



27 March 2019

Department of Planning
Sydney West Region
Locked Bag 5020
PARRAMATTA NSW 2154

Attention: Christine Gough, Team Leader, Sydney West Region

Dear Ms Gough,

Site Compatibility Certificate Application – No. 392 Galston Road and 5 Mid Dural Road, Galston

I refer to the Site Compatibility Certificate (SCC) application for the proposed seniors housing development at No. 392 Galston Road and 5 Mid Dural Road, Galston.

As the Department is aware, Council has concerns with the proliferation of seniors housing in rural areas as a result of SCCs being issued by the Department. The Seniors Living SEPP promotes seniors housing development on the urban/rural boundary, which is inconsistent with the objectives of the North District Plan and its actions to limit urban development within existing urban areas.

As you are also aware, Council has accepted grant funding under the Accelerated LEP Program. A number of technical studies are being prepared to inform the preparation a Local Strategic Planning Statement (LSPS) and a review of the Hornsby Local Environmental Plan 2013 (HLEP). One such study is a Rural Lands Study which will provide strategic direction for rural areas and respond to the actions of the North District Plan (NDP). Council is also preparing a Housing Strategy which will consider the demand for various forms of housing, including housing for seniors. The body work will provide evidence to inform an appropriate path forward to meet future demand for various forms of housing in urban areas whilst protecting the character and values of the Metropolitan Rural Area (MRA) in line with the actions of the NDP.

Council is participating in a pilot project in conjunction with the Greater Sydney Commission and the Hills Shire Council to conduct detailed research on the challenges identified concerning SCCs for seniors housing within the MRA. Issues such as inadequate infrastructure capacity, land use conflicts and impacts on the character of the rural areas will be key matters considered in this research.

The Department's recent amendment to the Seniors Housing SEPP to temporarily exclude the policy from applying to Heritage Conservation Areas (HCA) in Greater Sydney until 1 July 2020 is supported by Council. It is advised On the Department's website that *'the temporary change offers councils time to ensure seniors housing provisions align with their local strategic plans which are currently under review'*. It is requested that the Department extend this exclusion to rural zoned land. Unless this opportunity is provided, the strategic planning work to prepare a LSPS and new LEP being undertaken by Councils will be undermined by State Government policy overriding local planning controls.

With respect to the SCC application for No. 392 Galston Road and 5 Mid Dural Road, Galston, it is recognised that 76 self-contained dwellings have been approved on the site and the current SCC application proposes to increase the number of dwellings to 94. Council considers that the site is not suitable for more intensive development. The background of the site and the strategic planning implications of the proposal have been reviewed and the following comments are provided for your consideration.

Background

The history of the applications on site is summarised below:

- On 5 November 2008, a SCC was issued by the Department for a seniors living development comprising 94 self-contained dwellings of single storey construction. Conditions of the SCC require:
 - Development to consist of one storey
 - The final number of dwellings (not to exceed 94) to be determined by taking into account the requirements of Council's DCP and other formal policies, including setbacks to boundaries, on site effluent disposal, drainage and the like, and the open space and landscaping requirements of the SEPP.
- A pre-lodgement meeting was held with Council on 15 December 2009. Advice provided at the meeting indicated issues with the intensity of the development, protection of significant trees, as well as conflicts between the wastewater dispersal area, location of the OSD system and landscaping of the property.
- On 19 September 2010, The Department issued a SCC for the site to preserve the validity of the former SCC issued for 94 single storey dwellings.
- Development application (DA/832/2010) was lodged on 14 July 2010 proposing a seniors living development containing 78 self-car dwellings and was refused by the Joint Regional Planning Panel on 22 December 2010, generally on the grounds that the development is incompatible with adjoining land uses, is an overdevelopment of the site and constraints regarding inadequate sewer infrastructure.
- A second development application (DA/484/2011) was lodged on 16 May 2011 for 76 self-contained dwellings and was refused by the Joint Regional Planning Panel on date 15 September 2011 on similar grounds to the previous refusal.
- An appeal was made to the Land and Environment Court (LEC) against Council's refusal of DA/484/2011 and the application for 76 dwellings was approved by the Court on 12 January 2012.
- Since the approval, Section 4.55 modifications (B, C and E) have been approved which have resulted in the staging of the development and minor design changes.
- Three section 4.55 modifications (D, F and G) are presently under assessment by Council. The modifications propose amendments to the community centre, design changes to villas and changes to the internal driveways.
- As of March 2019, works have commenced on site and the consent is operative. However, Council is investigating the presence of potentially contaminated unauthorised fill that has been imported to the property. Details of this matter will be forwarded to the Department upon the completion of Council's investigation.

