

**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:** Lots 15, 16 and 21 in DP 213730, Lot 44 in DP 221350 and Lots 1–6 in DP 238165 – 88 Shoal Bay Road, Nelson Bay.

The site compatibility certificate (SCC) application was received in November 2017. The subject site has a total area of 5,900m<sup>2</sup> and is the current car park and motel component of a registered club (**Figure 1**). The site is about 1.2km from Nelson Bay strategic centre, and fronts Shoal Bay Road which is the main road between Nelson Bay and the Shoal Bay local centre (**Figure 4**).

The site is zoned RE2 Private Recreation under the Port Stephens Local Environmental Plan 2013. It adjoins residential dwellings in an R2 Low Density Residential zone to the south and an R3 Medium Density Residential zone to the north, and public park zoned RE1 Public Recreation to the west (**Figure 3**). Residential development in the immediate vicinity is single dwellings or town houses. The existing club buildings are up to 3 storeys high.

The existing uses, approved uses and future uses of land in the vicinity of the development can be summarised as:

- the registered club to the east;
- sports grounds and open space to the west; and
- surrounding residential areas of the site to the north and south.

The surrounding residential land is mostly developed with varying ages of building stock and includes strata title sites, thus creating a difficult scenario to consolidate land to generate significantly greater densities in the future.



Figure 1: Subject Site (current aerial view).

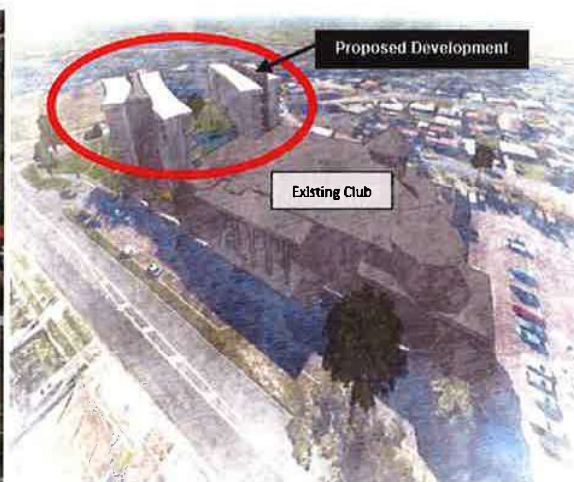


Figure 2: Proposed development (rendered view as submitted).



Figure 3: Zoning map.

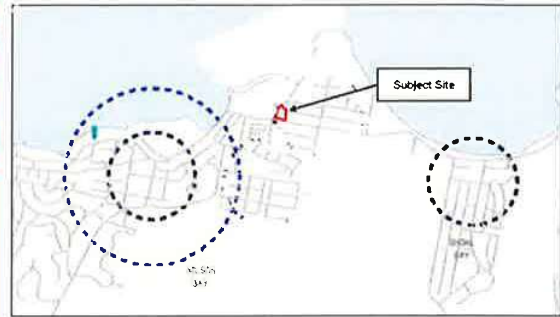


Figure 4: Location of commercial centres with 400m and 800m catchments

**APPLICANT:** Wests Group Australia

**LGA:** Port Stephens

**PROPOSAL:** Seniors living development – a 79 infill self-care housing proposal with a mix of two-bedroom and three-bedroom units in a building up to seven storeys (max 22.5m) (**Figure 2**).

#### PERMISSIBILITY STATEMENT

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP) applies to land zoned primarily for urban purposes or adjoining land zoned primarily for urban purposes where it satisfies the additional requirements of clause 4.

An existing registered club is on the site, therefore the Seniors Housing SEPP applies to the land by clause 4(1)(b). For the avoidance of doubt, the site can be considered as being zoned primarily for urban purposes because it also mostly adjoins land zoned for urban purposes, being the R2 Low Density Residential zone to the south and the R3 Medium Density Residential zone to the north (**Figure 3**).

