
**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 42 DP 846326 (Wilton Drive and Mount Vincent Road, East Maitland)

APPLICANT: GHT Holdings P/L

PROPOSAL: The application is for a retirement village consisting of 134 serviced self-care dwellings within 98 buildings. The village would also include a community centre, providing facilities such as an indoor pool, rooms for the provision of services, commercial kitchen and gym. A mobile home (caravan) storage area is also proposed.

The retirement village would extend over part of lot 42 DP 846326 and lot 8 DP 855275. Lot 8 is zoned R1 General Residential which permits seniors housing. As a result, the site compatibility certificate provisions do not apply to lot 8. Those parts of the proposal that are to be located on lot 8 are therefore excluded from the application and are not considered further in this assessment. As a result, the application should only relate to 122 serviced self-care dwellings within 89 buildings.

LGA: Maitland

PERMISSIBILITY STATEMENT

The *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 the subject land.

Assessment of Clause 4:

- The subject land is zoned RU2 Rural Landscape under *Maitland Local Environmental Plan 2011* (the LEP).
- Dwelling houses are permissible with consent within the RU2 Rural Landscape zone.
- The subject land adjoins land zoned primarily for urban purposes, being land zoned R1 General Residential.

Consequently, the provisions of clause 4 of the SEPP provide that a Site Compatibility Certificate (SCC) could be issued.

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 due to its location adjoining a waste disposal management facility; 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

Maitland City Council was consulted on 17 August 2016 and a response was received on 21 September 2016 (Tab G). A further response was received on 1 November 2016 following review of additional material prepared by the applicant in response to the Department. Council supports the issuing of a site compatibility certificate. It notes however that certain environmental constraints would require further investigation and resolution through the development application (DA) process.

Issues identified by Council that require further consideration through the DA process include:

- Mine subsidence: to evaluate shallow mine workings, pillar stability and water quality, and determine appropriate mitigation measures.
- Access to public transport: footpaths to the nearest bus stop will need to be constructed to satisfy the access standards of the SEPP. Compliance with the relevant design and construction standards will need to be demonstrated.
- Flooding: parts of the southern portion of the proposed retirement village would be flood affected in a 1:100 year flood event. Minimum floor levels of dwellings will need to meet the flood planning level and the proposed perimeter road raised above the 1:100 year flood level.
- Ecology: further subdivision design work will be required to demonstrate that the development can avoid hollow bearing trees. Further information required regarding native grass impacts.
- Additional studies: traffic impact assessment, stormwater drainage management, heritage, contamination, visual impacts, flooding, flora and fauna, bushfire, site and building design to demonstrate compliance with SEPP requirements and geotechnical (mine subsidence).

These matters are discussed later in this report.

Other matters raised by Council include:

- Impacts associated with the Mount Vincent Waste Management Facility. Council has considered potential impacts based on the recent EIS prepared for a DA to expand the facility. Council's assessments of potential odour, air quality, noise and vibration, and water quality and quantity impacts concludes that adverse impacts are not likely.
- Validity of the Statement of Effect on Threatened Flora and Fauna. Tree clearing, contrary to the study, has been recently undertaken on the site. Council considers the study to no longer be applicable because it is no longer up-to-date.

The applicant provided additional material regarding native grass clearing, the extent of endangered ecological community impact and possible illegal tree clearing. Council advised that it is satisfied with the applicant's response to these matters (Tab G).

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 of the proposed development is considered suitable for more intensive development. While further study would be necessary at the DA stage, site issues relating to flooding, mine subsidence, ecology and bushfire are considered resolvable.

Council's settlement strategy identifies all of lot 42 as an urban investigation area, suggesting a residential outcome could result provided site environmental issues and the scope of future operations of the waste management facility were determined. It is understood that Council has progressed the latter.

The timing of a rezoning outcome however is uncertain. Council's annual review of land supply suggests substantial zoned, undeveloped residential land is available (approximately 20 years supply). It is understood that the applicant has lodged a planning proposal with Council to rezone the land to residential.

