

Summary of significant SCC and DA events – 3 Quarry Road & 4 Vineys Road, Dural

DATE	ACTION
6/07/2016	SCC lodged Site Compatibility Certificate (SCC) application (SCC_2016_HORNS_002_00) prepared by RPS Australia East Pty Ltd (on behalf of landowner), received by the Department of Planning.
24/05/2017	SCC issued Site Compatibility Certificate (SCC_2016_HORNS_002_00) issued by Department of Planning for seniors housing development at 3 Quarry Road & 4 Vineys Road, Dural, comprising: <ul style="list-style-type: none"> - 74 bed residential aged care facility; and - 219 self-care units contained within 8 three-storey buildings, with basement car parking and an ancillary building. <u>Requirements imposed on the determination:</u> The final layout, number of in-fill self-care living units and onsite facilities will be subject to the resolution of issues relating to: <ul style="list-style-type: none"> - Overland flood management; - Setbacks, landscaping and land use conflict; - Utility servicing to confirm reticulated water and adequate facilities for the removal or disposal of sewage; and - Traffic and access.
21/06/2018	New SCC lodged New SCC lodged SCC_2018_HORNS_005_00 seeking to ensure a valid SCC applied to the site after the lapsing of SCC_2016_HORNS_002_00 on 24/06/2019.
16/07/2018	DA lodged On behalf of the applicant Willowtree Planning lodged a development application with Hornsby Shire Council on behalf of the landowner for: <ul style="list-style-type: none"> - a 74 bed residential aged care facility; - 146 self-care units contained within 7 three-storey buildings; - 383 basement car parking spaces; and - an ancillary wellness centre.
28/09/2018	Department correspondence to applicant – withdraw SCC Department wrote to applicant and invited them to withdraw SCC application (SCC_2018_HORNS_005_00) as it was considered that there was sufficient time for the DA to be determined under the SCC_2016_HORNS_002_00.
16/10/2018	Applicant appeal Applicant sought to appeal the DA with the NSW Land and Environment Court (L&EC) under a deemed refusal.
2/11/2018	Applicant correspondence to Department – withdraw SCC Applicant wrote to Department stating they did not wish to withdraw their SCC application (SCC_2018_HORNS_005_00) given the likely timeframe for a SCC to be issued and the need to preserve a valid SCC on the site. Further the applicant advised an appeal was lodged with the L&EC for DA 668/2018 to ensure a determination could be obtained prior to 23 May 2019, with a hearing date confirmed from 6 to 10 May 2019; however, the applicant would continue working with council to resolve issues.
5/12/2018	Planning Panel consideration and DA refusal <u>Council report</u> Council report to Sydney North Planning Panel recommended refusal of the DA for reasons summarised as follows:

