



Planning,  
Industry &  
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IRF21/1336

## 58 Laitoki Road, Terrey Hills – Site Compatibility Certificate Assessment Report

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Report to the Sydney North Planning Panel for a Site Compatibility Certificate under State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004 - (SCC2020NBEAC-4)

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## Glossary

Abbreviation	Definition
AHD	Australian Height Datum
ARI	Average Recurrent Interval
Council	Northern Beaches Council
DA	Development Application
DCP	Development Control Plan
Department	Department of Planning, Environment and Industry
EP&A Act	Environmental Planning and Assessment Act 1979
FPL	Flood Planning Level
LEC	Land and Environment Court
LEP	Warringah Local Environmental Plan 2011
LGA	Local Government Area
Planning Panel	Sydney North Planning Panel
PMF	Probable Maximum Flood
SCC	Site Compatibility Certificate
SEPP	State Environmental Planning Policy
Seniors Housing SEPP	State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

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# 1.Site Description

Table 1: Site Description

Site Description	The Site Compatibility Certificate (SCC) application applies to land at 58 Laitoki Road, Terrey Hills, which is legally described as Lot 368 DP 752017 (the Site). The site is outlined red in <b>Figure 1</b> .
Type	Site
Council	Northern Beaches
LGA	Northern Beaches Council



Figure 1: 58 Laitoki Road, Terrey Hills (the subject site)

The 19,536sqm site fronts Laitoki Road to the east and Cooyong Road to the south. The site slopes steeply and unevenly, from a high point at the intersection of Laitoki Road and Cooyong Road, with an overall fall of approximately 28m to the western boundary. An existing watercourse is located along the western boundary forming part of the Neverfail Gully which eventually flows into Cowan Creek.



The existing topography, structures and vegetation contained to the site are identified in **Figure 2**. The site is occupied by a single dwelling, garage and swimming pool with horse training facilities and stables and ancillary structures on the western portion of the site.



**Figure 2:** Existing Site Conditions (Source: Bee & Lethbridge Pty Ltd 2015)

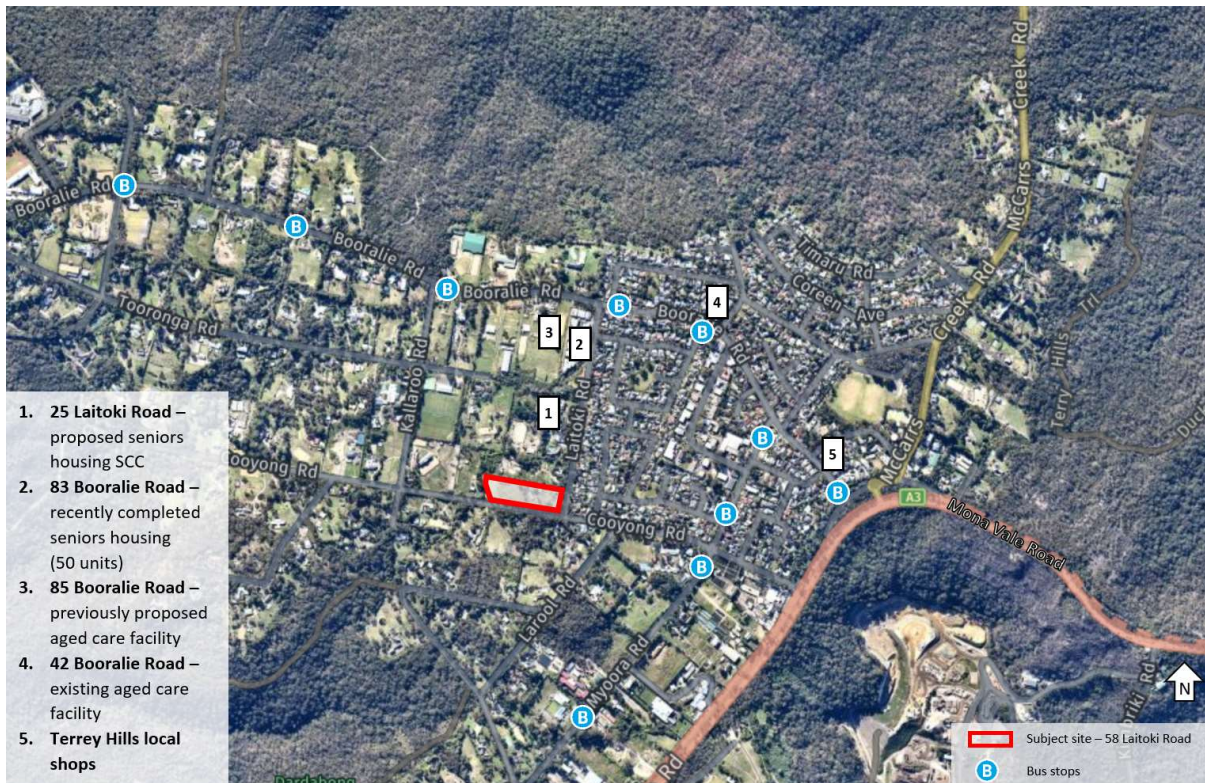
The land to the north, south and west of the site is primarily rural residential in character. Adjoining properties comprise single dwelling houses and ancillary structures with a consistent subdivision pattern and similar sized allotments of 2ha or greater and are zoned RU4 Primary Production Small Lots under the Warringah LEP 2011. Development within the zone in this locality includes small scale agricultural enterprises, equine industry uses, nurseries and landscape suppliers.

The land to the east of the site comprises low-density residential development zoned R2 Low Density Residential and characterised by single and two storey dwellings.

Within the wider locality, the site is approximately one kilometre from the Terrey Hills shopping village, on the corner of Booralie Road and Yulong Ave, which provides local shops including IGA express supermarket, newsagent, post office, pharmacy and café and food outlets. There is also a community centre and library near the local shopping village and the Tepko Road industrial area provides supporting services and employment areas. Ku-ring-gai Chase National Park lies approximately 700m to the north and west of the site and the Garigal National Park is approximately 2.9 km south of Mona Vale Road.

Within one kilometre of the site, there are several proposed and existing seniors housing developments. At 25 Laitoki Road, Terrey Hills, approximately 175m to the north of the site (separated by two properties), there is a current SCC application that has been concurrently assessed by the Department and is with the Sydney North Planning Panel (the Panel) for determination and proposes 54 self-care dwellings.

Adjoining 25 Laitoki Road to the north is a recently completed seniors housing development comprising 50 self-care dwellings at 83 Booralie Road, Terrey Hills. An established residential aged care facility at 42 Booralie Road, Terrey Hills is approximately 700m to the north east of the site (**Figure 3**). Section 3.2 discusses current and approved SCC applications proximate to the subject site.



**Figure 3:** Locality Map (Source: Nearmap 2021)

The site is subject to the following controls provided under the *Warringah Local Environmental Plan 2011* (Warringah LEP 2011):

- Land Use Zone: 'RU4 - Primary Production Small Lots' adjoining land zoned for an urban purpose (**Figure 3**).
- Maximum Building Height: 8.5m.
- Floor Space Ratio (FSR): No FSR applies.
- Minimum Lot Size: 2ha.
- Landslip Risk: Site contains land with 'Area B' landslip risk.
- Heritage: Not identified as containing a heritage item and not located near heritage item/s or heritage conservation area/s.



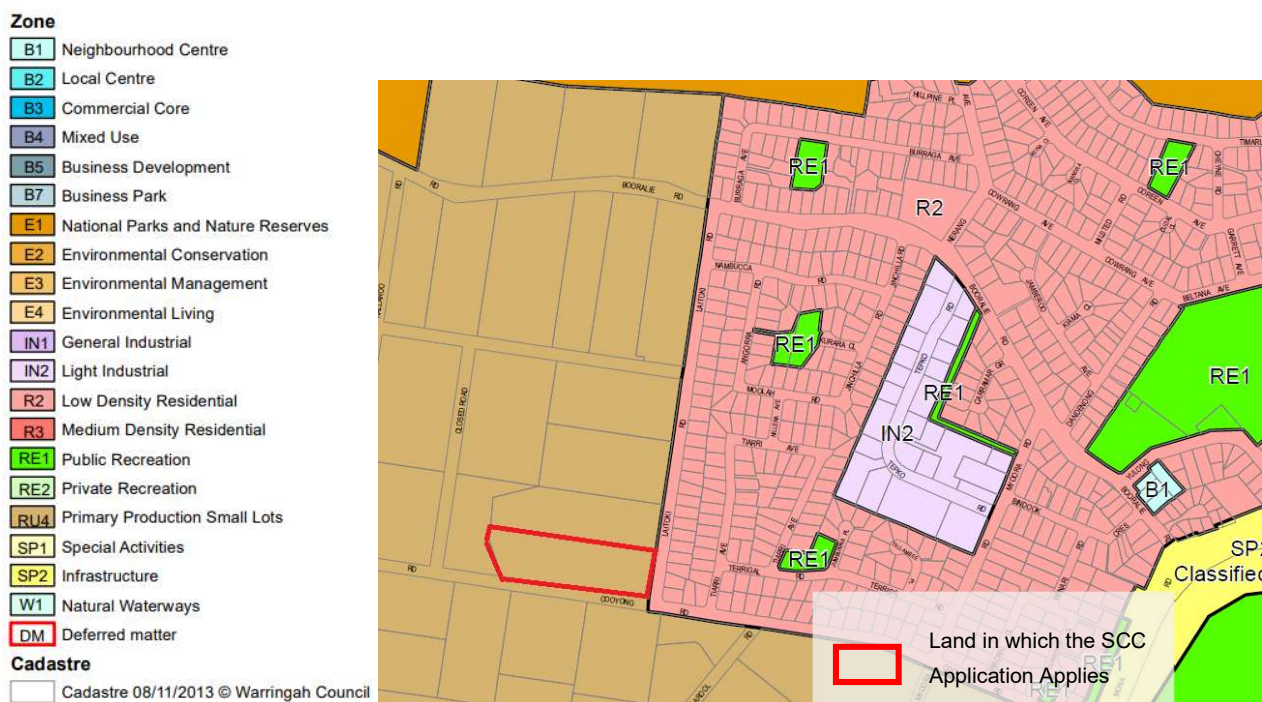


Figure 4: Land Zoning Map (Warringah LEP 2011)

## 2. Previous Planning Background

A SCC application for the subject site was previously issued on 14 July 2017 by the Department to facilitate the development of 60 self-care units in 2-4 storey buildings and a 102-bed residential aged care facility with ancillary services located on site.