The Hunter Regional Plan does not identify a need for additional residential land in this location. However it notes that the region has a growing ageing population and that there is a need to improve housing diversity. This proposal aligns with these objectives.

The site is a 10 hectare portion of lot 42 DP 8463265 (total area 26 ha). It is zoned RU2 Rural Landscape under the *Maitland Local Environmental Plan 2011* (Tab F) and is currently used for low intensity cattle grazing. It adjoins an existing residential area, is near to public transport, and is relatively close to the East Maitland centre and Green Hills Shopping Centre. A site and locality map is attached (Tab F).

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))

Agricultural and Resource Value

The applicant states that the site consists of Class 5 agricultural land, although the classification map provided by the applicant also indicates the site as containing Class 3 land. Council's Maitland Rural Strategy 2005 confirms the site to contain both.

The Rural Strategy notes Class 3 land to be suitable for pasture improvement and is generally used for cattle grazing. It states that Class 5 land has little to no capacity for agriculture and is not be suited for cattle grazing.

The land to the south of the site (within the balance of lot 42) and further west is mapped as Biophysical Strategic Agricultural Lands. This land is considered to be land with high quality soil and water resources capable of sustaining high levels of productivity.

The same land is mapped as Class 3 agricultural land in the Maitland Rural Strategy 2005. It notes the land to be unsuitable for regular cultivation but represents moderate quality grazing land. Aerial photography suggests that the land has been used for grazing over the last five years.

Given the limited size of the site (10 ha) and its limited agricultural productivity, the loss of this site for agricultural purposes is minor. Furthermore, the use of the site for seniors housing is considered compatible with the grazing activities occurring on the adjoining rural lands.

The site and adjoining land to the east which makes up the balance of lot 42 contained a coal resource and was underground mined from 1920 to the early 1960s. This site is recognised as an historic mining area but is not mapped as a coal resource area on the NSW Department of Industry (Resources and Energy) MinView website. As such, the proposed development is not considered to adversely affect mineral resources.

Flora and Fauna

While the site is largely cleared, biodiversity impacts would result due to the proposed development. The study undertaken identifies that the development of the site would result in the loss of eight hollow bearing trees¹, potential habitat for 23 threatened flora and fauna species, 0.42 hectares of Lower Hunter Spotted Gum – Ironbark Forest EEC (good condition) and 0.18 ha of Hunter Lowland Redgum Forest EEC (highly disturbed). Native grass (low condition) forms part of the pasture is to be removed also.

The study states that the site would not be potential koala habitat in terms of *State Environmental Planning Policy 44 – Koala Habitat Protection* and that no observations or evidence of koala habitat were found.

The applicant has proposed mitigation measures but it is unclear whether these measures are adequate offsets given the impacts. Measures include weeding, compensatory planting and provision of nest boxes. The study also identifies the need for a vegetation/ habitat management plan to be prepared to address impacts and to ensure the long term viability of the remaining and rehabilitated habitat. Offset opportunities may also exist on the balance of lot 42 given the presence of hollow bearing trees (87), Lower Hunter Spotted Gum – Ironbark Forest EEC (11.6 ha) and Freshwater Wetlands on Coastal Floodplains EEC (2.14 ha) on this land.

¹ The study identified that nine hollow bearing trees would need to be removed due to the proposal. However, part of the site has since been cleared per an existing development consent for a dwelling house which has resulted in the removal of one hollow bearing tree.

The Department agrees with the applicant that impacts are not likely to be significant and that offset measures would be required. It also concurs with Council that further work would be required at the DA stage to examine whether impacts could be reduced (eg refining the development footprint to avoid hollow bearing trees). Where impacts are unavoidable, suitable offset/ mitigation measures would need to be determined. A condition to this effect is recommended. The exact nature of the measures would be a matter for Council to determine.

