



22 August 2019

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

Attention: Angela Hynes, Acting Team Leader, Sydney West Region

Dear Ms Hynes,

Site Compatibility Certificate Application – 3 Quarry Road and 4 Vineys Road, Dural

I refer to the Department's letter dated 24 July 2019 inviting Council comment on the amended Site Compatibility Certificate (SCC) application for a proposed seniors housing development at No. 3 and 4 Vineys Road, Dural.

In the first instance, I note that a SCC was issued for the site previously and has recently lapsed. The current SCC was lodged last year and has recently been amended. Council wrote to the Department on 31 August 2016 and 18 July 2018 objecting to both SCC applications on the site (copies enclosed).

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. Council has recently prepared a draft Local Strategic Planning Statement which is currently on exhibition and is in the process of completing a number of technical studies to inform a review of the Hornsby Local Environmental Plan 2013 (HLEP) and the LSPS. 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 land within the MRA. Unless this opportunity is provided, the

strategic planning work being undertaken by Councils will be undermined by State Government policy overriding local planning controls.

With respect to the current SCC proposal, Council considers that the site is not suitable for more intensive development above that permitted under Council's planning controls. 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 application for a seniors living development on the site is outlined as follows:

- On 24 May 2017, the Department issued a SCC for 74 residential aged care facility beds and 219 self-care dwellings (SCC_2016_HORNS_002_00).
- On 16 July 2018, development application (DA/688/2018) for a seniors living development on the site was lodged with Council.
- Also on 16 July 2018, a new SCC application (SCC_2018_HORNS_005_00) was submitted to the Department, with a design concept consistent with the development application lodged to Council. This SCC remains under consideration.
- In September 2018, an appeal was made to the Land and Environment Court (LEC) against Council's deemed refusal of DA/688/2018.
- In May 2019, the matter was considered at a hearing and the Court determined to refuse the application.
- On 23 May 2019, the SCC that the DA relied upon expired, being 24 months from the issue date.
- The applicant has lodged a s56A appeal under the Land and Environment Court Act against the decision of Commissioner which has been listed for hearing on 2 October 2019.
- In July 2019, the current SCC application (SCC_2018_HORNS_005_00) which has remained under consideration by the Department since lodgement in July 2018, was amended to match the design concept considered in the recent court appeal of the DA/688/2019.

It is understood that if the 56A appeal is upheld, the DA will need to be re-determined by the Land and Environment Court. A SCC application would need to be issued by the Department to allow re-consideration of the DA to occur.

Current Proposal

The application is for a residential aged care facility containing 74 beds and 91 self-serviced care seniors living dwellings contained within eight (8) three storey buildings, with basement car parking.

The basement level car park is proposed to accommodate approximately 225 car spaces (177 for the self-contained dwellings and 48 spaces for the residential aged care facility).

Seniors Living SEPP

Clause 24 of the SEPP prescribes that the SEPP applies to land zoned primarily for urban purposes. Land to the north, east, south and west is zoned RU2, whilst land to the south-west is zoned B2- Local Centre. Given that the site is located diagonally opposite the B2 zoned land, it is questionable whether the site can be considered to adjoin urban land.

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

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). The site experiences environmental constraints, including an overland flow path across the centre of the site and significant vegetation in the site's eastern portion.

Development involving the construction of 91 self-care dwellings and a 74 bed residential care facility 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.

Council's future vision for the MRA will be considered as part of the current Rural Lands Study. This will involve a place-based planning approach to meet targeted environmental, social and economic outcomes in line with the actions of the NDP. Seniors living developments in the MRA under the SCC pathway would undermine Council's efforts to plan for appropriate management of rural land into the future in line with NDP priorities and actions.

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

As stated above, the objectives of the RU2 zone are to encourage agriculture and primary industry production and land uses that support these industries. The proponent has not demonstrated that the site is unsuitable for agricultural purposes and primary industry production. The proposed development could result in the loss of potentially productive agricultural land.

The proposal is inconsistent with Criteria 2 as 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 established 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.

The site is located within than 400m of a bus stop which would provide access to Castle Hill and other commercial centres. To demonstrate compliance with Clause 26, further details on access to services and path gradients should be provided at the end of trip, once passengers alight from the bus.

The proposal includes 225 car spaces which indicates the majority of residents and visitors to the site would be travelling by car and not utilising bus services. There are major implications for the future provision of road infrastructure to service a development of this scale and the proponent has not detailed any proposed financial arrangements to ensure infrastructure provision. For development under the SEPP, there is no

opportunity to negotiate contributions towards the provision of infrastructure upgrades that might otherwise be possible through a more coordinated urban planning investigation and planning.

