

Report to the Sydney Western City Planning Panel on an application for a site compatibility certificate under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

SITE: Lot 110 DP 1135581, Leonay Golf Course and Emu Sports Club.

LGA: Penrith

The subject land (shown in blue in **Figure 1**) forms part of the Leonay Golf Club and the associated 18-hole golf course. This subject land is located on Leonay Parade and is opposite intersections with Fairways Avenue and Linksvue Avenue, Leonay.

The portion of the subject land on which the development is proposed and would be excised from the golf course is 3,788m² in size, with a frontage of 139.7m to Leonay Parade.

The site is located in proximity to Buring House, a heritage item of local significance, and opposite part of Leonay Public School and existing low density residential development Leonay Parade.

The allotment has a fall from the south-west corner (RL 43.5) towards the north-east corner of the site (RL 41.5). The site contains a number of small trees that are to be removed and a number of existing street trees are also to be removed.

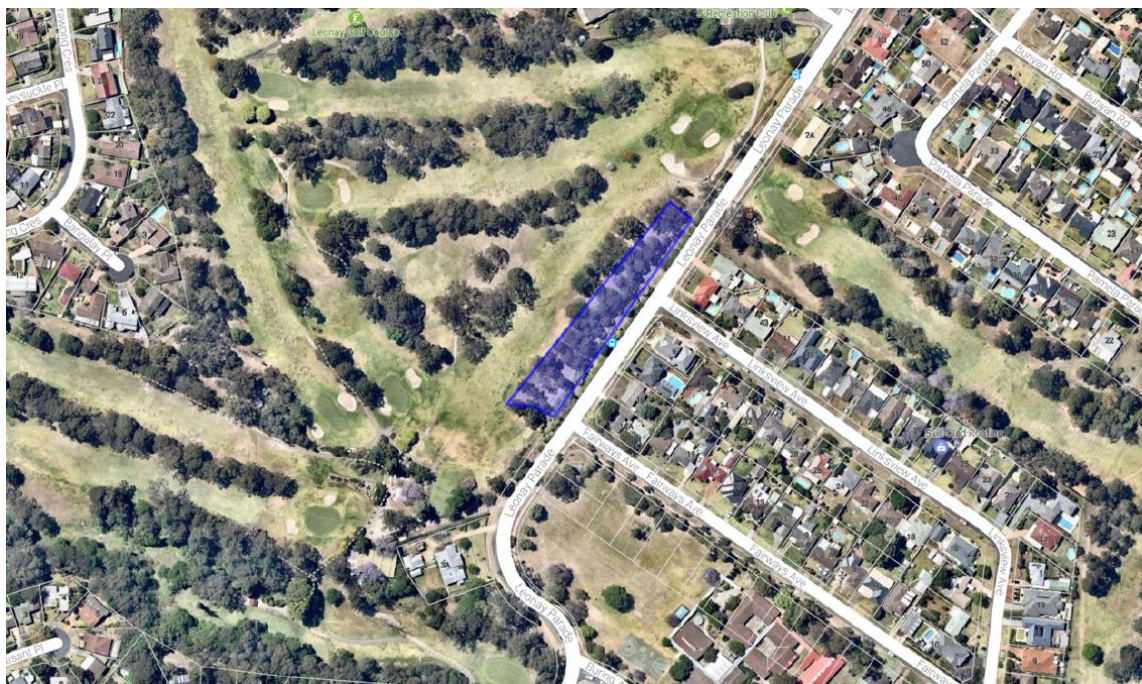


Figure 1 – location of subject land

PROPOSAL: The applicant seeks a site compatibility certificate (SCC) to permit 8 seniors housing - self-contained dwellings and carparking for 16 vehicles (**Figure 2**).

The 8 self-contained dwellings would each be single storey detached dwellings and would all include 3 bedrooms as well as individual landscaped area / private open space. The dwellings are proposed to all have their own vehicle access from Leonay Parade which will access a garage with parking space for 2 vehicles.

A SCC was previously issued for the subject land on 2 July 2017, to permit 10 dwellings (**Attachment A**). This SCC expired on 7 July 2019.

