

**Report to the Northern Regional Planning Panel on an application for a site compatibility certificate.**

**State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

**SCC\_2018\_BALLI\_001\_00**

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**SITE:** 67 Skennars Head Road, Skennars Head (Lot 239 DP 1201225). A site map is at **Attachment C**

**APPLICANT:** Planners North on behalf of GemLife

**PROPOSAL:** 147 Serviced Self-Care Seniors Housing dwellings, a manager's residence, club house, recreational facilities, roads, utility services, environmental management and environmental protection works.

Meals, cleaning services, personal care and nursing care will be available and co-ordinated by on-site support services (onsite care manager) as required for serviced self-care seniors housing.

**LGA:** Ballina Shire Council

**PERMISSIBILITY STATEMENT**

Zoning of the Site

Lot 239 DP 1201225, is predominately zoned RU1 Primary Production under Ballina Local Environmental Plan (LEP) 2012 (**Attachment D**). Part of the land is zoned 7(a) Environmental Protection (Wetlands) and 1(b) Rural Secondary Agricultural Land under Ballina LEP 1987. The 7(a) land is located close to the western boundary and mostly comprises land mapped as coastal wetland by State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP) (**Attachment E**).

The Site Compatibility Certificate (SCC) application to establish a seniors housing development relates to the eastern part of the site, which is zoned RU1 Primary Production. Seniors housing is prohibited in this zone under the Ballina LEP 2012.

In order for seniors housing to be permissible on the site, an SCC is required under Clause 24 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP)*.

Seniors Housing SEPP

A SCC can be issued for land that is not zoned primarily for urban purposes provided it adjoins land zoned for urban purposes. The subject site is located across Skennars Head Road from land zoned R2 Low Density Residential and RE1 Public Recreation and therefore is considered to adjoin land zoned for urban purposes (cl 4(4)).

An SCC can be issued for land which is not zoned for urban purposes providing dwelling houses, residential flat buildings or hospitals are permissible with consent in the zone. Dwelling houses are a permitted use within the RU1 zone.

However, an SCC cannot be issued for environmentally sensitive land being land which is described in Schedule 1 of the Seniors Housing SEPP. Schedule 1 relevantly precludes the Seniors Housing SEPP from applying to:

*Land identified in another environmental planning instrument by any of the following descriptions or by like descriptions or by descriptions that incorporate any of the following words or expressions:*

- (a) coastal protection,*
- (d) environment protection,*
- (m) natural wetland.*

A part of the site subject to this application is mapped as 'coastal wetlands and littoral rainforests area'. This mapping comprises both areas identified as 'coastal wetland' and 'proximity area for coastal wetland' under State Environmental Planning Policy (SEPP) (Coastal Management) 2018 (**Attachment E**).

Both the 'proximity area for coastal wetland' and the mapped coastal wetland areas are considered to constitute 'coastal wetlands and littoral rainforests area' for the purpose of the Coastal Management SEPP. Controls for the distinct 'proximity area' are contained in Clause 11 of the Coastal Management SEPP. Irrespective of the separate controls the land remains identified as coastal wetland and littoral rainforest area which is a like definition, and incorporates the words, 'natural wetland', excluding that part of the land from application of the Seniors Housing SEPP.

The proponent has provided legal advice which concludes that the proximity area is not considered to be 'coastal wetland' for the purposes of Schedule 1 of the Seniors Housing SEPP (**Attachment F**).

It is the Department's position that the land mapped as 'proximity area for coastal wetland' does constitute coastal wetland and is therefore considered to be environmentally sensitive land for the purposes of the Seniors Housing SEPP.

The reason for this position is that, for the purpose of identifying land, the Coastal Management SEPP makes no distinction between land that is coastal wetland and land that is in proximity to this area, all land identified on the *Coastal Wetlands and Littoral Rainforests Area Map* under the Coastal Management SEPP including the proximity areas is part of the coastal wetlands and littoral rainforests area.

Consequently, it is recommended that the SCC only be issued for the land which is not identified as 'coastal wetland' or 'proximity area for coastal wetland'.

#### **PREVIOUSLY ISSUED SITE COMPATIBILITY CERTIFICATE ON THE LAND**

A site compatibility certificate (SCC) was previously issued for 211 serviced self-care housing dwellings on the subject land on 30 March 2015 (**Attachment G**).

