

JRPP No.	2012HCC016
DA No.	Integrated Development Application DA-2012/419
Proposal	Concept of Seniors Housing Development, Golf Course and Associated Works (Staged Development)
Property	Lots 103 DP 881682: 2/90 Vale Street, Birmingham Gardens Part Lot 10 DP1149782, 8/475 Sandgate Road, Shortland Lot 151 DP 1143683, 4/50A Queen Street, Waratah Part Lot101 DP 881682 (University Land) - now Part Lot 1 DP1188100
Applicant	Chamber Developments Pty Ltd
Report By	TCG Planning on behalf of the City of Newcastle Council
Checked by	Team Coordinator, Development Assessment Team

Assessment Report and Recommendation

Executive Summary

Proposed Development

The proposed development is for a staged concept proposal for a seniors living development (including 189 villas, 56 apartments and a 127 bed residential care facility), golf course works (including remediation and redesign), additional works, and subdivision.

Referral to Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'regional development' of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposal is listed within Schedule 4A of the *Environmental Planning and Assessment Act 1979*, being general development over \$20 million. In addition, the development is also 'Council related development over \$5 million' (Council is the owner of Lot 10 'Lorna Street site'). The nominated capital investment value of the project is \$61.8 million.

Permissibility

At the time the application was lodged, the applicable planning instrument was *Newcastle Local Environmental Plan 2003* when the site was zoned 6(a) Open Space and Recreation and 7(b) Environmental Protection. The golf course works are categorised as "recreation area" and are permissible with consent in both of these zones. The seniors living development is permitted with development consent pursuant to *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. Subdivision (as proposed) is not permitted under the provisions of any planning instrument. Other aspects of the development (remediation, tree removal) will require approval via separate future development applications. All required owner(s) consent has been provided. The proposal is integrated development.

Consultation

The application was publicly notified (via letters to adjoining and nearby owners and occupiers) from 14 May to 12 June 2012 (ie. 30 days) and exhibited in a newspaper notice in accordance with Element 3.1 'Public Participation' of *Newcastle Development Control Plan (NDCP) 2005* (applicable at the time) for this type of development. One submission was received from the owner of Lot 101 (adjacent to the golf club site) and part of the subject land regarding impact of existing parking easements and traffic management matters. The application was also referred to the NSW Rural Fire Service, NSW Department of Primary Industries (Office of Water), the Roads and Maritime Services, Transgrid, Ausgrid and Australian Track Corporation in accordance with statutory requirements.

Key Issues

The main issues identified in the assessment and/or raised in the submissions were as follows:

- Land Contamination
- Impact on SEPP 14 Wetlands
- Site Suitability of Seniors Living Development (Urban Design and Social Impacts)
- Vegetation Removal
- Parking Management (on University site) and Traffic Management

Recommendation

That Integrated Development Application DA-2012/419 be refused on the grounds of unsatisfactory information with respect to land contamination and non-compliance with the provisions of *State Environmental Planning Policy 55 (Remediation of Land)*.

1. Background

11 December 2011: Pre-Development Application Meeting held regarding the proposal.

16 December 2011: correspondence was forwarded to the applicant's consultant which provided advice and information for the preparation of the development application following the pre-lodgement meeting.

17 April 2012: Development Application DA-2012/419 lodged with Newcastle City Council (NCC).

14 May to 12 June 2012: Development Application exhibited/notified.

7 June 2012: Briefing of application given to Hunter and Central Coast JRPP.

16 July 2012: Correspondence provided to applicant confirming assessment to be by independent planning consultant and advising of comments provided by internal officers of Council and external authorities.

8 August 2012: TCG Planning engaged as independent planning consultant.

14 and 18 September 2012: Independent planning consultant provided NCC with correspondence of additional information required to assess the application. Most of the matters reflected Council's letter of 16 July 2012 to the applicant.

17 September 2012: Council issued a Request for Information letter and email listing the items required to further assess the application.

21 September 2012: On site meeting held with independent planning consultant, Council's Senior Development Officer and the applicant and applicant's representatives.

11 October 2012: The applicant requested to suspend assessment of the application while required reports were being completed and Council agreed to grant an extension.

16 November 2012: Council advised the applicant that further assessment of the application would not proceed as the Site Compatibility Certificate was to expire on the 1 December 2013 and could not be reported to the JRPP without a valid site compatibility certificate (SCC).

13 March 2013: NCC received advice from the Office of the Director General that a new SCC had been issued.

30 April 2013: NCC received further information from the applicant responding to NCC's previous requests for information (excluding matters relating to Office of Water's General Terms of Approval (GTA)).

25 June 2013: Applicant requested NCC to have the assessment of the independent consultant finalised.

13-22 August 2013: TCG Planning received the applicant's additional information relating to the application and necessary referral information.

11 September 2013: TCG Planning completed the assessment and advised Newcastle City Council staff the application is unsatisfactory relating to land contamination and remediation, and requested further clarification from Council's Senior Environmental Protection Officer on certain matters.

18 September 2013: Council's Senior Environmental Protection Officer provided clarification of unsatisfactory aspects of application (land contamination and remediation).

19 September 2013: Council advised the applicant of nature of unsatisfactory information and provided 7 days within which to indicate when this information would be provided (and request for extension) and how this would be addressed for consideration.

24 September 2013: Telephone conference with applicant and representatives, Council Staff and TCG Planning to discuss unsatisfactory information.

25 September 2013: Applicant submitted correspondence acknowledging that the information required for the Vale Street site is required and will take five (5) weeks to prepare. The letter also indicated that, in the applicant's opinion, the previously submitted information addresses Council's concerns regarding impacts on potential users of the Lorna Street site, and requested conditions of development consent be imposed to address the required additional information (relating to the impacts on the receiving environments) be provided before development occurs. Serious impacts on the project viability of provision of this information prior to issue of development consent was also expressed in this correspondence.

2 October 2013: Following receipt of legal advice and discussions with Consultant Planner (TCG Planning), Council advised the applicant that the application would be reported to the JRPP for determination based on the currently submitted information.

2. Site and Locality Description

The subject site is comprised of four (4) adjoining parcels of land as described in Table 1 below. Figure 1 is an aerial photograph/map of the subject site and surrounds. Figure 2 indicates the location of each parcel name in the table below.

Table 1: Site description and ownership (adapted from "Table 1", City Plan Services, <i>Statement of Environmental Effects</i> , April 2012, p5)		
PARCEL NAME	LOT/DP and STREET ADDRESS	LANDOWNER
'Shortland Waters Golf Course'	Lot 103 in DP881682 2/90 Vale Street, Birmingham Gardens	Shortland Waters Golf Club (SWGC)
'Lorna Street Site'	Part Lot 10 in DP1149782 8/475 Sandgate Road, Shortland	Newcastle City Council (NCC)
'Chichester Pipeline'	Lot 151 in DP1143683 4/50A Queen Street, Waratah West	Hunter Water Corporation
'University Land'	Part Lot 101 DP881682. <i>Note</i> : recently consolidated with the adjacent allotment to the south. Now known as Lot 1 DP 1188100.	University of Newcastle

The Shortland Waters Golf Course site '**Golf Course land**' has an area of approximately 63 hectares and comprises an 18 hole golf course, with the majority of the facilities (clubhouse, pro shop, greenkeeper's shed etc) being located at the southern boundary of the land. According to the applicant's information, the land has been used as a golf course since 1921. The Golf Course land is characterised by notable pockets of remnant wetlands, dams, and 'managed' introduced and native vegetation. A number of frequently used, formed and informal pathways cover the site as golfers traverse the 18-hole course. Some of the key attributes and constraints of the site are listed below (adapted from the Statement of Environmental Effects (SEE) submitted with the application by City Plan Services, April 2012, p5-6):

- Topography – It's highest elevation is at approximately 26m AHD, located along the site's southern boundary. From this location, a wide ridgeline extends towards the site's north-eastern boundary, gently sloping downwards to approximately 18m AHD before falling away towards several areas of low-lying wetland and dams in the northern and western portions of the site;
- Access – the site is accessible via a private road connected to Vale Street by bridge. A formal pedestrian path provides connections to the University of Newcastle (connecting to the road at the site's south-western boundary) and an informal pedestrian path provides connections to the eastern portion of the University (near the site's boundary with the Chichester Pipeline);
- Bushfire – the site contains some areas of Bushfire Prone Land
- Contamination – some areas of the site have the potential to be contaminated and remediation activities of the Lorna Street site will need to be undertaken prior to the undertaking of proposed works;
- Ecology – the site contains some pockets of disturbed remnant native vegetation, through the majority of the site comprises 'managed lands'. No Endangered Ecological Communities are present within the proposed development area, although 3 threatened fauna species (various bats); 1 threatened flora species (a planted Gum species); and a number of Hollow Bearing Trees were identified during surveys;
- Wetlands – the site contains and is adjacent to several areas of coastal wetlands identified as such under *State Environmental Planning Policy No. 14 – Coastal Wetlands (SEPP 14)*.

The **surrounding land** is described as:

- Northeast - great northern rail line, SEPP14 wetlands, various industrial uses
- Northwest - SEPP 14 wetlands, residential development and Jesmond Bypass Road interchange
- West - Jesmond Bypass Road and residential development
- South - Newcastle Institute for Energy Research Complex and the University of Newcastle
- East - great northern rail line, major electricity transmission lines and SEPP14 wetlands.

3. Project Description

The proposal comprises a 'concept' approval, forming part of a 'staged development application' pursuant to Section 83B of the *Environmental Planning and Assessment (EP&A) Act 1979*. Accordingly, no 'works' are proposed as part of this application, and subsequent development applications will be lodged for approval of specific stages of the project, which must be in accordance with a development consent issued for a concept proposal (pursuant to Section 83D of the Act). The application comprises less detail than a standard development application. However, the concept application seeks approval to the parameters for location, built form and density. The application submitted to Council nominates the capital investment value of the project as \$61.8 million. The Statement accompanying the application indicates that "the development is expected to assist in maintaining the viability of the Golf Club into the future" (p21).

The application is an 'Integrated Development Application' pursuant to Section 91A of the EP&A Act 1979 as it requires concurrence/approvals from external authorities (refer Section 4 of this report).

The proposed development comprises of the following 'parts', each described in more detail later in this section:

- a) Seniors Housing;
 - Self-care housing (villas and apartments comprising a total of 245 dwellings)
 - Residential care facility (comprising 127 single bedrooms)
- b) Golf Course Works;
- c) Additional Development;
- d) Subdivision (6 lots).

The proposed concept plan also involves **five (5) stages** (generally aligning with the proposed 6-lot subdivision). This will also involve the staging of the golf course extensions/re-design to coordinate with the staged seniors housing works. It is noted that two of the three self care apartment buildings are included within Stage 1 and (the third being in Stage 4). However the proposed Residential Care Facility (RCF) is not proposed until Stage 5 (which includes the community facilities accessible to all residents on the site, ultimately to all be available from the RCF building). Prior to this, the applicant proposes that meals, nursing care and other services will be available by external services, and on-site community services (meeting rooms, libraries etc) will be temporarily provided in a Stage 1 villa until the construction of the RCF is developed at Stage 5 (details to be provided as part of a subsequent development application).

Note: the assessment does not support the provision of the RCF at Stage 5, and, should the development be approved, could only be permitted as part of Stage 1 of a seniors living proposal in accordance with the provisions of the Seniors Living SEPP.

Appendix A provides a complete list of the documents submitted with the application for assessment.

a) Seniors Housing

The proposed residential accommodation within the Seniors Housing Development is detailed in the Table 2 below:

Table 2: Proposed Development – Seniors Housing (adapted from “Table 2”, City Plan Services, <i>Statement of Environmental Effects</i> , April 2012, p5)			
Proposed development	No of beds/ dwellings	No. of storeys/ maximum height	Gross Floor Area (GFA) (excludes lifts, fire stairs, vertical risers, garages, balconies and basements)
Serviced self-care housing (Villas) Precinct A	102 x 2-bedroom villas 75 X 3-bedroom villas 12 x 4-bedroom villas Total - 189	1-2 storey Maximum height above ground 6.4m	23,266.95m ²
Serviced self-care housing (Apartments) Precinct A	3 apartment buildings, being: 5x 1 bedroom apartments 43 x 2-bedroom apartments 8 x 3-bedroom apartments Total apartments - 56	3-4 storeys plus basement (Total 4-5 storeys depending on topography) Maximum height above ground: 12.6m	Block A: 988.56m ² Block B: 2632.14m ² Block NN: 2742.94m ² Total: 6,363.64m ²
Residential Care Facility (low-care and high-care) Precinct B	127 single bedrooms	4 storeys plus 2 basement levels Maximum height above ground: 15.5m	10,169.94m ²

The applicant’s SEE (p21-22) accompanying the application including the following vision, design principles and benefits regarding the proposed concept development:

- *“to provide the young to ageing retiree with a quality lifestyle in the midst of a venerable 18-hole golf course facility. The development will provide architecturally designed, quality homes in a perfect position – next to sporting facilities, parklands, education facilities and clubs, and within easy reach of beaches, Hunter wineries and shopping destinations”.*
- The development will:
 - *“Provide a mix of villas and apartments with appropriate transitional forms, supported by appropriate landscaping zones;*
 - *Designed for safety and security performance;*
 - *Provide a range of spaces to cater for the desired recreational activities and to support a variety of social functions, including quiet solitary enjoyment, family barbeques and children’s games”.*
- *“All residents of the Residential Care Facility (RCF), Villas and Apartments will have access to areas of landscaped communal open space throughout the site. An extensive network of pedestrian/golf-buggy pathways, rest areas and landscaped corridors is proposed throughout the site, linking housing with the Golf Club, the RCF and associated community facilities.”*
- *A range of services and facilities will be available to all residents, including a library, communal meeting spaces and function rooms within the RCF building. Residents may also access the existing Golf Club for meals, social activities and recreation opportunities.”*

It is also noted in the SEE accompanying the application that “as this development proposal is only conceptual, minor amendments to the design, location or orientation of housing may occur during detailed design” (p24).

It is proposed that Precinct A (the majority of the site and the development) will compose of serviced, self-care apartment buildings and villas. According to the Seniors Living SEPP, 'serviced self-care housing' is defined as;

Seniors housing that consists of self-contained dwellings where the following services are available on site: meals, cleaning services, personal care, nursing care.'

The 1-2 storey villas will be north-facing, will have varied sizes, heights and façade treatments, and will have direct frontage to a street and green space. Each villa will have a garage/carport and stacked visitor space. The 4-5 storey apartments will be within three separate buildings and each will have basement parking accessed via lifts and stairs. Each dwelling will have a private patio and/or balcony.

The residential care facility will comprise a surface car park; two basement car parking levels (above ground in some locations due to topography); foyers and administration areas; nursing stations on each level; lounge, games dining and kitchen areas; consulting rooms; community facilities; and an area for ancillary services (hairdresser etc).

