

17 May 2017



PCU070877

Wayne Williamson
Team Leader
Sydney Region East, Planning Services
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Our Ref: 2017/124031

Dear Mr Williamson

Site Compatibility Certificate – 83-85 Booralie Road, Terrey Hills

I refer to your letter dated 27 March 2017 concerning an application for a Site Compatibility Certificate (SCC) under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* for the above-mentioned site.

The documentation accompanying this application has been reviewed and Council is of the opinion that the development is inconsistent with the criteria referred to under Clauses 17 and 25 (5) (b) (i), (ii), (iii), and (v) of the Policy.

Please find attached Council's detailed assessment with regards to the set criteria under Clause 17 and Clause 25 (5) (b) of the SEPP.

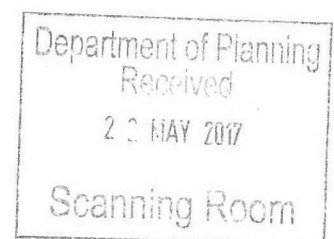
Council appreciates the opportunity to make a submission and trusts that the issues raised in this submission will be duly considered in the assessment and determination of whether to issue the certificate.

Should you wish to discuss the matters raised or require any further clarification, please contact Lashta Haidari, Senior Planner on 9942 2466 or via council@northernbeaches.nsw.gov.au.

Yours faithfully

Mark Ferguson
Chief Executive Officer

Encl: Northern Beaches Council Site Compatibility Certificate Submission



ATTACHMENT A

NORTHERN BEACHES COUNCIL SUBMISSION

SITE COMPATIBILITY CERTIFICATE – 83-85 BOORALIE ROAD, TERREY HILLS

INTRODUCTION – CURRENT DEVELOPMENT AND SITE CONTEXT

In considering the proposal, the following key features of the site and its location are identified:

- The site is zoned RU4 Primary Production Small Lots under Warringah Local Environmental Plan 2011, which envisages development primarily for the purposes of primary industry and other low intensity land uses in a rural setting.
- The site comprises two (2) lots being Lot 51 in DP 651178 known as No. 83 Booralie Road and Lot 2 in DP 530145 known as 85 Booralie Road, Terrey Hills.
- The site has two (2) street frontages; being Booralie Road to the north, Laitoki Road to the east and an unformed Crown Road identified as Tooronga Road to the south. The site to the west is also in the rural zone, being used for rural/residential purposes and contains approved stables and horse arena and comprises a single dwelling house and ancillary structures.
- The lots located on the eastern side of Laitoki Road are zoned R2 Low Density Residential under Warringah Local Environmental Plan 2011 and are characterised by one and two storey detached dwelling houses.
- The property at No. 83 Booralie Road (Lot 51 in DP 651178) was the subject of a Site Compatibility Certificate issued by the Department of Planning and Environment on 2 May 2013 for construction of up to 50 dwellings (Serviced Self-Care Housing) for seniors. Development Application No. DA2013/0796 for 50 serviced self-care dwellings within fourteen (14) two storey buildings was issued deferred commencement consent by the Warringah Development Assessment Panel (WDAP) on 11 December 2013. The consent was activated on 3 May 2016 and the development is currently under construction.

KEY FEATURES OF THE APPLICATION

Council understands the key features of the application are as follows:

- Consolidation of No. 85 Booralie Road with the adjoining site at No. 83 Booralie Road, Terrey Hills.
- Use of No.85 Booralie Road for seniors housing, in the form of an additional 37 x single storey detached dwelling houses by extending the approved development at No.83 Booralie Road;
- Associated landscaping, including an internal road network extending from the main site entrance off Booralie Road connecting to each individual dwelling. An internal footpath connecting to the communal open space, pool, putting green and bush garden located within the adjacent site currently under construction. Boundary footpath networks along the east, south and western boundaries will provide pedestrian access to Booralie Road;
- Retention and restoration of the creek line (Neverfail Creek) traversing the southern portion of the site.
- Connection to existing OSD/Nutrient Control facility located on the adjacent property at No. 83 Booralie Road.

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

Permissibility

Under the Warringah Local Environmental Plan 2011 (WLEP 2011), the subject site is zoned RU4 Primary Production Small Lots with the adjoining properties also having the same land zoning.