	<ol style="list-style-type: none"> 1. The proposal has not satisfied the requirements of the SCC issued (SCC_2016_HORNS_002_00) to satisfactorily resolve overland flood management, setbacks, landscaping, land use conflict, provision of utility services (including reticulated water supply and waste water disposal), traffic impacts and access; 2. The proposal has not satisfactorily demonstrated the “serviced self-care” housing use of the proposal as required by Clause 17(1) of the <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP)</i>; 3. The proposal has not satisfied clause 27 of the Seniors SEPP relating to bush fire prone land and has not been issued a Bush Fire Authority or NSW Rural Fire Service General Terms of Approval as Integrated Development and does not comply with Planning for Bush Fire Protection 2016; 4. The proposal has not received General Terms of Approval from the NSW Department of Primary Industries (relating to the water courses on site); 5. The proposal results in an unacceptable density of 0.83:1 and fails to demonstrate that 15% of the site area is appropriately provided as deep soil landscaped area; 6. The proposal has not satisfactorily demonstrated that 70% of the self-care dwellings receive three hours of solar access to living spaces as required by the Seniors SEPP; 7. The proposal does not meet the design quality principles of SEPP 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide; 8. The proposal has not provided a Detailed Environmental Site Assessment to determine the land is suitable for the proposed use as required by SEPP 55 – Remediation of Land; 9. The proposal does not comply with the maximum building height under Hornsby LEP 2013 and the applicant’s 4.6 request to vary the standard has not provided sufficient justification; 10. The proposal does not comply with requirements of the Hornsby Development Control Plan 2013 relating to buffers to threatened species, removal of street trees (including remnant Sydney Turpentine Ironbark Forest), design of the development does not maintain an effective watercourse riparian zone comprising native vegetation, site coverage, setbacks, landscaping, separation to adjoining sites (particularly existing intensive plant agriculture uses), waste and recycling storage; 11. Proposal results in unacceptable impact upon the ecological communities on site (Sydney Turpentine Ironbark Forest and Black Gully Forest) and fails to provide appropriate offset measures in accordance with Council’s Green Offsets Code; 12. The application’s Noise Impact Assessment has not appropriately addressed the potential impacts of existing noise generating intensive agricultural uses on adjoining properties; 13. The proposal has failed to demonstrate compliance with NSW Roads and Maritime Service requirements and RMS have not issued concurrence for the proposal; and 14. The proposal would not be in the public interest being contrary to the protection of the metropolitan rural area under the North District plan, Hornsby Shire Rural Resource Lands Study 2006, the Hornsby Shire Rural Lands Planning Provisions Review 2009 and the RU2 Rural Landscape zone provisions under the Hornsby LEP. <p><u>Planning Panel decision</u> The development application was refused by the Sydney North Planning Panel for the following reasons:</p>
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	<ul style="list-style-type: none"> - The application does not comply with the maximum building height in the Hornsby LEP of 10.5m and the applicant's 4.6 request to vary the development standard is not supported; - The Panel accepts Council's assessment report's conclusion that the proposed development is not compatible with its surroundings and while seniors housing on the site may be designed to be compatible with the surroundings, the proposed built form is not compatible as its major visual connection is to land possessing rural character; - The applicant has not provided suitable evidence that serviced self-care housing will be provided and sufficiently serviced in accordance with the Seniors SEPP; - There is insufficient evidence to demonstrate the development will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage in accordance with the Seniors SEPP; - The Panel cannot grant consent as the NSW Rural Fire Service has not issued concurrence.
6/03/2019	Applicant updated DA package Development application package updated and lodged with Council in support of amendments to the application package submitted to the L&EC. Amendments included: <ul style="list-style-type: none"> - Reducing maximum building height from 17.71m to 10.5m; - Reducing maximum building length from 83m to 59m; - Reducing building depth from 23.9m to 18m; - Reducing GFA from 24,537sqm to 19,260sqm; - Reducing number of buildings from 8 to 7; and - Reducing number of storeys from 3 storeys and roof to 2 storeys and attic.
31/03/2019	Department correspondence to applicant – Court appeal Department wrote to applicant advising that the assessment of the SCC (SCC_2018_HORNS_005_00) would not progress until there was a determination by the L&EC. The Department advised the determination of the development application through the Court will give a clear path forward for the outcome of the site and at the time it was anticipated that the Court's decision would be delivered prior to the expiration of the previous SCC (SCC_2016_HORNS_002_00).
22/05/2019	Findings of the Land and Environment Court The Court found <i>"that the power of the Court to grant consent to the Applicant's development application DA/668/2018, for the demolition of existing structures, earthworks, tree and vegetation removal, and the construction of a seniors housing development, has not been enlivened as the jurisdictional pre-conditions within cl 55 of SEPP Seniors [requirements for a fire sprinkler system in the residential aged care facility] have not been satisfied ... and further conclude that for this reason, the appeal must be dismissed, and further consideration of the contentions in this appeal is otiose."</i> The Court noted the key areas of contention relate to the proposed design and whether or not it satisfied the provisions of the SEPP beyond Clause 17, 24, 25; and the provisions of the Hornsby LEP and Hornsby DCP (particularly character and context, stormwater management, waste management, remediation of land, traffic impacts and access arrangements, and potential ecology impacts). <u>The Court noted the provisions of the Seniors SEPP which were relevant to the DA appeal, however as the applicant's development application did not include a fire sprinkler system for the residential care facility, the Court's power to grant consent was not enlivened, and the appeal was dismissed. No further deliberation</u>

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Commented [AH2]: Matters of contention are not reasons for refusal - what was or were the reasons the DA was not supported by the L&EC?

Commented [MC3R2]: While the process would normally involve further consideration of other provisions, the appeal was dismissed once it was found that a sprinkler system was not identified on plans or in any documentation. The court's power to determine the application was not enlivened, and further consideration was not necessary.