It is intended that the proposed seniors living development (comprising an area of 110,887m², being 11 hectares) will require the removal of all existing vegetation within the development footprint. Of this area, the majority comprises managed grassed fairways, managed land (mixed native/exotic canopy, mature upper stratum 25m in height), and 'disturbed coastal foothills spotted gum Ironbark Forest', generally disturbed with upper stratum height up to 24m. The removal of 41 hollow-bearing trees is proposed within this area. No Ecological Endangered Communities are located within this footprint and one of the three Wallangarra White Gum trees species (a vulnerable species under the *NSW Threatened Species and Conservation TSC Act 1995* and Endangered under the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*) identified on the site is proposed to be removed.

b) Golf Course Works

Due to the proposed seniors housing concept resulting in loss of golf holes at the existing Shortland Waters Golf Club, the proposal also includes the remediation of a former landfill site to the north of the existing golf course (Lorna Street site). The remediation will be undertaken to facilitate the construction of additional golf holes to ensure the golf club maintains an eighteen hole golf course.

Such work is expected to involve:

- The filling of parts of the Lorna Street site (in addition to capping for contamination remediation purposes), to allow for the construction of bunkers, tees, greens, new fairways etc as well as the drainage of the playing zones;
- Landscaping of new golf fairways, extension of existing irrigation lines, and the addition of new formed pathways where appropriate.
- Removal of vegetation (ie. part of practice fairway, 18th tee, 2nd hole; 3rd hole; 8th hole and 9th tee – shown on 'Plan of Proposed Golf Course Works at **Appendix D**).

c) Additional Development

The SEE (p28) accompanying the application also lists the following additional works:

- Capping and filling of parts of the Lorna Street site (to a depth of at least 500mm) to contain existing contamination;
- Development of infrastructure, including roads, a potential bridge over the Chichester pipeline (to be confirmed during detailed design), sewerage systems and stormwater management systems;
- Development of a waste transfer station to service the seniors housing;
- Creation of a new pedestrian pathway network, including connection from the existing Golf Club House to the seniors housing area;
- Creation of a scooter/buggy parking area near the existing Golf Club House;

- Relocation of 16 carparking spaces near the existing Golf Club House, to create space for the proposed access road.

d) Subdivision

The concept plan also includes a six lot torrens title subdivision which, according to the SEE accompanying the application will “allow for the staged sale of parts of the land for financial purposes” (p28). Details of the proposed subdivision including easements, rights of carriageway (including for access over the Chichester pipeline lot) are proposed to be addressed within the future development applications.

Note: this assessment does not support this component of the application as the Seniors Living SEPP does not permit subdivision until the seniors living development has been completed/carried out.

4. Consultation

The development application is defined as ‘nominated integrated development’ and ‘advertised development’ and was publicly notified (via letters to adjoining and nearby owners and occupiers) from 14 May to 12 June 2012 (ie. 30 days) and exhibited in a newspaper notice in accordance with Element 3.1 of *Newcastle Development Control Plan (NDCP) 2005* for this type of development (applicable at the time) and the *EP&A Regulation 2000* (Division 7 ‘Public Participation – Other advertised development’). No sign was erected at the site (Note: this is not a mandatory requirement of the Regulation or the DCP).

While NDCP 2005 applied at the time of the submission of the concept application, the *Newcastle Development Control Plan 2012* (NDCP 2012) applies to the application to all new applications submitted on or after the 15th June 2012, unless stated otherwise in the ‘savings provisions’ in the relevant section of DCP 2012. The savings provisions of NDCP 2012 Part 8 ‘Public Participation’ states “*any development application lodged prior to this section coming into effect will be processed taking into consideration the provisions of this section.*” The provision of the additional information, and inclusion of the additional allotment (University Land, Part Lot 101 DP881682, within the land that is the subject of the application due to road upgrade works being indicated on the plans as being within Stage 5 works) since the advertising and notification in 2012 has not altered the nature and scope of the proposed development as exhibited. Note: this allotment is now known as Lot 1 DP1188100. Re-notification/advertising of the development application is not considered to be warranted. This is in compliance with Clause 90 of the Regulations and Section 8.00.04 and 8.00.06 of NDCP 2012.

One submission was received from the Acting Vice Chancellor-Services of the University of Newcastle, who own land adjoining the golf course (and later being part of the subject land as described above). The University indicated in the submission that it is generally supportive of the proposed development (Note: this was later reiterated in a separate written correspondence granting consent for the inclusion of Part Lot 101 DP881682 (now Lot 1 DP1188100) within the subject land). The submission requests the consent authority to take into account the national significance of two research institutes which play an important role in the future development of the University of Newcastle’s research profile. In addition the following key concerns were raised:

Traffic Management:

- That a traffic management plans for any construction work be available to the University for comment and endorsement;
- That the entrance align with University pedestrian and cycleways;
- The proposed new entrance road on the golf club site (located between the Clubhouse and southern boundary of Lot 103 is of sufficient width for a public road and pathways suited to use by elderly people using mobility scooters; and

- Consideration of how traffic management and parking around existing club house will be achieved having regard to lack of additional parking.

Easements for Parking on University Land:

At the time of agreement between the University and the Golf Club (1998), regarding the easements for parking on Part Lot 101 (University Land, now part Lot 1 DP 1188100), the use was (and still is) a recreational golf course only. The University raised concern that the increased density of development (and associated potential increase in visitation and parking demands) may impact on shared arrangements of parking with the University. The University proposes to discuss the current easement terms with the Golf Club. The later correspondence from the University (granting consent) requests a copy of any draft conditions subject to Council's consideration of the application. It is noted that draft conditions would be available for viewing via a JRPP report should the development be recommended for approval.

Planner's Comment: The applicant in responding to these comments has indicated that the entrance road is designed to comply with Council's DCP for two-way movements with a pedestrian path. The revised information (including vehicle manoeuvring/turning paths) was reviewed by Council's Traffic Engineer who deemed the application to be acceptable, subject to conditions, including the widening of the 8m wide access road with the University's NIER facility access road to adequately cater for coach and heavy vehicle access.

The applicant has also responded that *"while some residents may choose to drive vehicles to the short distance to the Clubhouse, a range alternative travel options are available which will not result in an increased demand for car parking (eg. walking, golf buggies, mini-bus). Accordingly it is not anticipated that there will be any significant demand on the existing parking associated with the Clubhouse. However, if there is found to be an unacceptable demand on existing parking spaces, management measures can be implemented, such as a prohibition on residents parking adjacent to the Clubhouse at certain times, and the subsequent encouragement of the mini-bus."* The applicant has further stated that the Golf Club *"is anticipated to be amenable to discussing any proposed changes with the University."*

It is agreed that the issue of the existing easements for parking is a private matter between the University and the Golf Club, and the terms of the easements cannot be imposed within this application (Clause 18 'Covenants' of NLEP 2003). However it is considered that, should the proposal be recommended for approval, that this be resolved prior to the issue of the Stage 1 application (via an appropriate condition of development consent). It is noted that the proposal also includes subdivision of land for future sale of the senior living development. Once this occurs, if approved, there is little ability for the Club to address parking issues via management/ownership of the land. If the Club intends to expand in the future, or seniors living development places significant parking demands on the existing parking areas on the University land, then it should set aside an appropriate location on its own site for adequate number of parking spaces (which does not appear to be the case in the current layout), in the event that the University no longer agrees to allow parking for Golf Club patrons on Lot 101. The Club should be aware of this risk to the future development/expansion of the Clubhouse. There are no known existing development consents relating to the golf club and/or University land that would impact on the existing arrangements.

Traffic management (including during construction) and road design could be included in draft conditions of development consent for the University's review should the application be recommended for approval.

5 Referrals

External

The following statutory (and non-statutory) external referrals were forwarded for the proposed concept development application. It is noted that the application is an 'Integrated Development Application' pursuant to Section 91A of the Act as it requires concurrence/approvals from external authorities.

Table 3-External Referrals	
Agency/Reason	Response
<p>NSW Rural Fire Service</p> <p>S91 Integrated Development of <i>EP&A Act 1979</i></p> <p>(s100B of <i>Rural Fires Act 1997</i> as a Special Fire Protection Use, as the land is 'bush fire prone')</p>	<p>On 8 June 2012 the RFS issued a 'bush fire safety authority' as required under section 100B of the <i>Rural Fires Act 1997</i> subject to conditions relating to:</p> <ul style="list-style-type: none"> Asset Protection Zones Water and Utilities Access Evacuation and emergency management Design and Construction <p>These conditions should be imposed on any Development Consent issued, should the development application be approved.</p>
<p>NSW Department of Primary Industries</p> <p>Office of Water (OoW)</p> <p>S91 Integrated Development of <i>EP&A Act 1979</i></p> <p>(s91 of <i>Water Management Act 2000</i> for a Controlled Activity Approval, as the proposed golf course works are located within 40m of 'waterfront land' including the SEPP 14 wetland)</p>	<p>The OoW issued a "stop the clock" letter dated 30 May 2013 as the originally submitted information was deemed insufficient. The applicant consulted with the OoW directly (including a site meeting) and forwarded additional information (via NCC) confirmed to be received by OoW on 18 March 2013. The key issue appeared to be in relation to buffers between the SEPP 14 wetland, as the edge of Fairway 6 was set back between only 8.5m and 30m from the eastern edge of the wetland (or less to the 'Freshwater Wetland Complex' Endangered Ecological Community. Refer Attachment E. The additional information included from 'e-par' - a sports turf environmental specialist indicated that the golf course fairway will be an adequate buffer to the wetland.</p> <p>On 8 May 2013, the OoW issues General Terms of Approval for the development which included a range of conditions. A cover letter was also attached noting "to this date the OoW has not received the additional information requested but has had discussions with the applicant's consultants." The GTAs included specific conditions requiring plans to be amended to provide a 20m riparian buffer around all SEPP 14 wetlands and other waterfront land. GTA No. 14 specifically states "<i>the consent holder must establish a 20m wide riparian corridor/buffer along the all SEPP 14 wetlands and any other water front land in accordance with a plan approved by the NSW Office of Water. The 20m riparian zone must be restored and managed to provide an ecological buffer to the existing wetlands, and consist of fully structured locally occurring ecotones. All riparian buffers are to be suitably fenced or otherwise separated from the golf course and other development areas.</i>"</p> <p>TCG Planning contacted OoW directly to clarify what information was reviewed and whether the proposed development was acceptable as submitted. The OoW indicated that the additional information was received directly from the applicant, and no formal re-referral was issued from NCC (as is the usual required procedure) and, hence the abovementioned comment in the cover letter. In summary, the OoW advised that 20m buffer is from the <u>water's edge</u> (not SEPP 14 map edging), usable turf area on fairway cannot be within this 20m buffer, and the 20m area must be vegetated and not accessible.</p> <p>While a 40m setback would impact on the layout of the golf course and potentially the viability of the design and overall proposal, it would appear that the Fairway 6 design may be able to be slightly amended to meet this requirement for a 20 metre setback and be accommodated in the overall concept design. Refer Appendix F.</p>
<p>Roads and Maritime Services</p> <p>SEPP (Infrastructure) 2007 Clause 104</p> <p>applies to development specified in Column 1 of the Table to Schedule 3 'Traffic-generating development to be referred to the RTA' as the development exceeds 200 vehicles.</p>	<p>16 August 2013: No objections to the proposal, subject to conditions, including:</p> <ul style="list-style-type: none"> Provision of a pedestrian crossing phase and associated civil works on the northern leg of the Sandgate Road and Vale Street traffic signals; and Combined footpath/cycleway (preferably 2.5m wide) between the development and the required signalised pedestrian crossing. Upgrade of the existing pedestrian crossing phases inclusive of civil works at the Sandgate Road and Vale Street traffic signals to ensure compliance with current road standards. <p>The advice and conditions were considered by Council's Traffic Engineer and should be incorporated into conditions imposed on any Development Consent issued if approved.</p> <p>The RMS also issued advice for Council's consideration including road safety at the Vale St/Shortland Waters local road access intersection, and potential for road traffic noise,</p>

Table 3-External Referrals	
Agency/Reason	Response
	(which has been addressed in the assessment of the application).
Transgrid SEPP (Infrastructure) 2007 Clause 45 (development within or immediately adjacent to an electricity easement or transmission line)	30 May 2012: concerns regarding the impact of proposed works running parallel to the Great Northern Railway (golf course works). Should the application be approved, it is considered that appropriate condition(s) can be imposed requiring works adjacent to or within this area to be shown on a registered survey plan (with respect to the future DA for that stage).
Ausgrid SEPP (Infrastructure) 2007 Clause 45	Formally advised, but no response received. It is recommended that a similar condition imposed to Transgrid above, should the development application be approved.
Australian Rail Track Corporation (ARTC) Adjoining property owner SEPP (Infrastructure) 2007 Clause 87 'Noise and Vibration'	12 March 2012: requested that Council consider noise and vibration, and conditions relating to fencing and storm water adjacent to the rail corridor. The additional information supplied by the applicant (Acoustic Report) was reviewed by Council's Senior Environmental Protection Officer and is considered to address the noise and vibration matters, subject to conditions and no re-referral was considered necessary.
Hunter Water Corporation General Comment (non-statutory)	No formal submission received in response to notification, however, conditional consent for the lodgement of the DA was provided (dated 16 January 2012) subject to numerous matters being required to be addressed prior to the next phase of the project associated with access to and improvements to the pipeline. Should the concept application be approved these conditions should be imposed on any Development Consent issued, to be addressed and satisfied in writing by HWC prior to the submission of Stage 1 application.

Internal Referrals – Newcastle City Council Officers

The initial application documents, and additional information received in 2013 (where relevant) was referred to the list of officers below, who responded as follows.

- **Landscape Architect (City Services and Presentation Group):** Requested further information (eg. comprehensive landscape plan, tree protection plan). Following review, the consultant planner identified that some of the requested information was detailed and should rather be provided at the individual future stages of the concept proposal (to be imposed as conditions of development consent). Other matters requested by the landscape architect (eg. internal and external pathway connections) were requested to be addressed by the applicant and reviewed by the consultant planner.
- **Manager Parks and Recreation Services –** No comment.
- **Traffic Engineering (Engineering Services) –** Satisfactory subject to recommended conditions (also notes is consistent with RMS comments)
- **Stormwater/Flooding Engineer (Engineering Services) –** Satisfactory subject to recommended conditions.
- **Community Planning Coordinator (Strategic Planning Services) –** Satisfactory. Supported subject to recommended improved connectivity to off-site centres and provision for an external bus service and associated infrastructure (noting mini bus to service the internal network).
- **Senior Environmental Protection Officer (Compliance Services Unit) –** referral dated 18 May 2012 unsatisfactory with respect to information relating to contamination, ecological issues, potential noise impacts and sewage management, with additional information requested. The additional information submitted by the applicant in 2013 was reviewed and matters relating to ecological issues, potential noise impacts and sewage management were considered to be satisfactory and could be resolved via conditions of consent or at a later design stage (provided 10 October 2013). However, the additional information relating to contamination issues (including updated reports) was deemed unsatisfactory (provided in a referral dated 31 July 2013, and clarified on 18

September 2013. An additional response to further information provided by the applicant was provided on 30 September 2013). Refer to Section 6 of this report (under heading *State Environmental Planning Policy 55 - Remediation of Land*).