A development application was lodged with Northern Beaches Council on 26 October 2018 which sought consent for a seniors housing development comprising of a 94 bed Residential Aged Care Facility and 60 Serviced self-care apartments.

The applicant lodged a deemed refusal appeal in the Land and Environment Court on 28 December 2018. Amendments were made in April 2019 to the plans originally lodged, including reducing the number of serviced self-care dwellings from 60 to 48 and the number of Residential Aged Care Facility beds from 94 to 90; as well as the deletion of the third storey of Residential Aged Care Facility.

On 1 May 2019, the Panel resolved to refuse the development application for reasons set out in Council's assessment report including (but limited to) that the application was:

- inconsistent with the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors Housing SEPP), in particular:
  - clause 24 in relation to design and compatibility;
  - clause 26 as the site is not located within 400m of essential facilities and services and is substantially further than 400m from public transport services (bus);
  - and that the requirements imposed on the SCC (Schedule 2) have not been appropriately resolved;
- inconsistent with the design principles of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartments (SEPP 65)*; and
- not in the public interest as the site was considered unsuitable to facilitate the subject development.



The Panel also noted it has real concerns about the resident's safety in the event of bushfire and the satisfaction of Clause 27(2) of the Seniors Housing SEPP.

On 20, 21, 22 and 24 May 2019, the Land and Environment Court of NSW (LEC) considered a merit appeal of the Panel's decision and determined to approve the plans submitted with the DA on 21 June 2019.

Council subsequently lodged a s56A appeal against the Commissioner's judgement on questions of law based on the grounds that the Commissioner:

- decided that bushfire safety had been satisfactorily addressed by the application, despite the application lacking sufficient detail to support the Commissioner's conclusion (Ground 1);
- did not give adequate reasons for whether or not the proposed development contained sufficient detail about the management of bushfire risks (Ground 4); and
- incorrectly identified that Clause 26 does not apply to the serviced self-care housing and did not adequately consider whether the location of the proposed development met the requirements for location and access to facilities (Ground 10).

The LEC upheld Council's appeal in relation to these matters on 3 August 2020 and remitted the decision on the development application to another Commissioner of the LEC pending the provision of a valid SCC. The proponent has lodged the current SCC application, as described in Section 3, in order to allow the LEC to reconsider the development application.

## 3. Application for a Site Compatibility Certificate

### 3.1 Description of the Proposal

On 16 March 2020, the Department received the current SCC application from Minto Planning Services on behalf of Tolucy Pty Ltd to permit seniors housing on the subject site, 58 Laitoki Road, Terrey Hills. This application is for a 90-bed residential aged care facility, in addition to 48 independent living units on the subject site.

The proposed development on a site area of approximately 19,536m<sup>2</sup> would result in:

**Table 2:** Development summary

Development breakdown	Figures
Gross Floor area	10,629m <sup>2</sup>
Floor Space Ratio (FSR)	0.544:1
Landscaped area	11,968m <sup>2</sup> or 61.3%
Deep soil area	6,994m <sup>2</sup> or 35.8%

Additional documentation was submitted on 29 September 2020 to address the Panel's resolution (**Attachment Z**) that a cumulative impact study must be provided to determine whether the land concerned is suitable for more intensive development.

The information submitted included an updated SCC assessment report (**Attachment A**) including a cumulative impact assessment based upon the documentation:

- Bushfire Response Letter prepared by Building Code & Bushfire Hazard Solutions (15/9/20) (**Attachment M**);
- Assessment of Traffic & Parking Assessment Report prepared by Transport & Traffic Planning Associates (September 2020) (**Attachment Q**);

- Social Impact Statement prepared by Judith Stubbs & Associates (September 2020) (**Attachment R**); and
- Preliminary Water & Sewer Servicing Assessment prepared by Martens Consulting Engineers (September 2020) (**Attachment S**).

A description of each facility independently is provided below:

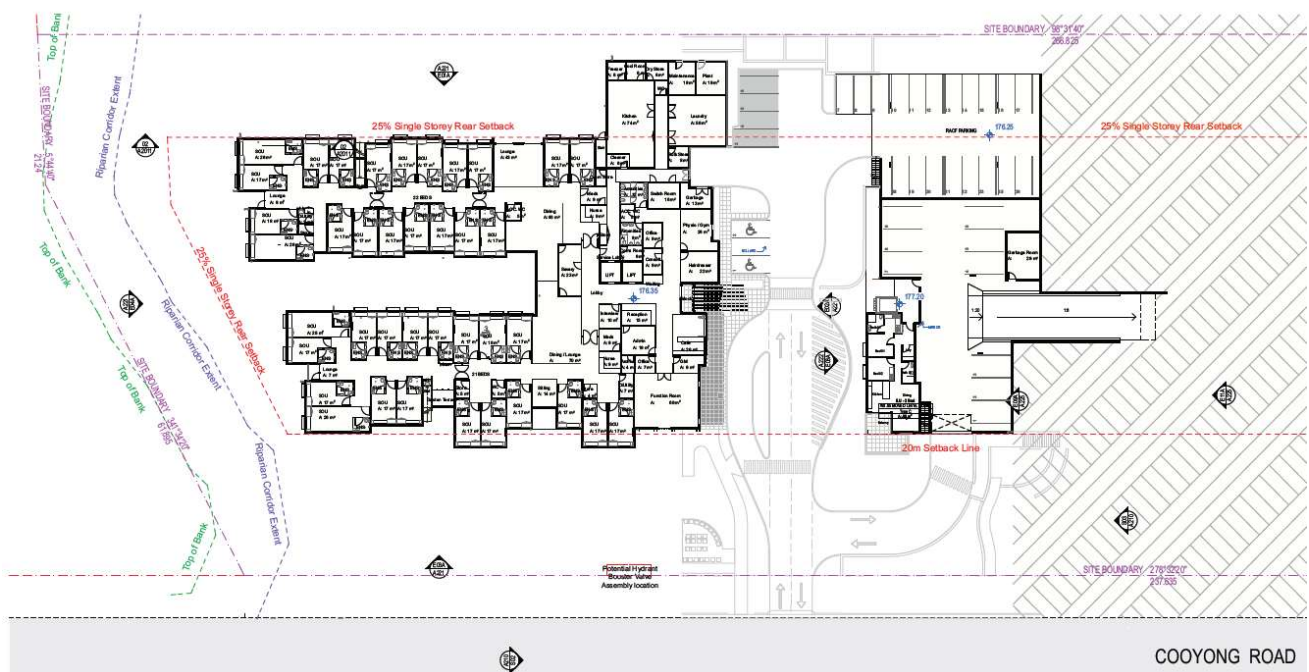
### Residential Aged Care Facility – 90 Beds

The residential aged care facility is located on the western portion of the site, comprising a two storey building with basement parking and primarily dedicated to respite and dementia care.

The facility is proposed to be set back 20m from the southern boundary fronting Cooyong Road, approximately 14m to the northern boundary and between 20-29m to the western boundary adjacent to the water course.

Access to the facility is proposed via a driveway on the southern boundary off Cooyong Road.

**Figures 5 and 6** highlight the proposed layout of the facility.



**Figure 5:** Ground Floor Plan – Residential Aged Care Facility (Source: Calder Flower Architects 2020)



**Figure 6:** Upper Level Floor Plan – Residential Aged Care Facility (Source: Calder Flower Architects 2020)

### 48 Independent Living Units

The Independent Living Units would be located in the central and eastern portions of the site. Similar to the residential aged care facility, the units are proposed to be two storeys in height with basement car parking and the development is stepped to accommodate the slope of the site.

Units are divided into two separate buildings with access provided from the southern boundary via a new driveway. Built forms have a setback of 20m to Cooyong Road (southern boundary), 10m to Laitoki Road (eastern boundary) and approximately 14.5m to the northern boundary.

Pedestrian access will be provided throughout the site comprising external pathways, stairs and access to internal lifts that will provide access to pedestrian entries on Laitoki Road.

