



**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: The subject land is located at 183 -197 Boronia Road, North St Marys (Lot 312 DP 863203), near the intersection of Forrester Road and Boronia Road (to the west of the site). Refer to Appendix 1 and 2 for site location and aerial photograph. A zoning extract is attached (Appendix 3).

- The area of the site is 1.37 ha. and is a relatively level allotment, with a fall of less than 1 metre from the rear of the site to the Boronia Road frontage.
- The site is primarily vacant and is cleared with minor improvements associated with perimeter fencing, a garden and landscape supply business on the western portion of the site and demountable sheds and training facilities associated with the St Marys Rugby Leagues Club (RLFC) on the eastern portion of the land. The applicant has advised that these site improvements and land uses will be removed as a consequence of the proposed development.

The surrounding area consists largely of residential dwellings (immediately to the east and south), with the St Marys RLFC located north of the site on Boronia Road. The St Marys Industrial Estate is located to the west (on the opposite side of Forrester Road) and a McDonalds restaurant is located immediately adjacent to the intersection of Forrester and Boronia Roads.

APPLICANT: Mr Ross Fleming of Boston ^{Blyth} Fleming

PROPOSAL: The applicant seeks a site compatibility certificate to permit a residential care facility which will provide residential accommodation for approximately 124 aged persons (with some suffering from dementia). Services will include meals, cleaning and nursing care, as well as all furnishing and equipment.

In addition to the residential care and accommodation, the use will include the provision of a range of extended services to residents including: physiotherapy, aromatherapy and podiatry services, entertainment, hairdressing and beautician services and access to a range of related health care services and professional medical services on an individual patient's needs basis and as required.

LGA: Penrith

PERMISSIBILITY STATEMENT

The site (Lot 312 DP 863203) has a split zoning, with the western portion being zoned 3(d1) Special Business under *Penrith Interim Development Order 81* and the remainder being zoned 2(b) Residential pursuant to the *Penrith Urban Lands LEP 1988* (refer to diagram - Appendix 3).

While the proposal is permissible on the residential zoned portion of land, the proposal is not permissible within the 3(d1) zone and requires a site compatibility certificate for that part of the allotment to allow the development to proceed as proposed.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP 2004) states that this policy applies to land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes.

The part of the site zoned residential is clearly "land zoned primarily for urban purposes". The land zoned 3(d1) under IDO 81 is considered to be "land that adjoins land zoned primarily for urban purposes".

In these circumstances, the SEPP allows the issue of a site compatibility certificate under clauses 24 and 25.

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

As indicated (above) the Director General must not issue a certificate unless he has taken into account any written comments concerning the consistency of the proposed development with the criteria specified in clause 25(5)(b) received from the General Manager of the Council within 21 days after the application for the certificate was made [clause 25(5)(a)].

Council's comments (letters of 3 February and 14 February) were received by the Department on 7 February and 15 February, 2012, respectively (refer to Appendix 4 & Appendix 5). The comments of 3 February were within the statutory time limit, while the comments received on 15 February were outside the statutory time frame.

Council's letter of 3 February advised that it had held a pre-lodgement DA meeting with the proponent in October 2011 and attached a copy of the meeting advice (Appendix 6).

Council highlighted the key issues to the developer and asked the following be addressed:

- The provision of flood safe access for evacuation purposes.
- Given the density of development proposed and the current surrounding residential development, the potential noise and local traffic impacts.
- There are also some adjoining commercial land uses that may impact on future residents of the senior housing development that need to be considered.

It is noted that in its pre-lodgement advice, Council also highlighted the following issues:

- existing easements;
- bushfire considerations, and
- contamination issues.

These additional issues are addressed in this report.

Subsequently, in its letter of 14 February (Appendix 5), Council advised that the current application does not provide sufficient information to allow an assessment of its consistency with the specific provisions of the Seniors Housing SEPP and requested that until additional information addressing these matters is provided, a Site Compatibility Certificate should not be issued.

Following are the issues raised by Council:

The Natural Environment

Flooding and Evacuation

The site is located in an area at risk from flooding during a 1% annual exceedance flood event.

- The flood risk information available to Council indicates that the likely flood water level (1% annual) for the site, during such as event is 26.00 metres AHD.
- Council has advised that while the developer has provided a detailed report on flood risk in support of the application (copy at Appendix 7), which identified and proposes mitigation works, the report does not address the provision of a safe and effective evacuation from the site.
- The application also fails to demonstrate any level of consultation with the State Emergency Service.