- Council and Legal Services: Council's Lawyer provided advice on the assessment of the application. Refer to Section 6 of this report (under heading *State Environmental Planning Policy 55 - Remediation of Land*).

Urban Design Consultative Group

The Concept Plan was referred to the Urban Design Consultative Group (UDCG) on 23 May 2012, who provided a detailed report based on the ten Design Quality Principles set out in State Environmental Planning Policy (SEPP) No. 65. These design quality principles must be addressed in considering residential flat development in NSW. While SEPP 65 only applies to the three self care apartment buildings proposed (refer Section 6(a) of this report), the UDCG consider these principles to be an appropriate format for consideration of applications which do not include residential flats (*Note: this is not a statutory requirement and is an advisory approach only*). Refer to the table at **Appendix H** for the detailed UDCG comments and responses by the independent consultant planner. Refer also to Section 6(b) of this report which discusses urban design and urban form.

6. Section 79C Considerations

(a)(i) the provisions of any environmental planning instrument

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

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ('Seniors Living SEPP') aims to encourage the provision of housing (including residential care facilities) that will increase the supply and diversity of residences to meet the needs of seniors or people with a disability. It also seeks to make efficient use of existing infrastructure and services and ensure that seniors housing is of good design.

Consideration has been given to the application of the Seniors Living SEPP in relation to the Serviced Self Care Seniors Housing (189 Villas and 3 apartment buildings comprising 56 apartments) and the Residential Care Facility of the proposed development. The manner in which the proposed self care housing and residential care facility address the provisions of the SEPP, at the concept plan stage, is discussed below. The provisions of the Seniors Living SEPP (as they apply to the proposed concept development) are complex. Hence the application of each of the relevant clauses is included in this assessment report.

The Golf Course land is the site of the proposed seniors living development which is located on land zoned 6(a) Open Space and Recreation under *Newcastle Local Environmental Plan (NLEP) 2003*.

Clause 4(1) (Land to which this policy applies) confirms that the policy applies to "*land that is zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes but only if:*

(a) *development for the purpose of any of the following is permitted on the land:*

- (i) *dwelling-houses,*
- (ii) *residential flat buildings,*
- (iii) *hospitals,*
- (iv) *development of a kind identified in respect of land zoned as special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries, or*

(b) *the land is being used for the purposes of an existing registered club.*

The Golf Course land is the site of the proposed seniors living development which is located on land zoned 6(a) Open Space and Recreation under NLEP 2003. The land is surrounded by land zoned 5a Special Uses (University Land, Roads and Rail land) and 7(b)

Environmental Protection (Lorna Street site to the north). To the west is the 2(b) Urban Core Zone (suburb of Shortland). The site meets the provisions of Clause 4(4) as the site is separated by a public road. Clause 4(1)(a)(i) and (b) is met. Clause 4(7)(b) is also met as the land is zoned open space and is used for the purposes of a registered club on which dwelling houses are permitted. Clause 4 is therefore met.

The proposal is for “a residential care facility” and a “group of self-contained dwellings”, being “serviced self-care housing”(Clauses 10, 11 and 13).

Clause 15(b) allows for the proposed development despite any other environmental planning instrument, provided it is carried out in accordance with the Policy.

Clause 17(1) specifies that for land adjoining land primarily for urban purposes, the seniors housing must comprise a residential care facility or a serviced self-care housing, and where serviced self-care housing is proposed, must be provided in combination with a residential care facility (Clause 17(2)). The overall development meets this requirement, however the proposed staging of the development proposes the residential care facility as the last stage, means that the initial stages will not meet this provision. Therefore it is recommended that, should the application be supported, that the RCF be incorporated into Stage 1 of the development concept to meet this provision.

Should the development be approved, a condition will be required to be imposed pursuant to Clause 18(2) limiting the accommodation to seniors only.

Clause 21 states that “*land on which the development has been carried out under this chapter may be subdivided with the consent of the consent authority.*” The applicant seeks concept subdivision of the site under this Clause, however this is not considered to be permitted under this Clause, which requires the development to be completed. The wording of this clause (in past tense) infers this and this wording differs from other clauses in the SEPP which reference development “to be carried out” or “development that may be carried out” (ie. future tense). It is recommended that this concept application not permit inclusion of subdivision in the proposed development scope. Subdivision will therefore only be permitted following completion of the entire development.

Clause 23 is considered to be satisfied with respect to amelioration of land use conflicts and management measures with the existing registered club, which can also be addressed in detail by future staged development applications.

Clauses 24 and 25 apply (being land that is used for the purposes of an existing registered club) and are satisfied as a current Site Compatibility Certificate has been issued by the Director General (Planning and Infrastructure – **Appendix J** that states that “the land is suitable for more intensive development” and “the development is compatible with the surrounding environment and surrounding land uses having had regard to the criteria specified in Clause 25(5)(b).” Schedule 2 of the Certificate (presumably addressing Clause 25(7) also states that “*the location and final numbers of dwellings and bed provision, plus ancillary community, administrative and commercial facilities permitted on the site shall be determined by council through the development application under Section 79C of the EP&A Act 1979.*” It is considered that this best be achieved through future detailed development applications, not this concept application, and hence this is considered to be the intention of this statement.

This Clause [26(2)(c)] ‘Location and access to facilities’ will be satisfied by the provision of a private mini bus to the nominated facilities and services. The future detailed development applications will need to demonstrate compliance with subclause (3) (pathway gradients), however it is noted that an extensive pathway system is proposed to be provided within the development, particularly to the golf club and the RCF which will provide on-site services. It is therefore anticipated that the provision of a private bus service with direct access from suitable access pathways from the various parts of the site will therefore achieve compliance with the gradient requirements of the SEPP.

The bushfire considerations within Clause 27 'Bush fire prone land' have been taken into consideration and have been satisfied, including the provision of a bush fire safety authority by the Rural Fire Service with associated conditions. Future detailed development applications will need to satisfy bushfire matters.

Clause 28 'water and sewer' is satisfied as the application is accompanied by written evidence that there is sufficient capacity within the existing water and wastewater systems to cater for the proposed development.

Part 3 'Design Requirements' – The information submitted with the application is sufficient to satisfy Clause 30 'Site analysis'.

Division 2 Design Principles: The proposed Seniors Living concept development has been designed and/or is satisfactory, having regard to the design principles set out in Clauses 33-39 of the SEPP as summarised below (noting that the detailed aspects will required to be addressed in future detailed development applications). Refer also Section 79C assessment under '(b) likely impacts' and '(c) suitability of the site for development'.

- Neighbourhood Amenity and Streetscape
- Visual and Acoustic Privacy
- Solar access and design for climate
- Stormwater
- Crime Prevention
- Accessibility
- Waste Management

Clause 40: Development Standards to be complied with - The minimum site size and frontage requirements are well exceeded. The building height limitations are not applicable as the subject land is not a residential zone. Notwithstanding this, while the RCF and apartment buildings exceed 8 metres in height, the visual and other amenity impacts of the seniors housing is considered to be satisfactory.

Clause 41 'Standards for...self contained dwellings (detailed design requirements for dwellings) will be addressed in future DA stages.

Clause 42 'Serviced self-care housing' requires written evidence that residents of the proposed development will have reasonable access to home delivered meals, personal care and home nursing and assistance with housework. The SEE accompanying the application indicates that this requirement will be satisfied and that "details for this service provision will accompany a subsequent DA for the first stage of seniors housing development, when details of the proposed design are completed." Similarly, details of transport services to local centres will be provided a subsequent DA for the first stage of seniors housing development (in accordance with Clause 43). A viable operator has not been demonstrated for this concept application, however will need to be done so in detail for the first application and to enable the use to proceed.

Clause 44 requires a facility or service of a proposed development to be available to residents when the housing is ready for occupation. In the case of a staged development, the facilities or services may be provided proportionately according to the number in each stage. The proposed concept plan also involves five (5) stages with the proposed residential care facility is not proposed until Stage 5 (which includes the community facilities accessible to all residents on the site, ultimately to all be available from the RCF building). Prior to this, the applicant proposes that meals, nursing care and other services will be available by external services, and on-site community services (meeting rooms, libraries etc) will be temporarily provided in a Stage 1 villa until the construction of the RCF is developed at Stage 5 (details to be provided as part of a subsequent development application). Given the scale of the development, off-site provision of services until development of the RCF at Stage 5 is not supported (nor does it comply with Clause 17 of the SEPP). Should the

development be approved, the RCF, and associated on-site services will need to be provided as part of Stage 1 of a seniors living proposal.

Clauses 48 and 50 outline development standards that cannot be used to refuse development consent for residential care facilities and self contained dwellings (including 8m height, density and scale, landscaped area and parking). While not directly applicable to this concept development application, it is likely that the proposal will be able to comply with these requirements, with the exception of the proposed heights of the self care apartment buildings and RCF building (proposed to be maximum 12.6m and 15.5m respectively) will be outside of these standards. However, as detailed in Section 6(b) 'Visual Amenity-Built Form, Density, Bulk & Scale' and **Appendix H** of this report, the proposed heights of these buildings are acceptable. In addition, while the applicant reasonably indicates that precise landscaping areas are not available at the concept stage, there appears to be a reliance on the golf course area to be included to address these standards. This should not be permitted in the future if the subdivision of the seniors living development from the golf course land is proposed (which it is). The areas of landscaping and deep soil zones should meet the minimum 30% site landscaping requirement (requirement for self-care housing within Clause 50 of the Seniors Living SEPP). This should be within the seniors living development footprint only and not include the golf course site, which is intended to be subdivided from the parcel of land and will have future separate ownership and ongoing management. Should the concept development application be approved, it is recommended that this be imposed as a condition of consent. This may impact on density/yield outcome for the seniors living development.

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development

The proposal includes the development of three apartment buildings to which the provisions of SEPP 65 apply. As the proposal is a concept development application, application of the SEPP is limited; however it will apply to the future detailed development applications for each of the three proposed apartment buildings. The applicant's architect, who prepared the (reasonably detailed) concept designs, however addressed the ten design quality principles of the SEPP, which are provided at the table at **Appendix H**. The SEE accompanying the application indicates that the residential flat buildings have also been designed in accordance with the Residential Flat Design Code (RFDC). A response to this is also provided within the table (however an assessment of the buildings in accordance with the RFDC has not been undertaken). In summary, it is considered that the proposed apartment buildings within the proposed development are generally consistent with the design quality principles within the SEPP.

State Environmental Planning Policy 71 - Coastal Protection

The land is located within the Coastal Zone and therefore *State Environmental Planning Policy 71 - Coastal Protection* applies. The site is located some distance from the coast and in this regard, many of the provisions are not applicable and/or are satisfied. Conditions within the 'General Terms of Approval' issued by the Office of Water require vegetated buffers (20 metres wide) to protect the ecology of the riparian zone of the SEPP 14 wetland.

State Environmental Planning Policy 55 - Remediation of Land

State Environmental Planning Policy 55 - Remediation of Land aims to "promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:

- (a) by specifying when consent is required, and when it is not required, for a remediation work, and
- (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and

(c) by requiring that a remediation work meet certain standards and notification requirements” (Clause 4(2)).

This SEPP is applicable to the development application as the Golf Course land (Lot 103) is potentially contaminated and the Lorna Street site (part Lot 10) is confirmed as being contaminated land. Hence the provisions of Clause 7 ‘Contamination and remediation to be considered in determining development application’ apply.

a) Information Accompanying the Application

Numerous documents have been submitted with the development application addressing site contamination. These documents, and the key outcomes of the reports are listed below.

Phase 1 Environmental Site Assessment (Golf Course), by RCA Australia, Ref # 7875a 401/2, dated January 2013.

This report is a ‘Phase 1’ (desktop review, historical use assessment and limited shallow soil sampling) in respect of the Golf Course site only. The assessment identified that filling has occurred on the site and there is potential for slag and other industrial waste products to be present at the site. There is also potential contamination from petroleum storage (limited to proximity of greenhouses), herbicide and pesticide use and potential disposal of hazardous building materials (asbestos) present on the site (Note: the buildings are in good condition and are not likely to have caused contamination). As a result, the report concludes that “the potential contamination may pose a risk to human health and the environment during the construction of the proposed development and where use is going to be more intensive, such as the residential care complex.” The report makes several recommendations, including that further sampling be undertaken for construction of buildings and alternative fairways and holes. This information could then be used to determine either or both the scope of remediation required and management controls required during the construction process.” Further sampling in areas where soil accessible to residents at the site is also recommended, in addition to appropriate removal of petroleum storage and associated validation, and appropriate management and disposal of demolished and other materials.

Remedial Action Plan (Lorna St) by RCA Australia, Ref # 7875-104/2, Dated January 2013

This remedial action plan (RAP) applies to the Lorna Street site only (former landfill site) and reviewed previous reports, involved excavation of test pits to evaluate existing site capping depth and condition, and identified remediation options. The report identified that the most appropriate strategy for the remediation of soil at the site to be the ‘cap and contain in situ’ option, with appropriate ongoing management controls for the site.

Groundwater Investigation Report by RCA Australia, Ref # 7875-402/0, Dated September 2010

This report applies to the Lorna Street site only and concludes that groundwater contamination exists but concentrations are decreasing. Groundwater contamination is not considered to represent a significant risk to human health for users of the site as a planned golf course. It is recommended ongoing groundwater monitoring continue on the site and that appropriate health and safety procedures be adopted during site development/construction activities based on avoiding contact with groundwater, and other safety measures.

Site Audit-Interim Advice #1 - Review of Existing Reports and Remediation Strategy, by GHD, Ref # 22/16703/101982, Dated 10 April 2013.

This report was prepared in response to Council’s request for a site audit, however is interim advice, noting that it does not constitute a site audit report or site audit statement under the provisions of the *Contaminated Land Management Act*, which can only make conclusions at the completion of a full audit process. The Interim Advice is based on a review of existing reports and a brief site inspection. A summary of the conclusions and recommendations is provided below:

- The remediation strategy (capping of former landfill site and use as a golf course) is appropriate for the proposed land use of the Lorna Street site, and can reasonably be expected to improve current environmental condition of the site;
- The “concept” level of documentation is understood, with further detail to be undertaken prior to any works being undertaken on the site. The Auditor considers that further characterisation of the site is required (in accordance with the relevant Guidelines) to allow appropriate planning and detailed design of the remediation works and the proposed development of the surrounding areas. This should include (but not be limited to) the extent of landfilling to be confirmed; better characterization of groundwater characteristics; assessment of landfill gas impacts; and detailed survey of the site and comparison with final levels and design levels.
- The Auditor considers that these further investigations can be undertaken as part of final design and documentation in preparation for construction, and could reasonably be made a condition of consent in future detailed DAs, together with review of these documents by an Auditor as recommended in the audit (including remediation and validation report, Construction Phase Management Plan and Environmental Management Plan).

b) Assessment and Referral by Council's Environmental Protection Officer

The initial referral response dated 18 May 2012 stated that information that had been submitted to date was unsatisfactory with respect to contamination, with additional information requested. The additional information submitted by the applicant in 2013 was reviewed and was again deemed unsatisfactory, as advised in a referral dated 31 July 2013, and clarified on 18 September 2013 as follows:

State Environment Planning Policy (SEPP) 55 – Remediation of Land (requires that) a consent authority must not consent to the carrying out of any development on land unless, if the land is contaminated, it is satisfied the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. The lots to which the proposed development pertains are currently considered to be in a contaminated state. Therefore, assessment of the suitability of the site, in its current state or after a proposed remediation strategy is required. I note SEPP 55 does not distinguish between whether the development application is for a concept plan (as proposed) or for a physical construction.

