

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

SITE: The site compatibility certificate (SCC) application applies to part of Lot 18 DP 627632 and part of Lot 22 DP 1170438, known as 49 Elouera Terrace, Bray Park (Figure 1, below). The sites have an area of 35.36ha.

The proposed SCC development footprint is 6.5ha. It adjoins the residential area of Bray Park and is 3.7 km south-west of Murwillumbah (**Attachment B**).

An access road from Elouera Terrace, a dwelling and some farm structures are on the western part of the site. It is bounded by productive rural farmland to the north, east and south, with the Tweed River adjoining the southern boundary.

Lot 18 has 1.7ha of R2 Low Density Residential land that is not part of the SCC application and is subject to a subdivision development application. It adjoins an established low-density residential development.

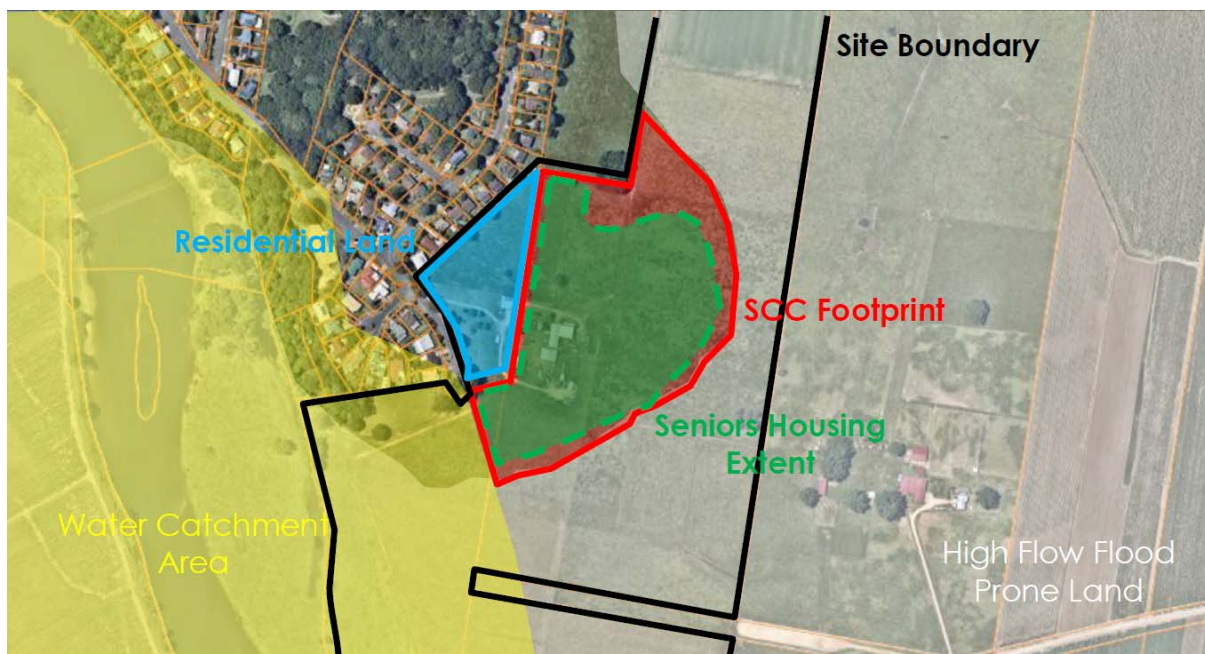


Figure 1: Proposed seniors housing footprint outlined in red (source: SCC request, Planit Consulting).

APPLICANT: Planit Consulting Pty Ltd on behalf of Marjan Management Pty Ltd.

PROPOSAL: Up to 139 serviced self-care seniors housing dwellings and ancillary facilities, including a multipurpose function/recreational hall, a swimming pool, a bowling green, a tennis court, barbecue areas, car parking and village bus services (**Attachment A**).

Meals, personal care, home nursing and assistance with housework will be available and coordinated by on-site support services as required for serviced self-care seniors housing.

LGA: Tweed Shire

PERMISSIBILITY STATEMENT

Site zoning

The site comprises two lots (Lot 18 DP 627632 and Lot 22 DP 1170438) that are primarily zoned RU1 Primary Production under the Tweed Local Environmental Plan (LEP) 2014 (Figure 2, below). The southern part of both lots is zoned W2 Recreational Waterway where the land adjoins the Tweed River. The northern part of Lot 18 is zoned R2 Low Density Residential.