Current Proposal

The SCC application proposes 94 self-contained dwellings up to two storeys in height. A total of 130 car spaces are proposed, 52 of which are proposed within two basement car parks. The proposal involves the provision of a two storey community centre with a range of facilities including a movie theatre, indoor swimming pool and gym.

The following table presents an overview of the proposal compared with the previously approved development and the original SCC issued.

	Original SCC	Approved DA	Proposed SCC	Comment on proposed SCC
No. of dwellings	94	76	94	<ul style="list-style-type: none"> • 18 more dwellings than approved • Same number of dwellings as the original SCC however built form is different being two storeys
Car parking	Not specified	76	130	<ul style="list-style-type: none"> • 54 car spaces more than approved. • Two basement car parks proposed to cater for additional parking which did not form part of approved DA or original SCC
Height	Single Storey	Single Storey	Two storey plus basement car park	<ul style="list-style-type: none"> • Of the 94 dwellings proposed, 69 dwellings proposed at ground level dwellings and 23 dwellings proposed at the first floor level. • Community centre now proposed to be two storey (instead of single storey as approved).
Setbacks	15m – 30m	15m – 30m	15-30m	No change
Sewer	Not specified	Storage tanks and pump out system	Storage tanks and pump out system	<ul style="list-style-type: none"> • The approved development for 76 dwellings would require a tanker vehicle extracting effluent on site for almost 6 hours over a one week period. • No details have been provided with the new proposal for 94 dwellings

The table demonstrates that although the number of dwellings proposed is consistent with the original SCC issued by the Department (being 94), the scale of the development, involving a second storey and basement car park, is significantly more intensive than the original SCC. Further, it is evident that the current application is significantly more intensive than the development approved by the LEC for 76 single level dwellings.

Clause 25(5)(b) of the Seniors Living SPP requires that the proposal is compatible with the surrounding land uses having regard to specific criteria. Council's comments with respect to this criteria are provided below:

Criteria 1 – The natural environment and the existing and approved uses of land in the vicinity of the proposed development.

The subject site is zoned RU2 Rural Landscape under the *Hornsby Local Environmental Plan 2013* (HLEP). Development involving the construction of 94 self-care dwellings would be inconsistent with the objectives of the RU2 zone, namely to:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*

- *To encourage land uses that support primary industry, including low-scale and low-intensity tourist and visitor accommodation and the provision of farm produce direct to the public.*
- *To ensure that development does not unreasonably increase the demand for public infrastructure, services or facilities.*

Council's existing rural land use planning strategy and associated planning controls are aimed at ensuring the rural character of the area is maintained. The zoning facilitates agricultural and other compatible land uses. Development involving the construction of a seniors living development containing 94 self-contained dwellings as proposed would be alien to, and inconsistent with, Council's current rural land use planning strategy and development standards, namely one principal dwelling on a minimum lot size of 2Ha and a maximum building height of 10.5m.

Council's future vision for the MRA will be considered as part of the Rural Lands Study and in the preparation of the LSPS.

Criteria 2 – The impact that the proposed development is likely to have on the future uses of the land.

The existing uses to the west, east and south of the site are rural uses. No. 5 Mid-Dural Road is located opposite land zoned for urban purposes on the northern side of Galston Road, however, No. 392 Galston Road is surrounded by land zoned for rural purposes and does not adjoin an urban zone as required by the SEPP. In issuing a SCC for No. 392, the Department is creating an undesirable precedent for the expansion of seniors living developments to adjoining rural lots that do not adjoin urban land.