Vale Street site (90 Vale Street, Birmingham Gardens)

The Phase 1 Environmental Site Assessment prepared by RCA Australia dated January 2013 has undertaken sampling within the proposed development footprint of the seniors housing estate with analysis of contaminants restricted to herbicides and pesticides only. However, the Phase 1 Environmental Site Assessment prepared by RCA Australia dated January 2013 notes the presence of fill, likely from the nearby BHP research facility, may be present in localised areas. Furthermore, an elevated level of Total Recoverable Hydrocarbons (TRH) associated with a storage tank near the existing golf course maintenance shed (proposed for redevelopment as a waste transfer area) was noted in the report. Due to the potential presence of contamination in fill materials and known elevated TRH levels associated with a storage tank Council recommends the applicant undertake a detailed investigation, and a remedial action plan if required, within the proposed development footprint to address potential contamination issues. The currently submitted information notes contaminants and potential areas of concern (filling) remain at the site and may require remediation to ensure the site is suitable for the proposed seniors housing estate. Therefore, the information, as currently submitted, does not adequately address the requirements of SEPP 55 – Remediation of Land for the Vale Street site.

Lorna Street site (475 Sandgate Road, Shortland)

Although previous studies have revealed elevated levels of contaminants in groundwater at the Lorna Street site the Remedial Action Plan prepared by RCA Australia dated January

2013 notes potential groundwater remediation options will not be considered as part of the proposed development. The Site Audit Interim Advice #1 prepared by Ian Gregson from GHD Pty Ltd dated 10 April 2013 notes assessment of the suitability of the site for the proposed redevelopment must consider potential impacts to both on-site and off-site receptors and whether any control of such impacts is required. The Site Audit Interim Advice #1 prepared by Ian Gregson from GHD Pty Ltd dated 10 April 2013 notes further groundwater and surface water assessment is required, but notes this may potentially be conducted prior to final design. However, the objectives of SEPP 55 – Remediation of Land aim to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. This is echoed in the aims of Section 5.02 of the Newcastle Development Control Plan (DCP) 2012. In this instance, groundwater contaminants from the site have the potential to impact upon a sensitive receiving environment (SEPP 14 – Coastal wetland) and potential future users eg) water hazards as part of the potential golf course design. Therefore, the suitability of the site, in regards to potential impacts of contaminated groundwater from the site on the surrounding environment and on potential course design requirements, have not been adequately addressed. Council recommends the applicant undertake further groundwater sampling and assessment, in the form of a detailed investigation and revised remedial action plan, to address potential groundwater contamination issues associated with the site.

On 25 September 2013 the applicant submitted correspondence responding to these outstanding/unsatisfactory issues. In summary, the letter acknowledged that further information is required for the Vale Street site (further testing) and would take five weeks to complete. In respect of the Lorna Street site, the applicant indicated that the previously submitted information addresses Council's concerns (regarding impacts on potential future users of this site), and requested that the other additional information requested (relating to the impacts on the receiving environments due to groundwater issues) be addressed via a condition of development consent, to be provided before development occurs, as staged (concept) consents do not allow for the carrying out of development until subsequent DAs are lodged, and therefore the provisions of SEPP 55 can be addressed (then). The serious implications of the project's viability if this is required prior to determination of this DA was expressed.

The Council's Senior Environmental Officer responded (on 30 September 2013) to the applicant's letter in relation to the Lorna Street site as follows:

- *Current groundwater contamination situation: The letter acknowledges sampling undertaken during Groundwater Investigation Report prepared by RCA dated September 2010 revealed groundwater contamination continues to leach off-site above guideline levels. Therefore, the groundwater is posing a potential risk to the environment.*
- *Additional work required: The additional groundwater sampling recommended in the Groundwater Investigation report prepared by RCA dated September 2010 is to confirm the groundwater contamination is decreasing. The current status of the groundwater is unknown (with the exception of the results from the 2010 report) and it is only assumed the levels are decreasing, and may potentially still be above guideline levels. I also note the Interim Advice #1 by Ian Gregson dated 10 April 2013 raises issues over the groundwater monitoring employed by RCA and notes the assessment of suitability of the site must consider potential impacts to both on-site and off-site receptors. I acknowledge the cap and contain strategy addresses the suitability for the on-site receptors (eg users of the golf course), but the off-site receptor (wetland and downstream receptors) have not been adequately addressed. The currently submitted remedial action plan also notes potential groundwater issues will not be addressed as part of the future proposed development.*
- *Issue 1: impacts on potential future users of the site: Council agrees the cap and contain strategy is the suitable remediation strategy for the users of the site, as water hazards will not be incorporated into the design and groundwater will not be utilised. The physical*

cap will provide suitable protection to users on-site. However, the issue of off-site impacts remains.

- *Issue 2: impacts on sensitive receiving environments: The Interim Advice #1 prepared by Ian Gregson states the proposed remediation strategy can be reasonably expected to improve the current environmental condition of the site, due to reduction in infiltration. I do not disagree remediation will be an improvement. However, this does not resolve the issue of whether the strategy will reduce the leaching of contaminants to acceptable levels or whether high levels of contaminants will continue to leach into the surrounding environment unabated.*
- *(a - if requested information is provided now): the letter assumes the groundwater is decreasing, based on the 2010 report which utilises a number of assumptions as highlighted by Ian Gregson. The letter also notes that the resultant sampling may require an amendment to the RAP. This brings us back to Clause 7 of SEPP 55 which requires that the land is suitable in its contaminated state (or will be made suitable, after remediation) for the purposes of the proposed development. My concern relates to the potential on-going groundwater contamination and impacts on the receiving environment. In essence if the RAP requires amendment, potentially a large amendment based on the results of the sampling, has Council adequately assessed the suitability of the site (in regards to protection of the environment). I also note that existing RAP states groundwater contamination will not be dealt with as part of the proposed or future development.*
- *(b - if Conditions are imposed): the concern remains as above, but the issue relates to timing of the information. I note SEPP 55 does not differentiate whether the development application is a concept approval or not. I would interpret that as a development application Council needs to be satisfied the land can be made suitable. I believe adequate information has not been provided to ensure the site is suitable from a groundwater perspective. The timing of the information needs to be addressed based on the potential risk to Council.*
- *(c - if Council recommends refusal): Council does believe the groundwater issue can be dealt with, but needs to be assessed and potentially remediated appropriately to ensure the site is suitable for the proposed development.*

At the request of the Council's Consultant Planner, advice from Council's Lawyer was sought in respect of certain issues, in particular previous general legal advice obtained, SEPP 55 provisions and the Council's request for further information, and the applicant's request to impose conditions for necessary information relating to the Lorna Street site. In summary, the Lawyer's advice (26 September and 11 October 2013) contained the following advice (noting that the detail of the application had not been reviewed in the provision of this advice):

- *"it is irrelevant whether the final outcome in a general sense is certain;*
- *...the more compelling issue is that it is necessary that Council has sufficient information to assess whether development is hazardous or offensive and whether to impose conditions to reduce or minimise any adverse impact and that the Council has properly traversed the evidence/information in exercising its discretion.*
- *the SEPP 55 requirement that Council's may ask for Stage 2 information is a discretionary issue - and that information may be critical, and necessary for the Council to make its decision. If a condition is so uncertain so as to leave open the possibility that compliance with it may alter the nature of the development for which this application was made, the application is invalid.*
- *Council must take into consideration relevant matters and council's obligation is to consider all relevant matters at the time that the DA is determined.*
- *Deferred commencement conditions where the information has not been obtained, and the outcome is not certain would render the consent invalid."*

On the basis of this advice and the assessment of Council's specialist Senior Environmental Protection Officer (provided above), it can be concluded that the information provided is not

adequate and it is not appropriate for the insufficient information relating to the Lorna Street site to be addressed via conditions of development consent, as requested by the applicant.

c) Provisions of SEPP 55 and Conclusion

In terms of the applicability of this information to the SEPP, Clause 7(1) prohibits a consent authority from consenting to development unless the provisions in the left hand column of Table 4 below are addressed.

Table 4: Provisions of and Compliance of proposal in accordance with Clause 7(1) of SEPP 55	
SEPP 55 Clause 7 Provision	Comment
<i>(a) it has considered whether the land is contaminated, and</i>	The Lorna Street site is contaminated and the Phase 1 Assessment indicated that Golf Course site is potentially contaminated (with further testing recommended and required).
<i>(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and</i>	The information submitted for the contaminated Lorna Street site indicates that the proposed golf course use will be suitable after proposed remediation strategy and recommended detailed investigations for future DAs. However there is potential for groundwater contaminants to impact on receiving waters (including the SEPP 14 wetland) and the information submitted has not adequately addressed this clause.
<i>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</i>	It is unknown whether remediation is required for the Golf Course site (proposed seniors living development). If required, remediation will be necessary prior to the future use (if so recommended by a future remediation action plan). The Lorna Street site requires remediation prior to future use as a golf course, however further information is necessary.
<i>(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.</i>	A preliminary investigation was not provided for the Lorna Street site as the contamination status of that land is known. The preliminary investigation prepared and submitted for the Golf Course site indicated that the land is potentially contaminated.
<i>(3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.</i>	The information provided for the Golf Course site (proposed seniors living site) does not satisfy this clause as further investigations are recommended within the preliminary investigation. A stage 2 detailed investigation should be undertaken to further address this clause.
<i>(4) The land concerned is:</i> <i>(a) land that is within an investigation area,</i> <i>(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,</i> <i>(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:</i> <i>(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and</i>	The subject land includes uses for purposes listed within Table 1 of the Guidelines (pesticides, fungicides from golf course use, and fuel storage facilities) and residential use is proposed on the existing Golf Course land. The Golf Course site is known to have been filled, which is also listed as an activity that may cause contamination in Table 1 of the Guidelines.

Clause 8 stipulates that remediation work is permissible (Category 2 remediation works is permitted without consent, but Category 1 requires consent subject to additional clauses).

No remediation 'work' is proposed by this application, and hence no further provisions of the SEPP apply, however this may be applicable for future DAs involving remediation works (it will need to be clarified whether the remediation works are Category 1 or not, depending on the outcomes of the further investigations recommended by the Interim Audit, RAP and Phase 1 report).

It can be concluded that the information provided with the application does not satisfy the provisions of SEPP 55, and it cannot be demonstrated that the site is suitable for the proposed use for seniors living development and a re-designed golf course (including potential risks to human health and the environment).

State Environmental Planning Policy 14 - Coastal Wetlands

State Environmental Planning Policy 14 - Coastal Wetlands aims to "ensure that the coastal wetlands are preserved and protected in the environmental and economic interests of the State" (Clause 2). SEPP 14 applies to the land outlined on the relevant map. The map (available on www.nratlas.nsw.gov.au) indicates the eastern boundary of the SEPP 14 wetland to be on the landward side of the water body, possibly up to approximately 15 metres. This mapped SEPP 14 coastal wetland is not shown on any of the documentation submitted by the applicant, however survey information was submitted by the applicant to ascertain the extent of the waterline of the non-tidal wetland (for the purposes of future subdivision boundary). While approximate, it generally accords with the SEPP 14 coastal wetland map. The SEPP 14 wetland is located at the north-western part of the subject land and immediately borders part of the existing golf course and proposed 2nd, 7th and 5th and 6th golf holes/fairways of the redesigned golf course.

Clause 7 requires development consent of council and concurrence of Director (of Planning) for certain works within the applicable land. The applicant indicates that none of the identified works are proposed, and hence does not apply. However, Section 10.4 and Appendix 1 of the '*Remedial Action Plan for the Former Lorna Street Landfill site*' (RCA 2013) submitted by the applicant indicates the extent of the former landfill site to extend to the water's edge (ie. within the mapped SEPP 14 wetland area), and the proposed remediation works (capping and associated clean *filling*) would include this area. If this was the case, Clause 7(1)(d) would be applicable (ie. filling works) and pursuant to Clause 7(3) these works would be designated development. As indicated in the discussion under SEPP 55 above, there is outstanding information regarding the impacts of potentially contaminated groundwater on receiving waters (ie. the SEPP 14 wetland). Clause 7(2)(b) requires the Director in considering whether to give concurrence, to give consideration to "*the surface and groundwater characteristics of the site on which the development is proposed to be carried out and of the surrounding area, including salinity and water quality.*"

Clause 7A requires the consent of the Council and the concurrence of the Director for 'restoration works' as per a submitted restoration plan. In addition, the OoW's GTA conditions require the developer to restore, manage and provide a 20m vegetated buffer (from the water's edge). Therefore Clause 7A may apply. **Appendices F and G** to this report is an aerial overlay of the eastern edge of the wetland to the golf course showing setback distances.

Regardless of the location of the boundary of the mapped SEPP 14 coastal wetland, and applicability of the abovementioned provisions of the SEPP, it is considered that the proposed future site remediation and required riparian/SEPP 14 wetland buffer zones will improve the environmental outcomes of the coastal wetland and therefore meet the aims of the SEPP. However, the exact area and impacts needs to be ascertained. Therefore the following needs to be provided prior to the provisions of the SEPP being satisfactorily addressed:

- A map indicating (a) the applicable *SEPP 14 Coastal Wetland* map and (b) extent of remediation works;

- If the remediation works and riparian corridor/buffer are located with the mapped SEPP 14 wetland area, the applicant must address the provisions of SEPP14, including whether Clause 7(3) of the SEPP is triggered (designated development) and the applicability of the preparation of a restoration plan (Clause 7A).

State Environmental Planning Policy 44 - Koala Habitat Protection

The Flora and Fauna Assessment (RPS, 2012) submitted with the application identified that the tree species located on the site constituted “potential koala habitat”, however direct and indirect searches for koala found no evidence, and therefore is not considered to be “core koala habitat.” Therefore no provisions of SEPP 44 apply.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

As a ‘concept development application’, this SEPP does not apply, however will apply to the detailed future development applications for each of the stages of the seniors living development. BASIX Certificates will need to accompany each application to demonstrate the list of commitments proposed to achieve appropriate building sustainability.

State Environmental Planning Policy (Infrastructure) 2007

The following clauses of this SEPP are applicable to the development application and require the consent authority to take into consideration consultation responses and/or recommended conditions of consent (refer also external referral comment in Section 5). The following indicates that the provisions of the Infrastructure SEPP are met, or can be met via appropriate conditions of development consent.

