

SUPPLEMENTARY ASSESSMENT MEMORANDUM

Panel Reference	PPSNTH-80
DA Number	DA2021/056
LGA	Nambucca Valley Council
Proposed Development	Seniors Housing (271 Self-contained dwellings, 75 bed care facility, and recreation facilities)
Street Address	24 Coronation Road, Congarinni North Lots:155 and 188 in DP: 755537 and Part Lot: 1 DP: 1000618 and Part Lot: 2 DP: 1265232
Date of Report	23 November 2021

This supplementary assessment memorandum responds to a questions raised by the Panel, forwarded through the Chair. Each of the issues raised are addressed under the following headings.

1.0 Seniors housing SEPP – referred to in reasons for refusal when report says on page 15 and 16 that the SEPP does not apply to the land – please clarify. If appropriate, please provide new wording for recommended reason for refusal.

Assessment Comment:

Although the SEPP does not apply to the rural zoned land, the proposal is for a Seniors Housing development and the SEPP contains benchmark controls relevant to the merit assessment of Seniors Housing development. In other words the SEPP is not considered under Section 4.15(1)(a)(i) of the EP&A Act as an EPI, but rather under Section 4.15(1)(c) of the EP&A Act, in relation to the suitability of the site, as a merit consideration.

To reflect this, the reasons for refusal relating to “Essential Services Sewer and Water” and “Slope of the Site” may be amended as follows:

- **Essential Services Sewer and Water** – Sufficient information has not been provided to satisfy the consent authority under Clause 7.4 of Nambucca LEP 2010 that public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required. Sufficient information has not been provided to determine whether the site is suitable for the disposal of the required volumes of treated effluent, or that the requirements of all relevant regulators can be met. Specifically, any required licences under the Water Industry Competition Act 2006.
- **Slope of the Site** – Notwithstanding that State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 does not apply to the site because it is located within a rural zone, the Policy contains benchmark controls relating to the fundamental suitability of the site. The proposed internal grades of the road ways within the site exceed the maximum degree and length grades required by the Policy. As a result, the proposed grades are, on merit, considered to be unsuitable to facilitate convenient pedestrian movement around the development site by the future elderly residents.

2.0 Please provide a copy of the RFS advice and Council engineering advice on utility services.

Assessment Comment:

The NSW RFS General Terms of Approval and Bushfire Safety Authority dated 7 June 2021 is provided as **Attachment 1**.

Comments from Council's Manager of Water and Sewer dated 15 March 2021, an email outlining concerns with on-site STP dated 8 June and comments from Council's Manager of Water and Sewer dated 30 August 2021 in relation to utility services are provided as **Attachment 2**.

3.0 The comment on noise and vibration aspects of the development on page 27 appears to be incomplete – is that the case?

Assessment Comment:

Noise and Vibration	An acoustic report was submitted with the development application. The proposed development is located in a rural area. The background noise logging for the acoustic report was undertaken in the absence of the likely horticulture development to be located to the south of the site. The application was subsequently amended to incorporate a rural buffer including 80m separation between the nearest dwelling and rural uses. The buffer incorporates a 20m wide vegetative buffer, a 3m high earth mound and a 1.8m high fence. It is considered that a suitable condition could require an amended acoustic report which recommends treatments to reflect the likely future horticulture use and the amended features of the buffer.
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4.0 In reviewing the flood planning level for the project, cl. 7.7 of the LEP refers to a flood planning map which doesn't seem to be available online. Can the Panel assume that the FPL is the 1% AEP flood, as seems to be implied by comments earlier in the report?

Assessment Comment:

The Flood Planning Level is defined in the Nambucca LEP 2010 in the following terms:

“ flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.”

The 1% AEP flood level at the entry to the site is RL 4.29 m AHD. Therefore the FPL is 4.79m AHD.

