

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

SITE: Part of Lot 10 DP 1155452, 216 Duckenfield Road, Berry Park

APPLICANT: HR and BC Grugeon

PROPOSAL: Serviced self-care dwellings and a residential care facility

The proposed development consists of 176 serviced self-care dwellings and a residential care facility on a 47ha site. The site adjoins the recently rezoned, but still undeveloped, Thornton North urban release area and is 3.5km from the towns of Morpeth and Thornton and 6.5km from East Maitland ([Tab I](#)). Due to flooding and environmental constraints, the development footprint of the proposal is limited to the southern third of the site adjoining McFarlanes Road ([Tab L](#)).

The proposal will have a community bus service and a community centre with consultation rooms, residents lounge, games room, tennis court, gymnasium, indoor pool and men's shed. Meals, cleaning services, personal care and nursing care will be available and coordinated by on-site staff.

LGA: Maitland

PERMISSIBILITY STATEMENT

Lot 10 DP 1155452, is zoned part RU1 Primary Production and part E2 Environmental Conservation under *Maitland Local Environmental Plan 2011* ([Tab E](#)). The proposed development footprint is confined to land within the RU1 Zone and south of the land zoned E2 Environmental Conservation.

Dwelling houses are a permitted use within the RU1 zone under Maitland LEP 2011. Seniors housing is prohibited in the zone and development of the site for seniors housing can only proceed with a Site Compatibility Certificate (SCC) under clause 24 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors Housing SEPP). The provisions of clause 4 of the Seniors Housing SEPP provide that a SCC could be issued for the part of the site zoned RU1 Primary Production as:

- the RU1 zone is not an urban zone;
- dwellings are a permitted use in the RU1 zone; and
- the land 'adjoining' the site to the south (separated by McFarlanes Road as permitted by clause 4(4) of the Seniors Housing SEPP is zoned R1 General Residential under Maitland LEP 2011 (i.e. primarily for urban purposes).

It is noted that the subject land is zoned part E2 Environmental Conservation under Maitland LEP 2011. While the development footprint of the proposal is limited to land zoned RU1 and south of the part of the site zoned E2 Environmental Conservation, it is noted that a SCC could not be issued to any part of the site that is zoned E2 Environmental Conservation due to the provisions of clause 4(6) and the exclusions listed in Schedule 1 of the Seniors Housing SEPP related to environmentally sensitive land.

If the SCC is issued (subject to the exclusion of land zoned E2 Environmental Conservation,) the proposed seniors housing development would be permissible with development consent.

Part of the land is also identified as being within a flood planning area and as 'Watercourse land' for the purpose of clause 7.4 under Maitland LEP 2011. Due to the flooding issues this part of the land should be excluded from any certificate, if issued.

CLAUSES 24(2) AND 25(5)

A consent authority cannot grant development consent unless the consent authority is satisfied that the Secretary has certified in a current site compatibility certificate that, in the Secretary's opinion:

- (a) the site of the proposed development is suitable for more intensive development; and
- (b) development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding environment having regard to (at least) the criteria specified in clause 25(5)(b).

Additionally, the Secretary must not issue a certificate unless the Secretary:

- (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; and
- (b) is of the opinion that the proposed development is compatible with the surrounding land uses having regard to the criteria specified in clause 25(5)(b).

These matters are considered in detail below.

COMMENTS FROM COUNCIL

The Secretary must not issue a certificate unless she 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)).

The SCC application was received on 10 December 2014 and a letter was sent to Maitland City Council on 11 December 2014 seeking comments.

Maitland City Council has advised (Tab G1) on 19 January 2015 that its comments dated 19 November 2012 (Tab G2) in relation to the previous SCC application remain unchanged for this matter. Council's previous comments confirmed that it was not opposed to the application and did not believe the proposal would result in any insurmountable conflicts that could not be addressed at the development application stage. It is noted that the comments dated 19 November 2012 provided by the General Manager had superseded earlier comments by Council's strategic planner dated 12 July 2012 (Tab G3) which had raised various concerns with the proposal.

