

**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: Lot 7, DP 829150 (Duke Street, Morpeth)

APPLICANT: Scott Property Development

PROPOSAL: The proposal (Tab D) involves the construction of an aged care housing development to provide accommodation for seniors including:

- 40 x 1 bedroom Hostel Apartments with ancillary services
- Retirement Village comprising 250 Villa/Townhouses

The proposal includes administrative offices, community facilities, chapel, recreational facilities, and indicates that services for residents will be provided, including a community bus.

LGA: Maitland

PERMISSIBILITY STATEMENT

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the SEPP) applies to land that adjoins land zoned primarily for urban purposes, where it satisfies the locational requirements of Clause 4. An assessment of Clause 4 is provided below, which confirms that the SEPP applies to part of the subject land.

Assessment of Clause 4:

- The subject land is zoned RU2 Rural Landscape and E2 Environmental Conservation under *Maitland Local Environmental Plan 2011* (the LEP).
- Dwelling houses are permissible with consent within both the RU2 Rural Landscape zone and E2 Environmental Conservation zone.
- The subject land adjoins land zoned primarily for urban purposes, being land zoned R1 General Residential.
- A Site Compatibility Certificate cannot be issued for 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 SEPP.
- The Senior Housing development is proposed to be located only within the RU2 Rural Landscape portion of the site on developable land being above the 1:100 year flood level.

Consequently, the provisions of clause 4 of the SEPP provide that a Site Compatibility Certificate (SCC) can be considered for that part of the site zoned RU2 Rural Landscape.

CLAUSES 24(2) AND 25(5)

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;

(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

A letter was sent to Maitland City Council (the Council) on 19 August 2015 seeking written comments on the consistency of the proposal. The request was considered at Council's Ordinary Meeting held on 8 September 2015. Council's resolution states:

'Council provide a written submission to the Director General (NSW Planning and Environment) requesting that a site compatibility certificate for the proposed SEPP Seniors development on Lot 7, DP 829150, Duke Street, Morpeth not be issued for the reasons outlined in this report'.

Council's report was received 15 September 2015 and indicates the reasons for not supporting the SCC which are broadly summarised as:

- The proposal will have a detrimental impact on the heritage significance of the Morpeth Conservation Area, including the defined boundary, rural curtilage and views to and from the historic village.
- Intensive development of the site has been extensively tested through consideration of an earlier Development Application.
- The earlier proposal for development of the site was unable to demonstrate that it was capable of protecting and enhancing the heritage qualities of the existing built environment.
- The current concept proposal is larger than the previous development, and the issues which were identified during the assessment of the previous DA equally apply to this application.

A copy of the Council Report (Tab F1) and Minutes (Tab F2) are provided. Council's concerns are discussed further within this report.

SUITABILITY FOR MORE INTENSIVE DEVELOPMENT

The Secretary must not issue a certificate unless the opinion is formed 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 site is located within the Morpeth Heritage Conservation Area (Tab G). The town and its rural curtilage is identified as of heritage significance in Maitland LEP 2011. A number of specific items within the town are also listed. The heritage assessment of Morpeth has identified the Conservation Area as of state, regional and local significance. The town is recognised for its cultural heritage significance as a 19th century river port town which retains many features from that era. Key elements include the towns historical form, extending from the river to the ridgeline, numerous historical buildings and landscape features, including state heritage listed items, and the towns

grid pattern and rural curtilage which provides clear defined edges largely unchanged since the 1840's. The subject land currently contributes to establishing the rural curtilage for the town and establishes the towns strong edge, setting, and context at its south-west entry point.

Development of the site for more intensive uses is limited due to the zone and planning controls reflecting the heritage significance of the area and the site is currently used for grazing. Council has previously assessed more intensive development on the site through the consideration of a development application in 2005-7. This development application was lodged under the former provisions of the *State Environmental Planning Policy (Seniors Living) 2004*. The application sought approval for a seniors living development in a similar footprint to the current proposal but yielding a smaller number of dwellings and not including a hostel. Council resolved to refuse the development application in 2007 because of the significant impacts on the heritage setting and values of the village of Morpeth.

Despite the site being relatively physically unconstrained, it is not suitable for more intensive development because of its location within the Heritage Conservation Area and significance in providing the rural landscape curtilage to the defined historic town of Morpeth. The expansion of the town southward as a consequence of the proposed development would compromise the heritage significance of Morpeth as it will change the town's historically intact layout, and would erode the existing town's rural aspect and vistas.

It is considered that, once the rural curtilage of Morpeth Heritage Conservation Area is compromised by intense development, it will be difficult to defend the heritage planning principals for the area more broadly.

The 24.47 hectare site (Tab E) is cleared agricultural land partly zoned RU2 Rural Landscape, and E2 Environmental Conservation. It is rectangular in shape with the short side adjacent to existing residential development and extending downslope to a wetland area.