As the site is zoned primarily for urban purposes, any form of seniors housing is allowed under clause 15(a) of the Seniors Housing SEPP. The proposal is in-fill self-care housing, by the definitions of clause 13 of the Seniors Housing SEPP as none of the required services will be provided on site as part of the development.

A site compatibility certificate can be issued for this site because it satisfies the locational requirements of clause 4, being on land used for the purposes of a registered club, and is considered land zoned primarily for urban purposes because it adjoins land zoned for urban purposes.

#### 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**

Council's comments were received on 24 January 2018 (**Attachment B**) and discussed with Council staff by phone on 8 February 2018. Council's comments raised the following issues:

### Visual impacts

The applicant has stated that the proposal will not be seen from any significant public vantage points. Council could not find any evidence that the development will not impact on the views of important natural features.

The applicant should provide evidence to support its statement with any future development application.

### Distance to centres and impacts

Council notes that the distance to an existing centre is greater than prescribed in Council's planning strategy (1.2km instead of 800m), and access to public transport via crossing Shoal Bay Road may be unsafe for seniors during peak holiday periods.

Council also recognise the need for seniors housing in the Port Stephens area and supports the provision of aged housing that does not undermine the role of the Nelson Bay and Shoal Bay centres.

### Alternative sites

Council is of the opinion that there is adequate availability of land for seniors living development in Port Stephens without the need for the development of this site for seniors housing.

### Impact on recreation land

Council believes the proposal does not contribute to enhanced recreational outcomes and will reduce the already limited availability of RE2 Private Recreation sites in the area.

### Design impacts

Council has concerns about the proposal's impacts from overshadowing, impacts on human scale and privacy, and about the street-level visual impacts on access points and the character of the immediate neighbourhood.

### Nelson Bay Town Centre and Foreshore Strategy

Council provided further information on 7 May 2018 in relation to plans for Nelson Bay. Council has recently exhibited a strategy for Nelson Bay town centre and foreshore area that considered changes to building height controls. There are currently buildings much taller than the existing building height controls in Nelson Bay (maximum HOB = 15m and existing buildings from 17m to 28m). The strategy proposes a mix of building heights up to 9 storeys (31.5m) in the town centre.

Council is currently considering submissions received during the exhibition, before making any changes to the building height controls.

The site is outside the boundary of the Nelson Bay town centre and foreshore strategy, and Council has advised that there is no intention for the town centre strategy to be extended to include the site.

The issues raised by Council have been considered and assessed in this report.

### **SUITABILITY FOR MORE INTENSIVE DEVELOPMENT**

The Secretary must not issue a certificate unless the Secretary 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 zoned RE2 Private Recreation and accommodates a portion of the registered club, being a motel and ground-level car parking for the club. There is no native vegetation on the site.

A range of tourism and recreation uses are permissible in the RE2 zone, including motel accommodation and serviced apartments that would have a similar intensity of activity and built form to the proposed seniors housing. The site is considered suitable for seniors housing uses based on the similarity to the permissible uses in the RE2 zone.

The site has maximum building height controls taller than other sites in the immediate area, ranging from 15 metres from the west and stepping down to 12 metres to the east (**Figure 5**). The proposal is for building heights in excess of the current controls (up to 22.5 metres). Shadow diagrams provided with the application show that the proposal has minimal impact on nearby residential areas (**Attachment H**) indicating that the site is suitable for taller buildings.

The final height for the proposal can be assessed by Council and would need to be supported by an application to vary the development standard. This will be a requirement listed in the SCC.

There are no major natural or infrastructure constraints which preclude this form of development on the site.





Figure 5: Building height map.

## COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND SURROUNDING LAND USES

The Secretary must not issue a certificate unless the Secretary 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 and hazards

The Nelson Bay locality is environmentally significant because of its landform (basin surrounded by ridgelines), rich biodiversity and the setting of the water of Port Stephens.

