

SITE COMPATIBILITY CERTIFICATE

RECORD OF DECISION

NORTHERN REGIONAL PLANNING PANEL

DATE OF DECISION	25 March 2019
PANEL MEMBERS	John Griffin (Chair), Julie Savet Ward, Susan Budd and Eoin Johnston
APOLOGIES	Nathan Willis
DECLARATIONS OF INTEREST	Garry West, Pamela Westing, Stephen Gow and David Wright declared conflicts of interest as they had been briefed on a related DA (2016/524 – 2016NTH027) on 24 January 2016

SITE COMPATIBILITY CERTIFICATE APPLICATION

2018NTH025 – Ballina - SCC_2018_BALLI_001_00 at Lot 239 DP 1201225, 67 Skennars Head Road, Skennars Head (AS DESCRIBED IN SCHEDULE 1)

The Panel determined the application via electronic means.

PANEL CONSIDERATION AND DECISION

By circulation of papers the Panel considered: the material listed at item 1 and the matters raised and/or observed at briefings and site inspections listed at item 6 in Schedule 1.

Based on this information, the Panel determined that the application:

- ☐ **should** be issued with a site compatibility certificate subject to satisfaction of certain requirements (as listed below), because the application has demonstrated that the proposed development is suitable for more intensive development and it is compatible with the surrounding environment.
- ☒ **should not** be issued with a site compatibility certificate, because the application:
- ☒ has not demonstrated that the proposed development is suitable for more intensive development
 - ☒ has not demonstrated the proposed development is compatible with the surrounding environment and land uses having regard to (at least) the criteria specified in clause 25(5)(b) of SEPP (Housing for Seniors or People with a Disability) 2004.

The Panel authorises the Chair to notify the applicant, Council and the Department of Planning and Environment of the Panel's decision to refuse the application.

The decision was 3:1, against the decision was Eoin Johnston.

REASONS FOR THE DECISION

The decision for refusal of the site compatibility certificate (SCC) has not been made lightly.

The Panel notes the application for the SCC expressly excludes a component of the site comprising *environmentally sensitive land* as identified in Annexure A to the application. The Seniors Housing SEPP does not apply to environmentally sensitive land identified in Schedule 1 of the SEPP and the Panel cannot issue an SCC for land so identified.

The area identified in Annexure A to the application for the SCC includes an area marked *Coastal SEPP Wetlands*.

The Panel has considered differing views on the threshold question of whether land identified as 'a proximity area for coastal wetlands' as well as land identified as 'coastal wetland' under the Coastal Management SEPP fall within the definition of environmentally sensitive land in Schedule 1 of the Seniors Housing SEPP.

The Department of Planning and Environment supports the view that land identified as 'a proximity area for coastal wetlands' as well as land identified as 'coastal wetland' under the Coastal Management SEPP fall within the definition of environmentally sensitive land in Schedule 1 of Seniors Housing SEPP. This interpretation, if accepted, precludes the issue of a SCC for land mapped as coastal wetlands or a proximity area for coastal wetlands, which is a significantly greater area than that excluded by the terms of the application for the SCC. The Panel notes advice provided to the Applicant from Peter McEwen SC expresses a contrary view i.e. that only land identified as 'coastal wetland' under the Coastal Management SEPP falls within the definition of environmentally sensitive land in Schedule 1 of Seniors Housing SEPP.

The majority of the Panel accepts the Department's view that land within the proximity area for coastal wetlands falls within the definition of environmentally sensitive land in Schedule 1 of the Seniors Housing SEPP and the Seniors Housing SEPP does not apply to that land. Therefore a significant portion of the land in the application before the Panel is environmentally sensitive land and the Panel cannot issue a SCC for that land.

The Panel has considered Clause 25(7) of the Seniors Housing SEPP which provides that a SCC may certify that the development to which it relates is compatible with the surrounding land use only if it satisfies certain requirements specified in the SCC.

The proposed development provides for dwellings and other built structures outside of the coastal wetlands, but within the proximity area for coastal wetland under the Coastal Management SEPP. Substantial redesign would be required to confine the development to the area outside the area mapped as coastal wetland and proximity area for coastal wetland in the *Coastal Management SEPP*. The applicant may be able to propose an alternate form of development for Seniors Housing on the balance of the land, and it would be appropriate for a fresh application for an SCC to be made for that application and considered on its merits at the appropriate time.

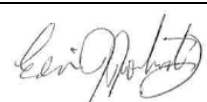
Therefore the majority of the Panel refuses the SCC under Clause 25(4) of the Seniors SEPP.

Eoin Johnston disagreed with the majority decision for the following reasons:

"I have examined all the documents before me in relation to the matter.

I acknowledge the competing interpretations and it is a delicate distinction. The Land and Environment Court could go either way if it came to a hearing. My view is to concur with the findings of McEwen SC, specifically paragraph 37 of his advice dated 16 October 2018.

I support the motion that, 'The Panel authorises the Chair to issue a Site Compatibility Certificate and notify the applicant, Council and Department of Planning and Environment of the Panel's decision'".

PANEL MEMBERS	
John Griffin (Chair) 	Susan Budd 
Julie Savet Ward 	Eoin Johnston 

SCHEDULE 1		
1	LGA – DEPT REF.	2018NTH025 - Ballina LGA - SCC_2018_BALLI_001_00
2	SITE DESCRIPTION	67 Skennars Head Road, Skennars Head
3	PROJECT DESCRIPTION	The application seeks a site compatibility certificate for 147 serviced self-care seniors housing dwellings, on Lot 239 DP 1201225, 67 Skennars Head Road, Skennars Head
4	APPLICATION MADE BY	Planners North on behalf of GemLife
5	MATERIAL CONSIDERED BY THE PANEL	• Site compatibility certificate application documentation • Assessment report from Department of Planning and Environment • <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i> • <i>State Environmental Planning Policy (Coastal Management) 2018</i> • Confidential Legal Advice from the Department of Planning and Environment
6	BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Site inspection: 16 January 2019 - o Panel members in attendance: John Griffin (Acting Chair), Julie Savet Ward, Susan Budd and Eoin Johnston Department of Planning and Environment (DPE) staff in attendance: Tamara Prentice and Paul Garnett • Briefing with Department of Planning and Environment (DPE): 16 January 2019, 1:15 pm - o Panel members in attendance: John Griffin (Acting Chair), Julie Savet Ward, Susan Budd and Eoin Johnston - o Department of Planning and Environment (DPE) staff in attendance: Tamara Prentice, Paul Garnett and Lisa Foley • Papers were circulated electronically between 7 March 2019 and 25 March 2019