Seniors Housing is a prohibited use in the RU4 Primary Production Lots zone. The use of land as Seniors Housing is permissible under SEPP (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) on land that adjoins land zoned primarily for urban purposes (i.e. the R2 Low Density Residential Zone) subject to obtaining a Site Compatibility Certificate from the Director – General. However, the expansion of the site to include No.85 Booralie Road is not supported on the grounds that the new lot (Lot 2, DP 530145) does not qualify under these provisions.

It is important to note that the property at No. 85 Booralie Road is one lot removed from the nearby R2 zone and so does not adjoin land zoned for urban purposes. In this regard, the R2 zone adjoins No. 83 Booralie Road which is also zoned RU4 Primary Production Small Lots zone.

The proposal to consolidate No. 85 with No. 83 after the consent has been taken up and construction of the development is well underway, is regarded as a subversive adjunct to the development at No. 83 Booralie Road to take advantage of the adjoining land which benefits from an existing Site Compatibility Certificate and which due to its physical separation cannot apply to No. 85.

Council raises serious concerns with this proposal and the precedent it will create by permitting a “flow-on” effect of this form of development “creeping” beyond the intended limits of the lands identified as being “adjoining”.

Development on Land Adjoining Land Zoned Primarily for Urban Purposes

The Applicant is relying on Clause 17 which enables seniors housing to be permissible on land adjoining land zoned primarily for urban purposes provided it is:

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

The application seeks to extend the boundaries of the existing approved development on No. 83 Booralie Road by consolidating with the site at No. 85 Booralie Road to accommodate an additional 37 dwellings.

The sites are not currently consolidated and therefore the site at No. 85 Booralie Road is not land adjoining land zoned primarily for urban purposes and it is Council's submission that the proposal does not qualify for consideration under this Part. Accordingly, the proposed development on No.85 Booralie Road is prohibited and should not be granted the SCC.

Furthermore, the Planning Report by Minto Planning Services does not address this issue, nor does it provide any legal basis or compelling planning argument that No.85 should qualify as land that is “adjoining” the R2-Zone.

The following is provided should the Department form a different position on the issue of permissibility.

SITE COMPATIBILITY CRITERIA

The criteria under Clause 25(5) (b) of the Seniors Housing SEPP have been used to provide a detailed assessment of the application. This assessment provides a comparison between the desired forms of development envisaged for this site versus that sought.

THE NATURAL ENVIRONMENT

- (i) *The natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development.*

Comment:

The site includes a number of significant environmental features including;

- Vegetation located on the perimeter of the site to the north and east includes the threatened plant species, *Grevillea caleyi* as listed under the NSW Threatened Species Conservation Act 1995 and Commonwealth Environment Protection and Biodiversity Conservation Act 1999. Development works have the potential to impact on the *Grevillea caleyi* and Duffys Forest Ecological Community
- A natural watercourse located at the southern end of the site (Neverfail Creek).
- The site (at its southern end) is potentially flood affected. As seniors housing developments are considered vulnerable development under Warringah Development Control Plan 2011 (WDCP 2011) this will have a significant impact on minimum floor level requirements for all future development.
- The site is identified as Land Slip prone land pursuant to Warringah Local Environmental Plan 2011 (WLEP 2011). In this regard, Council raises concerns that the proposed development may be prohibited development under Schedule 1 of the Senior Housing Policy in that Geotechnical Hazard could be interpreted to meet the definition and/or intent of "natural hazard" under the SEPP.

Additionally, any development on the site for the purposes of Seniors Housing will require significant new infrastructure including footpaths and road construction. Such works have the potential to impact on the *Grevillea caleyi*. Approval of any proposal at the Development Application stage would be contingent upon the applicant demonstrating that the required infrastructure works have a minimal impact on the environmental features of the site and can satisfy the provisions of the WDCP 2011, the NSW Threatened Species Conservation Act, 1995 and Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

In light of these natural features, it is recommended that any approval for a SCC include the following requirements for future development at the site:

