

File No: 11/06043

**Report to the Director General on an application for a Site Compatibility Certificate
State Environmental Planning Policy (Housing for Seniors or People with a Disability)
2004**

SITE: Land at 28-30 Ivy Avenue, McGraths Hill (Lot 25 & 26, DP 1025505). Refer to Appendix 1 and 2 for Site Location and Existing Lot Layout.

APPLICANT: David Woodham c/- Barker Ryan Stewart

PROPOSAL: A Site Compatibility Certificate (SCC) is sought to support a development application to construct a total of 36 serviced self-care housing units (i.e. 17 attached and 19 detached) and community centre.

The Council is required to consider Clause 17 of the SEPP when determining any development application (DA) and it will need to be satisfied that the units will be provided:

- for people with a disability; or
- in combination with a residential care facility; or
- as a retirement village (within the meaning of the *Retirement Villages Act 1999*).

Please refer to Appendix 3 for a proposed site layout; Appendix 4 for SEPP (Housing for Seniors or People with a Disability) 2004; and Appendix 5 for the relevant clauses of the Retirement Villages Act.

As of 10 March 2011, no DA has been submitted to Hawkesbury City Council for the subject site.

In accordance with Clause 5(a) of the SEPP, Hawkesbury City Council was notified on 23 February 2011 (Appendix 6). Council's comment was submitted to the Department on 7 March 2011 (Appendix 6).

LGA: Hawkesbury City Council

PERMISSIBILITY STATEMENT

The site is zoned *Rural Living* under the provisions of *Hawkesbury Local Environmental Plan 1989*. A copy of the zoning map is attached (Appendix 7). The aims of the *Rural Living* zone are to enable the continued use of the agricultural land; minimise conflict with rural living; to provide for rural residential development on former agricultural land if the land has been remediated; and to preserve the rural landscape character of the area.

The *Rural Living* zones permits dwelling houses, but housing for seniors or people with a disability is prohibited.

Under the provisions of Hawkesbury LEP 1989 (Appendix 8), the area to the north and west of the site is predominately zoned *Rural Living* and *Environmental Protection (Mixed Agricultural)* zones. The *Environmental Protection (Mixed Agricultural)* zone generally provides for sustainable agricultural activities and ensures development does not create or contribute to rural land use conflicts.

Land to the south and east of the site is zoned *Residential (Housing)* (Appendix 9). Hence, the SEPP applies to this proposal as it is on land that adjoins land zoned primarily for urban purposes. This zone aims to facilitate low density housing (single dwellings only) and associated facilities in locations of high amenity and accessibility.

The aim of the SEPP (*Clause 2: Aims of Policy*) (Appendix 4) is to encourage the provision of housing (including residential care facilities) that will increase the supply and diversity of residences that meet the needs of seniors or people with a disability. The SEPP seeks to achieve this aim by setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards it specifies.

The application for a SCC can therefore be considered as the site is:

- Within the zone that allows the development of dwelling-houses (in accordance with Clause 4 of the SEPP); and
- On land that adjoins land zoned primarily for urban purposes (in accordance with Clause 24 of the SEPP).

CLAUSES 24(2) AND 25(5)

The Director General must not issue a certificate unless the Director General:

- (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).*

COMMENTS FROM COUNCIL

Hawkesbury City Council submitted its comments to the Department on 7 March 2011, and the issues raised are as follows:

1. Consistency with Local and Regional Strategies:

The application has not made adequate mention of the draft Northwest Subregional Strategy and did not consider the draft Hawkesbury Residential Land Strategy. It is

clear that the proposal is inconsistent with the general direction of both of these documents. All non-urban land currently affected by the 1in100 year flood event was not considered suitable for intensification or residential development in Council's draft residential development strategy.

It is not considered appropriate that an individual development be assessed for consistency against high level strategies such as Sydney Metropolitan Strategy or the Hawkesbury Community Strategic Plan.

2. Flood Evacuation

McGraths Hill has not been identified for future investigation for residential development in Council draft residential strategy due to the flood affectation and evacuation problems of the locality.