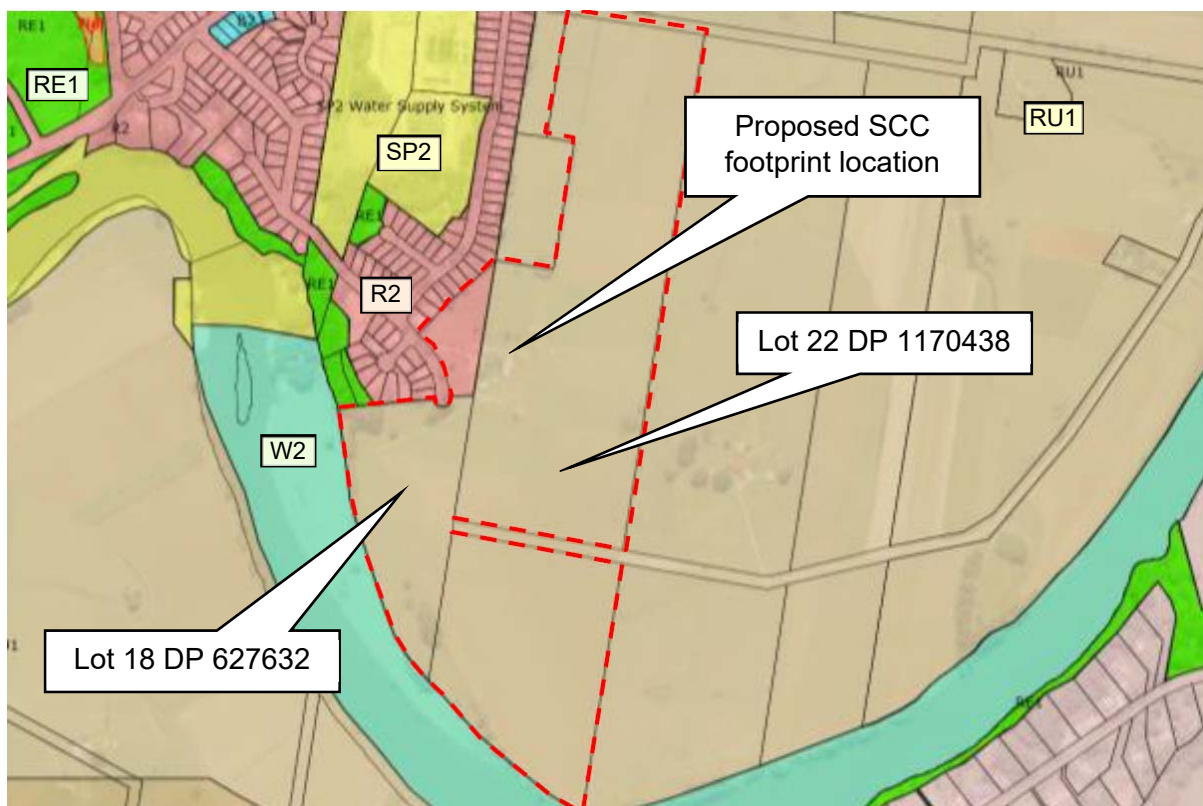


Figure 2: Land use zoning.

The SCC application relates to land zoned RU1 Primary Production. Seniors housing is prohibited in this zone under the Tweed LEP 2014.

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

An SCC can be issued for land that is not zoned primarily for urban purposes provided it adjoins land zoned for urban purposes. The SCC footprint on Lot 18 and Lot 22 directly adjoins the area of Lot 18 that is zoned R2 Low Density Residential.

The SCC footprint on both lots is considered to adjoin land zoned for urban purposes (clause 4(4)).

An SCC can be issued for land that is not zoned for urban purposes provided dwelling houses, residential flat buildings or hospitals are permissible with consent in the zone. Dwelling houses are a permitted use in the RU1 zone under the Tweed LEP 2014.

An SCC cannot be issued for environmentally sensitive land, being land that is described in schedule 1 of the Seniors Housing SEPP. While parts of Lots 18 and 22 are identified under the Tweed LEP 2014 as being affected by constraints such as flooding and water catchment, the SCC footprint does not involve any land identified in schedule 1 of the Seniors Housing SEPP that would exclude its permissibility.

PREVIOUSLY ISSUED SITE COMPATIBILITY CERTIFICATE ON THE LAND

No SCCs have been issued on the land.

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 1km radius of the land for which there is a current SCC, or where an application for an SCC 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 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 is not required as there are no undetermined SCC applications or determined SCCs within a 1km radius of the site.

COUNCIL COMMENTS

Council provided comments to the Department by letter dated 8 August 2019 (**Attachment C**) and email dated 14 August (**Attachment D**). Council advised that it does not support the SCC application and raised the following concerns:

- major flooding issues, particularly regarding residual flood risk and hazard in larger flood events, given the site's location within the floodplain, evacuation requirements and the sensitive nature of its occupants;
- significant traffic impacts on existing adjacent residents and a lack of alternative transport options;

- high impact on visual amenity and potential impact on tourism, based on the draft *Tweed Scenic Landscape Strategy*;
- potential land use conflicts and impacts on regionally significant farmland;
- existing constraints, limited capacity of water and sewer infrastructure, and inadequacies of infrastructure during flood emergencies;
- impacts of the bulk, scale, built form and character on existing uses of land in the vicinity; and
- unresolved land contamination issues.

SUITABILITY FOR MORE INTENSIVE DEVELOPMENT

The panel must not issue a certificate unless it 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 not identified in the *Tweed Urban and Employment Land Release Strategy 2009* or the *North Coast Regional Plan 2036* for urban development, with the land located outside the urban growth area for Murwillumbah/Bray identified in the regional plan (Figure 3, below).