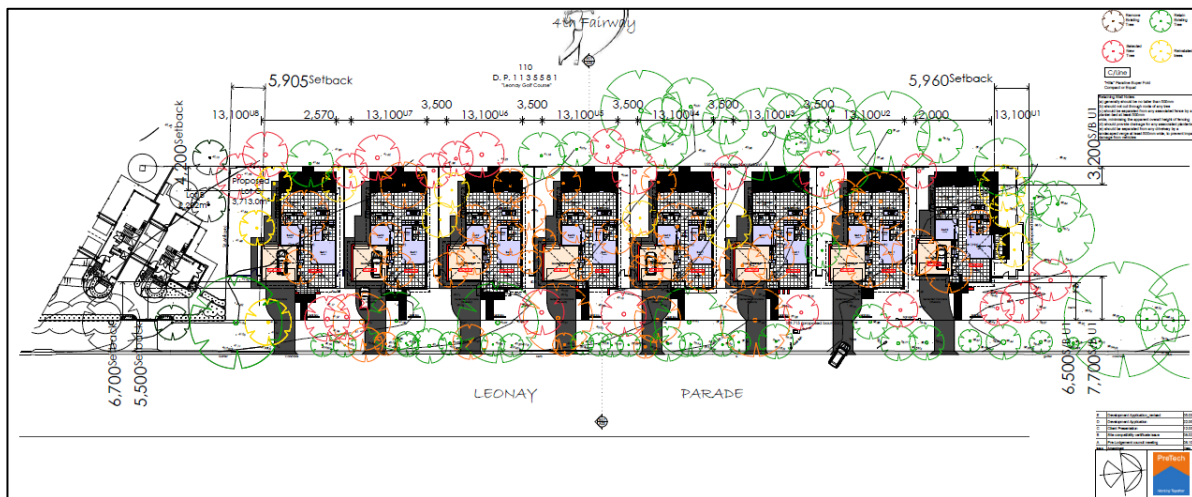


Figure 2 – Proposed Concept Plan (Attachment C3)

APPLICANT: Think Planners on behalf of Emu Plains Sporting and Recreation Club Limited.

PERMISSIBILITY STATEMENT: The subject land is zoned RE2 Private Recreation pursuant to Penrith Local Environmental Plan (LEP) 2010. **Figure 3** below shows the zoning of the site.

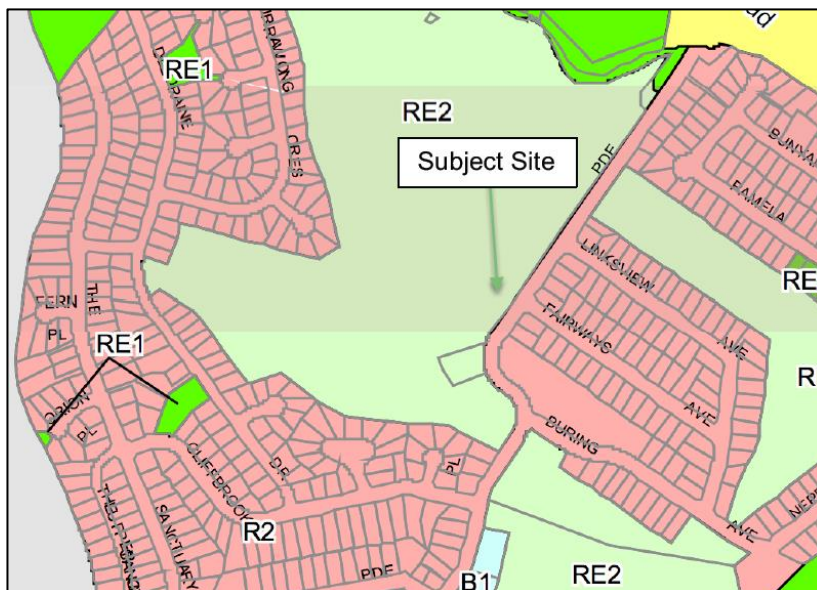


Figure 3 – Extract of zoning map under Penrith LEP 2010

Under Penrith LEP 2010, RE2 Private Recreation does not permit seniors housing and dwelling houses. For seniors housing to be permissible on the site, an SCC is required under clause 4 and clause 24 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP).

Seniors Housing SEPP – Clause 4

Clause 4 of the Seniors Housing SEPP provides that a SCC can be issued for land zoned for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if it satisfies the following:

- Clause 4(1)(b) – the land is being used for the purposes of an existing registered club; and

The subject site forms part of a golf course which is a registered club (LIQC300244717) pursuant to the *Registered Clubs Act 1976*.