The application has not made any provision for flood evacuation of the site. The evacuation route in times of flood would be via Pitt Town Road and Windsor Road. The proposed primary flood evacuation route from the site is cut in Ivy Street, close to the intersection of Pitt Town Road. The road level in this vicinity is approximately 14.5m AHD¹ and will inundate in a 1 in 10 or 12 year flood event. Given that the proposed development is for Seniors Housing, it is not appropriate that such housing should be located in an area that is isolated relatively frequently by flood water.

3. Other comments:

Council also noted that many of the components of the SEPP have been addressed; however it is concerned with the above strategic justification and flood evacuation information.

Comment: The matters raised by Council are addressed further in this report.

SUITABILITY FOR MORE INTENSIVE DEVELOPMENT

The Director General must not issue a certificate unless he/she is of the opinion that the site of the proposed development is suitable for more intensive development (clause 24(2) (a)):

1. The site of the proposed development is suitable for more intensive development (clause 24(2)(a))

The subject site is unsuitable for more intensive development for the following reasons:

- The proposed development contradicts the draft North West Subregional Strategy since it identified land south of the Hawkesbury River as not suitable for additional growth without substantial further upgrades to the flood evacuation network.

¹Australian Height Datum is a geodetic datum for altitude measurement in Australia.

Average recurrence interval (ARI) is a "statistical estimate of the average period in years between the occurrence of a flood of a given size or larger (e.g. floods with a discharge as big as, or larger than the 100-year ARI flood event will occur on average once every 100 years). The ARI of a flood event gives no indication of when a flood of that size will occur next".

- The subject site is located on flood prone land and a large portion of the site is located below the 1 in 100 year flood event.
- The application lacked detail in relation to the fill required for the site to be raised to achieve the 1 in 100 year flood level for proposed dwellings.
- The applicant has not made adequate provision for flood evacuation of the site.
- The application does not adequately assess in detail the likely impacts the proposed fill would have on the peak discharge or the flood and stormwater behaviour in the vicinity of the site.

COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND SURROUNDING LAND USES

The Director General must not issue a certificate unless he/she is of the opinion that the proposed development for the purposes of seniors housing is compatible with the surrounding environment and surrounding land uses having regard to the following criteria (clause 25(5)(b)) and clause 24(2)(b)):

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))

Ecological: Due to previous uses, the majority of the site has been cleared of vegetation. On-site vegetation is limited to grass paddocks and small number of trees mostly located near the dam. Further investigation would be required at the DA stage.

Flood Risk: The subject site is located on land below the 1 in 100 year level for the Hawkesbury Nepean River (Appendix 13).

According to the Site Compatibility Report submitted by the proponent, the natural ground level varies across the site, ranging from 15m AHD in the south west of the site to 16.9m AHD in the north eastern corner of the site. The proponent proposed "minor filling" of the site so that the minimum level for each of the units and the associated community building will be at the 1 in 100 year flood level of RL17.3m AHD. In addition, it is proposed that the units will contain a freeboard (i.e. 0.3m) which will result in a final floor level of 17.6 AHD.

The documentation submitted by the proponent does not clearly indicate the amount of fill required for the site to be raised to 17.3 AHD. No site survey and details of the proposed fill were submitted as part of the application.

The contour map submitted by Hawkesbury Council indicates that the natural ground level varies across the site, ranging from 13m AHD to 17.5m AHD.

Based on these levels, the proposed development will require fill of approximately 3.3m to achieve a high of 17.3m AHD as indicated on Figure 1. The fill is considered excessive and the proponent has failed to demonstrate that the proposed fill and finished floor level will be in character (i.e. height, scale and bulk) with the surrounding topography and properties and assess the likely impacts of the proposed fill would have on the peak discharge or the flood and stormwater behaviour in the vicinity of the site.