5.0 Flooding

Cl. 5.21(3) of the Nambucca LEP in relation to Flood Planning states:

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,**
- (b) the intended design and scale of buildings resulting from the development,**
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,**
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.**

Could the author of the report please provide further advice on these matters for us as they are not specifically addressed under these headings in his report? Part (c) is obviously a central issue covered elsewhere, but not in relation to this specific precondition.

5.1 (a) the impact of the development on projected changes to flood behaviour as a result of climate change,

Assessment Comment:

The proposed dwellings are to be located above the PMF. The adopted 1% AEP flood level incorporates a 0.9m allowance for sea level rise, which was adopted in accordance with the recommendations of the relevant NSW Government policy, at the time the modelling was completed.

5.2 (b) the intended design and scale of buildings resulting from the development,

Assessment Comment:

The proposed dwellings are to be located above the PMF. The design and scale of the residential buildings are not critical in the consideration of flood hazard.

The design and scale of the elevated road way is a relevant consideration and does have potential to affect flood behaviour, external to the subject site. The modelling provided of the proposed road levels and culverts did not specify the invert level of the proposed culverts. The details of the proposed culverts and modelling are important to consider of the impact of inundation of dwellings located on Kings Point, as many existing dwellings in that area have floor levels well below the 1% AEP.

5.3 (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,

Assessment Comment:

Although the dwellings are all to be located at a level above the PMF, due to the low lying nature of the access road, the site will be isolated in a flood exceeding a 10% AEP event (one in 10 year), at which times the proposal provides a "shelter in place" proposal for residents. However when isolated, the proposal would not have access to basic supplies or medical assistance. The only means of evacuation would be via helicopter. The proposal incorporates a helicopter landing area, however the availability of a helicopter to assist with evacuation of residents on an "as required basis" is not guaranteed, especially during a flood emergency, which may stretch the available air resources along the entire east coast. On this basis, while the residents would be on high ground, they would be isolated and not practically able to be evacuated. Neither would staff at the facility.

5.4 (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

Assessment Comment:

As mentioned in previous comments the dwellings are all located on high ground, above the PMF.

6.0 Likewise, as the DA involves a Residential Care Facility there is a need to address cl.7.7 of the LEP regarding Floodplain Risk Management. It's cited in Reason 3 of the reasons for refusal, but the Panel member was unable to find any reference to this clause or its requirements in Table 4 (p.22) of the Assessment report – please clarify

(4) Development consent must not be granted to development for the following purposes on land to which this clause applies unless the consent authority is satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land—

- (a) caravan parks,**
- (b) correctional centres,**
- (c) emergency services facilities,**
- (d) group homes,**
- (e) hospitals,**
- (f) residential care facilities,**
- (g) tourist and visitor accommodation.**

Assessment Comment:

The proposal includes residential care facility, and is isolated or surrounded by the flood planning area in a 1% AEP flood event.

All of the proposed dwellings are located on high ground, above the PMF. However the issue with being satisfied that the site can be safely occupied relates to providing access to essential supplies and medical assistance during times that the site is isolated by flood water. In the event that evacuation of residents is required, i.e. to obtain medical assistance, helicopter evacuation is the only

viable means. As the availability of helicopter resources is not certain, particularly for the number of elderly persons on the site, the proposed development does not adequately provide for the evacuation from the land.

7.0 *Finally, having read the information provided by Council the Panel member considers that the issue of ‘shelter in place’ is a key issue for this DA. The Panel member understands that there was a previous Catholic School DA in Macksville where the same issue was pivotal – the DA was refused by the Panel and the refusal later upheld in Court. The Panel member can’t see a reference to any Council DCP or Policy in relation to Shelter in Place which may have been considered subsequently – perhaps that could be clarified too?*

Assessment Comment:

Following the refusal of the Dudley Street School (DA2010/234) Council adopted a Flood Risk Management Plan (2017) which is based upon the 2015 modelling. Under the Flood Risk Management Plan the subject site is includes land within the H2 – H6 Flood Hazard Classification areas the parts of the site affected by the various Flood Hazard Classifications are shown in **Figure 1**.