Given this, and noting that the site is substantially cleared, the site is considered suitable for more intensive development. Further, as the development would not extend beyond the identified footprint, it is considered compatible with the adjoining vegetated areas. Further discussion regarding native vegetation impacts, particularly EEC, is provided later in this report.

Mine Subsidence

The site is located within the East Maitland mine subsidence district and has been mined previously. A preliminary geotechnical assessment undertaken by the applicant confirmed the presence of shallow mine workings on the central and eastern parts of the site. Former mine workings do not extend across the western part.

The preliminary assessment concludes that there is a risk of pothole subsidence on the central part of the site. While it notes the risk of pillar instability to be low, it states that further investigation would need to occur. Preliminary testing indicates that the workings are flooded and some pillars would likely be unstable due the presence of a weak mudstone layer in the floor of the workings and/ or the pillar shape. The investigation suggests pillar instability is more relevant to the eastern portion of the site and the adjoining land further to the east which makes up the balance of the lot.

The merits of various mitigation measures are considered by the study which suggest subsidence issues may be effectively managed. However, it is also evident that further study is required before mine subsidence issues, including the management of displaced mine water, may be fully understood. Both the applicant and Council recognise this and support this work occurring at the DA stage in consultation with the Mine Subsidence Board (MSB).

The Department is satisfied that the proposed development is compatible with the mine subsidence hazard, noting that further work is needed to evaluate subsidence on the site and in turn determine the appropriate means of mitigation. These issues may be addressed at the DA stage. Council supports this approach and importantly, any future DA for seniors housing on the site would require the approval of the MSB before development consent could be issued.

Bushfire Risk

The eastern part of the site is mapped as being bushfire prone (both category 1 and 2), forming part of a larger area of bushfire prone land extending to the east.

A preliminary bushfire study considered the proposed layout and bushfire management options relating to setbacks and asset protection zones, water supply/ utilities, access and building construction standards.

The study concludes that bushfire risk can be adequately managed and makes recommendations on management measures which may be considered at the DA stage. Council has identified the need for a more detailed study to be undertaken at the DA stage.

Flooding

The southern parts of the site of the proposed development are flood affected (1% AEP) and mapped in Council's DCP as high hazard flood storage. At least 9 dwellings on the southern fringe of the site would be flood affected (either directly by flood waters or indirectly by flooding of road access). Council considers that all dwellings and the associated access road could be constructed to levels that would avoid impacts.

The land adjoining the site (within lot 42) to the west and south-west is flood prone, forming part of high hazard flood storage area which extends further west. These floodwaters do not serve to isolate the site. Site access is proposed to be via the higher ground to the north (lot 8) which connects the site to the broader East Maitland/ Green Hills road network.

As the majority of the site is not flood affected and as it has flood free access, the Department considers the site suitable for more intensive development and compatible with the flood hazard on the adjoining land. The matters identified by Council may be adequately addressed at the DA stage. As the SEPP (Schedule 1) does not allow seniors development on land identified as high flooding hazard, a condition requiring the development to be situated above the high flooding hazard level is recommended.

Water Catchment

The site drains to the south, into the Wallis Creek Catchment. Stormwater from the development may affect the catchment water quality which the Maitland Urban Settlement Strategy notes to be very poor. Council has not raised concerns with catchment impacts. It identifies the need for stormwater management to be examined at the DA stage.

The Department is satisfied that the development is compatible with the water catchment.

Existing and Approved Uses

The site and balance of lot 42 is used for cattle grazing. The applicant has not indicated whether this activity would cease on the balance of the lot should the proposal proceed. Irrespective of this, the remainder of the lot is relatively small (16 ha) and is substantially vegetated so the intensity of any cattle grazing activity would be limited. This use is considered compatible with the proposed seniors housing.

