

20 August 2020

Mr Luke Downend
Acting Director, North District
Department of Planning Industry and Environment
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

Our Ref: 2020/476466

Attention: Ms Elvie Magallanes – Senior Planner

Dear Mr Downend

Site Compatibility Certificate (SCC2020NBEAC-2) – 25 Laitoki Road, Terrey Hills

I refer to your letter dated 8 July 2020 in relation to an application for a Site Compatibility Certificate (SCC) under *State Environmental Planning Policy (Housing for Seniors or People with Disability) 2004* for the above-mentioned site.

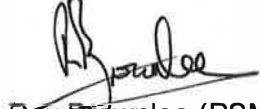
The documentation accompanying the application has been reviewed and Council is of the opinion that the development is inconsistent with the criteria referred to under Clauses 25 (5)(b)(i) and (v) of the Policy and that a SCC should not be issued.

Please find attached Council's detailed assessment with regards to the relevant provisions of the SEPP.

Northern Beaches Council appreciates the opportunity to make a submission and trusts that the issues raised will be duly considered in the assessment of the application by the Department.

Should you wish to discuss the matters raised in this submission or require further information and clarification, please contact Louise Kerr, Director Planning and Place on 99422949 or via council@northernbeaches.nsw.gov.au

Yours Faithfully



Ray Brownlee (PSM)
Chief Executive Officer

(Attachment)

ATTACHMENT A

NORTHERN BEACHES COUNCIL SUBMISSION SITE COMPATIBILITY CERTIFICATE 25 LAITOKI ROAD, TERREY HILLS

INTRODUCTION – CURRENT DEVELOPMENT AND SITE CONTEXT

In reviewing the proposal, the following key features of the site and its location are noted:

- The site is zoned RU4 Primary Production Small Lots under the Warringah Local Environmental Plan 2011 (WLEP 2011), which envisages development primarily for the purposes of primary industry and other low intensity land uses in a rural setting.
- The site is located on the south-western corner of the intersection of Tooronga Road (unmade section of road) which forms the northern boundary of the site and Laitoki Road which forms the eastern boundary of the site.
- The lots located on the eastern side of Laitoki Road are zoned R2 Low Density Residential and are characterised by single and two storey detached dwelling houses.
- The property at No. 83 Booralie Road (situated to the north of the subject site) was the subject of a Site Compatibility Certificate issued by the Department of Planning and Environment on 2 May 2013 for construction of up to 50 dwellings (Serviced Self-Care Housing for Seniors).
- Development Application No. DA2013/0796 for 50 serviced self-care dwellings within fourteen (14) two storey buildings on 83 Booralie Road was issued deferred commencement consent by the former Warringah Development Assessment Panel (independent planning panel) on 11 December 2013. The development is now completed.
- The property at 58 Laitoki Road (located to the south of the subject site) was the subject of an approved SCC and the DA approval for a seniors housing development which is currently before the Land and Environment Court.

KEY FEATURES OF THE APPLICATION

Council notes that the key features of the application are as follows:

- Use of the site for a Seniors Housing Development, which comprises demolition of all existing structures and construction of 54 serviced self-care dwellings in the form of detached single storey houses, 4 x attached single storey dual occupancies and 5 x two storey apartment blocks (comprising of 32 units) and 10 x attached

two storey terrace houses. The development will also include a community centre for the future residents.

- Vehicular access from Laitoki Road.
- Basement parking.
- Landscaping.

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

Permissibility

As mentioned above, under the WLEP 2011 the subject site is zoned RU4 Primary Production Small Lots. However, adjoining the land on the eastern side of Laitoki Road is zoned R2 Low Density Residential.

Seniors Housing is a prohibited use in the RU4 zone, however, the use of the site as Serviced Self-care Housing is made permissible by the SEPP (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)), as the site adjoins land zoned for urban purposes (R2 Low Density Residential), subject to obtaining a Site Compatibility Certificate from the Director General of the Department of Planning and Environment.

SITE COMPATIBILITY CRITERIA

The criteria under Clause 25(5) (b) of the Seniors Living SEPP has been used to carry out a detailed review of the application. This assessment provides a comparison between the desired forms of development envisaged for this site under the SEPP versus that being sought under this SCC.