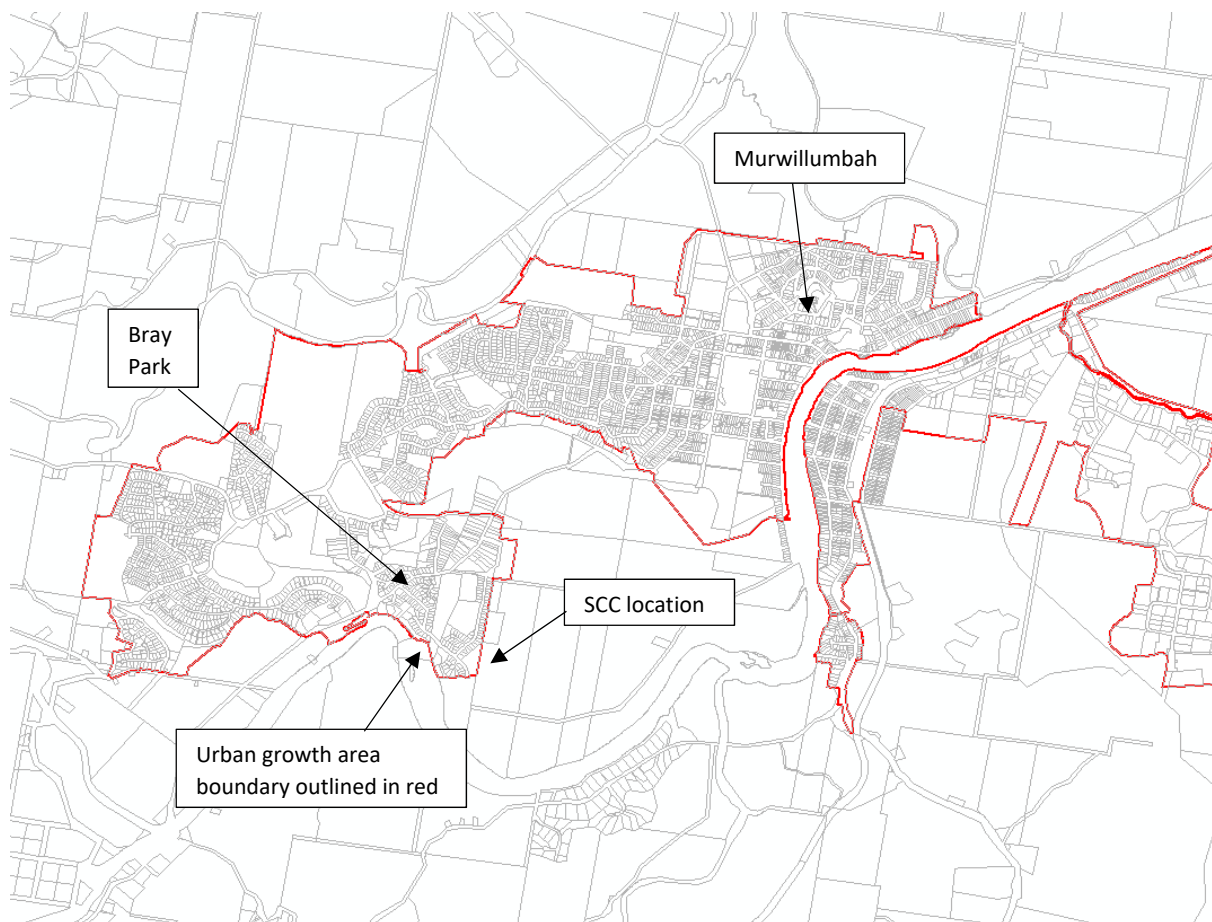


Figure 3: Urban growth area boundary within red outline (source: *North Coast Regional Plan 2036*).

Only a small portion of the site is considered relatively free of constraints. Most of this unconstrained area is zoned R2 Low Density Residential and is not proposed for seniors housing.

The portion of the site that is proposed for seniors housing has various issues that need to be addressed such as:

- regionally significant farmland;
- flood risk management;
- land use conflict and buffering to farmland;
- visual amenity;
- mapped coastal environment area;
- water and sewerage infrastructure and servicing;
- traffic and vehicular access;
- potential land contamination; and
- acid sulfate soils.

Regionally significant farmland

The *North Coast Regional Plan 2036* identifies the importance of the agricultural sector, which contributed more than \$900 million to the regional economy in 2014-15. Underpinning the strength of the region's agricultural sector is identified state and regionally significant farmland.

Approximately 5.4ha of the 6.5ha SCC footprint is mapped as containing regionally significant farmland (Figure 4, next page). The regional plan, section 9.1 Direction 5.3 Farmland of State and Regional Significance on the NSW Far North Coast and the *Northern Rivers Farmland Protection Project Final Recommendations* report (2005) all identify that urban development should not occur on the identified farmland.

