

Report to the Northern Regional Planning Panel on an application for a site compatibility certificate under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
SCC_2018_BALLI_001_00

SITE: 67 Skennars Head Road, Skennars Head (Lot 239 DP 1201225).

APPLICANT: Planners North on behalf of GemLife.

PROPOSAL: 147 serviced self-care seniors housing dwellings, a manager's residence, club house, recreational facilities, roads, utility services, environmental management and environmental protection works (**Attachments B, B1 & B2**).

The site is part of Lot 239 DP 1201225, 67 Skennars Head Road, Skennars Head (**Attachment C**).

The site is predominately zoned RU1 Primary Production under Ballina Local Environmental Plan (LEP) 2012 (**Attachment D**) with the proposal located within this area. Part of the land is also zoned 7(a) Environmental Protection (Wetlands) and 1(b) Rural Secondary Agricultural Land under Ballina LEP 1987. The 7(a) land is located close to the western boundary and mostly comprises land mapped as 'coastal wetlands' by State Environmental Planning Policy (SEPP) (Coastal Management) 2018. A proportion of the RU1 land is also mapped as 'proximity area for coastal wetland' by the SEPP (**Attachment E**).

Meals, cleaning services, personal care and nursing care will be available and co-ordinated by on-site support services (onsite care manager) as required for serviced self-care seniors housing.

LGA: Ballina Shire Council

PREVIOUS SITE COMPATIBILITY CERTIFICATE

A site compatibility certificate (SCC) was previously issued for 211 serviced self-care housing dwellings on the subject land on 30 March 2015 (**Attachment G**).

A development application (DA 2016/524) for the seniors housing was lodged with Ballina Council on 19 September 2016. The development application was initially for 211 dwellings, however after consideration of the proposal, the application was amended to be for 147 serviced self-care seniors housing dwellings.

The SCC issued on 30 March 2015 however lapsed before the associated development application was determined. As a result, the proponent applied for a new SCC on 30 July 2018 to enable finalisation of the development application.

The Northern Regional Planning Panel determined not to issue a new site compatibility for the land on 25 March 2019.

The introduction of the Coastal Management SEPP after the issuing of the previous SCC in 2015 had identified most of the site as either 'coastal wetland' or 'proximity area for coastal wetland'. The majority of the Panel, and the Department, interpreted this as identifying the land as being environmentally sensitive land excluded from the operation of the Seniors Housing SEPP. While the Department recommended the issue of a SCC

for the remainder of the site not mapped by the SEPP, the Panel determined that this would require such a substantial redesign that a new SCC application would be more appropriate (**Attachment H**).

Planners North, acting on behalf of Gemlife, lodged an appeal to the Panel's decision in the Land and Environment Court. A decision was handed down by Justice Pain on the 19 December 2019 which found that the:

- Panel's refusal to issue a SCC pursuant to the Seniors Housing SEPP with respect to the subject property is void and of no effect; and
- Seniors Housing SEPP does not preclude the issue of a SCC for that part of the property mapped as "proximity area for coastal wetlands" by SEPP (Coastal Management) 2018 (**Attachment LEC Judgement**).

As the Court has ruled that the Panel's previous determination for this matter is void and has no effect, it is now necessary for the Panel to reconsider and determine this application.

PERMISSIBILITY STATEMENT

Zoning of the Site

The Site Compatibility Certificate (SCC) application to establish a seniors housing development relates primarily to the eastern part of the site, which is zoned RU1 Primary Production. Seniors housing is prohibited in this zone under the Ballina LEP 2012.

In order for seniors housing to be permissible on the site, an SCC is required under Clause 24 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP)*.

Seniors Housing SEPP

A SCC can be issued for land that is not zoned primarily for urban purposes provided it adjoins land zoned for urban purposes. The subject site is located across Skennars Head Road from land zoned R2 Low Density Residential and RE1 Public Recreation and therefore is considered to adjoin land zoned for urban purposes (cl 4(4)).

An SCC can be issued for land which is not zoned for urban purposes providing dwelling houses, residential flat buildings or hospitals are permissible with consent in the zone. Dwelling houses are a permitted use within the RU1 zone under Ballina LEP 2012.

A SCC cannot be issued for environmentally sensitive land being land which is described in Schedule 1 of the Seniors Housing SEPP. Schedule 1 relevantly precludes the Seniors Housing SEPP from applying to:

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) *coastal protection,*
- (d) *environment protection,*
- (m) *natural wetland.*

The subject site contains land mapped as 'coastal wetlands' and 'proximity area for coastal wetland' under State Environmental Planning Policy (SEPP) (Coastal Management) 2018.