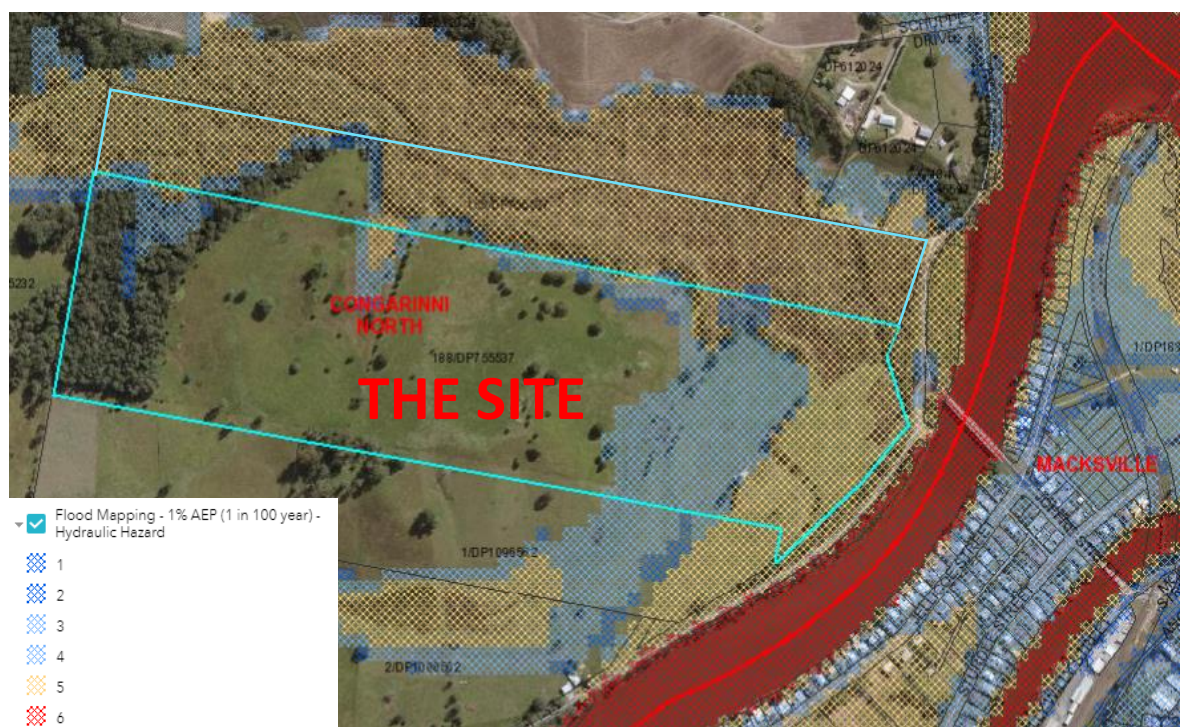


FIGURE 1 - Flood Hazard Classifications

The Flood Risk Matrix within the Flood Risk Management Plan indicates that development for the purpose of a Residential Care Facility is a “Critical Use” and that development for the purpose of Seniors Housing is a “Sensitive Use”. An extract of the Matrix is provided in **Figure 2**.

The construction of the access road is also considered to development for the purpose of Residential Care Facility and Seniors Housing respectively.

The Matrix indicates that Critical Uses and Sensitive Uses are unsuitable land uses within the Flood Hazard Classification areas of H5 – H6 and that Critical Uses are also unsuitable land uses within the H2 – H4 Flood Hazard Classification areas.

In summary, under the Flood Risk Matrix the areas subject to the H2- H5 hazard classification are unsuitable for the proposed development. The proposed development can provide access to land located above the PMF, however the only means of evacuation from the site is via helicopter.

The proposed development is inconsistent with Councils Flood Risk Matrix, specifically the risk associated with evacuation.