- Clause 4(6) – the land to which the SCC applies is not covered by any of the exclusions listed in Schedule 1 of the Seniors Housing SEPP.

The site is not covered by any exclusions listed in Schedule 1.

Is the site zoned primarily for urban purposes to determine whether the proposed types of seniors housing development is permissible under the Seniors Housing SEPP.

Consideration of whether land zoned RE2 Private Recreation under the Penrith LEP may be considered land zoned primarily for an urban purpose in the context of the Seniors Housing SEPP is necessary. This is to determine whether the proposed types of seniors housing development is permissible under the Seniors Housing SEPP.

The proposal contemplates the development of self-contained dwellings, which may only be undertaken on land zoned primarily for urban purposes under the Seniors Housing SEPP (clauses 13, 15(b) and 17(1) of the Seniors Housing SEPP).

In the context of the Seniors Housing SEPP, the words ‘primarily’ and ‘urban’ are taken to have their natural meaning, with ‘primarily’ meaning ‘chiefly’ or ‘principally’ and ‘urban’ meaning ‘pertaining to or constituting a town’ (see *Murlan Consulting Pty Limited v Ku-ring-gai Municipal Council* [2007] NSWLEC 182 at [23]).

Clause 4(2) of the Seniors Housing SEPP identifies a non-exhaustive list of land which is not considered to be land zoned primarily for urban purposes, including land that is within any of land zoned under another environmental planning instrument:

- principally for rural purposes;
- principally for urban investigation; and
- principally for residential uses on large residential allotments (for example R5 Large Lot Residential or RU6 Transition zones per the Standard Instrument—Principal Local Environmental Plan).

This does not mean that all other land not listed in clause 4(2) of the Seniors Housing SEPP is land zoned primarily for urban purposes.

It is therefore necessary to determine if the site is on land zoned primarily for urban purposes by reviewing the characteristics, objectives and permissible uses of the relevant RE2 Private Recreation zone of Penrith LEP, as follows:

Zone RE2 Private Recreation

1 Objectives of zone

- *To enable land to be used for private open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

2 Permitted without consent

Nil

3 Permitted with consent

Aquaculture; Building identification signs; Caravan parks; Centre-based child care facilities; Community facilities; Environmental facilities; Environmental protection works; Function centres; Hotel or motel accommodation; Information and education facilities; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restaurants or cafes; Roads

4 Prohibited

Any development not specified in item 2 or 3

With reference to the characteristics, objectives and permissible uses of the RE2 Private Recreation Zone of the Penrith LEP, while some are indicative of being principally or chiefly within an urban context, others may be equally applicable in a rural context.

Additional considerations when treating land being used for the purposes of an existing registered club as land zoned primarily for urban purposes

Additionally, clause 4(5) of the Seniors Housing SEPP provides that a consent authority must not treat land that is being used for the purposes of an existing registered club as being land zoned primarily for urban purposes unless it is satisfied that most of the land that it adjoins is land zoned for urban purposes. If one was to form the view that the RE2 Private Recreation zone under the Fairfield LEP was land zoned primarily for urban purposes, then naturally clause 4(5) of the Seniors Housing SEPP would be satisfied as the site mostly adjoins land of the same zone.

Department Conclusion

Further, in determining whether land zoned RE2 in the Penrith LEP may be considered land zoned primarily for an urban purpose, analogies can be drawn with the RE1 Public Recreation Zone of The Hills LEP 2012 which was considered in *Wirrabara Village Pty Limited v The Hills Shire Council* [2018] NSWLEC 1187. In *Wirrabara*, land in The Hills RE1 zone was determined **not** to be land zoned primarily for an urban purpose.

In consideration of this previous ruling, it is noted that this conclusion is not beyond doubt, and it would therefore be open to a determining authority to conclude if the land is zoned primarily for urban purposes.

The label, i.e. the zone name, and objectives of The Hills RE1 zone closely resemble those in the RE2 zone of the Penrith LEP, with a common emphasis on recreation, open space and natural environment. Labels and objectives of this nature are not considered to be indicative of land zoned primarily for an urban purpose as these are equally applicable in a rural setting (*Wirrabara* at [57]).

The Court also noted that the 'public' nature of the land zoned for 'public recreation' is irrelevant to the construction of whether The Hills RE1 zone is land zoned primarily for urban purposes under the Seniors SEPP (Wirrabara at [57]). The same logic would extend to the 'private' nature of land zoned for 'private recreation' in the RE2 zone of the Penrith LEP.