Division 5 electricity transmission or distribution (Clause 45): consideration is to be given to electricity supply authority (Transgrid/Ausgrid) regarding development within or immediately adjacent to an electricity easement or transmission line. Conditions should be imposed requiring works adjacent to or within impact of proposed works running parallel to the Great Northern Railway (golf course works) to be shown on a registered survey plan (with respect to the future DA for that stage).

Division 15: Railways (Clause 87 “Noise and Vibration”): The additional information supplied by the applicant (Acoustic Assessment, RCA Acoustics, April 2013) addressed the comments raised in correspondence received by ARTC, including assessment of the development in relation to relevant government guidelines (including the *NSW Road Noise Policy 2011* and *Development near Rail Corridors and Busy Roads (2008)*) and the LAeq levels stipulated within this Clause. The report concluded that *“rail traffic noise can be mitigated through façade design for villas located at the north-eastern corner of the proposed development with an acoustic view of the rail lines. Rail vibration will be imperceptible at all villas.”* This report was reviewed by Council’s Senior Environmental Protection Officer and is considered to address the noise and vibration matters, subject to conditions within the Acoustic Assessment (Section 7).

Division 17 ‘Roads and Traffic’ (Clause 101): is satisfied as the RMS issued correspondence providing no objection to the proposal subject to conditions. While the subject land adjoins/has frontage to the State Highway 23, it gains access from an alternative road, and will not impact on the classified road. The acoustic assessment found that *“road traffic noise from the adjacent Main Road SH23 does not have a significant impact on the proposed seniors housing development and the centre does not generate significant additional traffic noise on Vale Street.”* Clause 104 also applies as the proposed development is specified in Column 1 of the Table to Schedule 3 ‘Traffic-generating development to be referred to the RMS’ as the development exceeds 200 vehicles.

State Environmental Planning Policy (State and Regional Development) 2011

The application submitted to Council nominates the capital investment value of the project to be \$61.8 million. The application is therefore referred to the Joint Regional Planning Panel

for determination pursuant to Part 4 'regional development' of SEPP (State and Regional Development) 2011 as the proposal is listed within Schedule 4A of the *Environmental Planning and Assessment Act 1979*, being general development over \$20 million. In addition, the development is also 'Council related development over \$5 million' (Council is the owner of Lot 10 'Lorna Street site' which also necessitates the proposal to be referred to the JRPP for determination. Clause 22 of this SEPP also requires the future stages of the proposal to be determined by the JRPP.

Newcastle Local Environmental Plan (NLEP) 2012

Is not applicable as it commenced on 15 June 2012 (the application was submitted in April 2012), and hence Clause 1.8A 'Savings provision relating to development applications' requires that "*the application must be determined as if this Plan had not commenced.*" The applicable local environmental planning instrument is Newcastle Local Environmental Plan 2003.

Newcastle Local Environmental Plan 2003

NLEP 2003 was repealed on 15 June 2012 but was the applicable planning instrument at the time of the lodgement of the application. Figure 3 below is an extract from the NLEP 2003 zoning map, which indicates that the applicable zoning of the Golf Course land (Lot 103), the Chichester Pipeline Land, and part of the University Land (Lot 101) is 6(a) Open Space and Recreation and the Lorna Street site is 7(b) Environmental Protection.

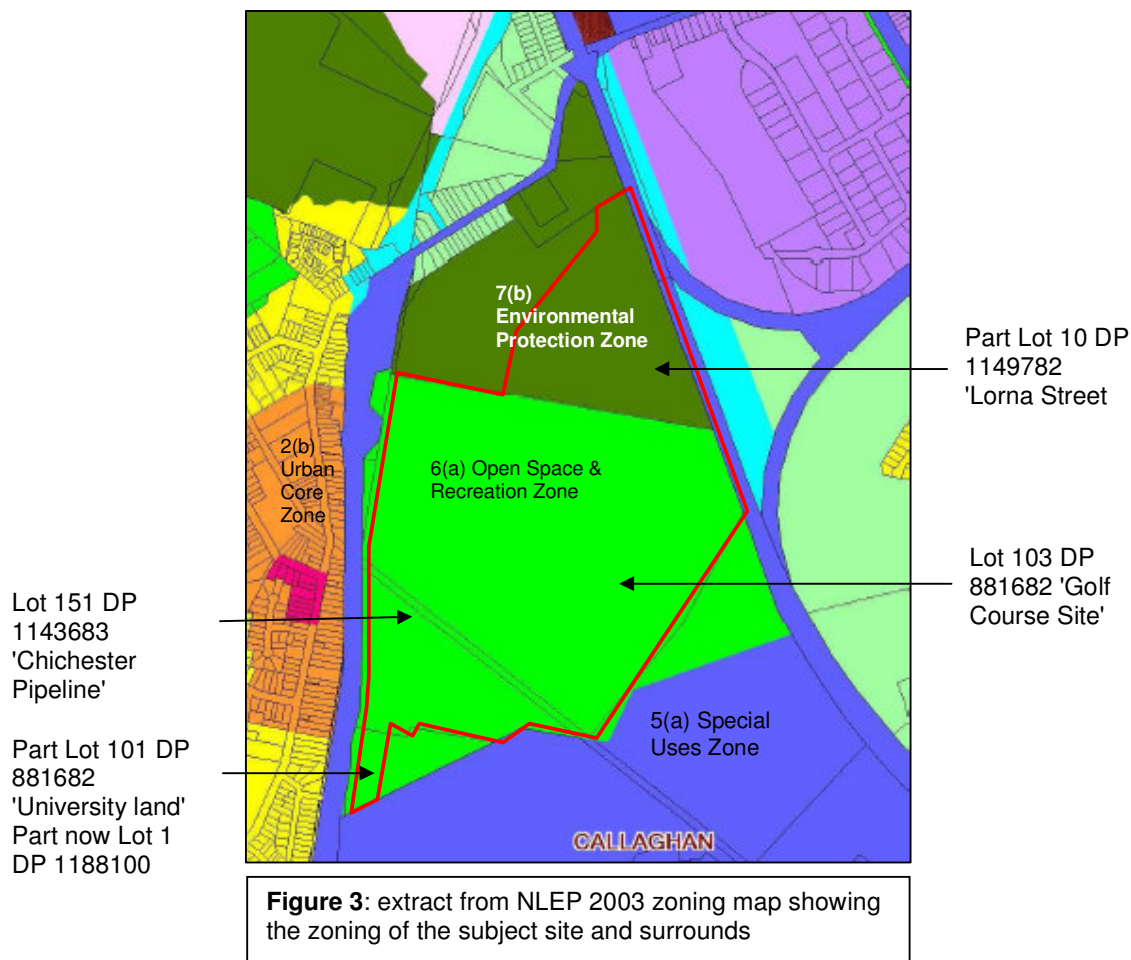


Figure 3: extract from NLEP 2003 zoning map showing the zoning of the subject site and surrounds

Table 5 below sets out the development standards and other provisions applicable to the proposal. In summary, the proposed concept development meets the provisions of the NLEP 2003 (with the exception of the proposed concept subdivision component).

Table 5: Compliance with NLEP 2003 Provisions			
Part/Clause	Requirement	Proposal	Consistent/Complies
Part 1: Preliminary			
Clause 5: Aims (listed below) and General Objectives	<p>The proposed development meets the overarching aims and is consistent with the related general objectives.</p> <p>With the exception of satisfactorily addressing site contamination issues, the proposal is a suitable use for the site and the locality, particularly the golf course which is a suitable use for a former land fill site. While having limited proximity to existing centres and most amenities, and will depend on private vehicle use, the seniors living development meets the statutory requirements for accessibility and will provide a diverse housing mix within the City. Both the golf course and seniors living development will provide employment opportunities.</p>	Yes	
Part 2 General Controls for Development			
Clause 16 Zonings and Permitted/Prohibited Development	<p>Note: under the Dictionary of the LEP, the proposed golf course works are defined as “recreation area”, having the following meaning:</p> <p>(a) a children's playground, or</p> <p>(b) an area used for sporting activities and sporting facilities, or</p> <p>(c) an area used by the Council to provide facilities for the physical, cultural or intellectual welfare of the community, or</p> <p>(d) an area used by a body of persons associated for the purpose of the physical, cultural or intellectual welfare of the community to provide recreational facilities for those persons, and includes any associated buildings or structures used for spectator accommodation, change rooms, meeting rooms, refreshment facilities and the like.</p> <p>Seniors housing is not defined in the dictionary (but is applicable in the Seniors Living SEPP, which overrides the LEP). However, under the NLEP 2003, the seniors living portion would be defined as</p> <p>urban housing means a building or buildings comprising two or more dwellings (self care accommodation); and</p> <p>hospital means a building or place used for the purpose of providing professional health services (including preventative care, diagnosis, medical or surgical treatment or counselling) to people admitted as in-patients, whether or not out-patients are also cared for or treated, and may include:</p> <p>(a) a nursing home, or</p> <p>(b) offices for administration, or</p> <p>(c) accommodation for staff and visitors, or</p> <p>(d) associated education or research facilities.</p> <p>(this would be applicable to the residential care facility).</p>	NA	
<p><u>6(a) Open Space and Recreation</u></p> <p>The objectives of this zone are:</p> <p>(a) To accommodate leisure, recreation and sports facilities in parks, gardens, plazas and other open spaces, for the general use of the community, where consistent with an adopted plan of management under the <u>Local Government Act 1993</u> or the <u>Crown Lands Act 1989</u>.</p> <p>(b) To provide for the conservation of urban bushland where associated with parks and other open spaces.</p> <p>(c) To accommodate other facilities for the benefit of the</p>	<p>The proposed golf course amendments are consistent with the objectives. The proposed seniors living development is not inconsistent with the objectives. While existing significant vegetation is proposed to be removed to make way for the seniors living development, the majority of this is “managed land” and this is likely to be offset by the development of the degraded Lorna Street site for the displaced golf holes, and compensatory planting within the seniors living development (subject to</p>	Yes	

Table 5: Compliance with NLEP 2003 Provisions			
Part/Clause	Requirement	Proposal	Consistent/ Complies
	<p>community that are compatible and consistent with the heritage and character of the open space and with the character and amenity of the neighbourhood.</p> <p><i>"Recreation Areas" are permitted with development consent. Tree removal, and demolition are also permissible with development consent. <u>While dwellings are permitted with development consent, "urban development" and "hospitals" are prohibited.</u></i></p>	appropriate conditions of development consent, should the development concept application be approved).	
	<p><u>7(b)Environmental Protection Zone</u> The objectives of this zone are:</p> <p>(a) To provide for the conservation, enhancement and protection of environmentally sensitive land, particularly wetlands.</p> <p>(b) To allow limited development where it is unlikely to have a significant detrimental effect on the growth of natural communities, the survival of native wildlife populations, the provision and quality of habitats for indigenous and migratory species and the surface and ground water characteristics of the site.</p> <p>(c) To provide for the management of the majority of the Hunter River flood plain by restricting the type and scale of development to that compatible with the anticipated risk to life and property.</p> <p><i>"Recreation Areas" are permitted with development consent. Subdivision is permitted with development consent under this zone, however Clause 17 prohibits this.</i></p>	<p>The proposed golf course (and associated rehabilitation works) are likely to improve and enhance this land which will include a buffer to the SEPP 14 wetlands. The proposed land use is suitable for this degraded and flood-liaible site.</p> <p>However, the inadequacies of the information submitted with respect to land contamination/remediation (and groundwater impacts) on the wetlands are unknown.</p>	Yes
Part 3: Special Provisions			
Clause 17 - Subdivision	<p>(1) Subdivision of land in more than one zone A subdivision is prohibited if it would create a lot comprised of land within more than one zone, except as provided subclause (2).</p> <p>(2) Despite subclause (1), the consent authority may consent to a subdivision that creates such a lot if at least 90% of the land in the lot is within the same zone.</p> <p>(3) Any lot created under the exception provided by subclause (2) is taken to be wholly within the zone in which the largest part of the land in the lot is included.</p> <p>(4) Subdivision of land within Zones 1 (a), 6 (a), 7 (a), 7 (b) and 7 (c) Consent must not be granted to subdivision of land in Zone 1 (a), 6 (a), 7 (a), 7 (b) or 7 (c) unless the subdivision is complying development.</p>	<p>The proposed subdivision concept involves excising the SEPP 14 wetland from Lot 10, six lots for the staging of development works for the seniors living development on part Lot 103), and the remaining land being a 'residue' lot for the golf course.</p> <p>The proposed future subdivision (subject to future DAs) is not permitted under this clause.</p>	No
Clause 23 – Access to arterial roads	Land that adjoins an arterial road must have alternative access.	Access to the site will be via Vale Street (9a local road).	Yes
Clause 24 – Development of land below high water mark	Development consent is required for works below the high water mark	No work is proposed below the high water mark	Yes
Clause 25 Acid Sulphate Soils (ASS)	This clause requires development consent for land mapped as being Class 1-5 Acid Sulfate Soils, depending on depth and/or location of works and/or whether the works impact on the water table	<p>Works are proposed in Class 3 ASS (generally Lorna St site) and 5 ASS (generally golf course land). Works within the Lorna St site may trigger this clause, subject to detailed remediation requirements.</p> <p>It is recommended a condition of development consent be imposed requiring this matter to be addressed in future DAs, including by the submission of a detailed ASS Management Plan</p>	Yes - Can be satisfied via a condition of development consent
Clause 26 – Bushfire Prone Land	This clause requires that the consent authority is satisfied with	The RFS issued a 'bush fire safety authority'	Yes

Table 5: Compliance with NLEP 2003 Provisions			
Part/Clause	Requirement	Proposal	Consistent/ Complies
	the measures proposed to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.	as required under section 100B of the Rural Fires Act 1997 subject to conditions relating to: <ul style="list-style-type: none"> ▪ Asset Protection Zones ▪ Water and Utilities ▪ Access ▪ Evacuation and emergency management ▪ Design and Construction These conditions should be imposed on any Development Consent issued.	
Part 4: Environmental Heritage Conservation			
Clause 31: Development Affecting places or sites of Aboriginal Heritage Significance	This clause requires consideration is the development is likely to have an impact on a place of Aboriginal heritage significance or that will be carried out on an archaeological site of a relic that has Aboriginal heritage significance,	There are no heritage items listed in NLEP on or in proximity to the site. According to the SEE accompanying the application (p73), a search of Aboriginal Heritage Information management System of the site and buffer areas was undertaken and the results indicated no sites or places recorded. The previous land uses (landfill and golf course an associated earthworks and land disturbance) is unlikely to contain artefacts. Notwithstanding this, a condition of development consent can be imposed regarding the process during construction should artefacts be discovered.	Yes Can be satisfied via a condition of development consent

(a)(ii) the provisions of any draft environmental planning instrument

Draft Newcastle Local Environmental Plan 2011

At the time the development application was submitted, the *Draft Newcastle Local Environmental Plan 2011 (Draft NLEP 2011)* had been exhibited but not yet made.