SUITABILITY FOR MORE INTENSIVE DEVELOPMENT

The Secretary must not issue a certificate unless she is of the opinion that the site of the proposed development is suitable for more intensive development (clause 24(2)(a)).

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

The Lower Hunter Regional Strategy (LHRS) 2006-31 identifies the site as 'rural and resource land' adjoining the Thornton urban area that does not contain any regionally significant agricultural land, extractive resources, green corridors or proposed conservation lands (Tab M).

The LHRS also identifies that the region has a population that is older and ageing more rapidly than the NSW average. The LHRS states that housing trends delivery in the region are continuing to deliver low density dispersed development and that a different approach to the

provision of smaller and easier to maintain dwellings for an ageing population will be necessary. The ageing of the local and regional population is also reflected in the Maitland Urban Settlement Strategy (MUSS) 2012. The MUSS identifies that the percentage of residents living in the Maitland Local Government Area aged 60 years or older increased from 13.9% to 18% between 1996 and 2011 and that this trend is set to continue. Demand therefore exists, and is likely to increase, from an ageing and growing population for suitable residential accommodation that has historically not been delivered in sufficient quantity within the local area and region.

The subject land adjoins the zoned but not yet developed Thornton North urban release area. The Thornton North Master Plan and Background Report that informed the rezoning indicates that demand for residential development is high in the area east of Maitland and that the Thornton North urban release area which adjoins the site is considered by Council *'as an ideal location for further residential development due to its close proximity to existing urban development, infrastructure and services'*. The Background Report notes that previous studies undertaken as part of the MUSS indicate that the Thornton North release will cater primarily for young families, but that these young families will often wish to relocate elderly relatives close by for *'access and visitation'*. The Report recommends that *'a new aged care/disability centre should be considered or alternatively the provision of additional beds at both the Greenhills Churches of Christ Nursing Home and Hostel'*. It also recommends that any housing for older people and people with a disability should ideally be located near to retail and commercial facilities, in particular shops, doctors' surgeries, clubs and the like.

While the site is between 3.5km and 6.5km from retail and commercial services at Morpeth, Thornton and East Maitland, the proponent has advised that the development will provide residents with a regular community bus service that will satisfy the requirements of the Seniors Housing SEPP to Morpeth and Maitland to allow access to these facilities. In the broader regional context, the Thornton North area is (as noted by Council) ideal for further residential development due to its proximity to existing urban development, infrastructure and services that provide a full range of facilities and services. No environmental constraints have been identified as applying to the proposed development footprint that would preclude the issue of a SCC as discussed below in detail. The site is therefore considered to be suitable for more intensive development (particularly as the Thornton North release area to the south develops) and is in a location that will help to address the growing and increasing need for additional aged care residential accommodation in the area.

COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND SURROUNDING LAND USES

The Secretary must not issue a certificate unless 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))**

Environment

While being predominantly cleared pastoral land (Tab N), the subject land is impacted by a number of constraints including flooding, bushfire, environmentally sensitive land and acid sulfate soils (Tab O). As noted above, the proposed development footprint is located clear of any land identified as being environmentally sensitive or flood prone. It is noted that in the case of a flood greater than the 1% Annual Exceedance Probability (AEP) event, that flood free access to higher ground along McFarlanes Road is available. Due to the flooding along Raymond Terrace Road and McFarlanes Road, flood free access above the 1% AEP to other urban areas such as Maitland or Thornton will not however be available until the development of

the road network in the Thornton North release area. This matter should be considered in more detail at the development application stage to ensure appropriate arrangements are in place should flood evacuation be required prior to the development of the Thornton North release area road network.

With regard to detailed flooding, bushfire, environmentally sensitive land and acid sulfate soils assessment, none of the investigations that have been undertaken to date would indicate that these constraints would preclude the proposed development (other than the location of the environmentally sensitive land and flood prone land which the development footprint already avoids). The other constraints can therefore be assessed and practically managed and/or ameliorated if required at the development application stage (along with other issues such as appropriate treatments and buffers to the environmentally sensitive land to protect water quality and evacuation procedures and requirements in the case of a bushfire event). If a SCC is issued, further consideration should occur of bushfire, acid sulphate soils and water quality impacts at the development application stage to ensure that these matters are addressed fully.

