

Report to the Hunter and Central Coast 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

SITE: Lot 321 DP 1242093 – 333 Diamond Beach Road, Diamond Beach

The site compatibility certificate (SCC) application has been made in relation to land at 333 Diamond Beach Road, Diamond Beach. The site covers an area of approximately 20.5ha and is zoned RU1 Primary Production, where seniors housing is prohibited but dwelling houses are permitted with consent.

The site is on the fringe of the village of Diamond Beach. It is generally flat, contains a vegetated creek line in the north-west part of the site, and is otherwise sparsely vegetated. Part of the site is subject to flooding, although it is not impacted by coastal hazards. The site is vacant (Figure 1).

Under the Greater Taree Local Environmental Plan 2010, the minimum lot size for further subdivision is 40ha.



Figure 1: Site map

Surrounding land uses include a low-density rural residential development to the south (zoned R5 Large Lot Residential) and rural uses to the north and west (zoned RU1 Primary Production). More intensive tourism uses (zoned SP3 Tourism) are located on the coast, more than 1km to the north-east before joining the Saltwater National Park (Figure 2).

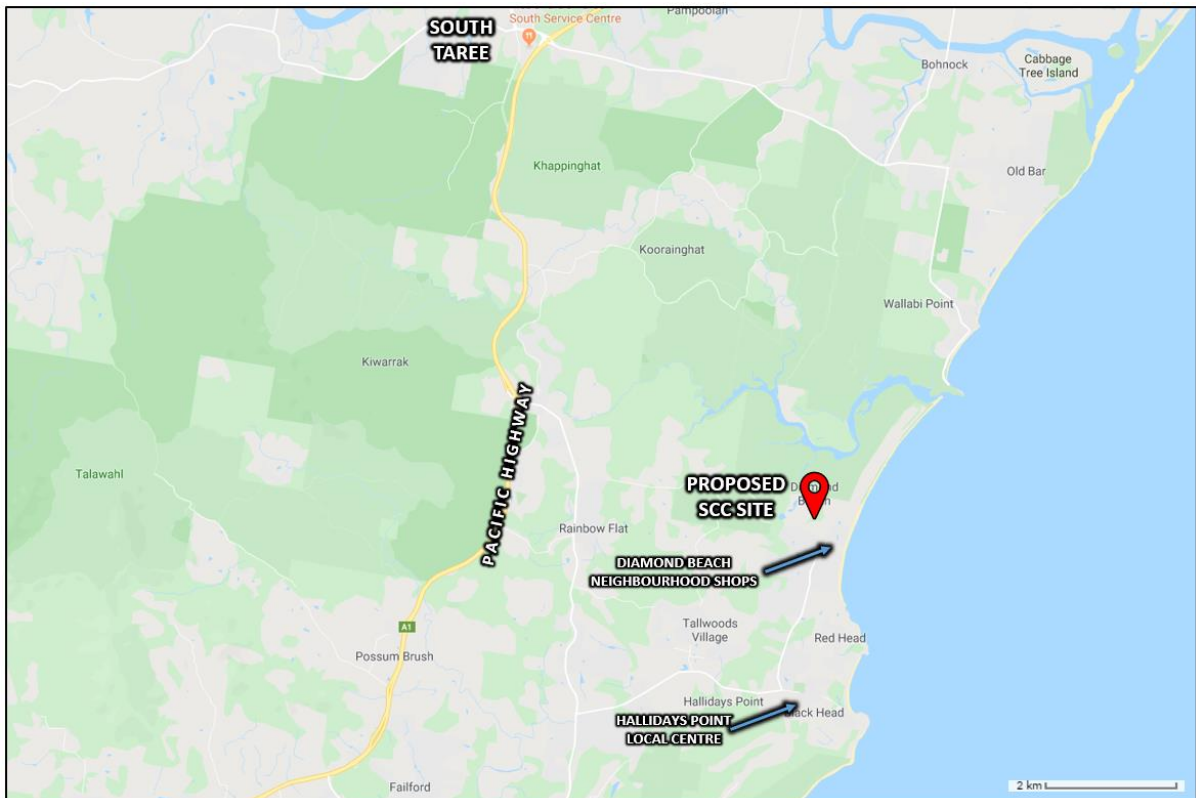


Figure 2: Broader site context

The site is in proximity to land zoned R1 General Residential (Edgewater Shores) to the south-east and this land has commenced early stages of development through the creation of roads (Figure 3). The proximity to this R1-zoned land is relevant to determining if State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP) is applicable to this site, and this matter is further discussed below. The proposed SCC site is approximately 31km to Taree and 23km to Forester traveling by car.