**Figures 7 -12** highlight the proposed layout of the units across the site.



**Figure 7: ‘Level 4’ – Independent Living Units (Source: Calder Flower Architects 2020)**

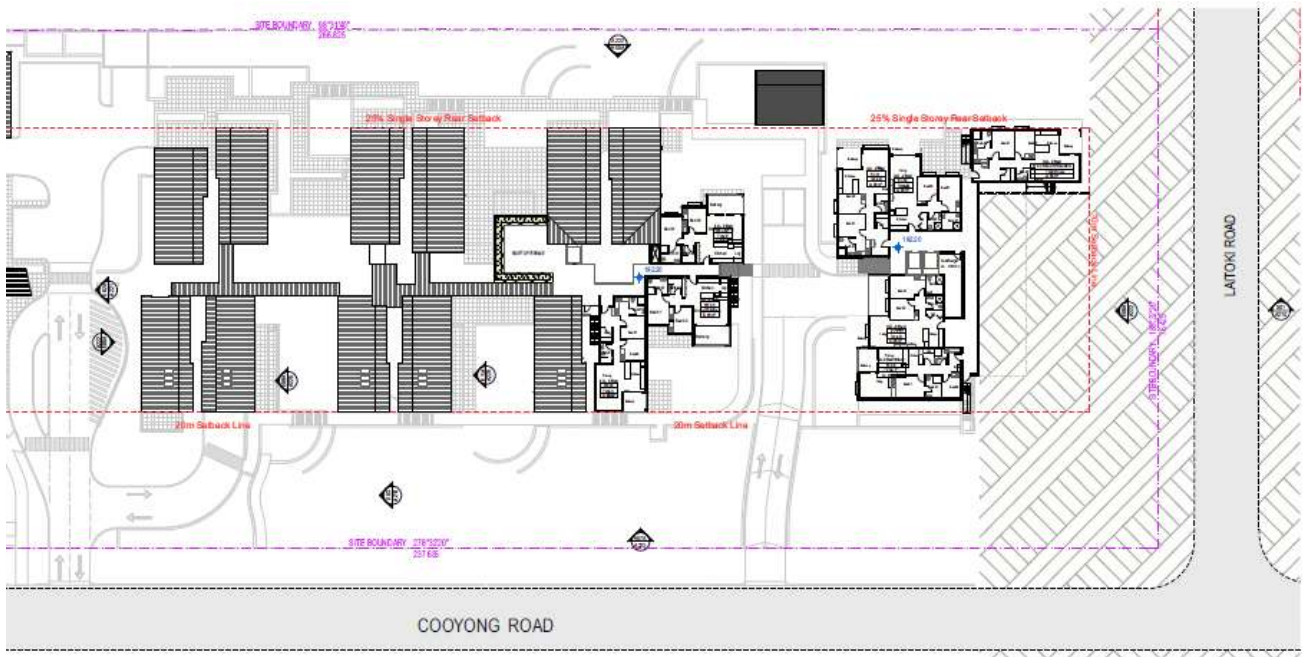




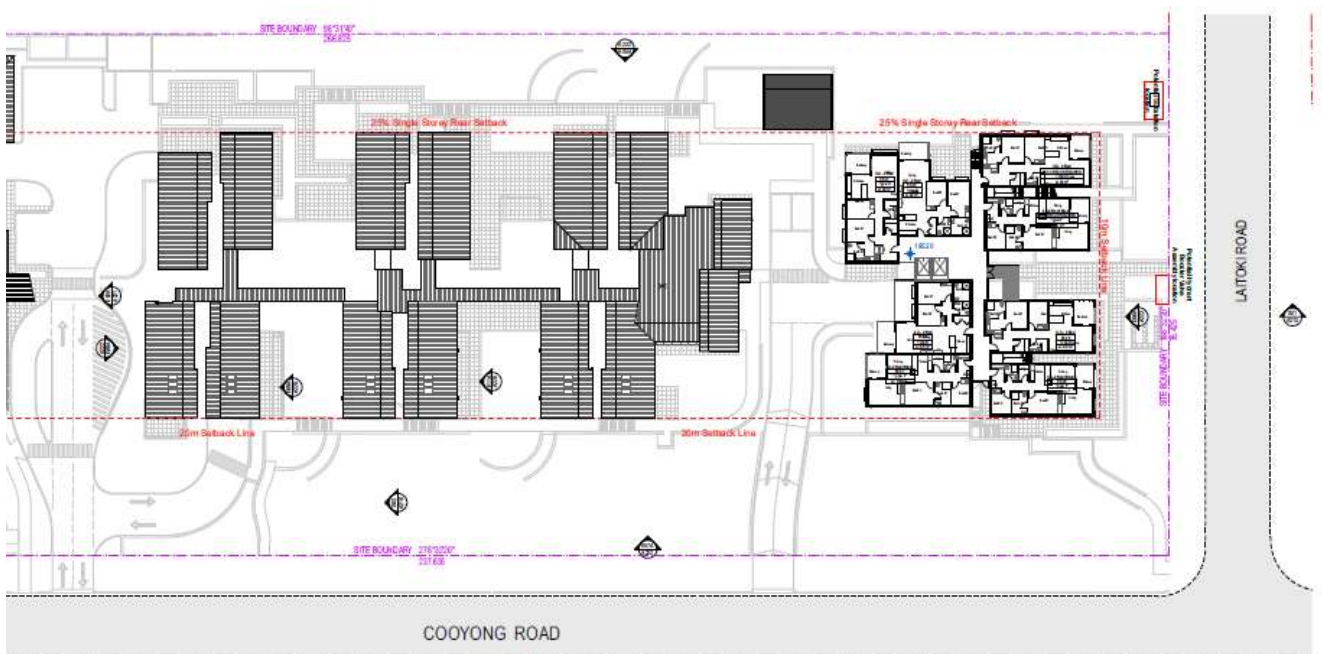
**Figure 8: 'Level 5' – Independent Living Units (Source: Calder Flower Architects 2020)**



**Figure 9: 'Level 6' – Independent Living Units (Source: Calder Flower Architects 2020)**



**Figure 10:** 'Level 7' – Independent Living Units (Source: Calder Flower Architects 2020)



**Figure 11:** 'Level 8' – Independent Living Units (Source: Calder Flower Architects 2020)





**Figure 12:** 'Level 9' – Independent Living Units (Source: Calder Flower Architects 2020)

## 3.2 Surrounding Site Compatibility Certificates

As a result of the increased amount of senior's developments in urban fringes and concerns raised by residents in rural and semi-rural areas including Terrey Hills, the NSW Government made changes to the Seniors Housing SEPP on 2 October 2018.

Key changes included expanding the criteria for assessing SCCs to include the consideration of cumulative impacts. This requires applicants to provide a cumulative impact study if the subject land or any part of the land was within one kilometre of two or more other SCC sites. This includes SCCs that are current with no determination and applications under assessment.

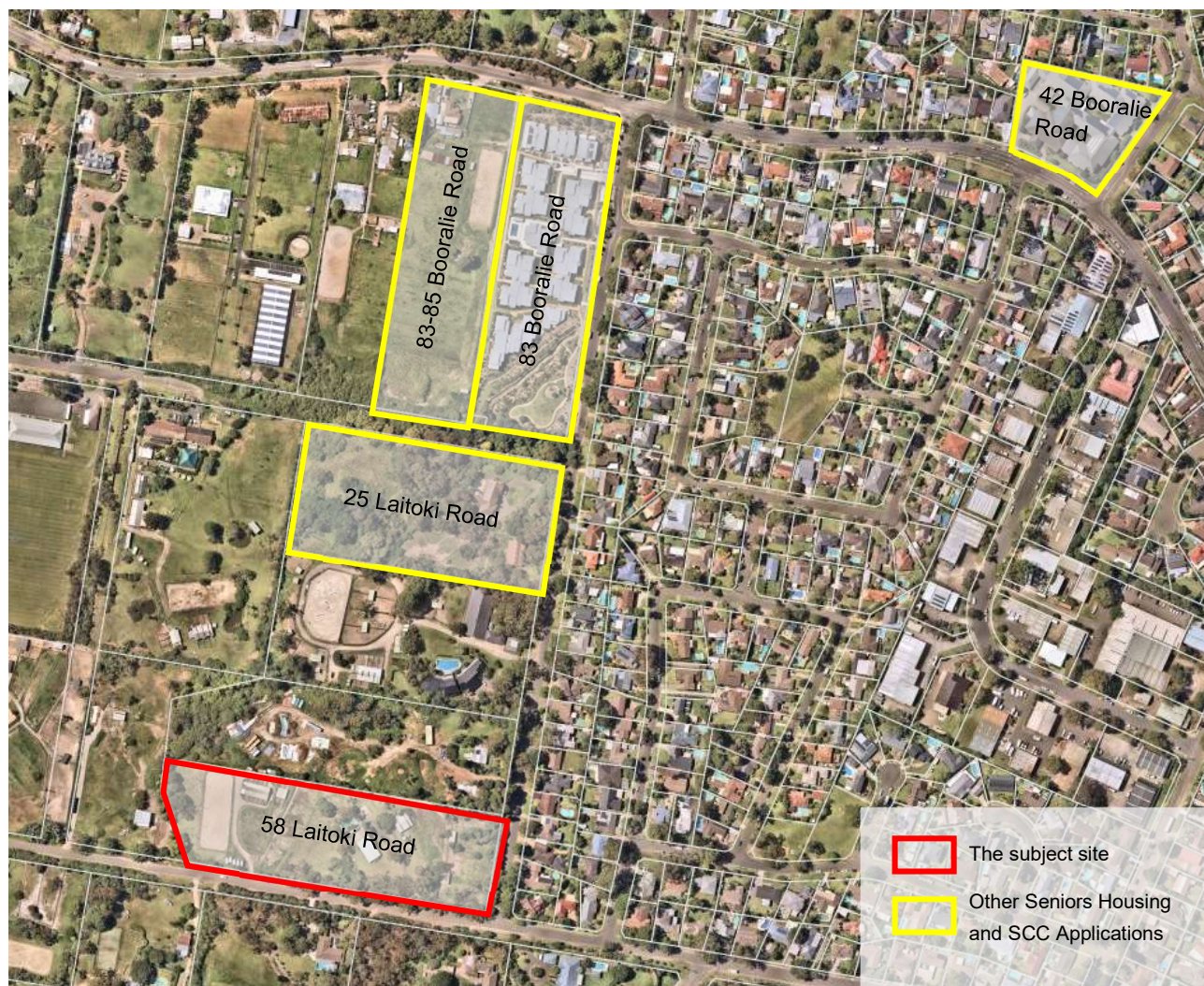
A Panel may also request a cumulative impact study to be prepared at any time if it considers that it is necessary for it to be provided to determine if whether the land concerned is suitable for more intensive development.

At the time of the submission of the SCC to the Department, the site was within one kilometre of two or more SCC sites (**Figure 13**) at:

- 42 Booralie Road – Existing Residential Aged Care Facility for 102 high-care beds.
- 83 Booralie Road – Seniors housing development comprising 50 serviced self-care units completed in September 2018 (- SCC Issued 2 May 2013 and acted on with DA deferred commencement consent).
- 83-85 Booralie Road – SCC proposed to amalgamate 83 and 85 Booralie Road and permit an additional 37 single storey seniors dwellings. SCC issued on 12 July 2017 and expired on 12 July 2019. The DA and Land and Environment Court appeal was ongoing and has now been withdrawn.
- 25 Laitoki Road – SCC lodged 11 February 2019 for 54 self-care dwellings that has been concurrently assessed by the Department and is with the Panel for determination.

The cumulative impact study must include an assessment of the impact of the proposed development on the capacity of existing or future services and infrastructure to meet demands arising from the proposed development. This must include impacts on water, reticulated sewers and public transport as well as the capacity of existing or future road infrastructure to meet any anticipated increase in traffic.





**Figure 13:** Map of seniors' housing in the vicinity (source: Nearmap 2020, overlay by the Department)

On 9 June 2020, the Panel advised that a Cumulative Impact Study was required to accompany this application pursuant to Clause 25(2C) of the Seniors Housing SEPP (**Attachment Z**).

On 29 September 2020, the applicant submitted the Cumulative Impact Study enclosed within a revised report to accompany the SCC application with several other supporting studies. As part of the application, the Cumulative Impact Study considered the following matters:

- Traffic and Parking;
- Social Infrastructure;
- Water and Sewer Servicing; and
- Bushfire Matters.

Section 4.3 of this report outlines the Department's assessment of the above matters and Council's comments.

## 4. Assessment Against the Seniors Housing SEPP

### 4.1 Permissibility Statement

The site is zoned RU4 Primary Production Small Lots under Warringah LEP 2011. Seniors housing is prohibited in this zone. However, development for the purposes of seniors housing (other than

dual occupancy) may be permissible at the site under Clause 24 of the Seniors Housing SEPP, if a SCC is issued for the site.

Clause 24(1)(a)(i) of the Seniors Housing SEPP identifies that where the subject site adjoins land zoned for primarily urban purposes, development can be carried out where the Seniors Housing SEPP applies. The site adjoins land to the east zoned R2 Low Density Residential (**Figure 4**). However, an application for a SCC must also satisfy other criteria within the Seniors Housing SEPP – which is discussed further in Section 4.3.2.