The proposed development would result in the fragmentation of rural land sterilising its future use for agricultural purposes. The proposal would also increase the potential for land use conflict between residential uses and farming practices located on adjoining properties. This issue is highlighted in the NSW Department of Primary Industries 'Right to Farm Policy', which recommends strengthening land use planning and the consideration of options in environmental planning instruments to ensure best land use outcomes to minimise conflicts.

Criteria 3 – The services and infrastructure that are or will be available to meet the demands arising from the 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.

Access:

Clause 26 of the *Seniors Living SEPP* provides a set of requirements for access to baseline services such as shops, banking, social and medical services. The site is located more than 400m from Galston village centre, however, the proposed development relies on the provision of new bus stops for transport to the Galston village shops to achieve compliance with the access requirements of the SEPP.

It appears that the access gradients for pathways from the development to public transport connections can be achieved. However, details of the existing access arrangements to shops, services and medical centres, once passengers alight from the bus in the Galston Village has not been provided and is required to demonstrate compliance with the Clause 26.

Sewer:

Clause 28 of the SEPP prescribes that satisfactory water and sewer infrastructure must be provided.

The application has not included a waste water report and has not adequately addressed the issue of waste water disposal to cater for the additional 18 dwellings proposed.

The inadequacy of sewer infrastructure was a key issue raised in the assessment of the two former development applications on the site and formed part of the reasons of refusal issued by the Joint Regional

Planning Panel. The outcome, as approved by the LEC, relies on effluent storage tanks and a pump out system to service the development. Council considers that this method of waste water management on site is unacceptable and the addition of 18 dwellings would exacerbate the issues.

To highlight the issue, the following extract is provided from Council's assessment report for DA/484/2011, considered by the Joint Regional Planning Panel, which outlines the waste water generated by the 76 dwellings:

'The proposed development would generate 25, 080 litres of waste water per day. The maximum tanker vehicle is 30,000 litres. The proposed 100,320 litre storage tank would require pump out collection 4 times per week. The pump-out takes 1 hours and 10 minutes for a 30,000 litre pump out. The cost is approximately \$2.40 per 100 litres amounting to \$720 per pump out. The yearly cost for residents of the development would be approximately 150,000 per year on this basis.'

Based on the above details, the approved development would require a tanker vehicle extracting effluent on site for almost 6 hours over a one week period. The pump out process has the potential to adversely impact on the amenity of residents in terms of noise, odour and inconvenience. The system is also not cost effective and results in substantial operating costs for residents.

In 2013-2014, a reticulated sewerage system was developed in the Galston / Glenorie area as part of a priority sewerage program to serve the existing Galston and Glenorie Villages. This system does not have the capacity to service growth and will not accommodate the approved or proposed development. The dependency on a pump out system to operate a development of this scale, when there is no indication that the site will be able to connect to the Sydney Water's reticulated sewerage system in the future, is evidence that the scale and intensity of the development is not suited to the rural area.

Should the Department consider supporting the SCC, it is important that provision of an adequate waste water disposal system is addressed by the applicant prior to the issue of an SCC as this matter is critical to the operation of the development. It is not acceptable to defer this matter to be considered under a development application and through an amendment to section 68 approvals, as experience has shown that Council has limited capacity to prevent the approval of inappropriate development once a SCC has been issued by the Department.

In this regard, Council recommends that a waste water report be submitted as part of the current SCC application that includes details of:

- The anticipated levels of waste water generated by the proposed 94 dwellings;
- The size, capacity and location of the proposed storage tanks;
- The location of the tanker standing location, tanker capacity, frequency of visit and duration to extract effluent;
- Provide evidence from waste water contractors of the capacity to service the development;
- Measures proposed to mitigate potential amenity impacts to residents.

Should this information be provided, it is required that Council has the opportunity to review and provide comment during the Department's SCC assessment.

Water:

A reticulated water supply is available for the site, however at the time of the approval by the LEC, the supply rate (0.5 litres per second) was considered inadequate for peak demands and fire-fighting. A site reservoir and booster pump system to service the development was required as a condition of consent.

The issue of water supply and the provision of additional infrastructure to cater for the proposed additional 18 dwellings and swimming pool has not been addressed and details should be provided prior by the proponent as part of the SCC application.