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	<p>on the below provisions were given: The Court noted the provisions of the Seniors SEPP which were relevant to the DA appeal are:</p> <ul style="list-style-type: none"> - Clause 4 Land to which Policy applies - Chapter 2 Key concepts [relevant land use definitions]; - Clause 16 Development consent required; - Clause 17 [and Part 5] Development on land adjoining land primarily zoned for urban purposes; - Clause 24 Site compatibility certificates required for certain development applications [seniors housing development applications on land that adjoins land zoned primarily for urban purposes provided the consent authority is satisfied the relevant panel has certified in a current site compatibility certificate that the site is suitable for more intensive development and is compatible with the surrounding environment having regard to the minimum criteria specified in clause 25(5)(b)]; - Clause 25 Application for a site compatibility certificate [including notification requirements to the council and relevant planning panel; a planning panel must not issue a site compatibility certificate unless they have taken into account the written comments of council and the panel is of the opinion that the proposal is compatible with surrounding land uses have regard to (at least) (Clause 25(5)(b): the natural environment; the impact the proposed development is to have on likely future uses of the land; the services and infrastructure available to meet demands arising from the proposal; the impact of bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of surrounding land; of the development involves clearing of native vegetation and the proposal's likely impact on the conservation and management of native vegetation; and the impacts of any cumulative impact study provided in connection with the application]; - Clause 33 Neighbourhood amenity and streetscape [DAs are to contribute to the quality and identity of the area/neighbourhood amenity]; - Clause 34 Visual impact and acoustic privacy; - Clause 48 Standards that cannot be used to refuse development consent for residential care facilities and Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings [a consent authority must not refuse DA consent for the purposes of residential care facility and self-contained dwellings on the basis of any of the development controls in the respective clauses if the DA complies with said clauses]; and - Clause 55 Residential care facilities for seniors required to have fire sprinkler systems. 	<p>Commented [JC4]: Not sure this section relevant?</p> <p>Commented [MC5R4]: This was put into the document in response to Amanda's query about the DA not being supported</p> <p>Formatted: Space Before: 6 pt, After: 6 pt, Add space between paragraphs of the same style</p>
3/06/2019	<p>Applicant correspondence to Department – Court appeal</p> <p>Applicant's solicitors wrote to the Department advising they are of the view that the Commissioner's determination is legally incorrect and had filed an appeal against the L&EC's decision seeking that the Commissioner's determination be overturned. Having regard to the date on which the previous SCC expired, that appeal was filed with the Court on the evening of 22 May 2019 – the day the Court's decision was reached.</p> <p>The applicant states the Court's determination did not address or consider the range of merit matters which were put before it during the proceedings. As the applicant has appealed the decision of the Court, a valid SCC is required "to enliven the permissibility of the site" and therefore requests for the Department to</p>	<p>Formatted: Space Before: 6 pt, Add space between paragraphs of the same style</p> <p>Commented [AH6]: This needs to be revised to make clear what aspects of these clauses were reasons for dismissing the appeal. In Particular the SCC clauses, which may be relevant to the subject and current SCC application.</p> <p>Commented [MC7R6]: The Court decision included this information, but the reason for the dismissal was due to the applications failure to show satisfaction of Cl 55 of the Seniors SEPP. It did not go further than this. I believe this can be considered as an FYI or be removed completely.</p> <p>Commented [JC8]: Department of Planning as referred to on p.1?</p> <p>Commented [MC9R8]: Yes</p>

	progress the assessment of the pending SCC application and allocate the matter for determination by the Sydney North Planning Panel.
14/06/2019	<p>Department correspondence to applicant – update SCC documentation</p> <p>Department wrote to the applicant requesting for the SCC documentation for the open SCC application which had not progressed in its assessment (SCC_2018_HORNS_005_00) to be updated to reflect the development concept being considered by the Court.</p> <p>The development concept for seniors living has been significantly reduced from that submitted to the Department as part of the SCC application on 21 June 2018. Details of the amended DA submitted to the Court on 4 March 2019:</p> <ul style="list-style-type: none"> - Building height maximum 10.5m; - Maximum building lengths of 59m; - Building depth 18m; - Gross floor area 19,260sqm; - 91 independent living units over 7 two storey buildings; and - 74 bed residential aged care facility.
24/06/2019	<p>2017 SCC lapsed</p> <p>SCC_2016_HORNS_002_00 lapsed.</p>
16/07/2019	<p>Updated SCC information sent to Department</p> <p>Applicant updated the SCC application documentation for SCC_2018_HORNS_005_00 to reflect the development concept considered by the Court.</p>
2/10/2019	<p>LEC Hearing</p> <p>The L&EC appeal hearing was held on 2 October 2019. This was to consider the applicants appeal of the courts 22 May 2019 decision based on whether the Commissioner had made errors in law, on two grounds:</p> <ol style="list-style-type: none"> 1) That the offered condition of consent, proposed as a method of addressing the Commissioner's concerns regarding the provision of fire sprinklers, would have satisfied cl 55 of the Seniors SEPP. 2) That the company was denied procedural fairness as the Commissioner rejected the proposed condition without affording the Company an opportunity to address the matter further in circumstances where the Company had not been given notice that the Commissioner remained concerned about the efficacy of the condition to satisfy cl 55 of the Seniors SEPP. <p>The courts conclusion on Ground 2 of the appeal, was that Commissioner did deny the company procedural fairness, in that he had denied the company the opportunity to persuade him that such an approach was a permissible one. As the company was successful on ground 2 of the appeal the court decided it was unnecessary to address Ground 1.</p> <p>However the court advised that due to absence of a current SCC for the application, at the time of the appeal hearing, the development is prohibited within the zone and proposed location and therefore does not have this prohibition set aside by the provisions of the Seniors SEPP. Therefore, even if court was to remit this matter to the Commissioner, development consent could not be granted even if other relevant merit matters have been resolved.</p> <p>The appeal was therefore upheld, however DA/668/2018 for a seniors living development at 3 Quarry Road and 4 Vineys Road, Dural was determined by the refusal of the development consent.</p>

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Also, this section is good, however seems isolated from the context of the attachment.