in only minor localised impacts to flood behaviour associated with event magnitudes greater than the 100 year ARI flood.

Residential Controls

The following table discusses the residential controls in Part E with reference to the proposed development:

DCP Matter	Control	Compliance
Hydraulic Hazard Category	No development is to occur in or over a floodway area, or a high hazard area, generated by flooding up to FPL2, unless justified by a site specific assessment.	The subject site does not include any floodway or high hazard areas.
Floor Levels	Habitable floor levels are to be no lower than FPL3.	The habitable floor levels of the dwellings will all be above FPL3.
Car Parking and Driveway Access	<p>The minimum surface level of open car parking spaces or carports shall be as high as practical, and not below FPL1.</p> <ul style="list-style-type: none"> • Garages or enclosed car parking must be protected from inundation by flood waters up to FPL2. • Where the level of the driveway providing access between the road and parking space is lower than 0.3m below FPL2, the following condition must be satisfied - when the flood levels reach FPL2, the depth of inundation on the driveway shall not exceed: <ul style="list-style-type: none"> ○ The depth at the road; or ○ The depth at the car parking space. 	<p>The garages are all at levels above FPL2.</p> <p>The new public road is partly below FPL2 and is generally no lower than 2.8m AHD, however there are localised areas where the road is 2.7m AHD. However, flood free paths are always available above the FPL2 from all dwellings.</p>

The proposed development is considered to meet the flood control requirements of the DCP.

4.6.4 Part G – Car Parking Requirements

This part of the DCP provides the Council's requirements in relation to car parking and access requirements. The DCP does not have any controls for Seniors Housing; however the proposal provides parking well in excess of the minimum requirements of the State Environmental Planning Policy for this type of development, which is the appropriate standard.

Whilst meeting the non-refusal standard under the SEPP, it is also noted that the proposal includes parking areas at the village green, club house and mens shed. These uses are ancillary to the Seniors Housing and do not generate significant additional external parking demand; however there is likely to be some internal use of the parking area by:

- Staff and contractors.
- Residents' visitors.
- Residents who may choose to drive to the facilities due to frailty, disability or illness.

The development provides an additional 86 parking spaces for these areas, as well as providing 68 caravan/boat parking spaces for use by residents.

4.6.5 Part H – Residential Requirements

This part of the DCP is not technically applicable to Seniors Housing and the controls of the SEPP would generally provide the controls relevant to the placement of homes on the land, etc.

Whilst not applicable, this DCP part has been reviewed in relation to the proposal in examining its compatibility with residential development.

In regard to the general controls for residential development, the following is noted:

- The DCP provides a building site coverage control of 65%. The site coverage of the proposed dwellings and infrastructure on the lots is less than 65%.
- The DCP requires provision of Private Open Space. Each dwelling provides a large private open space area which would exceed the DCP requirements.
- The orientation of the sites maximises orientation to the north for sites, maximising opportunities for homes to have excellent solar access. Given the low development forms and setbacks to site boundaries, overshadowing of other lands is not expected to be an issue.
- Given the setbacks and landscaping for the perimeter of the estate, no impacts to privacy are expected to occur.

- The proposal is unlikely to significantly impact on any significant views or vistas.

Whilst the proposal is not multi dwelling housing, the proposal would still be generally consistent with the controls for that form of development as follows:

- The DCP requires a minimum area of 1,000m² for multi dwelling housing. The subject site is well in excess of 1,000m².
- The setback of sites to Manor Road is a minimum of 10 metres, exceeding the minimum setback of 7 metres specified for the DCP.
- The side setback requirements of approximately 3 metres for a single storey dwelling are exceeded, with a 5 metre setback to common boundaries.

Whilst these controls are not relevant to seniors housing, it is clear that the outcomes for the land are similar to residential development that could be established in residential areas.

4.6.6 Part M – Site Waste Minimisation and Management

This part of the DCP seeks to ensure that waste management is considered in development design, so that suitable facilities are in place to enable garbage to be collected, stored and picked up within a development.

The DCP provides that the Site Waste Minimisation Template form provided by Council can be completed. Given the size of the proposed development and the mixed uses on the site, this template may not be appropriate for this development. The matters dealt with in the template are, however, discussed below:

Construction Waste Generation

During construction waste generation, the following measures will be employed:

- Sand and soils generated from the site will be utilised as fill on the site.
- All excess materials from construction will be returned to the supplier or recycled where possible.
- Any waste materials (packaging, etc.) will be collected in skip bins at the site and taken away by a waste contractor for disposal at a licensed waste management centre.
- Any opportunity for separation of recyclable materials in construction waste will be examined and separate collection of recyclable materials at the site will be provided.