## 4.2 Application of the Seniors Housing SEPP

Under the Seniors Housing SEPP, Clause 4, 4A and 4B outline criteria which must be met for the Policy to apply.

### 4.2.1 Clause 4

As per Clause 4(1) the Seniors Housing SEPP applies to land that is:

- Zoned ‘primarily for urban purposes’ or land that ‘adjoins land zoned primarily for urban purposes’; and
- Where development for the purpose of any of the following is permitted on the land:
  - Dwelling houses;
  - Residential flat buildings;
  - Hospitals;
  - Development of a kind identified in respect of land zoned as special uses; or
  - The land is being used for the purposes of a registered club.

The site satisfies these criteria as:

- The site directly adjoins land zoned primarily for urban purposes (R2 Low Density Residential) (**Figure 4**); and
- Dwelling houses are permitted at the site.

Clause 4(6) identifies land where the Seniors Housing SEPP does not apply. These include:

- (a) Land described in Schedule 1 (Environmentally sensitive land), or
- (b) Land (other than land to which *Warringah Local Environmental Plan 2000* applies) that is zoned for industrial purposes, or
- (c) The land to which *Sydney Regional Environmental Plan No. 17 – Kurnell Peninsula (1989)* applies, or
- (d) The land to which *State Environmental Planning Policy (Western Sydney Parklands) 2009* applies.

Schedule 1 of the Seniors Housing SEPP defines ‘environmentally sensitive land’ as land that is identified in another environmental planning instrument by any of the following descriptions, or by like descriptions, or descriptions that incorporate any of the following words or expressions:

- Coastal protection;
- Conservation (but not land identified as a heritage conservation area in another environmental planning instrument);
- Critical habitat;
- Environment protection;
- Open space;
- Escarpment;

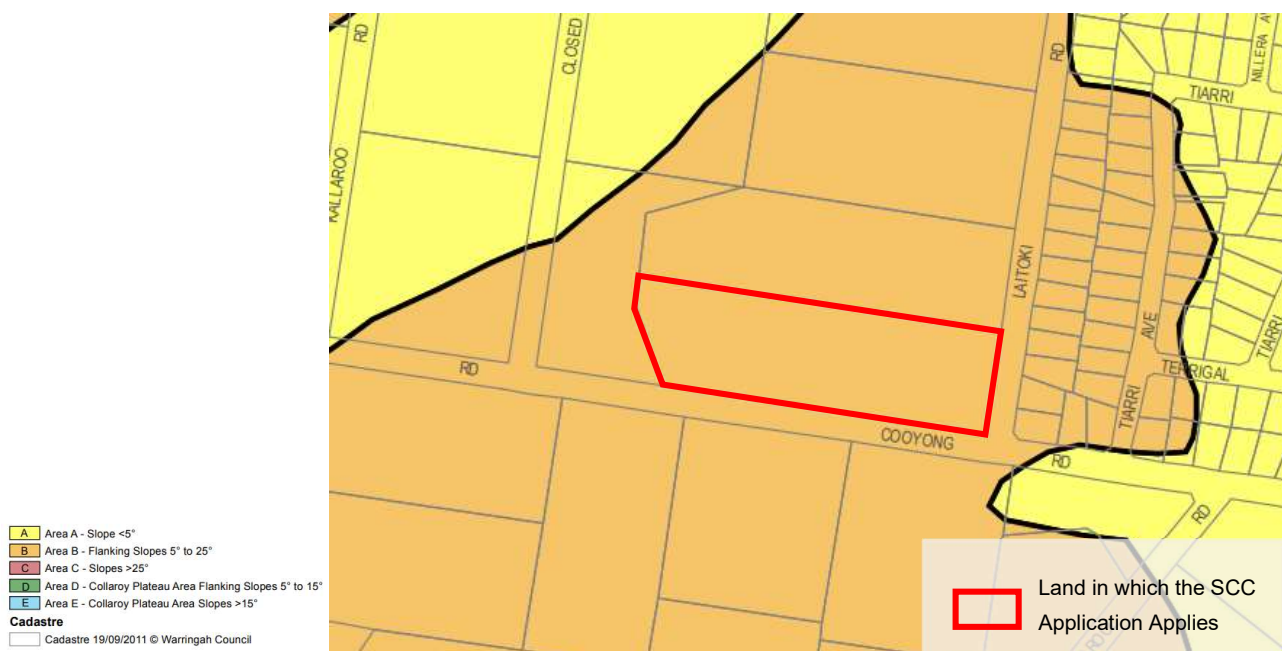


- Floodway;
- High flooding hazard;
- Natural hazard;
- Scenic (but not land that is so identified if:
  - The land is within a residential zone in which development of two storeys or more in height is permitted; or
  - An adjacent residential zone, also identified as scenic, permits development of two storeys or more in height);
- Water catchment; and
- Natural wetland.

The site satisfies these criteria as:

- The site is not described as 'environmentally sensitive land' in accordance with the terms listed in Schedule 1 of the Seniors Housing SEPP;
- The site is not zoned for industrial purposes and the land is zoned under Warringah LEP 2011; and
- The site is not subject to the environmental planning instruments listed under Clause 4(6) of the Seniors Housing SEPP.

The Department notes that the site is mapped under the Landslip Risk Map of the Warringah LEP 2011 as being contained to landslip risk 'Area B' (**Figure 11**). However, the Department is of the view that this does not constitute the definition of 'natural hazard' land under Schedule 1 (environmentally sensitive land) of the Seniors Housing SEPP, as the Warringah LEP 2011 does not define landslip risk land as 'geotechnical hazard land' or 'natural hazard land'.



**Figure 14:** Land Slope Risk Map – (Source: Warringah LEP 2011)

#### 4.2.2 Clause 4A – heritage conservation areas in the Greater Sydney Region

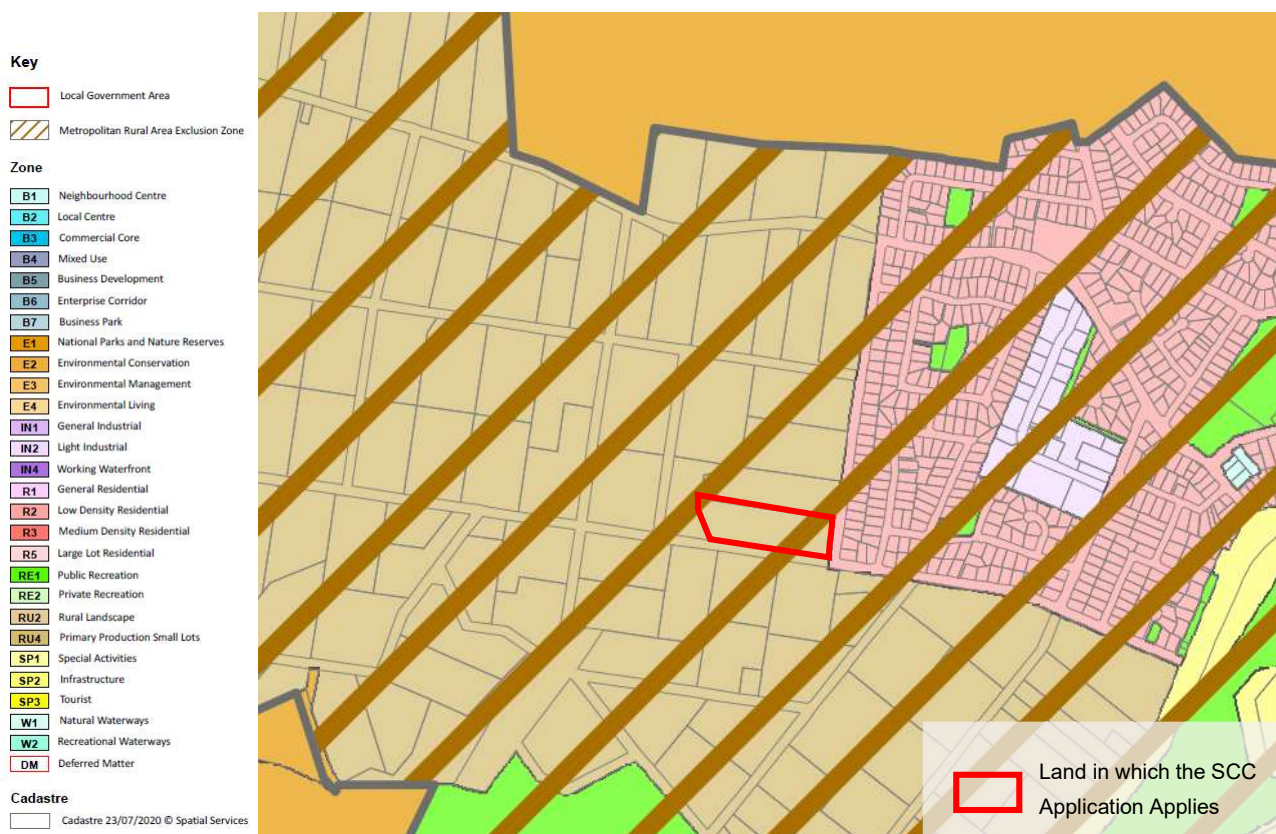
The land is not identified as being within a heritage conservation area.



### 4.2.3 Clause 4B – metropolitan rural areas in the Greater Sydney Region

Clause 4B(1) of the Seniors Housing SEPP identifies that the Policy does not apply to land identified on the Metropolitan Rural Areas Exclusion Zone Map as a 'metropolitan rural area exclusion zone'. The site is identified on Sheet 10 of the Northern Beaches Metropolitan Rural Areas Exclusion Zone Map as being located in a metropolitan rural area exclusion zone (**Figure 14**).

However, Clause 4B(2) outlines that the Seniors Housing SEPP continues to apply if an application for a SCC was lodged before the commencement of this clause. The application was lodged on 16 March 2020 and Clause 4B commenced on 29 July 2020. Therefore the Seniors Housing SEPP continues to apply to the subject land.



**Figure 15:** Metropolitan Rural Area Exclusion Zone Map – Northern Beaches LGA

### 4.2.4 Clause 25(5) – Previously Certified Land

As a SCC was previously issued for the subject site as discussed in Clause 2 of this report, Clause 25, clause (5)(c) of the Seniors Housing SEPP applies to the property. While the application does not include any additional land, the land continues to be identified as land that adjoins land zoned primarily for urban purposes.

The SCC was previously granted with requirements that the final layout, building construction and onsite facilities addressed the following matters:

- Access to services and facilities via appropriate pedestrian and public transport facilities
- Bulk and scale
- Flora and fauna issues
- Land slip issues
- Flooding

- Traffic and
- Potential contamination.