The permissible land uses in The Hills RE1 zone also closely resemble those in the RE2 zone of the Penrith LEP. However, there are some differences in the development which is permitted with consent in the land use table for the RE2 zone of the Penrith LEP. It is feasible that the differences between The Hills RE1 zone and the Penrith LEP RE2 Zone (i.e. centre-based child care facilities and function centres) may suggest that the RE2 zone of the Penrith LEP is, when compared to The Hills RE1 zone, more 'urban' in nature and lead the panel and a relevant consent authority to a different conclusion to that reached by the Court in Wirrabara.

It is also noted that the adjoining lands are predominantly zoned R2 Low Density Residential. Pursuant to Penrith LEP 2010, this zone permits residential development including dwelling houses and dual occupancies as well as more intensive forms of development including educational establishments, places of public worship and hospitals.

Clause 24(2) of the Seniors Housing SEPP provides that a consent authority must not provide development consent to an application to which clause 24 of the SEPP applies unless it is satisfied that the relevant panel has certified in a current SCC that, in the relevant panel's opinion:

- the site of the proposed development is suitable for more intensive development; and,
- 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).

Under clause 25(5)(a) the Seniors Housing SEPP, the Panel must not issue a SCC unless it has considered any written comments received from the general manager of the council within 21 days after the application for the SCC was made regarding the consistency of the proposed development with the criteria referred to in clause 25(5)(b).

Penrith City Council has provided its written comments for the purposes of clause 25(5)(a) of the Seniors Housing SEPP (**Attachment B**). In its comments, Council has not expressed an objection to the proposed SCC application based on whether the subject land is not zoned for an urban purpose.

Accordingly, taking into consideration the Council's advice and the Department's views on this issue, it is considered reasonable for the application to proceed to the Panel for its consideration and determination.

PREVIOUSLY ISSUED SITE COMPATIBILITY CERTIFICATES ON THE LAND

23 January 2013 – SCC issued for seven self-contained dwellings which expired on 23 January 2015.

31 August 2015 – SCC re-issued for eight self-contained seniors housing dwellings. Development approval has been granted by Penrith Council for these dwellings.

6 July 2017 - SCC was issued for the subject land to permit 10 self-care seniors housing dwellings which expired on 7 July 2019.

The SCC issued 6 July 2017 determined that:

- the site described is suitable for more intensive development;
- the development is compatible with the surrounding environment and surrounding land uses, having had regard to the criteria specified in clause 25(5)(b); and
- the development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding land uses only if it satisfies certain requirements specified in Schedule 2 of the certificate.

The current SCC is almost identical to the previous application, with the SCC now seeking eight seniors housing dwellings, which is a reduction from the 10 dwellings which was previously approved on 6 July 2017. The site has already been determined to be suitable for more intensive development.

PROXIMITY OF SITE TO OTHER SITE COMPATIBILITY CERTIFICATES

Clause 25(2)(c) of the Seniors Housing SEPP provides that the applicant is required to provide a cumulative impact study with their application if the land (or any part of the land) is located within a one-kilometre radius of two or more other parcels of land over which:

- (a) there is a current SCC, or
- (b) an application for a SCC has been made but not yet determined

Two SCCs have previously been approved on land directly adjacent to the south of the subject land which also forms part of the golf course. These SCCs were issued for the same development, with the second issued following the expiration of the first SCC. This land is shown in **Figure 4** below.



Figure 4 – adjoining land where another SCC was issued

The SCCs for this land were issued as it was determined that this adjoining land, which also forms part of the golf course site was suitable for more intensive development and was compatible with the surrounding environment. This land subsequently received development consent from Penrith Council and 8 seniors housing dwellings are in the final stages of construction.

As these dwellings are currently under construction and these SCCs relate to the same development a cumulative impact study was not required.