Comment:

To clarify Council's comments, on 16 February 2012, Council was requested to supply additional information concerning the flood issue, including the supply of a flood map of the area (Appendix 8). On 14 March 2012, Council provided a flood map diagram (Appendix 9).

This diagram indicates part of the site (fronting Boronia Road, and the road itself) is at or below 26 AHD (i.e. the 1% flood event level). Therefore, Council was concerned that evacuation during a flood event could not be safely undertaken via Boronia Road and this matter had not been clearly addressed by the applicant.

The applicant had included a 'Flood Evacuation Procedures' diagram with the SCC application (Appendix 10). This diagram shows a stage 2 assembly area in the south western corner of the site, without any further advice on a means of evacuation.

As indicated in the former government's Floodplain Development Manual (April 2005), particular consideration should be given to the mobility of people where evacuation may be necessary (see L6.7 of the manual, for example). The proposal will cater for 124 residents, with restricted mobility and function, and it would be inappropriate for this population to be required to evacuate via Boronia Road into the possible presence of flood waters.

This matter was discussed with council's engineer and no objections were raised to the proposal provided a reasonable evacuation route was available through the site's adjoining Aylett Street and/or Grose Avenue (see aerial photo at Appendix 2). These streets are above 26 AHD and would serve to safely evacuate residents. An appropriate condition to this effect, together with an appropriate turning bay on site for vehicles at this location, is recommended for attachment to the certificate.

Existing and Approved Uses in the Vicinity:

Council considers that there is unlikely to be any land use conflict between the proposed development and the low density residential development adjoining the site's eastern and southern boundaries.

However, the land immediately to the west of the site is occupied by a food and drink premises (McDonalds). While the application notes the presence of this adjacent land use and states that the location of less sensitive aspect of the proposed development will be located in the vicinity, the application makes no assessment of any potential land use conflicts.

Comment:

It is noted that on the indicative floor plan submitted by the applicant (Appendix 11) the proposed building(s) are separated from the restaurant by a parking area, loading dock and utility rooms (e.g. furniture store, main switch room, etc.). Given this setback and building arrangement, it is not considered that there would be any undue conflicts and this matter can be satisfactorily addressed at development application stage.

The Metropolitan Plan for Sydney 2036:

Council advises that the application does not assess the consistency of the proposed development with this document.

Comment:

It is acknowledged that that the application does not address the consistency of the proposed development with the Metropolitan Plan for Sydney 2036.

It is noted, however, that the Metropolitan Plan for Sydney 2036 and the draft North West Subregional Strategy acknowledges the growing population of people over 65 years of age by 2036, and the increased demand for housing seniors and people with a disability. Both of these documents encourage sufficient housing for seniors (and people with disability) at appropriate locations where there is easy access to services such shops, banks, public transport, community facilities and medical services.

It is considered that the proposed development generally meets the above criteria for seniors housing within the Penrith LGA, as discussed further under the heading: *the services and infrastructure that are or will be available to meet the demands arising from the proposed development*, in this report.

The proposal is considered to be generally consistent with the objectives of the Metropolitan Plan.

Principal (comprehensive) Standard Instrument LEP:

Council has received an initial Gateway Determination to proceed with its draft comprehensive Standard Instrument LEP. Council contends that under this Planning Proposal it will rezone the land currently zoned 3(d1) Special Business to a B1 Neighbourhood Centre Zone and translate the remainder of the allotment to a R2 Low Residential Zone.

The B1 Neighbourhood Centre Zone provides for a range of small scale retail, business and community uses that would serve the needs of people who live or work in the surrounding neighbourhood. The R2 Low Density Residential Zone provides for the housing needs of the community within a low density residential environment.

Council has accordingly contended that the proposed development is inconsistent with current and proposed zone objectives and will prevent future planned uses of the site from occurring.

Comment:

Under the provisions of the draft Penrith Principal LEP, the proposed development is permissible with consent under the R2 Low Density Residential Zone. However, the proposal will not be permitted under B1 Neighbourhood Centre.

As previously indicated, this certification is for the part of the site which is currently zoned 3(d1) Special Business under Penrith Interim Development Order 81, which is proposed to be zoned as B1 Neighbourhood Centre under the draft Penrith Principal LEP and does not permit 'seniors housing' within that zone.