The Department also notes the SCC previously issued for the site expired on 14 July 2019 and did not result in development.

As noted above, the current court proceedings were adjourned to await the outcome of this application for SCC noting that the previous SCC has expired. The appeal decision of 3 August 2020 considers the approach in the absence of a current SCC. It adopts the approach taken by Preston CJ in *Ballina Shire Council v Palm Lake Works Pty Ltd* [2020] NSWLEC 41 (*Palm Lake*) whereby the applicant can apply for another site compatibility certificate, and in the meantime, it can seek an adjournment of the remitted proceedings before the Commissioner to await the outcome of its application for another site compatibility certificate.

## 4.3 Detailed Assessment

This section provides a detailed assessment of relevant matters to be considered by the Panel.

Under Clause 25(5)(a) of the Seniors Housing SEPP, the Panel must not issue a SCC unless it:

- (a) has taken into account any written comments concerning the consistency of the proposed development with the criteria referred to in clause 25(5)(b) received from the general manager of the Council within 21 days after the application for the certificate was made.
- (b) is of the opinion that:
  - (i) the site of the proposed development is suitable for more intensive development; and
  - (ii) the proposed development for the purposes of seniors housing is compatible with the surrounding environment and surrounding land uses having regard to the criteria specified in clause 25(5)(b).

An analysis of the SCC application against the abovementioned criteria is provided in the following subsections.

### 4.3.1 Northern Beaches Council Comments

On 20 January 2021, Council provided comments on the application (**Attachment X**). The Department notes that Council does not support the issuing of a SCC for the proposed development at the site. Council's comments are summarised below in **Table 3**.

Council provided a detailed assessment against Clause 25(5)(b) of the SEPP. Council has raised issues relating to:

- the character of the area,
- density and scale of the proposal
- insufficient consideration of bushfire impacts and to the cumulative impact of SCCs in the vicinity on bushfire and emergency services, and
- accessibility and excessive distance to transport and services.

Council concludes that development is inconsistent with the criteria under Clause 25(5)(b) of the Seniors Housing SEPP. Council considers the proposal is not compatible with likely future development within the RU4 Primary Production Small Lots zone and the adjoining R2 Low Density Residential zone.

Council notes the site is not a transition site rather the current zoning has deliberately sought to establish a demarcation of lands distinct from the urban area. The proposal will result in a higher intensity of development more typical of R3 Medium Density Residential and will not maintain the existing rural landscape character. The range of uses currently permitted in the RU4 zone do not

require substantial internal roads and would have a built form that is lower density and or dispersed across the site.

Council also notes that important changes have been made to the Seniors Housing SEPP since the original application was made including the Panel as the determining authority and the requirement for a cumulative impact study. It considers the Panel should independently consider all relevant matters and not adopt the conclusions from the previous decision made by the Department on the earlier SCC application, particularly given the Panel's refusal of the original development application which followed the SCC.

The proponent also submitted a response to Council's comments on 24 February 2021 (**Attachment Y**). The Department has considered Council's comments and the proponent's response in its assessment of the application.

**Table 3:** Council comments

Issue	Council Comments
Consistency with Clause 26 of the Seniors Housing SEPP with regard to access to services and facilities	<p>Council considers the zone objectives of RU4 Primary Production Small Lots to be an important consideration, given the application relies on a clause 4.6 variation under the Warringah LEP 2011, in relation to a non-compliance with development standards under Clause 26 of the Seniors Housing SEPP (particularly relating to the proximity of services and facilities to a bus stop).</p> <p>In considering the application, the objectives of the land use zone applying to the site and the provisions of Clause 25(b), Council identified:</p> <ul style="list-style-type: none"> <li>the proposal does not maintain the low intensity of land uses and rural landscape character of the land and is more typical of development in the R3 Medium Density Residential zone;</li> <li>the proposal does not maintain the existing rural and scenic character;</li> <li>the subject site is not a transition site and is reflective of a rural zone; and</li> <li>the range of uses currently permitted in the subject land use zone would not require the need for substantial internal roads which are likely to result in a dispersed built form across the site.</li> </ul> <p>Clause 26 is a mandatory provision that is applicable to all seniors housing developments. This includes serviced self-care housing which is contrary to the SCC application that stipulates clause 43* would override clause 26. The requirements of Clause 26 must be met in addition to Clause 43 for the entire application. This matter was raised in the section 56A court appeal and the court determined that clause 26 must be met or be supported by a clause 4.6 variation request.</p> <p>*Clause 43 requires that the consent authority must not consent to a development application to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that a bus capable of carrying at least 10 passengers will provide transport to and from local services and facilities.</p>



Local Infrastructure	<p>The site is not located within 400m of essential facilities and services, and is substantially further than 400m from public transport services (bus). The application identifies the closest bus stop is measured at 492m and 575m from the south east corner of the site, meaning residences are located further than the specified distances. From the indicative access/exit from the site, this is measured at between 548m and 631m.</p> <p>The grade of the road and road reserve in Cooyong Road is of significant concern and the ability of the proposal to satisfy the requirements of Clause 26 as raised above is questioned.</p> <p>Any development on the site for the purposes of seniors housing will require significant new infrastructure, including footpaths and road construction. This is likely to include widening of Laitoki and Cooyong Roads, and the construction of footpaths along both frontages. The relevant infrastructure works may create impacts on the area's environmental features, including the waterway and riparian lands along the western boundary and proportion of Duffy's Forest Endangered Ecological Community (DFEEC) on the site.</p>
Bushfire	<p>Under Clause 27(2) of the Seniors Housing SEPP, the consent authority must not consent to development on a site within the vicinity of bushfire prone land unless the matters in clause 27(2) are comprehensively addressed by the applicant in order for Council and NSW Rural Fire Service (RFS) to make a proper assessment. The bushfire report submitted with the SCC dated 1 July 2019 does not address the specific provisions of Clause 27(2) of the SEPP, particularly in response to:</p> <ul style="list-style-type: none"> <li>• the size of the existing population within the locality;</li> <li>• other seniors' developments within the locality that are existing or under assessment; and</li> <li>• the capacity of the road network.</li> </ul> <p>A detailed consideration of bushfire impacts should be completed when assessing the SCC rather than left for a matter to be addressed by a condition of development consent.</p>
Built Form Impacts and Local Character	<p>The surrounding development consists of low-density residential accommodation, with a predominant single and two storey built form outcome. 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 of the surrounding context to the north, south and west with single dwellings and several outbuildings typical of a rural character.</p> <p>When viewed from Cooyong Road and the broader rural context, the bulk and scale appears to be inconsistent with the prevailing character of the area. This is highlighted by the multi-dwelling housing appearance and lack of separation between built forms.</p>

	Potential land use conflicts that may arise from the approval of the subject development based on permissible uses in the RU4 Primary Production Small Lots land use zone.
Cumulative Impact Study	<p>The material submitted in relation to a Cumulative Impact Study does not adequately address the impact of the subject development. Specifically, the assessment does not consider the Terrey Hills locality, which comprises of multiple existing and established seniors housing developments that currently contribute to the cumulative impacts on infrastructure and services.</p> <p>The assessment does not consider the impact of bushfire and other emergency services on the proposed development which would generate capacity issues on existing services.</p>

### 4.3.2 The Department's Assessment

Under Clause 24(2) of the Seniors Housing SEPP, the Panel must not issue a SCC unless the panel has considered if the site of the proposed development is suitable for more intensive development, and satisfies the criteria specified under Clause 25(5)(b). The Department has provided an assessment of this criteria below.

#### **Suitability for More intensive Development**

The Department considers that although the proposed development would provide additional seniors housing, the site is not considered to be suitable for more intensive development as proposed. This is summarised below and discussed in detail in response to each criteria later in this report:

##### **a. Access to Public Transport:**

The nearest bus stop is approximately 500m (from the intersection of Laitoki Road and Cooyong Road) to the bus stop on Myoora Road to the south of Cooyong Road, outside Terrey Hills Public School (northbound services). These buses provide services to the Sydney CBD, North Sydney, Macquarie University and Gordon. Bus stops are also located opposite the school along Myoora Road for southbound services, which are approximately 550m away from the site.

Bus stops to the north of Cooyong Road are generally 600m walking distance from the site. Bus shelters are provided at the two southbound bus stops along the eastern side Myoona Road, either side of Cooyong Road. There are no opportunities for shelter or rest along the journey to the bus stops. These distances to public transport services do not comply with the requirements of the Seniors Housing SEPP to be a maximum walking distance of up to 400m from the site.

The intersection of Laitoki Road and Cooyong Road to the south and west are densely vegetated landscaped street verges with no kerb and gutter. To the east of the site along Laikoti Road, is low density residential area that has no footpath, however does have kerb and gutter. There is an existing footpath that is at grade along the northern side of Cooyong Road to Myoora. The footpath would need to be extended west to the site and along the Cooyong Road boundary if the site to meet SEPP requirements.

There is steep terrain in the immediate vicinity of the site and Council also maintains that the accessible path as defined by the SEPP is not possible to achieve. The footpath would need to be provided along Cooyong Road from the south western corner of the site to the corner of Laitoki Road and Cooyong Road to meet the existing footpath on the northern side of Cooyong Road, which is currently at a steep gradient.

Other bus stops are located to the north of the site along Booralie Road providing services to Chatswood; however, these bus stops are further away approximately 650m walking distance along

Laitoki Road with a steep gradient combined with no paved footpath and is considered to be unsuitable for future elderly residents to walk on to travel to and from the bus stops at Booralie Road.

It is noted that with reference to the court judgement, it was considered that the appropriate treatment to the public domain addressing Cooyong Road was not agreed and the applicant had proposed a concrete kerb and gutter to Cooyong Road but to retain the grass verge rather than provide a concrete footpath. Council's preference for a 1500 metre wide concrete footpath was noted in order to provide the safest path for the residents. However, the applicant suggested an accessible path that traverses the site with the aid of elevators and ramps would be preferred by the residents.

The previous SCC consideration did acknowledge the non-compliance of the requirements under clause 26 of the SEPP in terms of proximity to the nearest bus stop being in excess of the required 400m maximum walking distance. From the information and further detail provided through the development assessment process, the Department considers the proposal's distance to public transport is not capable of demonstrating compliance with Clause 26 of the Seniors Housing SEPP.

Clause 43, applies in addition to Clause 26, and requires that the consent authority must not consent to a development application to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that a bus capable of carrying at least 10 passengers will provide transport to and from local services and facilities during specified times of the day.