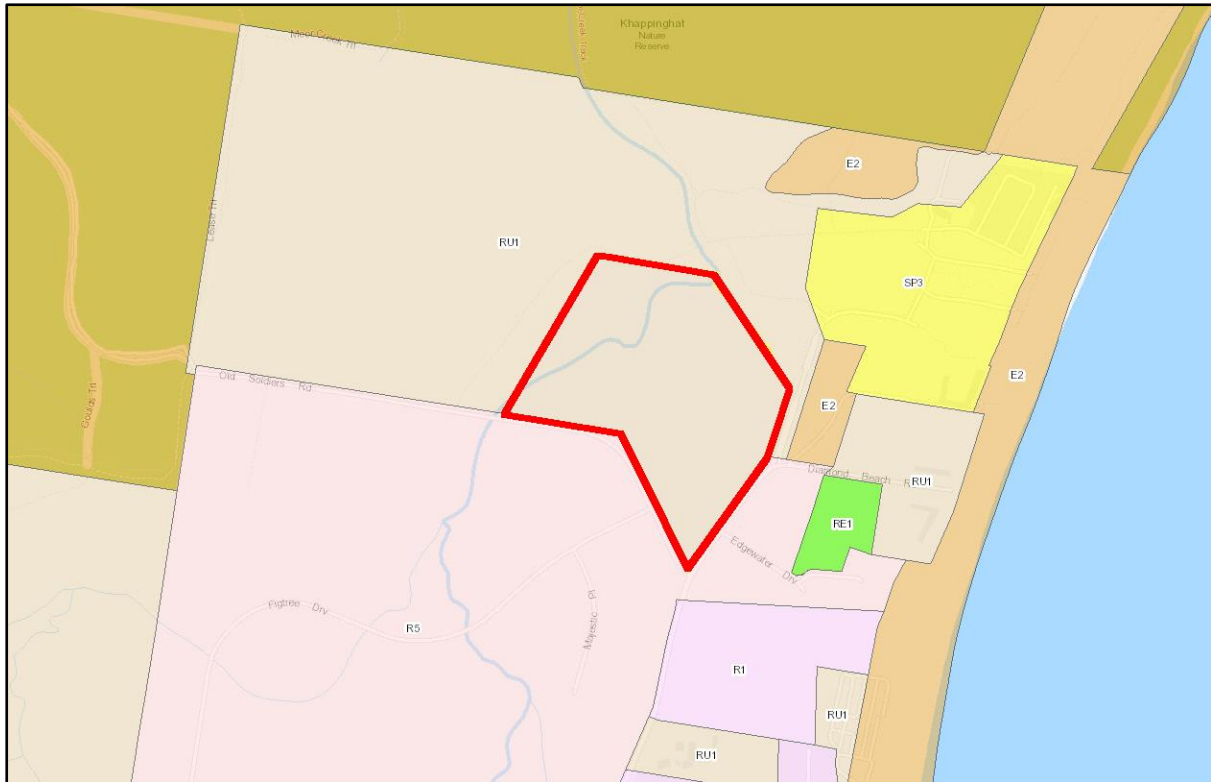


Figure 3: Site zoning and zoning context

APPLICANT: RPS Australia East Pty Ltd acting on behalf of Salvatore Coco (the proponent).

PROPOSAL: The proposal seeks to develop the site for seniors housing comprising:

- 240 serviced self-care housing consisting of 2 and/or 3 bedrooms;
- communal facilities including recreation club, bowling green, clubhouse, tennis courts and men's shed;
- smaller communal areas including mixed seating arrangements, barbeque area and shade structures;
- onsite caravan, boat and RV parking;
- extensive landscaping to provide a vegetated transition from existing development surrounding the site; and
- 2m wide path and cycleway.

