

**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 200 DP 740455, 333 Diamond Beach Road, Diamond Beach

The site compatibility certificate (SCC) application has been made in relation to land at 333 Diamond Beach Road, Diamond Beach. The site covers an area of approximately 19ha and is zoned RU1 Primary Production, where seniors housing is prohibited but dwelling houses are permitted with consent.

The site is on the fringe of the village of Diamond Beach. It is generally flat, contains a vegetated creek line in the north-west part of the site, and is otherwise sparsely vegetated. Part of the site is subject to flooding, although it is not impacted by coastal hazards. Under the Greater Taree Local Environmental Plan 2010, the minimum lot size for further subdivision is 40ha. The site is vacant (**Figure 1a**).



Figure 1a: Site location outlined in blue (source: Nearmap 2017).

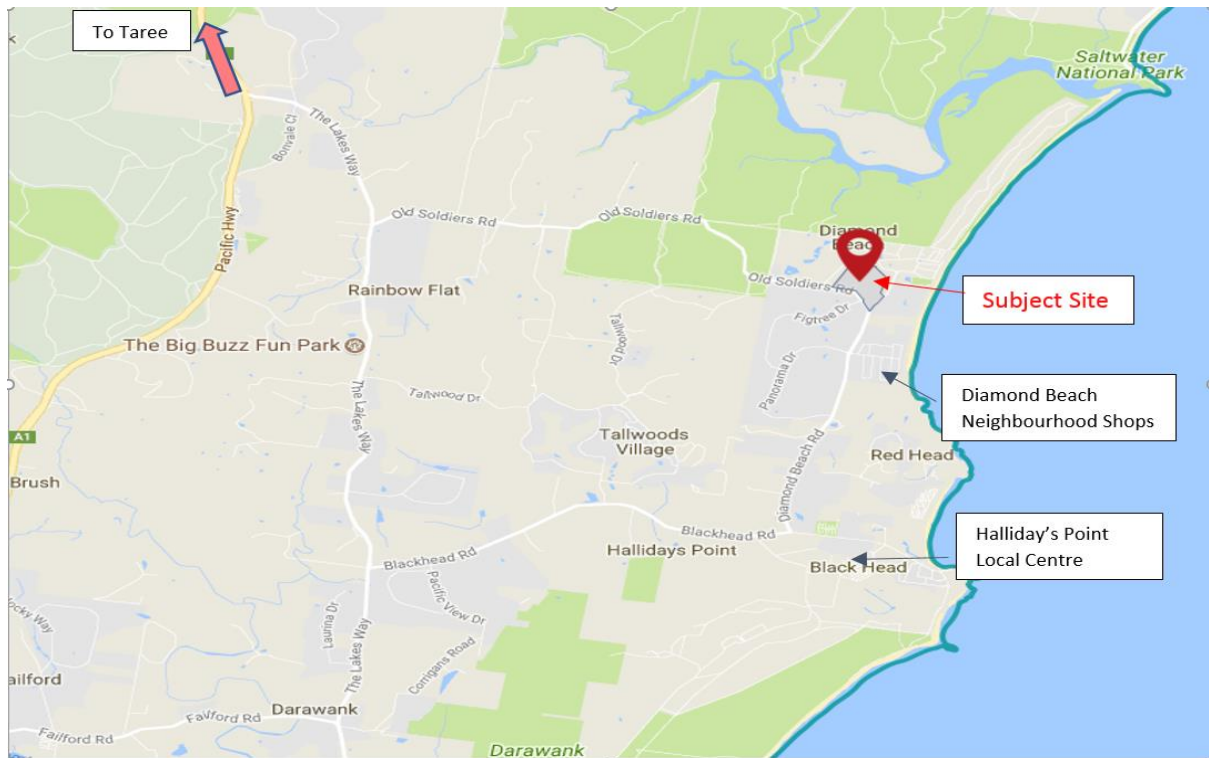


Figure 1b: Broad site context (source: Google maps)

Surrounding land uses include a low-density rural residential development to the south (zoned R5 Large Lot Residential) and rural uses to the north and west (zoned RU1 Primary Production). More intensive tourism uses (zoned SP3 Tourism) are located on the coast, more than 1 kilometre to the north-east before joining the Saltwater National Park (**Figure 1b and 2**).