The proposal 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.

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. 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 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 would represent an overdevelopment of the site when compared to the low density development and rural character of the surrounding area.

The built form indicated on the concept plan submitted with the proposal is largely urban in nature. The site coverage is excessive and would adversely impact on the character of the rural area and the adjoining rural properties.

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.

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 not within the one-kilometre radius of any other SCC applications. However, Council considers that a cumulative impact study should be provided for any SCC application to address the impacts on existing developments, infrastructure capacity and adjoining land uses.

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 NDP. 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.

Although a SCC was formerly approved by the Department in 24 May 2017, it does not automatically follow that the current SCC should be supported. Since the SEPP was amended in October 2018 to require the Sydney North Planning Panel to be the determining authority for SCC applications, three SCC applications in the Hornsby Shire have been appropriately refused on character grounds. One of the applications refused was for 334 Galston Road Galston, where a SCC had been formerly issued by the Department. This

example shows that the current SCC application needs to be considered on its own right, within the current context of the GSRP and NDP and not be influenced by the former decision to issue a SCC on the site.

Council's request 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 land within the MRA.

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

18 July 2018

Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001
Attention: Christine Gough, Team Leader, Sydney Region West

Dear Christine,

Site Compatibility Certificate – 3 Quarry Road and 4 Vineys Road, Dural

I refer to the Department's letter of 28 June 2018 on the application for a Site Compatibility Certificate (SCC) under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP) for proposed seniors housing at properties at Nos. 3 Quarry Road and 4 Vineys Road, Dural.

In the first instance, I note that a SCC was issued for the subject properties on 24 May 2017 and remains current for another ten months. Given that a Development Application (DA/668/2018) has been lodged with Council today there appears to be no justification to grant an extension of time. The matters raised in Council's original submission of 31 August 2016 are reaffirmed and are attached for your reconsideration.

Council opposes the issuing of SCCs particularly within the Metropolitan Rural Area and in circumstances where the subject sites tenuously "adjoin land zoned primarily for urban purposes". The conditions imposed on the current SCC relating to reticulated water and adequate facilities for the removal or disposal of sewage and overland stormwater flooding highlight the inappropriateness of the site for seniors housing.

The consistency of the SEPP with the North District Plan should be reconsidered in light of the additional protections for the Metropolitan Rural Area outlined under Planning Priority N18. In this regard, Council has made separate representations to the Greater Sydney Commission who have requested Council's participation in a pilot project to conduct detailed research on the challenges identified concerning site compatibility certificates for seniors housing and housing for people with disability within the Metropolitan Rural Area. The project is funded by the Department of Planning and Environment.

Furthermore, Council has accepted grant funding under the Accelerated LEP Program which will comprise a comprehensive review of Hornsby Local Environmental Plan 2013 and preparation of associated technical studies and strategies by June 2020. Better managing the Metropolitan Rural Area within Hornsby Shire will be one of the focus areas for Council.

In light of the above, the request to extend the deadline for the site compatibility certificate is unreasonable and should be refused.

Yours faithfully



Katherine Vickery
Acting Manager – Strategic Planning Branch

TRIM Reference: D07486473

Attachment: SCC Response – 3 Quarry Rd & 4 Vineys Rd, Dural – August 2016

31 August 2016

Mr Terry Doran
Team Leader – Sydney West Region, Planning Services
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr Doran

Site Compatibility Certificate Application for Properties Nos. 3 Quarry Road and 4 Vineys Road, Dural

I refer to your letter received on 4 August 2016 requesting comments on the application for a Site Compatibility Certificate for proposed seniors housing at properties Nos. 3 Quarry Road and 4 Vineys Road, Dural.

The strategic planning implications and specific comments concerning the proposed development in relation to the Site Compatibility Criteria contained within *State Environmental Planning Policy (SEPP) Housing for Seniors or People with a Disability* are outlined below for your consideration.

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

Existing and approved uses immediately adjacent to the proposed site are rural uses. The northern portion of the Dural Service Centre is zoned B2 Local Centre and is located to the south west but not immediately adjacent to the proposed site. The expansion of urban development into the rural area may result in land use conflicts. The land is zoned RU2 (Rural Landscape) under the *Hornsby Shire Local Environmental Plan (HLEP) 2013*. Seniors housing is prohibited within the Shire's rural zones under the *HLEP*. Development involving the construction of an aged care facility containing 74 beds and 219 self-care housing units would be inconsistent with the objectives of the RU2 zone, namely:

- *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 land use planning strategy and other 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 an aged care facility as proposed would be inconsistent with Council's current 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.