Clause 13(3) of the Seniors Housing SEPP defines serviced self-care housing as "self-contained dwellings where the following services are available on the site; meals, cleaning services, personal care, nursing care". The proposal is consistent with this definition of serviced self-care housing.

A concept plan (Figure 4) detailing the proposed built form and site layout formed part of the application. The proposal would cover approximately 50% of the site area.

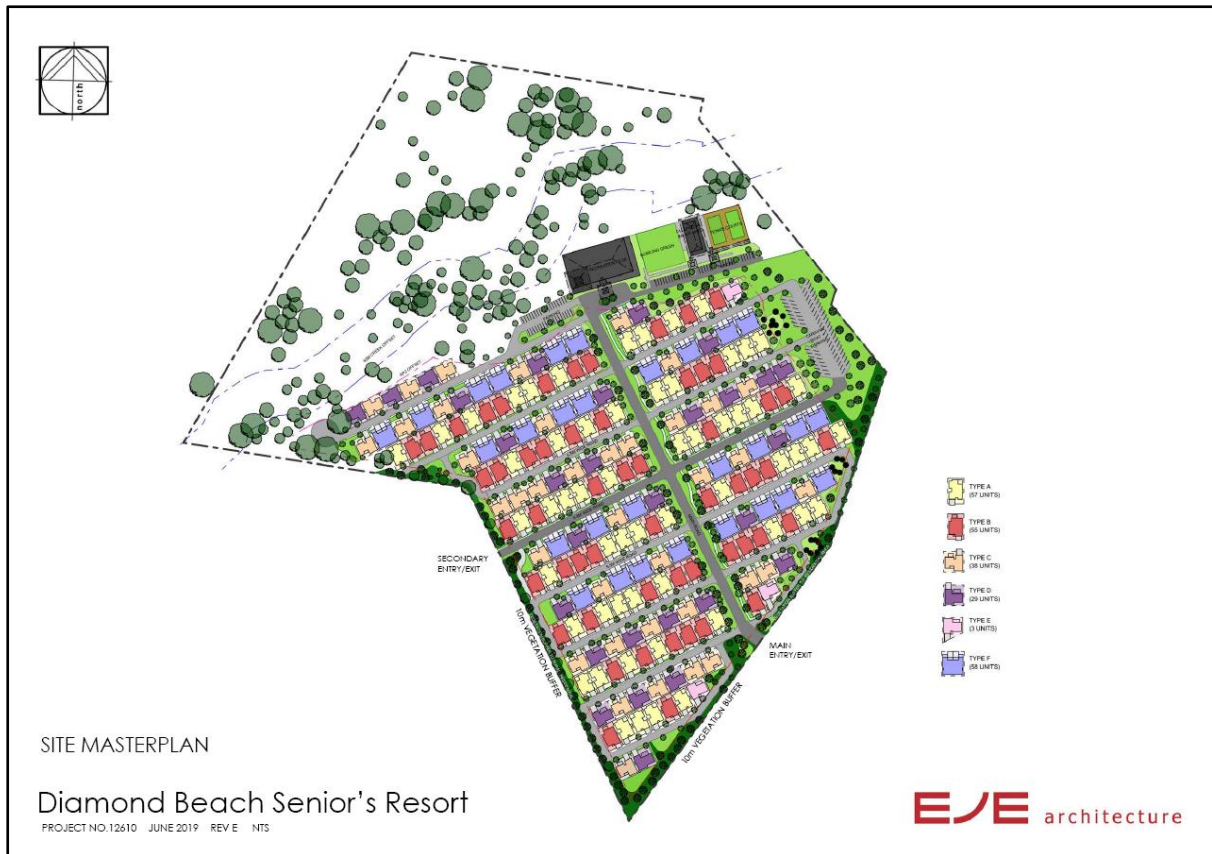


Figure 4: Site masterplan (source: EJE Architecture)

LGA: MidCoast

PERMISSIBILITY STATEMENT

The Seniors SEPP applies to land that is zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, where it satisfies the additional requirements in clause 4 of the Seniors SEPP.