In the court proceedings, the applicant had proposed consent conditions which were accepted by the court, relating to ensuring that the transport bus service would be provided as required by the Seniors Housing SEPP. The proposed conditions included having two mini buses, with a capacity of 12 seats (each) will be provided for the life of the development; to be provided in accordance with the times outlined in the Seniors Housing SEPP, and the costs be borne by the owner of the land, and prior to occupation the required access to meals, cleaning and personal care be provided by the operator of the RACF or by the owner of the site. This was proposed to be enforced through a public positive covenant to be created on the title of the land incorporating the measures outlined above, prepared at the applicant's expense and endorsed by the Council prior to lodgement with NSW Land Registry Services.

While it is acknowledged that the applicant intends to provide a 12-seat minibus to accommodate the transport needs of future residents, the Seniors Housing SEPP requires the development to be located within 400m of public transport to access essential services as defined by Clause 26.

The Department considers that the proposed minibus service in the absence of required access to services and proximity to public transport would not meet the varied day to day needs of the future residents of the proposed development and cannot be relied upon as a substitute for public transport access.

In summary, the proposed development has insufficient access to public transport and does not provide enough information to demonstrate compliance of path of travel to public transport services with the required gradients under the Seniors Housing SEPP.

However, should the Panel determine to issue a site compatibility certificate for the subject land, it would be a matter for the court to consider a variation under clause 4.6 in relation to the requirements of the development standard under clause 26 of the SEPP.

#### **b. Compatibility with Local Character:**

The bulk and scale of the proposed development emulates a low-rise medium density which is inconsistent with the predominate low-density landscaped character of the surrounding suburb. While the Department acknowledges that the site is near to an existing seniors housing development, comprising 50 self-care units, this development not characteristic of the area and therefore should not be relied upon as a precedent.



The site is located within a Metropolitan Rural Area (MRA). On 29 July 2020, the Seniors SEPP was amended by *State Environmental Planning Policy (Housing for Seniors or People with a Disability) Amendment (Metropolitan Rural Areas Exemption) 2020* to prevent new proposals for seniors housing on land within the MRA of Greater Sydney. The amendments took effect immediately, however development applications and applications for site compatibility certificates that have already been lodged will continue to be assessed and determined.

Although, the transitional provisions of the Seniors Housing SEPP allow the application to continue to be assessed and determined, it is considered the proposed development would be inconsistent with priorities and directions of local and State strategic plans that seek to protect metropolitan rural land from incompatible development. These policies support more intense urban development close to services and amenity and reduce car dependency.

The location of the site is not a transitional site and is surrounded by predominantly rural uses, including equestrian facilities. Surrounding rural uses could generate adverse noise, odour and dust impacts on the proposed development. The proposal for this site conflicts with surrounding RU4 development and is out of character with the predominant character of the surrounding area.

### **c. Strategic Land Use Priorities under Council's Local Strategic Planning Statement:**

The Northern Beaches Local Strategic Planning Statement (LSPS) was adopted by Council on 25 February 2020 and finalised in April 2021. The LSPS sets a 20 year vision for the Northern Beaches LGA, building upon the North District Plan and Greater Sydney Region Plan to act as the bridge between strategic land use planning at a district level and local statutory planning.

The LSPS introduces strategic principles to manage growth and change in the area. The proposed development is inconsistent with various priorities contained to the Northern Beaches LSPS, comprising:

- *Priority 2:* Protected and enhanced bushland and biodiversity
- *Priority 3:* Protected scenic and cultural landscapes
- *Priority 4:* Protected Metropolitan Rural Area
- *Priority 5:* Greener urban environments
- *Priority 17:* Centres and neighbourhoods designed to reflect local character, lifestyle and demographic change

The LSPS identifies 'Rural Uplands' in Terrey Hills that is land which supports rural and lifestyle properties, small scale or urban agricultural enterprises, nurseries, an equine industry and urban services such as landscape supplies. Under the North District Plan, further urban development is not consistent with the values of the MRA which the LSPS considers is a clear State level direction to avoid housing in these areas. The majority of land within the MRA and future MRA lands under the LSPS is noted as being either bushfire prone land or surrounded by bushfire prone land. Protection of human life and property from bushfire is a major planning concern for the area.

Principles of the LSPS include limiting development to a scale, form and density consistent with the existing character and use and avoiding urban intensification and subdivision in the MRA, including to ensure development is not intensified in areas where there is an unacceptable risk to human life and property from hazards such as bushfire.

The LSPS also includes an Action (4.4) to work with the Department on the application of relevant SEPPs that allow urban intensification of the MRA by developing a local approach to the provision of seniors housing, boarding houses and medium density housing based on evidence in the local housing strategy. Council's Local Housing Strategy also notes that seniors housing should be avoided in high risk natural hazard areas or areas that have evacuation constraints.

#### d. Unresolved matters relating to bushfire:

The site is located in proximity to 'Category 1', 'Category 2' and 'Vegetation Buffer' bushfire prone land. As part of the request for the cumulative impact study, the applicant provided a Bushfire Response letter prepared by Building Code and Bushfire Hazard Solutions (**Attachment M**).

The information provided in the material to address cumulative impact is considered insufficient to satisfy the criteria of Clause 27(2) of the Seniors Housing SEPP.



**Figure 16:** Bushfire Prone Land - Northern Beaches LGA

Terrey Hills is a relatively isolated area where occupants may need to travel large distances along roads flanked by bush fire prone vegetation to evacuate. Introducing additional aged residents in a bushfire prone locality would increase the evacuation burden on local roads and for emergency services and is not supported.

Council's assessment report to the Panel for the DA also provides that the area is subject to a bushfire evacuation study for the nearby Ingleside area. Council considers that the outcomes of the study should be considered when complete. The Bushfire Risk Assessment has recently been completed and is on exhibition along with the draft Ingleside Place Strategy.

The study was commissioned by the Department to assess the road network performance during bushfire events. The primary evacuation route for existing and proposed residents of Ingleside has been identified through consultation with stakeholders, including emergency services, as southbound along Powderworks Road, given the proximity of large sections of the Mona Vale Road state corridor to bushfire prone land.

The Department and Council determined that rezoning should not proceed on much of the area contemplated to rezoning under the previously exhibited Strategy.

It also notes the cumulative impact of development in other locations which may rely on evacuation through Ingleside may, over time, further compound the ability of the network to function in an emergency.

Planning for Bushfire Protection Policy 2019 requires a strategic assessment of the potential bushfire risks and mitigation. Elimination of risk by making sound land use planning decisions is a principle of the Policy.

The Transport and Traffic report which supports the SCC considers the road network of the locality and the capacity of the road network to and from existing development accessing intersections on Mona Vale Road. It concludes that the access provisions have more than adequate capacity to provide for an emergency evacuation circumstance. It doesn't provide sufficient detail as to the evacuation route from Mona Vale Road.

The cumulative impact on bushfire safety, including safe evacuation from the locality, is not addressed satisfactorily and the Department is concerned with this aspect of the proposal. It is considered that the information provided in **Attachment M** also does not provide adequate transport arrangements for evacuation of a potentially 200 persons on site.

Noting that not all residents will have their own private vehicles and the two 12-seater buses provide limit capacity to assist with evacuation. The bushfire report also notes that where evacuation may not be possible, shelter in place at a community facility on site is proposed and generally relies on attending fire services or Police to instruct that the village is to be evacuated.

It is noted that the development application was referred to the NSW Rural Fire Service under the provision of Clause 27(2) of the Seniors Housing SEPP as the site is in the vicinity of land identified on a bushfire prone land map.

The Rural Fire Service provided a response to Council on 15 May 2019 and required that an emergency/evacuation plan be prepared in accordance with the NSW Rural Fire Service Guidelines for the Preparation of Emergency/Evacuation Plan and comply with Australian Standard AS 3745 -2010 'Emergency Control Organisation and Procedures for Buildings Structures and Workplaces for Residential Accommodation'. A bushfire emergency management plan prepared by Building Code & Bushfire Hazard Solutions P/L (dated June 2019) forms part of the report at **Attachment M**.

Based on the appeal of the consideration of bushfire risk in the court hearing, it is considered that this would also be a matter for the consent authority to determine as part of the development application, specifically as required by Clause 27 (2).

### **Assessment against the criteria listed in Clause 25(b) of the Seniors Housing SEPP**

*Criteria 1. the natural environment (including known significant environmental values, resources or hazards) and the existing and approved uses of land in the vicinity of the proposed development (Clause 25(5)(b)(i))*

#### **Bushfire**

As noted above the site is located in proximity to 'Category 1', 'Category 2' and 'Vegetation Buffer' bushfire prone land. The applicant has submitted a Bushfire Emergency Management Plan to demonstrate compliance with Clause 27(2)(h) of the Seniors Housing SEPP. The application was not accompanied by a report addressing the remaining criteria of Clause 27(2), however, statements from Building Code and Bushfire Hazard Solutions have been provided.

Council has previously raised concerns with the submitted material, deeming the assessment inadequate in demonstrating compliance with Clause 27(2). These matters were also considered by Council as an important matter in the most recent appeal to the Land and Environment Court.

The Department considers the information provided with the application does not address all requirements outlined under Clause 27. While the criteria of Clause 27 has been discussed individually in other reports, a comprehensive analysis of this criteria in the context of bushfire planning has not been considered.



Further, the information provided in **Attachment M** is deemed insufficient to address the criteria listed in Clause 27(2). As there exist concerns about the ability to defend development against major bushfire events, safe evacuation and the location in the site in relation to bushfire prone land, the Department raises concerns that this has not been adequately addressed or can be.

### Vegetation and Biodiversity

An Arboricultural Impact Assessment Report has been prepared by Arterra Design Pty Ltd for the SCC application (**Attachment O**). To facilitate the proposed development, the report states that 119 trees have been recommended for removal. Of these, 19 are a higher value category.

In addition, A Flora and Fauna Assessment (**Attachment N**) and Biodiversity Management Plan (**Attachment P**) was prepared by Narla Environmental for the SCC application. The Flora and Fauna Assessment identified the following vegetation communities present on the site:

- no threatened flora or fauna species were identified in the subject site;
- the subject site may be utilised by threatened species, such as threatened hollow-roosting Microchiropteran bats due to the presence of 49 hollow bearing trees; and
- weeds and Exotic Vegetation making up 1,700sqm of the subject site;
- cleared Exotic Grassland, making up 15,000sqm of the subject site;
- the presence of the Duffy's Forest Ecological Community, making up 2,800sqm of the subject site; – listed on Schedule 2 of the *Biodiversity Conservation Act 2016* as an endangered ecological community and includes a variation of species.