Approximately 8-8.9 hectares of the site is within the RU2 Rural Landscaped zone and above the 1:100 year flood level and development is proposed to be confined to this area (Tab H). The applicant has not identified the site as bushfire prone, and no bushfire assessment was provided in the application. Towards the south-east of the site is the Hunter Water Treatment Works, and 100m to the east is the Ray Lawler and Morpeth Common Wildfowl Reserve.

The subject land is located on the southern residential boundary of the town of Morpeth and otherwise surrounded by agricultural land largely used for grazing. Morpeth is perched on the ridge of high land alongside the Hunter River. Its hilltop location provides distant views to and from the town.

COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND SURROUNDING LAND USES

The Secretary must not issue a certificate unless the opinion is formed 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))**

Natural Environment and Hazards

The site and surrounding land is predominately cleared agricultural land, constrained by acid sulfate soil, flooding and areas of environmental significance zoned E2 Environmental Conservation. The proponent has indicated that the proposed development will not extend into the E2 Environmental Conservation land or be located below the relevant flood planning level.

However it is not clear from the application where the boundary of the flood affected land lies in relation to the proposed development, nor does the application contain information detailing the management of stormwater, which has previously been proposed to be located on land within the E2 Environmental Conservation zone. Any certificate issued for the site will need to expressly exclude the E2 Environmental Conservation zoned land, consistent with the legislation which does not allow a site compatibility certificate to be issued for that land. Any future development will be subject to clause 7.3 Flood Planning of Maitland LEP 2011.

Agricultural Resources and Uses

The proponent has indicated that the subject land is not considered to be economically viable as prime agricultural land, given its small size and portion of the site as a permanent waterway. There are no significant minerals or extractive industries associated with the site.

However the Lower Hunter Regional Strategy (LHRS) 2006-31 identifies the whole site as 'rural and resource land'. A minor portion of the site, zoned E2 Environmental Conservation, is mapped as Biophysical Strategic Agricultural land through the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

Other Existing and Approved Uses in the Vicinity

The proposal is located at the southern edge of the existing Morpeth village within the Morpeth Heritage Conservation Area and the town and its entrances are clearly visible due to its hilltop location. Residential development within Morpeth has been established largely consistent with the heritage character of the village and the site is within close proximity to a number of heritage items of local significance. The proposal has the potential to detract both from the overall heritage value of the village but also the heritage setting of individual items within proximity to the site.

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))

The existing strategic plans (both local and regional strategic policy) do not identify the site or land in the vicinity of the site as being required for future urban uses.

Future uses of land in the vicinity of the subject site, within the Heritage Conservation Area, must address the provisions of clause 5.10 of the *Maitland LEP 2011* and be consistent with Council's Development Control Plan (DCP) Morpeth. However the proposed development is expected to change the heritage context for the village and therefore may weaken Council's ability to apply existing development controls on this land.

Future development within the existing Morpeth residential precinct is expected to be limited due to the existing development pattern. However expansion of the town southward, as a consequence of the proposed development and erosion of the area's heritage significance, may lead to increased pressure for additional residential development.

Future uses on the surrounding rural area are currently limited to a variety of rural and low density type uses with Council's consent. A large part of the agricultural land in the broader area is flood prone and rural land that is not flood affected is valuable for flood sensitive rural uses and stock refuge. Development of the subject site for seniors living will reduce the amount of flood free land available for these purposes. The development will also bring residential development in closer proximity to agricultural uses bringing with it the potential land use conflicts that can arise.

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 proponent has provided evidence of the availability of services and infrastructure to meet the demands from the proposed development. In particular the proponent has advised that the serviced self-contained dwellings will be in association with a retirement village, within the meaning of the *Retirement Villages Act 1999*.

Any site compatibility certificate issued for the site will therefore need to be conditional upon a future development application including the necessary evidence of compliance with clause 42 of the SEPP. This is typically a servicing management plan and draft contracts with relevant service providers.

Details of the services and infrastructure available are discussed below:

Retail

The closest retail centre is Morpeth. Morpeth is identified as a local centre by Maitland City Council's Activity Centres and Employment Clusters Strategy 2010. Morpeth provides a mix of limited retail and commercial premises that meets the needs of the local community and visitors.

The closest major retail centres are Green Hills (6km), East Maitland (6km) and Maitland 9.6km. These are defined in the Lower Hunter Regional Strategy as a 'town centres' and 'stand-alone shopping centre' respectively. These centres are considered to be of sufficient size and able to meet additional retail demand arising from the proposed development. The application indicates that transport services will be made available to enable residents to access these large retail centres.