Existing uses occurring in the vicinity of the development consist of pasture land (grazing), residential (both low density and rural lifestyle) and a rural fire service training station. Seniors housing is considered compatible with these uses, noting that the rural fire service training station is 280 m distant.

While the Mount Vincent Waste Management Centre land is located to the south and south-west of the site, the facility is located on the eastern side of Mount Vincent Road 330 m distant. A DA to expand the existing facility is being assessed by Council. Council has considered the seniors housing proposal in the context of the predicted impacts from an expanded facility (odour, air quality, water quality and noise) and is satisfied that adverse impacts (both on the seniors housing proposal and the ongoing operation of the facility) are unlikely. The Department concurs with this conclusion.

It is considered that the proposal is compatible with the existing and approved uses of land in the vicinity of the proposed development.

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 site is zoned RU2 Rural Landscape under *Maitland Local Environmental Plan 2011*. This zone supports agricultural activities while allowing for other land uses which are considered generally compatible with agriculture, including bed and breakfast accommodation, dwelling houses, eco-tourist facilities. A 40 ha minimum lot size applies which limits the intensity of development.

If the land was not developed for seniors housing then it is likely that the site would continue to be used for low intensity cattle grazing/ environmental management (EEC) unless it was rezoned. This is a possibility given the land has limited agricultural value, the mining resource has been removed, it is substantially cleared, is well located in terms of services, and adjoins an existing residential area.

Given the above, the proposed seniors housing is considered compatible with the likely future uses of the land. The site attributes and Council's settlement strategy suggest a residential outcome for the site may be appropriate in the future. The seniors housing proposal is consistent with this outcome.

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 applicant has indicated that services and infrastructure are available to meet the demand generated from the proposed development.

Retail, community, medical and transport services are available in the locality. The site is located near to Green Hills (1.8 km) which is a service and shopping centre, and provides medical services, community and recreational services. Further afield is the East Maitland centre (3.5 km). Public transport connects the site to these areas and a bus stop is located within 400 m of the site. Council has advised that additional

footpaths which meet the relevant standards of the SEPP would need to be provided to connect the site to the bus stop.

As the proposal is for serviced self-contained dwellings in association with a retirement village, certain services would need to be made available to residents (SEPP clause 42). Any site compatibility certificate issued for the site should include a condition requiring a future DA to include evidence of compliance with clause 42. This is typically a servicing management plan and draft contracts with relevant service providers.

The applicant has indicated that on-site services and facilities would be available, including a therapy centre, medical consulting rooms, swimming pool, and community hall etc.

No information has been provided regarding proposed financial arrangements for infrastructure provision.

Subject to the recommended condition relating to clause 42, the proposed development is considered compatible in terms of access to services and infrastructure provision.

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.

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 bulk, scale, built form and character of the proposed development is likely to have an adverse impact on the existing dwellings that adjoin the site. Uses associated with nearby pasture and vegetated lands are unlikely to be affected by these matters.

Adjoining the site to the north is a low density residential development and to the north east are a few isolated dwellings which form part of a large lot residential development. The large lot residential suburb of Louth Park (developed) is situated 600 metres to the south west. Refer to the aerial maps attached (Tab F).

As a result of this topography and distribution of uses, it is likely that the existing residents in the locality may experience visual impacts due to the development. At least 16 dwellings from the estates to the north and three dwellings in Louth Park would be affected. No information has been provided by the applicant to demonstrate the extent of potential visual impacts on these residents.

The applicant asserts that the development would be consistent with the neighbouring residential area, as the proposal would result in single-storey, mostly free standing residences with a density of approximately one dwelling per 800 sq.m. Given this, and noting that the site generally slopes down from the existing residences to the southern part of the site, opportunities may exist to reduce impacts.

While DA assessment of visual impacts is appropriate, visual impacts would result due to the bulk, scale, built form and character of the proposal. The development would result in buildings where there is currently none and change the character of the site from rural to urban. It is likely that the rural views enjoyed by existing residents would be reduced.