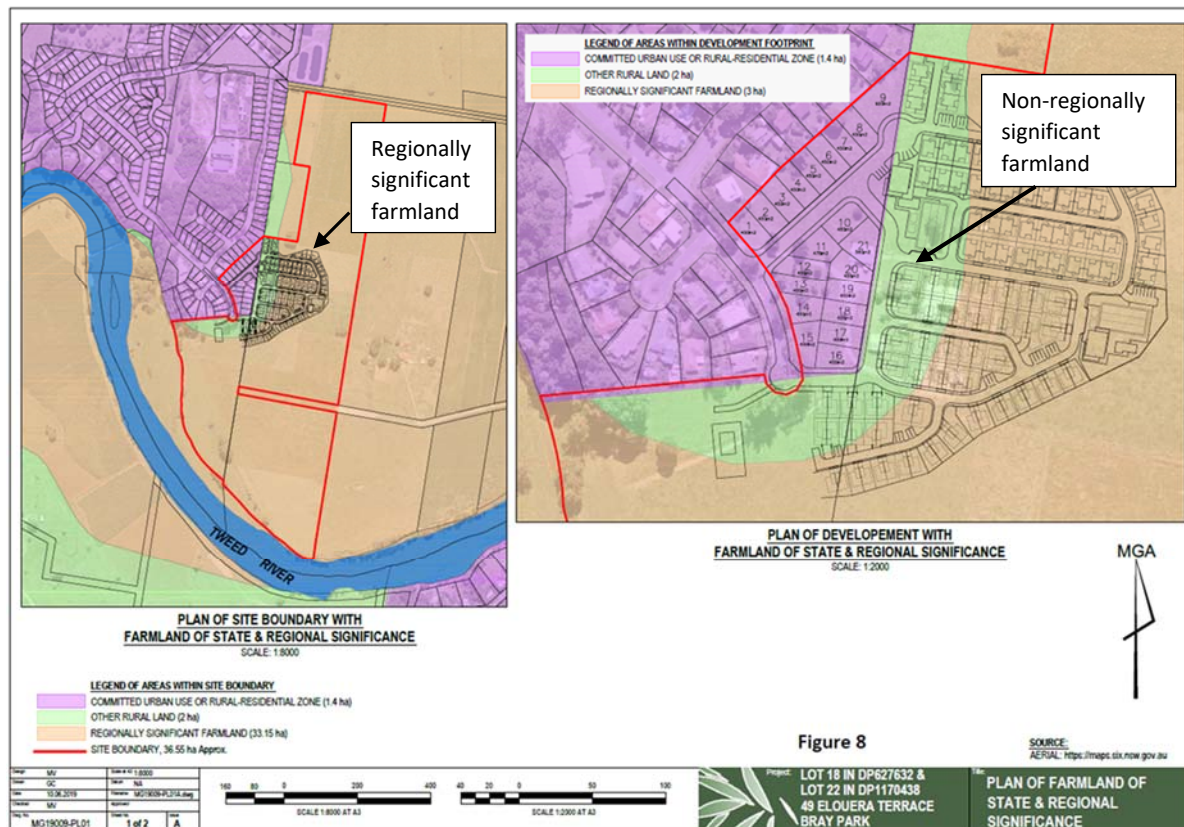


Figure 4: Regionally significant farmland on the site (source: SCC request, Planit Consulting).

Direction 11 of the regional plan also precludes the development of important farmland (which includes regionally significant farmland) for other purposes unless it is consistent with the interim important farmland variation criteria. These criteria include provisions that a site may be suitable for other uses if:

- it is isolated from other important farmland and is not capable of supporting sustainable agricultural production;
- it does not increase the likelihood of conflict; and
- it does not impact on current or future agricultural activities in the locality.

The proposal is considered to be inconsistent with the regional plan's interim important farmland variation criteria and not suitable for urban uses as the regionally significant farmland area of the SCC footprint is contiguous with large parcels of mapped important farmland and is not considered isolated.

The agricultural report in the SCC application confirms that the site has been used continuously for agricultural production for approximately 120 years. Various agricultural pursuits include subsistence farming, dairy, piggery, vegetable crops, sugar cane and beef cattle grazing, which is the current use for the site. Land adjacent to the site zoned RU1 Primary Production is being used for agricultural purposes, including beef cattle grazing, sugar cane cropping and dairy farming, and is likely to remain in primary production due to flooding constraints. The use of this land for seniors housing would sterilise important farmland and preclude it from agricultural production use.

The land in the proposed SCC footprint that is outside of the area mapped as regionally significant farmland is considered suitable for more intensive development subject to

matters such as potential land use conflict with the adjoining agricultural activities being appropriately addressed at the development application stage.

COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND LAND USES

The panel must not issue a certificate unless it 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))

Regionally significant farmland

As discussed in relation to clause 24(2)(a), most of the SCC footprint is mapped as regionally significant farmland and is not considered suitable for more intensive urban purposes.

Flooding

Most of the SCC footprint and all of the proposed seniors housing is above the design flood level (DFL) or 1% average recurrence interval (ARI) flood. Most of the SCC footprint is affected by the probable maximum flood (PMF) (Figure 5, next page). The PMF level does not preclude the development.

The SCC footprint is adjacent to the main out-of-river flow path through the Bray Park basin in major floods, and the velocity of the floodwaters is likely to be significant should a flood higher than the DFL occur. Council has advised that significant depths of water could be experienced within a short time frame, which could impact on the safe evacuation of residents.