Commercial Waste Collection and Management

A garbage room has been provided at the commercial tenancies which will be used to store bins that will take waste collected from the communal buildings and commercial spaces. On-site management will collect garbage from the various areas and place in the commercial bins. The bins will be collected as necessary by the garbage contractor.

Domestic Waste Management and Collection

Each dwelling has direct frontage to an internal road that allows access by heavy vehicles. Each dwelling will have three bins for garbage, recycling and green waste. The design of the road allows for kerbside pick-up of these bins in the same manner as occurs for residential properties throughout the MidCoast local government area.

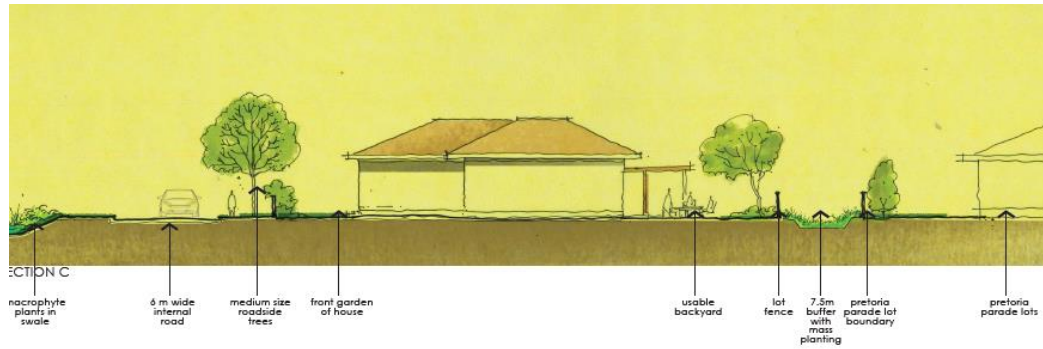
5. *Likely Environmental Impacts*

5.1 Context and Setting

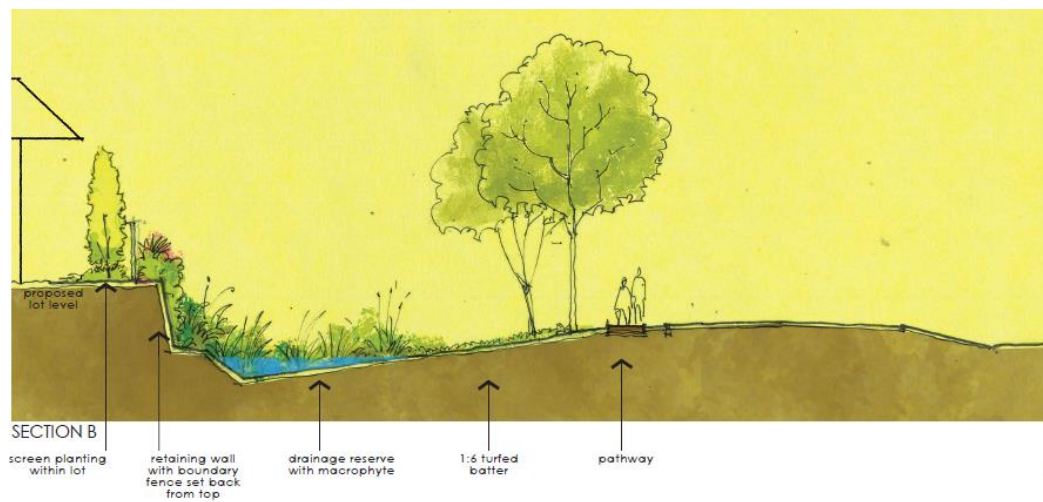
As discussed previously, the proposed development design has responded to the area's character in accordance with the considerations under the Seniors SEPP. The site is located at an urban fringe between residential development and rural residential development to the north. Visually there are no areas that overlook the site, other than the row of houses along Pretoria Parade in Harrington Waters Estate.

The landscape Masterplan shows the treatment of the site to provide tree-lined streets and open space corridors that break up the development form. Ultimately the treatment of the edges of the development site plays an important role in terms of integrating with the area's character.

The existing eastern edge of the site is formed by a retaining wall, concrete drain and urban housing on top. The proposed development will modify this interface; however the resulting development form is consistent with the development form in Harrington Waters. The interface is shown in the following section from the landscape concept.