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

Comment:

Natural Environment Impacts

Biodiversity

The applicant has provided a brief Environmental Assessment that has provided an overview of the natural environment, including known significant environmental values. The report states that a thorough assessment was conducted, however no detail as to the survey techniques or intensity is provided, and the background database searches and site visits date from 2018, which are not contemporary. Updated searches of threatened species databases is required, a suitable site survey methodology is to be developed, and an appropriate level of site survey conducted so that the potential impact to the natural environment can be fully considered.

More importantly, a large portion of the subject site is mapped on Council's Biodiversity Values (BV) Map, and this fact is omitted from Section 1.3.1. The BV Map identifies land

with high biodiversity value that is particularly sensitive to impacts from development and clearing. The map forms part of the Biodiversity Offsets Scheme Threshold which is one of the triggers for determining whether the Biodiversity Offset Scheme (BOS) applies to a development proposal.

The site is identified on the BV Map as the land is mapped as containing the Duffys Forest threatened ecological community. DFEC is also identified as an entity subject to potential Serious and Irreversible Impacts (SII) under section 6.5 of the Biodiversity Conservation Act, indicating that the community has a high sensitivity to loss and an impact may likely contribute significantly to the risk of the ecological community becoming extinct. The design as presented will impact the area mapped on the BV Map.

In addition to the BV Map threshold, clearing of greater than 0.5 hectares of native vegetation within the site will exceed an area threshold, and the BOS is again triggered. One hundred and forty-nine (149) trees have been recommended for removal due to impacts from the proposed development works, including a high number of native species. The arborist only considered trees above 5 metres in height, so the extent of vegetation that qualifies as native vegetation, will be much larger in extent.

As the Biodiversity Offset Scheme does apply, an accredited assessor must apply the Biodiversity Assessment Method (BAM) to the proposal. Additional surveys for threatened species is also highly recommended. After applying the BAM, the accredited person must prepare a Biodiversity Development Assessment Report (BDAR) that sets out how the proponent has applied steps to avoid and minimise impacts on biodiversity, and setting out the number and type of ecosystem and species credits required to offset residual impacts of the activity on biodiversity ('credit obligation').

The proposal is likely to have a significant and irreversible impact on biodiversity values. Based on this, it is recommended that the development proposal is sited and designed to avoid impacts to the area mapped on the BV map, and also to minimise impacts to native vegetation in order to stay below the native vegetation clearing threshold of 0.5 hectares.

Riparian Land and Water Management Impacts

The site is characterised by the following significant environmental features:

- The proposed development is located adjacent to Neverfail Creek, a tributary within the Kierans Creek catchment. According to the Warringah Creek Management Study (2004), the Kierans Creek catchment is classified as a Group B catchment, which is characterised as generally having *"some degradation in the upper catchments, but high ecological value downstream; generally 10-15% existing connected impervious area."*

Neverfail Gully passes through the middle of the site from NE to SW. The required riparian corridor varies from 30m in the north to 18m in the south, which is available to view on Northern Beaches Council's planning portal under the Waterways and Riparian mapping layer.



Figure : Neverfail Creek and riparian corridor running through the site

Northern Beaches Council does not allow the riparian corridor to be included in or cleared for asset protection zones.

Piping or channelisation of the creek will not be accepted, as this will increase velocity of flows and transport of sediment and impact the creek downstream.

The site is classified as Waterways and Riparian Lands for the purposes of Council's Protection of Waterway and Riparian Lands Policy and Clause E8 – Waterways and Riparian Land under the Warringah Development Control Plan 2011. A riparian zone is mapped as per WDCP 2011 and no development, including installation of sewer or stormwater infrastructure, is to take place within the riparian zone.

Due to these constraints, a significant area of the site would not be available for development.

Flood Related Impacts

Development for accommodation under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is classified as *Vulnerable Development* and therefore must use the Probable Maximum Flood level or Flood Planning Level, whichever is higher, as the planning flood.

The applicant has prepared a preliminary flood report to accompany the SCC application. Appropriate blockage parameters have been applied for stormwater infrastructure, however it is unclear if this applies for the proposed bridge structure. Further, it is not clear if the underside of the bridge deck is above the Probable Maximum Flood level.