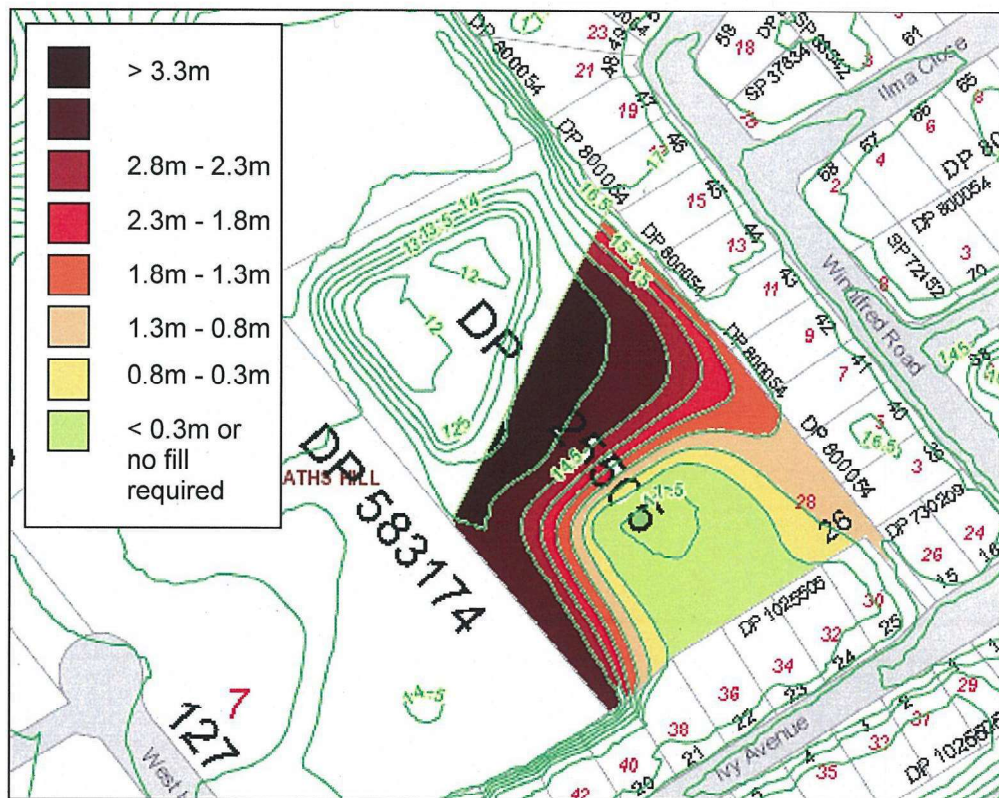


Fig 1: Fill required for the site to achieve 1 in 100 year flood level (17.3m AHD)

The current proposal seeks to place additional dwellings on the land that is affected by the 1 in 100 year flood level in a locality that has known deficiencies for effectively evacuating the existing population in times of flood.

The draft North West Subregional Plan states that:

"Future housing growth in the Hawkesbury local government area is substantially constrained by the capacity within the existing evacuation network. For most parts of the Hawkesbury local government area to the south of the Hawkesbury River there is no capacity for additional growth outside that already planned under the Hawkesbury Local Environmental Plan, without substantial further upgrades to the flood evacuation network." (p.82)

It is noted that Hawkesbury City Council has prepared a draft Residential Development Strategy which will provide for additional dwellings to achieve the targets required in the draft North West Subregional Strategy (5000 dwellings). This draft residential strategy seeks to avoid flood prone areas in relation to future urban development. In this regard, all non-urban land currently affected by the 1 in 100 year flood event was not considered suitable for intensification or residential development.

The draft SRS is being used to inform zoning decision within the Hawkesbury Local Government Area and has been since the implementation of Government works to enhance the evacuation capacity. The strategy has been consistently applied in the North-West region and can be illustrated by the following examples:

- Pitt Town - The rezoning of land at Pitt Town was restricted so that the number of dwellings would not exceed the SES-agreed capacity of the safe evacuation route.
- North Bligh Park – The Metropolitan Development Program (2008-2009) identified that North Bligh Park as a Greenfield Release Area with a capacity of 600 lots. A Planning Proposal [(PP_2010_HAWKE_002_00 (10/18298))] was submitted to the Department seeking the rezoning of land from Mixed Agriculture and Open Space zones to Housing zone and to permit retail/commercial facilities on the land to support future residential development. However, the Department did not support Council in initiating a rezoning process for the following reasons:
 1. The critical issue of flooding and flood evacuation need to be addressed in the light of Council's Flood Risk Management Study/Plan.
 2. The outcomes of this Flood Risk Management Study/Plan should inform any planning proposal to rezone the subject land.
 3. The views of the State Emergency Services in relation to flood evacuation should be obtained once the Flood Risk Management Study/Plan has been completed.