- The south east corner of the property (generally south of Neverfail Creek) remains free from dwellings and is used as open space. Development is not recommended for this area due to potential risk from flood and erosion hazards, and for ecological reasons.
- All development must be located outside a riparian buffer of 10m either side from the top of bank of Neverfail Creek and *Grevillea caleyi* and Duffys Forest Ecological Community habitat.
- Impact of the development on native vegetation including threatened flora (*Grevillea caleyi*), and Duffys Forest Ecological Community and potential habitat for threatened species be minimised and managed through a Biodiversity Management Plan submitted with the Development Application.
- Where the development impacts upon *Grevillea caleyi*, or Duffys Forest Ecological Community, further assessment and approvals will be required in consultation with relevant state and federal agencies.
- Any additional known or potential threatened species including those identified in Flora and Fauna Statement are also be addressed as per NSW Threatened Species Conservation Act 1995, Environmental Planning and Assessment Act 1979 and Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

- All current protection and management measures for *Grevillea caleyi* and Duffys Forest Ecological Community for No. 83 Booralie Road are to be fully implemented and maintained – associated plans and documents are to be updated to incorporate any additional development/property and protection/management measures.

Approval of any application would be contingent upon the applicant demonstrating that the required infrastructure works have a minimal impact on the environmental features of the site and can comply with requirements of the Warringah Development Control Plan 2011 (WDCP 2011), the NSW Threatened Species Conservation Act, 1995, Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and the Water Management Act 2000.

IMPACT ON THE LIKELY FUTURE USES OF THE LAND

- (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.*

Comment:

The use of the site (No. 85 Booralie Road) as Seniors Housing is not a permissible use within the RU4 Primary Production Small Lots zone under the local planning controls applicable to this site.

SEPP (HSPD) is a State wide planning policy and allows a form of development and a density of development not necessarily reflected in local planning instruments. The intensity of development proposed exceeds the density controls of WLEP 2011.

The RU4 Primary Production Small Lots zone envisages that development would comprise '...primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature'. Permissible uses in the zone include animal boarding or training establishments; aquaculture; extensive agriculture; intensive plant agriculture; plant nurseries; recreation areas; and landscape material supplies.

The granting of a Site Compatibility Certificate for a residential development of such a density as that proposed has the potential to prejudice the development of the adjoining RU4 zoned lots for uses such as those mentioned above. The development potential of the adjoining lots for the purposes of intensive primary industry could be diminished as such uses could generate impacts such as odours, traffic, noise and dust emissions which have the potential to be detrimental to the amenity of a more intensive residential development, particularly a development comprising a further 37 dwellings close to the entire western boundary of the site occupied by more sensitive (older and frail) residents.

THE AVAILABILITY OF SERVICES AND INFRASTRUCTURE

- (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.*

Comment:

The Planning Report prepared by Minto Planning Services indicates that the site is within close proximity to public transport being the Forest Coach Lines bus service along Booralie Road. There are east and west bound bus stops located to the east of Laitoki Road which provides access to Duffys Forest and Chatswood via Terrey Hills. These bus stops are located within 150m to 200m from the front of No. 85 Booralie Road, however the service available from these bus stops are infrequent and requires changing of buses to reach the main centres where a number of the identified services are located.

Consequently, from the information provided, the proposal has failed to demonstrate that there are adequate public transport services to ensure access to services and facilities is available to the site in accordance with Clause 26.

Clause 42 of SEPP (HSPD) requires that access be provided to; home delivered meals, personal care and home nursing, and assistance with housework. No detail has been provided in this regard except to note that the proposed services to be provided to the approved development on No. 83 Booralie Road will be expanded to cater for the additional dwelling proposed for No. 85 Booralie Road.

Clause 43 of SEPP (HSPD) requires that serviced self-care housing on land that adjoins land zoned for urban purposes is to provide a bus (capable of carrying at least 10 passengers) for the residents of the development that provides access to and from a list of identified services at least once in the morning and once in the afternoon each day.

Given the above, it is considered that there is insufficient information to demonstrate that the required services and facilities are available to the property, therefore failing to satisfy the criteria for the issue of a Site Compatibility Certificate.

IMPACT ON THE PROVISION OF LAND FOR OPEN SPACE OR SPECIAL USES

- (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.*

Comment:

The site is neither zoned, nor adjoins land that is zoned for open space or special uses.

IMPACT OF THE BULK, SCALE, BUILT FORM AND CHARACTER

- (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.*

Comment:

Development to the north, south and west of the site is generally characterised by single dwelling houses and buildings associated with permissible uses of the RU4 zone such as horse stables, produce stores, and large outbuildings for the storage and/or production of landscape supplies.