Agricultural Significance

Under the NSW Government's Strategic Regional Land Use Policy (SRLUP) in 2013 (and since the issue of the previous SCC for the land) part of the site has been identified as Biophysical Strategic Agricultural Land (BSAL) due to its inherent and high level agricultural attributes (Tab P). The land identified as containing BSAL includes the northern section of the proposed development footprint. While the identification of BSAL is not directly applicable to the Seniors Housing SEPP (it was mapped for the purposes of the Mining SEPP and introducing a gateway process for proposed coal and coal seam gas development) it is important that the agricultural significance of the land be considered. The SRLUP acknowledges that the BSAL mapping was conducted at a regional scale, was objective in nature, and therefore site specific verification is often required to confirm the agricultural capability and significance of the land. The site verification process is available to landowners under the Mining SEPP but is not applicable to the current situation. Due to the lack of site verification in this instance, it is not considered reasonable that the identified BSAL land be excluded from the SCC without further investigation. If a SCC is issued, further consideration should occur of the agricultural significance of the land and the potential need to retain it in agricultural production at the development application stage.

Existing and Approved Land Uses

The Thornton North area comprises farming (mostly cattle grazing and poultry sheds), clay mining, and rural residential development. The area is undergoing significant land use change. The Thornton North Master Plan Background Report prepared by Council identified that:

- poultry operators in the area are leaving the industry (it is understood that the closest poultry operator located 500m to the south east of the site has now closed and the poultry shed demolished since the issue of the previous SCC);
- the existing clay quarries within the Thornton North release area will be sufficient to support the local brick making industry and that further preservation of the local clay resource is not required; and
- rural and rural/residential development is continuing to grow.

The Thornton North urban release area is located to the south of the site. The release area is zoned, but not yet developed, and has a potential yield of 5,000-7,000 residential lots and will have a new local centre with convenience shops, a primary school and potentially a community centre. While the Thornton North release area may not proceed for a number of years, once developed, the proposal will be consistent with the residential style development that will occur within the release area.

The subject site and its immediate surrounds to the north, east and west are not utilised by the existing poultry or clay mining industries and are identified as open pastoral lands in the

Thornton North Master Plan. The introduction of residential development into the existing rural environment could result in potential land use conflicts. Pastoral grazing however represents one of the lowest impact agricultural activities. The *Living and Working in Rural Areas* handbook prepared by the NSW Department of Primary Industries in 2007 identifies a best practice minimum land use conflict buffer between grazing and residential dwellings of 50 metres. The handbook also acknowledges that appropriate buffer distances will vary based on local topographic, climate, environmental and social considerations. It is therefore considered that this matter can be considered and addressed in greater detail at the development application stage to determine any appropriate buffers or site design requirements that may be needed to minimise the potential for land use conflict. If a SCC is issued, further consideration should occur of the relationship of the proposed development with the adjoining rural land uses at the development application stage.

Nothing in the natural environment (including known significant environmental values, resources or hazards) or the existing and approved uses of land in the vicinity of the proposed development footprint has been identified that would preclude the proposal and could not be considered, and the appropriateness of the proposal proceeding to be determined, at the development application stage.

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

If not developed for seniors housing, the likely future use of the site is anticipated to remain for open pastoral grazing. The likely future use of the land to the south of the site in the Thornton North release area is considered to be residential in nature and consistent with the current proposal once developed. The land to the north, east and west is expected to remain rural in the foreseeable future (and land to the south in the short term). The MUSS identifies no further expansion of the Thornton North area towards the subject site as being required in its projections to 2031. As discussed above, it is considered important that the relationship of the proposed development with the adjoining rural land uses is considered in detail at the development application stage to determine any potential issues.

In the longer term it is anticipated that demand will remain strong for residential development east of Maitland. Due to the relative scarcity of unconstrained land in this area, it is considered likely that the subject site and any other lands adjoining the Thornton North release area that are located above the flood planning area will be examined at some time in the future for possible residential development. Council should therefore be mindful when considering this matter of any potential infrastructure integration issues with the site in the longer term.