Whilst the subject site may comply (or be made to comply) with other provisions of the SEPP, the flood prone nature of the land and the risk posed for future residents in relation to flood evacuation is sufficient reason to not issue the certificate under the provisions of clause 25(5)(b)(i).

Bushfire: The subject site is not identified as Bushfire Prone Land (Appendix 15).

Heritage: A review of the relevant LEP and the State Heritage Register has been conducted. No items have been listed for this site.

It is noted that a local heritage item, No. 21 Beddek Street, is located approximately 200m from the subject site. All proposed works will be contained within the property boundaries and will have no impacts on the heritage items.

Geotechnical and Land Contamination: There are no known contamination issues resulting from past land uses on the site.

According to the Hawkesbury Council contour map, the application would require fill, ranging from 0m to 3.3m, for the site to achieve a level of 17.3m AHD. The required fill is considered excessive and the proponent has failed to provide a geotechnical report in support of the application.

Existing Uses: The subject site contains an existing residence, dam and fencing.

"The site is split into two distinct levels. The area to the south and east (i.e. adjoining to the residential dwellings) has been fill to an approximately level of RL16.9m AHD with an area of 6,000sqm".

The remainder of the site, to the north and west, has a level of approximately RL15m and contains a dam.

Land in the Vicinity: The properties to the north are zoned as *Rural Living* and *Environment Protection (Agricultural Protection)*.

The properties to the south and east, along Ivy Avenue and Winnifred Road, are zoned *Residential (Housing)* and occupied by single or two storey detached dwellings.

The land to the west is currently being used as a childcare centre and is located approximately 70m from the common boundary.

2. The impact that the proposed development is likely to have on the uses that, in the opinion of the Director General, are likely to be the future uses of that land (clause 25(5)(b)(ii))

Metropolitan Plan for Sydney 2036

The Metropolitan Plan for Sydney 2036 is a strategic document that outlines a vision, challenges and directions for Sydney over the next 25 years. The following actions are related to the SCC application:

Action B1.3 – “Aim to located 80 per cent of all new housing within the walking catchments of existing and planned of all sizes with good public transport”

Action F3.1 – “To promote agricultural activities positively in Sydney to reduce land use conflict”

The subject site is zoned *Rural Living* under the provisions of Hawkesbury LEP 1989 and located at the boundary between *Residential (Housing)* and *Rural Living*. It is noted that the lands to the south and east are zoned *Residential (Housing)*, mainly consist of low density detached dwellings. The properties to the north and west are zoned as *Rural Living* and *Environment Protection (Agricultural Protection)*. Due to the proximity to other residential developments (i.e. Ivy Avenue and Winnifred Road), the potential for the site to be used as agricultural land is diminished due to possible land use conflicts.

The subject site is located approximately 290m from the nearest bus stop on Pitt Town Road which, provide regular connections (generally every hour on weekdays) to the nearby Windsor Town Centre. Occupants of the site will therefore, have access to the range of facilities identified within Clause 26 (1). Refer to Appendix 10 for the locations of bus stops.

Draft North-West Subregional Strategy

The draft North-West Subregional Strategy identified the site as “Rural/Non Urban land”. The aim of Rural/Non Urban Land is to ensure these “valuable areas are utilised productively and not preserved as “urban land in-waiting”.

The following actions, contained in the Subregional Strategy, are related to the SCC application:

Action C2.2 - “Provide self-caring housing for seniors and people with a disability”

Action E4.2 - *“Protect Resource Lands from Incompatible and Inappropriate Uses”*
Action C1.1.3 – *“Hawkesbury Council to prepare a strategic residential land use study to consider opportunities for further growth around local centres to the north of the Hawkesbury River, cognisant of flooding and flood evacuation issues”.*

The proposal will enable the construction of 36 serviced self-care housing units within close proximity to public transport. The self-care housing will be located adjacent existing dwellings, along Ivy Avenue and Winnifred Road and minimise conflicting land uses.

However, the Subregional Strategy also identified that land south of the Hawkesbury River as not suitable for additional growth without substantial further upgrades to the flood evacuation network. No upgrade to the flood evacuation network is proposed and detailed Flood Emergency Response Plan is not submitted as part of the application.