The site is zoned RU1 Primary Production under Greater Taree Local Environmental Plan 2010. Dwelling houses are permitted within the zone.

The site does not immediately adjoin land zoned primarily for urban purposes but adjoins land zoned RU1 Primary Production and R5 Large Lot Residential. The R5 zone is expressly excluded as land zoned for urban purposes under clause 4(2)(c) of the Seniors SEPP.

The closest land zoned primarily for urban purposes is approximately 80m to the south. While this land is zoned R1 General Residential, it is separated by a rural lot before adjoining residential land (refer to Figure 3).

The ability for the application to rely on proximity to the R1 General Residential zone for permissibility has been confirmed by the Department's legal office (**Confidential Attachment F**).

PREVIOUSLY ISSUED SITE COMPATIBILITY CERTIFICATE ON THE LAND

No SCC has been issued for this land, and therefore the requirements of clause 25(5)(c) do not apply.

In December 2016 an application was lodged with the Department for an SCC on the same site, containing 283 three-bedroom serviced self-care dwellings. The Department determined not to issue a certificate because the proposed development:

- is not in keeping with the character of existing rural and large lot residential uses in a village fringe location;
- proposes lots that will be significantly denser than existing residential development within the locality, including the existing large lot residential uses with a minimum lot size of 4,000m² and 1.5ha adjacent to the site;
- is located approximately 1km from basic convenience shops at Diamond Beach, 4km from existing services at Hallidays Point and around 18km from higher-order social services and retail needs; and
- is inadequately serviced by public transport, with the proposed future bus route currently unresolved.

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

The site is not next to proximate site land under the terms of clause 25(2A).

CLAUSES 24(2) AND 25(5)

The panel must not issue a certificate unless the panel:

- (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 because there are no current SCC or SCC applications (undetermined) within 1km of the site and therefore there is no requirement for a cumulative impact study.

COUNCIL COMMENTS

MidCoast Council provided comments on 16 September 2019 regarding the SCC application (**Attachment C**). Council raised concerns with the application and provided the following comments:

- Council's draft Housing Strategy is close to progressing to exhibition, where it is envisaged that future zones to the north east of the site will become R1 or R2. The future likely character of this immediate area would align with a seniors living development;
- the site is under investigation by the EPA in relation to illegally clearing native vegetation;

- the application inaccurately maps native vegetation surrounding the site and does not acknowledge the EEC vegetation;
- inconsistencies and outdated Vegetation Assessment Report;
- the density in this locality is inconsistent with the character of the existing surrounding development;
- facilities and services are restricted by the location of the site at the northern most end of Diamond Beach Road;
- existing development approvals (632/2010/DA and 317/2008/DA) currently exist on the land in, but the proposed development layout does not reflect the current approved development footprint which incorporates a much larger conservation area referred to as the Moor Creek Environmental Corridor (refer to APZ & Riparian Zone Site Plan prepared by Austin McFarland Architects dated 4/11/11); and
- the site layout and development footprint lack detail into roadways, dwellings, and stormwater management devices.

The proponent supplied unrequested additional information (**Attachment I**) to support the SCC application on 4 October 2019. Council were supplied with the additional information on 17 October 2019 and given an opportunity to comment, but no response was received.

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 site is located at the northern extent of rural and large lot residential uses in the Diamond Beach area, with coastal tourism developments further away to the northeast. Large lot residential uses adjoin the site on two sides.

The visual setting of the area is either large lots, with large single dwellings surrounded by open space and deep setbacks between dwellings, or coastal tourist developments that are setback from the public roads and are not visible from the rural and large lot residential areas (see Figure 1). The proposed development shown in Figure 4 includes four precincts consisting of shallow setbacks and long lines of buildings on narrow lots.

The proposed development will be more intense in character and visual appearance than the surrounding rural, large lot residential or the coastal tourism uses. Figure 5 (while not exactly to scale) provides an overlay of the proposal that clearly outlines the difference in density and character. The intensity of the proposed development is not compatible with the character of the area.