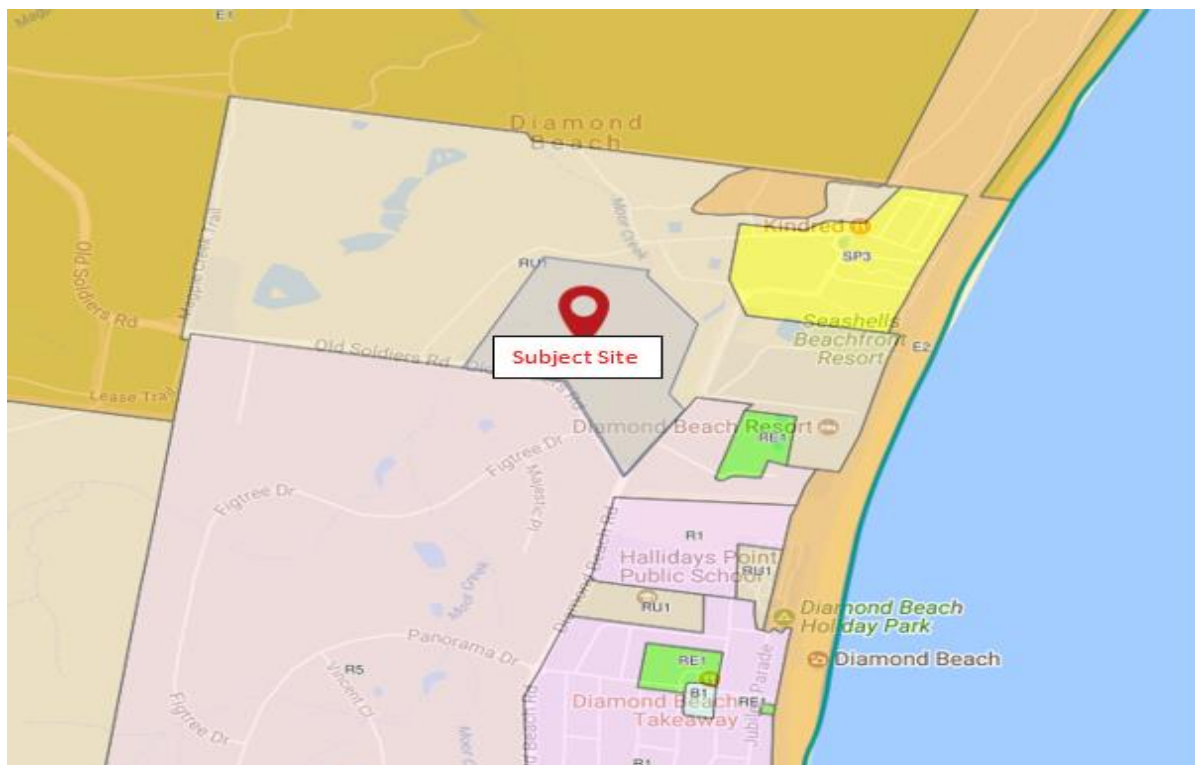


Figure 2: Site zoning and zoning context (source: NSW Planning Portal).

The site is in proximity to land zoned R1 General Residential to the south-east and this land remains generally undeveloped. The proximity to this R1-zoned land is relevant to determining if State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP) is applicable to this site, and this matter is further discussed below.

APPLICANT: Coastplan Group on behalf of Cocos Properties Pty Ltd.