The northern edge to Harrington Road and Manor Road will be improved with planting on the embankments of the bio-retention areas necessary to treat stormwater from the new Manor Road construction, as shown in the following section from the Landscape Masterplan:



The effectiveness of the proposed treatments is further shown in the render of the main entry showing landscape treatments.



This will provide a formal edge along Manor Road and improve the interface with the adjoining caravan park.

Land to the south is treated with a new public road separating the retirement village from the rural residential lots existing there. The public road is provided to create a formal access to these lots allowing for further subdivision of those lots. This edge creates a formal corridor separation between the two uses.

The western edge of the site adjoins rural land and open space/recreation uses have been concentrated in this area. There is no fill placed along this interface to maintain flood flows and the single clubhouse building is elevated to allow for flows underneath.

The proposed development is located at the urban edge of Harrington Waters. The development provides a relatively low density compared to what could be achieved under the SEPP, or under the controls for the adjoining residential zone. The following table compares the development controls which apply and the outcomes for the site.

Development Aspect	SEPP Control	R1 – General Residential Control	Proposed seniors housing development
Floor Space Ratio	0.5:1	0.6:1	0.28:1
Site Coverage	70% of site	65% of site area	55%
Landscaping	30% of site	Not specified	45% of site
Private Open Space/dwelling	15m ² per dwelling	35m ² per dwelling	Minimum 60m ² per dwelling
Winter Solar Access	70% of dwellings	All dwellings	100% of dwellings
Parking	1 space (2 bed) 1.5 space (3 bed)	1 space (2 bed) 2 space (3 bed)	2 bed 1-2 spaces 3 bed 2-3 spaces

The development form and density is well below the maximum density that could be achieved under either the SEPP or local controls and is a suitable outcome for a retirement village on an urban fringe.

5.2 Traffic and Access

The traffic impacts of the proposed development have been examined in detail within the Traffic Assessment Report prepared by BJ Bradley and Associates. A copy of the Traffic Assessment has been submitted with the development application. The traffic assessment includes traffic counts of existing traffic in the area and projects future traffic growth. The Assessment uses RTA data to

estimate traffic generation from the proposed development and uses computer modelling (SIDRA) to examine the impacts of the proposal on the local traffic system. Due to comments made in preliminary discussions of the proposal with Council, the report has examined the traffic impacts with the current intersection, as well as if a roundabout were to be constructed at the intersection of Harrington Road and Manor Road. The assessment concludes:

1. *I recommend the proposed Retirement Village as a suitable development on the site as it will not generate a significant volume of additional traffic and the development will not adversely affect the level of service, level of safety or capacity of Manor Road or Harrington Road, Harrington.*
2. *I recommend retaining the existing rural type BAR intersection at Manor Road and Harrington Road based on the SIDRA simulations for the existing intersection compared with the performance of a roundabout, which provides no operational benefits to traffic utilising Harrington Road when the Retirement Village is eventually fully occupied and would result in higher average geometric delays and lower average travel speeds for through-traffic on Harrington Road.*

Parking provided for the proposed retirement village exceeds the minimum numbers required under the non-refusal standard of the SEPP. The proposal includes suitable parking for residents in private garages, as well as providing ample parking at the central village green area, as well as the activity spaces along the western boundary. There is also provision for caravan and boat parking on the site which is a common need for housing catering to active retirees.

5.3 Ecological Impacts

As discussed, the subject land is highly disturbed from past activities and uses of the land. Previous investigations did not identify any ecological constraints for the land which would prevent development from occurring. As a result of recent legislative changes, the application is subject to the provisions of the *Biodiversity Conservation Act 2016* and regulations, and a Biodiversity Assessment Report is being prepared for the site which will examine the need for offsetting, etc., under this legislation.

5.4 Aboriginal Heritage

The following review has been undertaken using the due diligence Code of Practice for the Protection of Aboriginal Objects in NSW. Use of the due diligence code is not mandatory but is used to determine if further assessment of Aboriginal heritage is warranted. The due diligence code provides a series of steps for undertaking due diligence assessment, which has been followed in this case.

With regard to the first step, the proposal will involve ground disturbance so the next step is to consider Step 2a.

Step 2a required the undertaking of an AHIMS search. An AHIMS search did not identify any Aboriginal sites or places on the site or surrounding area.