Property No. 4 Vineys Road is traversed by a creek as identified by the Department of Land and Property Information in 2011. The Section 149 Certificate for the property identifies that the site is subject to flood related development controls and has a “current” exposure to flood hazard risk based on the 1 in 100 year ARI storm event flowpath identified by the *Hornsby Overland Flow Study (2010)*.

The information submitted by the proponent states that creek flows east to west through the site into a dam located on Property No. 835-837 Old Northern Road, Dural. This is incorrect. As shown in Attachment A, the contour map identifies that the creek runs from west to east. The proponent has also indicated that the dam on the adjoining property will be removed and replaced with a dam on the eastern boundary of the site. The proponent has not submitted a hydrological study or demonstrated the potential impact of the creek and dam on the proposed development and downstream receiving waters.

There are a large number of mature trees on property No. 3 Quarry Road that would be required to be removed as part of the proposal. The application does not provide any information regarding the species of this vegetation and whether they are significant. Regardless of their significance, the vegetation currently contributes to the rural character of the area and their removal would have a negative impact on same.

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

As stated above, the objectives of the RU2 zone are to encourage agriculture and primary industry production and land uses that support these industries. The proponent has not demonstrated that the site is unsuitable for agricultural purposes and primary industry production. The proposed development could result in the loss of potentially productive agricultural land.

The proposal is inconsistent with Criteria 2 as the proposed development would result in the fragmentation of rural land sterilising its future use for agricultural purposes and would increase the potential for land use conflict between residential uses and farming practices.

Criteria 3 – The services and infrastructure that are or will be available to meet the demands arising from the development and any proposed financial arrangements for infrastructure provision.

The proponent has not provided any supporting information from utility providers to detail whether water and energy supply can be augmented to meet demand.

Investigations are currently underway regarding possible future development and necessary infrastructure required to support approximately 2,500-3,000 additional dwellings in close proximity to the proposal within the South Dural precinct.

The preliminary traffic advice submitted by the proponent as part of their Site Compatibility Certificate application refers to data contained within the Traffic Study conducted by Maunsell Australia in 2009 and submitted as part of the South Dural Planning Proposal in 2013. The Maunsell traffic study is outdated, being based on 2006 Journey to Work data, 2005 Average Annual Daily Traffic volumes and 2008 traffic counts. The traffic advice submitted by the proponent also incorrectly identifies the site as being located within the Hills Shire Council and references car parking requirements within the Hills Shire Council Development Control Plan 2012.

A revised traffic study regarding the proposed South Dural development is currently being prepared and is anticipated to be submitted to Council within the next couple of months. Should the Department issue a site compatibility certificate, it would be appropriate for the proponent to revise their traffic advice, amend references to Hills Council and take into account the updated modelling for the proposed South Dural development.

Until the revised South Dural Planning Proposal is submitted to Council, it will be difficult to confirm how this proposal will fit in with future infrastructure requirements for the area. The proponent has not detailed any proposed financial arrangements to ensure infrastructure provision. Therefore, the proposal is inconsistent with Criteria 3.

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.

This criteria is not applicable to the proposal.

Criteria 5 – The impact 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 built form indicated on the concept plan submitted with the proposal is largely urban in nature. The proposed building heights do not comply with requirements within the *HLEP 2013*. The site coverage is excessive and inconsistent with the provisions of the *Hornsby Development Control Plan (HDCP) 2013*. The *HDCP 2013* emphasises that developments should contribute positively to the character of the rural area and requires natural landscape features and vegetation on the site to be retained. The scale of the proposal represents an overdevelopment of the site when compared to the low density of development in, 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.

In summary, the proposed development would be inconsistent with the objectives of the RU2 zone and Council's current planning controls. The proposal does not adequately address the impact of the proposal on the environmental constraints of the site. The proposal is an overdevelopment of the site which would result in the expansion of an urban built form and detract from the character of the rural area. The proposal would conflict with existing, approved and future uses of land in the vicinity of the development. Furthermore, the proposal does not comply with the Site Compatibility Criteria contained within the *SEPP Housing for Seniors or Persons with a Disability*.

I trust this information is of assistance.

Yours faithfully



Jason Rawlin
Acting Manager
Strategic Planning Branch

TRIM Reference: D07031991

Attachment A