Flood Hazard Classification*	Land Use Risk Category	Planning Controls						
		Floor Level	Building Materials	Structural Soundness	Flood Affection	Evacuation / Access	Flood Awareness	Management & Design
H1	Critical Uses & Facilities	3	2	2	2	2		
	Sensitive Uses & Facilities	1	2	2	2	2	2	1,2,3
	Subdivision and Filling							
	New Residential	1				3	2	
	New Commercial & Industrial	2				3	2	
	Redevelopment	1,2				3	2	
	Infill Development	1,2				3	2	
	Additions	4				3	2	
	Tourist and Visitor Accommodation and Caravan Parks	2				3	2	
H2 – H4	Critical Uses & Facilities							
	Sensitive Uses & Facilities	1	2	2	2	2	1,2	1,2,3
	Subdivision and Filling			3	2	1	2	4
	New Residential	1	1	1	2	1	2	3
	New Commercial & Industrial	2	1	1	2	3	1,2	1,2,3
	Redevelopment	1,2	1	1	2	3	1,2	1,2,3
	Infill Development	1,2	1	1	2	3	1,2	1,2,3
	Additions	4	1	1	2	3	1,2	1,2,3
	Tourist and Visitor Accommodation and Caravan Parks	2	1	1	2	3	1,2	1,2,3
H5 – H6	Critical Uses & Facilities							
	Sensitive Uses & Facilities							
	Subdivision and Filling							
	New Residential							
	New Commercial & Industrial							
	Redevelopment	1,2	1	1	1	3	1,2	1,2,3
	Infill Development	1,2	1	1	1	3	1,2	1,2,3
	Additions	4	1	1	1	3	1,2	1,2,3
	Tourist and Visitor Accommodation and Caravan Parks							

Key:

	Not Relevant
	Unsuitable Land Use

*Refer to Section 3.3 of the Nambucca Flood Risk Management Study (2017) for details on hazard categories. Hazard Classification defined on Figures 22 to 27 from the Nambucca Shire Floodplain Risk Management Study

FIGURE 2 - Flood Risk Matrix

8.0 Earthworks

It appears that cl.7.6(3) requires:

(3) Before granting development consent for earthworks, the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,**
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,**
- (c) the quality of the fill or the soil to be excavated, or both,**
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,**
- (e) the source of any fill material and the destination of any excavated material,**
- (f) the likelihood of disturbing relics,**
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.**

8.1 (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,

Assessment Comment:

The proposed earthworks are unlikely to disrupt or have a detrimental effect on existing drainage patterns or soil stability.

8.2 (b) the effect of the proposed development on the likely future use or redevelopment of the land,

Assessment Comment:

The proposed earthworks would be required to be undertaken and certified with Level 1 geotechnical supervision and would be unlikely to preclude alternative future use or redevelopment of the land.

8.3 (c) the quality of the fill or the soil to be excavated, or both,

Assessment Comment:

The proposed development application was accompanied by a Geotechnical Investigation Report which indicates that the material to be excavated from the site may be considered suitable for use as engineered fill on condition that they are 'clean', free of organic matter and contain a maximum particle size of 150mm.

8.4 (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,

Assessment Comment:

The bulk of the earthworks are not visible from adjoining rural properties due to the topography and vegetation in the area. In this regard the proposed earthworks are unlikely to adversely affect the existing and likely amenity of the adjoining properties.

8.5 (e) the source of any fill material and the destination of any excavated material,

Assessment Comment:

Given the topography of the site, the proposal could achieve a balanced cut to fill.

8.6 (f) the likelihood of disturbing relics,

Assessment Comment:

The application was accompanied by an Aboriginal Due Diligence Assessment which indicated that the majority of the site has low potential to contain archaeological potential. The small areas with moderate potential for archaeological potential are located to the north of the development footprint. Accordingly it is considered that the likelihood of disturbing relics is low.

8.7 (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

Assessment Comment:

The proposed earthworks are located in proximity to a coastal wetland, however subject to appropriate sediment and erosion control measures being implemented during construction, it is unlikely that the earthworks would create adverse impacts to the environmentally sensitive area.

Reporting Officer



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Brad Lane
SENIOR TOWN PLANNER