Step 2b of the due diligence process involves consideration of if there are any landscape features indicating a likelihood of the presence of Aboriginal objects, where the land is not 'disturbed land'. The subject site is 'disturbed land' as defined by the code. In these circumstances, the code provides that activity could proceed but that work must stop if any Aboriginal objects are found during construction works.

5.5 Hydrological Impacts

Regional flooding from the Manning River has been examined in the flood assessment prepared by BMT-WBM that has been submitted with the development application. The assessment identified that the subject land is generally above the current 1% AEP flood level of 2.6m AHD, but is affected by flood level models that have included assumptions about the impact of climate change to the year 2100. As discussed, the development has been developed to address the 2100 flood level and complies with the Council's DCP. The assessment also examines the effects of development of the land on surrounding flood levels, and finds that the proposal does not have significant effects on flood levels on adjoining lands.

Stormwater management for the site has been examined in detail by Tattersall Lander and the assessment is provided in their stormwater management report which has been submitted with the application. The report has identified key criteria for the site, including base level information on stormwater quality and flows.

The stormwater system for the site provides for collection, treatment and conveyance of stormwater flows from the site. The system includes:

- Rainwater tanks to collect roof water.
- Interallotment drainage systems for lots.
- Dished and graded road to convey surface water flows.
- Bioretention basins to treat stormwater flows.
- Constructed wetlands to collect water from Manor Road and untreated catchments.
- Detention basins.

The stormwater strategy details stormwater modelling undertaken to examine stormwater flows and quality. The proposed system is shown to result in containment of the 1:5 year ARO flows within the pit and pipe system, whilst the 1:100 year ARI events were shown to be controlled and not result in any additional flooding of adjoining lands.

The stormwater quality model (MUSIC) was initially run to examine the effectiveness of the stormwater system on treating stormwater flows. The initial run showed that the development would not meet the Council targets. In discussions with Council it was determined that the catchment above the site (Manor Road and caravan park) may be able to be collected and treated, resulting in overall improvements to stormwater quality. The proposal was modified to include constructed wetland areas to collect this catchment and the model was re-run; the results showing that the system would result in positive impacts to stormwater quality in the area. The results show the following reductions in pollutants loads:

- Gross Pollutants – 100% Reduction
- Total Suspended Solids – 70% Reduction
- Total Phosphorous – 4% reduction
- Total Nitrogen – 1% Reduction

The proposal has been shown to have a Neutral or Beneficial Effect on stormwater quality.

5.6 Construction Impacts

With such a large construction project, there are inevitable impacts from construction activities. The key area of potential impact is along the eastern boundary interface with residential properties within Harrington waters Estate.

The construction staging is shown in the plans submitted with Council. As can be seen the staging is carried out to ensure that only small areas of the interface are affected by civil construction (filling etc.) at any one time. Following civil construction, construction of homes at this interface will be typical domestic construction only giving rise to noise impacts etc. for a small period of time typical of any residential construction. As can also be seen in the construction staging plans the areas for hauling fill and making deliveries is distant from this

Usual controls will be implemented for the works to avoid air quality impacts from dust etc.

As discussed, access to the three properties to the south will be maintained during construction in accordance with the rights of access across the subject property.

5.7 Social and Economic Impacts

The Social Impacts of the proposed retirement village have been examined in detail in the Social Impact Assessment prepared by RPS and lodged with the application. The Social Impact Assessment recognised the significant social benefits delivered by this form of housing.

The subject site is close to a range of services, shops and recreational facilities including access to public transport.

The proposed development provides a significant social benefit to the local community by creating more affordable housing options in Harrington. The proposed development will be attractive to existing residents in the local area and to residents in the Hunter and Sydney regions more generally. It is considered that the proposed development will help secure the economic viability of the local community.

The Hunter Regional Plan 2036 states that the region will need an additional 70,000 dwellings by 2036. Further, the plan notes that by 2036 the percentage of people aged over 65 years is projected to increase from 19% to 25%. The proposed retirement village described in this SIA supports the objectives of the Hunter Regional Plan 2036.

The proposed development will have positive economic impacts through the provision of additional population to support local services and businesses. The construction program will provide significant employment for the local area and the ongoing use of the premises will employ persons involved in management and maintenance of the village and the provision of health and personal care services.

Whilst the proposal includes commercial spaces and a temporary accommodation, these are provided as ancillary components to provide services and facilities primarily for the residents and their guests, rather than to draw from existing markets.