Figure 5: Proposed density compared to surrounding character

Infrastructure and services like street drainage, footpaths, public transport and walk to shops are limited for the whole of Diamond Beach, in keeping with the character of this area as a low-density rural area. Requirements of the Seniors SEPP regarding location and access to facilities has not been met, with the small neighbourhood centre in Diamond Beach (approximately 1km away) containing take-away food, gift shop and real estate which are servicing the nearby holiday caravan and tourist developments, and not for more dense seniors housing development.

Services such as bank service provides, retail, commercial services, community services and recreation facilities are outside the 400m distance requirement of the Seniors SEPP. There is also no external public footpath to facilities and the topography may not meet the SEPP requirements for steepness of gradients. Some of these services are available in the local centre at Hallidays Point (approximately 4km away).

The nearest medical centre in Hallidays Point is only open on Tuesday and Thursday between 3:30pm and 6:30pm. This is inadequate to meet the increased demand from the proposed 240 seniors dwellings and is also outside the 400m accessibility requirements of the Seniors SEPP. The nearest higher-order government and social services is in Tuncurry and Forster (approximately 23km away).

There is no public bus route servicing the site, with the closest bus stop approximately 1km away with no connecting footpath or off-road cycleway. Bus services are limited, with only two services to the Diamond Beach shops on a weekday. The proposal has identified a private shuttle bus to operate from the site.

Unrequested additional information provided by the proponent on 4 October 2019 attempts to further justify meeting the requirements of the Seniors Housing SEPP.

The information provides data of 50 existing developments ranging from nursing homes, retirement villages, community homes and tourist parks, and their location to retail and medical services. It should be noted that the majority of these existing developments did not require a site compatibility certificate.

The additional information reiterates the proposal's location and access to facilities, however no new information is provided to justify the sites accessibility. The proposal still does not meet the requirements of the Seniors Housing SEPP.

The additional information again states a regular minibus service will be provided by the Resort, linking future residents to retail, community and support services in the area. It is considered inadequate, unsustainable and a poor planning outcome to rely on a private minibus shuttle for seniors.

The site is considered unsuitable for more intensive development because it:

- does not meet the location and access to facilities requirements of the Seniors SEPP.
- is located approximately 1km from basic convenience shops at Diamond Beach, 4km from existing services at Hallidays Point, and around 23km away from higher-order government and social services and retail needs;
- is inadequately serviced by public transport, noting the proposal identifies a regular private mini-bus service.
- is not in keeping with the character of existing rural and large lot residential uses in a village fringe location; and
- proposes lots that will be significantly denser than existing residential development within the locality, including the existing large lot residential uses with a minimum lot size of 4000m² and 1.5ha hectares adjacent to the site

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

Biodiversity

The SCC application is accompanied by an outdated Vegetation Assessment Report from 2016 and makes reference to SEPP 14 – Coastal Wetlands which has been repealed. The Report also refers to a site layout applicable to the previous application for an SCC on this site.

Council has concerns that the SCC application does not acknowledge the EEC vegetation mapped on the site in the context of additional clearing. The tree removal plan shows a number of trees to be removed, however the Vegetation Assessment Report states that only native grassland is to be cleared.

Council has concerns that the Existing Land Use map within the SCC application does not accurately reflect the native vegetation surrounding the site or the E2 Environmental Conservation to the east of the site.

Council has also raised that the site is currently under investigation by the EPA in relation to the removal of native vegetation.

The site contains a watercourse (Moor Creek) and has native vegetation within the riparian corridor consisting of potential endangered ecological communities, including Swamp Sclerophyll Forest and Riparian Forest. Proposed recreation facilities encroach the asset protection zone offset but appear to be outside the 40m creek offset.

Legal advice [REDACTED] noted that the application should be considered based on the information provided and should not be affected by any investigation into illegal clearing.

Heritage

No information on Aboriginal heritage or European heritage was provided with the SCC application.

Due to the lack of information, the Department cannot determine the significance of the natural environment in the vicinity of the proposed development.