Council's Nelson Bay Town Centre and Foreshore Strategy 2012 identifies that development should not be visible above the Tomaree Peninsula and treed ridgeline and highlights the importance of appropriate building heights to ensure the natural setting of the town is clear and amenity is preserved. The proposal has considered this planning principle and has designed the building to not protrude the ridgeline.

There are no known natural hazards affecting the site and the proposed buildings are lower than the ridgeline, therefore the proposal is considered compatible with the natural environment.

#### Other existing and approved uses in the vicinity

Surrounding residential areas are typically low scale, with a mix of single-storey dwellings and two-storey townhouse development. The adjoining R3 Medium Density Residential and the R2 Low Density Residential zones both allow buildings up to 9m in height (i.e. three-storeys).

To the west of the site is a Council reserve with playing fields, community buildings and natural bushland that connects to Fly Point Park, an important parcel of open space for locals and tourists. Fly Point Park is an item of environmental heritage in the LEP for its previous uses as a migrant camp and has Aboriginal heritage values.

The club is the biggest building in the immediate vicinity (1km radius), being 2-3 storeys and occupying an approximate 6000m<sup>2</sup> footprint.

Further to the west are three-storey apartment buildings and along the foreshore of Victoria Parade are buildings of 4-6 storeys that overlook Port Stephens and sit below the ridgeline. Taller buildings are proposed in Nelson Bay town centre (up to 9 storeys) in Council's strategy.

By setting taller maximum building height controls for this site and zoning it as RE2, Council has already established that buildings taller than the adjoining residential zones and a range of tourism and recreation uses are compatible with the surrounding environment and land uses. Therefore, seniors housing on this site can be compatible with the existing uses in the vicinity, subject to development assessment of the height, scale and bulk of the final proposal.

**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 subject site is zoned RE2 Private Recreation and permissible uses relate to a potential recreation or tourism function for the site, noting its use as a motel, registered club and associated car parking.

The Port Stephens Planning Strategy 2011 identifies intensification of development (medium-density and multi-unit development) within infill areas like this location (**Figure 7**). Much of the Port Stephens LGA is highly constrained, with limited ability for additional urban expansion. The strategy recognises the need for infill to accommodate population growth.