PROPOSAL: The originally submitted proposal was modified during the assessment period. The final proposal seeks to develop the site for seniors housing comprising:

- 257 serviced self-care (two and three bedroom) single-storey dwellings;
- recreation facilities including barbecue, kiosk, tennis court, bowling green, pool and walking tracks;
- a clubhouse for the provision of support services such as lifestyle activities, a care nurse and an on-site manager, and space for on-site medical consulting rooms;
- small-scale retail amenities such as a coffee shop and hairdresser; and
- on-site car parking spaces and caravan parking.

Clause 13(3) of the Seniors Housing SEPP defines serviced self-care housing as “self-contained dwellings where the following services are available on the site: meals, cleaning services, personal care, nursing care”. The proposal is consistent with this definition of serviced self-care housing.

A concept plan (**Figure 3**) detailing the proposed built form and site layout formed part of the application. The proposal would provide for an estimated density of 14 dwellings per hectare.



Figure 3: Proposed development (source: Coastplan Group).

LGA: MidCoast Council (formerly Greater Taree).

PERMISSIBILITY STATEMENT

The Seniors Housing SEPP applies to land that is zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, where it satisfies the additional requirements in clause 4 of the Seniors Housing SEPP.

The site is zoned RU1 Primary Production under the Greater Taree Local Environmental Plan 2010. Dwelling houses are permitted within the zone.

The site does not immediately adjoin land zoned primarily for urban purposes and adjoins land zoned either RU1 Primary Production or R5 Large Lot Residential. R5 is expressly excluded as land zoned for urban purposes under clause 4(2)(c) of the Seniors Housing SEPP.

The closest land zoned primarily for urban purposes is approximately 80m to the south. Whilst this land is zoned R1 General Residential, it is a vacant holding and is then separated by a rural lot before adjoining developed residential land. The closest residential development to the site is approximately 450m away (Refer to **Figure 1a and Figure 2**). The ability for the application to rely on proximity to the vacant residential land for permissibility has been confirmed by departmental legal advice (**Attachment H1**).

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; and
- (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).

COUNCIL COMMENTS

The original application was referred to MidCoast Council and brief comments were received (**Attachment B1 and B2**). Council raised “serious concerns” with the application including:

- the development of land that had been illegally cleared;
- the proposed dwelling density being too high, especially compared to adjoining areas;
- the layout of the proposed development limiting accessibility to the common facilities; and
- flooding of part of the site.

Further advice from Council was sought to confirm the detail of its concerns and to discuss the amended proposal. Despite Council raising serious concerns with the proposal (**Attachment B1**), staff have declined to provide further detailed comments

regarding these concerns or a response to the amended proposal (**Attachment B3**). Council's concerns are discussed in relation to the assessment of the site below.

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)).

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

The site is located at the northern extent of rural and large lot residential uses in the Diamond Beach area (**Figures 1a and 1b**), with coastal tourism developments further away to the northeast. Large lot residential uses adjoin the site on two sides, and the average density is one dwelling per 1.5ha to the west and one dwelling per 0.4ha to the east. Rural land adjoining the site to the north is one dwelling per 40ha. The proposal envisages a density of 1 dwelling per 0.07ha, which is unsuitable when it would be surrounded by development at much lower intensity.

The visual setting of the area is either large lots, with large single dwellings surrounded by open space and deep setbacks between dwellings, or coastal tourist developments that are setback from the public roads and are not visible from the rural and large lot residential areas. The proposed development shown in **Figure 3** includes shallow setbacks and a long line of buildings on narrow lots along the frontages to two public roads. This is despite modifications to the earlier proposal to increase these setbacks. The proposed development will be more intense in character and visual appearance than the surrounding rural, large lot residential or the coastal tourism uses. The intensity of the proposed development is not compatible with the character of the area.