Traffic:

The approved development includes 76 car spaces for 76 dwellings. This is proposed to increase to 130 car spaces for 94 dwellings under the current proposal. The SCC application should not be supported in the absence of a traffic study to address the traffic implications of the development.

In summary, the proposal for 94 dwellings represents an over development of the site and is not within the servicing capacity of the area. The site is not suitable for more intensive development due to the absence of a clear vision, infrastructure and funding plans for the area.

The matters raised above show that there are issues with the Department specifying the precise number of dwellings permitted under a SCC, when there has not been a detailed assessment of the proposal's impacts. SCCs have the effect of provide in principal approval for a specific number of dwellings where the impacts of the proposal have not been assessed against the matters of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), involving community consultation and a detailed assessment by Council's planners in conjunction with Council's development engineers, traffic engineers, waste water officers, arborists, bushland officers and waste management officers. The number of dwellings in a seniors living development should be determined by Council through the DA process to ensure the scale is appropriate for the site and its impact on the character of the rural area is fully considered.

Criteria 4 – 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 or special uses in the vicinity of the development.

The site does not adjoin land for open space or special uses (apart from Galston Road and Mid-Dural Road which is zoned SP2). Notwithstanding, the intensity of the development is inappropriate and is inconsistent with the infrastructure capacity and character of the rural area.

Criteria 5 – The impacts that the bulk and 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.

The original SCC was for 94 self-care dwellings of single storey construction. Through the development application process, the number of proposed units was reduced to 78 under DA/832/2010 and 76 under DA/484/2011 in response to issues relating to the site constraints, vegetation protection, waste water management, drainage and open space.

The current proposal seeks to enlarge the community centre to two storeys and the provision of 23 first floor dwellings. The two-storey built form is inconsistent with the original single storey built form proposed in the original SCC application issued by the Department. The change from the approved single storey construction to a two storey development is inconsistent with the bulk, scale, built form and character of the rural area.

The expansion of the urban built form would detract from the character of the rural area and may result in land use conflicts with existing, approved and future uses of land in the vicinity of the development. The proposal for 94 self-contained dwellings on the site would represent an overdevelopment of the site when compared to the low density of development and rural character of the surrounding area.

Criteria 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.

This criteria is not applicable to the proposal. The *Native Vegetation Act 2003* has been repealed and replaced with a new framework for Land Management and Biodiversity Conservation.

The front of the site contains *Sydney Turpentine Ironbark Forest (STIF)*, an endangered ecological community under the *Biodiversity Conservation Act 2016*. The current proposal appears to be compatible

with the Vegetation Management Plan approved under the development approval. The development and the operation of the site must ensure the protection of the significant vegetation.

Criteria 7 – The impacts identified in any cumulative impact study provided in connection with the application for the certificate

Amendments to the Seniors Living SEPP made in October 2018 include a requirement for a cumulative impact study to be provided when an application is lodged within a one-kilometre radius of a site of two or more SCC applications. The site is within one kilometre of No. 330-334 and 328A Galton Road where a seniors living development has been approved and a new SCC application is under consideration for 95 dwellings. Although there is not a second SCC site within the one kilometre radius, Council considers that a cumulative impact study should be provided given the large number of developments proposed on each site and the potential cumulative impacts to the area.

In summary, the site is not suitable for more intensive development in the absence of a clear vision, infrastructure and funding plans for the MRA. The proposed development would be inconsistent with the objectives of the RU2 Rural Landscape zone, Council's planning controls and the North District Plan. The proposal represents an overdevelopment of the site which would detract from the character of the rural area. The concerns with the proposed development outlined above clearly demonstrate that seniors housing developments do not respect the constraints of the rural areas and lead to ad-hoc planning outcomes.

Council's request to the Minister for Planning is reiterated that no further SCCs be issued for seniors housing developments in the rural areas of Hornsby Shire. In light of the recent amendment to the SEPP to exclude the Policy from applying to HCAs, it is also requested that this exclusion be extended to rural zoned land.

I trust our comments on this matter will be given due consideration.

Yours faithfully

A handwritten signature in black ink, appearing to read 'K Vickery', with a stylized, cursive script.

Katherine Vickery
Manager, Strategic Planning

TRIM Reference: F2007/01473