While Council's views are appreciated from a strategic point of view, the submission of a SCC application and its determination would continue to remain valid under the Standard Instrument LEP – should it be made in this form.

Available Services and Infrastructure in the vicinity of the proposed development:

Council contends that the application does not provide an assessment of its consistency with Clause 26 of the SEPP, instead the applicant makes a statement that access to such services by the residents will not be required given the nature of the services offered by the proposal and the restricted mobility and function of the residents. The application however advises that bus services are available near the site.

Comment:

It is noted that the applicant has advised that in addition to residential care and accommodation, various services will be provided on site, such as physiotherapy, podiatry, entertainment, hairdressing, beautician, and access to a range of related health care services and professional medical facilities.

In addition, Council's preliminary assessment indicates that services located at Park Lawn Place, St Marys, (the nearest local centre) are available approximately 1.5 km away from the site (more than the required 400 metres). Council also contends that this centre does not provide the full range of services listed in the relevant provision of the SEPP. Council notes that a full range of services is provided at the St Marys Town Centre. This centre is located 2 km from the site.

It is noted that the site is within 400 metres of a regular bus services to the St Marys Shopping Centre and the Penrith CBD. For information, copies of bus route maps are attached at Appendix 12 and an indicative 'trip planner result' - with a sample bus time table, are attached at Appendix 13.

Given that regular bus services are available within 400 metres from the site and are readily accessible, it is considered that the proposal fulfils the intent of the SEPP in this regard (see clause 26 of the SEPP).

As indicated, Council also raised the issues of: existing easements; bushfire considerations; and contamination. These issues are addressed in the following section of the report.

COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND SURROUNDING LAND USES

Clause 25(5)(b) of the SEPP requires that the Director General must not issue a certificate unless he 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:

- (i) **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:

The site is generally clear of vegetation (refer to aerial photo at Appendix 2).

Flood Risk:

The issue of flood evacuation measures has been addressed within the *Comments from Council* section of this report. It is concluded that the proposal may safely provide for evacuation subject to amendment of the proposal to ensure that vehicular access is provided for evacuation purposes via with either Aylett Street and/or Nebula Glen.

In terms of the suitability of the site for development, the applicant has provided an Overland Flow Path Assessment Report (Mott MacDonald – March 2011 – Appendix 7). This report:

- assesses the overall catchment of the site, undertakes hydrological calculations to estimate the magnitude of surface flows through the site for the 100 yr ARI;
- determines the capacity of the existing stormwater infrastructure in the vicinity;
- makes recommendations on how major overland flows (1 in 100 yr ARI) may be conveyed through the site; and
- makes recommendations for floor levels and freeboard for proposed works.

The report indicates that the proposed facility can be satisfactorily constructed in conformity with appropriate construction standards and with minimum floor levels to RL 26.5 AHD, which is consistent with Council's flood planning advice. ✓

Bushfire:

A small portion of the subject land (i.e. the north east of the allotment) is identified by Penrith City Council's Bushfire Prone Land Map (Appendix 14) as being within the 100 metre buffer zone from Category 1 vegetation and therefore the application of *Planning for Bush Fire Protection – 2006* (Rural Fire Service) must apply in this instance. The vegetation identified as being of a potential bushfire hazard is located to the northeast within the St Marys Rugby League Club allotment (see aerial photo – Appendix 2).

A revised Bushfire Hazard Assessment Report (prepared by Building Code & Bushfire Hazard Solutions, April 2012 - see Appendix 15) has been subsequently submitted with the application.

The report concludes that the minimum required Asset Protection Zone for the proposal would be 40 metres. The report notes that the proposed facility would be located 94 metres from the hazard to the south east.

Further, provided the measures contained in the report are adopted, a satisfactory level of bushfire protection to the subject development can be provided. ✓

Heritage:

A review of the relevant Local Environmental Plan and the State Heritage Register has indicated that no heritage items are identified as being present on the subject land.

Geotechnical and Land Contamination:

No information in this regard had been provided with the application.

Penrith Council raised 'contamination' as a possible issue in its DA pre-lodgement meeting (see Appendix 6). It is noted that the detail survey submitted with the application (see Appendix 16) indicates that there are 'unknown tanks (underground)'.

This matter was subsequently raised with the applicant and the applicant has provided a history of the allotment (see Appendix 17). This initial history does not raise the possibility of any hazardous use of the site.