6. Suitability of the Site

The subject site is an urban fringe location with access to services and facilities and public transport. The site is suitable for a seniors housing development as evidenced by the site compatibility certificate issued by The Department of Planning and Environment.

The subject site is mapped as bushfire prone land and the proposal has been subject to bushfire assessment which has made recommendations for the proposed development to comply with *Planning for Bush Fire Protection 2006* and AS 3959. These measures have been incorporated into the proposed development.

The land is identified as a flood planning area; however this hazard has been addressed by filling of the site so that floor levels are above the relevant flood planning levels.

7. The Public Interest

As discussed, the proposed development is expected to have positive social and economic effects for the local area and would be in the public interest.

The need for seniors housing in the area is acknowledged in The Hunter Strategy. The strategy recognises the ageing population in the area and the need for supply of suitable housing to meet the housing needs of seniors. The strategy also recognises the benefits that aged care in the area will provide to local economies. The proposal is consistent with the strategy and provides housing suitable for aged persons, and provides economic benefits in the area, increasing employment opportunities in aged care services.

The former Greater Taree City Council also prepared a development strategy for the Harrington area, known as the *Harrington Development Strategy 1998*, which identified the older population trend in Harrington and the need for self-care housing for seniors as well as aged care facilities. The proposal provides for development of serviced self-care housing at the site. Council has also been providing incentives for the development of a residential care facility at Harrington and the developer of this site has commenced discussions with Council to incorporate a facility within the proposed development. This will be the subject of further discussions with Council and a specialist aged care provider.

The proposed development will help deliver outcomes recognised in strategies for the area and will help to fulfil the public interest.

7.1 Disabled Access and Facilities

The proposed development has been designed to provide a high level of access for persons with a disability. The development has been designed to meet the requirements of the SEPP, BCA and Australian Standards. The village provides for a high level of disabled access and facilities for the residents which should be expected for this form of development.

7.2 Crime Prevention through Environmental Design (CPTED)

The suitable design of facilities to minimise the opportunities for crime are consideration for the public interest. The prevention of opportunistic crime provides significant benefits for the public through reduction in the volume of crime, minimising the demand for police resources responding to crime that could be avoided through suitable design measures.

The proposed retirement village is not at significant risk and the design incorporates features which limit potential opportunistic crime. Some features can be simply incorporated into the proposal as follows:

- Provision of lighting to the access roads and pathways.
- Villa doors should be fitted with security screened doors with locking mechanisms and deadbolts where appropriate.
- Any private open space access gates should be provided with locking/latching mechanisms that cannot be operated from the outside without a key.

The proposed development is not located in an area with a high crime risk and the design provides for good surveillance, access control and territorial reinforcement within the village and features can be incorporated into the development.

8. Conclusion

The development is proposed at Lot 2 DP 1219123, Lot 4 DP 1219124 and Lot 6 DP 1217806, 26-56 Manor Road, Harrington. The site has an area of 22.7 hectares and is located adjacent to urban development in Harrington Waters. The proposal involves the development of a 293 dwelling retirement village providing housing for seniors and persons with a disability with a high level of care and support services.

There is a need for this form of development in the Harrington area which has been recognised in the development strategy for the area. The proposal provides serviced self-care housing with a high level of support services which allow for ageing in place. The proposal will provide a form of housing which meets an identified shortage.

The application has been lodged under the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The

proposed development complies with the provision of this planning instrument which allows for this form of housing on the land. A Site Compatibility Certificate for the proposal has been issued by the NSW Department of Planning and Environment.

The proposed development is generally consistent with relevant local planning controls. The roof forms of the communal buildings exceed the maximum building height standards of 8.5m and exception to the development standard has been sought under Clause 4.6 of *Greater Taree Environmental Plan 2010*. It is noted, however, that the buildings meet the non-refusal standard for building height under the SEPP.

The proposed development involves development at the urban fringe and creates a new edge with residential development. The proposed development has been designed to address the existing character and minimises visual impacts in the surrounding character through site planning, provision of open space corridors, and provision of effective screen landscaping.

The proposed development site is a large area of land which has been significantly disturbed through previous occupation and use. The proposed development does not result in any significant environmental impacts.

The location of the subject site is highly suitable for the proposed use, being located close to relevant services and facilities and having public transport services available at the frontage of the site.

The proposal provides additional seniors housing with substantial services and provides for ageing in place. The proposed use is consistent with public policy and legislation to encourage this form of housing. The proposal will provide additional seniors housing options in an area which has an identified shortage of this form of housing and the proposal is in the public interest.