The draft SRS is also being used to inform zoning decision within the Hawkesbury Local Government Area and has been since the implementation of Government works to enhance the evacuation capacity. The strategy has been consistently applied in the North-West region and can be illustrated by the following examples:

- Pitt Town - The rezoning of land at Pitt Town was restricted so that the number of dwellings would not exceed the SES-agreed capacity of the safe evacuation route.
- North Bligh Park – The Metropolitan Development Program (2008-2009) identified that North Bligh Park as a Greenfield Release Area with a capacity of 600 lots. A Planning Proposal [(PP_2010_HAWKE_002_00 (10/18298))] was submitted to the Department seeking the rezoning of land from Mixed Agriculture and Open Space zones to Housing zone and to permit retail/commercial facilities on the land to support future residential development. However, the Department did not support Council in initiating a rezoning process for the following reasons:
 1. The critical issue of flooding and flood evacuation need to be addressed in the light of Council’s Flood Risk Management Study/Plan.
 2. The outcomes of this Flood Risk Management Study/Plan should inform any planning proposal to rezone the subject land.
 3. The views of the State Emergency Services in relation to flood evacuation should be obtained once the Flood Risk Management Study/Plan has been completed.

Achieving a Hawkesbury-Nepean Floodplain Management Strategy

In 1997, the NSW State Government responded to the risk of flooding in the Hawkesbury-Nepean valley by forming the community based Hawkesbury-Nepean Flood Management Advisory Committee to undertake investigations and make recommendations to the Government regarding management of the flood risks. The Committee presented its report entitled ‘Achieving a Hawkesbury-Nepean Floodplain Management Strategy’ to the NSW Government in 1997. The guidelines aim to reduce future flood losses and damages and provide for safer occupancy of the floodplains. Since the preparation of the Hawkesbury-Nepean Floodplain Management Strategy,

approximately \$58.1 million has been spent on improving the flood evacuation network for the Hawkesbury-Nepean area. These upgrades have improved the flood evacuation situation for existing residents and provided limited capacity for planned growth.

Flood Plain Development Manual

Please refer to Appendix 17 for further discussion.

Draft Hawkesbury LEP 2009

Under the draft *Hawkesbury LEP 2009*, the subject site and lands immediately to the north and west is identified as *Rural Small Holdings*. The aim of this zone is to maintain the rural and scenic character of the land; ensuring that future development does not unreasonably increase the demand for public services or public facilities; minimise conflict between landuse within the zone and land uses within adjoining properties; and enable identified landuses to continue in operation (Appendix 14).

The proposed serviced self-care units will minimise landuse conflict with residential dwellings adjoining the south and east boundary and will not unreasonably increase the demand for public services or facilities. It is considered the application is not inconsistent with the aims of the *Rural Small Holdings* zone set out in the draft *Hawkesbury LEP 2009*.

Draft Hawkesbury Residential Land Strategy

It is noted that the proponent did not address the draft Hawkesbury Residential Land Strategy which was exhibited by Council in December 2010 to February 2011. The applicant lodged a submission to Council seeking the inclusion of the site for residential purposes. This was considered by Council at its meeting of 10 May 2011 where it resolved not to include the site. This was due to all land in McGraths Hill and Mulgrave being removed from investigation because of the unacceptable flooding and evacuation impact. More generally, all land in the city located below the 1 in 100 year flood event was not considered suitable for intensification for residential development.

The intent of the Hawkesbury Residential Land Strategy is to guide the location and type of future residential development within the LGA. As highlighted in the Strategy, the Hawkesbury LGA is expected to have significant increase in those aged 60+ which will impact on housing needs, services and facilities.

Hawkesbury Community Strategic Plan 2010-2030

The Hawkesbury Community Strategic Plan 2010-2030 provides a definitive set of directions and initiatives to guide the development of the community during the next 20 years.

The Community Plan provides an overview of the community's major priorities grouped under five key focus areas of:

- Looking after People and Place
- Caring for our Environment

- Linking the Hawkesbury
- Supporting Business & Local Jobs
- Shaping our Future Together

It is considered that the proposed serviced self-care housing development is generally consistent with the directions and priorities of the Community Plan. //

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))

Location and Access to Facilities: *Clause 26: Location and Access to Facilities*, of the SEPP requires that residents of a proposed development have access to:

- (a) shops, bank service providers and other retail and commercial services that residents may reasonably require;
- (b) community services and recreation facilities; and
- (c) the practice of a general medical practitioner.