On balance however it is considered that the site attributes (substantially cleared, adjoins an existing urban area, close to a centre) outweigh the potential adverse visual impacts. This matter should not prevent the Secretary from forming the overall view that the proposed development is compatible with the surrounding environment and land uses. A condition requiring visual impact mitigation is recommended to assist in limiting visual impacts.

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 proposed development will involve the clearing of native vegetation that would require an approval under section 12 of the *Native Vegetation Act 2003*. Therefore the Secretary must consider the likely impact on the conservation and management of native vegetation.

Clearing would include a 0.42 ha portion of the site consists of Lower Hunter Spotted Gum – Ironbark Forest EEC. The Assessment found this fragment to be in a generally good condition. A 0.18 ha remnant of Hunter Lowland Redgum Forest EEC would also be removed. This fragment was found to be highly disturbed.

The type of vegetation clearing proposed does not appear, nor has the developer advised, that the clearing is to be excluded from the provisions of the *Native Vegetation Act 2003*, as being of a type exempt from approval or otherwise permitted under the Act as described in Part 3, or under Schedule 1 of the *Native Vegetation Act 2003*.

The Flora and Fauna Assessment indicates that the 0.42 ha portion of Lower Hunter Spotted Gum – Ironbark Forest forms part of a larger fragment of total size of 12.67 ha. This larger fragment is situated on the adjoining land, being the remainder of lot 42.

The assessment of significance (per the Department's SCC Application Guidelines) undertaken by the applicant found the 12.67 ha fragment to make up approximately 4.76 % of the 266 ha of native remnant vegetation within the surrounding 1000 ha (1.79 km radius). Furthermore, that it forms part of a link to a larger area of similar habitat to the south. The study states that the 12.67 ha fragment would have a high conservation significance but does not state whether the loss of 0.42 ha on the fringe of this fragment would be significant. Its loss would equate to 3.3 % of the broader EEC fragment on lot 42 or 0.16 % of the native vegetation remnant in the surrounding 1000 ha area.

This level of assessment was not undertaken by the applicant for the Hunter Lowland Redgum Forest EEC. The Flora and Fauna Assessment noted the fragment to be isolated and highly disturbed, and would result in a small reduction of the community in the local area. On this basis the study concluded that the removal of this area would not be significant.

The Department considers the loss of EEC to be minor. The Lower Hunter Spotted Gum – Ironbark Forest to be removed is located on the fringe of a larger remnant making up 12.67 ha. At 3.3 % of the existing EEC fragment on lot 42, the loss is not considered substantial. Similarly, the loss of Hunter Lowland Redgum Forest EEC is not considered to be substantial either given it is a small, highly disturbed and isolated fragment.

Notwithstanding, the applicant should be required to demonstrate that an “improve or maintain” biodiversity outcome would be achieved, consistent with the biodiversity objectives sought in the Hunter Regional Plan. This can be ensured through a condition applied to the site compatibility certificate that require impacts to be either offset or other mitigation measures put in place to the satisfaction of Council.

Native grass would also be removed as a result of the proposal. The study found the vegetation to be in a low condition and so further analysis was not required (per the guide).

RECOMMENDATION

It is recommended that the Secretary's delegate:

- **notes** this report;
- **determines** the application for a site compatibility certificate under clause 25(4)(a) by issuing a certificate subject to the following requirements (clause 25(7)):
 - biodiversity impacts resulting from the proposed development are to be offset to the satisfaction of Maitland City Council such that an “improve or maintain” biodiversity outcome would be achieved;
 - visual impact mitigation measures are to be applied to the satisfaction of Maitland City Council;
 - the proposed development is not to be located on land identified as high flood hazard; and
 - any development application for the proposed development must include evidence of compliance with clause 42 of the *SEPP (Housing for Seniors or People with a Disability) 2004*.
- **signs** the letters to the applicant (Tab C) and Council (Tab D) advising of this determination.