Services like street drainage, footpaths, public transport and walk-to shops are limited for the site, in keeping with the character of this area as a low density rural area. Services such as banking, medical and groceries are not available in the small neighbourhood centre in Diamond Beach (approx. 1km away), but are available in the local centre at Hallidays Point (approximately 4km away). The nearest higher-order government and social services in Tuncurry and Forster (approximately 18km away). Local shops in Diamond Beach include take-away food, gift shops and real estate which are servicing the nearby holiday caravans and tourist developments, and not a more dense seniors housing development.

There is no bus route servicing the site, with the closest bus stop approximately 1km away. There is no connecting footpath or off road cycleway to the bus stop. Bus services are limited, with only two services to the Diamond Beach shops on a weekday.

The site is considered unsuitable for more intensive development because it:

- is not in keeping with the character of existing rural and large lot residential uses in a village fringe location;
- proposes lots that will be significantly denser than existing residential development within the locality, including the existing large lot residential uses with a minimum lot size of 4000m² and 1.5ha hectares adjacent to the site;

- is located approximately 1km from basic convenience shops at Diamond Beach, 4km from existing services at Hallidays Point, and around 18km away from higher-order government and social services and retail needs; and
- is inadequately serviced by public transport, with the proposed future bus route currently unresolved.

COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND 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))

Natural environment

Biodiversity

The site contains a watercourse (Moor Creek) and has native vegetation within the riparian corridor consisting of potential endangered ecological communities, including Swamp Sclerophyll Forest and Riparian Forest. A state significant SEPP 14 wetland lies to the north of the site. The remainder of the site is largely cleared; however, the extent of native grassland on the land has not been assessed.

The application indicates that the proposed development has been designed to avoid disturbance of the remaining vegetation. Council has raised concerns regarding the impact of the proposal on native vegetation. Allegations of illegal clearing have been made by Council and are being investigated by the Office of Environment and Heritage. The environmental studies accompanying the application were undertaken after the alleged clearing occurred.

Legal advice (**Attachment H1**) noted that the application should be considered based on the information provided and should not be affected by any investigation into illegal clearing.

Environmental studies prepared to support the application did not include detailed assessment of the site's vegetation. The study concluded that:

“the native vegetation of conservation significance has been retained in key areas for the protection of water quality of Moor Creek and to maintain the linear connectivity of habitats to the south and north of the site ...

“It is however recommended that a habitat management plan be prepared and implemented to ensure that the buffer areas to these native vegetation communities and corridor be enhanced over the life of the development.”

Some parts of the proposed development footprint, including the clubhouse, pool and associated facilities, appear to fall within what would be the riparian area (they are located below the flood planning level) (**Attachment G**). Council would need to be satisfied that the development would not destroy riparian vegetation and the proposed development may not be compatible with the riparian area. This would need to be further assessed in any future development application. Further discussion on the potential clearing of native vegetation is provided in the

assessment against clause 25(5)(b)(vi). Further discussion on implications for flooding is provided in the flooding subsection.

Heritage

A due diligence assessment for Aboriginal heritage prepared by McCardle Cultural Heritage Services was undertaken for the site. The assessment has identified potentially sensitive areas, predominantly the riparian area along the creek and below the flood planning level.

Natural hazards

Contamination

No information on site contamination was provided with the application, noting previous land uses have been limited to low-intensity agricultural activities.

Bushfire

The site is partly mapped as bushfire-prone. Preliminary bushfire advice has been obtained regarding the requirements of a suitable asset protection zone (APZ). The proposal for 257 dwellings reflects the proposed APZ and visual buffer setbacks.

Flooding

Council has raised concerns with the flood-prone nature of the site. Although the site is not identified as flood-prone on Council's LEP flood mapping layers, Council has indicated that localised flood studies from previous applications over the site identify the site as being partly flood-affected.

The applicant has undertaken additional work in relation to the issue of flooding in response to Council's concerns (**Attachment G**). The submitted flood report indicates:

"the majority of development is located above the 1% AEP flood level and that the impacts of filling in the parts of the site identified as flood affected would not be expected to raise the modelled 1% AEP peak flood levels in this area."