The residential development to the east of No. 83 Booralie Road comprises single dwelling houses on lots of approximately 700sqm. Due to the surrounding uses, buildings are generally a maximum of two storeys in height and detached style.

The Built Form Controls relevant to the RU4 Primary Production Small Lots zone, do not envisage housing of such a density as proposed on the subject lot (approximately 1 dwelling/527m²). As mentioned previously, the approved development on No. 83 Booralie Road was approved due to its physical location adjoining land zoned for urban purposes (being R2 low density residential) on the eastern side of the intersection of Booralie Road and Laitoki Road. The site at No. 85 Booralie Road does not adjoin such land (it is one lot or 100metres removed from being "adjoining") and will create an uncharacteristic, unintended and unfettered "up-zoning" of this site.

Due to the level of site coverage and density of residential accommodation, both on the single site at No. 85 and as a larger development conjoined with the approved development on No. 83 Booralie Road, the proposal has great potential to prejudice the redevelopment of adjoining RU4 zoned lots for the envisaged primary production uses.

While the single storey nature of the proposed self-care dwellings is considered reflective of the R2 Low Density Residential Zone to the west of Laitoki Road, it does not provide a suitable density with the adjacent RU4 zone.

Notwithstanding the density of the proposed development, it is noted that the building layout has been designed to respect the relevant setback controls of the WDCP 2011. While the supporting documentation indicates the site provides 59% landscaped open space, these calculations are questionable as the substantive integrity of the landscaped areas appears to be diluted by the paved internal road network and footpaths. In this regard, it is Council's opinion that the number of dwellings should be reduced and that larger landscaped buffers and separation between each dwelling should be provided to support more meaningful landscaping.

CLEARING OF NATIVE VEGETATION

- (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.*

Comment:

The Native Vegetation Act 2003 is not applicable to land covered by the Warringah LEP 2011.

CONCLUSION

Having considered the application in accordance with the criteria for a Site Compatibility Certificate under SEPP (HSPD) 2004, a number of fundamental issues have been identified which can be summarised as follows:

- Failure to demonstrate the applicability of Clause 17(2) of SEPP (HSPD) in relation to No.85 Booralie Road,
- The potential to impact on threatened flora (*Grevillea caleyi*),
- The potential to prejudice future development of adjoining lots in the RU4 Primary Production Small Lots zone,
- Unjustified housing density on a site surrounded by RU4 Primary Production Small Lots zone, and
- Failure to sufficiently demonstrate access to facilities and services including:
 - the availability of public transport to the identified services listed in Clause 26;

For the above reasons, the proposal is not found to be compatible with the criteria under Clause 25(5) (b) of the Seniors Housing SEPP. It is requested that these matters be addressed in the Department's determination of the SCC application.

If the Department is minded to issue a Site Compatibility Certificate for the new site, Council requests that the certificate be subject to the following requirements:

- Department being satisfied that the development is consistent with Clause 17 of SEPP (HSPD).
- Council being satisfied that the services required to satisfy the requirements for serviced self-care housing are provided in detail being home delivered meals, personal care and home nursing and assistance with housework including the ongoing management for the provision of these services for the life of the development in accordance with Clause 42 of SEPP (HSPD).
- That a bus service be provided in accordance with Clause 43 of SEPP (HSPD).
- Development must not exceed two storeys.
- The final number of dwellings should not be specified in the approved SCC.
- Parking is to be provided for 2 vehicles per dwelling (plus visitors).

- A setback/buffer is to be provided from all boundaries in accordance with the Warringah Development Control Plan 2011.
- The southern end of the property (riparian buffer of Neverfail Creek) remains free from dwellings and associated structures, is rehabilitated/restored and is used as open space. Development is not recommended for this area due to potential risk from flood and erosion hazards, and for ecological reasons.
- All development must be located outside a riparian buffer of 10m either side from the top of bank of Neverfail Creek.
- All Asset Protection Zones are to be located outside the riparian zone of Neverfail Creek.
- Impact of the development on native vegetation including threatened flora (*Grevillea caleyi*), and Duffys Forest Ecological Community habitat, and potential habitat for threatened species be minimised and managed through a Biodiversity Management Plan submitted with the Development Application.
- Where the development impacts upon *Grevillea caleyi*, further assessment and approvals will be required in consultation with relevant state and federal agencies.