The clause notes that access is complied with if the facilities and services are located no more than four-hundred metres away; or if they are, that there is a public transport service available that will take them to within four-hundred metres of the required facilities.

The proposed development of the subject site contains one access point:

- i) access off of Ivy Avenue

As indicated in the Infrastructure Services Report, it is proposed that the existing dwelling located on 30 Ivy Avenue (Lot 25 DP 1025505) be removed to facilitate the construction of a 6m wide internal two-way vehicle driveway and a separate pedestrian footpath.

The subject site is located in close proximity to following centres:

- Rouse Hill – A Planned Major Centre, approximately 10km from the site;
- Windsor – A Town Centre, approximately 2 km from the site; and

The subject site is located approximately 290m from the nearest bus stop on Pitt Town Road. Route 661 and 663 provide regular connections (generally every hour on weekdays) to the nearby Windsor Town Centre.

Windsor Town Centre provides a range of facilities such as banking, medical centres, a range of retail and commercial services, community centre and recreation facilities and hospital.

In addition, the application proposed the following:

- On-site community centre – *“the centre will be located toward the dam on the southern section of the land and used by the residents of the estate for socialising, meetings, functions and recreation activities. The community centre will also*

contain an administration area for the day to day management of the retirement village. A health consulting room will also be provided in the community centre for visiting health professional”.

- Wetland and Recreational Facilities – *“the existing dam will be upgraded to create a wetland setting with park benches and barbeque facilities along the perimeter of the wetland”.*

As demonstrated above, the subject site has sufficient access to the retail, community and transport services and satisfies the requirement set out Clause 26 of the SEPP. *Please refer to Appendix 10 for a map of the local road network and existing and proposed bus routes/stops.*

Infrastructure and Services: The proponent has indicated the site is serviced with water, sewerage, power and telecommunication. Some minor and extensions to the existing utility infrastructure to service will be necessary in consultation with Sydney Water, Hawkesbury Council (sewerage), Integral Energy and Telstra.

However, no formal investigation has been conducted by the proponent into the capacity of the facilities and infrastructure. Hence, it is uncertain whether the services and infrastructure will be available to meet the demands arising from the proposed development.

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))

This provision is not relevant.

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))

As indicated in the draft *Hawkesbury LEP 2009*, the subject site and lands to the east and south are zoned as Rural Small Holdings. The aim of this zone is to maintain the rural and scenic character of the land while ensuring that future development does not unreasonably increase the demand for public services or public facilities.

The adjoining properties are primarily being used as residential and largely consist of single and two storey dwellings.

The application proposes the construction of 17 attached and 19 detached single storey dwellings. As shown on Plan No. 07055DA3, the proposed building types and footprint are consistent with the dwellings along Ivy Avenue and Winnifred Road (i.e. adjoining the east and south common boundaries).

Note: *No elevation or section of the proposed units was provided as part of the Site Compatibility Certificate application.*

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))

As discussed previously, the majority of the site has been cleared of vegetation. On-site vegetation is limited to grass paddocks and small number of trees mostly located near the dam. Further investigation will be required at the development application stage. In addition, the subject site is not subject to the Native Vegetation Act 2003.

CONCLUSION

Given the flood affectation of the site, that is, being located at or below the 1 in 100 year flood level and the significant issues associated with evacuation the existing population of McGraths Hill, the request for a Site Compatibility Certificate should not be approved. Whilst the subject site may comply (or be made to comply) with other provisions of the SEPP, the flood prone nature of the land and the risk posed for future residents in relation to flood evacuation is sufficient reason to not issue the certificate under the provisions of clause 25(5)(b)(i).

As identified in the draft North West Subregional Strategy that there is no capacity for additional growth for land to the south of the Hawkesbury River unless there are substantial further upgrades to the flood evacuation network. Hence, the Site Compatibility Certificate is inconsistent with the direction of the draft North West Subregional Strategy.

Having regard to all of the above matters, it is considered that the proposal is unsuitable for the development of self-care housing units and is inconsistent with Clause 24 and 25 of the SEPP (Housing for Seniors or People with a Disability) 2004. Hence, it is recommended Site Compatibility Certificate not be issued in this instance, subject to reasons identified.