Figure 4 below is an extract from the draft NLEP 2011 zoning map, which indicates that the applicable draft zoning of the Golf Course land (Lot 103), the Chichester Pipeline Land, and part of the University Land (Lot 101) is RE2 Private Recreation and the Lorna Street site is proposed to be zoned E3 Environmental Management. A small portion of land adjacent to the western and northern boundary of the Lorna Street site was proposed to be zoned E2 Environmental Conservation (containing a part of the SEPP 14 wetland). The applicant indicated that no works are proposed within the proposed E2 zone. However the 20m from waters edge buffer condition imposed by the GTAs by OoW may require works within this area (refer to discussion under SEPP 14 above).

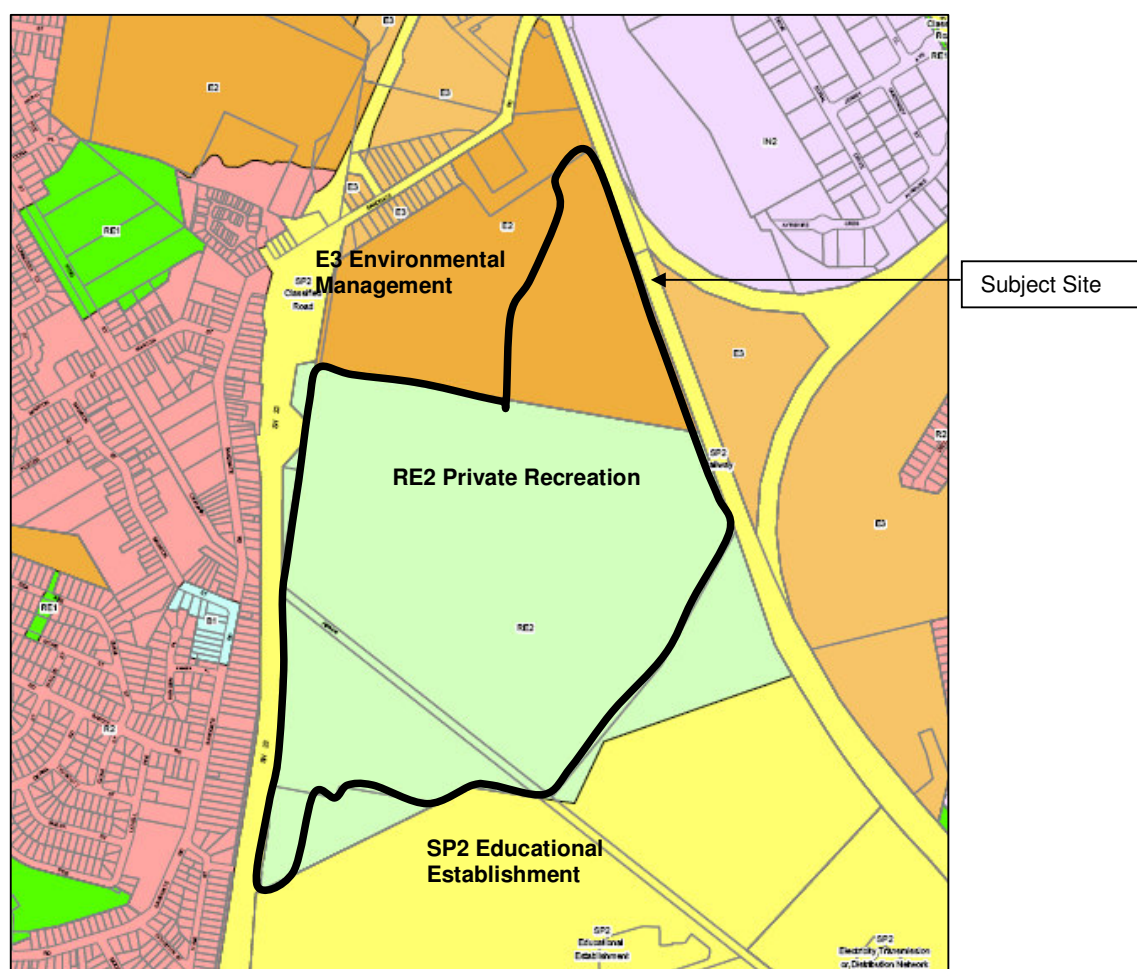


Figure 4: Extract from Draft Newcastle Local Environmental Plan 2011 showing proposed zoning of the subject land and surrounds (as exhibited)

Table 5 below sets out the development standards and other provisions applicable to the proposal. The provisions of the (then) Draft NLEP 2011 (as exhibited) were reviewed and were similar to the majority of the key relevant provisions of the NLEP 2003 detailed in the above table 4. In this regard, where similar, they are not reproduced in Table 5 below, which contains the key differing and/or relevant provisions from NLEP 2003. The table below indicates that the provisions of the applicable draft NLEP 2011 are satisfied (with the exception of proposed concept subdivision).

Table 5: Compliance with Draft NLEP 2011 Provisions			
Part/Clause	Requirement	Proposal	Consistent/Complies
Part 1: Strategic Direction and Application of Plan			
Clause 1.2: Aims of Plan Refer to Clause 5 of NLEP 2003		Similar provisions to NLEP 2003	Yes
Part 2 Permitted or Prohibited Development			
Clause 2.2 sets out the land use zones for land as per the Land Use Map.			Yes
Note: under the Dictionary of the LEP, the proposed golf course works are defined as having the following meaning:			

Table 5: Compliance with Draft NLEP 2011 Provisions			
Part/Clause	Requirement	Proposal	Consistent/ Complies
Clause 2.3(2) requires the consent authority to have regard to the objectives for development in a zone Zonings and Permitted/Prohibited Development			
Zone RE2 Private Recreation 1 Objectives of zone <ul style="list-style-type: none"> 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. <p>Dwelling houses, recreation facilities (outdoor) permissible with development consent</p>		The proposed golf course amendments are consistent with the objectives. The proposed seniors living development is not inconsistent with the objectives. While existing significant vegetation is proposed to be removed to make way for the seniors living development, the vegetation proposed to be removed, the majority of this is "managed land" and this is likely to be offset by the development of the degraded Lorna Street site for the displaced golf holes and compensatory planting.	Yes
Zone E3 Environmental Management 1 Objectives of zone <ul style="list-style-type: none"> To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values. To provide for a limited range of development that does not have an adverse effect on those values. To provide for the conservation of the rural and bushland character of the land that forms the scenic edge of and the gateway to urban Newcastle. <p>Recreation facilities (outdoor) permissible with consent. E2 Recreation facilities (outdoor) prohibited</p>		<p>The proposed golf course (and associated rehabilitation works) will improve and enhance this land which will include a buffer to the SEPP 14 wetlands. The proposed land use is suitable for this degraded and flood-labile site.</p> <p>However, the inadequacies of the information submitted with respect to land contamination/remediation (and groundwater impacts) on the wetlands are unknown</p>	Yes
Clause 2.6 - Subdivision <i>Subdivision requires development consent.</i>		The proposal seeks subdivision – refer to clause 4.1 and 4.1(c).	No
Clause 2.6C Earthworks	This clause requires consent for earthworks (unless ancillary to a development) and requires certain considerations to be met.	Earthworks will be required on the site with details to be provided in future DAs	NA
Part 4 Principal Development Standards			
4.1 Minimum Subdivision Lot size 4.1(c) Subdivision of and zoned E3 is not permitted.	The Minimum Subdivision Lot size map is 40 hectares.	The proposed future subdivision does not meet this minimum lot size. Part of the land is zoned E3 and hence subdivision is not permitted.	No
4.3 Height of Buildings	The Height of Buildings map does not apply heights to the subject site. The surrounding lands have a 8.5m height limit.	Not applicable	N/A
4.4 Floor Space ratio	The FSR map does not apply FSR limits to the site.	Not applicable	N/A
Part 5: Miscellaneous Provisions			
5.5 Development within the Coastal Zone		Consistent – refer SEPP 71 considerations	Yes
5.7 – Development of land below high water mark	Development consent is required for works below the high water mark	No work is proposed below the high water mark	Yes

(a)(iii) any development control plans

Newcastle Development Control Plan 2005

The applicable Development Control Plan at the time the application was submitted was *Newcastle Development Control Plan (NDCP) 2005*. The relevant elements/chapters contained within NDCP 2005 are provided below:

- Element 3.1 Public Participation- addressed earlier in this report (Section 4. 'Consultation').
- Element 4.1 Parking and Access
- Element 4.2 Contaminated Land Management
- Element 4.3 Flood Management
- Element 4.4 Landscaping
- Element 4.5 Water Management
- Element 4.6 Waste Management
- Element 4.10 Tree Management

Newcastle Development Control Plan 2012

The application was also considered against Newcastle Development Control Plan (NDCP) 2012 (which became effective on 15 June 2012). The introduction of NDCP 2012 repealed and replaced all of NDCP 2005 and the savings provisions within the relevant Sections of the DCP states that "*any development application lodged but not determined prior to this section coming into effect will be determined taking into consideration the provisions of this Section.*" Hence NDCP 2012 is the applicable DCP for the application.

The DCP 2012 does not contain any new standards or controls that would affect the assessment of the application, however the key issues within each section, where relevant are listed below.

The proposed concept development is considered to be generally consistent with the DCP, noting that the detailed provisions of the DCP will more relevantly need to be addressed for the individual DAs for each stage of the development. Key matters relevant to the concept development application are listed below for each relevant DCP Section.

3.01 Subdivision - (limited applicability, noting Seniors Living SEPP provisions will most likely apply).

3.08 Seniors Housing - Refer to Section 6(a) of this report addressing the Seniors Living SEPP.

4.01 Flood Management - Other parts of this report address flood-prone land and have been assessed by Council's Flood and Stormwater Engineer who deemed the concept proposal acceptable subject to conditions of development consent.

4.02 Bushfire Protection – the provisions of this Section have been satisfied. Refer to Section 4 of this report which indicates that the RFS have issued a 'bush fire safety authority' as required under section 100B of the Rural Fires Act 1997 subject to conditions relating to the relating to the relevant guidelines.

4.04 Safety and Security – Satisfactory. Will need to be addressed in future detailed DAs.

4.05 Social Impact – Satisfactory. Refer to Section (b) 'likely impacts' of this report below under 'Social Impacts'.

5.01 Soil Management – the extensive site works proposed for future stages (including remediation works and golf course shaping and seniors living landscaping) will need to address the detailed provisions of this Section.

5.02 Land Contamination –this Section reflects the provisions of the SEPP 55.

Potential contamination of the land has been addressed in an earlier section of this report (Section 6(a), SEPP 55 – Remediation of Land). The proposal is NOT satisfactory as it does not meet the provisions of the SEPP or the related DCP requirements.

5.03 Tree Management - The Landscape Plans submitted with the application are of a concept scale and the future detailed development applications for each stage will need to meet the requirements of the DCP. The site can be considered a “greenfield site” pursuant to 5.03.06 which requires that for sites exceeding 2 hectares 30% of the site for retention or provision of appropriate indigenous trees and other vegetation (excluding roads, detention basins etc). The proposal includes the retention of approximately 60% of the native vegetation present on the site. Therefore the provisions of this section of the DCP will be met.

7.02 Landscape, Open Space and Visual Amenity – the general objectives of this Section are met by the concept development application; however the detailed DAs will be required to address the specific provisions.

7.03 Traffic, Parking and Access and **7.04 Movement Networks** – A Traffic Impact Assessment has been prepared for the proposal and internal layouts and site access, external traffic generation, public transport and linkages and parking has been taken into consideration by Councils’ Engineer (and the RMS) for the concept plan and deemed to be acceptable subject to conditions. Refer to Section 4 and 6(b) of this report.

7.05 Energy Efficiency and 7.07 Water Efficiency – the application has indicated that the proposed design will include energy efficiency measures (also to address the requirements of the BASIX SEPP and SEPP 65 for the apartment buildings).

7.06 Stormwater - Aspects of the development relevant to this section has been assessed by Council’s Flood and Stormwater Engineer who deemed the proposal acceptable subject to conditions of development consent, noting detailed requirements for future DA for each of the stages.

7.08 Waste Management - The application indicates that, while details of the waste management regime will be provided in future DAs, that a designated waste storage and transfer area has been identified on the plans which will receive waste and recyclables for the development. This area will be accessible to large waste removal vehicles, with small vehicles collecting from individual residences to this storage/transfer area.

Section 94A Development Contributions Plan 2009 - A levy of 1% of the cost of development will apply to the development. Would be applicable via condition of consent at each stage.

(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Not applicable.

(a)(iv) any matters prescribed by the regulations

The proposal was reviewed with respect to the relevant EP&A Regulations and is considered satisfactory and/or the issues are addressed elsewhere in this report.

(a) (v) any coastal zone management plan (within the meaning of the *Coastal Management Plan Act 1979*).

Not applicable.

(b) the likely impacts of the development

The key likely impacts of the concept development are summarised below, and is mostly referenced from information received from the applicant (predominantly the SEE, where concurred with by the independent consultant assessing the application). Relevant additional comments, including from Council's officers are also included, where relevant.

Visual Amenity-Built Form, Density, Bulk &Scale

"The subject site is generally visually 'closed to the public domain and is not located in close proximity to any development, with the exception of the Newcastle Institute for Energy and Resources (NIER) complex and Newcastle University. Significant wetland areas, mature vegetation, topography and road/rail infrastructure provide visual and physical buffers on nearly all sides of the site. Other than the NIER complex, most of the adjoining University grounds are visually separated from the subject site by dense, screening vegetation and creek lines.

The NIER complex is significantly separated from the proposed development footprint, and will be at least partially screened by landscaping and topography. Accordingly, users of the NIER are not likely to be detrimentally impacted by the built form or character of the proposed development. As the subject site is not visible to the public domain or sensitive adjacent development, the only issue of visual compatibility relates to the proposal's interaction with the existing golf course environment.

The proposal has been designed to relate to this open space character through the use of generally low scale buildings throughout most of the development area (1-2 storey villas), and by limiting the few taller and bulkier elements to the southern area of the site, where they are topographically low and can relate to the form of the NIER complex and existing Golf Club building. Whilst the proposed RCF will be fairly significant building in terms of height and bulk, it will be located towards the boundary of the site, away from vehicular thoroughfares, and will be significantly screened by existing and proposed vegetation" (SEE p64-65).

The applicant has also addressed the UDCG and Council's request for further justification for the proposed height of the self care apartments. Refer to table at **Appendix H**. In summary, the buildings are unlikely to be visible from public viewpoints, or visually domineering from adjacent properties or the wider landscape. Hence the proposed height, scale and location of the RCF and apartment buildings are considered to be appropriate. Detailed consideration will be required to be addressed in future detailed applications for these buildings. Refer also to **Appendix I** which is a height analysis of the proposed larger buildings (seniors self care apartments and RCF building) and proximity to existing larger University buildings.

Vegetation Removal and Flora and Fauna Impacts

It is intended that the proposed seniors living development (comprising an area of 110,887m², being 11 hectares) will require the removal of all existing vegetation within the development footprint. A visual assessment of the plans provided showing vegetation to be removed roughly estimated to be half to two-thirds of the development footprint, being approximately 5.5 to 7.3 ha. Vegetation pockets are also proposed to be removed for the golf course re-design (ie. part of practice fairway, 18th tee, 2nd hole; 3rd hole; 8th hole and 9th tee) – refer to plan of proposed golf course works at **Appendix D**. The combined area is roughly estimated to be approximately 1.6 ha.