A development application (DA 2016/524) for the seniors housing was lodged with Ballina Council on 19 September 2016. The Development application will be determined by the Northern Joint Regional Planning Panel (JRPP).

The development application was initially for 211 dwellings however after consideration of the proposal the application has been amended to be for 147 serviced self-care seniors housing dwellings. Council has advised that it is likely to

require a further reduction of the proposal due to further identified site constraints **(Attachment H)**.

The SCC issued on 30 March 2015 has now lapsed and consequently, subject to Clause 24(2) of SEPP (Housing for Seniors or People with a Disability) 2004, the JRPP cannot consent to the development application.

The proponent has therefore applied for a new SCC (the current application) to enable Council to refer development application 2016/524 to the JRPP.

The current SCC application is consistent with the provision of clause 25(5)(c) of the Seniors Housing SEPP for the following reasons:

- The subject land continues to be land which adjoins land zoned primarily for urban purposes; and
- The land subject to the current SCC application does not include any additional land to that certified in 2015.

### **PROXIMITY OF SITE TO WHICH THERE IS A CURRENT SITE COMPATIBILITY CERTIFICATE, OR AN APPLICATION HAS BEEN MADE BUT NOT YET DETERMINED**

There are no other sites within a one kilometre radius of the subject land for which

- there is a current site compatibility certificate, or
- an application for a site compatibility certificate has been made but not yet determined.

This has been confirmed by Council in its letter of 11 October 2018 **(Attachment I)**. Therefore, a cumulative impact study pursuant to clause 25(2)(c) of the SEPP is not required.

### **CLAUSES 24(2) AND 25(5)**

The panel must not issue a certificate unless the panel:

- (a) has taken into account any written comments concerning the consistency of the proposed development with the criteria referred to in clause 25(5)(b) received from the general manager of the council within 21 days after the application for the certificate was made;
- (b) is of the opinion that:
  - (i) the site of the proposed development is suitable for more intensive development; and
  - (ii) the proposed development for the purposes of seniors housing is compatible with the surrounding environment and surrounding land uses having regard to the criteria specified in clause 25(5)(b).

### **CLAUSE 25(2)(C)**

A cumulative impact study has not been prepared as there are no other sites within a one kilometre radius of the subject land for which there is a current SCC or an application for an SCC has been made but not determined.

### **COUNCIL COMMENTS**

Council provided comments to the Department by letter dated 20 August 2018 **(Attachment H)**. In this letter concerns were raised about the currently proposed development considering the site's sensitivities and constraints. Council advised that

the proposal had been reduced from 211 self serviced dwellings, to 147 dwellings, and that Council maintained concerns that this number could not be accommodated based on advice from a consultant entomologist. Council advised that infrastructure works had been undertaken to service this site since 2015, and that the proponent and Council had been working together to negotiate an acceptable outcome.

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

The panel must not issue a certificate unless the panel 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 subject land is located on the north west edge of the Skennars Head urban area. The site is 11.6ha in size and is located approximately 3.2km south of the Lennox Head town centre and 6km north of the Ballina central business district. The land is bounded to the east by an existing caravan park, and to the south and west by rural land. Further east is the Skennars Head urban area comprising low and medium density residential land uses. The site fronts Skennars Head Road to the north and on the northern side of Skennars Head Road is the Skennars Head sports fields and an area of low density residential development.

A high demand exists from an ageing population for seniors housing accommodation within the Ballina LGA and the wider region. The North Coast Regional Plan 2036 identifies that over the next 20 years almost one third of residents in the region will be aged over 65 years.

The Ballina Growth Management Strategy identifies that changing household types and population ageing highlights the need for more seniors housing than is currently available within the Ballina LGA.

The use of that part of the land located outside the area mapped as 'coastal wetlands' or 'proximity area for coastal wetlands' for a seniors housing development is considered to be an appropriate for the following reasons:

- the site has no major physical constraints which cannot be mitigated, the availability of infrastructure and its proximity to developed urban land means that it is suitable for more intensive development; and
- its proximity and accessibility to a full range of retail, commercial, recreational, health, welfare and educational facilities at Ballina and Lennox Head makes it suitable for seniors housing.