In a PMF event, Council advises that parts of the SCC footprint could be under up to 5.3m of water. During larger floods, the site could be isolated from surrounding areas, including services at Murwillumbah, raising issues around potential hazards and risks due to the sensitive nature of seniors housing and the potential need for assisted evacuation.

While the PMF affectation and associated issues do not preclude the potential development, it is considered important that these issues be considered and addressed in greater detail at the development application stage in accordance with Clause 7.4 Floodplain risk management of the Tweed LEP 2014 to determine the suitability of the proposal.

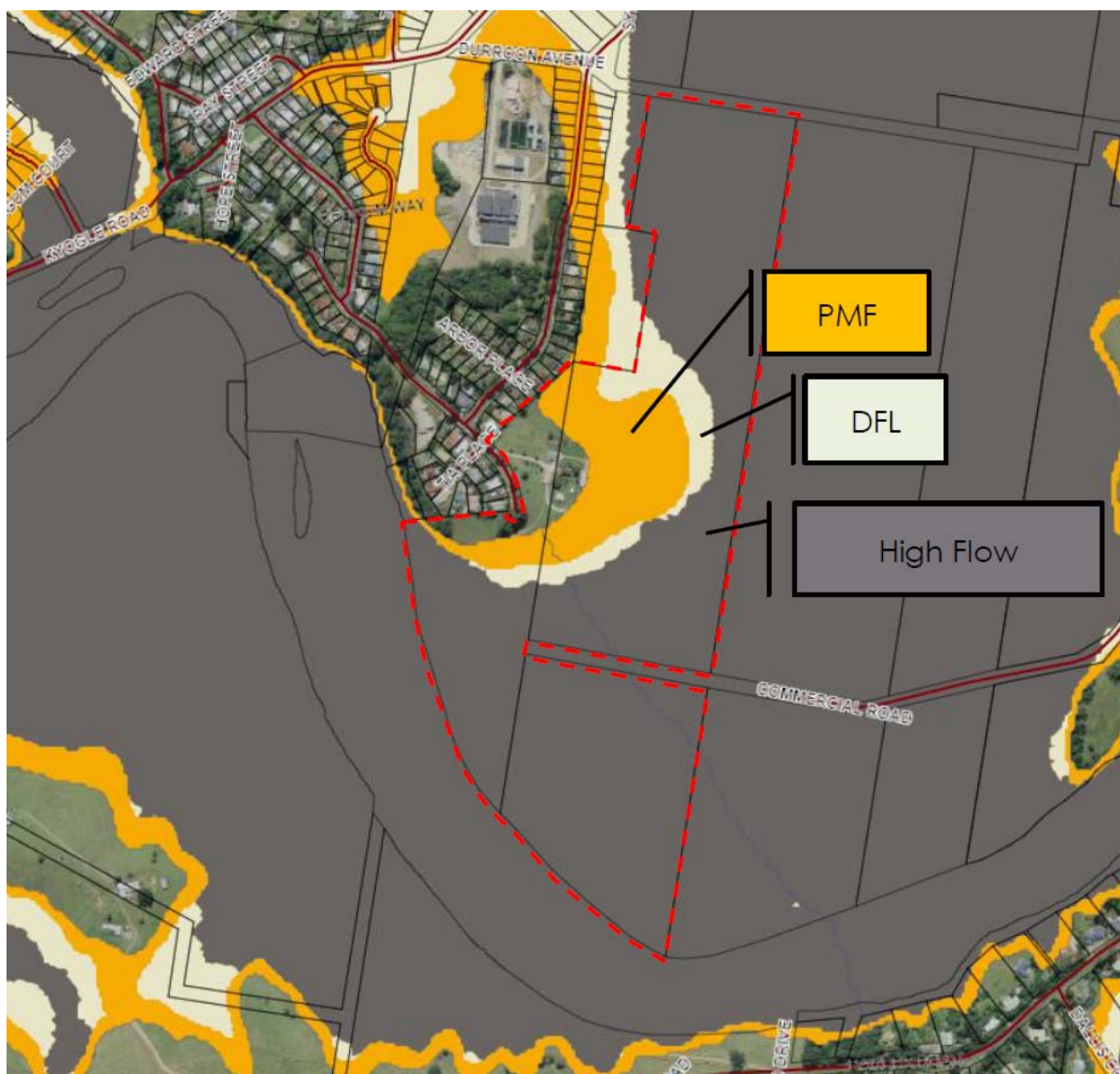


Figure 5: Flood-prone land on the site (source: SCC request, Planit Consulting).

Limiting the SCC footprint to non-regionally significant farmland will have positive impacts in terms of flooding issues as it:

- will locate almost the entire development above the PMF;
- reduce the size and scale of the development and any associated impacts on providing evacuation assistance to residents; and
- retain an area for a dwelling and farm infrastructure above the DFL to provide current and future landowners an opportunity to live on-site above the 1% ARI flood and a refuge for stock and equipment during floods.