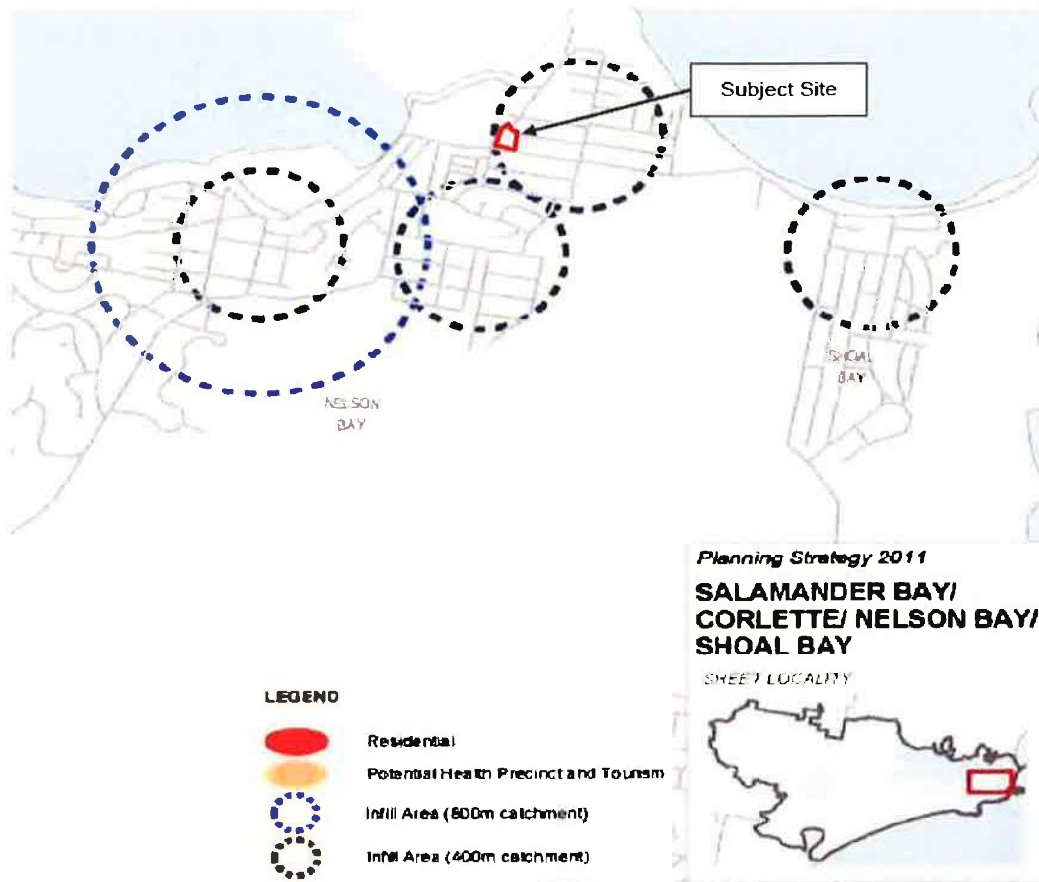


Figure 7 Map Extract from Port Stephens Planning Strategy 2011

The application states that:

"The proposed development will provide a form of residential accommodation consistent with medium density and multi-unit development within the designated Infill Area as indicated in Figure 7. The proposed development will increase residential density in the area and will not detract from the role of Nelson Bay as a strategic centre. The proposed development will reinforce and further enhance the current connection of the site with the residential population of Nelson Bay (medium density to north and the Austral Street neighbourhood to the south)."

The proposal will support the desire for additional housing in the Nelson Bay area, in a location that is consistent with Council's local strategy. The Seniors Housing SEPP enables seniors housing on sites with registered clubs so the proposal is considered consistent with the existing and future uses of the site and the RE2 zoning.

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))**

#### Accessibility to services

The site is within an existing urban area of Nelson Bay between the centres of Nelson Bay (1.2km) and Shoal Bay (1.4km), where retail, community and medical services are provided.

The closest access to public transport are bus stops on Shoal Bay Road travelling east and west about 125m from the site. Pathway access to these stops are relatively flat, within the desired accessibility grades and appropriate for seniors and people with a disability. Regular daily public bus services to Shoal Bay and Nelson Bay are available (**Attachment I**). Bus services into Newcastle are also available but are less frequent. The proponent has indicated that it operates a community bus for club patrons and will expand this service when the development is built to meet the needs of its residents, further improving the accessibility to services for seniors.

Council also raised concerns regarding the safety of the road network for pedestrians (especially during peak tourist times) for crossing Shoal Bay Road to access services and bus stops. These are considered matters that can be appropriately dealt with through any future development application assessment process and conditions of consent as this issue does not impact on the site's suitability for this development.

#### Retail

The closest retail centres are Nelson Bay, Shoal Bay and a small local centre at Austral Street (750m away) (**Attachment I**). These centres are accessible by public transport and provide a full range of retail services (i.e. banking, pharmacy, groceries, post office, personal services) for future residents of Seniors Housing.

#### Utilities

The proponent did not provide any details in relation to the availability of utility services. However, given the urban context and the adjoining club facilities and the previous use of the site for a motel, it is likely that the provision of reticulated services to the site – water, sewer, electricity, gas and telecommunications – are adequate, and if any capacity issues are identified that these can be resolved with the respective infrastructure agencies.

#### Community

Local community and recreational facilities are accessible across the Nelson Bay area. Regional facilities are available in Maitland, Newcastle and Raymond Terrace. The proposed development adjoins a registered club with associated community meeting spaces and facilities.

The demand for additional community facilities and spaces as a result of this proposed development can be accommodated within the local area.

#### Medical

Existing and future residents have access to medical facilities at the Tomaree Community Hospital 1km from the site, the Shoal Bay Medical Centre, the Nelson Bay Medical Centre and the Port Stephens Medical Centre at Salamander Bay. These facilities are well serviced by local public transport (**Attachment I**), with more specialised medical services available in Newcastle.