### **COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND LAND USES**

The panel must not issue a certificate unless the panel 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 - The site contains coastal wetland vegetation. The proposed concept development addresses potential impacts on this ecosystem by maintaining a 50m buffer between the proposed urban development and the previously mapped SEPP 14 wetland. The current proposal is to revegetate part of this buffer and employ storm water infrastructure to mitigate the impacts on the wetland.

Since lodgement of the development application for this site the Coastal Management SEPP was gazetted. As discussed previously, the coastal wetlands mapped under the Coastal Management SEPP include 'proximity area for coastal wetlands' which means the area mapped as coastal wetland for the purposes of the Coastal Management SEPP on this site is more extensive than those mapped under SEPP 14. The result is that part of the proposed development is located on land now mapped as Coastal Wetland. The Seniors Housing SEPP however prevents the issue of a certificate on that part of the land identified as coastal wetlands or proximity areas for coastal wetlands, and as such it is proposed to exclude that part of the land from the certificate.

The remainder of the site is cleared of significant native vegetation, comprises exotic grasses and has been used for cattle grazing. Small communities of hairy joint grass were identified on the site. An offsetting and compensation plan is proposed in the buffer between the seniors housing and the former SEPP 14 mapped wetland. It is considered that the natural environment of the site as currently identified would not be adversely affected if an SCC is issued outside of the areas identified as coastal wetland and coastal wetland proximity area.

The subject land is also flood prone, bushfire prone and subject to acid sulfate soils and potential site contamination. The investigations that have been undertaken for the development application (2016/524) have demonstrated that these constraints can be managed or mitigated.

Flooding - A flood impact assessment has been undertaken for the site. It concludes that filling of the site will be necessary to mitigate the impact of flooding on the proposed seniors housing. It has also modelled the flood impacts from this filling and concluded that augmentation of existing culverts under Skennars Head Road is necessary to avoid any significant change in inundation duration. Isolated areas around the western edge of the wetland may experience longer inundation of between 0.5 and 5%. These matters are being considered by Council during the development assessment process.

Bushfire - A bushfire assessment report has been prepared for the proposed development. The NSW Rural Fire Service has issued a bushfire safety authority for the proposed development and therefore the bushfire hazard is considered to be adequately addressed by the proposed development.

Site Contamination - A preliminary site contamination assessment was undertaken and it concluded that there is low potential for soil contamination on the site and the use of the site for residential purpose is appropriate. The site contamination assessment recommended that isolated areas of the site around existing sheds may need to be further investigated for the presence of asbestos.

Acid Sulfate Soils - Geotechnical assessment of the site identified potential acid sulfate soils and an acid sulfate soil management plan has been developed for the site and the proposed seniors housing development.

Land uses in the vicinity of the site - The existing and approved uses of the land in the vicinity of the site are residential, public recreation and rural. The proposed seniors housing is compatible with the residential and recreational land uses and a buffer between the rural land uses to the west will be incorporated into the development which will minimise the potential for land use conflict.

Regionally Significant Farmland - The north-western portion of the site is mapped as 'regionally significant non-contiguous farmland' (RSF) under the Northern Rivers Farmland Protection Project (NRFPP). The NRFPP identifies and seeks to protect the most important contiguous areas of agricultural land in the Northern Rivers from future urban development and land use conflict. Approximately 4,200m<sup>2</sup> of this mapped farmland is within the area of the site subject to the Seniors Housing SEPP.

The site is not currently used for agriculture due to its proximity to urban development. This small area of mapped farmland does not increase the connectivity of farmland in the area. There is a larger expanse of RSF farmland to the north which is not dependent on the site to maintain good agricultural value or connectivity to other large RSF areas.

If the site was to be utilised for intensive agricultural practices rather than seniors housing, this could result in land use conflict issues as neighbouring land is predominantly developed for residential purposes. The site is also identified as 'land adjoining a strategic urban growth area' and intensive agriculture would not therefore be a compatible use.

**2. The impact that the proposed development is likely to have on the uses that, in the opinion of the Panel, are likely to be the future uses of that land (clause 25(5)(b)(ii))**

The use of the part of the site which is not mapped as coastal wetland or proximity area for coastal wetland for seniors housing is not considered to have a significant adverse impact on the surrounding land uses. Seniors housing is compatible with the low density residential development to the north and east and the recreation land to the north east. It is considered that the use of part of the subject land for seniors housing will not cause land use conflict with the rural land to the west as the western part of the subject land is excluded from the Seniors Housing SEPP and will not be developed for seniors housing purposes.