Council has not provided any response to this additional flood information. However, examination of the mapping supplied indicates that several proposed dwellings (approximately 12), together with the clubhouse (and its associated facilities) and the swimming pool, are proposed to be located below the flood planning level (1% flood event).

Clause 7.2 of the Greater Taree Local Environmental Plan 2010, applies to land below the flood planning level, and Council would need to be satisfied that the development would not result in unsustainable social and economic costs to the community as a consequence of flooding. The proposed development may not be compatible with potential flooding impacts and this would need to be further assessed in any future development application.

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))

Council's strategic planning direction set out in its local strategy (Hallidays Point Development Strategy 2004) envisages tourism, environment protection and mixed use for a broad area, including the site. This strategy has been adopted by Council but not endorsed by the Department, nor has it been updated since 2004. Some of

this broader area, adjacent to the beach, has been developed for tourism purposes but the majority remains zoned rural.

Council's direction was not reflected in the Mid North Coast Regional Strategy 2006-31 (**Attachment I**). The site is not identified for any development purposes in the Hunter Regional Plan 2036. It is therefore expected that the long-term use of this area is for low-density residential development in existing zoned areas and rural uses.

The application proposes more intense development across the site than that which is currently permitted in the area. Immediately surrounding land uses include low-density, single-storey dwelling houses within a bush and rural setting to the south (zoned R5 Large Lot Residential) and rural uses to the north and west (zoned RU1 Primary Production).

There is a potential risk of future land use conflict with the adjacent RU1 Primary Production zone, where intensive livestock agriculture and rural industries are permissible with consent. However, these are neither existing nor approved uses and are unlikely to be located in a village fringe location such as this.

The development proposes intensification of the site and fails to recognise the amenity of the existing rural and rural residential area. The proposed development will be more intense in character and visual appearance than the surrounding rural or the large lot residential uses. It is considered that the proposed development will have a negative impact on the future uses of the site that would otherwise be rural.

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))

Location and access to services and infrastructure

The site is on the fringe of the village of Diamond Beach, being approximately 1km from the village local centre, which consists of around six convenience shops.

A larger centre at Hallidays Point is 4km further south, which offers a range of services to meet the needs of the local community. The applicant has investigated the provision of medical facilities to service the site and advises that they may be provided access at Hallidays Point Medical Centre. Higher-order social services and retail needs are located around 18km north at Taree or 20km south at Forster/Tuncurry.

The site is more than 400m from day-to-day retail, commercial and medical services, and consequently does not meet the requirement of clause 26(2)(a) of the Seniors Housing SEPP. In response to clause 26(2)(c), the applicant indicates that a transport service (a public bus) is proposed for the locality. The availability of this transport service and its ability to meet the requirements of clause 26(2)(a) is uncertain. The applicant indicates that it would be predicated on a realignment and upgrade of an existing road that is currently being investigated through a planning proposal. The applicant indicates that 'it is likely that when this road is constructed and operational, it will form part of the bus route through the area. There will be a regular bus service passing the site and a bus stop provided at the frontage of the site'.

Due to the fringe location, the considerable distance from services and the lack of certainty regarding the provision of public transport services, seniors housing is not

recommended on the site and is considered inconsistent with the supporting service aims of the Seniors Housing SEPP.

Utility Infrastructure

The application states that the site will have access to utilities in the area. It is considered that a development could be serviced by existing utilities given the proximity to the Diamond Beach village. On-site stormwater detention capacity and management would need to consider impacts on the riparian corridor and nearby SEPP 14 wetland.

Any development application for the broader seniors housing development should address these stormwater management requirements and any necessary road upgrades.

Utility infrastructure is not expected to be a constraint to development.

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.