The applicant states that *"the area proposed to be cleared for this development (ie. assumed to be the entire residential development footprint) includes approximately 12.6 hectares of wholly native vegetation."* The visual assessment of the plans provided showing vegetation to be removed indicated that this appears to be incorrect for the seniors housing and golf

course, and it is roughly estimated that approximately 7 to 9 ha of existing vegetation in total is proposed to be removed (not just native, including managed lands). The remaining areas within the development footprint are grassland/fairways.

A review of the historical aerial photographs (from 1954) within Appendix D of the Phase 1 Environmental Site Investigation (RCA, 2013) submitted with the application, confirmed that the majority of vegetation to be removed, particularly within the seniors living development footprint was previously mostly cleared land. The existing established vegetation was planted for fairways and landscaping of the golf course in the 1950s-1970s. These photographs also indicate that the established, mature continuous canopies of this vegetation along the main fairways are likely to have emerged in the late 1990s. Prior to this time, planted trees were generally isolated, and dominated by grassland.

The Flora and Fauna Assessment (RPS, March 2012) accompanying the application indicates that, of the vegetation proposed to be removed, the majority comprises managed grassed fairways, managed land (mixed native/exotic canopy, mature upper stratum 25m in height), and 'disturbed coastal foothills spotted gum Ironbark Forest', generally disturbed with upper stratum height up to 24m. Refer to **Appendix E** which is Figure 3-1 from the Flora and Fauna Report showing these vegetation communities. The removal of hollow-bearing trees is proposed within this area; however a larger proportion will be retained. No Ecological Endangered Communities are located within this footprint and one of the three Wallangarra White Gum trees species (a vulnerable species under the *NSW Threatened Species and Conservation (TSC) Act 1995* and Endangered under the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*) identified on the site is proposed to be removed. However the Flora and Fauna Assessment report accompanying the application indicated that these isolated species are well outside their known distribution and are likely to have been planted. The assessment concluded that the removal of this was unlikely to have an impact on this species. The assessment for the entire study area (including a seven part test), found the proposal was unlikely to significantly impact on any species, population or ecological community under the TSC Act 1995 and EPBC Act 1999. Several recommendations were made to provide ecological guidelines and site management strategies that may prevent any ongoing deleterious impacts upon habitat surrounding the proposed residential development, including installation of nest boxes, flagging and soft-felling of hollow-bearing trees, hydrological and sediment and nutrient controls implemented, and ongoing weed monitoring. Section 5A of the *Environmental Planning and Assessment Act 1979* (Significant effect on threatened species, populations or ecological communities) has therefore been addressed.

The applicant has indicated the following in respect of the issue of vegetation removal (in the submitted information SEE dated April 2012 and correspondence dated 30 April 2013), summarised as below. Refer also to **Appendix C** – Landscape Concept Plans.

- *Extensive landscaping is proposed throughout the development to soften and screen built form, create visual interest, integrate the existing landscaped open space with residential development, create privacy and cool shaded open space areas, and to create habitat for native wildlife. Green corridors have been created between housing components to enhance amenity and create connections with the existing natural environment. These corridors, orientated in an east-west configuration, connect the main central spine of landscaping, which occurs along the natural ridge line, with the remainder of the development (SEE, p37-38);*
- *The landscaping documentation (Blackburne Jackson Design) for the seniors living development details the proposed landscaping and tree replacement methodology, which will provide a significant degree of compensatory planting. Note: the submitted Softscape Palette (including proposed vegetation species) submitted was deemed by Council's Landscape Architect to be appropriate for the site.*
- *As this proposal is a concept only, detailed assessment of the potential for individual tree retention is not considered necessary or appropriate. However, at the detailed DA stage,*

the feasibility of retaining individual trees within the development footprint can be examined further. It is important to note that the safety of residents will be considered paramount, and impact of construction/civil works will also be necessary.;

- *At this conceptual stage, detailed species selection for golf course landscaping has not been completed. This information cannot be provided at this conceptual stage. However, it can be confirmed that the plantings within this area will be limited to native grass species, with the potential inclusion of a few low shrubs. This is in keeping with the 'links style' golf course envisaged (this design style is typically associated with coastal courses, with few water hazards and few if any trees). Further, more shallow-rooted species are preferable in order to minimise potential impact on the contamination capping layer.*

The proposed removal of vegetation is a significant area and if this vegetation (comprising mature trees) is removed, it will result in a comparatively visually stark landscape in the shorter term. This visual impact will, however be partially ameliorated due to the relative visual isolation of the site as viewed from outside areas, the proposed progressive staging of the development, and, longer term, through compensatory tree planting (refer comment and recommendation below).

While proposed landscaped areas are shown on the proposed golf course layout (limited) and throughout the seniors living development, it is unclear what the resultant quantity of compensatory tree planting will be as compared to proposed tree removal.

To address this, and ensure appropriate areas of compensatory planting, it is recommended that, should the development be approved, that the following conditions be imposed:

The Stage 1 DA must include an overall site landscaping masterplan including the following:

- the exact areas of mature vegetation to be removed over the entire development site (all species of trees exceeding 4 metres height) be calculated.
- The plan must show the same (or greater) area of large trees (not shrubs or groundcovers) be provided as compensatory planting over the entire site area seniors living and golf course. This must take into consideration the root structure and mature height of trees appropriate to the Lorna Street (to be rehabilitated by capping at various depths).
- A detailed site analysis should be provided for which considers retention of existing trees (both for the seniors living development and golf course redesign);
- The landscape plan should provide a landscape buffer which softens/minimises visual impact of seniors living development as viewed from the golf course. The buffer should be located both on the golf course and within the proposed seniors living development site boundary.
- The areas of landscaping and deep soil zones should meet the minimum 30% site landscaping requirement (requirement for self-care housing within Clause 50 of the Seniors Living SEPP). This should be within the seniors living development footprint only and not include the golf course site, which is intended to be subdivided from the parcel of land and will have future separate ownership and ongoing management.

Golf Course Safety

A Golf Course Designer Statement has been prepared by Richard Chamberlain Golf Design. This Statement provides general advice on how safety will be maintained for residents of the development in close proximity to an operational golf course. The Statement notes that some of the new/realigned golf holes will be located in proximity to proposed dwellings, and that when the detailed design of these golf holes progresses there will be additional considerations given to the design of each golf hole and landscaping principles to ensure the safest possible outcome is achieved. (SEE, p67).

Social Impacts

The proposed development will help to satisfy the demand for aged persons' housing in the Newcastle LGA and will provide a range of support services to residents to allow them to 'age in place'. The site has a range of attractions for residents, including the scenic amenity and recreational opportunities associated with living within a golf course, and proximity to a range of social, cultural and educational facilities within the nearby University of Newcastle.

The proposal is unlikely to result in any detrimental social impacts to the existing nearby community, and will provide a range of community building and social opportunities associated with the Golf Club, the University, and the residential community itself. The conceptual design of the development provides ample space for residents' needs and will allow residents to lead active, independent lives, should they choose, while enabling them to draw on services and support facilities within the development should these be required. (SEE, p73)

Aboriginal and European Heritage

There are no heritage items listed under the NLEP as being located within or in close proximity to the subject site. A search of the Aboriginal Heritage Information Management System (AHIMS) was undertaken in relation to the subject site and a buffer area of 50 metres. The result indicated that no Aboriginal sites or places have been recorded or declared within the subject site (SEE p73).

Servicing

A Physical Infrastructure & Stormwater Report was prepared by Worley Parsons which accompanies the application, and indicates that the proposed concept development can be adequately serviced. Telecommunications and gas infrastructure will be provided by the relevant utility authorities. Detailed arrangements will be need to be confirmed as the development planning progresses. (p74-75)

Traffic, Parking & Access (p86-87)

A Traffic Impact Assessment (TIA) was prepared for the conceptual development by Better Transport Futures which accompanies the application. The TIA (p12) examined the existing road and traffic environment and assessed the traffic and parking implications of the proposal. It noted the existing access to the site is via Vale Street which provides access to the Golf Club and the University's NIER (a proposed research facility) only, with no through traffic movements.

The TIA (p22) notes the proximity of the site to public transport hubs and cycleways, as well as the proposed provision of a minibus to transport residents to nearby shops and services. It examined proposed traffic volumes in relation to the existing traffic environment, and notes that the additional traffic movements associated with the development of the subject site will have an acceptable impact upon the key intersections in the immediate vicinity of the subject site.

It concludes (p27) that traffic and parking arrangements for the development proposal are satisfactory and there are no traffic or parking impediments to the development, and that the proposed development will have an acceptable impact on the overall road network and subject to detailed design issues within the site with regard to road and parking layout, the development should be approved.

Council's Senior Development Officer (Engineering) concurred with this (subject to conditions) and indicated in his assessment that (in summary):

- *Parking*: is required in accordance with SEPP Seniors Living 2004 and acknowledged under Council's DCP 2012. A review of the report and Table 5-9 and 5-10 confirms compliance with the parking requirements under this policy. Additional parking for visitors would appear to be provided in driveway of each self contained dwelling. It is expected

that parking would be reviewed in detail with each stage of development to ensure compliance.

- *Traffic Generation / External:* RMS accident data/statistics would suggest that the local road network in the vicinity of the access road is operating effectively. The SIDRA data confirms that the delays/queues likely to occur at the Sandgate Road/Vale Street and Vale Street/ Access Road intersections for both pre and post development periods are within acceptable limits.
- *Internal Layout / Site Access:* Appropriate conditions has been recommended for this application including (i) requiring the creation of a Right of Carriageway over the proposed 8.0m wide access road to establish legal access to the site; (ii) for the proposed upgrade of the existing entry point to the site, (east of the bridge)/intersection to be widened and (iii) for a 1500mm wide pathway is proposed along all roads with wheelchair passing areas at regular intervals in accordance with the Australian Standards.

The RMS also provided a number of conditions to be imposed, should the concept development be approved, including the provision of a signalised pedestrian crossing and associated civil works on the northern leg of the Sandgate Road/ Vale Street intersection. Related civil works on other legs of the intersection are also to be provided to ensure the safe movement of pedestrians across this new crossing. These works shall be at full cost to the developer.

Stormwater and Erosion/Sedimentation Management

In order to address the potential impacts of the proposed concept development, a Physical Infrastructure and Stormwater Report was prepared by Worley Parsons which accompanies the application. This Report reviewed the potential impacts of the proposed development on downstream surface waters and recommends measures to mitigate the identified impacts.

In addition to the proposed stormwater control strategy, the report (p18) recommends the following be undertaken to support the detailed design of the concept development (i.e. to accompany subsequent detailed DAs for the undertaking of works): and

- Preparation of water quality monitoring plan and implementation thereof both sites; and
- Update of relevant golf course management plans to include the changes to the golf course and expansion into the Lorna Street site, specifically addressing the proximity to the SEPP 14 wetlands (p15).

The report concludes that *“incorporation of the physical stormwater controls, golf course management and ongoing monitoring will minimise impacts of the proposed works on downstream surface water quality. The proposed construction of the golf course will enable the use of a parcel of land unlikely to be usable for any other purposes, and will also provide the economic means to enable capping of the former landfill which will assist in reducing leachate from the landfill into adjacent SEPP 14 wetlands.”* (p15)

The subsequent detailed DAs for the undertaking of development will incorporate detailed stormwater management plans based on the above information. Such DAs will also incorporate detailed plans to ensure there are no sedimentation or erosion impacts arising from the proposed development (SEE, p87-89).

Council’s Senior Development Officer (Engineering) reviewed this information and provided the following assessment (in summary):

- *Stormwater Management – Quantity:* The report has completed a detail study of the site including RAFT modeling of pre developed and post developed storm water flows for various ARI events. The modeling has identified for the Seniors Housing Development area pre developed flows to be approximately 0.33 m³/s/ha and post developed flows of 2.61 m³/s/ha. The predicted flows for the golf course should largely remain unchanged

as the impervious area of the new golf course should not be altered significantly from the existing golf course and the Lorna Street fill area. The modeled flows appear to be reasonable based on the impervious area of the proposed development. The report describes the installation of various water discharge control devices that convey the stormwater to a system of detention devices throughout the development. Final stormwater discharge is through a number of outlets from detention ponds across the existing and future golf course and then into the Hexham wetlands area. The proposed arrangement is acceptable to Council and will be subject to latter detailed development approval and construction certificate issue. Conditions of development consent recommended should the development application be approved.

- *Stormwater Management – Quality:* The submitted MUSIC analysis/modeling submitted (which is in accordance with Council's DCP 2012 and best industry practice), demonstrated compliance with Council's water quality outcomes for developments. The report proposes to create a water quality treatment drain for stormwater treatment utilizing rain water tanks, bio retention swales, vegetated buffers, bio retention basins, grassed swales and settling ponds. The development by utilizing these methods should deliver highly polished storm water to the adjoining Hexham Wetland area. The individual water quality devices should be able to be prepared in accordance with Council's DCP and Stormwater and Water Efficiency for Development (Updated 2012) Technical Manual. The proposed water treatment methods are acceptable to Council. Conditions of development consent are recommended should the development application be approved.

Flooding

Some parts of the subject site are known to be subject to flooding. Accordingly, a Flood Impact Assessment (FIA) was prepared by Worley Parsons as part of its Physical Infrastructure and Stormwater Report to evaluate the flood behaviour in the vicinity of the development site and to assess the potential impacts of the proposed development during a significant Hunter River Flooding Scenario. The FIA (p6) concludes that the proposed development will not result in a significant loss in the flood storage available within the Hunter River floodplain. As a result it is not expected that the development will result in any adverse flood impacts (i.e. increase in flood levels or flow velocities) during the full range of Hunter River flooding scenarios (SEE, p89-91).

Council's Senior Development Officer (Engineering) reviewed this information and provided the following assessment (in summary):

The development is significantly affected by flooding in the 1% AEP event and the Possible Maximum Flood event. These combined flood impacts result in high velocities of flood waters in some of the small creek areas and relatively high depths of water due to river flooding in the lower areas. The submitted flood study identified the 1% AEP flood level to be RL 3.8m AHD and the Possible Maximum Flood (PMF) level to be RL 6.6m AHD. These levels are in very close agreement to Council's levels and are therefore acceptable to Council. These levels are to be used for flood development controls in the form of a Flood Planning Level. The Flood Planning Level of RL 4.30m AHD for minimum floor levels for occupiable and habitable space can be conditioned in any approval issued by Council. The flood study also identifies the site as a flood water storage area. As a result of filling on the site due to the development, a loss of the available storage would be 21.4% in the 1% AEP event with the percentage loss being smaller in greater events. The impact of this loss on the greater Hexham Wetland area is considered negligible. This loss is only slightly higher than Council's permitted loss of available flood storage area of 20% and is therefore acceptable to Council. Conditions of development consent are recommended should the development application be approved.