CLAUSES 24(2) AND 25(5)

The panel must not issue a SCC 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(5)(a) Council Comments

Penrith City Council's comments (**Attachment B**) were received on 21 November 2019, and are summarised as follows:

- The proposal has the potential to impact significant and established vegetation located along Leonay Parade. Future development must have regard to this vegetation, to incorporate existing trees into the development as far as possible and ensure future landscaping provides significant native vegetation in the form of appropriate landscaping to all interfaces.
- The land is not identified as bushfire prone land, nor is the land impacted by flood related development controls.
- The proposal is located opposite existing low-density residential dwellings and the golf course. Any future development must be responsive and compatible to both land uses. This includes impacts on future traffic movements/driveway from the development and the potential impact of golf balls on the dwellings.
- The future uses of the subject site are unlikely to change from private recreation (golf course). Councils current land use studies and strategies do not identify any future change to this existing land use.
- Services and infrastructure are available within the broader locality of Leonay and Emu Plains to meet the demands of any future residents. However, the applicant should demonstrate, pursuant to clause 26, that future residents have the ability to safely access bus stops in the vicinity of the development. Currently, there is no footpath on the development side of the road and the heavy vegetation impacts visibility and manoeuvrability.

- The subject site is zoned RE2 Private Recreation and is currently used as a golf course. The development should not impact the function of the golf course, where designed accordingly. The proposal should ensure that there are no conflicts between any future development and the existing recreation uses.
- The proposal is generally consistent with the character of residential accommodation in the vicinity of the site in respect to bulk and scale. The proposed built form is typical for the locality.

Clause 25(5)(b) Compatibility with the Surrounding Environment and Land Uses

The assessment of the SCC has considered the package submitted by the proponent which includes the Application Form (**Attachment C1**), Planning Report (**Attachment C2**), Concept Plan (**Attachment C3**), Flora and Fauna Assessment (2017) and Addendum to Flora and Fauna Assessment (2020) (**Attachments C4a and C4b**) and Owners Consent (**Attachment C5**).

The following criteria of the Seniors Housing SEPP was required to be considered.

Clause 25(5)(b)(i) - 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

Surrounding land uses

The submitted Planning Report (**Attachment C2**) states that the surrounding area is characterised by low density residential development with zoning of R2 Low Density Residential. The proposed dwellings would be consistent with the low-density character of the surrounding area.

The subject land forms landscaping associated with the golf course. The development of this land would not result in changes to the current operational capacity of the golf course. The proposed dwellings are considered to be compatible with golf course operations which was considered under the previously issued SCC for the subject land.

Flood Risk

The site is not flood affected and is located above the 1% AEP flood level.

The site is not within the Probable Maximum Flood (PMF) area as identified in the Penrith Council Nepean flood study. It is noted that the site may have restricted road access from Leonay Parade to the M4 Western Motorway for evacuation during a PMF event. However, this access would be at the boundary of the extent of the PMF and as such it is considered that there would be adequate time for evacuation. The extent of the PMF and the evacuation point is shown in **Figure 4**.

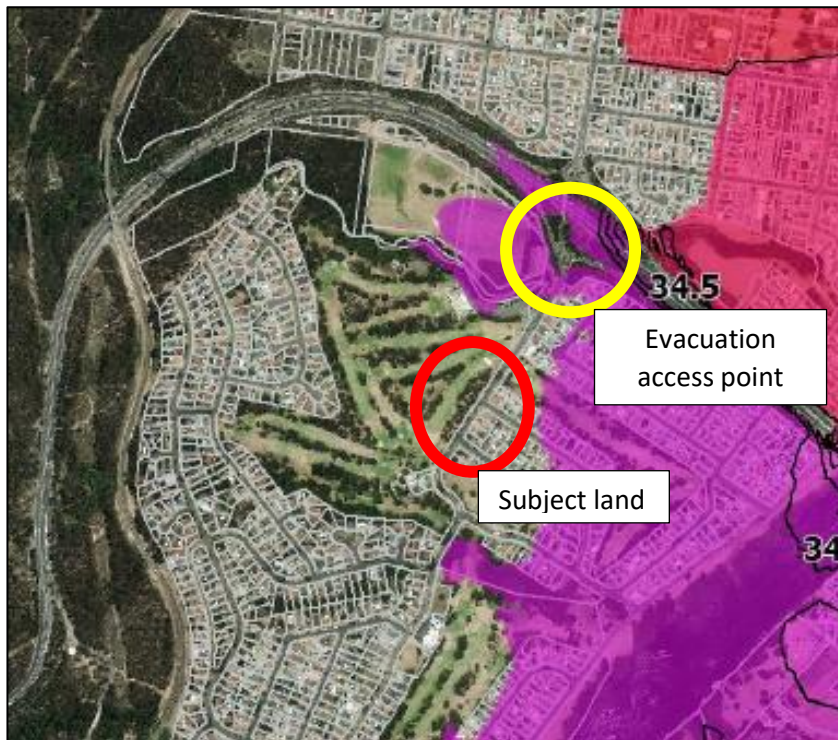


Figure 4 – extent of PMF and evacuation access. Source: Nepean River Flood Study – Appendix A: Flood Maps (MAP 023_A) (Penrith Council)

Bushfire Hazard

The site is not bushfire prone as shown on the bushfire hazard map as shown in **Figure 5**.