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))

Character of the local area

The surrounding area comprises predominantly low-rise (one-storey), low-density rural residential development. While the proposed buildings are only single-storey, the intensity of the proposed development (approximately 14 dwellings per hectare) will involve a significant change to the character of the local area.

The dwelling density of the R5 zone in this area is between 0.6 and 2.5 dwellings per hectare.

Due to concerns regarding the intensity of the proposed development, the applicant undertook further assessment of visual impacts and amended the submitted proposal to ameliorate the impacts identified. The revised proposal and redesign of the development has resulted in a reduction in development yield to 257 dwellings (from 283 dwellings) through greater setbacks, landscaping within the site and screen planting on the perimeter.

The visual impact assessment (**Attachment F2**) concluded that;

“the proposal introduces a higher density development to an existing semi rural-residential environment, the proposed development will generally have a low-moderate impact on the scenic quality of the surrounding areas ... if the landscape measures are undertaken.

“The proposal is inconsistent with the surrounding rural character however that character is evolving and the future landscape character may be less sensitive as a result.”

The applicant cites more intensive tourism development with higher densities in the locality. These have occurred on land further north of the site and within the village (Diamond Beach Holiday Park and Ramada Resort Diamond Beach) (**Figure 4**).



Figure 4: Subject Site and Existing Tourism Developments

These tourism developments reflect an intensification of uses in pockets of the Diamond Beach village. However, these pockets are located more than 1 kilometre away from the site, immediately adjacent to the beach, and therefore do not influence the character of the rural residential/rural area now, nor are they likely to extend close towards the subject site in the near future.

The intensity of the proposed development is greater than that within the locality and has attempted to address character through redesign. However, the proposed development fails to adequately consider the character of the area and the impact that higher-density seniors living will have on the rural residential amenity of the area. Due to the likelihood of conflicts with the rural and low-density character being generated by a seniors housing development in this locality and the relationship to the low-density housing of the adjoining R5 zone, the subject site is considered unsuitable for a seniors housing development.

It is considered that the bulk, scale, built form and character of the proposed development will be more intense in character and visual appearance than the approved and future uses of land in the vicinity of the development. This will have a negative impact on these uses.

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))

There has not been detailed assessment of vegetation on the site. The native vegetation on the site is predominantly located along the riparian corridor and on land affected by a 1% flood event. Some of the proposed development extends into the flood-affected land. However, the application indicates that all remnant trees are to be retained and that there may potentially be clearing of small areas of native groundcover. Whether this groundcover comprises more than 50% indigenous species of vegetation cannot be determined without more detailed assessment. The potential impact of the proposed development on groundcover is undetermined.

Investigations into clearing of native vegetation on this site have been previously undertaken by MidCoast Council and the Office of Environment and Heritage. Council determined there to be unauthorised clearing.

CONCLUSION

The site is unsuitable for more intensive use for the provision of self-care accommodation for seniors having regard to the criteria set out in clause 25(5)(b) of the Seniors Housing SEPP as the site is:

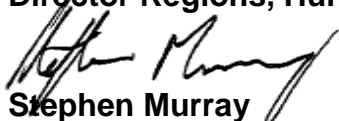
- located on the village fringe surrounded by rural and large lot residential development. The visual setting of the area is therefore either large lots, with large single dwellings surrounded by open space and deep setbacks between dwellings, or coastal tourist developments that are setback from the public roads and are not visible from the rural and large lot residential areas. The proposed development will be more intense in character and visual appearance than the surrounding rural, large lot residential or the coastal tourism uses. The intensity of the character and visual appearance of the proposed development is not compatible with that of the area.
- not in an adequate location for seniors housing due to its distance from services at Hallidays Point, and the basic convenience shops at Diamond Beach, approximately 1km away, do not provide adequate services; and
- inadequately serviced by public transport and is noncompliant with clause 26 of the Seniors Housing SEPP in relation to the provision of public transport services for future residents.

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19/4/2018

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