Construction Impact

The access to the site is via a Right of Accessway through land owned by the University of Newcastle and has the potential to impact on the operations of the University and adjacent intersections. Therefore, it is recommended that, should the application be approved, appropriate conditions of development consent be imposed addressing these matters.

Noise

Refer to Section 4 'Consultation' of this report. In summary, the application has addressed likely impacts of noise and vibration from road and rail, is considered to be satisfactory, subject to the imposition of suitable conditions should the development application be approved.

Contamination

Refer to discussion earlier in this report under SEPP 55 (Section 6a) and the comments of Council's Senior Environmental Protection Officer (Section 4). In summary, it is concluded that the information provided with the application does not satisfy the provisions of SEPP 55, and it cannot be demonstrated that the site is suitable for the proposed use for seniors living development and a re-designed golf course (including potential risks to human health and the environment).

Acid Sulfate Soils

Works are proposed in Class 3 ASS (generally Lorna St site) and 5 ASS (generally Golf course land). Works within the Lorna Street site may trigger more detailed remediation requirements. It is recommended that, should the development application be approved, a condition of development consent be imposed requiring this matter to be addressed in future DAs, including the submission of a detailed ASS Management Plan.

Bushfire

The application was accompanied by Bushfire Risk Assessments for the seniors living development and golf course, and was referred to the Rural Fire Service (RFS), who issued a 'bush fire safety authority' as required under section 100B of the Rural Fires Act 1997 subject to conditions. These conditions should be imposed on any Development Consent issued if approved (Refer to Section 4 'Consultation' of this report).

(c) the suitability of the site for development

The submitted information (Phase 1 Contamination Assessment) concluded that the existing golf course site (Lot 103) has been identified to be potentially contaminated based on existing and previous land uses (filling, petroleum storage and herbicides and pesticides), and recommended that further testing be undertaken. Therefore there is insufficient information to determine that the land is suitable for the development having regard to the risk to health and the environment from contamination.

The other site constraints (acid sulfate soils, bushfire prone land, proximity to noise-generating transport corridors, flood affectation, proximity to watercourse/wetland) have been addressed in the design (or are able to be in future staged development applications and/or could be subject to conditions of development consent), should the development application be approved. Notwithstanding the outstanding information on the Lorna Street site, use of this land for a Golf Course is considered to be a highly suitable outcome.

It is acknowledged that the site, while being located within an existing urban area of the Newcastle LGA, and only several kilometres from the Newcastle CBD, is relatively isolated from existing facilities and services in terms of accessible walking (or motorised scooter) distance. There will be a dependency on motor vehicle use for access to off-site services, and for some less able residents, on-site services due to the elongated scale of the

development footprint. While this is not ideal, the proposal meets the required provisions of the Seniors Living SEPP with respect to access to facilities and services, and therefore does not warrant lack of support on this basis. The proposed Seniors Living development will appeal to a certain sector of the aged housing market, who will most likely consider this factor prior to purchasing/locating to this facility.

While the proposed seniors living development proposed removal of a significant area of mature vegetation, this vegetation is described as 'managed lands', planted in recent decades for the golf course landscape and is not threatened or endangered habitat/species. If removed (as proposed) it will result in a comparatively visually stark landscape in the shorter term. This visual impact will, however be partially ameliorated due to the relative visual isolation of the site as viewed from outside areas, the proposed progressive staging of the development, and, longer term, through compensatory tree planting.

Overall, subject to the Golf Course land (Lot 103) and Lorna Street Site (Part Lot 10) being deemed suitable for the proposed land use having regard to land contamination and remediation (currently unsatisfactory), the proposal is considered to be suitable for the locality.

(d) any submissions made in accordance with this Act or the Regulations

Refer to summary of issues in Section 4 of this report. The matters raised by the University are considered to be addressed for the purposes of this Concept Development Application, however it is recommended the applicant consult with the University regarding parking for the Golf Club (not the subject of this application prior to the preparation and submission of the Stage 1 application, should the application be recommended for approval).

(e) the public interest

The development of a potentially contaminated site and associated risks (based on the existing information) is not in the public interest.

The proposed concept development application will provide increased housing for aged persons within the Newcastle LGA. In addition, the concept development application proposes to remediate a existing contaminated site (subject to satisfactory information being provided demonstrating this, which has not yet been provided). The applicant also contends that the development will allow for the improvement and continued economic viability of the Golf Club and its employees. In this regard, the proposed concept development is considered to be in the public interest from these aspects.

7. Conclusion

The proposed concept (staged) development application for the seniors living development and golf course redesign and associated works is permitted pursuant to the (then applicable) Newcastle LEP 2003 and Seniors Living SEPP.

The proposed use of the Lorna Street site (a former landfill site) is overall considered to be a suitable use for this land, however the information submitted relating to this site, known to be contaminated is insufficient to meet the provisions of SEPP 55 (Remediation of Land). The potential impacts of groundwater contamination on the SEPP 14 wetland are also unknown. The information submitted with the application has also not sufficiently demonstrated that the Golf Course land (Lot 103) and Lorna Street Site (Part Lot 10) is suitable for the proposed use due to contamination, and potential contamination (the extent of which is yet unknown). **On this basis, the proposed concept development application cannot be supported and is recommended for refusal.**

The proposed seniors living development (on the existing Golf Course site) will result in a large scale (both in land area and four substantial buildings) which will be relatively isolated (in terms of walking and mobile scooter distance) from existing residential areas and services. However, a site compatibility certificate (**Appendix J**) has been issued by the Director General of the NSW Department of Planning and Infrastructure, and the access requirements of the Seniors Living SEPP have been met (primarily the provision of a mini-bus). The taller buildings (apartment and RCF buildings), will be higher than that permitted under the LEP in the surrounding areas. However the application has demonstrated that the siting and location of these buildings will not have a detrimental impact on the surrounding land uses. Detailed design aspects of each of the stages will be required to be addressed in future development applications.

The concept development application also proposes subdivision of the land, excising the golf course and four allotments generally reflecting the proposed staging of the seniors living development (including provision of the RCF at Stage 5). However the assessment of the application identified that the Seniors Living SEPP does not permit the proposed subdivision and the RCF would be required to be provided in the first stage of development.

Other relevant considerations under Section 79C (including but not limited to built form, traffic management, flooding and stormwater, vegetation removal and compensatory planting requirements, economic benefits, noise, environmental constraints, and the public interest) were assessed to be generally satisfactory and/or could be addressed via appropriate conditions of development consent for the concept development application (in the event that the application was recommended for approval). As a concept planning proposal, the assessment identified that numerous matters will be required to be satisfactorily addressed at the future development application stages.

8. Recommendation

That the Joint Regional Planning Panel refuse Integrated Development Application DA-2012/419 as, pursuant to Section 79C(1)(a)(i), (b), (c) and (e), of the *Environmental Planning and Assessment Act 1979*, the proposed concept development application is unsatisfactory having regard to the potential contamination of the land and associated risks to human health and the environment, including the adjacent SEPP 14 wetland.

APPENDICES

- **Appendix A** Complete list of the documents submitted with the application for assessment.
- **Appendix B:** Concept Plans, including overall site concept plan, subdivision plans and staging plan and typical concept plans for buildings (Bishop Hitchcock and Irwin Architects)
- **Appendix C:** Landscape Plans (Blackburne Jackson Design);
- **Appendix D:** Plan of Proposed Golf Course Works and Golf Course Staging (Richard Chamberlain Golf Design)
- **Appendix E:** Figure 3-1 'vegetation Communities Map' from Flora and Fauna Report (RPS)
- **Appendix F:** Aerial Overlay showing setbacks of Golf Course from SEPP 14 Wetland
- **Appendix G:** Detailed Survey of Extent of Water (Project Surveyors)
- **Appendix H:** Urban Design and SEPP 65 Design Quality Considerations (Table)
- **Appendix I:** Site Height Analysis (BHI Architects, A.0015 Rev A dated 22/1/2013)
- **Appendix J:** Site Compatibility Certificate (NSW Department of Planning and Infrastructure)

APPENDIX A – All submitted Documents

ORIGINALLY SUBMITTED INFORMATION

Statement of Environmental Effects prepared by City Plan Services dated April 2012 and Appendices as follows:

- Appendix 1: Detailed Surveys of Shortland Waters Golf Club, Vale Street, Shortland (Project Surveyors; Drawing Nos. B1014-1; B1014-2, Being Lot 103 in DP881682, Showing general detail and site levels. Date of Survey July 2011)
- Appendix 2: Approved Eco-Tourism Development Masterplan (EJE Architects, Dated 26.07.06)
- Appendix 3: Site Compatibility Certificate (Correspondence between New Castle City Council and NSW Department of Planning, Dated 01/12/2010)
- Appendix 4: Concept Plans (BHI Architects)
- Appendix 5: Landscaping Concept Report and Plans (Blackburne Jackson Design)
- Appendix 6: Concept Development – Schedule of Areas (BHI Architects)
- Appendix 7: Proposed Golf Course Works Plan (Richard Chamberlain Golf Design)
- Appendix 8: Schedule of Conceptual Golf Course Works (City Plan Services)
- Appendix 9: Proposed Golf Course Works- Staging Plans (Richard Chamberlain Golf Design, Shortland Waters Golf Course Staging of Golf Course Construction Works, March 28 2012; Existing Golf Holes; Stage 1A Works; Stage 1B Works; Stage 2 Works)
- Appendix 10: Flora & Fauna Assessment (By RPS; Version/Date: Final/March 2012; Report No. PR109381)
- Appendix 11: Phase 1 Environmental Site Investigation (By RCA Australia; Ref # 7875a-401/1; January 2012);
- Appendix 12: Remedial Action Plan (By RCA Australia; Ref # 7875-401/1; January 2012)
- Appendix 13: Comment on Contamination Issues-Development Footprint (By RCA Australia; Ref # 7875a-402/0; 20 March 2012)
- Appendix 14: Physical Infrastructure & Stormwater Report; By Worley Parsons; Ref # 301020-03876-CI-REP-0002-C; 11 April 2012)
- Appendix 15: Golf Course Designer Statement (By Richard Chamberlain Golf Design; 20 March 2012)
- Appendix 16: AHIMS Search Results (Service ID 59354, 59351, 59352; 22 December 2011)
- Appendix 17: Lorna Street Survey- Extent of Water (By Project Surveyors; 5 December 2011)
- Appendix 18: Bushfire Threat Assessment-Golf Course Works (By Firebird ecoSultants; 13 January 2012)
- Appendix 19: Bushfire Threat Assessment- Residential Development (By Firebird ecoSultants; Final 2 April 2012)
- Appendix 20: Traffic Impact Assessment (Better Transport Futures Mark Waugh; Proposed Retirement Residential Development; Final Version 3; 2 April 2012)
- Appendix 21: Pre-DA Lodgement Meeting Minutes (By Newcastle City Council; 16 December 2011)

ADDITIONAL INFORMATION

Applicant's Response to NCC's Request for Information for DA2012/419 (By City Plan Services dated 30 April 2013) and following attachments:

- Attachment 1: Table responding to each item within Council's request for information Shortland Waters-Response to NCC's Request for Information
- Attachment 2: SWGC Liquor License Details (NSW Government Independent Liquor and Gaming Authority; Key Liquor License Details recorded as at 3 May 2012)
- Attachment 3: Site Height Analysis Section (By BHI Architects; Revision A; Dated 22 January 2013)

- Attachment 4: Acoustic Assessment (By RCA Acoustics; Ref # 9534 401.1; Dated 10 April 2013)
- Attachment 5: Bushfire Certification Letter (By FPA Australia and Firebird ecoSultants; Dated 18 February 2013)
- Attachment 6: *Eucalyptus scoparia* Location Map (By RPS; Dated 15 January 2013)
- Attachment 7: Phase 1 Environmental Site Assessment (Golf Course) (By RCA Australia; Ref # 7875a 401/2; Dated January 2013)
- Attachment 8: Groundwater Investigation Report (By RCA Australia; Ref # 7875-402/0; Dated September 2010)
- Attachment 9: Remedial action Plan (Lorna St) (By RCA Australia; Ref # 7875-104/2; Dated January 2013)
- Attachment 10: Site Audit-Interim Advice #1 (Review of Existing Reports and Remediation Strategy; By GHD; Ref # 22/16703/101982; Dated 10 April 2013)
- Attachment 11: Approximate Location of Private Pump Station (Concept Plan/ Urban Structure Plan; By BHI Architects; Dated 29 March 2012; Revision D)
- Attachment 12: Autoturn Simulation- 8.8m Vehicles
- Attachment 13: Autoturn Simulation- 11m Vehicles
- Attachment 14: Autoturn Simulation- 14.5m Vehicles
- Attachment 15: Site Plan (Cycleway Connection) (By BHI Architects; Dated 22 January 2013; Revision A)
- Attachment 16: Site Compatibility Certificate (By NSW Government Planning and Infrastructure; Ref 13/01856; Dated 8 March 2013)
- Attachment 17: University Letter of Consent (By Brok Glenn of the University of Newcastle Australia; Dated 19 April 2013)

Correspondence from Applicant to Council - Contamination Issues (By City Plan Services dated 25 September 2013)

INFORMATION SUBMITTED TO OFFICE OF WATER WITH COPY TO COUNCIL AND CONSULTANT

City Plan Services Letter to Office of Water dated 28 February 2013 and following attachments:

- Attachment 1- Location Plan
- Attachment 2- Overall Concept Site Plan, by BHI Architects Dated 5 April 2012 revision C
- Attachment 3- Golf Courses as Water Quality Buffers, by e par Pty Ltd
- Attachment 4a- Detail Survey Golf Course, by Project Surveyors dated 4 August 2011 Revision B
- Attachment 4b- Detail Survey Lorna Street, by Project Surveyors dated 4 August 2011 Revision B
- Attachment 4c-Detailed Survey- Lorna St, Extent of Water, by Project Surveyors dated 5 December 2011
- Attachment 5-Golf Course works (Extract) Overlaid on Aerial Image
- Attachment 6- Golf Course works (Extract) Overlaid Vegetation Community Map
- Attachment 7- Attachment 7- Plan of Proposed Golf Course Works, by Richard Chamberlain Golf Design
- Attachment 8-Physical Infrastructure & Stormwater Report, by Worley Parsons, and EcoNomics. Ref # 301020-03876-CI-REP-002-C dated 11 April 2012.
- Attachment 9- Standard Operating Procedure Fertiliser Management Chemical Nutrient Control, by e Par environment dated 10 September 2012
- Attachment 10- Standard Operating Procedure Spray Drift, by e Par environment dated 10 September 2012
- Attachment 11-Standard Operating Procedure Spraying Chemicals Wetting Agents, by e Par environment dated 10 September 2012

- Attachment 12-Remedial Action Plan, by RCA Australia dated January 2013 RCA ref # 7875-401/2
- Attachment 13- Standard Operating Procedure Erosion Sediment Control, by e Par environment dated 10 September 2012
- Attachment 14- Standard Operating Procedure Staff Environmental Induction, by e Par environment dated 10 September 2012
- Attachment 15- Standard Operating Procedure Wetland Management Protection, by e Par environment dated 10 September 2012