The demand for additional medical facilities as a result of this proposed development can be accommodated within the local area.

## Conclusion

Council has noted the distance from these centres and services and the number of residents proposed, and has raised concerns regarding their access to transport and adequate health and community services. This assessment concludes that the provision of and access to services is adequate to cater for this development and that the existing level of services and infrastructure that are available will meet the demands arising from the proposed 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))**

The site is zoned RE2 Private Recreation; however, it is not developed for recreational purposes. The site includes a car park and a portion of the registered club.

The remaining portion of RE2 Private Recreation land contains the main part of the registered club facility. The development of the western portion of the site for seniors housing will not impact on the continued operation of the club.

Land to the west of the site is zoned RE1 Public Recreation and accommodates active sporting pursuits such as sports fields, pathways linking the foreshore and Nelson Bay town centre, bushland and passive recreation facilities such as picnic facilities.

Council's concern about the loss of RE2 land for recreation purposes assumes that there would continue to be privately provided recreation use on the site. Given that the site of the proposal is currently a car park and is not providing recreation use, there is no actual loss of recreation land.

There is no expected impact on the provision of land for open space in the vicinity of the development.

### **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 proposal consists of a building with four storeys of seniors housing units over a podium of car parking. The building would be up to a maximum of 22.5m high and exceed the current maximum building height of 15m and 12m (**Attachment J**). The submitted design statement demonstrates that the proposal minimises the bulk and massing of the group of buildings on the site, and provides space and views between the two seniors housing building elements.

## Bulk

The design provides for a stepped development across the site, with the podium levels below the maximum building height and seniors housing units extending above the height control. The proposal considers the surrounding residential streetscape and has minimal overshadowing of nearby areas (**Attachment H**).



The applicant provides a comparison between the development of the site using the existing planning provisions, being a built volume of 65,000m<sup>2</sup> compared to the proposal providing a volume of 50,000m<sup>2</sup>. This highlights the approach taken to manage the impact of bulk on the surrounding area using differing building heights.

It is considered that the development can manage its impact on the surrounding neighbourhood. This has been done by reducing the bulk of the possible maximum development outcome through building below the maximum building height in some areas and increased heights on areas of site that consider and minimise overshadowing.

#### Scale and built form

The adjoining club covers a large development footprint of about 6000m<sup>2</sup>, forming a continuous two-storey building with two three-storey 'turrets' surrounded by car parking at the eastern and western ends. The club's appearance is softened by its setbacks from the car parking areas and the local park on its eastern and western frontages.

The characteristics of the existing residential built form are described as a mix of single-storey and two-storey single and medium-density dwellings with a maximum height of 9m.

The design will be most visible when viewed from the adjoining recreation area due to the slope and open nature of the site. Breaking the building into a podium and two separate and narrower buildings of seniors housing is appropriate in the Nelson Bay setting as this is consistent with tourism and residential accommodation buildings in the Nelson Bay and Shoal Bay commercial areas, which are on smaller lots than the registered club with resultant smaller floorplate and footprint buildings.

In commenting on the proposal, Council raised concerns about the impacts on human scale, the street-level visual impacts on access points and impacts on the character of the immediate neighbourhood. It is considered that some design enhancements and landscaping can address this visual impact and that these aspects can be addressed at the development application stage.

While the proposal is, in part, two storeys higher than that currently permitted, the remainder of the proposal is considered acceptable in the context of the site, existing surrounding neighbourhood and the likely future neighbourhood. It is noted that the recommendation for approval includes a condition to provide greater attention to street-level design impacts, and for Council to assess the impact of the height and a variation to the building height standard.

#### Character

The site is nestled in a natural basin with minor ridgelines rising to the north and south. Fly Point Park with its treed backdrop completes the basin effect to the west.