As discussed above, the Seniors Housing SEPP does not preclude the issue of a SCC for that part of the property mapped as “proximity area for coastal wetlands” by SEPP (Coastal Management) 2018. This is also consistent with the legal advice supplied by the proponent (**Attachment F**). The proposed SCC footprint does not impact upon the mapped ‘coastal wetlands’ area.

The current SCC application remains unchanged from that previously considered by the NRPP in 2019 and is consistent with the provision of clause 25(5)(c) of the Seniors Housing SEPP for the following reasons:

- the subject land continues to be land which adjoins land zoned primarily for urban purposes; and
- the land subject to the current SCC application does not include any additional land to that certified in 2015.

PROXIMITY OF SITE TO WHICH THERE IS A CURRENT SITE COMPATIBILITY CERTIFICATE, OR AN APPLICATION HAS BEEN MADE BUT NOT YET DETERMINED

There are no other sites within a one kilometre radius of the subject land for which

- there is a current site compatibility certificate, or
- an application for a site compatibility certificate has been made but not yet determined.

Therefore, a cumulative impact study pursuant to clause 25(2)(c) of the SEPP is not required.

CLAUSES 24(2) AND 25(5)

The panel must not issue a certificate unless it:

- (a) has taken into account any written comments concerning the consistency of the proposed development with the criteria referred to in clause 25(5)(b) received from the general manager of the council within 21 days after the application for the certificate was made;
- (b) is of the opinion that:
 - (i) the site of the proposed development is suitable for more intensive development; and
 - (ii) the proposed development for the purposes of seniors housing is compatible with the surrounding environment and surrounding land uses having regard to the criteria specified in clause 25(5)(b).

CLAUSE 25(2)(C)

A cumulative impact study has not been prepared as there are no other sites within a one kilometre radius of the subject land for which there is a current SCC or an application for an SCC has been made but not determined.

COUNCIL COMMENTS

Council provided comments to the Department in August 2018 (**Attachment I & J**) and in February 2020 (**Attachment K**). Issues raised by Council included:

- the site is not identified as a strategic urban growth area or an urban release area;

- the site's sensitivities and constraints;
- whether the total number of dwellings proposed can be appropriately accommodated;
- suitability of the site for a large scale residential accommodation of elderly people;
- that infrastructure works had been undertaken to service this site since 2015, and that the proponent and Council had been working together to negotiate an acceptable outcome; and
- site hydrology and groundwater management related issues have been identified as matters requiring further consideration in the assessment of the DA.

It is considered that the issues raised by council, including matters such as the total number of dwellings, can be adequately addressed at the development application stage and do not affect the issuing of a SCC for the subject land. It also is noted that Council has already been working with the proponent to adequately address all of these matters as part of the development application process.

SUITABILITY FOR MORE INTENSIVE DEVELOPMENT

The panel must not issue a certificate unless the panel is of the opinion that the site of the proposed development is suitable for more intensive development (clause 24(2)(a)):

1. The site of the proposed development is suitable for more intensive development (clause 24(2)(a))

The subject land is located on the north west edge of the Skennars Head urban area. The site is 11.6ha in size and is located approximately 3.2km south of the Lennox Head town centre and 6km north of the Ballina central business district. The land is bounded to the east by an existing caravan park, and to the south and west by rural land. Further east is the Skennars Head urban area comprising low and medium density residential land uses. The site fronts Skennars Head Road to the north and on the northern side of Skennars Head Road is the Skennars Head sports fields and an area of low density residential development.

A high demand exists for seniors housing accommodation within the Ballina LGA and the wider region. The North Coast Regional Plan 2036 identifies that within the next 20 years almost one third of residents in the region will be aged over 65 years.

The Ballina Growth Management Strategy identifies that changing household types and population ageing will generate the need for more seniors housing than is currently available within the Ballina LGA.

The use of that part of the land located outside the area mapped as 'coastal wetlands' for a seniors housing development is considered to be appropriate for the following reasons:

- the site has no major physical constraints which cannot be mitigated, the availability of infrastructure and its proximity to developed urban land means that it is suitable for more intensive development; and
- its proximity and accessibility to a full range of retail, commercial, recreational, health, welfare and educational facilities at Ballina and Lennox Head makes it

suitable for seniors housing.

COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND LAND USES

The panel must not issue a certificate unless the panel is of the opinion that the proposed development for the purposes of seniors housing is compatible with the surrounding environment and surrounding land uses having regard to the following criteria (clause 25(5)(b)) and clause 24(2)(b)):

- 1. The natural environment (including known significant environmental values, resources or hazards) and the existing and approved uses of land in the vicinity of the proposed development (clause 25(5)(b)(i))**

Natural Environment - The site contains coastal wetland and littoral rainforest vegetation on the western boundary. The proposed concept development addresses potential impacts on this ecosystem by maintaining a 50m buffer between the proposed urban development and the forested wetlands. The proposal also seeks to revegetate part of this buffer and employ storm water infrastructure to mitigate any impacts on the wetland.

While the entire site is identified as being of potentially high environmental value under the North Coast Regional Plan 2036, site specific studies have identified that the remainder of the site is cleared of significant native vegetation except for some isolated paddock trees, comprises exotic grasses and has been used for cattle grazing. Small communities of hairy joint grass were identified on the site. An offsetting and compensation plan are proposed in the buffer between the seniors housing and the coastal wetland. It is considered that the natural environment of the site would not be adversely affected if an SCC is issued outside of the area identified as coastal wetland. Environmental issues such as the impact on the small areas of hairy joint grass can be appropriately considered and addressed through the development application process.

The subject land is also flood prone, bushfire prone and subject to acid sulfate soils and potential site contamination. The investigations that have been undertaken for the development application have demonstrated that these constraints can be managed or mitigated.

Flooding - A flood impact assessment has been undertaken for the site. It concludes that filling of the site will be necessary to mitigate the impact of flooding on the proposed seniors housing. It has also modelled the flood impacts from this filling and concluded that augmentation of existing culverts under Skennars Head Road is necessary to avoid any significant change in inundation duration. Isolated areas around the western edge of the wetland may experience longer inundation of between 0.5 and 5%. These matters are being considered by Council during the development assessment process.

Bushfire - A bushfire assessment report has been prepared for the proposed development. The NSW Rural Fire Service has previously issued a bushfire safety authority for the proposed development and therefore the bushfire hazard is considered to be adequately addressed by the proposed development.

Site Contamination - A preliminary site contamination assessment was undertaken, and it concluded that there is low potential for systemic soil contamination on the site and the use of the site for residential purposes is appropriate. The site contamination assessment recommended that isolated areas of the site around the existing dwelling and sheds may need to be further investigated. This can be adequately addressed

through the development application process.

Acid Sulfate Soils - Geotechnical assessment of the site identified potential acid sulfate soils and an acid sulfate soil management plan has been prepared.

Land uses in the vicinity of the site - The existing and approved uses of the land in the vicinity of the site are residential, public recreation and rural. The proposed seniors housing is compatible with the residential and recreational land uses and a buffer between the rural land uses to the west will be incorporated into the development which will minimise the potential for land use conflict.

Regionally Significant Farmland - The north-western portion of the site is mapped as 'regionally significant non-contiguous farmland' (RSF) under the Northern Rivers Farmland Protection Project (NRFPP). The NRFPP identifies and seeks to protect the most important contiguous areas of agricultural land in the Northern Rivers from future urban development and land use conflict. Approximately 4,200m² of this mapped farmland is within the area of the site subject to the Seniors Housing SEPP.

The site is not currently used for agriculture due to its proximity to urban development. This small area of mapped farmland does not increase the connectivity of farmland in the area. There is a larger expanse of RSF farmland to the north which is not dependent on the site to maintain good agricultural value or connectivity to other large RSF areas.

If the site was to be utilised for intensive agricultural practices rather than seniors housing, this could result in land use conflict issues as neighbouring land is predominantly developed for residential purposes. The site is also identified as 'land adjoining a strategic urban growth area' and intensive agriculture would not therefore be a compatible use.

2. The impact that the proposed development is likely to have on the uses that, in the opinion of the Panel, are likely to be the future uses of that land (clause 25(5)(b)(ii))

The use of that part of the site which is not mapped as coastal wetland for seniors housing is not considered to have a significant adverse impact on the surrounding land uses. Seniors housing is compatible with the low density residential development to the north and east and the recreation land to the north east. It is considered that the use of part of the subject land for seniors housing will not cause land use conflict with the rural land to the west as the western part of the subject land is excluded from the Seniors Housing SEPP and will not be developed for seniors housing purposes.