**Figure 15** demonstrates the distribution of Vegetation communities across the site.



**Figure 15:** Vegetation Communities within the subject site (Source: Narla Environmental 2019)

While the Flora and Fauna Assessment concludes to support the proposal, the report identifies a series of recommendations, including:

- protection of the riparian corridor along the western boundary;
- the requirement for a pre-clearing assessment for the subject site, prior to the completion of any development works;
- prepare a plan for ongoing weed management;
- restore native vegetation to compensate for the loss of Duffy's Forest Endangered Ecological Community (DFEEC);
- introduction of nest hollow augmentation and management of pest fauna.

The Department considers the proponent has demonstrated the proposal can generally satisfy this criterion in relation to Vegetation and Biodiversity.

However, the intensive nature of the development would result in the removal of over 50% of existing vegetation within the site. While replacement planting is proposed under the Biodiversity Management Plan, the removal of remnant established vegetation from the site would require a significant period to reach the level of establishment currently displayed on the site. The removal of vegetation would also detract from the rural and scenic character of the site, which contributes to the surrounding character of Terrey Hills.

The Department considers that the loss of DFEEC and other vegetation to support more intensive development at the site, has not been adequately justified and is avoidable.

### **Stormwater and Flooding**

A flood assessment has been prepared by Martens and Associates Pty Ltd (**Attachment W**) for the SCC application. The flood assessment identifies that the primary source of site flooding is overland flow in Neverfail Creek west of Laitoki Road and flood waters affect the western portion of the site as they reach the boundary of Neverfail Gully Creek. The flood assessment notes the subject site is classified as a 'low flood risk precinct' in the 1% AEP and PMF events. The flood assessment suggests that compliance with Council's flood planning level requirements can be achieved by the demonstrated siting of the development.

While the assessment identifies that general egress and management practices on the site could generally be achieved during a flood event, further information may be required at the development application stage, including consultation with the NSW State Emergency Services on the proposed emergency response.

### **Land Contamination and Geotechnical Investigations**

A Detailed Site Investigation has been prepared by Martens and Associates Pty Ltd (**Attachment D**) for the SCC application. The report concluded that asbestos was identified in the eastern portion of the site and recommended that a Remediation Action Plan be prepared to address the areas containing asbestos material. The report also considered limitations due to access on portions of the site which would require further investigations at the time of development assessment.

A Preliminary Geotechnical Assessment was prepared to support a development application, noting the site is mapped on Council Landslip Risk Map. The report identified that, subject to compliance with several recommendations, the site can be made suitable for development.

The Department has not been provided with enough evidence that contamination has been satisfactorily investigated. Should the Panel approve this application, the applicant must undertake further assessment at the development application stage to demonstrate that potential contamination at the site could be appropriately managed and the recommendations of the Preliminary Geotechnical Assessment have been incorporated into the DA.

## Existing and approved uses of land in the vicinity of the proposed development

The subject site is primarily located in a rural area of Terrey Hills. While immediately to the east is a low density residential community the surrounding land uses are primarily rural, including small scale farms and equestrian facilities. The exception is an existing residential aged care facility at 83 Booralie Road. Council officers raised in their submission that the proposed development if approved, may be impacted and/or create land use conflicts in the rural zone based on the existing and approved uses.

The Department considers the development is inconsistent with the existing and approved uses of land in the vicinity of the proposed development, and land use conflicts may arise in the future if the application was to be approved.

*Criteria 2. the impact that the proposed development is likely to have on the uses that, in the opinion of the relevant panel, are likely to be the future uses of that land (Clause 25(5)(b)(ii))*

The site is zoned 'RU4 Primary Production Small Lots' which encourages the use of the land for primary industry enterprises while maintaining the rural and scenic character of the surrounding area. The site currently contains a residential dwelling, associated shed structures and remnant vegetation. The Department considers that the current nature of the site contributes highly to the rural and scenic character of the area.

Whilst it is acknowledged that the site is proximate to a completed seniors housing development at 83 Booralie Road, each of the sites directly adjacent to the south, west and north-west contain extensive rural and scenic character, which is representative of its RU4 zoning and the current and future character of Terrey Hills. The proposed development is not considered to be compatible with the predominant future uses and character of the RU4 zoned land in Terrey Hills and the surrounding area.

The proposed development is also inconsistent with various local character priorities contained to the Northern Beaches LSPS, comprising:

- *Priority 3: Protected scenic and cultural landscapes.*
- *Priority 4: Protected Metropolitan Rural Area.*
- *Priority 17: Centres and neighbourhoods designed to reflect local character, lifestyle and demographic changes.*

Expanding on Priority 4, the Northern Beaches LSPS seeks to protect metropolitan rural areas from incompatible development. This priority also supports State level directions in the North District Plan that seek to avoid housing growth in metropolitan rural areas. This is a key reason the Seniors Housing SEPP was amended on 29 July 2020 to no longer apply to land identified on the metropolitan rural area's exclusion zone map (this does not apply to this SCC application as it was lodged before the commencement of this amendment).

As previously identified, the site is located within a metropolitan rural area. Construction of the proposed development at the site would therefore conflict with various priorities and directions contained in local and State strategic plans that seek to protect metropolitan rural land from incompatible development.

*Criteria 3. the services and infrastructure that are or will be available to meet the demands arising from the proposed 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 (Clause 25(5)(b)(iii))*



## Traffic, Parking and Public Transport

A Traffic and Parking Assessment Report has been prepared by Transport and Traffic Planning Associates for the SCC application (**Attachment Q**). The report notes that the proposal will increase the number of vehicles used in the local areas by approximately 35. No additional information was provided in response to the likely impact on vehicle trips per hour over existing conditions during commuter peak periods. The Department is of the view that the proposed development is anticipated to fall within acceptable traffic limits and will not have unacceptable impacts on the wider road network.

In regard to parking and internal access, the report identifies that the proposal will:

- a. Provide on-site at-grade and basement parking to meet the requirements under the Seniors Housing SEPP.
- b. Provide vehicular access and egress into the site via Cooyong Road.

As previously noted, the Traffic and Parking Assessment Report also outlines that the closest bus stop is located within 492m to the north side on Myoora Road. This bus stop services multiple bus routes to and from various local centres. An additional bus service is also located on Booralie Road. Access to each bus stop is along existing footpaths along Cooyong Road. However, no footpath is present along Laitoki Road. Council have raised concerns relating to the grade of each road and the ability of the proposal to meet the requirements of Clause 26.

A Social Impact Statement has also been prepared by Judith Stubbs and Associates for the SCC application (**Attachment R**). The report outlines that based on an analysis of the suburb and LGA, there will be an increased need for transport and there is a need for assistance for future residents with core daily activity. Given the likely older age profile of the new residents and the reduced likelihood of independent driving among people in this age group (Social Impact Assessment estimates 74% of new residents will not have a motor vehicle), there will be an increased need for public transport and the frequency of these services.

However, the bus stops near the site are not located within an appropriate distance to support the needs of elderly residents. As such, public transport cannot be relied upon to meet the daily transport needs of future residents.

While it is acknowledged that the applicant intends to provide a 12-seat minibus to satisfy requirements under clause 46 of the Seniors Housing SEPP, the Department considers that the proponent must also demonstrate consistency with Clause 26 of the Seniors Housing SEPP. As public transport is not located within 400m of the subject site, the proposed development cannot demonstrate consistency with Clause 26 of the Seniors Housing SEPP. In this sense, the proposed 12-seat minibus will not meet the varied day to day needs of the all future residents on the site and cannot be relied upon as a substitute to a lack of public transport.

The potential use of private vehicles by future residents also cannot be relied upon to substitute the lack of surrounding public transport connections given the anticipated rates of car ownership. For these reasons, the Department is of the view that the SCC should not be issued.

## Services and Facilities

The Social Impact Assessment prepared for the SCC application (**Attachment R**) outlines that the Terrey Hills Shopping Centre is located approximately 1.2kms driving distance from the site and contains a variety of retail and commercial services including a chemist, post office, small supermarket, eateries, bakery, fruit and vegetable market and medical centre. The Terrey Hills Shopping Centre is also accessible via a bus service from Myoora Road and Booralie Road.

The applicant has also stated that the proposed development will have in place prior to occupation a service agreement for the provision of services such as meals, cleaning services, personal care and nursing care. However, the Department considers this to be a supplementary service that cannot meet the varied day to day needs of the future residents and cannot be relied upon.

While the Department acknowledges the presence of Terrey Hills Shopping Centre for required services and facilities, the public transport services available to access the centre are inadequate. It is essential that residents can easily access this location via public transport.

In addition, the applicant has not provided analysis to demonstrate compliance with Clause 26 of the Seniors Housing SEPP, particularly relating to gradients of footpaths and appropriate distances to public transport.

### Infrastructure

A Preliminary Water and Sewer Servicing Assessment has been prepared by Martens and Associates for the SCC application (**Attachment S**). Their findings indicate that:

- Sydney Water has existing spare capacity to provide domestic water to the development;
- Firefighting requirements could be supported via a separate fire main servicing from the Sydney Water main;
- It appears that the site is currently connected to a Sydney Water reticulated sewer service on Laitoki Road; and
- The exists sufficient capacity to service the site for the purposes of a sewer connection for the development and the feasibility from Sydney Water recommends further modelling.

The applicant has not provided additional detail in terms of the provision of gas services, delivery of electricity infrastructure, and data services (i.e. Telstra and NBN). The Department considers that further studies would be required to determine the extent to which the site can be serviced.

The Department considers that although some further studies are required, it is reasonable to expect that the proposed development would be able to be serviced by required infrastructure.

*Criteria 4. in the case of applications 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 and special uses in the vicinity of the development (clause 25(5)(b)(iv))*

The site is privately owned, zoned 'RU4 Primary Production Small Lots' and not for public use.

*Criteria 5. without limiting any other criteria, the impact that the bulk, 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 (clause 25(5)(b)(v))*

The site is located in an area with a built form that is predominately low-density and characteristic of 1-2 storey detached dwellings and rural outbuildings. The proposed development seeks to construct buildings at the site that contain a 1 to 2 storey building height. The Department considers the proposed heights are consistent with the development standards as outlined by the Seniors Housing SEPP.

However, the Department is of the opinion that if constructed, the proposed development would result in a density at the site that is inconsistent with the predominate low-density and rural character of the surrounding suburb, aligned with the current prescribed land use zones applying to the site and its context. Whist the Department acknowledges the development is in proximity to an existing residential aged care facility in the RU4 Primary Production Small lots zone, this development so not characteristic of the predominantly low-density character of the area and should not be relied upon as a precedent.