In these circumstances it is considered that any former use of the site would not necessarily preclude the Director General issuing a SCC and that this matter can be further investigated at development application stage. ✓

Views:

The applicant has advised that the site has a northerly aspect to Boronia Road with limited outlooks confined to the immediate streetscape. The characteristics of the site and the locality indicate that the land is not prominent and development as proposed would not impinge upon any long distance or immediate view lines.

Existing Uses:

The site is predominately vacant with large grassed areas. An existing nursery is situated on the western side of the site, along with demountable style buildings in the centre. The applicant has advised that these land uses will be removed as a consequence of the proposed development.

Council's pre-lodgement DA advice (see Appendix 6) indicated that the site was affected by three easements. Two are shown on the diagram at folio 16 and are associated with existing uses on the site and can be readily removed.

The third easement is for an underground mains easement – one metre wide (shown at Appendix 18). This would not hamper development of the site.

Land in the vicinity:

Development in the vicinity of the site comprises:

- a McDonald's drive through restaurant adjoining to the west at the intersection of Forrester Road and Boronia Road,
- St Mary's Rugby League Club, located north of the site on Boronia Road and
- residential dwellings adjoining the land to the east and south of the site.

Adjacent residential streets are: Aylett Street and Grose Avenue. These streets meet the subject site's boundaries and are shown on the aerial photo (see Appendix 2).

It is not considered that these use would hamper the proposed development. ✓

- (ii) **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))**

As discussed under the *Comments from Council* section of this report, Council has contended that the proposed development is inconsistent with current and proposed zone objectives and will prevent future planned uses of the site from occurring.

While Council's views are appreciated from a strategic point of view, the submission of a SCC application and its determination would continue to remain valid/permissible under the Standard Instrument LEP – should it be made in the proposed form.

It is accordingly considered that while the issue of a SCC may preclude one form of urban/retail development, the proposal will provide for another urban use in keeping with the future residential use of that land.

- (iii) **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 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.

This clause notes that access is complied with if:

- o the facilities and services are located no more than four-hundred metres from the site; or
- o if these facilities are not so located, that there is a public transport service available that will take residents to within four-hundred metres of the required facilities.

Location and Access to Facilities

This matter has been discussed under the *Comments from Council* section of this report and it is considered that available transport services exist to meet the requirements of the clause 26.

Utility Infrastructure

The proponent has not provided any information regarding infrastructure. However, it is considered that given the urban nature of the locality and the current urban zoning of the land, utility services capacity would be available.

- (iv) **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.

- (v) **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 proponent's report indicates that the development comprises, single storey, 116 individual rooms with associated en-suits and sitting areas, which is compatible with the existing and future surrounding land uses.

The plans submitted by the applicant indicate that the proposed built form will be generally compatible with the surrounding properties and there will be little likely impact upon the locality and character of the area.

- (vi) **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 the site is clear of any vegetation, it is considered that the proposed development will have no impact on the conservation and management of native vegetation.

CONCLUSION

Having regard to all of the above matters, it is considered that the proposal is not inconsistent with Clause 24 and 25 of the SEPP (Housing for Seniors or People with a Disability) 2004 and the site is considered to be suitable for the purposes of senior housing and people with disability subject to the following requirement being imposed on the determination:

1. The certificate is issued provided that vehicular access to the site is available from Grose Avenue and/or Aylett Street and an appropriate hard stand turning area is immediately available adjacent to these roads, on site, to allow for the safe evacuation of residents and staff in time of an emergency.

RECOMMENDATION

It is RECOMMENDED that the Director General:

- **note** this report (provided at Tag A); and
- **consider** any written comments concerning the consistency of the proposed development with the criteria referred to in clause 25(5)(b) received from the relevant General Manager within 21 days after the application for the certificate was made as set out in the report; and
- **form the opinion** that the site of the proposed development is suitable for more intensive development; and
- **form the opinion** that the proposed development for the purposes of seniors housing is compatible with the surrounding environment having had regard to the criteria specified in clause 25(5)(b); and
- **form the opinion** that development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding land uses only if it satisfies certain requirements specified in the certificate; and
- **determine** the application for a site compatibility certificate under clause 25(4)(a) by issuing a certificate subject to satisfaction of certain requirements specified in the certificate (Tag B) for Lot 312, DP 863203, No. 183 -197 Boronia Road, North St Marys.



13 April 2012

Regional Director
Sydney West Region



23.4.12

Executive Director
Planning Operations



Director General

24/4/2012.