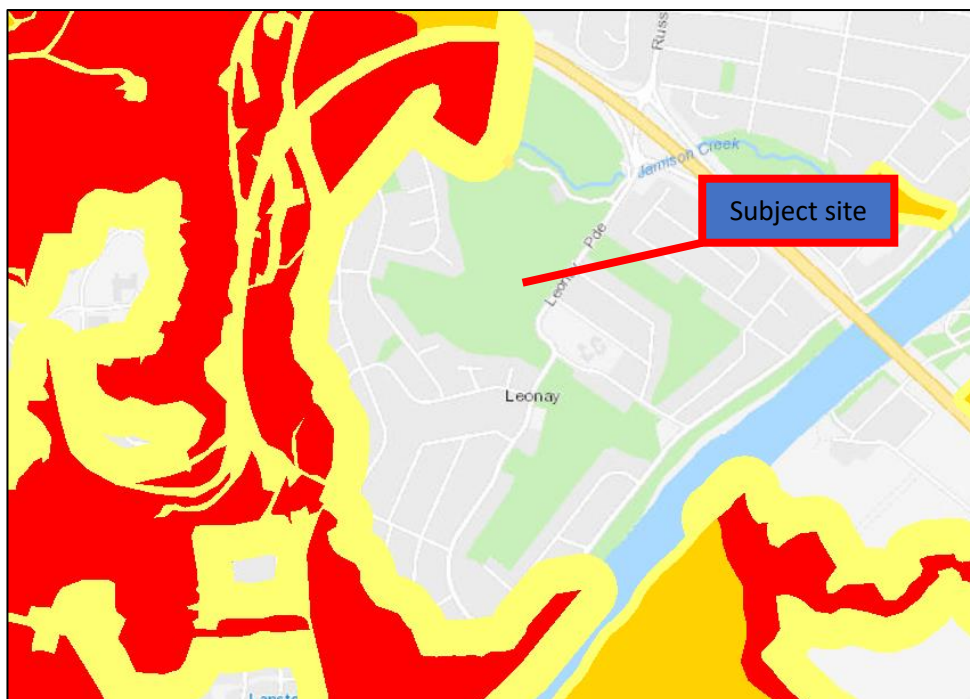


Figure 5 – bushfire hazard map [Yellow – vegetation buffer, Orange – Category 2 and Red – Category 1). Source: Planning Portal]

Heritage

The land site does not contain any local or State listed heritage items under the Penrith LEP 2010.

The site is located in proximity to Buring House, a heritage item of local significance listed under Penrith LEP 2010 (Item no. 109).

Clause 25(5)(b)(ii) - 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

The subject land is zoned RE2 Private Recreation which reflects the association with the golf course. The submission from Penrith Council advised future uses of the subject site are unlikely to change from private recreation.

The development has been sought to use the funds from the development to financially support the ongoing operation of the golf course and associated sports club. The development is proposed to be appropriately separated from the operations of the golf course and the associated club as required by Clause 23. Each dwelling is proposed to have separate access directly from Leonay Parade which would ensure that there are no conflicts between existing operations of the club and the proposed dwellings.

In accordance with Clause 34 of the Seniors Housing SEPP, the development has been designed to maintain visual and acoustic privacy. The bedrooms have been designed to not directly face Leonay Parade and adequate setbacks and landscaping have been provided to maintain privacy.

It is considered that the proposed development would not have a detrimental impact on the golf course or sports club.

Clause 25(5)(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.

Previous SCCs issued for the subject land and for the site to the south have determined that the site has suitable access to services and infrastructure required to meet the demands of the proposed development.

A bus service (CDC) currently operates two regular services (688 and 689) which run at a 30 - 60 minute frequency. There is a bus stop located directly outside of the subject land. This stop is consistent with the requirements of Clause 26 as it is well within 400m of the subject land and meets the gradient and accessibility requirements of this clause.