A number of proposed dwellings in the south-west corner of the property are likely to have their sub-structures impacted by flooding in a 1% AEP and Probable Maximum Flood event. In the absence of appropriate civil works plans and structural details, the

proposed vulnerable development being impacted by flood flows is not supported, irrespective of the finished floor levels being located above the relevant Flood Planning Levels.

Further, Council does not support the identified off-site flood impacts associated with the proposed development as they exceed the acceptable adverse impact thresholds.

Bushfire Related Impacts

Clause 27 (2) of the Seniors SEPP states that a consent authority must not consent to a DA made pursuant to this Chapter, to carry out development on land identified in the vicinity of land identified on a bush fire prone land map, unless the consent authority is satisfied that the development complies with the general location of the proposed development, the means of access to and egress from the general location and other relevant matters as listed in clause 27 (2).

The subject site is not located within a bushfire prone area on the Bushfire Prone Land Map, however, the site is identified to be within the vicinity of land identified on a bush fire prone land map.

The applicant has not provided a bushfire report which addresses the requirement of this clause, which is a critical consideration based on the latest decision of the Land and Environment Court (Northern Beaches Council v Tolucy Pty Ltd (2020 NSWLEC 76)).

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

Comment:

The proposed use of the site as seniors housing is not permissible within the RU4 Primary Production Small Lots zone under the WLEP 2011. While SEPP (HSPD) 2004 allows for such a use where a lot adjoins land zoned primarily for urban purposes, it is noted that the SEPP allows for a density of development that is not compatible with what is permitted by the RU4 zoning and by other local planning controls.

The granting of a SCC for residential development in the order of 54 dwellings and in the density and configuration proposed, has the potential to prejudice the development of the site and adjoining properties zoned RU4. In particular, the primary objectives of the rural zoning (including primary industry) would be undermined by the proposed residential use such that any rural use would no longer be practicable. The approval of such a use would also undermine surrounding sites zoned RU4 that could not accommodate rural activities without impacting on the amenity of the residential development being proposed.

However, conversely the use of the site for the purposes of providing housing for seniors or people with a disability is unlikely to have an adverse impact upon the types of uses which are permissible uses within the RU4 zone.

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.

Comment:

The Planning Report prepared by Minto Planning Services indicates that the site is within close proximity to public transport, being the Forest Coach Lines bus service along Booralie Road. There are east and west bound bus stops located to the east of Laitoki Road, which provides access to Duffys Forest and Chatswood via Terrey Hills. These bus stops are located within 280m from the front of the subject site, however the service available from these bus stops is infrequent and requires changing of bus services to reach the main centres where a number of the identified services are located.

There are also no details provided to determine the gradients of the footpath in Laitoki Road to ascertain compliance with the requirement of Clause 26.

Consequently, from the information provided, the proposal has failed to demonstrate that there are adequate public transport services and that pedestrian access complies to ensure access to services and facilities is available in accordance with Clause 26.

Clause 42 of the SEPP requires that access be provided to; home delivered meals, personal care and home nursing, and assistance with housework. Clause 43 of the SEPP requires that serviced self-care housing on land that adjoins land zoned for urban purposes is to provide a bus (capable of carrying at least 10 passengers) for the residents of the development that provides access to and from a list of identified services at least once in the morning and once in the afternoon each day.

Additionally, the Traffic Report submitted with the application does not address the nature of the traffic generated by serviced self-care housing, including the number, type and frequency of service vehicle movements required to facilitate the particular requirements of this specific type of seniors housing.

Given the above, it is considered that there is insufficient information to demonstrate that the required services, facilities, and suitable access are available to the property, therefore failing to satisfy the criteria for the issue of a SCC.

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.

Comment:

The site is neither zoned, nor adjoins land that is zoned for open space or special uses.

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.

Comment:

Development to the east of the site is generally characterised by low density detached dwelling houses on lots of approximately 700sqm. Larger lots are characteristic in the RU4 zone to the west and south, being developed as larger single dwelling houses and other buildings and structures which are permissible uses in the RU4 zone such as horse stables, produce stores, and large outbuildings for the storage and/or production of landscape supplies.

The Built Form Controls relevant to the RU4 Primary Production Small Lots zone, do not envisage housing of such a density as proposed on the subject lot. The approved development at No. 83 Booralie Road was approved due to its physical location adjoining land zoned for urban purposes (being R2 low density residential) on the eastern side of the Laitoki Road.