The likely future land uses of the land and its immediate surrounds therefore are not considered to preclude the proposal subject to further detailed consideration at the development application stage.

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))

The general locality is connected to and serviced by reticulated water, sewer, electricity, and telecommunication systems. Hunter Water (Tab Q) has confirmed that sufficient capacity exists in the existing water and waste water systems in the locality to cater for the proposal subject to the preparation of a detailed developer funded servicing strategy (which will be required to address the need for an additional sewer pumping station and connection to the existing Berry Park 1 sewer pump station which is located some distance from the site). The application

confirms that meals, cleaning services, personal care and nursing care will be provided to the development in accordance with the requirements of the Seniors Housing SEPP.

The village of Morpeth, the town of Thornton, the major regional centre of Maitland and the stand alone shopping centre at Greenhills (as identified in the LHRS hierarchy) are all between 3.5km and 6.5km from the subject site. Once developed, the Thornton North local centre will be approximately 2km from the site. These centres between them will provide a comprehensive and diverse range of community, retail, medical/health, recreational, educational and other ancillary services and facilities for the development. The site is also in close proximity to the New England Highway and M1 Pacific Motorway along with city train services at Metford and Thornton stations. It is noted that the proposed development will provide a community bus service to transport residents to Morpeth and Maitland daily in accordance with the requirements of the Seniors Housing SEPP to ensure adequate access to the identified services and facilities.

The services and infrastructure that are or will be available to meet the demands of the proposed development are considered to be satisfactory subject to Council considering in more detail at the development application stage that arrangements to ensure access to the services in accordance with the Seniors Housing SEPP will be satisfactory addressed.

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 land is not zoned for open space or special uses by Maitland LEP 2011. No adverse impact from the development on the amount or quality of open space land or special use land in the area has been identified.

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 a visual catchment from McFarlanes Road in the south to the Duckenfield Road area in the north. The land is identified for its rural views over the floodplain from McFarlanes Road in the Thornton North Master Plan while the Background Report identified the importance to the community of maintaining the rural/floodplain landscape in the locality.

The site is downslope of the ridge located at McFarlanes Road which will limit any significant visual impact to the Thornton North release area. A visual analysis (Tab R) prepared to support the proposal examined 10 sites around the subject land and concluded that it is visually prominent from only 3 sites (McFarlanes Road south of the site and the rural areas along Duckenfield Road to the north). The visual analysis concluded that this impact would not negatively impact on the important visual floodplain catchment subject to appropriate landscaping, ridgeline protection and a master planned layout. The proponent has also indicated that a low rise approach to the bulk, scale and form of any built development will be adopted along with the sympathetic use of the existing site slope to avoid any negative visual impacts. This is considered satisfactory subject to a more detail analysis by the consent authority at the development application stage. It is noted that the visual impact from seniors housing if appropriately managed is considered no more likely to be significant, or unable to be addressed, than other land uses that are already permissible in the RU1 Zone including landscaping material supplies, plant nurseries or rural industries.

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))

The area has been previously cleared of the native vegetation. No significant impact on native vegetation from the development has been identified.

RECOMMENDATION

It is recommended that the Secretary:

- **notes** this report;
- **considers** 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;
- **forms the opinion** that the site of the proposed development is suitable for more intensive development;
- **forms the opinion** that the proposed development for the purposes of seniors housing is compatible with the surrounding environment and surrounding land uses having had regard to the criteria specified in clause 25(5)(b);
- **determines** the application for a site compatibility certificate by issuing a certificate (Tab B) for Lot 10 DP 1155452, Duckenfield Road, Berry Park, excluding the land mapped as flood planning area or 'Watercourse land' and land zoned E2 Environmental Conservation in the *Maitland Local Environmental Plan 2011*; and
- **signs** the letters to the applicant and council advising of this determination (Tabs S and T).


22 April 2015
Stephen Murray
General Manager, Northern Region


Tim Hurst 5/5/15
Executive Director
Regions


Marcus Ray 05/05/2015
Deputy Secretary
Planning Services


Carolyn McNally 5/5/15
Secretary

 Approved / Not Approved / Noted