Site contamination

The applicant's preliminary site contamination assessment concluded that the site was suitable for residential and seniors housing development.

Council advised that the submitted report was unsuitable for the following reasons:

- the number of soil samples taken does not comply with NSW EPA Sampling Design Guidelines;
- as the minimum number of samples has not been taken, the exceedance levels for lead at BH8 should not be statistically written off;
- the report fails to adequately address the exceedances for total recoverable hydrocarbons in certain areas, which the results suggest are contaminated, and further site investigation may be required;
- no testing or assessment of sub-slab contaminants has been undertaken;
- dieldrin contamination in two locations requires further investigation/validation;
- it does not identify or test historical chemical storage areas; and
- further investigation is required into the adjacent land (Lot 21 DP1170438), which is nominated as potentially contaminated in Council's GIS records.

While further investigation is warranted, it is considered that these issues can be adequately addressed at the development application stage through a detailed contaminated land investigation.

Acid sulfate soils

The development footprint is identified as being potentially affected by class 5 acid sulfate soils. It is considered that management of acid sulfate soils can be adequately addressed at the development application stage in accordance with Clause 7.1 Acid sulfate soils of the Tweed LEP 2014.

Coastal management

The SCC footprint contains mapped coastal environment area under the Coastal Management SEPP 2018. The proposal is considered unlikely to have any impacts in relation to the issues requiring consideration under clause 13 of the SEPP such as adverse impacts on the biophysical, hydrological or ecological environment, public open space or marine vegetation and water quality. It is considered that coastal management can be adequately addressed at the development application stage.

Land uses near the site

The existing and approved uses of the land near the site are rural, residential, infrastructure (water supply system) and public recreation.

The proposed seniors housing development is considered compatible with the urban land uses to the west.

The proposal raises potential land use conflict issues with the adjacent regionally significant farmland. However, it is considered that this matter can be appropriately considered and addressed in the final design of the proposal at the development application stage.

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 expected future uses of the surrounding land are likely to remain as residential, recreation and rural. The *North Coast Regional Plan 2036* and the *Tweed Urban and*

Employment Land Release Strategy 2009 have not identified any surrounding land for alternative future uses. The presence of regionally significant farmland and constraints such as flooding and drinking water catchment make any future change to the surrounding land uses unlikely.

As discussed earlier in this report, the area of the SCC footprint identified as regionally significant farmland is not considered suitable for urban development. While the remaining SCC footprint raises potential land use conflict issues with the adjacent regionally significant farmland on its ongoing and future use for agriculture, this can be appropriately considered and addressed at the development application stage.

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))

Bray Park provides basic retail shops, including a grocery/liquor store, a service station, a butchery and a deli/café. A range of retail, community, transport and medical services including a hospital, general practitioners, dentists and allied health services are available at Murwillumbah. A regular bus service operates between Bray Park and Murwillumbah, including a hail-and-ride service approximately 150m from the site. The development also proposes to provide a daily shuttle bus service to transport residents to the Murwillumbah CBD.

Meals, cleaning services, personal care and nursing care for the seniors housing dwellings will be coordinated by the on-site management. Recreational facilities will also be provided on-site.

The general locality is connected to and serviced by reticulated water, sewer, electricity, stormwater and telecommunications systems. The proposal identifies that electricity and telecommunications services will be addressed during the development application phase and this is considered appropriate.

Council indicates that further extension and augmentation of the sewerage and water supply systems is likely to be required to meet the demand resulting from the proposal. Detailed modelling and assessment evaluating any necessary upgrades can be appropriately undertaken at the development stage.

A traffic impact statement (TIS) has been provided by the applicant for the proposal. The TIS and Council acknowledge that the primary route north to Murwillumbah from the site via Elouera Terrace, O'Connor Drive and Sylvan Road has adequate capacity for the proposal (Figure 6, next page). However, Council has raised the following concerns:

- the secondary route along Bellevue Street, which would be the primary route for residents visiting the shops at Bray Park, has been discounted as carrying only 10% of development traffic;
- the intersection of Bellevue Street and Kyogle Road has significant topography impacting on sightlines and is potentially more constrained than the Sylvan Street intersection with Kyogle Road; and
- a substantial increase (approximately 60%) in local traffic will occur, and alternative transport options such as pedestrian movements and connections to Bray Park shops have not been considered.