The characteristics of the existing residential built form are described as a mix of single and double-storey single and medium-density dwellings of typically medium to low scale.

The existing registered club has a long history on this site, and has been re-developed and expanded over time. As such, the registered club is part of the

character of the area. New residential uses on the registered club site is consistent with the two main character elements of the area.

### Views and visual setting

Council has raised concerns about the visual impacts of the proposed development, at the street level as well as for maintaining views to headlands and important local views. There is limited discussion of these matters within the application, however the design does provide views through the site between and around the building. Visual impacts can be assessed by Council in a development application and a requirement for visual impact assessment has been added to the SCC.

### Conclusion

The main impacts associated with this proposal are the height, bulk and scale impacts on the surrounding neighbourhood.

The design demonstrates that it is of a height, scale and bulk may have impacts on the existing urban area, but are acceptable considering the urban context and the existing, approved and future uses in the vicinity of the development. Impacts can be further minimised and mitigated through future development assessment.

The view from street level in some locations is dominated by the car parking podiums. It is considered that some design enhancements and landscaping can address this visual impact and that these aspects can be conditioned to be addressed at the development application stage.

The requirements for inclusion on the SCC in relation to bulk, scale and built form include that a future development application for the proposal should include:

- a visual impact assessment to clarify impacts on key public strategic viewpoints and the immediate surrounding neighbourhood, such as a photo montage;
- an assessment of height, scale and bulk and demonstration that the development is sympathetic to the existing urban area in the vicinity of the site and does not undermine the objective of the existing development standards; and
- greater design attention to the street activation of the development to ensure it considers adjoining development characteristics and vehicle and pedestrian access.

## **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 *Native Vegetation Act 2003* was repealed on 24 August 2017. It is considered that the nature of the existing vegetation on the site is not of such significance that it would preclude the issue of an SCC or subsequent development of the site.

## CONCLUSION

The Seniors Housing SEPP applies to the site to allow infill self care seniors housing as the site is currently part of an existing registered club site. The site is considered suitable for more intensive development as it has a zone and building height controls that enable more development on the site.

Seniors housing is compatible with the predominant residential character in the vicinity and supports Council's local strategy for infill housing in a location close to centres like Nelson Bay and Shoal Bay.

The site has public transport access to necessary services and facilities and infrastructure is available and accessible.

There will be no actual loss of recreation land arising from this proposal.

Council identified a range of issues in relation to this application, which have been acknowledged, and where appropriate requirements for matters to be considered in a future development assessment have been included to address these issues, including:

- a visual impact assessment to be included in a future development application to provide additional information on visual impacts, such as a photo montage at various significant public viewpoints;
- an assessment of height, scale and bulk and demonstration that the development is sympathetic to the existing urban area in the vicinity of the site and does not undermine the objective of the existing development standards;
- greater design attention be given to the street activation of the development to ensure it considers the visual impact at the street level, adjoining development characteristics and vehicle and pedestrian access; and
- measures to ensure safe pedestrian access to adjoining areas during peak tourist times.

## RECOMMENDATION

It is recommended that the Deputy Secretary, Planning Services, as delegate of the Secretary:

- **note** the assessment report (**Attachment A**);
- **consider** the written comments from Port Stephens Council (**Attachment B**);
- **form the opinion** that the site of the proposed development is suitable for more intensive development;
- **form the opinion** that the proposed development for the purposes of seniors housing is compatible with the surrounding environment and surrounding land uses having had regard to the criteria specified in clause 25(5)(b) of the Seniors Housing SEPP;
- **determine** the application for a site compatibility certificate by issuing a certificate (**Attachment C**) for 88 Shoal Bay Road, Nelson Bay and

- **sign** the letters to the applicant and Council advising of this determination (Attachments D and E).



9/5/2018

Monica Gibson

Director Regions, Hunter



14 May 2018

Stephen Murray

Executive Director, Regions



Marcus Ray

Deputy Secretary

Planning Services

25/05/2018

Approved / ~~Not Approved~~ / ~~Noted~~

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