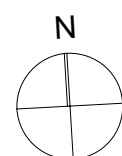
Appendix A
Site Plan and Elevations
EJE Architecture

DA

11843-Central Facilities v21.pln - 4/9/2018
11843 - a102 - Sept. '18 - rev [b]

Harrington Waters Lifestyle Resort

site masterplan
scale 1 : 1000 @ A1



Appendix B
Site Compatibility Certificate



Planning & Environment

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 Certificate of Site Compatibility

I, the Executive Director, Regions, as delegate of the Secretary of the Department of Planning and Environment, determine the application made by Bayline Investments (NSW) P/L on 29 November 2017 by issuing this certificate under clause 25(4)(a) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

I certify that in my opinion:

- the site described in schedule 1 is suitable for more intensive development;
- the development described in schedule 1 is compatible with the surrounding environment having had regard to the criteria specified in clause 25(5)(b); and
- that development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding land uses only if it satisfies certain requirements specified in schedule 2 of this certificate.



Stephen Murray
Executive Director, Regions
Planning Services

Date certificate issued: *4 April 2018*

Please note: This certificate will remain current for 24 months from the date of this certificate (clause 25(9)).

SCHEDULE 1

Site description: Lot 2 DP 1219123, Lot 4 DP 1219124 and Lot 6 DP 1217806 – 26-56 Manor Road, Harrington.

Project description: A retirement village comprising 293 serviced self-care dwellings, associated recreation facilities, ancillary commercial uses and community title subdivision.

SCHEDULE 2

Application made by: Bayline Investments (NSW) P/L

Requirements imposed on determination:

1. The final number of seniors housing dwellings will be determined through the assessment of the development application.
2. The commercial uses must be ancillary to the serviced self-care dwellings.



IRF18/781

Mr Danny Bayly
Bayline Investments (NSW) P/L
PO Box 82
HARRINGTON NSW 2427

Dear Mr Bayly


Determination of application for a site compatibility certificate for 26-56 Manor Road, Harrington – State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

I refer to your application of 29 November 2017 for a site compatibility certificate under clause 25(1) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP) in relation to 26-56 Manor Road, Harrington.

I, the Executive Director, Regions, as delegate of the Secretary, have determined the application under clause 25(4)(a) of the Seniors Housing SEPP by issuing a site compatibility certificate subject to satisfaction of certain requirements specified in the certificate (clause 25(7)). I have enclosed the site compatibility certificate.

If you have any questions in relation to this matter, please contact Mr Trent Wink in the Department of Planning and Environment's Newcastle office on 4904 2700.

Yours sincerely

 4 April 2018
Stephen Murray
Executive Director, Regions
Planning Services

Encl: Site compatibility certificate

Appendix C
Legal Advice - Subdivision

Michael Astill

Greenway Chambers
SYDNEY
TEL: 02 9151 2945 DX 165

Memorandum of Advice

Bayline Investments Pty Ltd

re

Harrington Land

Bayline Investments re Harrington Land

Introduction – Advice Sought

1. I am briefed to advise Bayline Investments Pty Ltd (**Bayline**) in relation to certain land at Harrington (**Site**) that it proposes to develop as a retirement village (**Proposal**).
2. The Proposal includes the construction of the development as well as subdivision of the individual units under the *Community Land Development Act, 1989* (**Community Title Act**).
3. The Site comprises three allotments which are, from west to east-
 - a. 26 Manor Road, Harrington being lot 2 in DP 1219123 (**Lot 2**),
 - b. 48 Manor Road, Harrington being lot 4 in DP 1219124 (**Lot 4**), and
 - c. 56 Manor Road, Harrington being lot 6 in DP 1217806 (**Lot 6**),
4. The Site is within the area to which the *Greater Taree Local Environmental Plan 2010* (**LEP**) applies under the *Environmental Planning & Assessment Act, 1979* (**EPA Act**).
5. Under the LEP, the vast majority of the Site is zoned *R5 Large Lot Residential*. However, the certificates under s.149 of the EPA Act you have provided to me indicate that part of Lot 6 is zoned *E2 Environmental Conservation*. You have provided me with an extract from the LEP Map indicating that this E2 zone applies only to a small part of Lot 6 at its southern extremity.
6. The zoning map also indicates that the entire eastern boundary of Lot 6 adjoins land that is zoned *R1 General Residential* under the LEP.
7. Under the LEP the Proposal would not be permissible. Further, under clause 4.1AA of the LEP, lots resulting from any subdivision under the Community Title Act must conform to a certain minimum size by reference to the *Lot Size Map* under the LEP. The lots resulting from the community title subdivision of the Proposal would not conform to the minimum size under that Map.
8. I am asked to advise on the interrelationship between *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (**SEPP**) and the LEP in relation to the Proposal.