The bus routes provides access to and from Penrith CBD, Emu Plains Shopping Strip, Lennox Shopping Centre and the Leonay neighbourhood shops. Furthermore, the Leonay shops are only 200m from the subject land. These local and regional centres provide a full range of services and facilities.

The proposal is consistent with the requirements pursuant to clause 26 (location and access to facilities) of the Seniors Housing SEPP.

The subject lands and the adjoining urban development have access to the Sydney Water reticulated water and sewerage networks as required by clause 28. In addition, the site and adjacent land are served by a full range of energy and

telecommunication facilities, as well as, access to both regional and local road networks.

In these circumstances, and given the low number of proposed dwellings, there are no known capacity constraints relating to local services and infrastructure.

Clause 25(b)(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 (clause 25(5)(b)(iv))

The application relates to land that is zoned RE2 Private Recreation. However, it is considered that given the small nature of the development the proposal would not adversely affect the operation of the privately owned open-space and would not restrict the ongoing operation of the golf course.

Clause 25(b)(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

Character of the local area

The applicant's report (**Attachment C2**) and concept plan (**Attachment C3**) indicate that the development comprises eight, two-storey seniors housing dwellings, which is compatible with the existing and future surrounding land uses. This is consistent with the low-density residential character of the area.

Bulk and scale

The proposed height is consistent with the controls in the adjoining R2 Low Density Residential zone.

No height controls apply to the subject site. The proposed dwellings will be single storey which is within the 8.5m height limit which applies to adjoining R2 zoned properties.

No maximum floor space ratio applies to the subject site or adjoining development. The concept plans show the dwellings have an average FSR of 0.31:1.

Design Requirements

The proposed development is also consistent with Part 3 Design Requirements Division 2 Design Principles of the Seniors Housing SEPP. These are discussed as following:

- *Clause 33 Neighbourhood amenity and streetscape*
The concept design is consistent with the location's low density residential character. The development has been designed with be sympathetic with surrounding dwellings by providing appropriate setbacks.
- *Clause 34 Visual and acoustic privacy*
The proposed development would not have a detrimental impact on the privacy of neighbouring dwellings as it separated by Leonay Parade.
- *Clause 35 Solar access and design for climate*
The development is away from existing dwellings and would not have a detrimental impact on their solar access or climatic conditions.

- *Clause 36 Stormwater*
The development is designed to adequately manage stormwater.
- *Clause 38 Accessibility*
The development is within close proximity to an existing bus stop. There is a footpath opposite the site which can provide safe pedestrian access.
- *Clause 39 Waste Management*
It is considered that the development can adequately manage waste utilising the appropriate services.

The design of the development can be further assessed at the development application stage. It is unlikely that the eight self-contained dwellings will have a significant impact upon the locality, and the future uses of land in the vicinity.

Future land use in the vicinity

The zoning controls in the area have not undergone any recent change and the locality is not expected to undergo any significant change in the future such as redevelopment, increased density or overall land-use change.

The proposed development would not restrict the future land uses in the vicinity.

Clause 25(5)(b)(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

The *Native Vegetation Act 2003* was repealed on 25 August 2017, with the current legislation governing the clearing of native vegetation being the *Local Land Services Act 2013* and the *Biodiversity Conservation Act 2016*.

A flora and fauna assessment report (dated 2017) (**Attachment C4a**) was submitted as part of the previous SCC application. It was submitted again as part of this application as well as an addendum dated March 2020 (**Attachment C4b**).

There is a copse of trees located across the subject land, as shown in **Figure 6**. The 2017 report identifies this is a mix of both remnant bushland species and introduced exotic species.

The 2017 report identified that the subject land has been mapped as accommodating Alluvial Woodland and that it is a component of the Sydney Coastal River Flat Ecological Community. This Community was listed as an endangered ecological community under the former *Threatened Species Conservation Act 1995* (replaced by the *Biodiversity Conservation Act 2016*).

The addendum to this report states the scientific name of this community is now known as 'River-Flat Eucalypt Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions'.