Natural Hazards

Contamination

No information on site contamination was provided with the SCC application, noting previous land uses have been limited to low-intensity agricultural activities.

Bushfire

The site is partly mapped as bushfire-prone. Preliminary bushfire advice has been obtained regarding the requirements of a suitable asset protection zone (APZ). The proposed 240 dwellings reflect the proposed APZ and visual buffer setbacks. A recreation facility and tennis court are proposed within the APZ.

Flooding

The proposal states that the site is not identified on the relevant Flood Planning Map within Greater Taree LEP 2010 as being within a flood planning area. Council comments made no reference to flooding.

Council comments stated that the proposed development layout does not reflect the current approved development footprint (317/2008/DA) which incorporates a much larger conservation area referred to as the Moor Creek Environmental Corridor. Previously a 50m wide riparian corridor was proposed (which has now been reduced to 40m) and a 30m wide Wallum Froglet Corridor, which is absent from the proposal.

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))

Council has provided comment anticipating a draft Housing Strategy will be reported to Council in late September seeking endorsement. The Strategy will identify land to the immediate east of the site (Ramada and Seashells Resorts) to be rezoned from SP3 Tourist to R3 Medium Density as part of the new MidCoast LEP. If supported by Council and the Department, this would see land to the east of the site accommodating a medium density built form with 3 to 4 storey development.

In the long-term, Council envisages that subsequent housing strategies would recommend rezoning the remaining rural land between the current SP3 zone (Figure 3) to the east and the Nature Reserve to the west. The current rural zone in this location is not seen as appropriate long-term as it has minimal agricultural value and is more suited to residential and environmental zones reflective of the site constraints. Indicative residential zones would be R2 or R1.

The application proposes more intense development across the site than that which is currently permitted in the area. Immediately surrounding land uses include low-density, single-storey dwelling houses within a bush and rural setting to the south (zoned R5 Large Lot Residential) and rural uses to the north and west (zoned RU1 Primary Production).

While there is a potential risk of future land use conflict with the adjacent RU1 Primary Production zone, where intensive livestock agriculture and rural industries are permissible with consent, these are neither existing or approved uses and are unlikely to be located in a village fringe location such as this.

The development proposes intensification of the site and fails to recognise the amenity of the existing rural and rural residential area. The proposed development will be more intense in character and visual appearance than the surrounding rural or the large lot residential uses. It is considered that the proposed development will have a negative impact on the future uses of the site that would otherwise be rural.

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))

Location and access to services and infrastructure

The site is on the fringe of the village of Diamond Beach, being approximately 1km from the village local centre, which consists of around six convenience shops. This does not meet the requirements of the Seniors SEPP, being located more than 400 metres from the site and not containing bank service providers, other retail and commercial services, community services or recreation facilities.

There is a larger centre at Hallidays Point 4km further south, which offers a range of services to meet the needs of the local community. The SCC application relies on a medical centre located in Hallidays Point, however further research shows that the current medical centre has restricted operating hours on Tuesday and Thursday only between 3:30pm and 6:30pm. This is insufficient to provide care for the additional proposed 240 seniors dwellings.

The surrounding topography from the site may also not meet the requirements of the Seniors SEPP due to the steepness of the gradients. No external public footpaths exist.

In response to clause 26(2)(c), the applicant will provide a private bus shuttle service to supplement the once daily local bus service. A scheduled minibus service will run from the resort to Diamond Beach and Hallidays Point shopping centre multiple times each day. In addition, a minibus will also routinely make trips to the regional hubs of Forster, Tuncurry and Taree and provide the opportunity to forgo their cars and travel together. Should the SCC be approved, this requirement should be

conditioned to ensure ongoing service into the future is maintained and does not cease after the initial development.

Even though a private shuttle bus is being proposed, due to the fringe location, the considerable distance from services, the lack of medical treatment options, and the lack of certainty regarding the provision of public transport services, seniors housing is not recommended on the site and is considered inconsistent with the supporting service aims of the Seniors SEPP.

Utility Infrastructure

The application states that reticulated water and sewer are available to the site and are provided by MidCoast Water. It also states that electricity and telecommunications are also available in the area.