Bayline Investments re Harrington Land

9. Particularly I am asked to advise-
- a. whether the provisions of the SEPP override the provisions of the LEP in respect of the Proposal, including the minimum lot size requirements of cl. 4.1AA, and
 - b. what other hurdles may have to be overcome to be able to rely on the provisions of the SEPP to obtain approval to the Proposal.

Summary of Advice

10. Subject to obtaining a Site Compatibility Certificate the SEPP will override the LEP in respect of the Proposal. This includes both the prohibition on development in the zone and the effect of cl. 4.1AA.
11. The Site is not zoned for urban purposes but adjoins such land. In such circumstances, before the operative provisions of the SEPP apply to the Proposal a Site Compatibility Certificate must be obtained.

Analysis and Advice

The SEPP prevails over other EPIs

12. To the extent of inconsistency between SEPP Seniors and any LEP¹, SEPP Seniors prevails by operation of cl. 5 (3) thereof –
- (3) If this Policy is inconsistent with any other environmental planning instrument, made before or after this Policy, this Policy prevails to the extent of the inconsistency.
13. The specific effect and implications of this for the Proposal are considered in detail below.

¹ An LEP is a type of environmental planning instrument under the EPA Act. This term is defined in the EPA Act as follows –

environmental planning instrument means an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 and in force.

Bayline Investments re Harrington Land

The SEPP does not apply to all land in the State

14. However, for there to be any potential for inconsistency the SEPP must first be found to apply to the land in question; it does not apply to all land within the State.

15. Clause 4(1) of the SEPP provides that it applies to the following land (subject to certain exclusions discussed below) as follows-

(1) General

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

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

16. It can be seen that there are two broad classes of land to which the SEPP applies; land that is itself zoned for urban purposes, and land that adjoins land for urban purposes. In both classes one of the uses in (i) – (iv) must also be permissible on the land itself (unless the land is being used for a registered club).

17. Pursuant to c. 2.3 of the LEP and the Land Use Table given effect by that clause, dwelling houses are permissible with consent in both the R5 and E2 zones. Accordingly, the second requirement imposed by cl. 4(1) is satisfied in respect of the Site.

18. In some cases, the question as to whether land is zoned primarily for urban purposes may require some detailed analysis. However, that is not the case here because cl.4(2) of the SEPP relevantly provides-

(2) Land that is not zoned primarily for urban purposes

For the avoidance of doubt, land that is not zoned primarily for urban purposes includes (but is not limited to) land that is within any of the following zones under another environmental planning instrument:

- (c) a zone that is identified as principally for residential uses on large residential allotments (for example, Zones R5 Large Lot Residential and . . .

Bayline Investments re Harrington Land

19. Accordingly, the Site is not zoned primarily for urban purposes and so for the SEPP to apply to it, the Site must adjoin land that is so zoned.
20. As noted above the entire boundary of Lot 6 adjoins land that is zoned *R1 General Residential* under the LEP. I think there can be no doubt that this land is zoned primarily for urban purposes.
21. Accordingly, in my view the Site adjoins land that is zoned primarily for urban purposes. In this regard, I do not think that the fact that the Site consists of three titles and only Lot 6 has a common boundary with the adjoining land is of any relevance.
22. As the Court of Appeal recently held, in planning law references to “land” connote the functional area over which development is, or is to, take place; such references are not intended to impose restrictions based on title boundaries.² Of course the analysis could well be different were the development proposed on Lot 2 and Lot 4 only.
23. Accordingly, *prima facie*, the Site is land to which the SEPP applies by operation of clause 4(1).

The SEPP is Expressly Excluded from Certain Land

24. However, clause 4(6) excludes the SEPP in certain cases as follows-

(6) Land to which Policy does not apply

This Policy does not apply to:

- (a) land described in Schedule 1 (Environmentally sensitive land), or
- (b) . . .

25. Schedule 1 relevantly provides as follows-

Schedule 1 Environmentally sensitive land

Land identified in another environmental planning instrument by any of the following descriptions or by like descriptions or by descriptions that incorporate any of the following words or expressions:

- (a) . . .