Figure 6 – Trees on subject land. Source: Flora and Fauna Assessment (Attachment C4a)

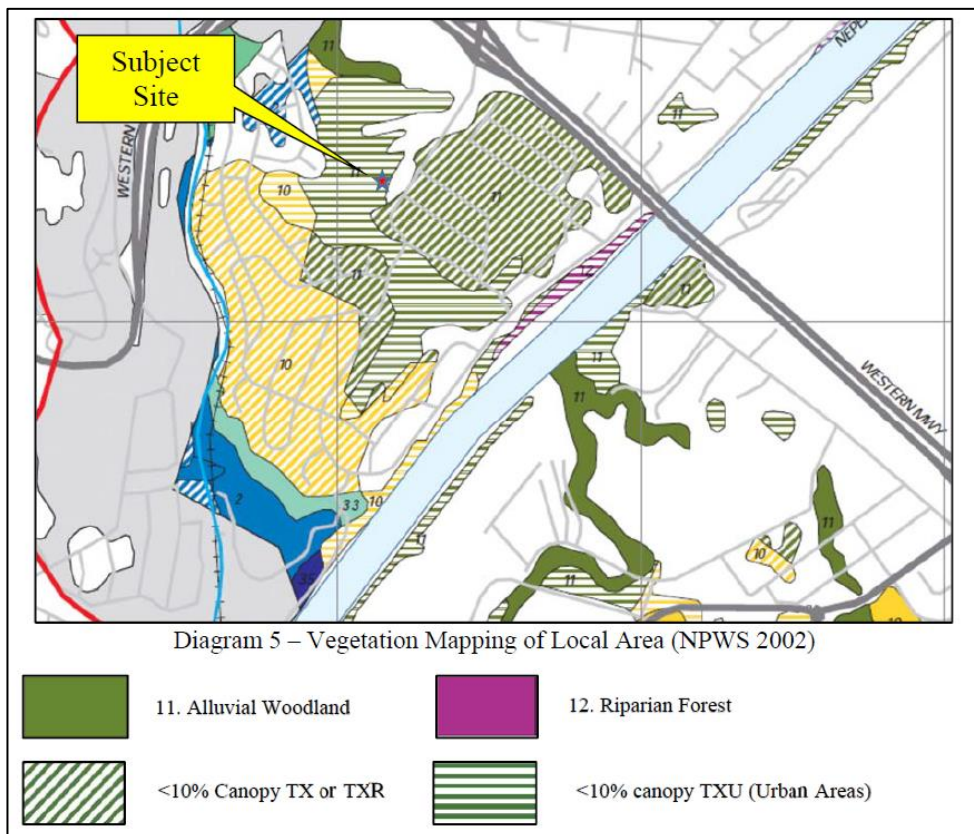


Figure 7 – Vegetation types. Source: Flora and Fauna Assessment (Attachment C4a)

The 2017 report stated the copse is unlikely to be considered as Alluvial Woodland under the NSW Scientific Communities definition of that community. A Seven Part Test was completed that concluded that the proposed development is unlikely to have a significant effect on the Sydney Coastal River Flat Forest Ecological Community.

The report highlights that the copse is comprised of a few trees that have been included as part of landscape planting that are dominated by introduced species. No indigenous shrub or ground stratus occur in the study area.

As per the previously issued SCC, it is considered that this matter has been satisfactorily addressed. The retention of vegetation screening/amenity purposes can be addressed at development application stage.

Clause 25(5)(b)(vii) - The impacts identified in any cumulative impact study provided in connection with the application for the certificate

A cumulative impact study was not required as the subject land is not within one kilometre of two or more other SCC sites.

CONCLUSION

The Department concludes that the proposed development for the purposes of seniors living is compatible with the site and the surrounding land uses, given:

- the site adjoins land that is primarily zoned for urban purposes, being R2 Low Density Residential, which permits the development of dwelling houses;
- the site is being used for the purposes of a registered club, identified as Leonay Golf Course and Emu Sports Club;
- the site is treated as land zoned primarily for urban purposes in accordance with clause 4(5)(b) of the Seniors Housing SEPP, as the land contains a registered club and most of the land that it adjoins is zoned for urban purposes;
- the land is not identified by any exclusions listed in schedule 1 of the SEPP; and
- in view of the nature of the site and the availability of services and infrastructure.

The proposal is generally consistent with Clause 24 and 25 of the Seniors Housing SEPP.

Further, the Department considers that the site of the proposed development is suitable for more intensive development as the proposal aims to contribute to seniors housing needs in the locality and there are no significant constraints to more intensive development.

ATTACHMENTS

A	Previously issued SCC on 6 July 2017
B	Penrith Council Submission
C1	Application Form
C2	Planning Report
C3	Concept Plan
C4a	Flora and Fauna Assessment (2017)
C4b	Addendum to Flora and Fauna Assessment (2020)

C5	Owners Consent
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