The expected future uses of the surrounding land are considered to remain as residential, recreation and rural.

The Ballina Growth Management Strategy (GMS) has not identified any of the immediately surrounding land for future land uses that would be considered incompatible with the proposed seniors housing development.

In view of the site's location relative to existing or proposed urban areas and its relative lack of constraints, the part of the site which is not mapped as coastal

wetland or proximity area for coastal wetland is a logical urban expansion area and is therefore appropriate for seniors living.

**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 general locality is connected to and serviced by reticulated water, sewer, electricity, stormwater and telecommunication systems. Meals, cleaning services, personal care and nursing care will be provided to the seniors housing dwellings from onsite facilities.

The township of Lennox Head is located approximately 3km to the north and Ballina approximately 7km to the south. Both Lennox Head and Ballina contain a broad range of community, retail, medical/health, recreational, educational and other ancillary services and facilities. A regular local bus service operates in the Skennars Head area. Bus stops (pick up areas) are on both sides of Skennars Head Road at the eastern and northern sides of the site. It is noted that the proposed development may also provide a daily shuttle bus to transport residents to the Ballina CBD.

**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 by Ballina LEP 2012. Land on the opposite (northern) side of Skennars Head Road is zoned RE1 Public Recreation and comprises the Skennars Head Sports fields. The proposed development will not overshadow this land or adversely affect its amenity, nor will it prevent the continued use of this land for public recreation. The proposed seniors housing development is not expected to have an adverse impact on the amount or quality of open space land in the area.

**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 documentation prepared for development application 2016/524 indicates that the proposed seniors housing will comprise detached single storey dwellings and a two storey club house facility. This proposal is considered to be compatible with the character, bulk and scale and built form of the existing residential development on land in the vicinity of the development which comprises detached dwellings and medium density housing of 1 and 2 storeys.

As only a portion of the land to which DA 2016/254 applies can be granted approval via the SCC, the design of the proposed development will be required to considerably change. The bulk and scale of any redesigned development can be adequately considered during the development application stage.

**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 majority of the site consists of former grazing land which is predominantly cleared of native vegetation. The seniors housing is proposed to be located on this area of the site. The development application documentation proposes a compensatory offset program for the removal of small communities of hairy joint grass. The development application will need to be reconsidered as the area to which this SCC can apply is a smaller footprint than that applied for. Considering the reduction in developable footprint this matter that can be adequately addressed by Council with the development consent.

**7. The impacts identified in any cumulative impact study provided in connection with the application for the certificate (clause 25(5)(b)(vii))**

As previously discussed in this report, a cumulative impact study pursuant to clause 25(2)(c) of the SEPP is not required.

**CONCLUSION**

In order for a Site Compatibility to be issued the land must be subject to the Seniors Housing SEPP, must meet the adjoining zone boundary provisions and must be considered suitable for more intensive development. A site compatibility certificate cannot be issued for that part of the land which is 'environmentally sensitive land' and excluded from the operation of the Seniors Housing SEPP.

It is considered that the part of the site which is not 'environmentally sensitive land' being the part of the site which is not mapped as coastal wetland or proximity area for coastal wetland is suitable for seniors development for the following reasons:

- it has no major physical constraints which cannot be mitigated and the availability of infrastructure and its proximity to developed urban land means that it is suitable for more intensive development; and
- its proximity and accessibility to a full range of retail, commercial, recreational, health, welfare and educational facilities at Ballina and Lennox Head makes it suitable for seniors housing.

**ATTACHMENTS**

<b>A</b>	SCC assessment report
<b>B</b>	SCC application package
<b>C</b>	Site locality Map
<b>D</b>	Land zoning map
<b>E</b>	Map of Coastal Wetland and Coastal Wetland Proximity Area from the Coastal Management SEPP
<b>F</b>	Proponent's legal advice concerning environmentally sensitive land
<b>G</b>	Previous site compatibility certificate issued on 30 March 2015

<b>H</b>	Council's comments of 20 August 2018
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<b>I</b>	Council's letter of 11 October 2018
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