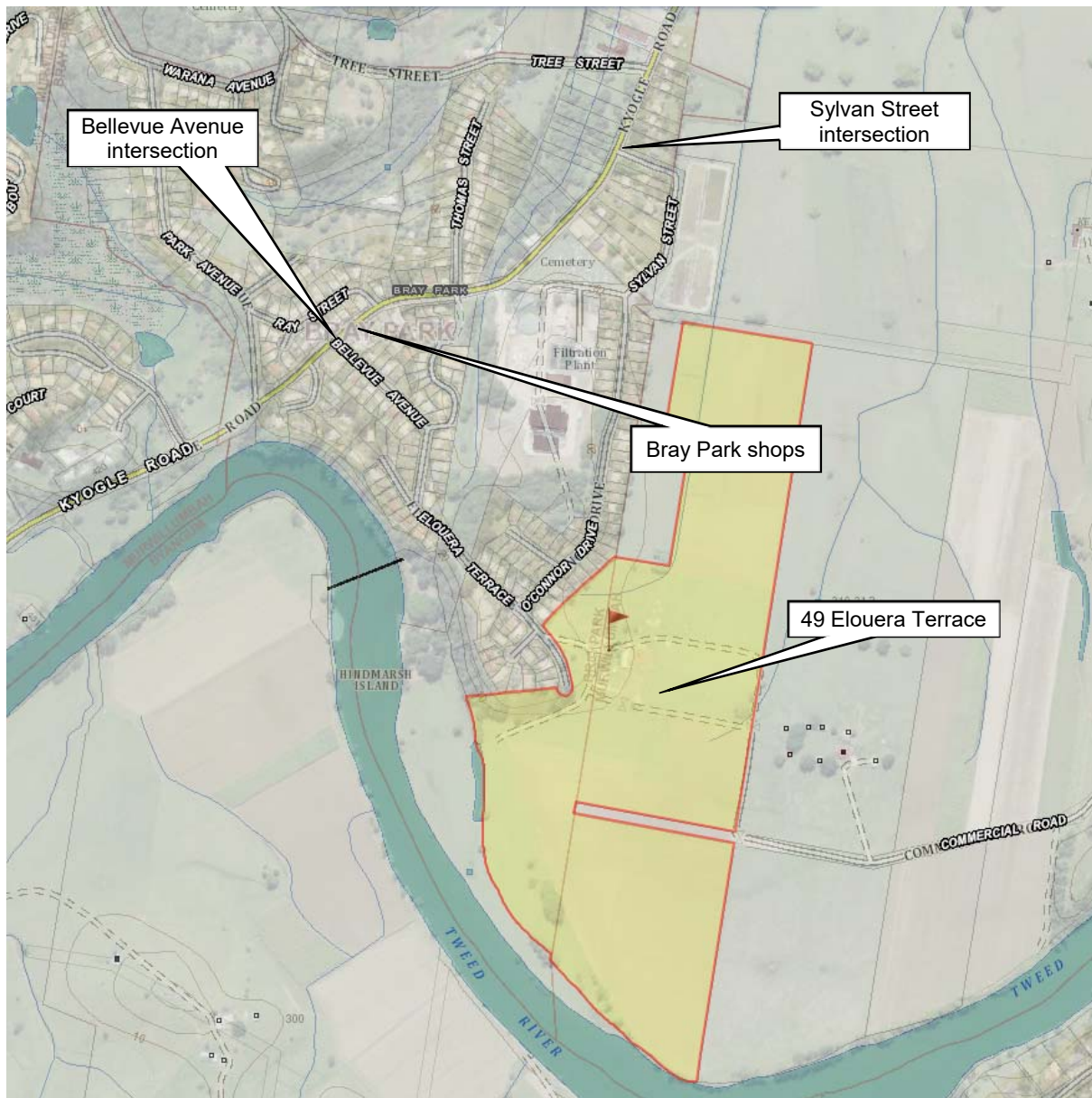


Figure 6: Traffic and shops in relation to the site (source: SIX Maps).

By reducing the SCC footprint and development to only non-regionally significant farmland, any associated traffic issues will be substantially reduced and can be adequately addressed at the development application stage.

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))

Land near the proposed development is zoned public recreation and special uses (infrastructure). It is not expected that the proposal will prevent or impact adversely on the continued use of this land for the designated purposes.

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 proposal indicates that the seniors housing will comprise up to 139 single-storey or double-storey serviced attached dwellings. Ancillary facilities include a multipurpose function/recreational hall, recreational spaces such as a swimming pool, bowling green and tennis court, barbecue areas and car parking.

The proposal is compatible with the character, bulk, scale and built form of the residential development on land near the development, which comprises mainly one-storey or two-storey detached dwellings.

Council has raised significant concerns over the potential visual impact of the development on the rural vistas due to its location within seven priority 1 and seven priority 2 view sheds identified by the draft *Tweed Scenic Landscape Strategy* (putting it within the most visible and visually sensitive land in the Shire). Council also notes that the site can be clearly viewed from the Tweed Regional Gallery, which attracts more than 125,000 visitors annually, and the Bakers Road tourist drive (**Attachment C**). Council is concerned that the proposal's visual impact could adversely affect these attractions and the tourism sector, which is a significant driver of the Shire's economy.

The recommended reduction of the SCC footprint to non-regionally significant farmland is considered likely to significantly reduce the potential visual impact, and the final number of dwellings that can be accommodated can be considered and addressed at the development application stage.

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))

Most of the site consists of grazing land, which is predominantly cleared of native vegetation with scattered remnant trees. The SCC footprint does not require the removal of native vegetation. The removal of any other trees or vegetation can be appropriately considered and addressed at the development application stage.

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

As discussed earlier in this report, a cumulative impact study pursuant to clause 25(5)(b)(vii) of the Seniors Housing SEPP is not required.

SITE INSPECTION

Departmental officers undertook a site inspection on 14 August 2019 and the subsequent report shows a visual representation of the development footprint and surrounding environment (**Attachment E**).