The significantly more dense development on the subject site will create an uncharacteristic, unintended and unfettered "up-zoning" of this site. The nature of the proposed development, being in the form of residential flat buildings, terrace housing and dual occupancy type does not provide a suitable density that is generally compatible with the adjacent RU4 zone.

The built form controls under the WDCP 2011 which are relevant to the RU4 zone, do not envisage multi-dwelling housing of such a density as that proposed on the subject lot. The proposed development is in the form of 54 independent living units within 11 blocks, which is more representative of individual residential flat buildings with basement parking and a single storey town house type buildings. All proposed building forms are inconsistent with the predominantly detached dwelling character and built form which is characteristic in the adjoining R2 zoned residential area.

The proposed landscaping through the development is considered inadequate. Apart from the open space associated with the creek and riparian zone through the centre of the site, the narrow spatial separation between respective buildings on both the east and west sides of the creek, will not allow for a sufficient amount of meaningful open space or landscaping, which is considered necessary to provide a setting to offset the residential flat building built forms to the east and long and continuous multi-unit style forms to the west.

Further, the design includes basement parking structures, which extend well beyond the ground level footprint of the buildings, reducing areas available for deep soil landscaping, which is essential for this form and scale of development.

As mentioned above, the extent of separation between the respective buildings is minimalist and more reflective of an R3 Medium Density zone than in the non-urban zone on the rural-urban fringe. The design is not considered to be conducive to providing a good outcome for the character of the development itself and its relationship with the surrounding area, both when viewed from the adjoining RU4 zoned land and the R2 zoned land.

In relation to the proposed built form, there is an excessive number of substantial sized buildings, which are in close proximity, thus creating an overly medium density character on the site.

The buildings demonstrate an excessive bulk and scale, which should be substantially lessened through a reduction in the mass of built forms, greater levels of articulation, separation and modulation, and greater variability in the separations in order to achieve a character and design which is complementary to and surrounding areas and the public domain.

The development will be contrary to the Front Building Setback control within the WDCP 2011, as the proposal includes long and continuous residential flat building style development fronting Laitoki Road. This will further contribute to the loss of rural character and streetscape character, which is symptomatic of the unsuitability of the site to support seniors housing of this form and density.

If seniors housing development is to be deemed a suitable and appropriate land use on the subject site, the future development is to present a predominantly detached housing character and design, with highly articulated built forms, with frequent and sizeable physical breaks in buildings, which are reflective of the dwelling house character on adjoining R2 Low Density Residential Zone.

Front, rear and landscaped side setbacks should also be compatible with those required for the RU4 zone under the WDCP 2011 and substantive landscape buffers established.

Therefore, the overall built form of the current proposal submitted in support of this SCC is considered unacceptable and unsuitable for this location, context and setting.

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.

Comment:

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

Comment:

Amendments to the Seniors Living SEPP made in October 2018 include a requirement for a Cumulative Impact Study (CIS) 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 located within the one-kilometre radius of other SCC applications, however, the applicant has not submitted a CIS that addresses the impact of the development in connection with other sites.

CONCLUSION

Council's review of the proposed seniors housing development of the site in accordance with the criteria of 25(5) of the SEPP, has identified the following issues:

- The building density, pattern and configuration, combined with narrow building separations, does not provide for sufficient perimeter and internal openness and landscaping between the buildings, such that it will be compatible with development in the adjoining and surrounding RU4 and R2 zones.
- The excessive bulk and mass of buildings, especially in relation to the residential flat building forms on the eastern portion of the site, will not be sufficiently compatible and complementary with the surrounding detached building forms in the adjoining and surrounding RU4 and R2 zones.
- The site is not suitable for housing for seniors or people with a disability, given the excessive street gradients to gain access to the closest public transport services.
- Failure to demonstrate the applicability of Clause 17(2) of SEPP (HSPD).
- Failure to demonstrate access to facilities and services, bushfire related impacts, biodiversity related impacts and cumulative impacts.

For the above reasons, the proposal is not found to be compatible with the criteria under Clause 25 (5) (b) of *State Environmental Planning Policy (Housing for Seniors or People with Disability) 2004*.

It is requested that these matters be addressed in the Department's determination of the SCC application.