The expected future uses of the surrounding land are considered to remain as residential, recreation and rural.

The Ballina Growth Management Strategy (GMS) has not identified any of the immediately surrounding land for future land uses that would be considered incompatible with the proposed seniors housing development.

In view of the site's location relative to existing or proposed urban areas and its relative lack of constraints, the part of the site which is not mapped as coastal wetland is considered to be a logical urban expansion area and appropriate for seniors living.

3. The services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision (clause 25(5)(b)(iii))

The general locality is connected to and serviced by reticulated water, sewer, electricity, stormwater and telecommunication systems. Meals, cleaning services, personal care and nursing care will be provided to the seniors housing dwellings from onsite facilities.

The township of Lennox Head is located approximately 3km to the north and Ballina approximately 6km to the south. Both Lennox Head and Ballina contain a broad range of community, retail, medical/health, recreational, educational and other ancillary services and facilities. A regular local bus service operates in the Skennars Head area. Bus stops (pick up areas) are on both sides of Skennars Head Road at the eastern and northern sides of the site. It is noted that the proposed development will also provide a daily shuttle bus to transport residents to Lennox Head.

4. In the case of applications in relation to land that is zoned open space or special uses—the impact that the proposed development is likely to have on the provision of land for open space and special uses in the vicinity of the development (clause 25(5)(b)(iv))

The land is not zoned for open space or special uses by Ballina LEP 2012. Land on the opposite (northern) side of Skennars Head Road is zoned RE1 Public Recreation and comprises the Skennars Head sports fields. The proposed development will not overshadow this land or adversely affect its amenity, nor will it prevent the continued use of this land for public recreation. The proposed seniors housing development is not expected to have an adverse impact on the amount or quality of open space land in the area.

5. Without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development (clause 25(5)(b)(v))

The documentation prepared for development application 2016/524 indicates that the proposed seniors housing will comprise detached single storey dwellings and a two-storey club house facility. This proposal is considered to be compatible with the character, bulk and scale and built form of the existing residential development on land in the vicinity of the development which comprises detached dwellings and medium density housing of 1 and 2 storeys.

6. If the development may involve the clearing of native vegetation that is subject to the requirements of section 12 of the Native Vegetation Act 2003—the impact that the proposed development is likely to have on the conservation and management of native vegetation (clause 25(5)(b)(vi))

The majority of the site consists of former grazing land which is predominantly cleared of native vegetation. The seniors housing is proposed to be located on this area of the site. The development application documentation proposes a compensatory offset program for the removal of the small areas of hairy joint grass.

7. The impacts identified in any cumulative impact study provided in connection with the application for the certificate (clause 25(5)(b)(vii))

As previously discussed in this report, a cumulative impact study pursuant to clause 25(2)(c) of the SEPP is not required.

CONCLUSION

In order for a SCC to be issued the land must be subject to the Seniors Housing SEPP, must meet the adjoining zone boundary provisions and must be considered suitable for more intensive development. A SCC cannot be issued for that part of the land which is 'environmentally sensitive land' and excluded from the operation of the Seniors Housing SEPP.

It is considered that the part of the site which is not 'environmentally sensitive land' being that area not mapped as coastal wetland by the Coastal Management SEPP is suitable for Seniors development for the following reasons:

- it has no major physical constraints which cannot be mitigated and the availability of infrastructure and its proximity to developed urban land means that it is suitable for more intensive development; and
- its proximity and accessibility to a full range of retail, commercial, recreational, health, welfare and educational facilities at Ballina and Lennox Head makes it suitable for seniors housing.

ATTACHMENTS

Report	SCC Assessment Report
Judgement	LEC Judgement - Planners North v NRPP (No 2)
A	Draft Site Compatibility certificate
B	SCC application for 67 Skennars Head Rd
B1	Statement of Environmental effects
B2	Statement of Environmental Effects - Attachments
C	Site locality map
D	Land zoning map
E	Map of Coastal Wetland and Coastal Wetland Proximity Area from the Coastal Management SEPP
F	Proponent's legal advice concerning environmentally sensitive land
G	Previous Site Compatibility Certificate
H	NRPP Refusal of SCC (2018)
I	Council's letter of 11 October 2018
J	Council's comments of 20 August 2018
K	Council comments of 18 February 2020

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