Council commented that the application does not provide a development footprint that indicates all required roadways, dwellings, stormwater management device etc to enable the comprehensive assessment of the total site impacts. The location of detention devices may increase the need for further vegetation removal or reduced dwelling numbers.

Any development application for the broader seniors housing development should address these stormwater management requirements and any necessary road upgrades within the flood free area of the site.

Utility infrastructure is not expected to be a constraint to development.

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))

Not applicable.

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))

Character of the local area

The surrounding area comprises predominantly of low-rise (one-storey), low-density rural residential development. While the proposed buildings are only single-storey, the intensity of the proposed development will involve a significant change to the character of the local area.

The applicant has supplied a revised Visual Impact Assessment which found;

“The development increases the population density and alters the current coastal rural character of the area. However, it should be considered that any development of this area will result in a modification of its unique qualities and although the proposal will have a visual impact, it will not be occurring in a pristine environment.”

The applicant cites more intensive tourism development with higher densities in the locality. These have occurred on land further north of the site and east of Diamond Beach Road, and within the village (Diamond Beach Holiday Park and Ramada Resort Diamond Beach).



Figure 6: Subject site and existing tourism developments

These tourism developments reflect an intensification of uses in pockets of the Diamond Beach village. However, these pockets are located more than 1km away from the site, immediately adjacent to the beach, and therefore do not influence the character of the rural residential/rural area now, nor are they likely to extend close towards the subject site in the near future. There is a clear distinction between development density on the eastern side of Diamond Beach Road and that on the west, with more density closer to the beach.

The proposed development fails to adequately consider the character of the area and the impact that higher-density seniors living will have on the rural residential amenity of the area. Due to the likelihood of conflicts with the rural and low-density character being generated by a seniors housing development in this locality and the relationship to the low-density housing of the adjoining R5 zone, the subject site is considered unsuitable for a seniors housing development.

It is considered that the bulk, scale, built form and character of the proposed development will have inappropriate character and visual appearance than the approved and future uses of land in the vicinity of the development. This will have a negative impact on these uses.

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))

There has not been detailed assessment of vegetation on the site. The native vegetation on the site is predominantly located along the riparian corridor and on land affected by a 1% flood event. Some of the proposed development extends into the APZ.

However, the application indicates that all remnant trees are to be retained and that there may potentially be clearing of small areas of native groundcover. Whether this groundcover comprises more than 50% indigenous species of vegetation cannot be determined without more detailed assessment. The potential impact of the proposed development on groundcover is undetermined.

Council have raised concern that some of the information in the SCC application does not accurately map the native vegetation surrounding the site, nor the E2 Environmental Conservation zoned land to the east which is significant for ecological connectivity purposes.

Council also raised that the SCC application does not acknowledge the EEC vegetation mapped on the site in the context of the additional clearing required. The tree removal plan clearly shows a number of trees to be removed, however the Vegetation Assessment Report states that only native grassland is to be cleared.

The site is currently under investigation by the EPA in relation to the removal of native vegetation.

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

Not applicable.

RECOMMENDATION

It is recommended that the SCC application not be supported. The reasons for refusal are due to not being suitable for more intensive development and the compatibility with the surrounding environment and land uses.

The site is unsuitable for more intensive use for the provision of self-care accommodation for seniors having regard to the criteria set out in clause 25(5)(b) of the Seniors SEPP as the site is:

- located on the village fringe surrounded by rural and large lot residential development;
- visual setting of the area is either large lots with large single dwellings surrounded by open space and deep setbacks, or coastal tourist developments that are setback from the public roads and are not visible from the rural and large lot residential areas;
- the proposed development will be more intense in character and visual appearance than the current surrounding rural large lot residential or coastal tourism uses;
- not in an adequate location for seniors housing due to the distance from services at Hallidays Point, with the basic convenience shops at Diamond Beach not providing adequate services;
- lacks adequate access to medical services; and
- inadequately serviced by public transport, where a private minibus service is not considered suitable replacement.

ATTACHMENTS

Attachment C – Council Comments

Attachment F – Department Legal Advice on Seniors SEPP



Attachment I – Additional Information

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