CONCLUSION

It is considered that the area of the SCC footprint that contains regionally significant farmland is not suitable for urban purposes and should be retained in primary production in accordance with the intent of the *North Coast Regional Plan 2036*, section 9.1 Direction 5.3 Farmland of State and Regional Significance on the NSW Far North Coast and the *Northern Rivers Farmland Protection Project Final Recommendations* report (2005).

An SCC is supported for the proposed footprint that is not mapped as regionally significant farmland, as shown in Figure 7 (next page). Reducing the size of the SCC

footprint will also help limit any potential impacts of the development and locate the seniors housing primarily above the PMF event. However, the proposal would still need to address and confirm its suitability at the development application stage, in particular to:

- the appropriate number of serviced self-care seniors housing dwellings;
- flooding and flood risk management issues;
- traffic issues;
- visual amenity;
- land use conflict with adjoining agricultural land uses;
- water and sewer infrastructure; and
- potential land contamination.

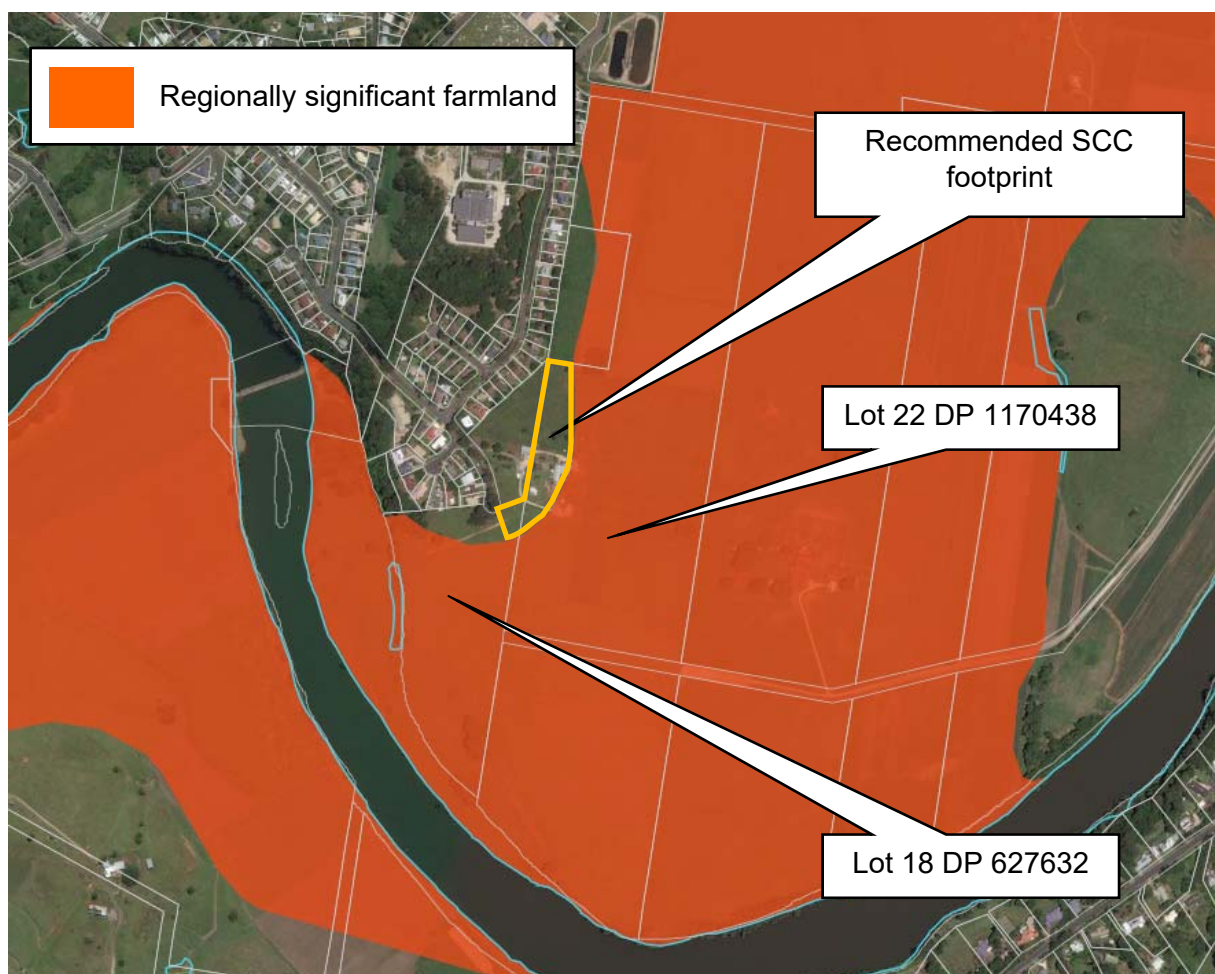


Figure 7: Recommended SCC footprint.

ATTACHMENTS

- A – SCC application package
- B – Site map, SCC footprint and regionally significant farmland map
- C – Council comments (letter)
- D – Council comments (email)
- E – Site inspection report

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