Community

Local community and recreational facilities are located in Morpeth, Thornton and Rutherford, with regional facilities available in Maitland and Newcastle. The proposed development will also include multi-purpose hall for functions, and community clubhouse with lounge, dining room, library and games rooms, workshop-restoration and craft areas.

Medical

There are limited medical services available in Morpeth, with the only medical services being a general practitioner (GP) clinic and one pharmacy. However, a wider range of medical practitioners service East Maitland, including GP, cardiology, dental, optometrists, x-ray, and ultrasound. Maitland Private Hospital is also located 6km away in East Maitland. The closest public hospital, Maitland Hospital, is located 12km away in Maitland. The proponent has also indicated within the application that Morpeth Family Medical Practice, the Royal District Nursing Services, Maitland Community Care Services and Aged Foot Care Services have indicated their willingness to provide services on site on an appointment basis.

Transport

The closest access to public transport is a bus stop located 300m from the proposed development. Regular daily public bus services to both Green Hills Shopping Centre at East Maitland and Maitland shopping district are available. The proponent has also indicated that a community bus will be provided for the residents of the proposed development. This bus will travel and return from major centres on a daily basis. The closest railway stations include East Maitland, Metford and Maitland Railway Station provides rail services between Newcastle, Sydney and Brisbane.

Infrastructure

As noted in Council's report the provision of reticulated services to the site – water, sewer, electricity, gas and telecommunications is a matter which the proponent will ultimately need to resolve with the respective infrastructure agencies. Hunter Water and Ausgrid have provided correspondence to the proponent confirming that water, sewerage and electrical services can be provided via an augmentation of their existing networks.

Council notes that infrastructure provisions relevant to Council will need to be of a standard equivalent to the existing road and footpath network within the adjoining Morpeth village and will need to support the incoming population. Any upgrading of local roads and footpaths would be the subject of detailed review at the development application stage. This may raise issues with the compatibility of the heritage features of the town and the needs of elderly residents.

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))

Not applicable as the land is not zoned for open space or special uses.

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 proposed development comprises 250 dwellings, 40 bedroom hostel apartment complex and main Communal Facility (including recreation facilities, restaurant, chapel etc), extending south from the existing town boundary down slope an estimated 200 metres, across a total area of 8-9 hectares.

The proposed development is of substantial bulk and scale and would represent an increase in the number of dwellings in the town by 20%. Council argues that due to the bulk and scale of the proposal the 'new' town edge will sit well below the ridge line of the existing township and will be visually prominent. The relationship of the original scale of the town to the surrounding rural lands as viewed from McFarlane's Road and Metford Road will be changed. The rural vistas from the village will be lost. Council is of the view that a new development in such a large defined area will alter the evolved character of the Morpeth village where infill development has largely been spread across the township.

It is considered that the bulk and scale of the proposed development is out of character with the historic setting and heritage significant locality of Morpeth, and surrounding rural landscape.

The applicant describes the built form as comprising three distinct sections. Firstly the top section, adjacent to the existing residential development, will comprise single storey traditional houses. Secondly the midsection has increased site density and includes two storey dwellings (with a maximum height of 8 metres), finally the lower section will provide a 'resort style village plaza' including the Hostel and communal facilities.

In contrast the characteristics of the existing built form are described as single storey small detached dwellings, wide streets and wide allotments with narrow rear lanes. Based on the information provided only the top section has attempted to respond to the heritage character of the existing village, the proposed built form including large blocks of two storey dwellings, rows of attached houses, and the large, circular, multi-storey community facilities building, are strongly incongruous with the pattern and distribution

of the small scale, modest structures that make up the fabric of the existing Morpeth village.

While these matters can typically be resolved through the development assessment process, Council has attempted to do this for the site through the earlier development application. Their refusal of that application is evidence that it is not possible for the proponent, due to the location of the site, and the scale, bulk and design of the proposal, to sensitively harmonise with the heritage conservation area and heritage items.

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 native vegetation and limited vegetation remains. No clearing of native vegetation has been identified.

RECOMMENDATION


It is recommended that the Secretary:

- **notes** this report;
- **considers** the 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;
- **determines** the application for a site compatibility certificate under clause 25(4)(a) by refusing to issue a certificate for the following reasons:
 - the site of the proposed development is not considered suitable for more intensive development, due to its location within the Morpeth Heritage Conservation Area;
 - the proposed development is of a bulk, scale, built form and character not compatible with the existing and future uses in the vicinity of the development;
 - Council has demonstrated that these matters cannot be successfully addressed for this site and therefore these matters cannot be reasonably deferred to the development assessment process; and
- **signs** the letters to the applicant and council advising of this determination (Tabs B and C).


Tim Hurst 23/9/15

Executive Director, Regions
Planning Services


Marcus Ray 24/09/2015
Deputy Secretary


Carolyn McNally
Secretary 28.9.15

Approved / Not Approved / Noted