² *People for the Plains inc. –v- Santos NSW (Eastern) Pty Limited and ors* [2017] NSWCA 46 at [187].

Bayline Investments re Harrington Land

- (b) conservation (but not land identified as a heritage conservation area in another environmental planning instrument),

26. As noted above the LEP is *another environmental planning instrument* in terms of Schedule 1. To the extent that the LEP identifies part of the Site as being zoned *E2 Environmental Conservation* there is little doubt that this part is land within the description of Schedule 1 and consequently the SEPP does not apply to that part of the Site at all.

The Effect of the SEPP

27. Chapter 3 of the SEPP, in general terms, makes certain types of development suitable for Seniors or people with disabilities, permissible with development consent, provided certain criteria are satisfied.
28. It is beyond the scope of this advice to comprehensively advise on these requirements and in any event, I have not been provided with the detail of the Proposal to be able to do so.
29. However, in certain cases the effect set out in the immediately preceding paragraph does not automatically occur, even if the SEPP applies to the land.
30. Specifically, clause 24 requires a *Site Compatibility Certificate (SCC)* to be obtained before development consent may be obtained in reliance on the SEPP, in certain circumstances.
31. One of the circumstances where a SCC is required is where the development is proposed on land that adjoins land zoned primarily for urban purposes, as is the case with the Site.
32. Bayline would need to apply to the Director General (**DG**) of the Department of Planning and Environment (**Department**) for a SCC over the Site, or at least that part of the Site in the R5 zone. There is no power for the DG to issue a SCC over the part of the Site in the E2 zone.

Bayline Investments re Harrington Land

33. The DG must notify the relevant Council of the application and consider any submission made as well as a number of matters set out under cl. 25 (5) of the SEPP.
34. Ultimately if the DG forms the view that the site is suitable (in general terms) for the proposed development a SCC may be issued which would render the Proposal permissible under the SEPP.
35. Once a SCC issues, a development application may then be made and determined on its merits under s.79C of the EPA Act. This would require consideration of all of the environmental and other town planning merit of the Proposal in respect of which I am not in a position to advise.

Application of the SEPP and the LEP

36. Consequently, the SEPP applies to that part of the Site that is zoned R5. To the extent that the LEP does not permit the Proposal, but the SEPP does (subject to first obtaining a SCC) it will prevail over the LEP by operation of cl. 5 (3) set out above.
37. In terms of the proposed subdivision under the Community Title Act, cl. 21 of the SEPP provides-

21 Subdivision

Land on which development has been carried out under this Chapter may be subdivided with the consent of the consent authority.

38. Subdivision is not defined in the SEPP but, being an instrument made under the EPA Act, it would carry the definition in s.4B of that Act as follows-

4B Subdivision of land

- (1) For the purposes of this Act, subdivision of land means the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:
 - (a) by conveyance, transfer or partition, or
 - (b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.
- (2) Without limiting subsection (1), subdivision of land includes the procuring of the registration in the office of the Registrar-General of:
 - (a) a plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919*, or

Bayline Investments re Harrington Land

- (b) a strata plan or a strata plan of subdivision within the meaning of *the Strata Schemes (Freehold Development) Act 1973* or *the Strata Schemes (Leasehold Development) Act 1986*

(3)

39. Whilst there is no express reference in the definition to subdivision under the Community Title Act, there is little doubt that such a subdivision would be within that term. Subsection 4B(1) contains very broad words and subsection 4B(2) contains examples only, including Strata Subdivision, with which subdivision under the Community Titles Act is similar.
40. Consequently the SEPP allows development that has been carried out pursuant to Chapter 3, that is, housing for seniors and the like, to be subdivided under the Community Title Act.
41. The SEPP contains a number of criteria required to be observed in connection with the construction of development to which it relates (particularly Parts 2-7 of Chapter 3 and Schedule 3). However, it does not contain criteria with which any subdivision must comply, except as set out in cl.21. An application for consent to subdivide under that clause would need to be on land developed under chapter 3 of the SEPP and would be assessed in accordance with the general matters for consideration in s.79C of the EPA Act.
42. Clause 4.1AA of the LEP purports to require lots in any Community Title Act subdivision to conform to a minimum size. That requirement is inconsistent with the SEPP, and thus cl. 5(3) of the SEPP operates to negate the requirement.



Michael Astill
Chambers
12 September 2017