*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 (clause 25(5)(b)(vi))*

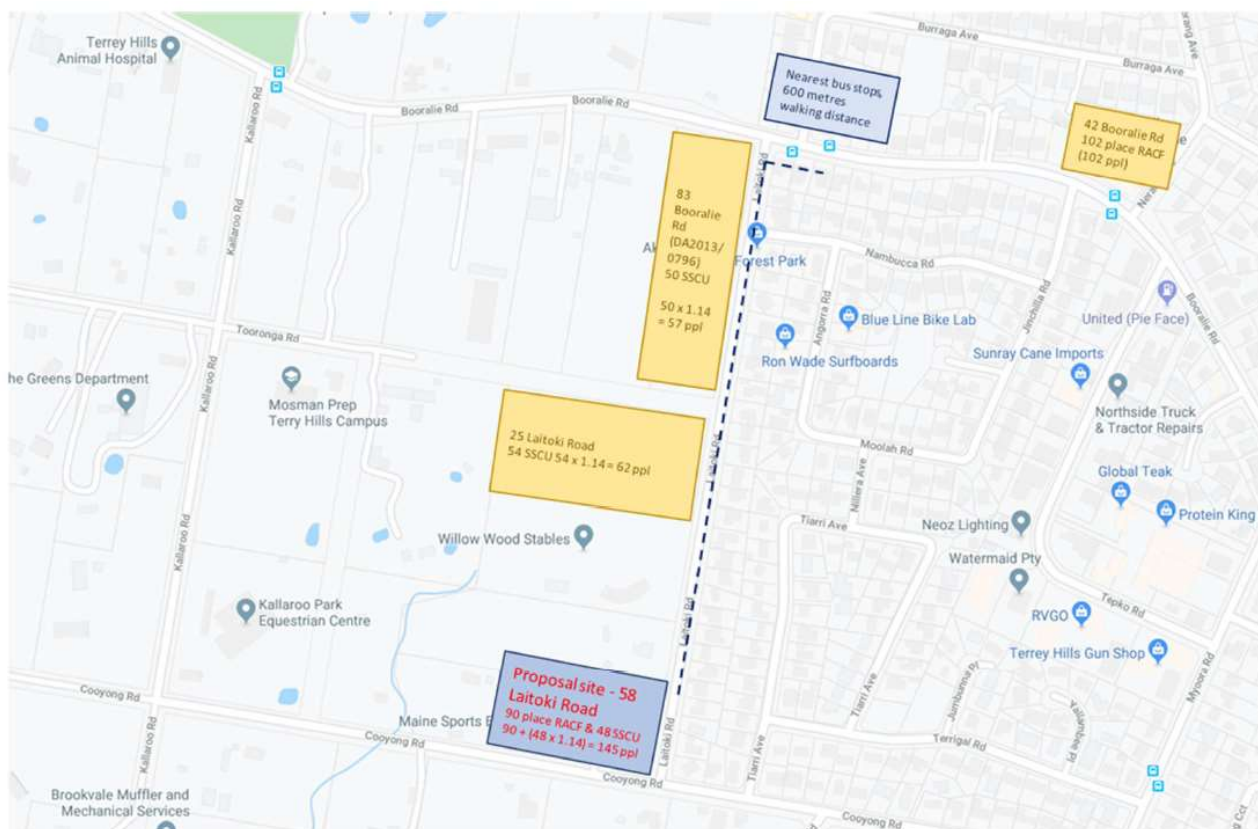
This subsection is not applicable as the *Native Vegetation Act 2003* was repealed on 25 August 2017 and replaced by the *Biodiversity Conservation Act 2016*. Biodiversity concerns relating to the proposed development have been discussed in response to criteria 1 above.

*Criteria 7. The impacts identified in any cumulative impact study provided in connection with the application for the certificate (clause 25(5)(b)(vii))*

The applicant's SCC report (**Attachment A**) included a cumulative impact study contained within the document, which is based on findings provided within the Traffic & Parking Assessment Report, Social Impact Assessment, Preliminary Water and Sewer Servicing Assessment and Bushfire Response Letter which are attached to this report. The cumulative impact study suggests the following:

- there is sufficient capacity for existing and future services and infrastructure, (including water, reticulated sewers and public transport) to meet the demands arising from the proposal;
- the transport needs of residents, visitors and staff can be catered for by a proposed on-demand minibus service operated by the development;
- there is sufficient capacity of existing and future road infrastructure to meet any increase in traffic as a result of the proposed development;
- development consent has previously been granted for the construction of 50 dwellings to be used as a residential aged care facility at 83 Booralie Road which has been constructed;
- the site is not currently used for any significant agricultural use and is not identified to change in use without significant land clearing and landform modification; and
- the site is serviced by bus stops within approximately 500m of the subject site which can provide access to relevant local services.





**Figure 16:** Cumulative Impact of existing and approved seniors housing developments (Source: Social Impact Statement, Judith Stubbs, Sept 2020)

The cumulative impact study prepared by the proponent concluded that the cumulative impact of the proposal on surrounding infrastructure, services and public transport is considered to be acceptable.

The cumulative impact of the proposed development and proximate seniors housing development noted in the Social Impact Statement (**Figure 16**) highlights an increase of residents within the locality as follows:

- 102 high care places are currently provided in the existing Terrey Hills Nursing Home at 42 Booralie Road (102 people);
- 50 serviced self-care dwellings have recently been constructed at 83 Booralie Road (57 people);
- 54 dwellings designed for seniors or people with a disability at 25 Laitoki Road Terrey Hills are proposed (62 people);
- A 90 bed residential aged care facility with 48 serviced self-care dwellings proposed at 58 Laitoki Road which is the subject of this application (145 people).

This proposal would contribute to 55% of the cumulative impact to the seniors development in the local area. Cumulatively, the proposal and existing/approved seniors developments and new nursing home places will add 263 people, representing an increase of 8% in the suburb. This is considered an increase of 95 people in need of assistance at the Residential Aged Care Facility. It is noted that the services required to meet the needs of people in nursing homes are delivered on-site.

The provision of public transport is limited in the regard to the provision of adequate services and transport to meet the demand of future residents. In relation to the location of services, the Terrey Hills shopping centre is located approximately 1.2km driving distance from the proposed site. It is understood that the residents would rely on the mini buses to provide transport to the Terrey Hills shopping centre.

The bushfire emergency management plan prepared by Building Code & Bushfire Hazard Solutions P/L (**Attachment M**) provides procedures for sheltering in place where evacuation may not be possible. The road infrastructure and emergency services to support the evacuation of the site in the event of a bushfire is of concern given the sensitive nature of the use and likelihood that residents will require assistance evacuating. The transport arrangements in the management plan, provide for residents to use their own private vehicles and village buses (2 x 12 seater) could supplement resident movements as necessary.

While the Department agrees the cumulative impact of the proposed development on surrounding infrastructure and services is anticipated to be generally acceptable with regard to water, sewer and road infrastructure, the Department does not agree this to be the case for:

- surrounding public transport;
- the proposals inability to demonstrate consistency with Clause 26 of the Seniors Housing SEPP, location and access to services and adequate arrangements;
- emergency services for evacuation in the event of bushfire.

## 5. Conclusion

It is noted that while the Department issued the previous SCC, the conclusions in this report are based on a merit assessment of the current SCC application, the site context as it currently exists and the current Seniors Housing SEPP.

It is acknowledged that the site adjoins an existing low density residential area and is close to an approved SCC application at 83 Booralie Road, and a SCC currently under assessment by the Department at 25 Laitoki Road.

Based on the detailed assessment, the Department is of the view the proposal is not suitable for the site on the basis that:

- the proposed development cannot access public transport services within 400m, and access to these services cannot be provided in compliance with Clause 26 of the Seniors Housing SEPP;
- the bulk and scale of the proposed development is incompatible with the prevailing character of the local area;
- the intensification of the land use for the purpose of Seniors Housing is inconsistent with the strategic direction of the Northern Beaches LSPS in relation to protecting rural land; and
- there exist concerns about the proposal's consistency with clause 27 of the Seniors Housing SEPP and the ability to defend development against major bushfire events, adequate response to evacuate due to cumulative impact of seniors housing in the local area and the general location of the property in relation to bushfire prone land.

## 6. Recommendation

The Department considers that a Site Compatibility Certificate should not be issued for the site. This is on the basis that the proposed development does not meet the criteria specified in clause 24(2)(a) and clause 25(5)(b) of the Seniors Housing SEPP.

It is recommended that the Sydney North Planning Panel:

- **Considers** the findings and recommendations of this report;
- **Notes** the applicant's SCC package (See Attachments);
- **Notes** the comments of Northern Beaches Council on the SCC application under clause 25(5)(a) of the Seniors Housing SEPP (**Attachment C**); and

- **Determines** that the application for a site compatibility certificate under Clause 25 (4) be refused for the for the reasons outlined in this report.

Recommended by:

**Thomas Soccio**  
**Planning Officer,**  
**Agile Planning and Programs**

Endorsed by:

**5 June 2021**

**Charlene Nelson**  
**Manager Infrastructure & Planning,**  
**Eastern Harbour City**



**6 July 2021**

**Eva Stanbury**  
**Acting Director, North District**



**22 July 2021**

**Malcolm McDonald**  
**Executive Director,**  
**Eastern Harbour City**



## Attachments

Attachment	Document
<b>A</b>	Applicant SCC Report
<b>B</b>	Architectural Plans
<b>C</b>	Survey Plan
<b>D</b>	Site Plan
<b>E</b>	Landscape Plans
<b>F</b>	Perspective Renders
<b>G</b>	Perspective drawings
<b>H</b>	Landscape Intent Statement
<b>I</b>	Tree Retention and Removal Plans
<b>J</b>	Shadow Diagrams
<b>K</b>	Internal Road Drainage Plans
<b>L</b>	External Road Drainage Plans
<b>M</b>	Bushfire Response Letter and Emergency and Evacuation Management Plan
<b>N</b>	Flora and Fauna Assessment
<b>O</b>	Arboricultural Impact Assessment Report
<b>P</b>	Biodiversity Management Plan
<b>Q</b>	Traffic and Parking Assessment Report
<b>R</b>	Social Impact Assessment
<b>S</b>	Preliminary Water and Sewer Servicing Report
<b>T</b>	Detailed Site Investigation
<b>U</b>	Acoustic Report
<b>V</b>	Statement of Compliance Access for People with a Disability
<b>W</b>	Flood Study
<b>X</b>	Council Submission (20 January 2021)
<b>Y</b>	Proponent Response to Council submission (24 February 2021)
<b>Z</b>	Panel Resolution to request Cumulative Impact Study (9 June 2020)
<b>AA</b>	Letter to Council advising of decision
<b>AB</b>	Letter to applicant advising of decision